



## Commissioner Adina Vălean

**Meeting with [REDACTED], IATA DG & CEO**

Date 16/03/2020

Place BERL, (including room)

City

Member of Cabinet responsible:

Member accompanying:

DG participant(s): (including contact number):

## **Scene Setter**

You will meet [REDACTED], IATA DG and CEO. The International Air Transport Association (IATA) is a trade association of the world's airlines founded in 1945.

Consisting of 290 airlines, primarily major carriers, representing 117 countries, the IATA's member airlines account for carrying approximately 82% of total available seat miles air traffic. IATA supports airline activity and helps formulate industry policy and standards. The organisation has however in the past been described as a cartel where in addition to setting technical standards for airlines, it is known to have organized tariff conferences that served as a forum for price fixing. It is headquartered in Canada in the city of Montréal, with Executive Offices in Geneva, Switzerland.

In requesting a meeting with you, IATA has submitted a paper listing priorities identified by the Association which are covered in your brief: Single European Sky reform (SES 2+), environmental aspects (CORSIA, SAFs, taxation), passenger rights, aviation safety and security.

A number of technical aspects related to SES 2+ of interest to IATA are currently being considered in the context of the amended legislative texts where our thinking is largely aligned. On environment aspects, IATA is in favour of CORSIA being the only global market-based measure and wants the EU to promote the production of Sustainable Aviation Fuels (SAF) at prices comparable with current jet fuel. On taxation, IATA considers that inefficient and burdensome tax measures that increase the cost of air travel will have a negative effect on demand and on economic growth.

With respect to Passenger Rights, the recent evolution in position of stakeholders (including Member States) indicates that positive developments can now be expected under the Croatian presidency.

With respect to aviation security, IATA has called for a new aviation security strategy that would consider a risk-based approach, coordination in cybersecurity, and improved transparency on aviation security charges.

The meeting with [REDACTED] is a timely opportunity to clarify some of the above aspects and reassure your interlocutor on the thorough consideration and commitment of the Commission.

## **Objectives**

- To inform and exchange views on the SES 2+, ongoing activities on energy taxation, plans under the ETS Directive and CORSIA, Sustainable Aviation Fuels (SAF), and aviation security.
- Update IATA on the ongoing revision of the Slot Regulation and on the impact of corona virus on airport slots.
- To reassure IATA that consultation with and contribution from the industry stakeholders is an essential tool for the Commission in defining the appropriate policy in aviation.

## Speaking points

### SES 2+

- The way capacity of the ATM network is managed today is outdated. It is often done on local level without taking into account the capacity of the ATM network as a whole.
- The Airspace Architecture Study (AAS) confirmed that European ATM network needs scalability. This means that if certain European ATM centre can't manage all the capacity in their area of responsibility, there will be others in the network capable to step in to provide necessary service.
- The AAS was one of the major inputs for the upcoming SES reform. Together with the Wise Persons Group report, the AAS was a major strategic input into the reform. We also of course considered European Court of Auditors (ECA) findings on SESAR.
- The plan is the following:
  - A partial General Approach for SES was agreed in Council on the SES2+ proposal at the end of 2014, but negotiations have stalled since then.
  - Due to the capacity crisis in 2018 and 2019 the political momentum changed and there is a renewed commitment both from stakeholders and Member States to work on the Single European Sky file and to continue improving ATM in Europe. This was a clear outcome of the Transport Council held in December 2019.
  - We can't put at risk what seems to be a common goal: to have SES reform taking full effect with the start of a new economic reference period on 1 January 2025.
  - Therefore, the approach is that Commission amends the current legislative proposal. It is our hope that the amended proposal could then be adopted by the College in spring 2020.
- The trilogue with Member States and the European Parliament would be hopefully finalised under the German Presidency.
- Our goal is the adoption in 2021 so we can subsequently amend the necessary implementing regulations by the start of 2025.

### **Air Traffic Management (ATM) – Infrastructure**

- A highly efficient European air traffic management system, requires, two features:
  - Defining, developing and deploying a modern interoperable ATM infrastructure,
  - People working together to achieve common objectives
- SESAR is the result of a collective European effort that implement these two features and that has become a worldwide reference for modernising ATM infrastructure.
- The Commission understands and supports the concerns of airspace users and values their full involvement in reforming SESAR. In particular through:
  - Implementation of the European ATM Master Plan to achieve the "Digital European Sky",

- Establishing a new “integrated ATM partnership” under Horizon Europe.

### **Economic Regulation and SES Performance Scheme in RP3**

- One key element of the necessary reform of the SES legislation is the introduction of an economic regulator for air navigation services and I am grateful that IATA is strongly favouring this position.
- Such an economic regulator needs the right expertise and resources.
- The current system with the Performance Review Body assisting the Commission to prepare implementing Decisions that are subject to comitology rules is not adequate for the necessary economic regulation of monopoly air navigation service providers. Furthermore, a stable set-up with permanent staff and expertise is needed.
- The discussion on the choice of economic regulation and the principles of risk-sharing between air navigation service providers and airspace users will have to take place between the co-legislators.
- We have identified that almost all Member States propose targets that are not consistent with the Union-wide targets for RP3 that were adopted in spring 2019. This requires a revision of performance plans by Member States with national/FAB targets that are more ambitious.
- The regulated entities must be able to take higher risks (up and downside) and receive the right incentives, which could also take the form of penalties in case targets are not met.
- It is not acceptable to increase costs by a significant margin and still not deliver the right capacity that corresponds to the demand of airspace users. The capacity targets are missed by a factor of 3 and the cost-efficiency targets by some 10% each year. The targets proposed by the States significantly miss the environment targets (by 5-10% each year).
- We must be vigilant here.

### **CORSIA/ETS**

- I take due note of IATA's position as regards CORSIA prevailing over other market-based measures such as the EU ETS.
- Aviation, as other transport modes, will need to contribute to the Green Deal.
- To achieve the desired results we must increase our efforts through a basket of measures:
  - 1) Improve fuel efficiency of aircrafts and bring in new technologies (hybrid, electric, hydrogen) as soon as they are ready.
  - 2) Operational improvements, notably completing the Single European Sky.
  - 3) Market-based measures like ETS and CORSIA.
  - 4) Sustainable aviation fuels.
- We need swift policy action to create a market and green the aviation fuel mix as soon as possible.
- Many Member States are preparing SAF blending mandates at national level. An EU approach would make more sense, to avoid market distortion.

- The support of IATA for a blending mandate would be important and very much welcomed.
- The EU remains committed to implement CORSIA from the start of its offsetting phase. During the voluntary phases, almost 77% of the CO2 emissions from international aviation would be covered. In the course of 2020, the Commission should report to the EP and Council on the best way to implement CORSIA in the EU.

### **Aviation Taxation**

- Taxation would not lead to direct decarbonisation. However, we cannot leave it out of the debate.
- Aviation taxes should not be looked at in isolation, but alongside other policy measures, including emission trading, offsets, fuel and aircraft standards, sustainable aviation fuels and operational improvements.
- The mix of measures should be based on what is most effective in achieving emission reductions without impacting connectivity or competitiveness.
- Attention has recently focused on energy taxation. The 2019 evaluation of our Energy Tax Directive noted inefficiencies and inconsistency with EU climate change commitments. The revision of the Directive is for mid-2021.
- Any tax related measure must take into consideration the international agreements Member States and the Union have with third countries (way over 1000 agreements) that make the equation even more complicated.

### **Slot Regulation Revision**

- The revision of the existing Slot Regulation to allow for an optimal use of scarce capacity at many EU airports is important and we see an opportunity to re-launch the file after Brexit.
- Our aim is to enable EU airports to better tackle congestion. Air carriers and airports have developed new business models and recent airline bankruptcies have raised new questions on the economic role and value of airport slots.
- Our new study assesses the relevance of the current proposal vis-à-vis the current market situation - with a view to proposing a course of action to the College.
- We expect that it will be for the 2021 Presidencies to deal with the file.

### **Waiver under Slot Regulation due to COVID-19**

- The Commission is currently assessing all available data regarding the significant impact of COVID-19 on the aviation industry. We are actively assessing all possible options, including putting forward legislation, in order to address the rapidly growing challenges.
- I know my services, including DG Hololei, have been in close contact with you. We will continue to remain in close contact with stakeholders on this issue.

## Safety/EASA

- We share the common vision that safety should remain the top priority. With the new Basic Regulation, the Commission and in particular DG MOVE has delivered in meeting the strategic objectives of ensuring safety and at the same time achieving a deeper and fairer internal market. For this, we need to maintain the legislative framework effective and balanced, by means of clear technical rules.
- DG MOVE and EASA in the last two years have worked closely and have managed to clear the rulemaking backlog, thus facilitating the growth and global competitiveness of European industry

## Drones

- The recently adopted European Regulations for drone operations should allow for an increase of their number in the European airspace, with a need to address safety, security and airspace integration issues.
- A robust regulatory framework, supported by clear and simple rules, should permit safe aircraft operations in all areas across the European airspace and for all types of aircraft operations. Our goal is to maintain, if not increase, the same current high safety levels.
- Current drone EU Regulations already lay down a number of requirements on drone operators, remote pilots and manufacturers. EASA and national authorities are also contributing to reinforcing safety requirements.

## Aviation Security

- I acknowledge the valuable points you have raised, highlighting the need for a more risk-based approach in the EU aviation security strategy, a higher rationalisation of policy and actions in the context of cybersecurity, and your legitimate aspiration to have a more transparent and fair involvement of industry in the discussions on Security Charges in the EU.
- On the first point, the Commission (DG MOVE) has just launched a formal **strategic discussion on the future of aviation security**. This stems from the acknowledgment that modern security regimes consist of "a layer cake" of measures within a continuously evolving threat and risk scenario. We are also questioning the efficiency of the current approach while we look at the forecasted traffic demand in the coming years.
- Our current objective is to explore a new strategy that considers aviation security as a better-integrated process through a network of connections between actors and measures to deliver an outcome based security. We do not think that the current system of a locally based, static, and cumulative set of requirements upon which new measures are added is the right way to tackle the expected growth.
- This has to be done maintaining the baseline and where necessary the higher-risk security measures, as well as preserving the principle of mutual recognition and One-Stop Security concept within the EU.
- We see the great value represented by innovation, artificial intelligence, the use of biometric data and devices, as well as exploring how we can make use of passengers' data to inform a more targeted security. We need nevertheless to be mindful of the protection of fundamental rights and personal data.

- This is a priority work-stream for us and we consider it essential if we want to be realistically able to cope with the forecasted traffic increase.
- On **cybersecurity**, DG MOVE is ensuring that the application of the Union framework, the Directive on security of network and information systems (the NIS Directive), is applied in a coordinated and effective manner in the transport sector.
- The Commission adopted in 2019 a Regulation on aviation security that aligns our rules with the ICAO policy. The rules will be complemented and completed with the package being developed by EASA aimed at covering a wider spectrum of operators from the safety standpoint.
- Finally, in the area of **security charges**, the principle of cost relatedness of security charges is already embedded in the framework Regulation on aviation security, whereby the charges shall be directly related to the cost of the service and be designed to recover no more than the cost involved.
- You know that the Commission presented in 2009 a proposal on a Directive on security charges, which was withdrawn in 2015 due to the lack of progress. It became clear at the time that it was not possible to find a common ground between the Council and the Parliament, particularly in relation to who should bear the cost of security.
- We have no indications that the situation may have evolved, and in the current climate it will be difficult to try to revitalise the discussion.

### **Air Passenger Rights (APR)**

- Air Passenger Rights (APR) are a flagship initiative of the EU. Despite substantial progress made in this area in the last fifteen years, some major challenges remain.
- As you know, the debate on the revision of Regulation 261 has been stalled for four years because of Gibraltar (among other issues). But the recent evolution in the position of stakeholders (including Member States) indicates that positive developments can be expected in the coming months under the Croatian presidency.
- Meanwhile, the Commission launched a number of technical initiatives at policy level, which should also support these regulatory discussions.
- These initiatives included a fact-finding study on air passenger rights commissioned by DG MOVE and conducted by an external consultant (Steer), published in January 2020. Its purpose was to update the information supporting the Commission proposal of 2013 by assessing the current level of protection of air passenger rights and their environment.
- I would like to personally thank IATA (and its members) for contributing to this exercise, by sharing views and data, which were very useful in shaping a balanced picture of the APR's state of play. IATA also participated in a workshop in Council / AVIA WP on 10 October 2019, to present the views of airlines.
- The study shows that the need for reform has become even more urgent since 2013. For passengers it is still rather difficult to enforce their rights, and for airlines the burden has increased. The study was published on 13 January and presented to all interested stakeholders, including IATA, on 30 January 2020. Many thanks to [REDACTED] and [REDACTED] for their active participation!

- The issues with the current APR rules seem unchanged compared to the situation in 2015 but may well have amplified. According to the study and recent discussions, some provisions in Regulation 261 could be clarified (e.g. extraordinary circumstances) and current rules are too compensation-oriented; national authorities (National Enforcement Bodies, or NEBs) and courts are overburdened; the framework on information to passengers needs to be improved, as well as on care and assistance, and re-routing, i.e. the priorities for passengers.
- The study confirmed that airports also play a major part in informing and assisting passengers. Regulation 261 does not impose a legal obligation on airports, since passengers' direct relationship is with the airlines. But many airports routinely provide support beyond their legal obligations to passengers, especially in case of airlines not (fully) complying with these rules.
- In view of the revision of Regulation 261, the COM's objective is to improve the air passenger rights regime, relying on a balanced system of simple and clear rules, which can be easily and effectively applied.
- Finally I would like to encourage airlines to continue with their efforts to implement the APR legislation. The need for such an improvement was identified by many NEBs and I understand that internal projects would be under development to address this matter.
- I thank you for your support in this important file!

#### **Note on Better Regulation**

- Better regulation has become an integral part of the corporate culture of the Commission. The Commission remains committed to evidence-based policy making enshrined in its better regulation approach. We prepare and implement the legislation in an open, transparent manner, backed up by the involvement of citizens, business, non-governmental organisations and other stakeholders.
- In the transport area, we embraced and integrated the Better Regulation agenda as an opportunity to improve the quality of our policy work. We consider it as a useful tool in helping us to make clear strategic choices and focus on issues where European solutions in transport are necessary and can add value. We remain bound to the principle of proportionality of any new actions and we regularly assess consistency and coherence of existing legislation through evaluation of existing legislation.

#### **Defensive points**

##### **Environment Aspects (CORSA, SAFs, Taxation)**

***The ICAO Assembly adopted in October 2019 a resolution stating that CORSA is the only global market-based-measures addressing CO2 emissions form aviation. Will you thus replace your Emissions Trading Scheme with CORSA?***

- An ICAO Assembly Resolution is not strictly legally binding.
- We oppose any broad and far-reaching interpretation of the exclusivity clause that could imply that any national or regional market-based measure applicable to international aviation (such as intra-EU flights), must fall under CORSA. We insist that CORSA allows for regional schemes such as the ETS to exist or for other legislation or taxation related to carbon-dioxide emissions to exist.
- CORSA – at least in its first years – is expected to provide less strong incentives to reduce emissions than the existing ETS (due to a CO2 emission price that is lower than the emission price of ETS). [REDACTED]



- [REDACTED]
- The EU position on the 'Exclusivity' clause was set out in our declaration made at the end of the last Assembly that preserves our own policy space for present or future legal obligations under the Emissions Trading Directive (ETS).
  - In line with our positions taken at the 39th Assembly and the Council Sessions, Paragraph 18 of the Resolution is to be read in line with certain Contracting Parties' legal obligations to pursue efforts to limit the temperature increase in line with the Paris Agreement on climate change.
  - One of the principles of the Chicago Convention is that each Contracting State may apply on a non-discriminatory basis its laws and regulation to all aircraft operating within its jurisdiction. This principle also applies to environmental measures such as the ones we have in the EU and its Member States.

***ReFuelEU Aviation: what policy options will you explore?***

- SAF blending mandate: imposing a minimum share of SAF which would gradually increase over time, to be supplied to airlines.
- Revision of the multiplier of the Renewable Energy Directive: currently, the multiplier is 1.2 for aviation.
- A central auctioning system: whereby SAF producers would bid to produce volumes of SAF over a period at the lowest price.
- Funding mechanisms: both for research and to accompany the market, EU funding instruments could be put to contribution (ETS innovation fund, Horizon Europe, European Investment Bank, others)
- Voluntary agreements: (non-legislative) to issue guidance on how to conclude efficiently SAF purchase agreements;
- Technical facilitation and support initiatives: a dedicated initiative to accompany SAF producers along the fuel approval process. And an EU coordination platform bringing together SAF/aviation stakeholders.

***SAF are too expensive. How will you finance a SAF blending mandate?***

- SAF are more expensive today because there is no market. With the right policy in place, the industry will react and the market will create itself. By scaling up SAF production, costs will go down. Airlines must support that market development.
- We are thinking of ways to contribute to the financing. Research funds will be allocated to developing more cost effective fuels. EU funds like ETS innovation fund, CEF, Horizon Europe, the European Investment Bank could play a role in accompanying the market in the transition to SAF.

***How will you ensure the availability of SAF supply to reach blending mandate targets?***

- A SAF blending mandate would need to be carefully crafted. Targets should be low enough at the start to ensure supply in sufficient volumes. Targets should be ambitious enough in the long term to provide certainty to the market that SAF are 'bankable' in the long term.

***What are the Commission's views on taxing aviation?***

- The Commission has published an evaluation of the current rules around energy taxation and President von der Leyen has committed to revise them. The idea is to see if there is scope for more environmental-friendly policies that support the EU's climate change commitments.

- When revising the rules, we need to look at how to decrease GHG emissions from aviation from a broader perspective and avoid that it limits citizens' connectivity.

## Slot Regulation

### ***When do you expect the Slot Regulation be revised?***

- My services are undertaking a study to assess the relevance of the current proposal vis-à-vis the current market situation - with a view to proposing a course of action to the new College. The study should be concluded Q2 2020.
- DG MOVE is assessing in which format these updates would best be addressed. 2020 EU Presidencies have not shown appetite to deal with this proposal, and should most probably be dealt in 2021.
- We are attentively monitoring the impacts of the Coronavirus outbreak on a daily basis and is in close contact with the industry to determine how the situation is evolving.
- In the case of flights to/from mainland China and Hong Kong, it was agreed by the EU slot coordinators that airlines could invoke the application of the Slot Regulation regarding "force majeure" and this way they will not lose the grandfathering right for the next season, subject to some conditions.

**Whether a more drastic response is needed (such as the amendment of the Slot Regulation as was the case for SARS outbreak in 2003 will be decided in due time and to the extent it is necessary taking into account the duration and the actual geographic scope (i.e. the markets affected by measures taken in response to the outbreak) of the outbreak.**

## Safety/EASA

### ***Regulations should be less prescriptive, with more use of AMC.***

- The new EASA Basic Regulation has created a regulatory framework that is meant to deliver more flexibility to all stakeholders, with requirements developed in a performance-based manner, which focuses on objectives to be achieved. At the same time, Regulations should be definite and clear, so Acceptable Means of Compliance (AMC) will not replace the actual requirements. The Legal Service of the Commission does not endorse EU Regulations lacking the necessary legal certainty to ensure a robust single market in the EU.

## Drones

### ***The additional costs of infrastructure and air navigation services to manage the exponential growth in UAS operations must fall on UAS operators***

- ATM cannot be seen as the only appropriate mean to safely and efficiently manage the upcoming drone traffic. Drone operators should rely on U-space airspace service providers for the safety of their flights at a reasonable cost.

- Large Commercial Aircraft operator should continue to rely on classic ATM, which fees should not be affected by the operations in the U-space.

## **Air Passenger Rights (APR)**

### ***Why does the EU revise air passenger rights?***

The current EU rules on air passenger rights form a vital part of the consumer protection measures of the Union. They date from 2004; air travel has changed considerably since then and therefore these rules need a revision.

### ***What has happened so far?***

- Already in 2013 the Commission reacted and proposed changes to the current rules. The aim was to arrive at a balanced system of simple and clear rules, which can be easily applied and effectively enforced. The Commission's proposal was discussed in the Council and the European Parliament for two years (2013 – 2015), but then was blocked.
- In the end of last year the Finnish Council presidency managed to unblock the files and the Council has now resumed the discussion of the Commission's 2013 proposal under the Croatian presidency.

### ***Why relaunch the discussions now?***

The recent fact-finding study on air passenger rights (released on 13 January 2020) has revealed that the need for reform has become even more urgent since 2013. The issues with the current air passenger rights rules, enshrined in Regulation 261/2004, are still the same but their magnitude has largely increased. According to the study and recent discussions, the obligations for airlines to inform passengers as well as to provide care and assistance when travel is disrupted need to be clarified, simplified and made easier to be applied and enforced.

### ***What will the reform bring to the passenger? Is the level of protection the same?***

The proposal clarifies key aspects of EU law which have been a source of difficulty for passengers and air carriers alike. It introduces new passenger rights where necessary. It provides passengers with effective complaint handling procedures and strengthens enforcement, monitoring and sanctioning policies to ensure a better application of all passenger rights. It also ensures that the obligations remain financially realistic.

### ***What are the next steps?***

The Croatian presidency has taken over the file last month and is now discussing with all the other Member States the revision proposal in detail. The Presidency aims at reaching an agreement on the major issues by the end of its mandate in June.

### ***What have you been doing on claim agencies?***

COM knows about the campaign currently conducted by claim agencies to maintain the status quo (which means a lot of profit for them)... Their recurrent statements against the study and the revision are therefore not surprising.

We were also informed about fraudulent practices by some claim agencies (information forwarded by [REDACTED]). These include impersonating passengers in their dealings with airlines: forged signatures, absence of power of attorney, etc.

Airlines, in view of the rapidly expanding claim agencies' business (as also demonstrated by the study) and these dubious practices, believe that clearer rules would eliminate the need of these intermediaries whose practices should nevertheless be regulated. According to IATA, ERA, AIRE, A4E... this could be done by amending Reg. 261's recitals and Article 16. COM has taken good note of this opinion.

Meanwhile, in 2017, COM published an Information notice on relevant EU consumer protection, marketing and data protection law applicable to claim agencies' activities in relation to Regulation 261/2004 on air passenger rights.

***What is your line on flights cancelled due to coronavirus?***

We understand the difficult situation that passengers and airlines are in. Nevertheless we shouldn't forget that according to Regulation 261/2004, in the event of flight cancellation, the airlines have to re-route the passengers or to reimburse them.

Concerning the financial compensation -the situation which air carriers have faced recently due to the COVID- the application of the extraordinary circumstances exemption could apply in many cases, so that no compensation has to be paid to passengers. However, as always in those circumstances, it will depend on the specific case (i.e. flight cancellation or other travel disruption), as to whether the 'extraordinary circumstances' exemption can be applied or not.

As regards any provisional exemption from the obligations of Regulation 261/2004, the Regulation does not provide for such a possibility. Air carriers will have to invoke extraordinary circumstances as in any other case and -if challenged by passengers- will have to prove that they took all reasonable measures.

Regulation 261 covers events of a flight cancellation by the airlines. But the cases of passengers cancelling their flight -due to COVID- do not fall under any EU legislation. In those circumstances, we would advise the passengers to check the General Terms & Conditions of Carriage of the airline.

***What can be said about airlines insolvencies, from a preventive point of view?***

Regulation 1008/2008 requires national licensing authorities to monitor carriers' compliance with the financial requirements. If a carrier cannot fulfil its financial obligations for the next 12 months the authority should revoke or suspend the license. Under some circumstances it may grant a temporary licence.

The evaluation of Regulation 1008/2008 concluded that there is a need to reflect on a better approach to the wind-up of air carriers. The Impact Assessment study that DG MOVE is carrying out is looking at options to increase dialogue between airlines in financial difficulties and licensing authorities to see whether this could help mitigate some of the negative consequences that occur when carriers leave the market suddenly.

***What is the role of airports in assisting passengers?***

As shown by the study, airports also play a major part in informing and assisting passengers. Regulation 261 does not impose a legal obligation on airports, since passengers' direct relationship is with the airlines. But many airports routinely provide

support beyond their legal obligations to passengers, especially in case of airlines not (fully) complying with these rules.

Outside of mass disruptions, some airports (particularly larger ones) are regularly involved in providing care and assistance to passengers whose flights have been delayed or cancelled as a backstop when assistance is not provided by the airlines. Airports may intervene when airlines fail to fulfil their obligations and/or when passengers have specific needs that airlines may not have been able to address. For example, passengers affected by disruption who are connecting and do not have a valid visa for the country in which they are connecting are not able to leave the airport and so overnight accommodation cannot be provided. Airports in these cases have provided mattresses, blankets, pillows and toiletries to such passengers.

***What may be the effect of Brexit on APR in general, and for travellers from/to the UK in particular?***

UK became a third country on 31/1/2020, the future relationship between the EU and the UK is still under discussion.

The APR acquis applies during the transition phase until 31/12/2020. The EU will treat the UK as if it were a Member State, with the exception of participation in the EU institutions and governance structures.

The transition period will provide time to administrations, businesses and citizens to adapt; and it will provide the EU and the UK with time to negotiate the future relationship.

**Background notes**

**Air Traffic Management (ATM) – Infrastructure**

IATA believes that the market uptake of mature SESAR solutions should be accelerated through incentives for early movers. Capping of EU Funding of Airborne related Projects and Equipage should be lifted.

IATA supports the rationalization of European Air Traffic Management an important factor to achieve the high-level goals of the SES and would welcome a programme of ATM rationalization at European level taking into account the human factor.

They also support increased Civil-Military Synergies and Dual Use.

They advocate for SESAR implementing bodies such as SJU, SDM, NM and EASA to work in harmony with each other with the aim to deliver safe and efficient operations serving the airspace users and their passengers and to ensure that the ICAO global aviation context takes into account in the European region to ensure interoperability and cost effective operations for airspace users/

The future SESAR project should focus on these areas:

1. Increased capacity to meet growing demand
2. Better predictability so we can plan and execute flights efficiently
3. Improved ATM performance under stronger governance
4. Effective, fair, safe and secure integration of unmanned aircraft systems (UAS)

### **Economic Regulation and SES Performance Scheme in RP3**

The SES performance and charging scheme (Article 11 of Regulation (EC) No 549/2004 and Article 16 of Regulation (EC) No 550/2004) provide for the economic regulation of air navigation service providers over fixed reference periods. In the implementation of the schemes, the Commission is assisted by an independent Performance Review Body (PRB).

The performance scheme sets a regulatory framework for improving the performance of air navigation services and network functions in the areas of capacity, environment and cost-efficiency, while increasing safety. The scheme also foresees incentive mechanisms, including the sharing of financial risks between air navigation service providers and airspace users. The targets in the key performance area of cost efficiency are the basis for the calculation of user charges under the charging scheme. This is achieved through the adoption of Union-wide performance targets and binding local targets for fixed reference periods.

The Union-wide performance targets for the third reference period (RP3, starting on 1 January 2020 and ending on 31 December 2024) were adopted by the Commission in May 2019.

Member States then had 5 months to submit their local performance plans, which include draft national or functional airspace blocks performance targets in each key performance area and the measures for achieving those targets. They also had to consult their stakeholders, in particular the airspace users. The results of the draft performance plans assessments are covered in a separate item. A number of Member States will be asked to submit revised performance plans. Several iterations are foreseen for the approval of the performance plans and their targets, and the achievement of the targets is then monitored throughout the reference period with corrective actions to be taken when the targets are not met.

### **CORSAI/ETS**

Aviation is the only transport sector directly covered by the EU Emissions Trading Scheme (ETS) - since 2012, allowing the aviation sector to purchase allowances from reductions achieved at lower cost in other sectors to compensate for aviation emissions.

At the international level, the EU has been confronted with strong opposition and threats of trade retaliation from third countries to the inclusion of international aviation in the EU ETS. This led the EU to suspend the application of ETS for flights operating outside of the EU (but departing or landing in the EU) to enable the conclusion of an international agreement on aviation CO2 emissions ('stop-the-clock' until the end of 2023).

An international agreement was reached in 2016 in the context of the International Civil Aviation Organization (ICAO). It is the first ever global sectoral agreement to tackle CO2 emissions: the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). To date, 81 States, representing 76.63% of international aviation activity, intend to participate in ICAO's CORSIA voluntary pilot phase between 2021 and 2026.

The EU has started to put in place a legally binding framework based on the existing EU ETS to implement CORSIA in EU legislation. Within one year of the completion of the CORSIA rules in ICAO, the Commission is expected to present a report to the European Parliament and to the Council to explain how it intends to implement CORSIA into EU rules.

## Sustainable Aviation Fuels (SAF)

As part of the European Green Deal, the Commission is required to carry out the "ReFuelEU Aviation" initiative, i.e. to assess legislative options to boost the SAF production and uptake. A stable policy framework is needed over a sufficient time horizon to provide investors with the necessary confidence to invest in the production of sustainable aviation fuels and for airlines to pursue an efficient fuels policy.

In the Commission Work Programme, the initiative is due to be delivered by Q4 of 2020 with the adoption of a legislative proposal. In the course of 2020, the Commission will perform an impact assessment. Policy options under consideration are:

- SAF blending mandate: it would consist of imposing a minimum share of SAF, which would gradually increase over time, to be supplied to airlines and/or a minimum share of SAF to be used by airlines. Sub-options to be considered could include a mandatory volume-based minimum share of SAF uptake by a certain time horizon or a minimum level of reduction of GHG-intensity of jet fuels used.
- Revision of the multiplier under the Renewable Energy Directive: Currently, with a 1.2 multiplier for aviation, Member States where biofuel is supplied to the aviation sector are allowed to count towards their national target 20% more than the SAF volumes provided. The approach could be further specified ensuring a harmonised implementation and the multiplier could be increased.
- A central auctioning mechanism: SAF producers would be invited by a central auctioning authority to bid at the lowest price to supply a certain volume of SAF to the aviation market over a certain period. Such schemes have been used in the field of renewable electricity.
- Funding mechanism: The EU would channel funds through one or more EU financial instruments with the aim of encouraging the deployment of SAF production facilities in the EU and of accompanying the gradual uptake of SAF by the aviation market at competitive prices by helping to bridge the cost gap and upscale production.
- Voluntary agreements: setting up of a collaborative platform to facilitate purchase agreements between SAF producers and airlines. It could also issue guidance on how to conclude efficiently purchase agreements.
- Technical facilitation and support initiatives: a dedicated facilitation initiative for SAF approval could be put in place in the EU. The objective would be to accompany SAF producers along the approval process, by providing the necessary technical support. The idea of an EU coordination platform could also be envisaged to bring closer together aviation stakeholders, SAF producers and regulators with a view to communicate and engage towards the common objective of developing the SAF market.

An external study to support the impact assessment on a possible legislative proposal on SAF will shortly be launched. In addition, DG MOVE will have organised a roundtable on 4 March, gathering aviation and SAF industry representatives, academics, environmental NGOs, Member States and international organisations. IATA will have been present.

## Aviation Taxation

Aviation is under political and public scrutiny to reduce its carbon footprint. There is a growing claim from society that aviation does not do enough to mitigate climate change and is unduly exempted from (kerosene and VAT) taxation.

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. Against this background, the Energy Taxation Directive provides for a mandatory exemption of such fuel, while permitting Member States to tax fuel on domestic flights or flights between Member States on the basis of corresponding bilateral agreements. The US, Canada, Australia, Japan and Hong Kong tax fuel on domestic flights.

Current rules on energy taxation have been in place since 2003; they are outdated. The revision of the Energy Taxation Directive with a focus on environmental issues is part of the roadmap/key actions adopted through the European Green Deal, ensuring in this way that taxation is aligned with climate objectives.

When revising the rules, we must look at how to reduce greenhouse gas emissions from aviation while avoiding limiting citizens' connectivity. However, aviation taxes should not be looked at in isolation. They should be considered alongside other policy measures, including emission trading, offsets, fuel and aircraft standards, the introduction of sustainable aviation fuels and operational improvements. The choice of measure or mix of measures should be based on what is most effective in achieving emission reductions without impacting connectivity or competitiveness.

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

### **Slot Regulation**

In 2011, the Commission proposed a revision of the existing Slot Regulation to allow for an optimal use of scarce capacity at many EU airports. The file has been stuck since 2013 because of the Gibraltar dispute. However, the Council reached a first reading position in October 2012 (at the level of a general approach) while the Parliament voted on the Commission's proposal in December 2012. Brexit is the opportunity to re-launch the file (like for SES2+ and 261/2004)

Since 2011, EU airports have become more congested, air carriers and airports have developed new business models and recent airline bankruptcies have raised new questions on the economic role and value of airport slots. Therefore Commission services are undertaking a study to assess the relevance of the current proposal vis-à-vis the current market situation - with a view to proposing a course of action to the new College. The study should be concluded Q2 2020. DG MOVE is assessing in which format these updates would best be addressed. 2020 EU Presidencies have not shown appetite to deal with this proposal, and should most probably be dealt in 2021.

Airlines hold slots at coordinated airports, and have to use them 80% during a season in order to maintain the same permission for the next season (commonly known as "use it or lose it" rule).

IATA asked that the Commission amends the Regulation alleviating air carries to taking into account the 2019-2020 seasons when allocating slots for 2021. In the past, for example as a response to the SARS outbreak in 2003 the Commission has taken severe measures when it decided to amend the Slot Regulation allowing to alleviate airlines from their obligation under the Slot Regulation.

Such a drastic response should only be taken if and to the extent it is necessary taking into account the duration and the actual geographic scope (i.e. the markets affected by measures taken in response to the outbreak) of the outbreak.



The Commission is attentively monitoring the impacts of the Coronavirus outbreak on airline operations on a daily basis and is in close contact with the industry to determine how the situation is evolving.

In the case of flights to/from mainland China and Hong Kong, it was agreed by the EU slot coordinators that airlines could invoke the application of the Slot Regulation regarding "force majeure" and this way they will not lose the grandfathering right for the next season, subject to some conditions.

As regards the summer season 2020 the Commission considers that it is still too early to make a robust assessment that could justify full alleviation from the Slot Regulation's use it or lose it rule, one that some airlines are requesting. The Commission will continue to maintain close contact with stakeholders to be able to act in a timely manner and as appropriate.

## **Safety/EASA**

The new EASA Basic Regulation has created a regulatory framework which fosters a better use of resources, mainly by reinforcing the risk- and performance-based elements, and also eliminating unnecessary requirements – therefore capable of delivering more flexibility to all the different sectors of the European aviation industry, while maintaining high EU standards.

It follows the principle that requirements and procedures should be developed in a manner which is performance-based and which focuses on objectives to be achieved, allowing different means of achieving compliance with those objectives. The Basic Regulation also calls for the use of recognised industry standards and practices, where it has been found that they ensure compliance with the essential requirements set out in the Regulation.

In this new regulatory framework, DG MOVE is fully engaged, with EASA and the Member States, in the preparation and adoption process of new delegated and implementing acts required under the Basic Regulation, and on the adaptation of existing implementing rules (which should occur by 12 September 2023 at the latest). Such regulations, which deal with every aspect of the different domains, are drafted by EASA and adopted through Comitology (EASA Committee). The new Basic Regulations requires that they are proportionate to the risk associated with the activities they address, taking into account elements such as the complexity of the aircraft and of the operation, the purpose of the flight, the involvement of passengers, the safety risk, including for third parties on the ground.

Until 2018, DG MOVE faced a considerable backlog in the adoption of technical regulations. A reason for this backlog was that the Commission Legal Service requested major changes to the regulations that were drafted by EASA. Indeed, they were assessed as not legally sound – one important comment was regarding the misuse of Accepted Means of Compliance (AMCs), which should not replace binding rules (AMCs are non-binding standards adopted by EASA to illustrate means to establish compliance with the applicable rules). The industry (IATA in particular very vocally) favours the replacement of prescriptive EU safety rules by a more lenient performance-based framework, which would be ideally based on non-too binding Regulations that would refer to AMCs for Member States and industry to comply with. This approach is, with good sense, not accepted by the Commission Legal Service since it would not comply with the requirements of legal certainty that EU Regulations shall have in order to be clearly enforceable to Member States and industry, and to ensure the robustness of the single market in the EU aviation policy.

The Commission has published in May 2019 its evaluation of the Air Safety List Regulation (2111/2005). It shows this Regulation and its objectives remains fully

relevant after more than 10 years, and that it has proven to be an effective, efficient and coherent tool to protect European citizens, with particularly high value added at the level of the EU.

In the last five years, new instruments at EU level such as Part-TCO have been adopted, reinforcing the EU international air safety system by allowing for a scrutiny before operations are conducted within the EU, and therefore complementing the Air Safety List measures. Part-TCO is implemented by EASA and requires third-country operators willing to fly to EU destinations to obtain an authorisation from EASA, following a safety assessment. However, the Air Safety List is the only means to control operations conducted outside of the EU and thus affording higher protection of EU passengers by extending it to flights outside of the EU. The Air Safety List remains the only safety-enforcement means at the disposal of the EU with a worldwide scope of action.

The evaluation found that the Air Safety List is largely consistent with Part-TCO. However, the interaction between these two instruments could be fine-tuned, in particular to avoid duplication of work, and to better exploit synergies. The Commission and EASA are working closely with the aim of better harmonising the work of these two instrument.

## **Better Regulation**

Better regulation underpins all the Commission's work. It is about policy measures that go no further than needed, in order to achieve objectives and bring benefits at minimum cost. It ensures that policy is prepared, implemented and reviewed in an open, transparent manner, informed by the best available evidence and backed up by the involvement of citizens and stakeholders.

The better regulation agenda became operational by Better Regulation Guidelines and Toolbox. It contains detailed guidance for Commission services on effective implementation of common standards at every step of the policy and law-making process. In order to ensure quality control over the better regulation work, the Commission established the Regulatory Scrutiny Board (RSB). The RSB is an independent body made up of Commission officials and experts from outside the Commission whose role it is to examine and issue opinions and recommendations on all the Commission's draft impact assessments, as well as major policy and programme evaluations and fitness checks of existing legislation.

The Commission's Regulatory Fitness Programme (REFIT) aims to simplify existing legislation and reduce the costs of regulation while still achieving the foreseen benefits. The "REFIT Platform" Plenary brings together the 2 high-level expert panels from (1) Member States, and (2) from business, social partners, and civil society who present their views on the impact of EU laws to the Platform and suggest how to improve the legislation. The results and outcome of REFIT actions are also reflected in the REFIT Scoreboard.

## **Air Passenger Rights (APR)**

In March 2013, the Commission proposed a revision of the existing air passenger rights (Regulation 261/2004); the European Parliament (EP) adopted its position in 1st reading on 5 February 2014. Despite numerous meetings Council, however, has not yet defined a common position.

The Commission's proposal mainly aims at confirming and clarifying existing rights and ensuring a better application of the Regulation through:

- Clarifying passengers' rights by introducing relevant case law into the text (e.g. compensation for delay; definition of "extraordinary circumstances"; missed connecting flight; rescheduling of flights);
- Stronger general enforcement (sanctioning) via a clearer definition of the roles of the national enforcement bodies (NEB) and via a stronger coordination of the latter;
- Better individual enforcement (for passengers) via clearly defined complaint handling procedures for airlines and the creation of alternative dispute resolution bodies.

At the same time, the proposal aims to ensure a more proportionate balance between the interests of passengers and those of the industry by limiting the cost of complying with the Regulation (for instance through a higher delay thresholds for compensation or a 3-night limit to accommodation in extraordinary circumstances).

With regard to the positions held by stakeholders in aviation, airlines have since the introduction of passenger rights taken a very negative attitude towards them, in particular by repeatedly challenging them before courts (albeit with limited success). They have generally welcomed the Commission's proposal for revision as it would significantly reduce the costs. Consumer associations (especially BEUC – European Consumer Organisation) have welcomed the proposed clarifications and stronger enforcement, but are disappointed by the proposed reduction of compensation.

Case-law has had a decisive impact on the interpretation of the Regulation. Meanwhile the Commission adopted Interpretative Guidelines on air passenger rights in 2016 aiming to explain more clearly a number of provisions contained in the Regulation and in particular in the light of the Court's case law.

Given the time that has elapsed since the drafting and adoption of the Commission proposal in 2013, the overall context has evolved. The air travel market has not only grown tremendously in the last years, but has also evolved in substance: new players have entered the market with new business models; budget carriers are now directly competing with legacy airlines on their market; new marketing and sales techniques have become common; direct purchase of tickets has become the norm; traditional travel agencies are being replaced by online ticketing portals; and the business of claim agencies' is flourishing.

While sticking to its 2013 Proposal, the Commission welcomes the fact that the discussion on the revision of Regulation 261 was resumed in the Council under the auspices of the Finnish and Croatian presidencies, after 4 years of stalemate. A number of meetings have taken place since autumn 2019 to discuss the principles of the revision, and the Croatian Presidency stressed the objective to arrive at a balanced system of simple and clear rules, which can be easily and effectively applied.

More concretely this means: ensuring an equitable balance of interests between passengers and air carriers, providing the right incentives to air carriers so as not to endanger EU connectivity, especially on routes between less connected airports, keeping rules simple, improving predictability and codifying EU case law to make the rules clearer and more effective.

In practice, 5 guiding principles are being followed:

- 1) Strengthening the airlines obligations in terms of care and assistance in case of cancellation and delay;
- 2) Applying the same thresholds for compensation in case of rerouting in the event of cancellation of a flight and in case of long delay at arrival;

- 3) Maintaining the current compensation amounts of Regulation 261/2004;
- 4) Making the payment of compensation more predictable and enforceable with the establishment of an exhaustive list of extraordinary circumstances;

Considering the possibility to grant a special treatment for routes between less connected airports.

### **Aviation Security**

Framework Regulation (EC) No 300/2008 on aviation security was designed to give flexibility in adapting security measures to mitigate evolving threats.

Aviation security measures are essential in the current threat and risk environment. However, they do have an impact on the cost of flying via aviation security charges, additional airport procedures, as well as on passengers' experience by increasing the time needed to board an aircraft and via controls which are sometimes perceived as too intrusive.

Over the last 10 years, the Commission has adopted more than fifty implementing regulations or decisions. These implementing acts were adopted to clarify, harmonise, simplify but also most importantly to strengthen our security measures in the face of increased malicious intentions and capabilities of parties. To this end, the framework has been successful. This is largely the result of the well-established cooperation between the Commission, the Member States, observers and stakeholders within the regulatory committee and the stakeholder advisory group.

However, our security system has also become "a layer cake" of security measures, the overall complexity of which might create imbalances in the security system. Moreover, while there is no doubt that the threat will continue to evolve with increasingly sophisticated modus operandi, it is questionable whether we can continue to rely on the continued accumulation of security measures to mitigate the threat.

As the number of travellers grows exponentially, we need solutions that ensure the continued sustainability of the industry and the passengers' experience, while at the same time delivering the necessary security outcomes.

We cannot pile layer upon layer of security measures; on the contrary, we need more flexibility in adopting security solutions in order to meet and mitigate evolving risks. We are therefore looking into ways of improving aviation security measures in the future, to make them more effective in more efficient ways.

In this context the Commission has seen the need to step back from the continuous legislative process and to launch a strategic discussion on possible next steps for our aviation security system. A discussion platform on the future of aviation security has been launched and results are expected to be achieved by the end of 2020.

With the increased use of technologies and automation, cybersecurity becomes increasingly important to address – without delay. We are building up the resilience of our systems with robust rules applied in a consistent, effective but also flexible and holistic manner. The Commission is working with EASA on the EU Cybersecurity (in aviation) Strategy in full complementarity with the ICAO Global Cybersecurity (in aviation) Strategy, which we fully support.

Drones are another issue high on our agenda. Drones create new services and bring value to many businesses, including airports operations, but put in the wrong hands,

they can pose serious safety and security concerns – as recent high profile incidents demonstrated.

As of this summer, EU-wide rules will make it easier for local authorities to restrict operations in sensitive areas, next to airports or prisons for instance. They will also greatly facilitate the identification and localisation of a drone and its pilot, with important provisions such as mandatory registration, marking and remote identification.

We are also working with European airports to ensure they are well prepared to deal with unauthorised drones' incursions, so that closure and diversions remain a last-resort measure only. This also raises the issue of counter-drones technologies, i.e. how to "take-down" a hostile drone. But it is imperative that these technologies do not threaten other legitimate airspace users, such as airliners.

### **Security Charges**

The proposal for the directive - adopted by the Commission on 11 May 2009 - was the by-product of difficult conciliation negotiations on framework Regulation (EC) 300/2008 on civil aviation security. The Parliament was pushing for a commitment by Member States for more State support for the costs of providing security to protect air transport against terrorism, whereas Member States categorically refused to do so.

A proposal was developed to improve transparency and to ensure cost-relatedness and non-discrimination when levying security charges at Union airports (all airports are covered). As such, it advocated the application of certain principles in levying security charges: provision of information between airports and airlines, consultation of airlines by airports, non-discrimination among airlines and passengers, and the possibility for airlines to appeal to an independent authority, (which may be the same as that used under the Directive on airport charges, adopted in March 2009).

The proposal does not address the question "who pays for security?" which is a matter of tension between the Council and the Parliament. The matter is rather left to subsidiarity.

The proposal was blocked in the Council following an attempt by the Swedish Presidency in December 2009 to get a political agreement. In general, Member States did not object to the principles laid down in the proposed Directive (transparency, non-discrimination, consultation) which have already been accepted for the Directive on airport charges.

However, the main outstanding issues were:

i. the scope of airports covered: when last discussed (end 2009), some Member States (representing 52 votes out of 345) wanted to cover all airports (the Commission's proposal); whilst others want to cover only those under the Directive on airport charges: airports with over 5 million passengers annually and the largest airport of each Member States (165 votes out of 345).

In May 2011, the final ruling by the ECJ dismissed the case brought by Luxembourg and Slovakia on the alleged discriminatory effect of the scope of the Directive on airport charges (i.e. airports with over 5 million passenger movements annually and the airport with the highest passenger movement in each Member State (even if  $\leq 5$  million passenger movements). This could have paved the way for the Council to employ the scope of that Directive for the proposed Directive on aviation security charges.

ii. the financing: on 5 May 2010, the Parliament adopted its First Reading of the proposal which required Member States to bear the costs of national aviation security measures that are more stringent than EU measures. This position stemmed from the long held position that aviation security measures counter threats against the States, not against air transport itself. The Council almost unanimously rejected that position, with only PL indicating that States should pay for more stringent measures.

No further progress being expected on this blocked file, the Commission in June 2014 identified, under its REFIT programme, this proposal for withdrawal. The Commission decided on 7 March 2015 to withdraw the proposal.

With regard to the relationship between the public financing of security costs and State aid rules, security is considered to be a "public policy remit" activity. This means that, by nature, security is a non-economic activity pertaining to the essential functions of the State which is procured to the airport operators.

The aviation state aid guidelines and the recent Commission decisions on airport cases make it clear that the public financing of security costs can only fall outside of state aid rules if there is no unjustified discrimination between airports subject to the same legal order. In other words, when, in a given legal order (regional, national, etc.), some airports have to pay for their own security costs while others do not, the latter are in principle being given an advantage which amounts to State aid. This position is intended to avoid circumvention of State aid rules by discriminating in favour of certain airports.

Therefore, if Member States' central governments or regional authorities want to finance security costs in airports, they can do so without being subject to State aid rules provided that they cover those costs for all of the airports in their constituency.

**Compiled by:** [REDACTED]

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