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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

Aviation: Open and Connected Europe

{SWD(2017) 207 final}

1. INTRODUCTION

1.1. A strong aviation sector for a stronger Union

Aviation is crucial for the European Union. It drives economic growth, creates jobs, facilitates trade and allows people to travel. Today European aviation represents 26% of the world market, contributing €10 billion annually to Europe's Gross Domestic Product, and supporting 9.3 million jobs in Europe.

Open and connected aviation markets offer better value flights to a greater choice of travel destinations worldwide. Air connectivity is relevant for the travelling public and for businesses and the economy at large as the better a city, region or country is connected by air to other destinations in Europe and other parts of the world, the more growth can be generated. Air travel has substantially increased since the creation of the EU's Single Aviation Market 25 years ago. The number of daily flights has increased from less than 10,000 in 1992 to around 23,000 in 2016. In addition passengers now have access to more destinations. Today there are around 7,400 routes compared to less than 2,700 in 1992. In 2015, over 1.45 billion passengers departed or arrived at EU airports.

European aviation must remain globally competitive and seize the opportunities offered by a fast-changing global economy, in a sustainable way. That is why in December 2015 the European Commission presented an "Aviation Strategy for Europe"¹, setting out an ambitious vision for the future of European aviation. It aims at boosting Europe's economy, strengthening its industrial base and reinforcing its global leadership position in aviation whilst addressing environmental and climate challenges, thus contributing directly to the Commission's strategic priorities.

1.2. The Aviation Strategy for Europe is delivering

The Aviation Strategy for Europe laid out a series of policy actions to be taken in the coming years. The present Communication and the proposal and Guidelines referred to in it, presented simultaneously, contribute to this Strategy and more precisely action intended to achieve the following:

- **Maintain leadership in international aviation**, by safeguarding competition and by facilitating foreign investment into EU airlines.
- **Tackle limits to growth in European skies**, by improving connectivity and airspace efficiency.

2. A LEADER IN INTERNATIONAL AVIATION

2.1. Safeguarding competition in aviation

The EU is improving market access and investment opportunities for European aviation in important overseas markets by helping it to increase its international presence and ensuring

¹ Communication from the Commission 'An Aviation Strategy for Europe', COM/2015/0598 final.

open market conditions for all EU airlines. Concluding EU aviation agreements with third countries supports an open and connected market. It offers more flights and destinations at cheaper prices. Some agreements are already in place, others are currently being negotiated or still need to be signed (Ukraine), and more are expected to be negotiated in the coming years based on the recommendations from the Commission to the Council to authorise the opening of further negotiations.

Today there are no international standards within the World Trade Organisation or the International Civil Aviation Organisation covering access to markets. That is why the EU sets out the conditions for market opening with third countries through its aviation agreements in order to create legal predictability and certainty for investors.

However in the absence of an EU aviation agreement with a third country concerned, or where existing agreements (EU or national) do not contain sufficient rules addressing practices negatively affecting competition, European connectivity may be harmed if EU airlines are subject to such practices from third countries or third country entities. In the longer run, if they are allowed to persist, such practices may have a negative impact on the competitive situation on the market and consequently lead to less choice, less connectivity and higher prices for EU citizens and businesses.

EU airlines are of course responsible for their own competitiveness and should continue to adapt their products and business models to market conditions. However, where the Union's connectivity and competitiveness in international air transport are put at risk through discriminatory practices, the EU should be able to take appropriate action.

Different actions are necessary to reduce the risk of practices affecting competition. Firstly, the EU and its Member States should pursue their efforts in the international context of the International Civil Aviation Organisation and the World Trade Organisation to actively support the development of multilateral rules guaranteeing the same market access conditions and a global level playing field for all airlines. Secondly, the EU and its Member States should continue engaging with third countries and address this issue in the context of aviation agreements². These remain the EU's preferred course of action.

Rules are also needed at EU level to allow the submission of complaints to the Commission. An investigation may then be conducted by the Commission to determine if EU airlines have been harmed by relevant practices from third countries, which could lead to compensatory measures being taken. The current Regulation concerning these matters³ has proven to be ill-adapted in its approach and needs to be replaced with a more effective instrument.

The Commission:

- **Proposes a new Regulation to safeguard competition in air transport, replacing Regulation (EC) No 868/2004.**
- **Urges the Council to allow the opening of negotiations for further EU**

² http://ec.europa.eu/transport/modes/air/aviation-strategy/external_policy.

³ Regulation (EC) No 868/2004 concerning protection against subsidisation and unfair pricing practices causing injury to Community air carriers in the supply of air services from countries not members of the European Community.

Comprehensive Aviation Agreements (Bahrain, China, Kuwait, Mexico, Oman and Saudi Arabia), and to swiftly decide on the signing of the EU Comprehensive Aviation Agreement with Ukraine.

2.2. Facilitating foreign investment into EU airlines

In order to grow, European airlines need access to investment, including foreign investment.

The liberalisation of the EU's aviation market has removed all barriers to investment between European airlines. This has benefited both airlines and passengers, improving the viability of airlines and providing more flights.

Foreign airlines are not only allowed to operate within the EU, but also to invest in EU airlines. However, under the current rules⁴, investment in EU airlines by third countries or third country nationals cannot exceed 49% of ownership, and effective control of the company must remain in the hands of Member States or their nationals. Failing that, airlines cannot be allowed or continue to operate as EU airlines. Several major foreign investments have taken place in recent years triggering reviews by EU Member States and by the Commission to ensure that these requirements remain fulfilled.

Therefore in order to improve legal certainty and bring clarity to foreign investors and airlines alike on which investment schemes allow the continuation of operations as an EU airline, the Commission is presenting interpretative guidelines on the current ownership and control rules contained in Regulation (EC) No 1008/2008. These guidelines outline the methodology followed by the Commission when assessing the ownership and control requirements, relevant notably to foreign investment cases.

As a next step, the ownership and control rules will be reviewed by the Commission and if need be adapted to remain relevant and effective in a fast-changing aviation market.

The Commission:

- **Presents interpretative guidelines on the ownership and control rules for European airlines contained in Regulation (EC) No 1008/2008.**
- **Carries out a review of the rules on ownership and control of EU airlines, as part of the evaluation of the Regulation No (EC) 1008/2008⁵.**

3. TACKLING LIMITS TO GROWTH IN EUROPEAN SKIES

3.1. Improving air connectivity

Air travel remains a challenge for certain regions in the EU, which may also concern the outermost regions. The EU has recognised the need to address cases where, on certain routes and due to specific conditions, insufficient demand or market failure prevented to provide enough flights to serve the needs of local communities. In such cases, Public Service

⁴ Regulation (EC) No 1008/2008.

⁵ Proposals will be subject to Commission better regulation requirements.

Obligations can guarantee notably that peripheral or development regions are well-connected to the rest of Europe. In order not to harm competition, Public Service Obligations in the EU are only allowed under very specific conditions set out in Regulation (EC) No 1008/2008. However experience shows that the existing rules are not always implemented in a consistent manner, which may undermine the objective of safeguarding both connectivity and competition on those routes.

The Commission is therefore presenting interpretative guidelines to bring clarity on the questions raised by Member States and local authorities in the conception, design and implementation of their Public Service Obligation regimes. These guidelines will outline the methodology followed by the Commission when assessing a Public Service Obligation. It should help Member States to correctly and effectively apply Public Service Obligation rules where appropriate as one of the options to address connectivity gaps. As a next step, the Public Service Obligation rules will be reviewed and if need be adapted in order to ensure they remain effective and clear.

The Commission:

- **Presents interpretative guidelines on the Public Service Obligation rules contained in Regulation (EC) No 1008/2008.**
- **Carries out a review of the Public Service Obligation rules, as part of the evaluation on the Regulation No (EC) 1008/2008.**

Furthermore, the Commission services are currently developing a connectivity index to better identify connectivity gaps and to benchmark different levels of air services between EU regions. This index will be published by the end of 2017.

3.2. Enhancing airspace efficiency

The main challenge for the growth of European aviation is to reduce the efficiency constraints which are seriously impeding the European aviation sector's ability to grow sustainably, compete internationally, and causing delays. The fragmentation of the European airspace costs at least EUR 3 billion a year and up to 50 million tonnes of carbon dioxide.

The Single European Sky is a concrete example of where the EU is making a difference by raising capacity, improving safety and cutting costs while minimising aviation's environmental footprint. Despite these improvements, traffic disruptions related to adverse weather conditions, technical failures, exceptional events, crisis situations as well as industrial action continue to severely hinder air travel in Europe⁶. In addition a number of vital reforms put forward by the Commission to improve airspace efficiency, with shorter routes and lower operational and environmental costs remain blocked in the Council since 2014 (SES 2+). These reforms could generate EUR 36 billion in savings over the next 20 years and create up to 11,000 jobs.

⁶ In 2016, ATFM en-route delays were due to the following causes in the following proportions: ATC capacity/staffing (57%), weather conditions (19%), ATM strikes (14%) and other events (9%).

Of all the causes of air traffic disruption, industrial action in the form of strikes poses the most complex challenges as Air Traffic Management strikes usually result in many flight cancellations and delays, leaving passengers stranded at airports. These actions seriously affect the functioning of the internal market⁷. From 2005 to 2016, 243,660 flights were cancelled as a result of Air Traffic Management strikes, affecting an estimated 27 million passengers. Over the same period, costs of more than EUR 1 billion due to delays alone have been incurred by airlines as a result of Air Traffic Management industrial action.

The right to strike is a fundamental right⁸. It is today governed in essence by national law. Some practices applied already today in various Member States help to reduce flight cancellations and delays for European travellers. The Commission has identified a number of operational measures which could be implemented by stakeholders to address these issues. These include improving social dialogue in Air Traffic Management sector - building upon the toolbox developed by the social partners, but also early notification of strikes by the unions, individual notification of staff members, protection of overflights and protection of air traffic peak periods.

The Commission:

- **Encourages Member States and stakeholders, including social partners, to apply the following practices with a view to improving service continuity in air traffic management:**
 - **Promote a sound and efficient social dialogue in Air Traffic Management undertakings** - Reducing the impact of industrial action on the Air Traffic Management network starts by reducing the probability of strikes through better social dialogue;
 - **Unions to provide early notification of strikes** - Providing sufficient notice in advance of a strike in order to enable aviation stakeholders to prepare mitigation plans ahead of industrial action (e.g. at least 14 days prior to the beginning of the strike);
 - **Staff members to provide individual notification of their participation to industrial action** - Individual notification of staff members in sufficient time to allow the management to organise the air traffic and manage the staff upfront of the strike (e.g. 72 hours prior to the beginning of the strike);
 - **Preserve overflights of Member States affected by strikes** - Ensuring 100% continuity of service for flights crossing the airspace of strike-affected Member States will reduce considerably the impact on the entire European Air Traffic

⁷ Indeed, since the launch of the Single European Sky in 2004, the EU aviation network has been subject to 375 days of strikes, the equivalent of more than a year of strike over a thirteen-year period.

⁸ Enshrined in Article 28 of the Charter of Fundamental Rights which provides that: "Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action". See also Article 6 of the European Social Charter (revised) which recognises the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike.

Management network;

- **Protect air traffic peak periods** - Strikes occurring during peak periods of the day and peak periods of the year should be avoided.
- **Encourages operational stakeholders and the Network Manager to reinforce their cooperation to address traffic disruptions in the event of strikes and further develop existing mitigation measures. Air navigation service providers are encouraged to enter into cooperative agreements, on bilateral or multilateral bases, to improve service continuity in the event of strikes. The Network Manager should monitor progress in that area through a strike registry.**
- **Will, together with stakeholders, further explore the concept of a more integrated operating European Airspace with a view to ensuring optimal continuity of service. It will also investigate measures in the Single European Sky performance framework to better reflect the impact of strikes on Air Traffic Management performance.**
- **Urges the co-legislators to swiftly adopt the Single European Sky (SES 2+) proposals and will continue to work with the Member States and other stakeholders towards the full implementation of the Single European Sky.**

4. CONCLUSION

A strong, competitive and sustainable European aviation sector is essential to support the EU's economy.

EU aviation should remain a leader internationally. This should notably be enabled by tapping into new international markets and by ensuring open competition between all airlines. Foreign investment into EU airlines should also be facilitated.

The EU should also enjoy broad connectivity and maximise the efficiency of its airspace. Action both at EU and national levels will allow the aviation sector to operate efficiently, in cases of market failure or air traffic disruptions.

The above actions are necessary to have an open and connected aviation market that directly benefits EU citizens, workers and businesses.