BRUSSELS AIR TRANSPORT BRIEF: APRIL 2020

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European Regulatory Newsletter

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AVIATION REGULATORY AND POLICY

COVID-19: European Commission Proposes Package of Measures to Support Transport Sector

On 29 April 2020, the European Commission proposed a package of measures which aim to provide relief to the transport sector, ease the regulatory burden and reduce costs for transport companies. This package includes measures to support the aviation, rail, maritime, inland navigation and road sectors, as they move on from the travel restrictions put in place during the coronavirus pandemic.

For the aviation sector, the relief measures include notably a Proposal for a Regulation on common rules for the operation of air services in the EU in view of the Covid-19 pandemic, which addresses notably the issue of ground handling services by authorising the extension of contracts to avoid complex tenders, and allowing concessions that will prevent airports from getting blocked should ground-handling companies go bankrupt.

The following measures are also included in the relief package proposed by the Commision:

- *Modification to air carrier licencing rules under Regulation (EC) N°1008/2008:* The Commission proposed to suspend temporarily the formal obligation for Member States to suspend or revoke the operating licence of any air carrier, which may not to be able to fulfil its actual or potential financial obligations for the next twelve months, provided that safety is not at risk. The obligation for Member States to monitor the financial fitness of their carriers to protect passengers from undue safety risks and to provide relevant information to safety authorities remains.
- *Modification to rules on emergency measures under Regulation (EC) N°1008/2008:* The Commission proposed a temporary derogation from Article 21 concerning the rules on emergency measures in order for a Member State to temporarily keep a justified and proportionate emergency measure in place for a period beyond 14 days but limited to the duration of public health risks clearly linked to the Covid-19 pandemic. At the request of any of the Member State(s) involved or on its own initiative, the Commission may suspend this action if it does not meet the requirements of Article 21 or is otherwise contrary to EU law. To this effect, Member States are obliged to inform the Commission about changes in duration and scope of their emergency measures.
- *Prolongation of the period during which suppliers of ground handling services may operate at EU airports under Directive 96/67/EC7:* In order to give the required security to the creditors granting loans to ground handlers, which allow them to avoid possible bankruptcy, the proposed Regulation provides that, in

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derogation from Article 11(1)(d) of Directive 96/67/EC, suppliers' contracts that expire between the date of entry into force of this Regulation and 31 December 2020 may be prolonged until 31 December 2021.

- *Introduction of an urgent procedure for the selection of suppliers of ground handling service during the COVID-19 crisis:* In the context of the Covid-19 pandemic, and in derogation from Directive 96/67/EC, in the case that one or several ground handling providers fail at an airport during the period of the COVID-19 pandemic and for reasons directly attributed to its impacts, the proposed temporary provisions allow an airport managing body to directly choose a ground handling service provider without having to organize a selection procedure in conformity with Article 11(1), for a maximum period of six months. The modifications also provide for the possibility for the Commission to prolong the relevant periods affected by delegated act, which can be adopted under an emergency procedure.

In light of the Commission's press release, additional proposals may follow in the coming weeks.

Single European Sky: European Commission Extends Deadline to Equip Planes with Surveillance Technology

On 29 April 2020, the European Commission extended the deadline of 7 June 2020 for airlines to equip aircraft with Automatic Dependent Surveillance – Broadcast (ADS-B) with its Implementing Regulation (EU) 2020/587. This is a relief measure to airlines postponing the deadline by six months, until 7 December 2020. This surveillance technology makes it possible to periodically broadcast aircraft information, such as identity, speed or position, derived from on-board systems (e.g. determined via satellite) and, therefore, enables the aircraft to be tracked from the ground for surveillance purposes. As this technology modernises ground surveillance systems, it has the potential to rationalise the European radars network. In addition to the transition period introduced in the amended Regulation, this change will provide aircraft operators additional time to retrofit their aircraft, if they had planned to do so, or to put in place an appropriate retrofit programme.

IATA Reports: Air Cargo and Passenger Demand for February 2020

On 1 April 2020, IATA released data for global air freight markets for February 2020, showing that demand, measured in cargo tonne kilometers (CTKs), decreased by 1.4% in February 2020, compared to the same period in 2019. However, the report states that seasonally adjusted demand for air cargo fell by 9.1% month-on-month in February, counting the impact of the Lunar New Year, which fell in February in 2019, and the leap year in 2020, which meant an additional day of activity. On 2 April 2020, IATA realeased the global passenger traffic data for February 2020, showing that demand, measured in revenue passenger kilometers or RPKs, fell 14.1% compared to February 2019, This was the steepest fall in traffic since 9.11 and reflected the collapse of domestic travel in China and the sharp decline in international demand to,from and within the Asia-Pacific region, owing to the spread of COVID-19 and the imposition of government travel restrictions. Capacity (available seat kilometers or ASKs) also fell 8.7% for February 2020 as airlines scrambled to trim capacity in line with plunging traffic.

IATA Reports: IATA Updates COVID-19 Financial Impacts

On 14 April 2020, the International Air Transport Association (IATA) released an updated analysis of the revenue impact of the COVID-19 outbreak on the global air transport industry. IATA estimates that the COVID-19 crisis will see airline passenger revenues drop by $314 billion in 2020, a 55% decline compared to 2019. These updated figures reflect a significant deepening of the crisis as IATA's previous analysis, published on 24 March 2020, estimated a plummet of $252 billion in air passenger revenues, or 44% below 2019's figure, in a scenario where

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severe travel restrictions would last for up to three months, followed by a gradual economic recovery later this year. The updated figures reflect the parameters of overall developments in the economy and travel restrictions, some of them extending beyond the initially reflected three-month period. Full-year passenger domestic and international demand is also expected to be down 48% compared to 2019.

Aviation Safety: European Commission and EASA Sign a Contribution Agreement on Aviation Safety Research Activities

On 1 April 2020, the European Commission and the European Union Safety Agency (EASA) signed a contribution agreement on aviation safety research activities. Under this agreement, EASA is responsible for contracting, the techical oversight and the proper dissemination and usage of the research results. EASA also undertakes the management of urgent research actions in the area of environmental protection and aviation safety (including the areas of smart, green and integrated transport). Research activities include topics such as environmental research, vulnerability of manned aircraft to drone strikes, and effectiveness of flight time limitations. The agreement covers a budget of €13 million over the next seven years and research activities are financed through the European Union's Horizon 2020 research and innovation programme.

Aviation Safety: EASA Publishes Safety Information Bulletin With Recommendations for Aircraft Operators and Aerodrome Operators

On 2 April 2020, EASA published an updated Safety Information Bulletin providing operational recommendations related to the Covid-19 outbreak. The Safety Information Bulletin is aligned with EASA's Safety Directives and Guidelines, with the aim to ensure that appropriate preventive measures are implemented by the aviation industry to prevent the spread of the coronavirus during the performance of aviation services. The Bulletin includes: (i) recommendations for the use of face masks for crew members; (ii) measures regarding social distancing in the airports; and (iii) recommendations for crew members not to use personal disinfectants to disinfect aircraft surfaces. The Bulletin further includes operational recommendations, particularly in relation to the instructions of public health authorities.

Aviation Safety: IATA Releases 2019 Airline Safety Report

On 6 April 2020, IATA released its Airline Safety Report for 2019, including safety performant indicators compared to the 2018 and to the average of the 2014-2018 period trend lines. The report showed that the safety performant indicators have improved as the number of total accidents, fatal accidents and fatalities declined compared to 2018 as well as to the five-year trend lines, even as the number of flights rose to a record 46.8 million. Airlines on the IATA Operational Safety Audit (IOSA) registry outperformed airlines that are not on the registry. Loss of control-inflight and hard landings was identified as the cause of the highest number of fatalities in 2019, reinforcing the need to continue identifying risks and threats and take steps to mitigate them.

Drones: EASA Publishes First Rules for Safe Drone Operations in Europe's Cities

On 6 April 2020, EASA published its first Opinion on the use and control of drones in an urban environment, that aims to allow a safe and secure co-existence of drones with other activities in any environment, in a way that is acceptable to the public. This Opinion contains a draft Regulation which has already been presented to the European Commission as a basis for future legislation, proposing a regulatory framework to support and enable operational, technical and business developments, and provide fair access to all airspace users. The Opinion proposes to allow immediate implementation of the U-space after the entry into force of the Regulation to permit

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safe aircraft operations in all areas and for all types of unmanned operations. Together with the Opinion, EASA published a first set of draft content of acceptable means of compliance (AMC) and guidance material (GM) to support drone operators and EU member states in complying with the new rules. The final AMC & GM will be published by EASA once the European Commission has adopted the Regulation and the necessary consultation with stakeholders has been completed.

class="title2">Antitrust and Competition

State Aid: European Commission Approves French Scheme Deferring Payment by Airlines of Certain Taxes to Mitigate the Economic Impact of the Coronavirus Outbreak

On 31 March 2020, the European Commission approved a French scheme deferring the payment by airlines of certain aeronautical taxes to mitigate the economic impact of the coronavirus outbreak. France notified the Commission of its intention to set up a deferral payment scheme of certain aeronautical taxes, accessible to airlines with an operating licence in France, with the aim to reduce the pressure on airlines' cash flows. The scheme offers the option to defer the payment of certain taxes that would, in principle, be due between March and December 2020 to after 1 January 2021, and to pay the taxes over a period of up to 24 months. The Commission found that the scheme was in line with the conditions set out in Article 107(2)(b) TFEU for the following reasons: (i) the coronavirus outbreak qualifies as an exceptional occurrence, and, as a result, exceptional interventions by Member States to compensate for the damages linked to the outbreak are justified; (ii) the scheme will compensate damages that are directly linked to the coronavirus outbreak; and (iii) the measure is proportionate as the foreseen compensation does not exceed what is necessary to make good the damage. On this basis, the Commission concluded that the scheme is in line with EU State aid rules.

State Aid: European Commission Approves Belgian Scheme Deferring Payment by Walloon Airports of Concession Fees to Mitigate the Economic Impact of the Coronavirus Outbreak

On 11 April 2020, the European Commission approved a Belgian scheme deferring the payment by Walloon airports of concession fees to mitigate the economic impact of the coronavirus outbreak. Belgium notified the Commission of its intention to set up a deferral payment measure of the concession fees, accessible to the operators of the Charleroi and Liège airports, to ensure that the two airports have sufficient liquidity to counter the damage caused by the coronavirus outbreak and to preserve the continuity of economic activity during and after the current crisis. This possibility would in principle be due for the year 2020. The Commission found that the scheme is in line with Article 107(3)(b) TFEU and the conditions set out in the State aid Temporary Framework adopted by the Commission on 19 March 2020, as amended on 3 April 2020, in particular, as: (i) it may only be granted until the end of this year; (ii) its duration will not exceed six years; (iii) the payment deferral involves minimum remuneration. The Commission, therefore, approved the scheme under the EU State aid rules.

State Aid: European Commission Approves €455 Million Swedish Guarantee Scheme to Support Airlines Affected by the Coronavirus Outbreak

On 11 April 2020, the European Commission approved a Swedish loan guarantee scheme up to approximately €455 million to support airlines affected by the coronavirus outbreak. Sweden notified the Commission of a scheme in the form of State guarantees on loans, accessible to all airlines which hold a Swedish commercial aviation licence at least as of 1 January 2020, with the exception of those operating non-scheduled passenger air

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transport services as their main activity. The Swedish authorities estimate that approximately 20 airlines will be eligible for loan guarantees under the scheme. This includes carriers operating scheduled passenger air transport services, as well as smaller airlines operating ambulance flights and helicopter companies performing inspection services. The Commission found that the scheme is in line with Article 107(3)(b) TFEU and the conditions set out in the State aid Temporary Framework adopted by the Commission on 19 March 2020, as amended on 3 April 2020. In particular, the Commisison assessed the following parameters: (i) the underlying loan amount per airline is linked to its liquidity needs for the foreseeable future; (ii) the guarantees may only be provided until the end of this year; (iii) the guarantees are limited to a maximum duration of six years; (iv) the guarantee coverage for each loan and the guarantee premiums do not exceed the levels foreseen by the Temporary Framework. On this basis, the Commission concluded that the measure is in line with the EU State aid rules.

State Aid: European Commission Approves Danish Public Guarantee of up to €137 Million to Compensate Scandinavian Airline SAS for Damage Caused by the Coronavirus Outbreak

On 15 April 2020, the European Commission approved a Danish State guarantee loan up to approximately €137 million on a revolving credit facility in favour of Scandinavian Airline (SAS). Denmark notified to the Commission an aid measure to partly compensate SAS for the damage suffered due to the cancellation or re-scheduling of its flights as a result of the imposition of travel restrictions introduced by Denmark to contain the spread of coronavirus. The support will take the form of a State guarantee on a revolving credit facility in favor of SAS. The Commission found that the scheme is in line with the conditions set out in Article 107(2)(b) TFEU. In particular, the Commission considered that: (i) the coronavirus outbreak qualifies as an exceptional occurrence, and, as a result, exceptional interventions by Member States to compensate for the damages linked to the outbreak are justified; (ii) the measure will compensate damage which is directly linked to the coronavirus outbreak; and (ii) the measure is proportionate, as the foreseen compensation does not exceed what is necessary to make good the damage. The Commission, therefore, concluded that the scheme is in line with EU State aid rules.

State Aid: European Commission Approves €550 Million German State-Guaranteed Loan to Compensate Airline Condor for Damage Caused by Coronavirus Outbreak

On 27 April 2020, the European Commission approved a €550 million German State-guaranteed loan in favour of German charter airline Condor. Germany notified to the Commission an aid measure to partly compensate Condor for the damage suffered due to the cancellation or re-scheduling of its flights as a result of the imposition of travel restrictions introduced by Germany and other destination countries to contain the spread of coronavirus. The Commission assessed the measure under Article 107(2)(b) TFEU, and found that: (i) the coronavirus outbreak qualifies as an exceptional occurrence, and, as a result, exceptional interventions by Member States to compensate for the damages linked to the outbreak are justified; (ii) the measure will compensate part of the damage that is directly linked to the coronavirus outbreak; and (iii) the measure is proportionate, as the foreseen compensation does not exceed what is necessary to make good the damage. The exact amount of damage suffered by Condor will be quantified after the coronavirus crisis, based on the airline's operating accounts for the year 2020, subject to the Commission's prior approval. Furthermore, should the German public support exceed the damage actually suffered by Condor due to the outbreak, a claw-back mechanism will be activated. The Commission, therefore, concluded that the measure is in line with the EU State aid rules.

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AIR TRAVEL - PASSENGERS' RIGHTS

Air Travel: CJEU Rules That Air Carriers Must Indicate the VAT on Domestic Flights and the Fees Charged for Paying by Credit Card From the First Time Their Price Offers are Published on the Internet

On 23 April 2020, the Court of Justice of the European Union (CJEU) issued its judgement on the Case C-28/19. This case originates from a probe of the Italian Competition and Market Authority (the "Authority") in 2011, which criticised Ryanair for having published on the internet prices for air services that did not indicate, from the first time that they were shown, the following: (i) the online check-in fees; (ii) the amount of value added tax (VAT) on domestic flights; and (iii) the fees charged when paying by a credit card other than that approved by Ryanair. The Authority imposed fines on Ryanair for unfair commercial practice, on the basis that those price elements were unavoidable and foreseeable and, therefore, the consumer had to be informed before a booking process was commenced. Ryanair brought an action before the Italian administrative courts and the Italian Council of State asked the CJEU whether the price elements in question are unavoidable and foreseeable and must, therefore, be included in the published initial price offer. The CJEU concluded that Article 23(1) of Regulation (EC) No 1008/2008 on common rules for the operation of air services must be interpreted as meaning that passengers' check-in fees, the payment of which cannot be avoided because there is no alternative method of checking-in free of charge, the VAT applied to fares for domestic flights, and administrative fees for purchases made by means of a credit card other than that approved by the air carrier, constitute price elements that are unavoidable and foreseeable. By contrast, passengers' check-in fees, the payment of which can be avoided by using a free check-in option, and the VAT applied to optional supplements relating to domestic flights constitute an optional price supplement.

PUBLIC CONSULTATIONS AND EVENTS

Upcoming Event: IATA's Aviation Data & Digital Webinar Series

From 27 April to 26 May 2020, IATA is organizing an Aviation Data & Digital Webinar Series to address the emerging priorities in the times of the coronavirus crisis towards generating and retaining cash, cutting costs and stimulating recovery and growth. These webinars focus on ways to achieve quick and immediate results by leveraging data and digital capabilities to meet these priorities. Industry experts and leaders provide insights about data and digital solutions that could deliver quick and immediate results helping airlines and the wider aviation and travel value chain overcome this crisis and accelerate the recovery process.

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