BRUSSELS AIR TRANSPORT BRIEF: MAY 2020

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European Regulatory Newsletter

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AVIATION REGULATORY POLICY

Tourism and Transport: European Commission Issues Guidance on How to Resume Travel and Reboot Europe's Tourism in 2020 and Beyond

On 14 May 2020, the European Commission presented a package of guidelines and recommendations to help Member States progressively lift travel restrictions and allow tourism businesses to reopen, while respecting the necessary health precautions.

The European Commission's Tourism and Transport package includes:

- An overall strategy towards recovery in 2020 and beyond. The package includes measures to: (i) restore unrestricted free movement and reopen internal borders; (ii) restore transport and connectivity; (iii) resume tourism services and, in particular, in the hospitality sector; and (iv) address the liquidity crunch and rebuild consumers' confidence;
- A common approach towards a phased and coordinated lifting of internal border controls with the aim to restore freedom of movement within the EU;
- A framework to support the gradual re-establishment of transport while ensuring the passengers' and personnel's safety. This framework sets out a series of recommendations, including the need to limit contact between passengers and transport workers, and passengers themselves and reduce, where possible, the density between them;
- A recommendation on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services. While reaffirming the passengers' right of choice between vouchers or cash reimbursement, the Commission's recommendation aims to ensure that vouchers become a viable and more flexible alternative to reimbursement for cancelled trips in the context of the COVID-19 pandemic. These voluntary vouchers should be protected against insolvency of the issuer, with a minimum validity period of 12 months, and be reimbursed, if not redeemed;
- Criteria on the progressive resuming of tourism services and for developing health protocols in hospitality establishments.

Emissions Trading: Greenhouse Gas Emissions Reduced by 8.7% in 2019

On 4 May 2020, the European Commisison released data on emissions of greenhouse gases from all operators covered by the EU Emissions Trading System (EU ETS) in 2019. The Commission's press release shows overall reduced levels of greenhouse gas emissions by 8.7% compared to 2018 resulting from a 9% decrease of

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emissions from stationary installations and a 1% increase of emissions from aviation. Under the EU ETS Directive, all commercial aircraft operators, and non-commercial aircraft operators with significant emissions, are accountable for their emissions from flights within the European Economic Area (EEA) for the 2013-2023 period. According to the press release, the sector has complied with its climate obligations despite the difficult economic situation as a result of the COVID-19 crisis. In 2019, verified emissions from aircraft operators amounted to 68.14 million tonnes of CO2-equivalent. This was around 1% higher than the 67.49 million tonnes of CO2-equivalent recorded in 2018. Furthermore, allowances acquired from auctions or other sectors covered for 54% of these emissions, whereas aircraft operators received free allocation of 31.3 million allowances, which covered for 46% of the emissions. The data indicates that approximately 500 aircraft operators reported and complied, including more than 100 commercial aircraft operators based outside the EU operating flights within the EEA. On the other hand, non-compliant operators are typically small or ceased operating in 2018.

IATA Reports: Air Cargo and Passenger Demand for March 2020

On 28 April 2020, the International Air Transport Association (IATA) released data for global air freight markets for March 2020, showing that global demand, measured in cargo tonne kilometers (CTKs), decreased by 15.2% in March 2020, compared to the same period in 2019. The report also demonstrates a severe capacity shortfall as global capacity, measured in available cargo tonne kilometers (ACTKs), plummeted by almost 23%, which has created a gap in meeting the remaining demand for air cargo. In this context, IATA's report urges the governments to take some necessary steps in order for air cargo to move efficiently throughout the supply chain, including: (i) cutting paperwork for charter operations; (ii) exempting cargo crew from quarantine rules applicable to the general population; and (iii) ensuring staff's and facilities' adequacy for the efficient processing of cargo. On 29 April 2020, IATA released the global passenger traffic data for March 2020, showing that demand, measured in revenue passenger kilometers or RPKs, fell by 52.9% compared to March 2019, marking this as the steepest fall in recent history. This decline reflects the impact of government actions to slow the spread of COVID-19 and restrictions on mobility, including in domestic markets. Capacity (available seat kilometers or ASKs) also fell by 36.2% in March 2020.

Single European Sky: European Commission Urges 11 Member States to Comply with EU Rules on the Provision of Data Link Services

On 14 May 2020, the European Commission decided to send a letter of formal notice to Bulgaria, Cyprus, Finland, France, Greece, Lithuania, Malta, Portugal, Romania, Slovakia and Slovenia, as these Member States have failed to provide and operate data link services for the operators of aircrafts flying within airspace under their responsibility. Data link services are air traffic management communications conveyed through data links, complementing the voice communications used within air traffic control. Each Member State is required by the Commission Implementing Regulation (EU) 29/2009 to provide these services. The deadline set for providers of air traffic services to operate such data link services expired on 5 February 2018, while a lack of equipment in certain air traffic control centres is preventing the use of data link services from aircraft operators, which they have been required to equip as of 5 February 2020. The Member States concerned have four months to reply to the Commission's concerns. Otherwise, the Commission may decide to send a reasoned opinion.

Civil Aviation: European Commission Urges 11 Member States to Designate a Just Culture Body

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On 14 May 2020, the European Commission decided to send letters of formal notice to Austria, Belgium, Bulgaria, Cyprus, Germany, Greece, Italy, Luxembourg, Malta and Spain, as these Member States have failed to designate a "just culture body" in line with the provisions of Regulation (EU) No 376/2014. Member States are required to designate this body with the aim to ensure that persons reporting events related to civil aviation safety do not face penalties by their employers or by the Member States' authorities. In addition, this body undertakes to ensure that organisations active in the civil aviation field and based in a Member State adopt internal rules describing the implementation of just culture principles within the organisation.The above Member States have four months to adress the arguments raised in the letters, or else the Commission may send reasoned opinions, thereby excalating the infringement procedure to the next stage. This is in fact what it did to Ireland for failing to designate a just culture body. Ireland has four months to respond to the arguments put forward by the Commission. Otherwise, the Commission may decide to bring the matter before the EU Court of Justice.

ANTITRUST AND COMPETITION

State Aid: European Commission Approves French Plans to Provide €7 Billion in Urgent Liquidity Support to Air France

On 4 May 2020, the European Commission approved a French aid measure of €7 billion to provide urgent liquidity to Air France in the context of the COVID-19 outbreak. France notified the Commission of an aid measure in the form of: (i) a State guarantee on loans, and (ii) a subordinated shareholder loan to the company by the French State. With regard to the State-backed guarantees, France submitted an individual notification, as the guarantee provides greater loan coverage (90%) than under the French general guarantee scheme approved by the Commission on 21 March 2020. The Commission found that this is in acordance with the conditions set by the State aid Temporary Framework. With respect to the subordinated shareholder loan, the Commission assessed the measure in line with Article 107(3)(b) TFEU, which empowers the Commission to approve State aid measures implemented to remedy a serious disturbance to the economy of Member States. The Commission found that, in the absence of the public support, Air France would likely face the risk of bankruptcy due to the sudden erosion of its business, which would, subsequently, cause severe harm to the French economy. The Commission concluded that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the French economy and will contribute to managing the economic impact of the COVID-19 in France. On this basis, the Commission found that the measure is in line with the EU State aid rules.

State Aid: European Commission Approves €18.2 Million Aid for Saarbrücken Airport in Germany

On 12 May 2020, the European Commission approved a German operating aid of €18.2 million to Saarbrücken airport under the EU State aid rules. In 2017, the Commission approved an initial operating aid of €12 million to Saarbrücken airport until April 2019. Germany notified the Commission of its intention to grant additional operating aid to the airport until 2024. The Commission assessed the measure under the rules on operating aid for small airports under Aviation Guidelines, which are extended until 2024. In its assessment, the Commission considered the exceptional circumstances posed by COVID-19 in order to assess the proportionality of the measure under the Aviation Guidelines. In particular, the Commission found that, while the airport had experienced a growth in passengers during 2019, it suffered a significant reduction of its services due to the COVID-19 outbreak, as a result of the imposition of travel restrictions introduced by Germany and by many

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destination countries. The Commission also concluded that the measure will contribute to improving the connectivity of citizens and facilitating regional development in the region, without unduly distorting competition in the Single market.

State Aid: The EU General Court Dismisses the Actions Against the European Commission's Decision Declaring Illegal the Aid from Italy to Several Airlines Serving Sardinia

On 13 May 2020, the EU General Court issued its judgements in the cases of easyjet v Commission (T-8/18), Volotea v Commission (T-607/17) and Germanwings v Commission (T-716/17) and dismissed the actions brought by the airlines seeking the annulment of the decision of the European Commission of 29 July 2016, pursuant to which the aid granted by Italy to several European airlines, including the three at issue, serving Sardinia was partly incompatible with the internal market. According to that decision, the aid scheme for the development of air transport in Sardinia constituted State aid granted not to the operators of the main Sardinian airports, but to the airlines concerned. The Court considered the following: (i) first, that the Commission had rightly found the airlines being the beneficiaries of the aid scheme owing to the grant of an advantage through State resources by payments imputable to Sardinia; (ii) second, that the Commission had not been obliged to examine whether the payment at issue was de minimis in nature, as it may confine itself to examining the characteristics of the aid scheme, without being required to carry out an analysis of the aid granted in individual cases under such a scheme; and (iii) third, that the Commission had not misconstrued the principle of legitimate expectations in ordering the recovery of the amounts received by the airlines in performance of the contracts concluded with the airport operators under the measures at issue.

AIR TRAVEL - PASSENGERS' RIGHTS

Air Travel: IATA Outlines Layered Approach for the Re-Start of the Aviation Industry

On 19 May 2020, IATA published its Biosecurity for Air Transport: A Roadmap for Restarting Aviation, which outlines its proposal for a layering of temporary biosecurity measures across the entire passenger journey. This aim of this roadmap is to minimize the risk of transmission of COVID-19 at airports and onboard aircraft, and to prevent aviation from becoming a source of international re-infection. In particular, IATA has concentrated its layered approach of measures in two key specific areas, including COVID-19 testing and immunity passports to segregate no-risk travelers. This roadmap includes measures: (i) pre-flight, as IATA foresees the governments' need to collect passenger data ahead of travel; (ii) at the departure airport, (iii) in-flight, (iv) at the arrival airport. IATA highlighted that these measures should be temporary and subject to regular review and improvement when more efficient options are identified.

Air Travel: EASA and ECDC Issue Joint Guidelines to Assure Health Safety in Air Travel in the Context of the COVID-19 Pandemic

On 20 May 2020, the European Union Aviation Safety Agency (EASA) and European Centre for Disease Prevention and Control (ECDC) issued a joint document identifying measures to assure air travellers' and aviation personel's health safety once airlines resume regular flight schedules following the severe disruption caused by COVID-19. The guidelines place importance on health safety at every stage of the end-to-end passenger journey stressing the ways in which individual locations and situations can best be re-engineered to meet the new health safety standards. Key measures in the EASA guidelines include the following recommendations: (i) physical

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distancing at the airport; (ii) wearing masks at all times in the airport and on board; (iii) enhanced cleaning procedures in both the airport and aircraft space; (iv) where allowed by the passenger load, cabin configuration and mass and balance requirements, physical distancing among passengers.

INTERATIONAL TRADE - BREXIT

Brexit: UK Publishes Draft Documents Outlining "The Future Relationship with the EU: The UK's Approach to Negotiations"

On 19 May 2020, the United Kingdom published draft documents setting out its approach to negotiations on a future relationship with the EU.

Among these draft negotiating documents, below are the ones of particular interest to the aviation sector:

- A draft Air Transport Agreement, which notably determines the following:
  - *Designation and authorisation of the British carriers*: The draft Agreement defines that an airline is considered as designated by the UK if it fulfils the following criteria: (i) it is incorporated and has its principal place of business in the UK territory and is licensed in accordance with the applicable UK law; (ii) it holds a current air operator's certificate issued by the UK; and (iii) the UK maintains effective regulatory control of the airline;
  - *Rights granted to the UK and the EU*: Under the draft Agreement, each party shall be granted the right to: (i) use the other's airspace for overflights; (ii) make stops for non-traffic purposes and; (iii) perform scheduled and non-scheduled passenger and cargo services, separately or in combination, without limitation as to capacity or frequency, between points both in the EU and the UK territory.
- A draft Civil Aviation Safety Agreement and draft Annexes: The draft Civil Aviation Safety Agreement sets out the framework for regulatory cooperation and mutual assistance between the UK and the EU, whilst ensuring the perservance of each party's regulatory authority. In the same regard, the proposition on the draft Annexes to the Agreement includes provisions for the implementation of cooperation in the areas of: (i) initial airworthiness; and (ii) aviation maintenance.

PUBLIC CONSULTATIONS AND EVENTS

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

From 27 April to 26 May 2020, IATA organised an Aviation Data & Digital Webinar Series to address the emerging priorities in the times of the COVID-19 crisis towards generating and retaining cash, cutting costs and stimulating recovery and growth. These webinars focused on ways to achieve quick and immediate results by leveraging data and digital capabilities to meet these priorities. Industry experts and leaders provided 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.

Upcoming Event: IATA's Business Travel Summit

On 17-18 June 2020, IATA organises the fifth edition of its Business Travel Summit to get the latest insights from the air travel industry value chain – airlines, IT providers, TMCs, SBTs and Corporates – in the course of the implementation of its New Distribution Capability (NDC) roadmaps. These roadmaps aim to empower the travel

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industry in the transformation of the way air products are retailed to corporations, leisure and business travelers, by addressing the industry's current distribution limitations. The Summit, which will be held online, will reflect on the paths taken by the industry, the value and benefits, the remaining challenges and the points that need to be addressed. The summit will also showcase innovation, particularly from start-ups.

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