



MARCH 2020

In this issue:

COVID-19	1
Aviation Regulatory and Policy.....	4
Antitrust and Competition	5
Air Travel - Passengers' Rights	5
International Trade - Brexit.....	6
Public Consultations and Events	6

K&L Gates LLP. Global legal counsel across five continents. For more information, visit www.klgates.com.

This edition of the Brussels Air Transport Brief includes industry highlights from March 2020.

COVID-19

Airport Slots: European Parliament adopts legislative resolution on amending common rules for the allocation of slots at Community airports

On 26 March 2020, the European Parliament [adopted](#) a legislative resolution on the proposal for a regulation on common rules for the allocation of slots at Community airports. Upon request of the TRAN Committee, the Parliament [voted](#) directly in Plenary with a view to quick adoption. On 20 March 2020, the Council's Permanent Representatives Committee had [approved](#) a mandate for the presidency to negotiate with the Parliament the Commission's proposal to suspend temporarily the airport slot requirements, which oblige airlines to use at least 80% of their take-off and landing slots in order to keep them the following year. The Council's position was to waive this "use it or lose it" rule until 24 October 2020, instead of June 2020, which was originally mentioned in the Commission's proposal. The Parliament adopted the Council's position. This temporary suspension of the airport slot requirements shall apply for a period covering 1 March to 24 October 2020.

Air Freight: European Commission issues guidance to ensure essential freight keeps moving by air

On 26 March 2020, the European Commission issued a [Communication on Facilitating Air Cargo Operations during COVID-19 outbreak](#), which contains recommendations of operational and organisational steps to keep essential transport flows moving, including medical supplies and personnel. The recommended measures notably include inviting EU Member States to grant temporary traffic rights for additional cargo operations from outside the EU if restrictions would normally apply, even if these cargo operations are conducted with passenger aircraft. Member States are also advised to temporarily remove night curfews and/or slot restrictions at airports for essential air cargo operations, and to facilitate the use of passenger aircraft for cargo-only operations. Aircrew flying the aircraft should be exempted from travel restrictions if they do not show symptoms. The EC is also calling on all third countries to refrain from unnecessary restrictions on air cargo operations, in particular those incompatible with agreements in place, in the common interest of supply chain continuity for goods, including essential ones, such as highly specialised, urgent and critical products such as medical supplies. These exceptional measures will be temporary for the duration of the coronavirus crisis.

Passengers' Rights: European Commission provides guidance on EU passenger rights

On 18 March 2020, the European Commission [published](#) its interpretative guidelines on EU passengers rights regulation to ensure the coherent application of EU passenger rights across the EU. In light of national governments' introduction of different measures, including travel restrictions and border controls, the purpose of the guidelines is to reassure passengers that their rights are protected and to provide legal certainty. The guidelines cover the passengers rights for air, rail, ship or bus/coach, maritime and inland waterways travel, and also the corresponding obligations for carriers. The guidelines further specify two distinct scenarios of a journey cancellation. In the event that passengers face the cancellation of their journey, the passengers can choose between reimbursement of the ticket price or re-routing to reach their final destination at a later stage. On the other hand, in case that passengers themselves decide to cancel their journeys, reimbursement of the ticket will depend on its type, and companies have the possibility to offer vouchers for subsequent use.

Free Movement: European Commission presents guidelines for border measures to protect health and keep goods and essential services available

On 16 March 2020, the European Commission [presented](#) its guidelines to Member States on health-related border management measures in the context of the COVID-19 emergency. The guidelines aim to ensure the free circulation of goods to maintain availability, particularly for essential goods such as food supplies including livestock, vital medical and protective equipment and supplies. The guidelines specify that control measures adopted by Member States should not cause severe disruption of supply chains, essential services of general interest as well as of national economies and the EU economy as a whole. In the same context, Member States should ensure adequate movement of goods and essential staff by designating measures for the safe movement for transport workers, including truck and train drivers, pilots and aircrew.

Free Movement: European Commission presents practical guidance to ensure continuous flow of goods across EU via green lanes

On 23 March 2020, the European Commission [issued](#) new practical advice on how to implement its guidelines for border management, in order to ensure continued and uninterrupted land, waterborne and air cargo services and keep freight moving across the EU during the current COVID-19 outbreak. To ensure the functioning of the EU's internal market and the EU-wide supply chains' operational continuity, it is requested from Member States to designate, without delay, all the [relevant internal border-crossing points on the trans-European transport network \(TEN-T\)](#) as "green lane" border crossings. These green lane border crossings should be kept open for all freight vehicles, regardless of the goods they are carrying. Furthermore, Member States are requested to ensure that they have at least one airport functional for repatriation and international relief flights. In respect of the rules applicable to transport workers, the guidance calls upon the Member States to ensure their safety and to apply enhanced hygiene and operational measures in airports, ports, railway stations and other land transport hubs.

State Aid: European Commission adopts temporary Framework to enable Member States to further support the economy in the COVID-19 outbreak

On 19 March 2020, the European Commission [adopted](#) a temporary State Aid Framework to support the economy in the current COVID-19 framework. The temporary Framework complements the possibilities for Member States to design measures in line with existing EU State aid rules and to support citizens and companies facing economic difficulties due to the COVID-19 outbreak. Regarding the framework for relief granted to the aviation industry, the Commission's press release notes that Article 107(2)(b) of the Treaty on the Functioning of the European Union enables Member States to compensate companies for the damage directly caused by exceptional occurrences, such as those resulting from the

COVID-19 outbreak, including measures in sectors such as aviation and tourism. In particular, the temporary Framework provides for five types of aid: (i) direct grants, selective tax advantages and advance payments; (ii) state guarantees for loans taken by companies from banks; (iii) subsidised public loans to companies; (iv) safeguards for banks that channel State aid to the real economy; and (v) short-term export credit insurance. The temporary Framework will be provisionally in place until the end of December 2020.

Aviation Safety: EASA issues safety directive to combat spread of COVID-19 via airline travel

On 13 March 2020, the European Union Aviation Safety Agency (EASA) [issued](#) a safety directive aiming at reducing the risk of spread of COVID-19 through flights to and from high risk areas. The safety directive specifies measures to be taken for flights serving high-risk destinations. It calls for thorough disinfecting and cleaning of aircraft which operate from high-risk destinations after each flight, with the exception of using disinfectants with a longer-lasting effect. In any case, this thorough disinfection is mandated no later than 24 hours after departure from a high-risk airport. Accordingly, the definition of high-risk geographical areas will be decided on the basis of all available information, taking into consideration World Health Organisation (WHO) situation report assessments, guidance issued by the European Centre for Disease Prevention and Control (ECDC) and regional public health assessments.

IATA Reports: IATA Updates COVID-19 Financial Impacts

On 24 March 2020, the International Air Transport Association (IATA) [updated](#) its analysis of the revenue impact of the COVID-19 outbreak on the global air transport industry. Due to the severe travel restrictions and the expected global recession, IATA estimates that air passenger revenues could plummet \$252 billion or 44% below 2019's figure. This scenario is built upon the expectation that severe travel restrictions will last for up to three months, followed by a gradual economic recovery later this year. On 5 March 2020, IATA has published its previous [analysis](#) amounting to a \$113 billion revenue loss. This scenario was before the introduction of sweeping travel restrictions worldwide, which largely eliminated the international air travel market. In this context, IATA's Director General and CEO, Alexandre de Juniac, called for immediate government relief measures granted to the aviation industry and liquidity support, in order to enable the aviation sector to get through this public health emergency.

AVIATION REGULATORY AND POLICY

IATA Reports: Air Cargo and Passenger Demand for January 2020

On 5 March 2020, IATA released [data for global air freight markets](#) for January 2020, showing that demand, measured in cargo tonne kilometers (CTKs), decreased by 3.3% in January 2020, compared to the same period in 2019. January marked the tenth consecutive month of year-on-year declines in cargo volumes. The report states that it is unlikely that the COVID-19 outbreak had a gross impact on January's weak performance. As regards passenger demand, the [passenger traffic results](#) for January 2020 show that demand, measured in revenue passenger kilometers or RPKs, climbed 2.4% compared to January 2019. The result for January was down from 4.6% year-over-year growth for the prior month and is the lowest monthly increase since April 2010. The report notes that the traffic impact owing to COVID-19 was only the tip of the iceberg, as major travel restrictions did not begin until 23 January 2020, in China.

Environment: Eurocontrol identifies five key priorities for the aviation industry to adopt to meet the target of climate neutrality by 2050

On 11 March 2020, Eurocontrol [published](#) its editorial on the key priorities for the aviation industry to adopt in order to meet the target of climate neutrality by 2050 set by the [European Green Deal](#). Eurocontrol stresses the importance of the aviation industry in this process, including: (i) providing support for the rapid transition to the wide-spread use of

sustainable aviation fuels for long-haul flights; (ii) developing highly efficient, large-capacity, short-haul aircraft to handle passenger throughput; (iii) undertaking a total fleet renewal by 2050; (iv) bridging the gap to electrification of short-haul passenger aircraft through hybridisation and improving battery energy densities; and (v) encouraging environmental improvements through provision of shorter and better routes.

Easy Access Rules: EASA publishes Easy Access Rules for Unmanned Aircraft Systems

On 4 March 2020, EASA [issued](#) its publication on the rules and procedures for the operation of unmanned aircraft. The publication covers the Commission Implementing Regulation (EU) 2019/947, the related acceptable means of compliance (AMC) and guidance material (GM), as well as the Commission Delegated Regulation (EU) 2019/945 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems. The goal is to further update this publication to include changes and evolutions to the implementing rules (IR), delegated rules (DR), AMC and GM.

IATA Reports: Ethiopian Air Transport Market Set to Grow 226% by 2037

On 4 March 2020, IATA [published](#) its study on the importance of air transport and tourism to Ethiopia. The study revealed that the sustained prioritization of air transport, connectivity and tourism as a strategic asset would amount to an additional 900,000 jobs and at least USD 9.3 billion of GDP by 2037. IATA's economic report identifies that air transport and foreign tourists arriving by air currently support 5.7% of the nation's GDP valued at USD4.2 billion and approximately 1.1 million jobs. On the basis of the current trends, the report estimates that Ethiopia's air transport market will expand by 226% in the course of the next 20 years, with annual passenger journeys increasing from 7.2 million in 2017 to 23.5 million a year by 2037. In the same vein, IATA identified four areas of improvement for further growth in aviation: (i) implementing the Single African Air Transport Market (SAATM); (ii) ensuring that future infrastructure investments maximize the economic and social benefits of connectivity; (iii) working further on the subject of blocked funds; and (iv) improving air cargo facilitation.

ANTITRUST AND COMPETITION

State Aid: European Commission opens in-depth investigation procedure into measures in favor of Béziers airport in France and Ryanair

On 2 March 2020, the European Commission has [opened](#) an in-depth investigation to assess whether operating aid to Béziers airport as well as marketing and airport services agreements concluded between Ryanair and Béziers airport operators are in line with EU State aid rules. The complaint alleges that the operating aid and the agreements amounted to illegal State aid in favour of Ryanair and Béziers airport. With regard to Béziers airport operators, the Commission's concerns relate to the operating aid's compatibility with the single market. In particular, the operating aid was granted by several local and public authorities to the operators, it was imputable to the State, involved public resources and granted an undue and selective advantage to the airport operators that potentially affected competition and trade between Member States. With regard to Ryanair, the Commission has decided to open an in-depth investigation into certain marketing agreements concluded between Béziers airport and Ryanair since 2009, as well as into airport services agreements concluded between the Béziers airport operators and Ryanair since 2007. At this stage, the Commission's concerns revolve around the fact that the agreements in question may give Ryanair an undue economic advantage vis-à-vis its competitors by virtue of incompatible aid in its favour.

AIR TRAVEL - PASSENGERS' RIGHTS

Passengers' Rights: CJEU rules that a passenger who is compensated for the cancellation of a flight and who has agreed to travel on an alternative flight is entitled to compensation for a delay in the re-routing flight

On 12 March 2020, the Court of Justice of the European Union (CJEU) has [issued](#) its judgement on the Case C-832/18. In this case, a number of travellers booked a direct flight, scheduled to depart on 11 October 2013, from Helsinki to Singapore with a Finnish airline. That flight was cancelled due to a technical defect that appeared in the aircraft. Following the airline's offer, the travellers were re-routed on the Helsinki-Singapore connecting flight via Chongqing (China), with an expected arrival in Singapore on 13 October. However, their re-routing was delayed as a result of a mechanical failure on the aircraft in question, and, therefore, the passengers arrived at their destination on 14 October 2013. The travellers brought an action against the airline seeking: (i) compensation of a sum of €600 each, together with interest, on account of the cancellation of the original Helsinki-Singapore flight; and (ii) a compensation the sum of €600 each, together with interest, on account of the delay of more than three hours in the arrival of the Helsinki-Chongqing-Singapore re-routing flight. The airline awarded compensation of the sum of €600 regarding the cancellation of the original Helsinki-Singapore flight. However, with respect to the second claim, it decided that the travellers did not fulfil the eligibility criteria for a second compensation payment under the regulation on the rights of air passengers. Second, the airline claimed that the re-routing flight had been delayed due to "extraordinary circumstances" within the meaning of the regulation. The CJEU noted that the regulation does not include any provision intended to limit the rights of passengers who find themselves in a situation of re-routing, including a possible limitation of their right to compensation. In that regard, it ruled that an air passenger is entitled to compensation for the delay of the re-routing flight, where that delay is such as to give rise to entitlement to compensation and the air carrier of the re-routing flight is the same as that of the cancelled flight. The CJEU further ruled that an air carrier may not rely on "extraordinary circumstances" in order to be released from its obligation to pay compensation. It specified that an air carrier may not rely on the so-called "on condition" part, except where such failure refers to an event which is not inherent in the normal exercise of the activity of the air carrier concerned and is outside its actual control.

Passengers' Rights: CJEU rules that a passenger who reserved a flight through a travel agency may bring an action for compensation for a long flight delay against the air carrier before the courts of the place of departure of the flight

On 26 March 2020, the CJEU has [issued](#) its judgement on the Case C-215/18 of *Libuše Králová v Primera Air Scandinavia A/S*. A passenger entered into a package travel contract with a Czech travel agency including carriage by air operated by Primera Air Scandinavia, between Prague and Keflavík (Iceland), and also accommodation in Iceland. The flight scheduled for 25 April 2013 was delayed by four hours. The passenger brought an action for compensation for an amount of €400 against Primera Air Scandinavia before the District Court of Prague, according to the regulation on the rights of air passengers. However, since the passenger entered into a contract with a travel agency instead of the air carrier, the Czech court subsequently asked the CJEU whether there is a contractual relationship between the passenger and the carrier, allowing the former to bring an action against the latter, taking also into consideration that the competent court is the court of the place of departure of the delayed flight. First, the CJEU ruled that a passenger, whose flight is subject to a long delay, may rely on the regulation on the rights of air passengers against the carrier, even in the absence of a contract between the passenger and the carrier. Second, the CJEU ruled that an action for compensation for a long flight delay, brought by a passenger against the operating air carrier which is not the contractual partner of the passenger must be regarded as covering matters relating to a contract under the regulation on jurisdiction. Consequently, in such a situation, the passenger may bring an action for compensation against the carrier before the courts of the place of departure of the flight.

INTERNATIONAL TRADE - BREXIT

Brexit: UK publishes document outlining “The Future Relationship with the EU: The UK’s approach to negotiations”

On 27 February 2020, the UK [published](#) a document titled “The Future Relationship with the EU: The UK’s approach to negotiations”. With respect to aviation, the UK seeks the establishment of a Comprehensive Air Transport Agreement with the EU, consistent with the best international precedents. According to this document, the agreement should include provisions on liberalised market access for air services on a reciprocal basis, close co-operation to maintain high aviation security standards, and collaboration on air traffic management to ensure interoperability between UK and EU airspace. The areas of key interest, include, but are not limited to: (i) traffic rights, including, as a minimum, the rights for UK and EU airlines to operate passenger, all-cargo and charter services between points in the UK and points in the EU with no restrictions on frequency or capacity; (ii) ownership and control to ensure that no unnecessary restrictions are imposed on the nationality of who can own or effectively control a UK or EU airline; (iii) modern commercial practices, including code-sharing and wet-leasing; (iv) aviation security, with particular focus on providing mutual recognition of designations of air carriers transporting cargo subject to the mutual application of equivalent minimum aviation security standards; (v) air traffic management, including cooperation between the UK and EU on the research, development and deployment of new ATM technologies, regulations and network management functions; (vi) avoiding trade distortions; and (vii) implementing appropriate governance arrangements. The document also deliberates on the establishment of a Bilateral Aviation Safety Agreement, with the aim to facilitate the recognition of aviation safety standards and regulatory co-operation between the UK Civil Aviation Authority and the EASA.

Brexit: European Commission publishes draft legal text on the future EU-UK Partnership

On 18 March 2020, the European Commission [published](#) a draft legal agreement for the future EU-UK partnership. The agreement translates into a legal text [the negotiating directives](#) approved by Member States in the General Affairs Council on 25 February 2020, in line with [the Political Declaration](#) agreed between the EU and the UK in October 2019. With respect to aviation, the draft agreement covers a wide range of issues, including route schedules; traffic rights, operational flexibility, conditions for authorisations and technical permissions, ownership and control of air carriers, compliance, fair competition, fiscal provisions, user charges, tariffs, aviation safety and security, air traffic management, air carrier liability and consumer protection. This negotiating document was presented to the Council Working Party in the UK, on 13 March 2020, and was further transmitted to the UK on 18 March 2020, following consultation with the European Parliament and Council.

PUBLIC CONSULTATIONS AND EVENTS

Past Event: EASA’s 2020 High Level Cybersecurity Conference

On 4-5 March 2020, EASA held, in cooperation with the Spanish National Aviation Authority, its [High Level Cybersecurity Conference](#) in Madrid. The conference focused on a number of key issues for the implementation of the future EASA cybersecurity requirements, including: coordination between different authorities within the Member States, coordination of the implementation of the different cybersecurity regulatory frameworks, risk management, and risk and information sharing.

Past Event: Europe for Aviation's 2020 World ATM Congress

On 10-12 March 2020, the "Europe for Aviation" team held its [World ATM Congress](#) in Madrid. The "Europe for Aviation" team consists of eight European aviation organisations working for the implementation of the Single European Sky, namely the European Commission, EUROCONTROL, SESAR Joint Undertaking (SESAR JU), SESAR Deployment Manager (SESAR DM), EASA, European Defence Agency, Innovation and Networks Executive Agency (INEA), and EUROCAE. The Congress focused on the interactions between the EU bodies as to their project management cycle from policy and funding to research and deployment. The Congress also tackled on the most pressing challenges in the aviation sector, such as sustainability, capacity and innovation.

Upcoming Event: EASA's 2020 Safety in Aviation Forum for Europe

On 27-29 April 2020, EASA will hold its [Safety in Aviation Forum for Europe](#) in Brussels. The conference will focus on drawing more links with the EASA Safety Risk Management process and the increasing importance of big data in augmenting safety intelligence under a cross-domain perspective. The conference is expected to showcase the link between the wider aviation safety communities and the D4S (big) data-driven safety intelligence. The key takeaways will contribute to the analysis of safety-related subjects, refining the Safety Risk Portfolios and likely, the European Plan for Aviation Safety (EPAS).

Authors:

Mélanie Bruneau

Melanie.Bruneau@klgates.com

P +32.(0)2.336.1940

Philip Torbøl

Philip.Torbol@klgates.com

P +32.(0)2.336.1903

Antoine de Rohan Chabot

Antoine.DeRohanChabot@klgates.com

P +32.(0)2.336.1941

Alessandro Di Mario

Alessandro.DiMario@klgates.com

P +32.(0)2.336.1938

Antonia Rountou

Antonia.Rountou@klgates.com

P +32.(0)2.336.1942

Francesca Lai

Francesca.Lai@klgates.com

P +32.(0)2.336.1924

K&L GATES

K&L Gates is a fully integrated global law firm with lawyers located across five continents. The firm represents leading multinational corporations, growth and middle-market companies, capital markets participants and entrepreneurs in every major industry group as well as public sector entities, educational institutions, philanthropic organizations and individuals. For more information about K&L Gates or its locations, practices and registrations, visit www.klgates.com.

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

©2020 K&L Gates LLP. All Rights Reserved