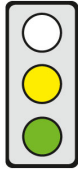


KEY ISSUES

Objective of the Communication: The Commission proposes measures aimed at maintaining the competitiveness of the EU aviation sector.

Affected parties: Airlines, airports, aircraft manufacturers, users of air traffic services.



Pro: (1) The creation of a Single European Sky (SES) reduces costs for airlines and thereby the price of flights.

(2) Relaxing the rules on the ownership and control of airlines increases Europe's attractiveness as a business location.

Contra: Instead of restating its ideas on external aviation policy, the Commission should make concrete legislative proposals. In addition, the competitive disadvantages for EU airlines caused by the EU and the Member States should be reassessed.

CONTENT

Title

Communication COM(2015) 598 of 07 December 2015: **An Aviation Strategy for Europe**

Brief Summary

► Context and objectives

- The EU aviation sector employs up to 2 million people and makes a direct contribution of € 110 billion to the gross domestic product (GDP) of the EU.
- The sector is facing "new and considerable challenges" (p. 2) because
 - fast-growing airlines and airports have emerged, particularly in Asia,
 - high standards of aviation safety and hazard prevention must be maintained and
 - aviation has to "contribute to the fight against climate change".
- The Commission proposes measures so that EU aviation can
 - continue to grow in the future and
 - maintain its leading role in international competition.

► EU external aviation policy

– Aviation agreements and market opening

- EU airlines are facing new competitors especially from Asia. By 2034, scheduled passenger traffic in the Asia-Pacific region is likely to account for 40% of world air traffic.
- Outside the EU, EU airlines are often subject to restrictions on access to markets and sources of investment.
- The Commission recommends "comprehensive aviation agreements" between the EU and countries with growth markets – e.g. Turkey and Qatar. These agreements will
 - in particular regulate "traffic rights" and
 - improve access to markets and investment sources for EU airlines.

– Harmonising standards

In order to support the worldwide trade in aircraft, the Commission recommends bilateral aviation safety agreements with "key partners" – e.g. China and Japan – on mutual recognition of norms and safety certification standards for aircrafts.

– Combating unfair commercial practices

- There are currently no legal provisions to combat unfair commercial practices in the international aviation sector.
- EU rules protecting EU airlines against subsidisation and unfair pricing practices by airlines in third countries [Regulation (EC) No. 868/2004] are, according to the aviation sector, ineffective and never applied (p. 4).
- In order to guarantee a level playing-field at international level, the Commission recommends combating unfair commercial practices by
 - tightening existing EU legislation or
 - introducing new provisions in aviation agreements and within the framework of the International Civil Aviation Organisation (ICAO).

- **Ownership and control of airlines**
 - Foreign investors are currently permitted to hold a maximum of 49% of the shares of EU airlines. Control of the company must remain in the EU.
 - The Commission wants to
 - work towards a reciprocal relaxation of the rules on ownership and control in future aviation agreements and
 - publish "interpretative guidelines" for the relevant Regulation on the operation of air services in the EU [(EC) 1008/2008] in order to create more legal certainty about the ownership and control of EU airlines.
- ▶ **Increasing efficiency in the aviation sector**
 - **Single European Sky (SES)**
 - European airspace is fragmented and not divided up on the basis of optimum routes. This costs at least € 5 billion per year.
 - With the "Single European Sky" (SES), it has been the Commission's aim, since 2004, to achieve EU-wide coordination of the air traffic management system in order to eliminate the current fragmentation of European airspace.
 - For this purpose, it proposed a Regulation in 2013 on implementation of the Single European Sky ("SES II+", COM(2013) 410; see [cepPolicyBrief](#)).
 - It calls on the European Parliament and the Council to accept the proposed measures.
 - **Airport capacity**
 - The shortage of capacity at EU airports will give rise to an annual loss in GDP of between €28 billion and €52 billion by 2035 because
 - EU airports probably will not be able to accommodate 2 million flights in 2035 and
 - there will be additional average airport-related delays of 5-6 minutes per flight.
 - In 2011, the Commission proposed a Regulation on common rules for the allocation of slots for take-off and landing at European Union airports ["Slot Regulation", COM(2011) 827; see [cepPolicyBrief](#)]. This states that
 - the slot utilisation threshold for prioritised slot allocation in the next corresponding season must be increased from 80% to 85% and
 - secondary trade in allocated slots between the airlines is made possible.
 - It calls on the European Parliament and the Council to pass this Regulation.
 - **Efficiency of airport services**
 - Airport services include in particular runway services, passenger terminal services and groundhandling services – e.g. fuelling, passenger handling and de-icing.
 - The Airport Charges Directive (2009/12/EC) contains provisions on the level of charges for airport services.
 - The Groundhandling Services Directive (96/67/EC) contains provisions on access to the groundhandling services market. It permits Member States to restrict the number of suppliers at an EU airport.
 - The Commission wants to assess and possibly revise both Directives.
- ▶ **Flight safety and security**
 - In 2035, EU aviation is predicted to encompass 50% more flights than in 2012.
 - High safety standards are necessary for the functioning and competitiveness of aviation. The current high safety standards will be maintained alongside growing air traffic.
 - The Commission wants to
 - include new technologies – e.g. electric engines, drones – in the safety regulations so that the aviation industry can "thrive" (p. 9) and
 - introduce new technologies and methods for security checks on passengers which
 - facilitate checks and
 - minimise delays for passengers.
- ▶ **Aviation emissions**
 - **Climate protection**
 - In the EU Emissions Trading System (EU ETS) companies in specific sectors are only permitted to emit greenhouse gases (GHG) where they hold the corresponding emission rights ("allowances").
 - Aviation is included in the EU ETS (see [cepCompass](#), p. 17 et seq.): From 2013 until 2016, emissions from flights between two EU airports require allowances [Regulation (EU) No. 421/2014 on the inclusion of aviation in the EU ETS, Art. 1].
 - At its Assembly in October 2013, the ICAO announced its intention to pass a "market-based mechanism" for GHG reduction which would cover several regions of the world and come into effect as from 2020. The Commission recommends that the Member States push for a "truly global mechanism" for GHG reduction (p. 13), at the ICAO Assembly in 2016.

– Noise control

- Approx. 4 million EU citizens are directly affected by air traffic noise around airports.
- In order to reduce the noise pollution, the EU will adopt new international noise control standards from 2017 which will also apply to new types of large aircraft.

Statement on Subsidiarity by the Commission

The Commission does not consider the question of subsidiarity.

Policy Context

In 2012, the Commission presented its ideas for an EU external aviation policy [Communication COM(2012) 556, see [cepPolicyBrief](#)] but no legislative proposals followed.

In 2004, to set up the SES, the EU adopted four Regulations which it amended in 2009 (SES II, see [cepPolicyBrief](#)). On both occasions, there were significant delays when it came to implementation. The delays resulted in the Commission proposing the "SES II+ Regulation" in 2013. The measures which it contained were integrated into the Commission's new proposal for a Regulation establishing a European Union Aviation Safety Agency (EASA) in December 2015 [COM(2015) 613].

The legislative process for the Slot Regulation [COM(2011) 827] has not yet been concluded. However, the European Parliament and the Council have already expressed support for maintaining the current 80% slot utilisation threshold.

In 2011, as part of what is known as the "Airport Package", the Commission submitted a proposal for a Regulation on groundhandling services at EU airports [COM(2011) 824, see [cepPolicyBrief](#)]. This was however withdrawn by the Commission in 2015.

Options for Influencing the Political Process

Leading Directorate General: DG Transport

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

As in its 2012 Communication on EU external aviation policy, the Commission has identified problems for the European aviation sector in global competition. However, it still fails to submit any legislative measures to remedy these problems. **Instead of restating its ideas on external aviation policy in a non-binding Communication, the Commission should make concrete legislative proposals**, particularly a revision of the Regulation protecting EU airlines from subsidies and unfair pricing practices by airlines in third countries.

In addition, the competitive disadvantages for EU airlines caused by the EU and the Member States should be reassessed. This includes, besides national tax rules like the German aviation tax, that the allowance requirement is currently only enforced in respect of emissions from flights between two EU airports. Airlines with their hubs outside the EU, can therefore offer cheaper prices for connecting flights coming from EU airports. As long as there is no global climate protection measure, the allowance requirement should also be enforced in respect of all flights going to and from third countries via EU territory.

"Comprehensive aviation agreements" between the EU and third countries may, in principle, contribute to the development of new markets and sources of investment by EU airlines. Since, in the past, the EU has not always been a good negotiating partner, the success of future aviation agreements depends crucially on what the two parties agree on and whether compliance with the agreement can be enforced.

The protection of the EU aviation sector, from subsidies by third countries and unfair commercial practices such as price dumping, is basically appropriate. Although such practices may give rise to lower prices for aviation services in the short term, in the long term they can result in a price rise by reducing the intensity of competition. The Commission should however indicate what measures it intends to propose to combat subsidies and unfair practices. It should, primarily, endeavour to achieve aviation agreements with fair competition clauses including sanctions and dispute resolution methods. In addition, it could propose to relax the currently strict requirements ["positive evidence", see Regulation (EC) No. 868/2004, Art. 6] attaching to what in practice is the often very difficult process of proving unfair commercial practices by airlines from third countries, in order to facilitate effective protection of EU airlines. It should in any event refrain from protectionist measures because these, in particular, reduce the number of international flights, cost the taxpayer money where they involve subsidies and thus have a negative effect on the economy.

Impact on Efficiency and Individual Freedom of Choice

Creating a Single European Sky (SES), particularly the optimisation of flight paths in European airspace, facilitates shorter routes and thus lower fuel consumption and lower CO₂ emissions per flight route. This **reduces costs for airlines and therefore, where there is competition, the price of flights.** This benefits

suppliers and customers alike. The European Parliament and the Council should therefore act promptly to bring in the EU coordination of air traffic management.

There should also be swift enactment of the Slot Regulation because its two core elements facilitate a more efficient use of airport capacity. On the one hand, the increase in the slot utilisation threshold to 85% makes it more difficult to get prioritised slot allocation. This makes it easier for new applicants to gain access to an airport and thus promotes competition. On the other hand, secondary trade facilitates an efficient distribution of slots because the price mechanism on the secondary market provides incentives for the airlines to exchange and transfer their allocated slots in accordance with their respective requirements. On this basis, it is not clear why the European Parliament and the Council want to retain the 80% slot utilisation threshold.

The Commission's recommendation to the Member States to push for the introduction by the ICAO of a "truly global mechanism" for GHG reduction is appropriate as the climate can only be effectively protected at global level. In addition, a solution at ICAO level would remove competitive distortions. In this regard, the ICAO should, for reasons of efficiency, also opt for an emissions trading system and ensure that such a system is compatible with other emissions trading systems such as the EU ETS and permits allowances to be traded between systems. Otherwise, the most important feature of emissions trading would be lost, namely the creation of incentives for emissions reduction to take place where it gives rise to the lowest costs.

Impact on Growth and Employment

Bilateral aviation safety agreements on mutual recognition of safety certification standards for aircraft facilitate global trade and result in lower production costs. This has a positive impact on growth and employment.

Impact on Europe as a Business Location

Relaxing the rules on the ownership and control of airlines increases Europe's attractiveness as a business location because foreign investors are then also able to have larger shares in these companies.

Legal Assessment

Legislative Competency

The EU can adopt "appropriate provisions" for aviation in general and for international aviation in particular (Art. 100 (2) in conjunction with Art. 91 (1) a TFEU). The areas of regulation addressed in this case – SES, slot allocation, groundhandling services etc. – are covered by this competence.

In addition, the EU is expressly permitted to conclude international agreements with third countries where this is provided for in the EU Treaties or in a binding EU act, where it is necessary to achieve one of the objectives in the EU Treaties or where otherwise EU rules will be detrimentally affected or their scope altered (Art. 216 (1) TFEU). This corresponds to settled ECJ case law according to which the EU has exclusive external competence for matters which have already been regulated internally under EU law (AETR Judgement, ECJ Case 22/70) or for which an international agreement with a third country is necessary (e.g. "Open Sky" Judgement, ECJ Case C-476/98). Whether these requirements are met must be determined on the facts of each case but is likely to be affirmed in the case of aviation agreements. In any case, the Council must issue the Commission with a mandate to hold negotiations with third countries (Art. 218 (29 and (3) TFEU).

Subsidiarity

Unproblematic. The largely cross-border nature of aviation justifies EU-wide action.

Proportionality

The question of proportionality can only be assessed on the basis of actual legislative proposals.

Conclusion

Instead of restating its ideas on external aviation policy in a non-binding Communication, the Commission should make concrete legislative proposals. In addition, the competitive disadvantages for EU airlines caused by the EU and the Member States should be reassessed. The creation of a Single European Sky (SES) reduces costs for airlines and thereby the price of flights. Relaxing the rules on the ownership and control of airlines increases Europe's attractiveness as a business location.