



## 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]
- 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.

## **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.

### **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.

### **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.

Contacts (Aviation): [REDACTED] (DG MOVE E1), tel.: [REDACTED] (DG MOVE E3), tel.: [REDACTED]

Contact (Air Passenger Rights): [REDACTED] (DG MOVE B5), tel.: [REDACTED]