

# Europe's Aviation Policy Takes Off

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On December 7, 2015, the European Commission ("the Commission") published their strategy for the European aviation sector. The new "Aviation Strategy for Europe" package includes the following policy proposals:

- A package of requests to negotiate **EU-level Comprehensive air transport agreements** with third countries, to combat perceived unfair practices in international aviation;
- New **guidelines on foreign ownership** and the meaning of control, which could affect the degree of foreign investment permitted in European aviation;
- A **proposal for a revision of the Aviation Safety Regulation** which includes a legal framework for the safe use of drones;
- A Commission Communication on the **competitiveness of the EU Aviation sector** in the years to come; and
- Additional guidance to be produced on **labour law in aviation**, aviation research, passenger rights, security checks and continuing efforts related to climate change policy.

Please find the press release [here](#), fact sheet [here](#) and the Commission staff working document [here](#).

## **Fair competition - Combatting perceived unfair practices in international aviation**

In the EU, subsidies are only permitted when they are deemed to be compatible with EU law. The EU aviation industry has often been perceived by EU policymakers to be at a disadvantage in the international aviation market for long-haul flights and aviation hubs. As such, the Commission has long sought to address potential state subsidisation by non-EU countries of non-EU airlines or hub airports which then compete with European aviation internationally.

International air transport services are not covered by the WTO/GATS framework and there is currently no international legal framework (such as the WTO) to deal with possible unfair commercial practices in international aviation. In 2004, the EU adopted Regulation 686/2004, intended to protect EU aviation against subsidisation and unfair pricing practices by providing defence instruments against third countries. However, few (if any) complaints were ever made under this regulation and according to the Commission, the regulation "is not considered effective among stakeholders".

The Commission is now moving away from redress mechanisms under Regulation 686/2004 to protect European aviation. Instead, in the new aviation package, the Commission proposes to negotiate comprehensive EU-Level air transport agreements with key countries such as China, the ASEAN countries, Turkey, Saudi Arabia, Bahrain, the UAE, Kuwait, Qatar, Oman and Mexico. The EU will include fair competition provisions in these agreements. A few air transport agreements such as the EU-US and EU-Canada agreements actually already include "fair competition" clauses and these may provide a

template. The EU will still consider further measures to address unfair practices from third countries and third country operators.

The Commission also recommends bilateral aviation safety agreements with important aeronautical manufacturing nations such as China and Japan and new aviation dialogues with important aviation partners such as India.

The International Civil Aviation Organization (ICAO) has already taken some initiatives on fair competition, such as publishing policy and guidance materials. The EU has proposed that these guidelines should be updated in the context of the work of ICAO Air Transport Regulatory Panel. The Commission intends to intensify its policy action within the ICAO.

### **Control and Foreign Investment**

Several major foreign investments in EU airlines have taken place during recent years triggering reviews of the investment rules by civil aviation authorities and the European Commission. Under EU rules (Regulation 1008/2008) foreign investment in EU airlines cannot exceed 49% of ownership and control of the company must remain in EU hands.

Under the new aviation package, the Commission intends to publish interpretative guidelines on the application of provisions on the ownership and control of EU airlines. The Commission intends to ensure “a common understanding of how to carry out the assessment of the 'control' criteria and their proper application”. It is unclear how these guidelines will impact the Commission’s current investigations. While the wording of the staff document is quite neutral, it is expected that the Commission will propose to relax these control and ownership requirements. The Commission will need to carefully calibrate these guidelines to ensure that European airlines can access much sought after foreign investment.

The ownership and control rules will form part of the bilateral air transport agreement negotiations with third countries and the Commission may propose the relaxation of ownership and control rules with a third country on the basis of reciprocity.

### **A Legal framework for Drones - Aviation Safety and Security**

Existing aviation rules were conceived for large aircraft manned by professional pilots. The EU is now considering ways to adapt these rules to drone manufacturers and operators - for drones of all sizes and professional as well as hobbyist operators. As many Member States have already adopted drone legislation or other rules, the Commission proposes a basic legal framework for the safe (and harmonised) development of drone operations in the EU (replacing Regulation 216/2008). According to the Commission, concerns about privacy, data protection, security, liability, insurance and the environment will also be taken into account in this framework. Keen not to stifle innovation in this fledgling industry, the Commission is likely to use a risk-based approach to regulation, ensuring that the proposed rules are proportionate to the risk posed in each case.

The European Aviation Safety Agency will also prepare more detailed rules which create aviation safety rules for drone operations and the development of industry standards.

As part of the new package, on the same day, the Commission also published a proposal for a revised Regulation for common rules in the field of civil aviation safety. This will create a framework for the pooling and sharing of technical resources between national authorities and the European Aviation Safety Agency.

## **Improving capacity - Single European Sky, competition in airport services and underserved-regions**

The Single European Skies package, launched over a decade ago, has the potential to greatly improve the competitiveness and efficiency of the European aviation sector. For example, a fully optimised air traffic management system would reduce the costs stemming from inefficiencies (delays, and longer routes etc.).

However, as the Commission notes in the aviation package working document, the level of cooperation between Member States air navigation service providers is “still far from optimal” and the technology used is neither harmonised nor state-of-the-art. The new aviation package acknowledges that further Member State co-operation is needed in order to achieve the goals of the Single European Sky initiative.

As a step towards this, the Commission encourages the Member States to adopt the Single European Sky (SES2+) proposals, which seek to improve network functions, and to implement EU-wide targets and a performance scheme with an independent performance review body. In addition, the Commission is considering whether it needs to review EU rules on airport charges.

Regarding airport services, the Commission has indicated that stakeholders have questioned the suitability of the current legal framework. According to the Commission, where airports are subject to “effective competition”, they do not require a specific regulatory framework. The Commission indicates that “assessing the degree of market power could be an appropriate means of determining where and whether regulatory intervention is necessary and justified.” The Thessaloniki Forum of Airport Charges Regulators is assessing the use of market power in the aviation sector to find the most appropriate metrics to measure competition in the sector. The Thessaloniki Forum of Airport Charges Regulators is a body established following the Airport Charges Directive which exchanges best practices among independent supervisory authorities and examines issues such as the determination of an airport's market power, transparency of airport charges and how to consult effectively on financing for new airport infrastructure.

The Commission will also publish interpretative guidelines explaining the current rules governing Public Service Obligations. This will guide Member States seeking to support airports in underserved regions.

## **Conclusion**

With strong growth in the international aviation sector and new airlines and hub airports emerging in the Middle East and Asia, the Commission wants to use the aviation package to ensure that Europe's aviation sector remains globally competitive.

However, many key initiatives under this aviation package will require the co-operation of third countries (bilateral aviation agreements), Member States (Single European Skies, a mandate for bilateral negotiations) or the Civil Aviation Authorities (drone initiatives). One concern is that this new Aviation package does not outline how it will seek to encourage the Member States to co-operate further. This is all the more important because the success of this package will, to a certain extent, depend on the degree of cooperation the Commission receives.

To provide stakeholders with the opportunity to comment on aspects of the aviation package, the Commission will conduct a number of public consultations in the coming months. Those with an interest in these issues should ensure that they follow these developments closely.

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