Scene setter

You will meet [redacted] Airlines for America (A4A) – arguably the most powerful airline association – at request for an introductory meeting. A4A would like to discuss a number of rather offensive topics centred around the forthcoming capacity reduction at Amsterdam Schiphol (AMS). A4A is a driving force in the legal challenges of the reduction plans, both in NL and the US, as it wants to avoid that this sets a precedent for other EU airports. Finally, [redacted] at the International Aviation Club in Washington DC, which brings together top-level decision-makers both from government/regulators and industry.

Your meeting is an opportunity to stress the mutual interest in deepening our aviation relationship based on the ATA and to raise some persisting irritants: 1) we are concerned about growing protectionism in the US, illustrated by recurring legislative proposals targeting EU air carriers, depicted as "flags of convenience" carriers, or seeking unilaterally to change the conditions for EU carriers to operate to the US; 2) the US is also dragging its feet to resolve difficulties encountered by EU carriers holding EASA Air Operator Certificates (AOCs) when seeking operating permissions to the US; 3) finally, there is a continued lack of reciprocity for crew visas, meaning that US crews can enter the EU without visa while EU crews need a visa to enter the US. The continued reluctance of the US State Department to change this imbalanced situation may soon result in Member States also requiring visa from US crews, which A4A should be aware of and would resent it.

A4A is closely monitoring policy developments in the EU and representatives regularly visit Brussels. [redacted] will be accompanied by

Objectives

- Underline the close EU-US aviation relationship and the mutual importance of the transatlantic market based on the ATA. Safeguarding the credibility of the ATA is paramount.

- Sustainability: Listen to the concerns of A4A, and update on AMS Schiphol, SAF etc. without going into detail.

- EU concerns: Stress our continued concerns with growing protectionism in the US ("flags of convenience" legislation, EASA AOC, crew visa reciprocity). Ask for insights into the US internal and legislative processes. Warn A4A that US carriers risk being faced with visa requirements in the EU if the US does not exempt EU crews.

- International Aviation Club: If feasible, accept the invitation to speak at your next visit to Washington DC.
Key Messages

EU-US aviation relationship

- The EU-US air transport market is a high-yielding, high-volume (>50 million scheduled seats in 2023) market and possesses the largest economic footprint of any international aviation market both for the US and the EU.
- For industry on both sides, a well-functioning transatlantic market is therefore absolutely crucial for the sustained recovery and growth of the sector.
- I am looking forward to working with A4A in that respect.

Noise – Amsterdam (raised by A4A)

- I am well aware of airlines’ concerns about the capacity reduction at Schiphol airport under both Phase 1 and Phase 2.
- Excessive noise levels have a big impact on the well-being of local residents, and it is important to allow Member States to mitigate negative impacts for the health of their citizens.
- Having said that, Member State measures must of course comply with EU law and international obligations.
- The Netherlands notified the Commission of Phase 2 on 1 September. My services are currently reviewing all documents received as a matter of priority assessing whether the Dutch authorities complied with the Balanced Approach Regulation.

- Regarding the international obligations under the ATA, the same goes as for the Balanced Approach Regulation: The Commission is observing that the legal obligations, be it under EU law or international law, are fully respected.

Noise – Paris/Brussels/Dublin (raised by A4A)

- We are aware, that Belgium, France and Ireland are planning to launch balanced approach studies. However, we have no concrete information on their timelines or what measures they may be considering.
It is essential that any noise-based operating restrictions are fully in line with EU law and international obligations.

ReFuelEU (raised by A4A)

- The Commission welcomes the recent political agreement on ReFuelEU Aviation and is looking forward to the final steps of the formal adoption of the text in the coming weeks. One co-legislator, the European Parliament, already approved it 13 September 2023 and Council should follow soon.
- We believe the agreement delivers ambitious but realistic European targets, with several flexibilities for fuel suppliers to facilitate the transition into SAF, and broadened scope of fuels that will gradually reduce aviation reliance on fossil fuels.
- This regulation will bring long-term market certainty for SAF supply in the European market and will help deploy SAF at scale, bringing down costs, and ultimately, considerably reducing the CO2 emissions of the sector.
- The Commission is now preparing the implementation of the Regulation with EASA.
- In parallel, we have also launched a number of initiatives, such as the Renewable and Low Carbon Fuels (RLCF) Value Chain Alliance, to support the industry in ramping up the production of SAF.

International Aviation Club (raised by A4A)

- I would be honoured to speak at the IAC during my next visit in Washington. I suggest that the organisers are in touch with my teams at headquarters and the Delegation to plan this further.

EU concerns

- There are few points that risk spoiling our otherwise good aviation relationship:
  - "Flags of convenience";
  - so-called "flags of convenience" legislation that would unilaterally alter the rights granted under the EU-US ATA – to the detriment of EU air carriers.
- The latest incarnation of this is the so-called Fair and Open Skies Act legislative proposal (NB: US Congress reference is S. 1752).
- **EASA AOCs**: EU carriers holding EASA AOCs face difficulties entering the transatlantic market with DOT/FAA being very slow in doing the necessary (i.e. amend U.S. regulation) so that permits can be approved in line with the ATA.

- This even though ICAO confirmed that EASA AOCs are fully compliant with the Chicago Convention. So in our view, there is not even the need to change the US domestic regulations in order to accommodate EASA AOC holders.

- This makes it even more urgent to resolve this unacceptable situation that a certain category of EU air carriers is denied entry to the transatlantic market.

- As we told the US very clearly at the last Joint Committee meeting, we see this as a breach of the minimum procedural delay requirement of our ATA.

- **Crew visa**: You have probably been briefed on the discussions we had at the most recent Joint Committee. The US once again showed no willingness to work towards lifting visa requirements for EU crews. This is in striking imbalance to US crews who travel visa free to the EU. This lack of reciprocity is not acceptable and must be addressed.

- As also explained at the Joint Committees, MS under EU visa rules can individually introduce a visa requirement for air crews. This option of mutual non-reciprocity is something that we are trying to avoid as it would become a lose-lose situation.

- However, we have now reached a moment where Member States have seriously started to look into requiring visa for US air crews.
The transatlantic aviation partnership has created unprecedented opportunities for industry and consumer on both sides. To avoid a lose-lose situation, it is important to avoid any unnecessary distractions and refrain from any self-inflicted damages that may jeopardise this market.

- I count on A4A to help defer any unnecessary harm to the EU-US ATA and aviation market.

**Defensive Points**

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**Noise – Amsterdam: Does Phase 2 comply with EU law?**

- The Netherlands notified the Commission on 1 September and my services are currently reviewing all submitted documents. At this stage it is too early to give any indications on whether or not Phase 2 breaches EU law.

- The Commission has 3 months to issue an opinion as of the date the notification is complete. So far my services do not consider the notification is complete and we have approached NL with a list of questions that need to be addressed before the notification can be considered complete.

**Noise – Amsterdam: If asked about the International Air Transportation Fair Competitive Practices Act (IATFCPA) complaint**

- I am aware that A4A has filed a complaint under the US domestic fair competition instrument (IATFCPA). This was followed by a separate complaint by JetBlue.

- While we are of course following this, it is a US domestic law matter for the time being and I understand it is for DOT to evaluate the merit of your complaint.
- However, should an IATF CPA complaint lead to a dispute relating to the application of the ATA, I expect the ATA’s provisions to be applied.

- Our agreement provides robust and well-structured mechanism to deal with any dispute relating to the application and interpretation of this agreement. Therefore we see no room to apply a unilateral tool as the IATF CPA to deal with matters covered by the ATA.

**ReFuelEU: What is foreseen on Book & Claim?**

- The Commission will carry out a feasibility study in 2023-24 to assess the needs for additional flexibility for SAF supply and the possible design and impacts of such a system. On the basis of this study, a report we will publish a report by 1 July 2024.

- This is a new concept in EU Energy policy and currently not widely understood in the same way in the industry. Stakeholders have different views on what book and claim means, how it works and who should be in charge of what. Therefore, further research seems pertinent to clarify how such a possible system might look like.

- Such a feasibility study will also take account that after the flexibility mechanism, this is as of 2035, SAF will have to be supplied to all Union airports without exception. The final objective of ReFuelEU Aviation is to ensure all regions of Europe and all airlines have access to (an increasingly higher share of) SAF to replace fossil kerosene.

- While there could be various benefits of such a book and claim system, a number of issues related to the essential functioning of such a system must be well examined. Notably (i) its compatibility with the existing European legislation (e.g., EU ETS, ETD or RED), (ii) ways to avoid double claims and the risk of fraud, and (iii) the question of overall added value and effectiveness in SAF production, supply and uptake.

**ReFuelEU: What is the state of play for the anti tankering guidelines?**

- Carrying excessive aviation fuel on board of aircraft creates excessive weight and non-negligible emissions. Emissions that can be avoided, not by limiting the fuel onboard, but by mandating minimum uplift of fuel in every airport.

- SAF availability will vary across EU during the flexibility period and the Regulation should not amplify such undesirable possibility. SAF is the future for aviation and will need to be supplied (blended with kerosene) at all Union airports to replace kerosene.

- The Commission will adopt Guidelines by September 2024, to explain how the exemptions are to be interpreted and implemented, to support airlines and Member States with implementation. The Guidelines will cover the elements that aircraft operators will need to provide to the authorities in order to justify their exemption to the anti-tankering rules.

- Exemptions can be granted on a temporary and exceptional basis by Member States authorities in case of serious and reoccurring operational difficulties or structural fuel supply difficulties on certain types of routes.
- MS are in charge of implementation and enforcement of this Regulation. Their work will be facilitated by EASA that will be collecting annually data from aircraft operators with relevant fuel uptake data.

**ReFuelEU: Why are certain fuels excluded under ReFuelEU Aviation when they are allowed under ICAO’s CORSIA and are needed to reach the LTAG?**

- The EU stands firmly by the agreement in ICAO. The EU acknowledges that for the accomplishment of the long-term aspiration goal for international aviation (LTAG), fuels adhering to these criteria are necessary (as shown in the LTAG report). Their contribution should be counted in the progress towards any trajectory of implementation of the long-term goal for international aviation of net-zero CO2 emissions by 2050.
- At the same time, the EU understands that there are different geographical, resource and economic circumstances of each region, as well as each region and state’s prerogative to establish its policies as it sees fit to incentivise use of SAF and more generally decarbonisation of aviation.
- For the European context, it is appropriate to incentivise the use of e-fuels and advanced biofuels for aviation. This is a choice justified by Europe’s view that first generation biofuels, as well as LCAF (low carbon fossil origin fuels), are not suitable for the energy mix in aviation. This is not a ban on importing such fuels. We are actually importing conventional fuels too. It only means that these fuels would not count for the incentive schemes in our jurisdiction.
- Other jurisdictions also incentivise only a subset of the CORSIA eligible fuels. But this does not mean we are shunning or dissuading the use of any globally recognised SAF.

**Minimum Air Fares: What is the Commission’s view on France’s idea to change EU law to introduce minimum pricing to “signal” the environmental cost of flying?**

- The Commission is in favour of measures that can help shape a more environmentally sustainable EU air services industry, as well as affordable connectivity. This is why the Commission has put forward an ambitious Fit-for-55 package that can lead aviation towards decarbonisation, in particular the ReFuelEU aviation.
- At the same time, we need to recognise the importance of freedom of pricing of airlines which has substantially increased air connectivity benefitting all EU regions.
- It is not clear how minimum ticket price would benefit the environment. It would only have a limited, symbolic environmental value.
- When it comes to making people aware of the cost of flying, we believe there are other more efficient tools and measures to enable customers to make fully informed choices when buying their tickets, and to encourage the use of more sustainable modes of transport which offer comparable connectivity, such as the proposal on CountEU emissions.
• With suitable alternatives and adequate information on the environmental footprint of their travel, consumers and businesses will be empowered to make more sustainable delivery and transport choices.

*When will the Commission revise the Air Services Regulation?*

• The work regarding a number of aviation files, such as the Air Services Regulation, the Slots Regulation, or Airport Charges Directive, is ongoing.

• Given the complexity of the files, more time is needed to further assess the different policy options. The Commission will continue working closely with all relevant stakeholders. The EU internal aviation market has delivered great benefits to the European citizens and economy, and the Commission is committed to ensuring that its regulatory framework remains fit for purpose.

• It will now be for the next Commission to decide how to take this forward.
Background

EU-US aviation market
The US is the second largest extra-EU market after the UK, and by far the most important long-haul market. The EU-US Air Transport Agreement (ATA) links more than 775 million people on both sides of the Atlantic. Its signature in 2007 constituted a defining moment in the aviation relations of the EU and the US. The Agreement fully opened-up direct traffic, recognised EU designation and set up cooperation in many fields (competition, security). It also provides for further liberalising traffic rights
and airline ownership and control, but the respective provisions have not been triggered to date.

The ATA has helped to achieve unprecedented transatlantic connectivity and yielded significant economic benefits (average savings of €230 per round trip, >€16bn in economic benefits per year). The market has recovered to 81% of pre-COVID passenger levels in 2022, and is on track for exceeding pre-pandemic traffic levels in 2023 with airlines reporting very healthy bookings. The busiest routes between the EU and US are New York JFK-Paris CDG (+300 flights in June 2023), New York JFK-Rome FCO (+200), New York JFK-Milan MXP (around 175), Atlanta-Paris CDG (around 150), Los Angeles-Paris CDG (around 150).

The last Joint Committee took place on 13 July 2023 in Washington DC and the next regular meeting will take place in spring 2024 (dates tbc) in Europe. The US may call for a special JC meeting on the forthcoming capacity reductions at AMS Schiphol prior to the next regular JC (tbc).

Chart 1: EU-US air transport market:

38 million passengers 2022 = 81% of 2019
2,6 million cargo tons 2022 = 114% of 2019

EU-US ATA signed 2007