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The European Commission implements its Aviation Strategy for Europe

In December 2015, the European Commission adopted its Aviation Strategy for Europe, an ambitious plan which tackles all issues of the Air Transport Sector such as the International Framework, the investments, the connectivity, etc.

The Aviation Strategy aims to place the EU as a leading player in international aviation but also to guarantee a level-playing field.

On 8th June 2017, the European Commission presented several initiatives to implement its fundamental priorities of this strategy which are to maintain its leading position in the International Aviation and to eliminate all barriers to growth in the European Airspace.

In order to guarantee a level-playing field, the Commission wants to negotiate effective fair competition provisions in the context of the negotiations of EU comprehensive air transport agreements and measures to address unfair practices from third countries and third country operators. This will be quite challenging as non European airlines are not submitted to the same legal framework, including the European rules applying to state aids.

In this context, the Commission published a legislative proposal for a regulation on safeguarding competition in air transport which is submitted for its approval to the European Council and the European Parliament. This regulation once adopted will allow the European Commission to investigate on anti-competitive measures such as abuses of a dominant position or subsidies from a third country. It will replace Regulation 868/2004 which was intended to address those issues through EU unilateral action but was never applied due to its inadequacy. Furthermore, the Commission's objective is also to keep negotiating fair competition clauses in bilateral agreements between the EU and third countries.

Another issue in this international context concerns the recent foreign investments in European airlines. Under Regulation 1008/2008, an European airline may not be controlled by a non-European undertaking as the control of the company must remain in EU hands : foreign investors may invest in EU airlines but they may not exceed 49% of ownership. Foreign investments in European airlines these past years have risen questions regarding this notion of control.

The Commission adopted in June 2017 interpretative guidelines on ownership and control of EU airlines. In order to increase legal certainty for investors and airlines companies, they establish criteria to assess the notions of ownership and control without modifying the rules set up by Regulation 1008/2008.

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Moreover, the Commission did a comprehensive evaluation of the public services obligations (for non-viable routes) and they were considered being fit for this purpose but guidelines would be useful to avoid misapplication. In June 2017, it adopted and published interpretative guidelines on public services obligations that can be entrusted to airlines for the operation of non-viable routes. Public authorities, regional airports and airlines should be aware that this document might put at stake current PSO as they tend to have a broader interpretation of Regulation 1008/2008.

Finally, the Commission presented in June 2017 its practices facilitating continuity of air traffic management. According to the European Commission, they will not limit the right to strike but intend to help the Member States to respond more efficiently to this type of disturbance and to preserve the connectivity of the European Union with a series of practical measures such as the improvement of social dialogues, the anticipated announcement of strikes by the unions, the individual notifications by staff members, the protection of overflights, the protection of air traffic peak periods, etc.

For reminder, the Aviation Strategy also concerns EU safety and security standards. In December 2015, the Commission proposed a revised basic regulation for common rules in the field of civil aviation safety that will replace the current Regulation (EC) n° 216/2008 and a revised European aviation safety program document that describes the way in which safety is currently managed in Europe. The new Regulation will provide for a basic legal framework for the safe development of drones' operations in the EU that will be included in the future basic aviation safety Regulation 216/2008 while the European Aviation Safety Agency will prepare more detailed rules to allow the drone operations and the development of industry standards.

The proposal to update EU civil aviation safety rules to address emerging risks was amended and approved by the Transport and Tourism Committee of the European Parliament in November 2016. The Committee text constitutes the Parliament's position for the negotiations with the Council on the final wording of the regulation.

Furthermore, The Commission announced in its Aviation Strategy a potential revision of the Airport Charges Directive. No concrete step has been yet taken to that respect.

The Commission also intends to publish a practice guide on applicable labor law and the competent court. It currently assesses the need for further clarification on applicable law and competent courts as employment contracts of mobile workers in aviation are concerned. Recent trials regarding notably Ryanair demonstrate the relevance of this issue. On 14 September 2017, The Court of Justice of the EU confirmed in two judgments concerning Ryanair and Crewlink that in disputes relating to their employment contracts, air crew members and pilots have the option of bringing proceedings before the courts of the place where they perform the essential part of their duties vis-à-vis their employer. The 'place where the employee habitually carries out his work' is to be determined by the national court on the basis of a set of indicia and the concept of home base constitutes a significant indicium for the purposes of determining this location.

Finally, the revision of Regulation 261/2004 on air passengers rights in case of denied boarding, long delays and cancellations is still ongoing. The draft regulation is being currently reviewed by the European Parliament and the Council of the EU. The Commission urges both EU institutions to adopt swiftly the reform. Before that, the Commission will adopt interpretative guidelines for the citizens and the airlines on

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the current state of law and jurisprudence and will ensure a strict application of passengers right by the national enforcement bodies of the EU air passengers rights.

In conclusion, the European Commission recognizes that aviation is a catalyst for economic growth and not the enemy of Europe. The new Aviation Strategy package addresses important issues for the sector, such as safety and security, external markets, investments and capacity, energy, etc.

Nevertheless, it is not sure that it will meet the sector's expectations as many airlines still struggle to meet profitability and public funding for both airports and airlines has been strictly regulated by the guidelines of the European Commission of 2014 on State aid for airports and airlines. Meanwhile, neighboring airports and foreign airlines pursue their developments outside the European legal constraints.

The implementation and therefore success of this new Aviation Strategy will also depend on other EU institutions such as the Council of the EU and the European Parliament that have the power to block proposals.

To the exception of the legislative proposal of regulation which will have to be debated before the European Parliament and within the Council and which will be subject to their formal approval, the guidelines and practices have been adopted and published in the Official Journal of the EU. They do not replace the applicable regulations and therefore do not reverse the constant position of the Commission on those issues but aim to formalize its interpretation in order to guarantee a harmonize application. Therefore, they are welcomed in a constant evolving sector.