BRUSSELS AIR TRANSPORT BRIEF: DECEMBER 2020–JANUARY 2021

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European Regulatory Newsletter

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AVIATION REGULATORY AND POLICY

Aviation Policy: European Commission Presents its "Sustainable and Smart Mobility Strategy"

The European Commission (Commission) presented its "Sustainable and Smart Mobility Strategy," together with an action plan listing a set of measures to be adopted over the next four years on 9 December 2020. The strategy identifies a number of initiatives to transform the EU transport system in line with the objectives of the European Green Deal and of the EU's Digital Strategy.

In relation to the aviation sector, the Commission's strategy primarily aims at reducing dependence on fossil fuels, and foresees that, by 2035, zero-emission large aircrafts will be market-ready. The Commission aims at boosting the uptake of zero-emission airplanes by incentivizing renewable low-carbon fuels as well as the related infrastructure, and by creating zero-emission airports. To decarbonize the aviation sector, the Commission will present a proposal to reduce the Emission Trading System (ETS) allowances allocated for free to airlines, as well as a proposal to implement the International Civil Aviation Organization's (ICAO) Carbon Offsetting and Reduction Scheme for international civil aviation through the revision of the ETS directive in 2021.

Airport Slots: European Commission Adopts Proposal on Airport Slots' Allocation

The European Commission published a proposal to amend Regulation No 95/93 on common rules for the allocation of slots at Community Airports on 16 December 2020. The proposal seeks to strike a balance between the need to provide relief to airlines, which continue to suffer from the significant drop in air travel due to the COVID-19 pandemic, and the need to maintain competition in the market. The proposed measures derogate from the 'use-it-or-lose-it' principle, according to which air carriers must use at least 80 percent of their allocated slots within a given scheduling period in order to retain precedence on the same series of slots for the next equivalent scheduling period. The Commission has proposed to reduce this threshold to 40 percent. The proposal also introduces a number of conditions aimed at ensuring that airport capacity is used efficiently and without harming competition during the COVID-19 recovery period.

On 11 January 2021, the Commission presented the proposal during the European Parliament TRAN Committee meeting. Members of the European Parliament argued that they will consider applying the urgent procedure, but only if the current text is amended and the European Parliament can have a meaningful political debate in full respect of its scrutiny powers.

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On 27 January 2021, Member States' ambassadors agreed on a negotiating mandate at the level of the Council of the European Union for granting airlines relief from airport slot use requirements, while adopting initial measures to relaunch the industry and to encourage competition. The text grants airlines the possibility to return 50 percent of their slot series, but expects them to use at least 50 percent of the remaining slots. The new rules give flexibility to adapt to different scenarios and allow for measures to be taken up to the summer 2022 scheduling period. Regarding next steps, both the Council of the European Union and the European Parliament will need to agree on the final text. The negotiations are being held as a matter of urgency, with a view to having the new rules in place in time for the start of the summer 2021 season on 28 March 2021.

COVID-19: ICAO Publishes its Latest Economic Impact Analysis of COVID-19 Effects on Civil Aviation

On 27 January 2021, the ICAO published its latest economic impact analysis of COVID-19 on civil aviation titled "Reports: Effects of Novel Coronavirus (COVID-19) on Civil Aviation: Economic Impact Analysis." In the last year, ICAO has constantly monitored the impact that the pandemic has had on international civil aviation, and according to its latest analysis, ICAO reported that in 2020 there was an overall 60 percent reduction of international air passengers compared to 2019, bringing air travel back to 2003 levels. ICAO also confirmed that just 1.8 billion passengers flew during 2020, against 4.5 billion in 2019, and estimated US$370 billion of airlines' financial losses, of which US$100 billion in Europe. Finally, in relation to 2021, ICAO indicated that the global outlook is expected to improve only in the second quarter of 2021, though this will depend upon various factors, such as the effectiveness of the pandemic management as well as the vaccination roll out.

IATA Reports: IATA Publishes 2020 Global Air Connectivity Report

On 25 November 2020, the International Air Transport Association (IATA) published the new Global Air Connectivity report. The report confirms that the COVID-19 crisis has had a devastating impact on international connectivity, with Europe experiencing a 93 percent fall. European countries saw significant declines across most markets, although Russian connectivity has held up better than Western European countries. The number of unique city pairs connecting Europe within the region and to the rest of the world reduced by a factor of four. In April 2020, there were 2,110 unique city pairs compared to 9,010 city pairs during the same period one year ago. Air connectivity offers a lifeline for peripheral communities in Europe: in April 2020, 79 routes to remote communities and islands in the European Union had been interrupted, and 14 have not recovered yet. Before the pandemic, the growth in air connectivity was a global success story: over the last two decades, the number of cities directly linked by air more than doubled while air travel costs fell by around half. According to Sebastian Mikosz, IATA's senior vice president for member external relations: *"In a short period of time we have undone a century of progress in bringing people together and connecting markets. The message we must take from this study is the urgent need to re-build the global air transport network.*"

IATA Reports: Air Cargo and Passenger Demand for November 2020

On 7 January 2021, the IATA released data for global air freight markets for November 2020, showing that global demand, measured in cargo ton kilometers, was 6.6 percent below previous-year levels in November (-7.7 percent for international operations). The report also demonstrates that global capacity, measured in available cargo ton kilometers, shrank by 20 percent in November (-21.3 percent for international operations) compared to the previous year. On the same date, IATA released the global passenger traffic data for November 2020,

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showing that demand, measured in revenue passenger kilometers, was 88.3 percent below November 2019, and slightly worse than the 87.6 percent year-to-year decline recorded in October. However, Alexandre de Juniac, IATA's director general and chief executive officer, mentioned that recovery in air travel demand came to a full stop in November 2020, as a result of governments responding to new outbreaks with even more severe travel restrictions and quarantine measures. In this context, Alexandre de Juniac stressed that such measures are inefficient, whereas testing is the best way to stop the spread of the virus and start the economic recovery.

Civil Aviation: EASA Publishes its European Plan for Aviation Safety 2021–2025

On 15 January 2021, the European Union Aviation Safety Agency (EASA) published its European Plan for Aviation Safety (EPAS) 2021–2025. This is the 10th edition of the regional aviation safety plan, which sets out the strategic priorities and the necessary actions to further improve aviation safety in the next years. The EPAS's main objective is to further improve aviation safety and environmental protection throughout Europe, while ensuring a level playing field, as well as to foster efficiency and proportionality in regulatory processes. EPAS proposes a series of actions for innovative air mobility solutions to be undertaken between 2021–2025 to create a cleaner, quieter, and more sustainable aviation system. Initiatives include actions to increase CO2 efficiency, to prepare for electric and hybrid propulsion technology, to incentivize sustainable aviation fuels, carbon offsetting, as well as the development of an environmental label.

ANTITRUST AND COMPETITION

State Aid: European Commission Approves €120 Million Greek Support to Compensate Aegean Airlines for Damages Suffered Due to COVID-19 Outbreak

On 23 December 2020, the European Commission found a Greek compensation measure to support Aegean Airlines in line with EU State aid rules. Aegean Airlines is a Greek-based airline, which has suffered a significant reduction of its services due to the COVID-19 outbreak. Greece notified to the Commission an aid measure to compensate Aegean Airlines for the damage suffered from 23 March 2020 to 30 June 2020 resulting from the containment measures and travel restrictions introduced by Greece and other destination countries to limit the spread of COVID-19. The Commission assessed the measure under Article 107(2)(b) of the Treaty on the Functioning of the European Union (TFEU), and found that the Greek measure, which will take the form of a €120 million direct grant, will compensate the damage suffered by Aegean Airlines that is directly linked to the COVID-19 outbreak, which in turn qualifies as an exceptional occurrence. The Commission also found the Greek measure proportionate, as the aid does not exceed what is necessary to make good the damage suffered by the airlines.

State Aid: European Commission Approves €650 Million Polish Support to LOT Airlines in the Context of COVID-19 Outbreak

On 22 December 2020, the European Commission approved two Polish measures, for a total of about €650 million, to support LOT Polish Airlines (LOT) in the context of the COVID-19 outbreak. LOT is a major network airline in Poland that suffered substantial losses due to the coronavirus outbreak and the travel restrictions imposed to limit its spread. The significant drop in travel demand and the restrictive measures have continued deteriorating the financial situation of the airline. In order to ensure the continuation of LOT's air transport

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services, Poland notified to the Commission two aid measures: i) a €400 million subsidized loan; and ii) a capital injection of €250 million, through the subscription of newly issued shares taken up by Poland. The Commission assessed the measure under Article 107(2)(b) of the TFEU, and found that the measures notified by Poland are necessary, appropriate, and proportionate to remedy a serious disturbance in the economy of a Member State.

State Aid: European Commission Approves €106.7 Million Restructuring Aid and €30.2 Compensation for Damages Suffered Due to COVID-19 Outbreak in Favor of French Airline Corsair

On 11 December 2020, the European Commission approved two French measures, for a total of about €137 million, in favor of Corsair. Corsair is a private French airline company active in passenger and cargo transport, which was already in financial difficulties before the COVID-19 outbreak, and was severely affected by the pandemic. In November 2020, France notified to the European Commission two measures to support Corsair. First, a restructuring aid measure of €106.7 million. The Commission assessed this measure under the Commission's 2014 Guidelines on State aid for rescue and restructuring, and concluded that the foreseen restructuring aid is compatible with EU State aid rules. The Commission found that the measure will help ensure the orderly continuation of flight services, in the interest of air passengers, and will contribute to maintain connectivity, without unduly distorting competition in the single market.

Second, a compensating measure taking the form of a €30.2 million tax credit, which was aimed at compensating the company for damages suffered from the containment and restrictive measures introduced by governments for the COVID-19 outbreak. The Commission assessed the measure under Article 107(2)(b) of the TFEU, concluding that the French measure is in line with EU State aid rules, as the measure will compensate damage that is directly linked to the travel restrictions in the context of the COVID-19 outbreak. It also found that the measure is proportionate, as the compensation does not exceed what is necessary to make good the damage suffered by the airline.

AIR TRAVEL - PASSENGERS' RIGHTS

Passengers' rights: Advocate General Pikamäe: the Mere Diversion of a Flight to an Alternative Airport that is Near the Airport for Which the Booking was Made Does Not Give Rise to a Right to Lump-Sum Compensation

On 3 December 2020, the Advocate General Priit Pikamäe pronounced his Opinion in Case C-826/19 concerning a preliminary ruling requested by an Austrian Regional Court. The Austrian judge had referred to the European Court of Justice a series of questions concerning the interpretation of the Air Passenger Rights Regulation No. 261/2004. Under this regulation, a passenger, in the event of cancellation or long delay of his or her flight, is entitled as a rule to lump-sum compensation of a certain amount. Advocate General Pikamäe suggested in the case at hand against Austrian Airlines AG that the court should find that, where a flight lands at an airport which is not that for which the booking was made, but is close-by, the passenger is not entitled to lump-sum compensation on the basis that the flight has been cancelled. A right to compensation would arise only if, as a result of the diversion, the passenger was delayed by three hours or more. However, the airline must offer to bear the costs of

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transferring the passenger to the airport for which the booking was made or another agreed close-by destination. According to the advocate general, a breach of this obligation does not entitle the passenger to a lump-sum compensation, but entitles the passenger to reimbursement of the amounts which, in light of the specific circumstances of each case, prove necessary, appropriate, and reasonable to make up for the breach by the airline.

INTERNATIONAL TRADE - BREXIT

Brexit: The European Union and the United Kingdom Reach a Trade and Cooperation Agreement

On 24 December 2020, the European Union and the United Kingdom reached a Trade and Cooperation Agreement (Agreement). The Agreement applies provisionally from 1 January 2021, and contains two dedicated titles on the aviation sector, namely on air transport and aviation safety.

Regarding air transport, as of 1 January 2021, the United Kingdom no longer participates in the fully liberalized EU aviation market, whereas UK airlines are no longer considered as EU carriers, and do not enjoy existing traffic rights in the European Union. To ensure connectivity between EU and UK airports, the Agreement sets out new terms and conditions for market access. EU and UK carriers are able to perform unlimited carriage of passengers and cargo between points in the EU and points in the UK (3rd & 4th freedoms), while Member States can agree bilaterally with the UK onward carriage (5th freedom) for the carriage of cargo to or from a third country.

Regarding aviation safety, as of 1 January 2021, the EU aviation safety legislation no longer applies to the UK, and the UK is no longer a member of the EASA. The Agreement specifies new terms and conditions for EU-UK cooperation in the area of aviation safety, defining new arrangements for the recognition of future design and environmental certificates. The Agreement also ensures that existing design certificates issued under EU rules before the end of the transition period shall remain valid, so that products and designs covered by them can continue to be used in aircrafts registered in the EU.

PUBLIC CONSULTATIONS AND EVENTS

Public Consultation: European Commission Launches Public Consultation on Measures for Integrating the Aviation Sector in the EU Emissions Trading System

The European Commission launched a public consultation on measures for integrating the aviation sector in the EU Emissions Trading System, which lasted until 14 January 2021. Through this consultation, the Commission aimed at gathering input from a broad range of stakeholders on market-based measures to reduce the climate impact from aviation. This initiative is part of the broader package of legislation, through which the Commission foresees a revision of the EU ETS to bring it in line with a revised EU emissions reduction target for 2030, as part of the European Green Deal. The stakeholders' inputs will now be used to inform the Commission's proposal for the revision of the EU Emissions Trading System legislation as regards aviation. The Commission's proposal for a revised ETS directive is expected to be adopted by the second quarter of 2021.

Past Event: 2020 SESAR Innovation Days

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On 7–10 December 2020, Single European Sky ATM Research (SESAR) organized the 10th edition of the SESAR Innovation Days, which took place over four days in a virtual setting. The SESAR Innovation Days is a yearly event that takes place since 2010 where representatives from the European and global Air Traffic Management (ATM) communities present their research and discuss important topics that will define the future of ATM. The aim of the 2020 event was to showcase results from the European exploratory research and to discuss how to advance promising concepts towards industrial research within the SESAR innovation pipeline, as well as to reflect on the role of innovation in the time of COVID-19, and the ways it can contribute to the long-term sustainability of the aviation industry and its recovery from the COVID-19 crisis.

Past Event: Eurocontrol's Network Manager User Week

On 8–12 February 2021, Eurocontrol organized the Network Manager User Week, which consisted in a five days' event and five webinars. The Eurocontrol Network Manager's User Forum is a yearly major air traffic management event for European aviation's operational community. Due to the COVID-19 restrictions, this year's edition was held online. The aim of the event was to address key challenges of the European ATM network with a special focus on scalability and resilience to move the network forward.

Past Event: Eurocontrol's Aviation StraightTalk Live Series

Over the next months, Eurocontrol is organizing a number of episodes of the "Aviation StraightTalk Live" series. In this ongoing series, Eurocontrol interviews top aviation leaders to discuss the future of the aviation industry. The aim of the series is to provide insights into the most relevant topics regarding European aviation, and to discuss both the impact that COVID-19 has had on the industry, and possible strategies to build back a better European aviation. The interviews are conducted by Andrew Charlton, journalist and Aviation Advocacy MD, and all sessions include a market update by Eamonn Brennan, Eurocontrol DG. The latest episode of the series took place on 23 February 2021 with Benjamin Smith, CEO of Air France-KLM.

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