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## 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 20 years.

### LEGAL BASIS

Article 100(2) of the [Treaty on the Functioning of the European Union](#) (TFEU).

### OBJECTIVES

To set up a single air transport market in Europe, ensure its proper functioning and extend it to certain non-EU 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 over market access and carrier ownership regimes, in particular.

Following 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 (in practice, 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 of the Single European Act 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. The latter was subsequently extended to Norway, Iceland and Switzerland and it could be further extended to the neighbouring countries through the [European Common Aviation Area Agreement](#)<sup>[1]</sup>.

The third package substituted national air carriers with Community 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

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



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 must be owned and effectively controlled by Member States and/or nationals of Member States, and their principal place of business must be located in a Member State.
2. Their financial situation must be good. They must be appropriately insured to cover liability in the event of an accident.
3. They must 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, common rules have been adopted to ensure the proper functioning of the single aviation market, which required, 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 (Article 107 and 108 TFEU) and competition (Articles 101 to 109 TFEU — mergers, alliances, price-fixing, etc.) applies to the air transport sector. The Commission adopted guidelines to assess public funding of the sector (for airlines in 1994 /for airports and start-up aid for airlines departing from regional airports in 2005). These were updated in spring 2014.

EU rules ensure that all carriers are granted the same rights and same opportunities to access air-transport-related services. However, this is not the case in some third countries where discriminatory practices and subsidies may give unfair competitive advantages to home carriers.

To remedy this situation, [Regulation \(EU\) 2019/712](#) of 17 April 2019 on safeguarding competition in air transport and repealing Regulation (EC) No 868/2004 established a [mechanism](#) to ensure fair competition and to maintain high connectivity throughout the EU. To achieve these objectives, it empowers the Commission to launch investigations and take decisions on repressive measures if a practice that distorts competition has caused injury or poses a clear threat of injury to an EU air carrier. The Regulation entered into force on 30 May 2019.

Fair access to airports and airport services is ensured through [Council 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) must be allocated to airlines in an equitable, non-discriminatory and transparent way by an independent slot coordinator. To further improve the efficiency of the slot allocation and to ensure the optimal use of airport capacity<sup>[2]</sup>, in 2011 the Commission came up with the amending proposal. However, negotiations on this proposal were suspended in 2013. The 2023

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[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 United States. See, in particular, the report entitled '[Airport slots and aircraft size at EU airports](#)' (European Parliament, 2016).



Commission [work programme](#) included a new proposal on the Revision of the airport slot Regulation for Q3 2023.

[Council Directive 96/67/EC](#) has gradually opened up the market to competition for ground handling services. However, a Commission proposal from 2011 to further open up this market at the biggest European airports was withdrawn in 2014. [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.

To ensure fair access to distribution networks and prevent them from influencing consumer choice, common rules have been in force since 1989. They provide that computerised reservation systems or CRSs (which serve as the technical intermediaries between airlines and travel agents) must display the air services of all airlines in a non-discriminatory way on the travel agencies' computer screens ([Regulation \(EC\) No 80/2009](#)). However, the role of CRSs has decreased since online distribution has been in more and more general use, including via the carriers' websites. The Commission plans to adopt a revision of the regulation in order to update the rules.

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, the European Aviation Safety Agency was established to draft regulatory safety provisions and to supervise their implementation<sup>[3]</sup>. Security requirements at all EU airports have also been harmonised to better prevent malicious acts against aircraft and their passengers and crew<sup>[4]</sup>. Furthermore, common rules ([Regulation \(EC\) No 261/2004](#)) to protect air passenger rights ensure that passengers receive at least a minimum level of assistance and compensation in the event of longer delays or cancellations. Despite providing much better protection of air passenger rights than in any other region of the world, sometimes the rules in place prove difficult to apply, leading to frequent court cases<sup>[5]</sup>. In March 2013, the Commission presented a new proposal amending Regulation (EC) No 261/2004 ([COM\(2013\)0130](#)) to enhance the enforcement of EU rules by clarifying the key principles and implicit passenger rights. However, the co-decision process has never been finalised. The Commission plans to propose another reform of passenger rights in 2023, which will also focus on options for multimodal tickets.

In October 2022, the EU and ASEAN<sup>[6]</sup> signed an air transport agreement that will increase direct connections between the two areas and expand air transport opportunities while also upgrading rules and standards.

In January 2023, [Council Directive 89/629/EEC](#) on the limitation of noise emission from civil jet planes was repealed, because, [Directive 2006/93/EC](#) mandated the complete

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[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 EU legislation on aviation security.

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

[6] The Association of Southeast Asian Nations (ASEAN) is a political and economic union that aims to promote cooperation among its 10 Member States.



phase-out of all aircraft that did not comply with the Directive's noise emission limits, thus [rendering Directive 89/629/EEC obsolete](#).

## RESPONSE TO THE COVID-19 CRISIS

Following the COVID-19 outbreak, several measures were adopted to address the difficulties the aviation sector was facing:

- [Regulation \(EU\) 2020/459](#) of 30 March 2020 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports, in order to release the airlines from the obligation to use their slots by flying empty aircraft ('ghost flights'). The mechanism was extended several times. In July 2021, the Commission again proposed extending the slot relief rules until October 2023, which Parliament and the Council agreed to in October 2022. Overall, this revision will give airlines more flexibility to respond to unexpected developments in the near future. The war in Ukraine has also shown that other kinds of unforeseen developments on certain routes can have serious and permanent impacts on air traffic and airlines' ability to meet normal slot occupancy requirements.
- [Regulation \(EU\) 2020/696](#) of 25 May 2020 amending Regulation (EC) No 1008/2008 (the Air Services Regulation) on common rules for the operation of air services in the Community in view of the COVID-19 pandemic. The temporary measures include an amendment of the air carrier licensing rules in the event of financial problems caused by the pandemic; a simplification of the procedures applying to the imposition of traffic rights restrictions; and more efficient award procedures for ground-handling contracts. The Commission plans to adopt a revision of the Air Services Regulation in 2023.

To tackle the risk of serious economic downturn, the Commission published a [temporary framework](#) for State aid measures (updated several times). This allows EU Member States to provide assistance to companies, in addition to the possibilities available under the current State aid rules. Member States have since then proposed a number of economy-wide measures and some sector-specific measures. In March 2023, the temporary framework was extended to support measures for the transition to a net-zero economy and to enable Member States to support the economy in the context of Russia's war against Ukraine.

## DECARBONISING TRANSPORT

The Fit for 55 package, adopted by the Commission in the context of the European Green Deal in July 2021, included a set of proposals covering air transport:

- A [proposal](#) to revise the European Emissions Trading System<sup>[7]</sup> ([Directive 2003/87/EC](#)) to phase out free emission allowances for aviation and align with the global Carbon Offsetting and Reduction Scheme for International Aviation. (The revised [directive](#) entered into force on 5 June 2023).

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[7]The EU ETS sets a limit on the amount of greenhouse gases a sector can emit. EU emission allowances are then auctioned or allocated free of charge and made available for trading.



- A [proposal for a revised Alternative Fuels Infrastructure Regulation](#), which notably stipulates that aircraft have access to a supply of clean electricity in major airports. The [final act](#) was published in the Official Journal of the EU on 22 September 2023.
- A [proposal for a regulation on ensuring a level playing field for sustainable air transport](#) (ReFuelEU aviation). EU airports and fuel suppliers are obliged to ensure that, starting from 2025, at least 2 % of aviation fuel will be green, with this share increasing every five years, to 70 % in 2050. Parliament approved the [new rules](#) on 13 September 2023.

## 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 between 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 three decades, Parliament has always argued for fair competition, aviation safety, quality of service and passenger 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 passenger rights. Moreover, Parliament is pushing for greener aviation fuels, the accelerated introduction of sustainable aviation fuels and the creation of a sustainable aviation fund.

This balanced attitude towards the liberalisation of air transport was recently illustrated again when Parliament, at first reading, radically 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 EU air carriers against the unfair practices of non-EU airlines. Its main goal is to establish a practical, effective and easy-to-use EU 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.

Related legislative and non-legislative resolutions of the European Parliament:

- [Resolution of 14 February 1995](#) on the Commission communication on the way forward for civil aviation in Europe;
- [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;





- [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;
- [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;
- [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;
- [Resolution of 11 November 2015](#) on aviation;
- [Resolution of 16 February 2017](#) on an Aviation Strategy for Europe;
- [Legislative resolution of 14 March 2019](#) on the proposal for a regulation of the European Parliament and of the Council on safeguarding competition in air transport, repealing Regulation (EC) No 868/2004;
- [Legislative resolution of 26 March 2020](#) on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports;
- [Legislative resolution of 15 May 2020](#) on the proposal for a Regulation of the European Parliament and of the Council laying down specific and temporary measures in view of COVID-19 outbreak and concerning the validity of certain certificates, licences and authorisations and the postponement of certain periodic checks and training in certain areas of transport legislation;
- [Resolution of 5 May 2022](#) on the impact of Russia's war against Ukraine on the EU transport and tourism sectors. It expresses concern over the effect the war in Ukraine is having on the aviation sector's operating costs, making both passenger and freight transport more expensive;
- [Legislative resolution of 13 December 2022](#) on notification under the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). Parliament's position entails that Member States must inform aircraft operators by 30 November 2022 that for 2021 they had offset requirements under the International Civil Aviation Organization's International Standards and Recommended Practices on Environmental Protection related to CORSIA to zero for 2021.

Following the COVID-19 outbreak and the subsequent impacts on transport, on 19 June 2020 Parliament adopted a [resolution](#) on transport and tourism in 2020 and beyond, calling for swift, short-term and long-term support for the transport and tourism sectors to ensure their survival and competitiveness.



Since March 2020, Parliament has adopted several legislative resolutions via urgent procedures with the aim of combating the immediate negative effects of the pandemic on the transport sector.

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10/2023

