



Commissioner Adina Vălean

Meeting with A4E CEOs

Date 10/12/2019
Offices of Commissioner Vălean
Berlaymont 09/369
Brussels

Member of Cabinet responsible: [REDACTED]

Member accompanying:

DG participants: [REDACTED]

Scene Setter

You will meet with Thomas Reynaert, Managing Director at Airlines for Europe (A4E), and the following A4E CEOs:

- Ryanair: [REDACTED], (A4E 2019 Chair)
- IAG: [REDACTED]
- [REDACTED] Lufthansa Group: [REDACTED]
- Air France: [REDACTED]
- easyJet: [REDACTED]
- Finnair: [REDACTED]
- TUI: [REDACTED]
- Jet2: [REDACTED]

A4E wants to discuss the following topics: sustainability, Single European Sky, airport charges and passengers rights.

On sustainability, A4E will look for indications of the green deal content, taxation of kerosene and revision of the Emission Trading Scheme (ETS) for aviation.

On Single European Sky, A4E CEOs will push for completing the legal framework (SES2+). Ahead of the 2 December TTE Council, A4E sent each Minister a letter urging them to support breaking the deadlock on the SES legislative framework and calling for an update to the SES2+ proposal in the most efficient way possible and in close cooperation with industry.

On Air Passenger Rights (Regulation 261/2004), A4E wants a revised legal framework. Main points for them: compensation thresholds, extraordinary circumstances, missed connections, the timeframe for re-routing, and the claims and complaint procedures.

Objectives

- Set the scene on the European Commission environmental agenda on aviation around the expected Green Deal.
- Take note of airlines' CEOs concerns on the different files and reaffirm the Commission position.

Speaking points

SUSTAINABILITY OF AVIATION

- The new Commission is now officially in place and the political guidelines of President von der Leyen set the way forward.
- The European Green Deal will be the first priority of this Commission. For Transport and Mobility our contribution to the Green deal will focus on:
 - Increase the uptake of clean vehicles and alternative fuels;
 - Incentivise the right consumer choices and low-emission practices, including by ensuring that prices reflect the true impact on environment;
 - Improve efficiency across the whole transport system.

- To set the framework for this, we will adopt next year a Strategy which will cover all transport areas (safety, security, internal market etc.) and will focus on sustainability and digitalisation.
- Aviation, as other transport modes, will need to contribute fully to the Green Deal. There is no silver bullet and we need a basket of measures:
 - To increase the efficiency of aircraft and continue the work on international technical standards which frame the development in manufacturing aircrafts and engines to emit less;
 - As a matter of priority, to complete the Single European Sky – I will come back to SES in a moment;
 - To address CO₂ emissions through market based mechanisms: we already have the ETS for intra-EU flights, the Commission will come forward with a proposal to reduce free ETS allowances to airlines over time;
 - To implement into EU law CORSIA - we will report to the EP and Council on the best way to do this in the course of 2020;
 - To put in place a framework which will support an increased production and uptake of sustainable aviation fuels.
- I noted your joint letter sent recently to my services, with other associations, mentioning your European Sustainable Aviation Roadmap work. We will be very happy to cooperate with you on the topic.
- On taxation: we will cautiously follow the review of the Energy Taxation Directive. We need to be cautious on certain aspects (e.g. kerosene) but we also see it as a great opportunity to incentivise uptake of sustainable alternative fuels (e.g. by exempting them).

SINGLE EUROPEAN SKY (SES)

- Thank you for your steadfast support of the implementation of the Single European Sky (SES) and now, for calling for its reform.
- We appreciate your involvement as A4E and some member airlines in the work of the Wise Persons Group, as well as the Airspace Architecture Study, which provided impetus to this reform, culminating in the Joint Stakeholder Declaration on the future of SES, to which you are signatories.
- Your letter to Transport Ministers ahead of the TTE Council last week was timely and passed the right message to States on the urgency of the improvements needed to SES, in light of the capacity and sustainability problems Europe is facing.
- The debate in the Council on the future of SES touched notably upon the way forward with the legislative package. The SES2+ package proposed by the Commission dates back to June 2013. The Council's general approach was agreed already in December 2014.
- Since then, the aviation context has greatly evolved. Ministers understood that this is no longer a good starting point for discussions with the European Parliament.

- The Council also requested the Commission to provide detailed background information and material to justify its proposals and to analyse the potential benefits and consequences of the proposals.
- Based on the information provided, the Council may update the general approach agreed on SES2+ in 2014 with a view to enter into negotiations with the Parliament as soon as possible.
- I trust that work on this file can progress quickly and smoothly in the New Year. Rest assured that the aviation industry will remain informed and involved where possible.

AIRPORT CHARGES

- It is important that airport charges are fair and competitive, for both airlines and airports. A fair airport charge is a charge that, on the one hand, provides airlines (and ultimately passengers) with cost-efficient services; and, on the other hand, provides the airport with sufficient resources and right incentives to improve capacity and quality of service.
- The objective of the Airport Charges Directive has been to reduce ex-ante the risk of airports potentially exploiting their market power by imposing excessive airport charges. To achieve its objective, the Airport Charges Directive introduces consultation, transparency and non-discrimination provisions that apply to almost 90 biggest airports in the EU.
- The recent evaluation of the Airport Charges Directive, published in July 2019, shows that while the Directive has been successful in achieving some of its objectives, the time may be right to further fine-tune it.
- My services are therefore assessing – based on the evaluation findings, the inception impact assessment published in 2017 and ongoing discussions with stakeholders (such as A4E) – the next steps. We are hoping to be able to communicate on the next steps in early 2020.

AIR PASSENGER RIGHTS

- The current EU legislation on air passenger rights forms a vital part of the consumer protection measures of the Union but needs a revision. The position of the aviation industry is well known.
- With the help of the Finnish Presidency the Commission has managed to get the file back on the table in the end of November.
- A first round of discussion in the AVIA working party has shown that all delegations share the view that the revision of Air Passenger Rights should be pursued.
- All delegations can agree on the overall objective to reach a balanced system, with simple and clear rules, which can easily be applied and effectively enforced.

- The fact-finding study on the current level of protection of air passengers in the EU, which is coming to its close, shows a valuable up-to-date picture of the recent developments on the market. Several of your member airlines have contributed to the study, which will be presented in a dedicated event in the end of January 2020.
- The Commission will work closely with the incoming Presidency to progress as much as possible on this important file.

EU Aviation Summits

- The Commission co-organises an EU-Arab Aviation Summit on 23-24 March 2020 in Beirut, Lebanon. Most of you should have received personalised invitations, or will do so shortly.
- Your participation in this high-level meeting would be highly valued and I very much hope that many of you will be available to attend.
- A4E and its airline CEOs are also warmly invited to the EU-India Aviation Summit in Delhi on 21-22 April 2020 (dates not yet published) for which invitations will follow.

Defensive points

President von der Leyen declared that she favours reducing the amount of free allowances available to airlines. How do you intend to proceed? How does that fit with CORSIA implementation?

The President made it clear that the aviation sector will have to accelerate its efforts towards more sustainability, notably via a reduction of free ETS allowances for airlines. This question will be duly looked into as part of our CORSIA implementation analysis to be completed in 2020 with a report from COM to EP and Council. It is still early to discuss about it in more details.

What could COM propose on Sustainable Alternative Fuels (SAF) at EU level? Is COM considering a blending obligation for SAF?

COM is currently reflecting on how to launch the SAF market both on the supply and demand sides in the coming years. Options such as a SAF blending obligation could be considered. Of course, keeping in mind that it should be realistic, gradual and balanced. And we should further incentivising the use of only those SAFs which comply with strict and robust sustainability criteria.

BACKGROUND NOTES

A4E'S PRIORITIES FOR THE NEXT COMMISSION (from the A4E Website)

- A Single European Sky (SES) resulting in more direct flight routings and a minimum 10% reduction in CO2 emissions.
- Aircraft fuel efficiency levels in Europe have improved by 2% per year. Further progress can be achieved if current R&D initiatives, such as electric and hybrid engine technologies and sustainable alternative fuels were better funded - and if the right political decisions were taken to remove the existing hurdles in place.
- Full implementation of the global aviation emissions offsetting system, CORSIA, while avoiding regulatory overlaps with EU measures and potential double burden.
- Investment in the development and delivery of more efficient air traffic management (ATM).

A4E is asking the EU to update the Single European Sky (SES) regulatory framework and to make it future proof. This means:

- A traffic management regulation which is performance-based and service-driven.
- An effective governance structure which also accounts for the needs of airspace users.
- Immediate re-design of the European airspace structure.
- Supporting for changes to enable digitalisation and inter-operability.

Consumers

With more than 700 million passengers carried each year, A4E airlines bring people closer together and support their economic activities in a quick and efficient manner.

While continuing to improve the unprecedented freedom of mobility aviation offers, we never compromise on safety and strive to make air transport reliable and accessible.

In case of disruptions, a high level of passenger protection is important. A4E urges the Council to proceed swiftly with the revision of Regulation 261/2004 on air passenger rights in order to establish a clear, proportionate and stable legal framework on air passenger rights – third parties should not be allowed to profit on the back of passengers.

A4E is asking the EU to wait and monitor closely the evolution of the market in the coming years before undertaking any legislative action on multimodal transport solutions.

Airport Charges and Investments

Airport charges is a highly debated file between the two groups of stakeholders: airports and airlines.

A4E openly calls for a revision of the Directive, arguing that the Directive is neither correctly applied in the Member States, nor is it adequate or effective as it only deals with procedural aspects, in addition to the non-discrimination principle (which is anyway enshrined in other pieces of EU legislation). It does not protect airlines and their passengers from airports abusing their market power.

Airlines argue that contrary to airlines that operate in a highly competitive environment (e.g. recent bankruptcies of some EU airlines, increased presence of non-EU carriers), EU's main airports or airport groups act as natural monopolies. They claim that airports with significant market power must therefore be subject to effective regulation, as they do not have sufficient incentive to reduce their costs and promote efficiency in their operation or capital expenditure / investments. Airlines take the view that some Member States have decided to go beyond the minimum requirements of the Directive, by implementing effective economic regulation, but this is unfortunately not the case in all Member States.

A review of Directive 2009/12 on airport charges (ACD) creating a clearer, more robust regulatory framework should encompass:

- Targeting economic regulation at airports with significant market power (SMP),
- Detailed rules on consultation and transparency in the setting of charges to make the process more effective,
- Ensuring Member States have a fully independent and well-resourced regulator that can effectively intervene as needed.

Concerning airports with significant market power, there are prominent cases that require action. This is pressing given the trend observed in some Member States to “lock in” existing systems where charges are determined through long-term concession agreements or national legislation.

The proposal for a regulation on the establishment of a framework to facilitate sustainable investment should not restrict investments in aviation infrastructure. Cost-efficient infrastructure development is essential to the competitiveness of EU aviation and the EU economy. A new EU framework for sustainable investments must ensure that aviation infrastructure can also benefit from

sustainable investment instruments in the years to come. This is needed to avoid a capacity crunch and to support the industry's sustainability initiatives.

Taxation

Aviation is under political and public scrutiny to reduce its carbon footprint. There is a growing claim from the society that aviation does not do enough to mitigate climate change and is unduly exempted from (kerosene and VAT) taxation. President von der Leyen proposed a new Green Deal by strengthening current ETS system and reviewing the Energy Taxation Directive.

Passenger/departure based taxes and charges are levied in several Member States. VAT or other taxes on domestic aviation exist in 17 Member States.

Fuel is generally exempt from excise duty in international aviation. The 1944 ICAO Chicago Convention requires tax exemption of fuel on-board when landing, whereas fuel delivered to aircraft is exempted through most existing air services agreements (be at EU-level or bilateral between Member States and third countries). Against this background, the Energy Taxation Directive provides for a mandatory exemption of such fuel, while permitting Member States to tax fuel for domestic flights or flights between Member States, on the basis of corresponding agreements between them. The US, Canada, Australia, Japan and Hong Kong tax fuel on domestic flights.

In its strategy to decarbonise aviation, the EU relies on a “basket of measures”, including Market-Based-Measure (EU ETS for aviation, CORSIA), enhanced ATM operations, R&D and deployment of technology for more efficient aircraft design, and the introduction of Sustainable Aviation fuels (SAF). Among those measures, SAF clearly is untapped potential. Measures to decarbonise should carefully be planned as it could negatively affect connectivity, lower European competitiveness and may either stimulate other forms of non-sustainable travel or deviate traffic to neighbouring countries.

The Commission registered a Citizens' Initiative calling for introduction of kerosene tax on 10 May 2019. The Commission found it acceptable and the petitioner will have to gather 1 million signatures with minimum thresholds reached in at least seven countries until 10 May 2020. In case such number of signatures are collected, the European Commission must decide whether or not to take action.

Nine EU countries (France, Germany, Italy, Belgium, Bulgaria, Denmark, Luxembourg, the Netherlands and Sweden) called for proposals for cleaner aviation in Europe on 7 November 2019 calling for a specific pollution tax.

Germany announced a raise of passenger tax for flight departing from Germany as from 1 April 2020. Similar actions were announced by France (from 2020) and the Netherlands (from 2021).

Single European Sky (SES)

The Single European Sky (SES) initiative was launched in 2004 with the goal of improving the performance of the European ATM system in terms of safety, capacity, cost-efficiency and environment. The SES initiative has delivered improvements in all of these areas and much has been achieved, especially in the field of technological innovation through the SESAR (SES ATM Research) modernisation project. Naturally, the landscape of European aviation has also evolved considerably and new challenges are on the horizon. It is clear that the ATM system in Europe as it operates today has reached its capacity limits. Recent growth in air traffic is resulting in air traffic delays of a magnitude not seen for more than a decade, to the detriment of the environment and major inconvenience of air passengers.

- Delays in 2018 and 2019 were double those of 2017.
- Every fourth passenger now faces a delay of 15 minutes due to air traffic flow management.
- In addition, more flights are cancelled and connections are missed. Passenger compensation claims have soared. The overall economic cost of the delays was estimated by the European Network Manager at 17.9bn euro in 2018.
- The serious congestion situation would have produced an estimated additional 5-6 million tonnes of avoidable CO2 emissions in 2019, which have been partly mitigated by the re-routing measures taken by the Network Manager and a number of air navigation service providers.

Air Passenger Rights

The revision of the Air Passenger Rights (APR) Regulation 261/2004 tabled in 2013 has failed to progress in Council for more than six years and was put on hold pending the resolution of its application to the Gibraltar airport. The Commission still stands by its proposal, a revised Regulation being the best way to provide the legal certainty that both passengers and the industry are expecting.

The dossier is now expected to move forward in the Council, with the support of the incoming Croatian Presidency, which expressed recently its view to continue the discussions that have just restarted under the Finnish presidency.

Meanwhile and to support this endeavour, the Commission launched a new fact finding study on the current level of protection of air passengers in the EU in December 2018, which aims to identify the recent developments on the market. The final report of the Study is in its very final phase. It will be made public soon and will be presented to stakeholders on 30 January 2020 (date tbc).

The Finns did not want to restart Article by Article but rather resume the debate more generally by discussing problem areas and possible solutions first. The Croatian presidency is expected to launch discussions along the same lines.

There has been a clear support from stakeholders to resume the file (and not to withdraw it and start from scratch again). An active support is now needed from the Member States in Council, but also from the stakeholders in order to swiftly relaunch discussions and to achieve tangible results soon. A General Approach under Croatian Presidency would be an achievement.

Council and Parliament would have a very different approach to the Commission proposal very likely; it is expected that the trilogue would be difficult.

A4E's position on the COM proposal for revision of Regulation 261/2004

The Commission services have been meeting on several occasions with representatives of A4E. They have recently been involved in two workshops organised in the framework of the Fact Finding Study.

The Commission services are well aware of A4E's position on the revision as outlined in its position paper.

Overall, A4E agrees with the objective to make air passenger rights clear and simple to implement. A4E considers the revision of Regulation 261/2004 extremely important in terms of legal certainty and a fair balance of consumer and industry interests; the current Regulation 261/2004 is too detailed and prescriptive and, at the same time, too vague on essential points.

A4E sees several positive elements in the 2013 COM proposal including the trigger points (thresholds) for compensation after long delays, a list of extraordinary circumstances, attempts to limit the financial liability for airlines as “insurers of last resort”, and the principle of the right of redress.

In A4E's view a high degree of protection should not be sought solely in the right to compensation. Compensation is a last resort when the actual inconvenience cannot be prevented or minimized, while the main goal is to prevent disruption, delay and inconvenience for passengers.

In addition to compensation thresholds and extraordinary circumstances A4E views as essential points still to be worked on: missed connections, the timeframe for re-routing, and the claims and complaint procedure.

The Commission notes positively that A4E share the common objective to make the rules simpler and clearer and improve their applicability and enforceability.

The new Commission fact-finding study (2019)

The fact-finding study on the current level of protection of air passenger rights in the EU has been carried out by the consultancy “Steer” through 2019 and is currently being finalised.

The study provides an up-to-date overview on the implementation of Regulation 261/2004 and aims at giving reliable and concrete data to assess the current level of APR in the EU and also to make an informed decision regarding the proposal for a revision.

The following issues are covered: (1) Level of disruption experienced by passengers (cancellations, long delays, denied boarding); (2) Expectations of passengers regarding their rights; (3) Air passenger rights from the perspective of airlines and airports; (4) Monitoring and enforcement of Regulation 261/2004 (national enforcement bodies); (5) Other means of redress and claim agencies; (6) Development of air passenger rights outside the EU; and (7) Airline insolvencies from an air passenger rights perspective.

The study emphasises the high complexity of the system for passengers (to know and enforce their rights) and the fact that it is increasingly costly for airlines, as well as burdensome for the national enforcement bodies (drivers being increased traffic, increased disruptions, rising claim rates, etc.). Concerns have also emerged from the analysis regarding the impact of airlines insolvency and the increasing role of claim agencies.

EU Aviation Summits

Positive engagement with other regions is crucially important in aviation, notably to address the many shared challenges in this sector, such as mitigating its environmental impact. The Commission therefore decided to co-organise an EU-Arab Aviation Summit with ACAO (Arab Civil Aviation Organization) on 23-24 March 2020 in Beirut, Lebanon. This event will be followed by an EU-India Aviation Summit on 21-22 April 2020 in Delhi, India.

Most A4E CEOs as well as [REDACTED] from A4E have already received their invitations to the EU-Arab Aviation Summit or will shortly receive them. [REDACTED] (Lufthansa) and [REDACTED] (Air France) and [REDACTED] (KLM) have also received invitations to speak in panel discussions. Mr [REDACTED] and Ms [REDACTED] have not yet accepted the invitation, and Mr [REDACTED] has had to decline the invitation (we consider inviting [REDACTED], CEO of EasyJet in his place). Formal invitations to the EU-India Aviation Summit will follow.

Annexes:

- Draft programme of the EU-Arab Aviation Summit (*internal*)
- First announcement of the EU-Arab Aviation Summit (*public*)

Contacts (Aviation): [REDACTED]
[REDACTED]

Contact (Air Passenger Rights): [REDACTED]

ANNEX 1: CVs of Participants

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[Redacted]

[Redacted]

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