



AIR TRANSPORT: MARKET RULES

The setting up of the Single Aviation Market in the late 1990s has profoundly transformed the air transport industry and has greatly contributed to the strong growth in air transport in Europe over the past twenty years.

LEGAL BASIS

Article 100(2) of the Treaty on the Functioning of the European Union.

OBJECTIVES

To set up a single air transport market in Europe, ensure its proper functioning, and extend it to certain third countries as far as possible.

ACHIEVEMENTS

Historically, air transport has developed under the auspices and control of national authorities. In Europe, this largely meant monopolistic national carriers and publicly owned/managed airports. International air transport, which is based on inter-state bilateral agreements, has expanded accordingly — with strict control of, in particular, market access and carrier ownership regimes. This fragmentation into national markets and the absence of real competition were less and less at one with increasing standards of living and the resulting growing demand for air transport. From the mid-1970s, civil aviation had to switch from an administered economy to a market economy. Thus, the 1978 Airline Deregulation Act completely liberalised the US market.

The same occurred in Europe in a decade-long process, in the wake of the Single European Act of 1986 and the completion of the internal market: several sets of EU regulatory measures have gradually turned protected national aviation markets into a competitive single market for air transport (de facto, aviation has become the first mode of transport — and to a large extent still the only one — to benefit from a fully integrated single market). Notably, the first (1987) and the second (1990) ‘packages’ started to relax the rules governing fares and capacities. In 1992, the ‘third package’ (namely Council Regulations (EEC) Nos 2407/92, 2408/92 and 2409/92, now replaced by Regulation (EC) No 1008/2008 of the European Parliament and of the Council) removed all remaining commercial restrictions for European airlines operating within the EU, thus setting up the ‘European Single Aviation Market’. The latter was subsequently extended to Norway, Iceland and Switzerland. It could be further extended to some neighbouring countries through the ‘European Common Aviation



Area Agreement', provided those countries progressively implement all relevant EU rules — which is not yet the case^[1].

The 'third package' substituted 'Community air carriers' for the national air carriers, and set as the basic principle that any Community air carrier can freely set fares for passengers and cargo and can access any intra-EU route without any permit or authorisation (with the exception of some very particular routes on which Member States can impose public service obligations, subject to conditions and for a limited period of time).

The 'third package' also laid down the requirements that Community air carriers must comply with in order to start or continue operations, principally:

1. They shall be owned and effectively controlled by Member States and/or nationals of Member States, and their principal place of business shall be located in a Member State;
2. Their financial situation shall be good. They shall be appropriately insured to cover liability in case of accidents;
3. They shall have the professional ability and organisation to ensure the safety of operations in accordance with the regulations in force. This ability is evidenced by the issue of an 'air operator certificate'.

In parallel with the setting-up of the Single Aviation Market, common rules have been adopted to ensure its proper functioning, which requires, notably, (1) a level playing field and (2) a high and uniform level of protection for passengers.

In order to ensure a level playing field, the legislation on State aid and competition (mergers, alliances, price-fixing, etc.) applies to the air transport sector. This was not obvious since major public recapitalisations of airlines were rather common until the mid-1990s. However, over the years the Commission guidelines serving to assess public funding of the sector were failing to match the current market environment since they dated back to 1994 (airlines) and 2005 (airports and start-up aid for airlines departing from regional airports). They were therefore replaced in spring 2014.

EU rules ensure that all carriers, European and non-European, are granted the same rights and same opportunities to access air transport-related services. This may not, however, be the case in some third countries where discriminatory practices and subsidies may give unfair competitive advantages to air carriers from those third countries. In its Communication on an Aviation Strategy for Europe of 7 December 2015 (COM(2015)0598), the Commission stated its intention to assess the effectiveness of Regulation (EC) No 868/2004 with a view to revising or replacing it with a more effective instrument that would ensure fair competition conditions between all carriers and thereby safeguard connectivity to and from the Union. This was followed by the publication in June 2017 of the proposal for a regulation on safeguarding competition in air transport, repealing Regulation (EC) No 868/2004.

[1] A study entitled '[Overview of the air services agreements concluded by the EU](#)' (European Parliament, 2013) provides an analysis of the contents and outcome of these agreements.



Fair access to airports and airport services is ensured through Regulation (EEC) No 95/93, which provides that at congested airports 'slots' (i.e. permission to land or take off on a specific date and at a specific time) shall be allocated to airlines in an equitable, non-discriminatory and transparent way by an independent 'slot coordinator'. However, this slot allocation system prevents the optimal use of airport capacity^[2]. For that reason, the Commission proposed a number of amendments to Regulation 95/93 in 2011 to improve the efficiency of the system, but so far, there has been no agreement on those between the two legislators. Directive 96/67/EC has gradually opened up to competition the market for ground handling services (i.e. the services provided to airlines at airports, such as passenger and baggage handling, fuelling and cleaning of aircraft, etc.). A Commission proposal from 2011 to further open up this market at the biggest European airports was not approved by the legislator and was withdrawn by the Commission in 2014. In addition, Directive 2009/12/EC lays down the basic principles for the levying of airport charges paid by air carriers for the use of airport facilities and services. This, however, has not prevented disputes between airports and airlines from multiplying.

To ensure fair access to the distribution networks and prevent them from influencing consumer choice, common rules have been in force since 1989. They provide that the Computerised Reservation Systems or CRSs (which serve as the 'technical intermediaries' between airlines and travel agents) shall display the air services of all airlines in a non-discriminatory way on the travel agencies' computer screens (Regulation (EC) 80/2009). However, the role of CRSs is decreasing since online distribution is in more and more general use, including via the carriers' websites.

(It should be noted that unfair competition from foreign carriers was to be dealt with by Regulation (EC) No 868/2004. However, this instrument has proven impossible to apply. In 2017, the Commission therefore tabled a new mechanism to ensure fair competition between EU and foreign carriers ([COM\(2017\)0289](#)) and this proposal is currently under discussion).

To protect passengers and aircraft and to ensure a high and uniform level of safety throughout the EU, national safety rules have been replaced by common safety rules, which have been progressively extended to the entire air transport chain. In addition, a European Aviation Safety Agency has been established which, inter alia, prepares the rules^[3]. Security requirements at all EU airports have also been harmonised to better prevent malicious acts against aircraft and their passengers and crew (it is worth noting, however, that Member States retain the right to apply more stringent security measures^[4]). Furthermore, common rules (Regulation (EC) No 261/2004) to protect air passengers' rights aim at ensuring that passengers receive at least a minimum level of assistance in the event of serious delays or cancellation. These rules also provide for

[2] Airlines can 'underuse' their slots to avoid returning them to the 'slot pool' for reallocation to competitors. It is worth noting that while the EU had about 90 'coordinated' airports (i.e. 'with slots') in 2016, there were only two such airports in the US. See notably '[Airport slots and aircraft size at EU airports](#)' (European Parliament, 2016).

[3] Fact Sheet [3.4.9](#) deals with civil aviation safety.

[4] Fact Sheet [3.4.7](#) deals with civil aviation security. '[The EU regulatory framework applicable to civil aviation security](#)' (European Parliament, 2013) is a comprehensive digest of the EU legislation on aviation security.



compensation schemes. However, they are proving difficult to apply, leading to frequent court cases^[5]. In March 2013, the Commission presented a new proposal amending Regulation (EC) No 261/2004 ([COM\(2013\)0130](#)) with a view to further enhancing the enforcement of EU rules by clarifying the key principles and implicit passenger rights that have given rise to many disputes between airlines and passengers in the past. The co-decision process is still ongoing and final solutions are yet to be agreed between Parliament and the Council. On 24 September 2019, the Committee on Transport and Tourism decided to open interinstitutional negotiations after the first reading in Parliament.

More than twenty years after the entry into force of the ‘third package’, the functioning of the Single Aviation Market is, of course, still perfectible, as illustrated by such factors as: the flaws in the slot allocation system; the fact that the vast majority (80%) of routes departing from EU airports are still served by only one (60%) or two (20%) carriers; the financial difficulties facing several airlines and secondary airports; or the complicated oversight of air carriers now operating in several Member States.

Nevertheless, the primary objective has been fully reached: from 1995 to 2014, while the number of passenger-kilometres within the EU increased by around 23%, for air transport it jumped by about 74%. Over the same period, aviation’s share of total passenger transport increased from 6.5% to 9.2%, which is by far the strongest growth of all modes of transport in the EU.

ROLE OF THE EUROPEAN PARLIAMENT

In numerous reports, and particularly in its resolution of 14 February 1995 entitled ‘The way forward for civil aviation in Europe’, Parliament has emphasised the need for a common policy on air transport providing for greater and fairer competition among airlines. Parliament’s support for the establishment and proper functioning of the Single Aviation Market has therefore been constant.

In so doing, however, Parliament has continuously stressed that the liberalisation of air transport must be implemented cautiously and gradually and must balance the interests of both consumers and the industry.

Thus, over the last quarter of a century Parliament has always argued for fair competition, aviation safety, quality of service and passengers’ rights, while also defending the working conditions of airline personnel, as well as environmental protection. For instance, it is Parliament that, right from the start of the liberalisation process, has requested criteria governing State aid to airports and airlines and the adoption of common rules on ground handling, airport charges and passengers’ rights.

This ‘balanced attitude’ towards the liberalisation of air transport was recently illustrated again when Parliament, at first reading, profoundly amended the Commission’s 2011 proposals on slots and on ground handling services at EU airports.

In its report of 20 March 2018 on safeguarding competition in air transport, Parliament voiced its support for the Commission’s proposal aimed at defending Union air carriers

[5] Fact Sheet [2.2.3](#) deals with passengers’ rights. In June 2016, in order to clarify the rules in force, the Commission adopted a set of guidelines based on case law.



against the unfair practices of third country airlines. Its main goal is to establish a practical, effective and easy-to-use Union instrument which would serve as a deterrent or be able to offset injury resulting from State aid or other discriminatory behaviour by non-EU actors in aviation. MEPs' amendments further shortened the time of the investigation led by the Commission at the request of EU carriers or EU Member States affected by such practices and introduced the concept of 'provisional redressive measures', which could be applied in urgent cases to prevent a threat of injury from materialising into actual damage. Parliament also insisted on introducing a so-called 'Union interest test', after an investigation is finished, to make sure that counter-measures taken by the EU as a result would not harm its connectivity or socio-economic situation. The inter-institutional negotiations on this regulation are still ongoing.

Related decisions of the European Parliament:

- Resolution of 14 February 1995 on the Commission communication on the way forward for civil aviation in Europe ([OJ C 56, 6.3.1995, p. 12](#)).
- Legislative resolution of 11 July 2007 on the proposal for a regulation of the European Parliament and of the Council on common rules for the operation of air transport services in the Community ([OJ C 175E, 10.7.2008, p. 371](#)).
- Legislative resolution of 12 December 2012 on the proposal for a regulation of the European Parliament and of the Council on common rules for the allocation of slots at EU airports ([OJ C 434, 23.12.2015, p. 217](#)).
- Legislative resolution of 16 April 2013 on the proposal for a regulation of the European Parliament and of the Council on ground handling services at Union airports and repealing Council Directive 96/67/EC ([OJ C 45, 5.2.2016, p. 120](#)).
- Legislative resolution of 5 February 2014 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air ([OJ C 93, 24.3.2017, p. 336](#)).

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