BRUSSELS AIR TRANSPORT BRIEF: JANUARY 2019

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European Regulatory Newsletter

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AVIATION REGULATORY AND POLICY

Drones: European Commission prepares smart mobility solutions for tomorrow

On 28 November 2018, the European Commission (the "Commission"), together with European and national authorities and the industry, adopted the Amsterdam Declaration to advance safe, secure, and green drone operations in Europe. The declaration stresses that Europe should propose concrete smart mobility solutions that integrate aviation in wider transport policy and that support automated drone operations over longer distances.

AIR SAFETY LIST: UPDATES THE EU AIR SAFETY LIST TO ENSURE HIGHEST LEVEL OF PROTECTION FOR PASSENGERS

On 28 November 2018, the Commission updated the European Union (EU) Air Safety List and has decided to ban seven air carriers registered in Angola that no longer hold a valid air operator certificate. The objective of the EU Air Safety List is to help maintain high levels of safety in the EU. Following this update, a total of 115 airlines are banned from EU skies.

Aviation Security: EU is strengthening measures on vetting of aviation personnel

On 21 November 2018, EU Member States expressed their positive opinion on the Commission's draft aviation security package. This proposal includes a revision on background checks for aviation personnel. It also includes providing clarifications in the area of operations originating at small airports and for the screening of liquids, aerosols, gels and hold baggage, as well as introducing standards for certain explosives detection equipment.

Airport Slot Allocation: The Commission calls on the Court to fine Portugal for failure to comply with previous Court judgment

On 8 November 2018, the Commission decided to refer Portugal back to the Court of Justice of the EU for its failure to fully comply with the Court's 2016 judgment. In this case, the Court had ruled that Portugal failed to fulfill its obligations on common rules for the allocation of slots at community airports by not ensuring the functional and

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financial independence of the slot coordinator.

AIR SERVICES REGULATION: COUNCIL VALIDATES AGREEMENT ON AMENDMENT REGARDING WET-LEASE AGREEMENTS WITH THIRD COUNTRIES

In December 2018, the Council of the EU validated the agreement reached in October 2018 with the European Parliament on an amendment to Regulation (EC) 1008/2008 on common rules for the operation of air services in the community. This amendment aims to ensure consistency between EU legislation and air transport agreements with third countries (in particular the provisions on wet leases) and to align the regulation with the relevant international obligations of the Air Transport Agreement between the EU and the United States.

CIVIL AVIATION SAFETY: EUROPEAN PARLIAMENT CONSENTS TO AMENDMENTS TO THE EU-U.S. AGREEMENT ON COOPERATION IN THE REGULATION OF CIVIL AVIATION SAFETY

On 13 December 2018, the European Parliament adopted a legislative resolution consenting to the conclusion of an amendment to the agreement between the EU and the United States on the cooperation in civil aviation safety. The amendment extends the areas of cooperation between the EU and the United States where reciprocal acceptance of approvals and findings of compliance can apply to allow for optimized resource utilization and cost savings while maintaining a high degree of safety in air transport. As a result of this amendment, the cooperation envisaged between the EU and the United States will cover personnel licensing and training, operation of aircrafts, aerodromes, air traffic services and air traffic management.

Standardised European Rules of the Air: EASA publishes its easy access rules for SERA

On 19 December 2019, the European Air Safety Authority (EASA) published the initial issue (and amendment 1) of its easy access rules for Standardized European Rules of the Air (SERA). This document contains the consolidated applicable rules for the common rules of the air and operational provisions regarding services and procedures in air navigation and will be updated regularly to incorporate further changes and evolutions.

Statistics on EU air passenger transport in 2017 and EASA Preliminary Safety Overview of the Commercial Air Transport operations 2018

According to Eurostat data released on 6 December 2018, 1.043 billion passengers travelled by air in the EU in 2017, up by 7% compared with 2016 and by 39% compared with 2009. Over this period, air passenger transport has steadily risen in the EU. Furthermore, in 2017, intra-EU transport represented almost half (47%) of total air passenger transport in the EU and extra-EU transport over a third (36%), while national transport accounted for fewer than one in every five passengers (17%).

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In addition, on 1 January 2019, the EASA published its Safety Overview figures concerning 2018 Commercial Air Transport operations showing that no fatal accidents involving commercial passenger airlines occurred in Europe in 2018.

The Commission adopts a new rulebook for sailplanes

On 14 December 2018, the Commission adopted new rules for the operations of sailplanes, which were developed together with the EASA and stakeholders. These new rules aim at simplifying the existing regulations for small and medium-sized enterprises, ensuring a high level of safety while reducing regulatory and administrative burden and they also contain new provisions for the use of electronic flight bags to help flight crews performing flight management tasks more easily and efficiently and with less paper. The new rules will apply from June 2019.

ANTITRUST AND COMPETITION

Merger: The Commission clears the acquisition of joint control over Simba Holdings by IFM and Trafigura

On 28 November 2018, the Commission approved, under the EU Merger Regulation, the acquisition of joint control over Simba Holding S.à r.l of Luxembourg by IFM Investors Pty Ltd. ("IFM") and Trafigura Group Pte Ltd ("Trafigura"). Simba Holdings (together with its respective subsidiaries, the "Simba Group") is a wholly owned indirect subsidiary of Trafigura. The Simba Group provides, inter alia, global freight forwarding and logistics services and offers global freight forwarding and logistics activities. The Commission concluded that the proposed acquisition would raise no competition concerns because of the limited impact it would have on the market.

Antitrust: The Commission closes its investigation into Brussels Airlines and TAP Air Portugal codeshare agreement on Brussels-Lisbon route

On 30 October 2018, the Commission decided to close its antitrust investigations against Brussels Airlines and TAP Air Portugal regarding their codeshare cooperation on passenger services relating to the Brussels-Lisbon route. Based on the review of the evidence, including information received in the replies to the Statement of Objections and during an oral hearing, the Commission concluded that the evidence collected was not sufficient to confirm its initial concerns and has therefore decided to close its investigation.

State Aid: The Commission opens an in-depth investigation into measures in favor of Ryanair at Frankfurt-Hahn airport in Germany

On 26 October 2018, the Commission decided to open an in-depth investigation to assess the compatibility with EU state aid rules (i) of certain marketing agreements concluded prior to 2009 between the State of Rhineland-Palatinate (Germany) and Ryanair, and (ii) of several other agreements, concluded between 2009 and 2017 between Ryanair and airport operator Flughafengesellschaft Frankfurt-Hahn GmbH (FFHG), including airport

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service agreements, training aid to Ryanair, and the financing of a crew and pilot school, as well as the funding of a maintenance hall for Ryanair at the German airport of Frankfurt-Hahn. The Commission concerns relate to the fact that incompatible aid might create an undue economic advantage in favor of Ryanair.

State Aid: The Commission finds no aid in €1.1 billion extension of Athens International Airport concession

On 12 December 2018, the Commission

ruled

that the price proposed for the extension until 2046 of the concession for Athens International Airport, currently operated by Athens International Airport SA (AIA), does not constitute state aid. In this case, the Commission determined that the price initially proposed (€484 million) would not be accepted by a private operator and would therefore constitute State aid, but after a significant increase in price (€1.1 billion), the Commission finally authorized Greece to extend the concession as it now respects market conditions, and therefore, AIA will not receive any undue economic advantage or aid.

AIR TRAVEL- PASSENGERS' RIGHTS

Air Travel: Air fares for intra-community flights must be expressed in euros or in a local currency objectively linked to the service offered

By its judgment of 15 November 2018 in Case C-330/17 Verbraucherzentrale Baden-Württemberg eV v Germanwings GmbH, the Court of Justice of the EU held that when indicating air fares for intra-community air services, air carriers who do not express those fares in euros are required to choose a local currency that is objectively linked to the service offered, in particular, the local currency in the Member State in which the place of departure or arrival of the flight is located.

Passengers' Rights: AG opinions on the notion of "extraordinary circumstances"

On 22 November 2018 and on 19 December 2018, respectively, Advocate General Tanchev delivered two opinions on requests for preliminary rulings concerning compensation to passengers under Regulation (EC) 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights (the "Flight Passenger Rights Regulation"). The Flight Passenger Rights Regulation provides that an operating air carrier shall not be obliged to pay compensation if it can prove that the cancellation is caused by extraordinary circumstances that could not have been avoided even if all reasonable measures had been taken. More specifically, these opinions concerned whether denied boarding and cancellation or long delay of flights due to damage to an aircraft tire caused by a screw (Opinion on Case C 501/17 Germanwings GmbH v Wolfgang Pauels) and flight delay caused by the spillage of fuel on a runway (Opinion on Case C-159/18 André Moens v Ryanair Ltd) constitute an extraordinary circumstance. In both cases, AG Tanchev found that the situations at hand fell within the scope of "extraordinary circumstance" within the meaning of the Flight Passenger Rights Regulation.

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INTERNATIONAL TRADE - BREXIT

Brexit: UK and United States agree new air transport agreement

On 28 November 2018, the UK Transport Secretary has announced the conclusion of a new "open skies" air transport agreement between the United Kingdom and the United States. This agreement, which will replace for both parties the existing aviation agreement between the EU and the United States, aims at guaranteeing the continuation of transatlantic routes.

Brexit: The Commission implements "no deal" Contingency Action Plan in specific sectors

On 19 December 2018, the Commission adopted two measures aimed at avoiding full interruption of air traffic between the EU and the United Kingdom in the event of "no deal" ensuring only basic connectivity. The first measure concerns a proposal for a regulation to ensure temporarily (i.e. for 12 months) the provision of certain air services between the United Kingdom and the EU and a proposal for a regulation to extend temporarily (i.e. for nine months) the validity of certain aviation safety licenses. The second proposal provides the extension of validity of certain safety certificates and approvals.

Brexit: House of Commons Briefing Paper on "Brexit and transport"

On 8 November 2018, the UK House of Commons published a "Brexit and transport" Briefing Paper discussing some of the pertinent issues in the four main transport policy areas, including aviation. This Briefing Paper provides details concerning the preparations for the United Kingdom's exit in the form of secondary legislation and what the UK Government has said about the implications of a possible "no deal" in the technical notices published as from August 2018.

PUBLIC CONSULTATIONS AND EVENTS

Airline Economics Growth Frontiers Dublin 2019

Airline Economics hosted the Growth Frontiers conference, where different topics, such as airline finance, aviation debt securities, and aircraft market dynamics were discussed by the key stakeholders in the sector. The conference took place on 20–23 January 2019 in Dublin (Ireland).

First ENISA Transport Cyber Security Conference

The EU Agency for Network and Information Security (ENISA) organized its first Transport Cybersecurity Conference, in cooperation with the European Commission's DG MOVE, the EASA, the European Union Agency

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for Railways (ERA) and the European Maritime Safety Agency (EMSA). The conference took place on 23 January 2019 in Lisbon (Portugal).

Network Manager User Forum 2019

Eurocontrol will hold its annual Network Manager User Forum, where key topics of European Air Traffic Management network will be discussed, as well as the industry's upcoming challenges. The forum will take place on 30–31 January 2019 in Brussels.

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