

BRUSSELS AIR TRANSPORT BRIEF: FEBRUARY 2020

Date: 5 March 2020

European Regulatory Newsletter

By: Mélanie Bruneau, Philip Torbøl, Antoine De Rohan Chabot, Alessandro Di Mario, Antonia Rountou, Francesca Lai

AVIATION REGULATORY AND POLICY

Data: European Commission publishes European Strategy for Data

On 19 February 2020, the European Commission published a communication detailing its "European Strategy for Data," with an aim to create a single market for data and common European data spaces. The document notably identifies digitisation and data in all modes of transport and logistics as a key feature of further work on the 'European Transport System' and, in particular, in the upcoming 'Smart and Sustainable Transport Strategy', expected to be published in the last quarter of 2020. The strategy will include actions in all transport sectors as well as cross-modal data sharing logistics and passengers ecosystems. In the field of aviation, the Commission identified as priority the amendment of the proposed Regulation on the Single European Sky to include new provisions on data availability and market access of data service providers. The goal is to promote the digitalisation and automation of air traffic management to improve safety, efficiency and capacity in air traffic.

Air Transport: Ministers of the Croatian Presidency Outline Priorities in the Field of Air Transport Before the TRAN Committee

On 21 January 2020, the Croatian Transport State Secretary, Mr. Josip Bilaver and the Croatian State Secretary for Tourism, Mr. Frano Matušić, outlined the priorities of the Croatian Presidency of the Council of the EU in the area of air transport during a meeting with the TRAN Committee. The Presidency's priorities focus on issues such as air transport sustainability and air transport capacities. An aviation summit in Dubrovnik will be held on this topic. MEPs urged the Presidency to restart discussions on air passenger rights and the Single European Sky. In addition, MEPs put forward the topic of emissions in the aviation sector and repeated calls for advanced support for the tourism sector in the next EU long-term budget.

Aviation Safety: EASA publishes the European Plan for Aviation Safety 2020-2024

On 20 January 2020, the European Union Aviation Safety Agency (EASA) published its 9th edition of the European Plan Aviation Safety (EPAS), which provides a framework for safety management at regional and national level, endorsing the goals and objectives of the ICAO Global Aviation Safety Plan (GASP). The EPAS stresses the importance of identifying and mitigating risks on a European and global scale, while considering the changing societal demands in areas such as innovation, security, capacity and environment. The 2020-2024

edition contains 180 actions aimed at improving air traffic management systems, addressing cybersecurity threats and developing safety requirements in the field of ground handling.

Artificial Intelligence: European Commission Publishes White Paper on Artificial Intelligence

On 19 February 2020, the European Commission published its White Paper on Artificial Intelligence. With regard to the aviation sector, the document advocates for a European governance structure on AI in the form of a framework providing for cooperation of national competent authorities. The aim of such European governance structure would be to enable authorities to fulfil their mandate through the effective monitoring and overview of the activities of economic operators, in which AI systems and AI-enabled products and services are used.

Artificial Intelligence: EASA Publishes its First Artificial Intelligence Roadmap

On 7 February 2020, EASA published its Artificial Intelligence Roadmap 1.0, which outlines EASA's vision on the safety and ethical dimensions of development of AI in the aviation sector. In its 33-page document, EASA highlights the need to establish public trust into AI-based systems, integrate the ethical dimension of AI in safety certification processes, prepare the certification of AI systems and develop the necessary standards, protocols, methods to ensure that it will further improve the current level of safety of air transport. Through this Roadmap, EASA intends to identify high-level objectives to be met and actions to be taken in coordination with the EU Member States, the EU industry, the European Commission and other EU institutions.

IATA Reports: Full-Year Air Freight and Passenger Demand for 2019

On 5 February 2020, the International Air Transport Association (IATA) released full-year data for global air freight markets for 2019, showing that demand, measured in freight tonne kilometers (FTKs), fell by 3.3% compared to 2018, while capacity (AFTK) rose by 2.1%. 2019 was the first year of declining freight volumes since 2012, and marked the weakest performance since the global financial crisis in 2009. As regards passenger traffic, the full-year global passenger traffic results for 2019 show that demand, measured in revenue passenger kilometers or RPKs, rose by 4.2% compared to the full year of 2018. The 2019 result is a slowdown in comparison to 2018's annual growth of 7.3% and marked the first year since 2009 with passenger demand below the long-term trend of around 5.5% annual growth.

ANTITRUST AND COMPETITION

State Aid: European Commission Approves Around €36 million Romanian Rescue Aid to State-Owned Flag Carrier TAROM

On 24 February 2020, the European Commission approved Romania's plans to grant a temporary loan of approximately €36.7 million to the state-owned flag carrier TAROM. Romania had notified the Commission of its intention to rescue the airline as a result of an acute liquidity shortage due to its ageing fleet. In its assessment, the Commission took into consideration that the loan's six-month timeline was intended to cover only the carrier's demonstrated liquidity needs, the stringent monitoring on the use of funds, and Romania's commitment that, after the six-month period, the loan will be fully repaid, or TAROM will either submit a liquidation plan or carry out a comprehensive restructuring in order to become viable in the long-term. At the same time, the Commission added

that the aid would help ensure the orderly continuation of aviation services, in the interest of air passengers and the maintenance of the regional connectivity on the routes where TAROM is currently the sole provider.

State Aid: European Commission Clears Public Support to Timișoara Airport, Airport Fees and Discounts, as well as Individual Agreements with Wizz Air

On 24 February 2020, the European Commission cleared the public funding granted by Romania to Timișoara Airport between 2007 and 2009, as well as the fees payable by all airlines using the airport and the charges to be paid by Wizz Air in favor of the airport on the basis of individual agreements. The Commission had opened an in-depth investigation in May 2011 to assess whether certain measures in favour of Timișoara Airport and Wizz Air were in line with EU State Aid rules. The Commission found that certain public funds received by the Airport Manager between 2007 and 2009 were used either for the financing of non-economic activities at the airport, or did not confer any economic advantage to it. In addition, according to the Commission, the remaining publicly financed investments were fully compatible with the 2005 State Aid Aviation Guidelines which were in force at that time. Furthermore, the schemes of airport charges, including their discounts and rebates for the years 2007, 2008 and 2010, applied to all airlines at the airport in the same manner. As a last point, the Commission noted that the 2008 agreements with Wizz Air were incrementally profitable for the airport and a prudent market economy operator would have entered into such arrangements.

AIR TRAVEL - PASSENGERS' RIGHTS

Passengers' Rights: CJEU Sheds Light on Air Passenger Rights to Claim Compensation in the Case of Connecting Flights under a Confirmed Single Booking

On 13 February 2020, the Court of Justice of the European Union (CJEU) issued its order on the Case C-606/19 of *flightright v Iberia*. In this case, two passengers had booked a three-leg journey with connecting flights under a confirmed single booking: the first leg of the journey, from Hamburg (Germany) to London (UK), was operated by British Airways; the other two legs of the journey, from London to Madrid (Spain) and from Madrid to San Sebastian (Spain), were operated by Iberia. The third leg of the journey was cancelled without the passengers being informed in due time. A claim was brought in Germany against Iberia by the company flightright GmbH on behalf of the passengers, and the local court in Hamburg questioned the CJEU on whether it has jurisdiction over the dispute, taking into consideration that the place of departure and the place of arrival of the leg of the journey cancelled are outside its territorial jurisdiction. The CJEU concluded that, where journeys with a confirmed single booking comprise several connecting flights operated by separate air carriers, compensation for the cancellation of the final leg of the journey may be sought before the courts of the place of departure of the first leg. According to the CJEU, the criterion of the place of departure of the first leg of the journey satisfies the objective of proximity between the contract for carriage by air and the competent court and the principle of predictability advocated by the Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

INTERNATIONAL TRADE - BREXIT

Brexit: European Commission Sets Out Draft Framework for Brexit Deal

On 3 February 2020, the European Commission published a Recommendation for a Council decision authorizing the opening of negotiations for a new partnership with the United Kingdom. In the field of air transport, the envisaged partnership would work towards providing equal and non-discriminatory treatment to all EU air carriers and conditions for open and fair competition specific to the aviation sector. In addition, such partnership should ensure that adequate mechanisms for verification and information exchange are in place as well as the existence of air safety and security provisions. Furthermore, it should not prohibit taxation on a non-discriminatory basis of aircraft fuel supplied to aircraft. Considering the geographical proximity of the UK, the draft negotiating directives also reflect on granting elements included in the Fifth Freedom of the Air subject to corresponding obligations on the part of the UK. In the field of aviation safety, the envisaged partnership would facilitate trade and investment in aeronautical products, parts and appliances through cooperation in areas such as certification and monitoring, production oversight and environmental approval and testing. Appropriate regulatory co-operation mechanisms should be a key component to verify on a reciprocal basis the continued fitness and ability of the regulatory bodies involved in the implementation of the partnership.

Brexit: UK Government Publishes its Proposed Approach to the Negotiations with the EU

On 3 February 2020, the UK Government published a statement setting out the Government's proposed approach to the negotiations with the EU. The UK Government advocates for the conclusion of an air transport agreement covering market access for air services, aviation safety and security and collaboration on air traffic management. The envisaged agreement with the EU should also encompass provisions on governance-related topics and provide for dispute settlement arrangements.

Brexit: European Parliament Adopts a Resolution on the Negotiations for a New Partnership with the UK

On 12 February 2020, the European Parliament adopted a motion for Resolution to wind up the debate on the statements by the Council and the Commission on the proposed mandate for negotiations for a new partnership with the UK. In the transport sector, the resolution calls on the negotiators to ensure continued connectivity between the UK and the EU, based on the requirement of reciprocity in mutual access to the transport markets and considering the difference in size of the two respective markets. As regards aviation, the Resolution highlights the need to ensure that negotiations encompass a balanced and high-standard comprehensive air transport agreement, in particular as to the topics of air traffic rights, air safety and airport security. The Resolution also insists that future air connectivity between the UK and the EU cannot amount to de jure or de facto participation of the UK in the Single Aviation Market.

International Trade: Aviation Agreement between EU and Morocco

On 21 January 2020, the European Parliament's TRAN Committee approved the Draft Recommendation on the draft Council decision on the conclusion of a Protocol amending the Euro-Mediterranean Aviation Agreement between the EU and Morocco. The proposed amendment is a technical adaptation in order to take into account

Bulgaria and Romania's accession to the EU, in the context of an agreement which aims to ensure more connections between the EU and Morocco as well as further access to markets for all EU airlines.

PUBLIC CONSULTATIONS AND EVENTS

Past Event: Eurocontrol's Three Workshops on Building Cyber-Resilience

On 21-23 January 2020, Eurocontrol organized three workshops on building cyber-resilience. The first was held on 21 January 2020 with the title "How can we build a common trust framework in the digital environment?". This workshop's focus was on public key infrastructure (PKI) and the ways it can be used to connect entities efficiently and flexibly and improve the security of information exchange. The second was held on 22 January and focused on "Operators sharing best practices". This workshop's goal was to give a practical insight on managing cyber/information security in aviation. The third was held on 23 January on "Frameworks, mappings and metrics in cybersecurity: what works well in practice?". This workshop brought together cyber experts from different fields to exchange practical experience and best practice on enterprise strategies, C-Suite reporting, and compliance with regulatory requirements.

Past Event: IATA's Legal Symposium 2020

On 19-21 February 2020, IATA held its annual aviation law event in New York. Among the topics discussed were: the current legal issues for airline in-house counsel and airline insurers, including how airlines are handling claims and the steps taken to minimize those types of risks going forward; the impact of environmental regulation; an overview of the latest appellate cases and broader themes relevant to carrier liability under the treaties and the local law; the mutual recognition of safety certification; critical issues on air cargo and the role of data and malicious cyber; and access to congested airports under the perspective of competition law.

Past Event: Eurocontrol's Workshop on NATO's Use of Civil Standards

On 25-27 February, Eurocontrol held a three-day workshop on NATO's use of civil standards in Athens. The goal of this workshop was to raise awareness of NATO's standardisation policy, structure and procedures with regard to the adoption of civil standards, the procedures to develop new dual-use and other standards in coordination with civil standards development organisations (SDOs), and fostering relationships between defence and civil standardisation communities.

Past Event: Eurocontrol's Digitally Connected Airports Conference

On 27 February 2020, Eurocontrol hosted, in its headquarters in Brussels, the high-level conference "Digitally Connected Airports - Meeting the Capacity Demand 2030," in collaboration with Airport Council International Europe. The agenda of the conference included, among others items, aviation challenges and opportunities in the future, airports and ATM integration, connectivity in aviation, drone detection and dissuasion, addressing

environmental challenges, and runway capacity challenges.

Event: EASA's 2020 High Level Cybersecurity Conference

On 4-5 March 2020, the High Level Cybersecurity Conference is held in Madrid by EASA, in cooperation with the Spanish National Aviation Authority. The conference will focus on a number of key issues for the implementation of the future EASA cybersecurity requirements, including: coordination between different authorities within the Member States, coordination of the implementation of the different cybersecurity regulatory frameworks, risk management, and risk and information sharing.

KEY CONTACTS



MÉLANIE BRUNEAU
PARTNER
BRUSSELS
+32.(0)2.336.1940
MELANIE.BRUNEAU@KLGATES.COM



PHILIP TORBØL
PARTNER
BRUSSELS
+32.(0)2.336.1903
PHILIP.TORBOL@KLGATES.COM



ANTOINE DE ROHAN CHABOT
SENIOR ASSOCIATE
BRUSSELS
+32.(0)2.336.1941
ANTOINE.DEROHANCHABOT@KLGATES.COM



ALESSANDRO DI MARIO
SENIOR ASSOCIATE
BRUSSELS, MILAN
+32.(0)2.336.1938
ALESSANDRO.DIMARIO@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.