# BRUSSELS AIR TRANSPORT BRIEF: JUNE 2019

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**European Regulatory Newsletter**

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## AVIATION REGULATORY AND POLICY

### Aviation policy: Regulation on safeguarding competition in air transport

On 10 May 2019 Regulation (EU) 2019/712 on safeguarding competition in air transport of 17 April 2019 was published in the Official Journal of the EU. This Regulation grants the European Commission powers to investigate and take redressive measures relating to violation of international obligations and practices adopted by a third country or third-country entity distorting competition between EU and non-EU air carriers. The measures concern, inter alia, the protection against subsidization and unfair pricing practices causing injury to EU air carriers. The new rules aim therefore to ensure fair competition between EU and third countries air carriers and to maintain a high level of connectivity. The Regulation describes in detail the investigation process and the Commission's powers thereof. Regulation (EU) 2019/712, which repeals Regulation 868/2004, entered into force on 30 May 2019.

### Drones: Commission adopts advanced rules for the safe operation of drones

On 24 May 2019, the European Commission adopted rules concerning drone traffic across Europe. These rules, part of the Aviation Strategy for Europe, aim at ensuring drone traffic is safe and secure for both people on the ground and in the air. The rules will apply to all operators of drones, including professionals and those flying drones for leisure. Furthermore, starting from 2020, drone operators will have to be registered with national authorities, thus allowing remote identification and definition of geographical zones.

### Air Safety: Evaluations of EU aviation safety legislation

On 17 May 2019, the European Commission published

### evaluations

on the Air Safety List Regulation and the Regulation on the investigation and prevention of accidents and incidents in civil aviation. As regards the Air Safety List, the Commission determined that it protects air passengers within and outside the European Union, and that it provides incentives for third countries to improve their aviation safety standards. The evaluation of the Regulation on the investigation and prevention of accidents and incidents in civil aviation finds improvements since the entry into force of the EU rules in 2010.

### Aerodromes: Easy Access Rules updated

On 24 May 2019 the European Union Aviation Safety Authority ("EASA") published the updated version of the Easy Access Rules for Aerodromes, incorporating the amending Regulation (EU) 2018/401 as regards the classification of runways, as well as the ED Decision 2019/012/R issuing Certification Specifications and

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Guidance Material for the design of surface-level VFR heliports located at aerodromes that fall under the scope of Regulation (EU) 2018/1139. This publication includes the current applicable Implementing Rules (IRs), Acceptable Means of Compliance (AMC), Certifications Specifications (CS) and Guidance Material (GM) displayed in a consolidated, easy-to-read format, and offers advanced navigation features through links and bookmarks.

### IATA Reports: Air Freight and Passenger Demand March 2019

IATA released the data relating to March 2019 for global air freight markets and passenger traffic. The data on freight shows that demand increased 0.1% compared to the same period in 2018, a significant improvement on the 4.9% contraction of February 2019. As regards passenger traffic, the total revenue passenger kilometers (RPKs) rose 3.1%, compared to February 2018.

### Air Traffic: Commission reappoints EUROCONTROL as Network Manager

On 6 May 2019, the European Commission reappointed EUROCONTROL as the Network Manager for air traffic network functions of the Single European Sky from 2020 until 2029. Since it was first nominated in 2011, the Network Manager's role has been to contribute to a more sustainable, efficient and safer air transport by closely cooperating with navigation service providers, airports and airlines. The Network Manager has recently announced a set of seven measures to prevent major disruptions in the air transport sector, while complying to the new Network Functions Regulation.

### Aviation policy: Commission decision on fuel tax exemption citizens' initiative

On 10 May 2019, the European Commission Decision on the proposed citizens' initiative entitled 'Ending the aviation fuel tax exemption in Europe' was published in the Official Journal of the European Union. This citizens' initiative aims at introducing in the EU Member States a tax on aviation fuel in order to desincentivise aviation as a transport mode. The amounts collected through the tax would flow into the EU's funding for greener mobility. This initiative falls within the quest of eco-friendly alternatives to aviation by enhancing the participation of EU citizens to those decisions. By its decision, the Commission has registered this initiative. In the next three months, the organisers of the initiative will meet with the Commission and the Parliament. This process could eventually lead to the Commission proposing legislation in this matter.

## ANTITRUST AND COMPETITION

### Abuse of dominance: Bromma Airport Commission Decision Published

On 7 May 2019, the European Commission published the letter that was sent in December 2016 to Hjelmco Oil, an aviation fuel services provider at Bromma Airport, in connection with case AT.40348. By this letter, the Commission decided to reject the Complaint submitted by Hjelmco Oil in March 2014 whereby the Swedish company requested the opening of an abuse of dominance investigation into Swedavia, the Swedish state-owned airport manager. The complaint indicated that Swedavia allegedly infringed Article 102 TFEU by imposing certain changes to the land leasing arrangements between Swedavia and Hjelmco Oil. In the letter, the Commission explained that the alleged anticompetitive conduct concerned one Member State and the market concerned appears relatively limited. Furthermore, it was noted that the operations of the airport in question appeared to be

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regional in scope and the cross-border element seemed limited. As a result, the Commission found that national authorities and courts were better placed to handle the case.

### Antitrust complaint: ECTAA files complaint against IATA

On 24 May 2019, the European Travel Agents' and Tour Operators' Association (ECTAA) filed a complaint against IATA to the European Commission for alleged breach of Articles 101 and 102 TFEU. In its complaint, ECTAA indicated that certain features of the Passenger Agency Programme ("PAP") led by IATA were restrictive of competition in the market for air ticket distribution. PAP is a system designed to facilitate airline ticket distribution between travel agents and airlines and to regulate their relations. According to ECTAA's complaint, not only some of the features of PAP are anticompetitive but PAP is organised as a dominant system itself. In addition, ECTAA is also claiming that anticompetitive rules are also due to the fact that the system is governed by IATA and by airlines, therefore not including travel agents in the decision making process. As a result, ECTAA requested the Commission to start an investigation into IATA's alleged infringements of EU competition rules.

## AIR TRAVEL - PASSENGERS' RIGHTS

### Passengers' Rights: Request for a preliminary ruling against Ryanair

On 16 January 2019, the Italian Council of State (Consiglio di Stato), the highest Italian Administrative Court, lodged a request for a preliminary ruling concerning - Ryanair Ltd, Autorità Garante della Concorrenza e del Mercato – Antitrust v Autorità Garante della Concorrenza e del Mercato - Antitrust and Others (Case C-28/19). The questions referred concern the interpretation of Article 23(1) of Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community. Article 23(1) concerns information and non-discrimination, whereby air fares and air rates, when offered, shall include applicable conditions for air services, the final prices to be paid shall indicate the air rate as well as taxes, charges, surcharges and fees and optional price supplements shall be communicated unequivocally at the start of any booking process. In particular, the Council of State asked whether i) the second sentence of Article 23(1) is to be interpreted in the sense that "an online check-in fee and an 'administration fee' for credit card purchases, which are additional to the price of the ticket, and the VAT applied to air fares and to optional supplements for national flights, fall within the category of unavoidable, foreseeable or optional price supplements" and ii) the fourth sentence of Article 23(1) is to be interpreted as meaning that "the word 'optional' covers price supplements which the majority of consumers are able to avoid".

### Passengers' Rights: Council proposal for a Directive

In May 2019, the Council has been discussing amendments to the proposal for a Directive on representative actions for the protection of the collective interests of consumers, repealing the existing Directive 2009/22/EC. The Council proposal is based on the European Commission proposal published on 11 April 2018 on targeted amendments to four EU consumer law directives as part of the New Deal for Consumers. The purpose of the Directive is, inter alia, to enable qualified entities representing the interests of consumers to seek remedies against infringements of EU law, to improve the deterrence of unlawful practices and to reduce consumer detriment. The provisions of this Directive will be applicable to Air passengers as well as other consumers.

## INTERNATIONAL TRADE - BREXIT

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### International trade: Air Transport Agreement between the European Union and Philippines

On 14 May 2019, the Council of the European Union has adopted Council Decision (EU) 2019/825 on the conclusion on behalf of the Union of the Agreement between the European Union and the Government of the Republic of the Philippines on certain aspects of air services. The provisions of this Agreement supersede or complement the existing bilateral agreements which ten EU Member States have previously concluded with the Philippines. Furthermore, this Agreement has the general objective of giving EU air carriers non-discriminatory access to routes between the EU and the Philippines.

### International Trade: Partnership between the European Union and Central Asia

On 15 May 2019 the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy Federica Mogherini adopted a Joint Communication setting out the EU's strategy on the partnership and trade relations with five countries of Central Asia including Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan. In view of the fast-developing Euro-Asia connectivity, the Communication aims to clarify the block's support to the region by investing over €1 billion in areas such as the rule of law, environment, water, trade and border management. Commissioner Mogherini, together with Commissioner for International Cooperation and Development Neven Mimica, will present formally the new EU Strategy on Central Asia to her Central Asian counterparts at the 15th EU-Central Asia Ministerial meeting, which will take place on 7 July in Bishkek, Kyrgyz Republic.

### International Trade: Commission signs landmark aviation agreements with China

On 20 May 2019, the European Union and China signed a Bilateral Civil Aviation Safety Agreement ("BASA") and a Horizontal Aviation Agreement to strengthen their aviation cooperation. In particular, the main objective of BASA is to ensure a high level of environmental compatibility and reduce costs by removing the unnecessary duplication of evaluation and certification activities for aeronautical products by the civil aviation authorities. The conclusion of the Horizontal Aviation Agreement aims to enhance compliance of bilateral air services agreements between China and EU Member States with EU law. From now on, all EU airlines will be able to fly to China from any EU Member State under a bilateral air services agreement with China under which unused traffic rights are available.

### International Trade: Air Transport Agreement between EU and Canada

On 8 May 2019 the Council's Decision on the conclusion of the Air Transport Agreement between the EU and Canada was published. The Agreement was intitially signed on 17 and 18 December 2009, subject to its conclusion at a later date. The text provides liberalization of traffic rights as well as foreign investment in airlines, by gradually stepping away from foreign ownership rules. It includes provisions on gradual phasing-in of traffic rights, mutual investment opportunities, as well as far reaching cooperation on a number of issues including safety, security, social matters, consumer protection, environment, air traffic management, competition law and state aid.

### International Trade: The U.S. move forward with countermeasures in the WTO aircraft dispute

On 15-16 May 2019 the US Trade Representative's office heard interested parties on the proposed retaliatory tariffs to EU goods further to the adjudication of a WTO dispute regarding measures affecting trade in large civil aircrafts. During the hearings, an aircraft manufacturer based in the U.S. urged the U.S. administration to hit its

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EU competitor's products with 100% duties, in order to induce prompt compliance to the WTO ruling. The exact estimation of U.S. countermeasures will be determined by a WTO appointed arbitrator.

## PUBLIC CONSULTATIONS AND EVENTS

### Public Consultation: Commission consults industry on the 2014 State aid Guidelines for Aviation

Until 19 July 2019, the European Commission is asking Member States, airports, airlines and any air transport related organizations to take part on the targeted consultation on the ex-post evaluation of the State aid rules in the aviation sector, the 2014 Aviation Guidelines and the 2017 General Block Exemption Regulation. This consultation is triggered by the announcement of the Commission of January 2019 of the intention to prolong certain State aid rules for a period of two years, including the rules in the aviation sector. This consultation aims at gathering stakeholder opinions on the application of the current State aid rules to confirm the effectiveness of these policies on the air transport field.

### Event report: EASA's first Safety in Aviation Forum for Europe (SAFE)

On 13-15 May 2019, EASA's first Satefy in Aviation Forum for Europe (SAFE) gathered about 250 stakeholders to share their experience on safety issues. The event allowed participants to explore different strategic views, develop collaborative mitigations and discuss safety risks. It also covered discussions on runway incursion, lithium batteries, ground safety and featured sessions on occurrence reporting and flight data monitoring.

### Event report: Aviation and AI

On 23 May 2019, EUROCONTROL organised the inaugural conference on Aviation and AI. The conference, attended by over 400 leaders in European aviation as well as experts in AI. During the conference the opportunities offered by AI in the field of aviation, such as safety, ATM, airport operations, passenger experience and airlines, were discussed by a panel of international experts.

### Events: EASA-FAA International Aviation Safety Conference

The 2019 Air Aviation Safety Conference, taking place on 12 -14 June in Cologne, Germany under the theme "Regulators Innovating in the 21st Century", will bring together senior aviation professionals from all world regions, to discuss global aviation safety issues from the perspective of both the regulators and the industry.

### Events: Air Traffic Management Research and Development Seminar

EUROCONTROL and the U.S. Federal Aviation Administration are organizing the 13th edition of the international seminar on Air Traffic Management Research and Development (ATM R&D) on 17-20 June in Vienna, Austria. The seminar promotes international collaboration, creates and reinforces relationships between leading ATM experts and researchers worldwide, and encourages discussion and consensus on major issues.

### Events: IATA Regional Aviation Forum for West and Central Africa

Under the theme "Aviation: business for Regional Prosperity", this event hosted in Accra, Ghana from 24 to 25 June will bring together African aviation decision makers and influencers representing governments and organizations from the air transport field.

### Events: IATA Slot Convention

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The 144th Edition of the Slot Convention will regroup IATA and non IATA airlines and provide a forum for the allocation of slots at fully coordinated airports and for the reaching of consensus on the schedule adjustments necessary to conform to airport capacity limitations, under worldwide air policies. The Convention will take place on 18-20 June in Cape Town, South Africa.

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