BRUSSELS AIR TRANSPORT BRIEF: MAY 2019

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European Regulatory Newsletter

By: Mélanie Bruneau, Antoine de Rohan Chabot

AVIATION REGULATORY AND POLICY

Fair Competition in air transport: Adoption of legislative proposal

On 9 April 2019 the Council of the EU formally adopted the legislative proposal for a Regulation on safeguarding competition in air transport. The Regulation grants the Commission powers to investigate and take measures relating to violation of international obligations and practices adopted by a third country or third-country entity affecting competition between EU and other air carriers. The new rules repeal Regulation 868/2004 concerning protection against subsidization and unfair pricing practices causing injury to European air carriers.

Air Traffic Management: Publication of reports comparing performance in Europe and the United States

On 8 April 2019, under the Memorandum of Cooperation between the United States of America and the European Union, the U.S. Federal Aviation Administration (FAA) and EUROCONTROL issued, on behalf of the European Union, two reports providing a factual comparison of Air Traffic Management performance between the United States and Europe. The first report, titled 'Comparison of Air Traffic Management-related operational performance: U.S./Europe' offers a detailed comparison of operational performance, focusing on the period from 2015 to 2017. The second report titled 'U.S./Europe continental comparison of Air Navigation Services cost-efficiency trends' analyzes cost-efficiency trends and covers the period 2006-2016.

Aviation Safety: Amendment to EU- US Agreement

On 8 April 2019, Council Decision (EU) 2019/572 of 8 April 2019 on the conclusion, on behalf of the European Union, of an amendment to the Agreement between the United States of America and the European Community on the cooperation in the regulation of civil aviation safety was published in the Official Journal of the European Union. The amendment extends the areas of cooperation between the U.S. and the EU where reciprocal acceptance of approvals and findings of compliance can apply, with the intent to optimize resource utilisation and commensurate cost savings while maintaining a high level of safety in air transport.

Aviation Safety: EASA published updated Rules for Continuing Airworthiness

On 25 April 2019, the European Union Aviation Safety Agency (EASA) announced the update of the Easy Access Rules for Continuing Airworthiness, incorporating Regulation (EU) 2018/1142 amending Regulation (EU) No 1321/2014, as well as ED Decision 2019/009/R. This publication includes the current applicable Implementing Rules, Acceptable Means of Compliance and Guidance Material and offers advanced navigation features through links and bookmarks as well as identification of General Aviation Community (GA alleviations). In the context of

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the 'General Aviation Road Map Project', the current regulatory requirements for the GA alleviations are simpler and lighter. The inclusion of the amended provisions of Regulation 2018/1142 mostly relate to technical requirement matters such as accountability, occurrence reporting, continuing airworthiness tasks and maintenance; whereas the respective additions from Decision 2019/009/R focus also on regulating the procedures for competent authorities

Aviation report: Commission calls for action to reduce delays and address capacity issues in the EU

On 15 April 2019, the European Commission received recommendations by high-level aviation experts (the so-called "wise persons group") concerning the future of air traffic management in Europe. The wise persons group was set up by the Commission to produce proposals on the future direction of air traffic management in Europe, in line with the objectives of the EU's Aviation Strategy. In fact, forecasts show that by 2040 1.5 million flights in Europe will not be accommodated due to capacity constraints, leaving around 160 million passengers on the ground.The report includes ten recommendations for a more efficient, flexible and sustainable European air traffic management system. The recommendation are divided into short-term measures and long-term solutions. The short-term measures include airspace restructuring measures and acceleration of the deployment of state of the art technologies. The long-term solutions include the increased role of the Network Manager, the improvement of the link between the quality of air traffic and the price paid by those who fly, and the establishment of a European (Upper) Airspace System with a common route charging system, stimulating the shortest routes.

Aviation Safety: Commission updates the EU Air Safety List to maintain highest level of protection for passengers

On 16 April 2019, the European Commission updated the EU Air Safety List, which corresponds to the list of airlines not meeting international safety standards. The majority of Moldovan airlines have been introduced to the list due to lack of safety oversight by the civil aviation authority. However, two Angolan national carriers, under restrictions since November 2008, have been released from the list. Following this update, a total of 120 airlines are subject to the operating ban within the European Union.

Aviation Safety: Questions and answers on air carriers that are restricted from operating within the European Union

Following the update of the EU Air Safety List, the European Commission published also a "Questions and answers" regarding air carriers that are restricted from operating within the European Union, indicating the procedure for the update of the list and the consequences for airlines included on the list. The factsheet provides also information concerning the airline's right of defence and EU's travellers rights.

Aerospace research: 47 millions euro for the French Aerospacial Research Center « ONERA »

On 16 April 2019 the European Commission and the European Investment Bank (EIB) announced the signing of a €47 million loan with the French aerospace research center ONERA under the InnovFin program. InnovFin is an EU funding program for innovative businesses and organizations, supported by the European Union's Research and Innovation Program, Horizon 2020. This funding will enable ONERA, an organization under the authority of the French Ministry of Defense, to modernize its wind tunnel infrastructure and its meteorological instruments. Private companies and industry stakeholders are expexted to benefit from the results of ONERA's research and

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study reports on the results of development of the above two projects. Likewise, the funds also aim to help ONERA meet the future challenges of aeronautics and space and contribute to the competitiveness of our aerospace industry.

IATA Reports: Air Freight and Passenger Demand February 2019

IATA released the data relating to February 2019 for global air freight markets and for passenger traffic. The data on freight show that demand decreased by 4.7% compared to the same period in 2018, the fourth consecutive month of negative year-on-year growth. As regards passenger traffic, the total revenue passenger kilometers (RPKs) rose by 5.3%, compared to February 2018. This result is in line with long-term demand trends.

Report: Symposium on Higher Airspace Operations

On 2 April 2019, the European Commission's DGs MOVE and GROW organised the European Symposium on Higher Airspace Operations.

The aim of the Symposium was to agree on developments regarding the establishment of a European Concept for Operations, which would serve as a key input for the creation of a global framework at ICAO level. Participants pointed to the need for a pan-European strategy on how to properly integrate new airspace users and operations into higher airspace and suggested that the safe, secure and orderly implementation of these operations, using risk and performance-based approaches is of the essence. The Symposium concluded that new airspace users should not disproportionally affect the performance of Europe's existing ATM network, as long as they enjoy fair and equitable access to higher airspace. In this respect, opinions converged on the demand for contingency and resiliency requirements for all phases of flights to be addressed. Finally, the participants emphasized that the increased levels of digitalisation and automation on which these new operations rely may give rise to valuable opportunities but urged for the reduction of their environmental impact in order to ensure public acceptability.

Eurocontrol: Seven measures to counteract severe delays

The high levels of traffic, flight delays and cancellations of the summer of 2018 revealed the vulnerabilities of Europe's air traffic management system. To prevent major disruptions, the EUROCONTROL Network Manager (NM) is working to balance the increasing demand for air travel with limited Air Traffic Management (ATM) capacity.

In this respect, in October 2018 the NM announced its "7 Measures for 2019" initiative, a seven-point plan aiming to ensure that the technical, procedural and institutional shortcomings of the ATM network identified in the peak traffic months of 2018 will be addressed as far as possible before summer 2019. For this plan to be successful it will require a partnership approach by all stakeholders. Because adding substantial new levels of capacity is a lengthy and complex strategic challenge requiring adequate staffing and industrial action, the seven-point plan merely ensures that the available capacity is optimised.

ANTITRUST AND COMPETITION

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Mergers: Commission clears the creation of a joint venture between Lufthansa Technik and LG Electronics

On 29 March 2019, the European Commission approved, under the EU Merger Regulation, the creation of a joint venture between Lufthansa Technik and LG Electronics, which will be active in the design, production and supply of in-flight entertainment and cabin management systems for commercial aircraft. Lufthansa Technik provides maintenance, repair and overhaul services for the aerospace sector worldwide and develops, manufactures and supplies cabin management and in-flight entertainment systems and components for business and VIP jets. LG Electronics is active in the production and supply of electronics, mobile communication devices and home appliances. The Commission concluded that the proposed joint venture would raise no competition concerns because there are only limited overlaps and vertical links between the activities of the joint venture and its parent companies (decision not yet published).

Merger: Commission clears the acquisition of ZAIC by Mirova, ADP, Bouygues, IFC, Marguerite and TAV

On 29 March 2019, the European Commission approved, under the EU Merger Regulation, the acquisition of joint control of ZAIC-A Limited by Mirova, controlled by the BPCE Group. ZAIC operates and manages Zagreb Airport pursuant to a concession agreement, while Mirova is a portfolio management company focusing on investment management. ZAIC will remain jointly controlled by Aéroports de Paris, Bouygues Bâtiment International, International Finance Corporation, Marguerite Fund and TAV Airports Holding. The Commission, after reviewing the case under a simplified procedure, concluded that the proposed acquisition would not raise competition issues given its limited impact on the market.

State Aid: the European Court of Justice rejects Lufthansa's appeal against State aid granted to Frankfurt-Hahn Airport for lack of standing

On 12 April 2019, the European Court of Justice issued its ruling on Case T-492/15 Deutsche Lufthansa AG v Commission. This ruling followed Lufthansa's appeal requesting the annulment of a decision of the European Commission which found that Ryanair had not benefited from any undue advantage for the use of the Frankfurt-Hahn airport, because it paid a price higher than the extra costs borne by the airport. The Court rejected Lufthansa's appeal on jurisdictional ground, stating that Lufthansa did not have standing to challenge the Commission's decision because (i) it was not a recipient of the decision and (ii) it did not provide information on how the contested decision substantially affected its position on the market. Furthermore, the Court ruled that Lufthansa did not have ground to challenge the Commission's decision because the national measures were not granted as an aid scheme but as an individual decision. Therefore, the Commission's ruling on such measures cannot be considered as a regulatory act which is a measure is of general application if it applies to objectively determined situations and produces legal effects with respect to categories of persons envisaged in general and in the abstractaccording to Article 263, para 4, of the Treaty on the Functioning of the European Union.

AIR TRAVEL - PASSENGERS' RIGHTS

Passengers' rights: AG Opinion, right of compensation for package travel holiday

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On 28 March 2019, Advocate General Saugmandsgaard Øe presented his opinion in the case Aegean Airlines (C-163/18). The opinion provides the interpretation of Article 8 (2) of Regulation (EC) No 261/2004, establishing common rules on compensation and assistance to passengers in the event of denied boarding and cancellation or long delay of a flight. In particular, AG Saugmandsgaard Øe deemed that the abovementioned Article 8 (2), shall be interpreted as meaning that a passenger is entitled, under Directive 90/314/EEC, to seek redress from the organizer of his package travel holiday in case of cancellation of the latter in order to obtain the refund of any sums paid under the contract. However, the passenger has no right to claim reimbursement of the airline ticket to the actual air carrier, on the basis of Regulation 261/2004, when the package travel holiday organizer is financially unable to reimburse the ticket and did not take the required guarantees to perform this reimbursement.

Passengers' rights: CJEU, compensation for delay in case of extraordinary circumstances

In its decision of 4 April 2019, the Court of Justice of the European Union stated that Article 5(3) of Regulation (EC) No 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, read in combination with recital 14 thereof, must be interpreted as meaning that "damage to an aircraft tyre caused by a foreign object, such as loose debris, lying on an airport runway falls within the notion of 'extraordinary circumstances' within the meaning of that provision". However, in order to be relieved of its obligation to pay passengers compensation under Article 7 of Regulation No 261/2004, an air carrier whose flight has suffered from long delay due to such 'extraordinary circumstances' must prove that it has deployed all its resources in terms of staff or equipment and the financial means at its disposal in order to avoid the changing of a tyre damaged by a such foreign object on the airport runway.

Passengers' rights: CJEU, Jurisdiction of the Court in claims for compensation

On 11 April 2019 the Court of Justice of the European Union delivered its judgement in the case ZX v. Ryanair DA, concerning the question regarding which court has jurisdiction to hear an application for compensation in respect of a delayed flight (Case C-464/18). This case saw the claim for compensation from a passenger due to the delay of a Ryanair flight in the Porto (Portugal) - Barcelona (Spain) route. The passenger sought relief before the courts of Spain, not being a Spanish resident, based on the fact that Ryanair has a branch in Girona (Spain). By its decision, the CJEU stated that a court of a Member State does not have jurisdiction (under Regulation (EU) No 1215/2012) to hear a dispute concerning a claim for compensation for a flight delay (under Regulation (EC) No 261/2004), on the ground that that company has a branch within the territorial jurisdiction of the court seised, without that branch having been involved in the legal relationship between the airline and the passenger concerned.

INTERNATIONAL TRADE - BREXIT

International Trade: WTO Boeing dispute ruling

On 28 March the WTO Appellate Body confirmed that the U.S. State of Washington is granting illegal subsidies to the aircraft manufacturer Boeing. In 2012 the WTO already ruled that the U.S. had offered massive subsidies to Boeing in violation of WTO rules, causing harm to its European competitor. The final compliance report regarding the dispute was adopted on 11 April and the amount of damage was estimated to be approximately $100 million a

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year. This decision marks a new phase in this 14 year-long dispute as the EU can now push the U.S. to comply with the ruling and threaten to introduce rebalancing duties in case of non-compliance.

International Trade: EU issues preliminary list of U.S. products considered for countermeasures

On 17 April the European Commission has launched a public consultation on a preliminary list of products originating in the U.S. that could potentially be subject to increased customs duties as a consequence of the Boeing dispute. The publication of the list comes as a follow-up to the adoption on 11 April by the WTO of the final compliance report in the dispute, confirming that U.S. subsidies to Boeing continue to cause harm to Airbus. The list covers a wide range of goods -including airplanes and helicopters- that overall represent around USD 20 billion of exports into the EU. Stakeholders who may be affected by such measures are requested to give their feedback on the list by May 31, 2019. In any case, the exact estimation of EU countermeasures will be determined by a WTO appointed arbitrator.

PUBLIC CONSULTATIONS AND EVENTS

Events: CNS Partnership Conference - eCommerce Revolution

The CNS Partnership Conference discusses developments in the air cargo industry through a conference type set-up in addition to a variety of panels and break-out sessions. This year focus will be on the growth of eCommerce and its impact on the air cargo industry. The Conference will take place in Miami on May 5-7.

Events: Safety In Aviation Forum For Europe - (SAFE)

The Safety in Aviation Forum for Europe conference provides the audience with an all-round multi-sectoral picture of safety issues, a focused examination of key risk areas and a toolbox of potential mitigations, in a conference format called "SAFE 360°". SAFE 360° will support the European Safety Management System, the European Plan for Aviation Safety ("EPAS") and complement the Data4Safety initiative. The conference will take place in Brussels on 13-15 May 2019.

Events: ATAG 2019 Global Sustainable Aviation Forum

The Global Sustainable Aviation Forum, expecting to bring more than 200 high-level delegates from the aviation industry, stakeholders, experts, regulators, NGOs, government and the media, is one of the most worldwide on this subject. The event will take place on 13 May 2019 in Montreal.

Events: Risk and Insurance Management (RIM) Forum

The Risk and Insurance Management Forum will bring together expert speakers from the legal, insurance, broking, law enforcement and airline specialists. The Forum aims to address questions concerning insurance and risk management issues in the air transport industry. The highlights of this year's conference will be two interactive scenarios: airline business failure caused by a cyber attack and an aircraft accident linked to a

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malicious cyber event. The Forum will take place on 15-16 May 2019 in London.

Events: High-level Conference on Artificial Intelligence: How is it going to impact the air transport sector?

Eurocontrol, with the participation of Airbus, will host the High-level Conference on Artificial Intelligence, which will address the impact of artificial intelligence on air transport. The event will feature two high-level panels on the direction in which AI is heading and how it is being applied to drive business growth outside the aviation sector; and the potential for AI to drive a change in aviation business models, identifying key issues and challenges such as pilotless aircrafts. The conference will take place in Brussels on 23 May 2019.

Events: Ground Handling Conference

The 32nd IATA Ground Handling Conference will bring together over 750 delegates representing the whole industry (airlines, ground service providers and airport, manufacturers and solution providers). The conference will take place in Madrid on 26-29 May 2019.

Events: Eurocontrol Safety Forum

Eurocontrol, co-sponsored by the Flight Safety Foundation - European Regions Airline Association, will host the 7th annual Safety Forum, whose main topic will be Safety and Procedure. The topics that will be discussed during the Forum include: understanding how safety procedures are created and implemented; the procedural shortcomings; and the lining technology and science. The Forum will be held in Brussels on 4-5 June 2019.

Events: Transport Logistic and Air Cargo Europe

Transport logistic, the bi-annual trade fair for logistics, mobility, IT, and supply chain management. The trade fair, which is accompanied by a conference program, will discuss solutions for requirements in the transport logistic sector. Transport logistic and Air Cargo Europe will both take place on June 4–7, 2019 in Munich.

KEY CONTACTS



MÉLANIE BRUNEAU
PARTNER

BRUSSELS
+32.2.336.1940
MELANIE.BRUNEAU@KLGATES.COM



ANTOINE DE ROHAN CHABOT
COUNSEL

BRUSSELS
+32.2.336.1941
ANTOINE.DEROHANCHABOT@KLGATES.COM

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