

Safeguarding competition in air transport

2017/0116(COD) - 08/06/2017 - Legislative proposal

PURPOSE: to safeguard competition in air transport.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: aviation plays a fundamental role in the European Union economy. In 2014, the sector supported the employment of up to 9.3 million people and accounted for over EUR 510 billion of EU Gross Domestic Product.

In 2015, more than 1.45 billion passengers departed from or arrived at EU airports.

The Union's overall connectivity relies on air services performed by Union air carriers (average of 7 million flights per year) and on third country air carriers (1.3 million flights per year).

The liberalisation and deregulation of international air transport has fostered unprecedented competition within the Union market and globally. Global competition is expected to further intensify in coming years with projected international aviation growth of around 5% per year until 2030.

Principles of fair competition have not yet been defined through specific multilateral rules, notably in the context of the International Civil Aviation Organization (ICAO) nor of World Trade Organization (WTO) agreements, from the scope of which air transport services have largely been excluded.

EU rules ensure that all carriers, European and non-European, are granted the same rights and same opportunity of accessing 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](#), 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.

IMPACT ASSESSMENT: the chosen option consists of replacing Regulation (EC) No 868/2004 with a new instrument and increasing efforts on the international scene including as regards the negotiation of air transport or services agreements.

CONTENT: the proposed Regulation shall replace Regulation (EC) No 868/2004 and aims to ensure fair competition between Union air carriers and third country air carriers, in the interest of maintaining conditions conducive to a high level of Union connectivity.

The proposal lays down rules on the conduct of investigations by the Commission and on the adoption of redressive measures, relating to violation of applicable international obligations and to practices affecting competition between Union air carriers and other air carriers and causing or threatening to cause injury to Union air carriers.

Proceedings: the proposal stipulates that an investigation shall be initiated following a written complaint submitted by a Member State, a Union air carrier or an association of Union air carriers, or on the Commission's own initiative.

The Commission may decide not to initiate an investigation where the adoption of measures would be against the Union interest. It may seek all the information it deems necessary to conduct the investigation and may verify the accuracy of the information it has received or collected.

The proposal also defines (i) the rules under which an investigation is to be conducted, and the conditions under which interested parties may have access to information relating to the investigation; (ii) the rules relating to cooperation with Member States, confidentiality and disclosure.

Redressive and compensatory measures: in order to be able to propose a measure, the Commission will have to demonstrate that an EU airline has been affected by an unfair practice on the part of a third country.

To this end, the proposal:

- establishes the conditions under which conditions the existence of injury or threat of injury may be found;
- sets out the conditions according to which proceedings may be suspended or concluded, with or without the adoption of redressive measures;
- provides for the possibility to adopt financial or operational measures intended to offset injury or threat of injury and requires that the measures must not exceed what is necessary for such offsetting bearing in mind that the objective of such measures does not consist in punishing the third country air carrier concerned but in restoring fair competition;
- defines the conditions under which the redressive measures may be reviewed.

BUDGETARY IMPLICATIONS: these are related to the initiation and conduct of investigations by the European Commission, and to financial duties. This instrument is expected to require nine officers for its implementation.

The impact on administrative expenditure is estimated at EUR 3.786 million for the period 2018-2020.