



ASSEMBLY — 38TH SESSION

ECONOMIC COMMISSION

Agenda Item 40: Economic Development of Air Transport — Policy

**EUROPEAN PRIORITIES FOR THE ECONOMIC REGULATION
OF INTERNATIONAL AIR TRANSPORT**

(Presented by Lithuania on behalf of the European Union and its Member States¹ and the other Member States of the European Civil Aviation Conference²)

EXECUTIVE SUMMARY

This Working Paper sets out recommendations for what should be considered as key areas and priorities for the economic regulation of international air transport, taking into account the outcome of the Sixth ICAO Air Transport Conference (ATCONF/6).

Action: The Assembly is invited to:

- a) adopt and include in Assembly Resolution A37-20 the actions set out in paragraph 3.1, and
- b) endorse that ICAO's Work Programme for 2014-2016 reflect the priorities identified in this paper.

<i>Strategic Objectives:</i>	This Working Paper relates to Strategic Objective <i>Environmental Protection and Sustainable Development of Air Transport</i> .
<i>Financial implications:</i>	Most of the proposed tasks for ICAO should be covered under the regular budget of the Organization. Nevertheless, reference is made to the recommendation by ATCONF/6 that a dedicated voluntary fund be established to support ICAO in carrying out its mandate and strengthening its work in the air transport field.
<i>References:</i>	ATCONF/6-WP/49, ATCONF/6-WP/50, ATCONF/6-WP/51, ATCONF/6-WP/54, ATCONF/6-WP/55

¹ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary,

² Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Iceland, the Republic of Moldova, Monaco, Montenegro, Norway, San Marino, Serbia, Switzerland, The former Yugoslav Republic of Macedonia, Turkey and Ukraine.

1. INTRODUCTION

1.1 The Sixth ICAO Air Transport Conference (ATConf/6 - Montréal, 18-22 March 2013) was an important event which adopted a series of constructive recommendations in relation to the further development of the global economic regulatory framework for international air transport. There was a general consensus at ATConf/6 that the current framework should be adapted to ensure the long-term sustainability of the air transport sector, and to take account of the increasingly global and competitive environment in which air transport operates today.

1.2 It is important that ICAO as an Organization and individual States pay due regard to the outcome of ATConf/6, and that the 38th Session of the ICAO Assembly endorses the key recommendations of ATConf/6. This Working Paper sets out its presenters' views on what actions ICAO and Member States should take in following up to ATConf/6, in particular when reviewing the Consolidated statement of continuing ICAO policies in the air transport field (Assembly Resolution A37-20), and when deciding on ICAO's Work Programme for 2014-2016.

1.3 Consistent with the conclusions of ATConf/6, the key areas where efforts should be focused are the liberalization of market access, fair competition, the liberalization of air carrier ownership and control and consumer protection.

2. KEY AREAS OF ECONOMIC REGULATION

2.1 Liberalization of market access

2.1.1 There was broad consensus at ATConf/6 that the liberalization of market access had generated significant economic benefits, was beneficial for the development of the air transport sector, and contributed to its sustainability. Support was expressed for the modernisation of the global regulatory framework for market access in order to adapt it to the rapidly evolving and now globalised business environment. It was agreed that ICAO should play a leading role in this process and provide a focus for such work by developing a long-term vision for market access liberalization including a multilateral agreement to help facilitate this.

2.1.2 However, a large number of States, including the presenters of this paper, also emphasised the close link between market access and fair competition. Indeed, they strongly believe that, in the operation of international air services, further liberalization must be accompanied by measures to ensure that competition takes place on a fair, open and non-discriminatory basis. This would, in turn, help to ensure the long-term sustainability of international air transport.

2.2 Fair and open competition

2.2.1 In order for liberalization of market access and air carrier ownership and control to be successful and beneficial for all participants in international air transport, competition should be fair, open and based on a level playing field (including such issues as subsidies, taxes, user charges, royalties, social protection, consumer rights, environmental protection etc.) ICAO and its Member States are invited to recognise that safeguards to ensure fair and open competition must be a condition for breaking down market access restrictions.

2.2.2 ATConf/6 concluded that fair competition is an important general principle in the operation of international air services. As recommended by ATConf/6, ICAO should develop tools to facilitate cooperation, dialogue and the exchange of information between States in order to foster more compatible regulatory approaches toward international air transport. Indeed, convergence and compatibility of regulatory approaches are key general enablers for establishing and maintaining fair competition.

2.2.3 More specifically, ICAO should update its policy guidance on fair competition, and propose that the conditions for achieving, demonstrating and consolidating a fair and open competitive environment (see Appendix A) should be taken as a starting point for work on an update of the policy guidance. This would allow ICAO to develop basic principles for fair competition and the necessary instruments to establish and maintain it.

2.3 **Liberalization of air carrier ownership and control**

2.3.1 ATConf/6 recognized the benefits of liberalizing air carrier ownership and control and called on ICAO to promote and facilitate further liberalization in this area. ICAO should develop a multilateral agreement on the liberalization of air carrier ownership and control, and in the meantime, Member States should be encouraged to continue to liberalise air carrier ownership and control rules through various existing measures such as waivers of such restrictions in bilateral air services agreements or through adoption of designation provisions which recognise the concept of community of interest within regional or sub regional economic groupings.

2.3.2 With appropriate safeguards to help ensure a level playing field, for instance relating to safety, financial fitness and working conditions, ICAO should encourage its Member States to progressively abolish remaining national restrictions on air carrier ownership and control. This would serve the interests of the air transport sector, for example, by facilitating foreign investment.

2.4 **Consumer protection**

2.4.1 ATConf/6 agreed unanimously that consumers of air transport services should be protected, and underlined that, globally, such protection would greatly benefit from increased regulatory convergence and compatibility. ICAO should therefore develop high-level, non-prescriptive core principles on consumer protection, to include non-discrimination (especially for passengers with disabilities and passengers with reduced mobility), transparency of information and compensation and assistance in case of denied boarding, short-notice cancellations and long delays under certain conditions. Proposals for developing such principles are attached to this working paper (see Appendix B).

3. **ACTION**

3.1 The Assembly is invited to take the following actions:

- a) ICAO should develop and adopt a long-term vision for international air transport liberalization including the examination of an international agreement by which States could liberalise market access;
- b) States should take into consideration that fair competition is an important general principle in the operation of international air services;
- c) ICAO should actively encourage States to seek fair and open competition in their air services agreements, and should confirm that States are entitled to require this as a basis for agreeing further market access;
- d) States, taking into account national sovereignty, should develop competition laws and policies that apply to air transport;
- e) ICAO should develop tools such as an exchange forum to enhance cooperation, dialogue and exchange of information between Member States in order to promote

more compatible regulatory approaches toward international air transport including labour;

- f) ICAO should continue to monitor developments in the area of competition in international air transport and update its policies and guidance on fair competition;
- g) States should continue to liberalise air carrier ownership and control, according to needs and circumstances, through various existing measures such as waivers of ownership and control restrictions in bilateral air services agreements or designation provisions recognising the concept of community of interest within regional or sub regional economic groupings;
- h) ICAO should initiate work on the development of an international agreement to liberalise air carrier ownership and control, taking into consideration safety and security concerns, the principle of reciprocity, the need to allow a gradual and progressive adaptation with safeguards, the need to take account of regional experiences, the requirements of various States' domestic laws, and the effects on all stakeholders including labour;
- i) in parallel, States should consider abolishing progressively, with appropriate safeguards as necessary, any remaining restrictions on air carrier ownership and control in their national laws; and
- j) ICAO should develop, in the short term, a set of high-level, non-prescriptive core principles on consumer protection in air transport which should include non-discrimination, especially for passengers with disabilities and passengers with reduced mobility, transparency of information as well as compensation and assistance in case of denied boarding, short-notice cancellations and long delays under certain conditions.

3.2 The Assembly is invited to endorse that ICAO's Work Programme for 2014-2016 reflect the recommendations set out in paragraph 3.1.

3.3 The Assembly is also invited to reflect these actions in the revised Consolidated statement of continuing ICAO policies in the air transport field (Assembly Resolution A37-20).

4. CONCLUSION

4.1 ICAO should continue to play a leading role in the economic regulation of international air transport with a view to ensuring its sustainability. ICAO should therefore review its policies in the area of economic regulation, and should establish and implement a Work Programme for 2014-2016 which will focus on the four key areas identified above and will set clear priorities.

4.2 The States presenting this paper stand ready to support ICAO's efforts to implement such a programme, and invite other States to do the same. Furthermore, States are invited to follow in their bilateral relations the ICAO policies and principles, in pursuit of the objective of sustainable air transport.

APPENDIX A

CONDITIONS TO REACH A FAIR COMPETITION ENVIRONMENT³

1. In order to develop basic principles of fair competition, it is appropriate to set conditions to help determine whether there exists (or not) fair competition on a given air transport market. The following conditions are suggested:

a) Regulatory conditions:

- 1) the existence of efficient competition law at national or regional level covering the abuse of market power, merger control, anti-competitive agreements and concerted practices, which is applicable to international air transport, as well as clear, transparent and strict state aid rules applicable to undertakings under the jurisdiction of the State concerned⁴ and ensuring the achievement of the objectives associated with fair and open competition; and
- 2) transparent and non-discriminatory minimum rules, based on applicable ICAO Standards and Recommended Practices if any, covering the areas of aviation safety, security, air traffic management, ground handling, slots, air passenger rights, environmental protection, social rights of aviation personnel, taxes/user charges.

b) Institutional conditions:

- 1) separation of institutions: an independent civil aviation authority (independent from airlines, air navigation services providers, airports etc.), an independent competition authority, and an independent judiciary to review decisions by authorities in air transport matters; and
- 2) such independent authorities must have clear regulatory/judicial responsibilities and powers as well as the necessary administrative capacities (including resources) to effectively carry out their responsibilities.

c) Economic conditions:

- 1) when public entities provide - under specific conditions and respecting the applicable strict state aid rules - state aid, subsidies or support to their air carriers, they should act as a rational private investor would do, without distorting competition in the market. In case the market cannot provide air services serving public interest (e.g. to/from remote areas of the country), state aid may be provided subject to transparent and non-discriminatory rules enshrined in strict legal requirements;

³ See EU-ECAC Working Paper ATConf/6-WP/51

⁴ See EU Information Paper ATConf/6-IP/4 on competition and state aid policies and laws applied to the air transport sector

- 2) transparent structures and relations between the State and economic entities throughout the whole aviation value chain should be in place including as regards financial flows; and
- 3) non-discriminatory and transparent treatment of foreign airlines: this would involve, for example, no royalties or mandatory commercial agreements between national and foreign airlines, but commercial freedom of foreign airlines regarding pricing, ticket selling etc., non-discriminatory taxes, refunds, charges and access to airport facilities and services.

2. **Possible instruments to establish and maintain fair and open competition**

2.1. On the basis of a global understanding of fair competition, instruments should be developed and used by ICAO Member States to establish and maintain conditions of fair competition in international air transport. These instruments may include, *inter alia*, national or regional legal and institutional frameworks, comprehensive aviation agreements, fair competition clauses in bilateral air services agreements, and a dispute resolution mechanism preferably through ICAO to resolve fair competition concerns between States, without prejudice to the application of competition law.

APPENDIX B

KEY PRINCIPLES OF CONSUMER PROTECTION⁵

1. The following basic principles are offered for consideration by ICAO to form the basis of an ICAO consumer protection policy in air transport in order to harmonise existing regulation and encourage States without legislation to protect passengers by adopting appropriate rules:

- a) Non-discrimination in access to air transport: this should include preventing air carriers from discriminating during ticketing by nationality, residence, disability or reduced mobility. For persons with disabilities and persons with reduced mobility, the provision of access and assistance has to be granted without any additional charges. Such persons should not be refused carriage on board an aircraft except on reasons of safety, which air carriers would have to justify;
- b) Transparency: this should include the right for the passengers to have accurate, timely and accessible information in particular to:
 - 1) be able to obtain information on what is included within the price of their ticket. Passengers should have access to all relevant information (e.g. on price and charges applicable) in order to make a reasoned decision before buying an air ticket. Such information will enable them to fairly compare ticket prices and provides a level competitive playing field for industry. This approach would also ensure that air carriers detail the conditions and restrictions on any fare offered and that tickets are sold inclusive of all taxes, fees and charges, together with any "optional" charges – such as the carriage of luggage. This would prevent air carriers from advertising "tax-free" prices where charges that passengers have to pay are only added during the process of payment;
 - 2) be advised before departure on which air carrier they will be flying;
 - 3) receive appropriate information before the purchase of their flight ticket and at appropriate stages of travel, particularly when disruption occurs; and
 - 4) renounce travelling and obtain a full refund when the trip is not undertaken as planned due to the actions of the air carrier;
- c) Immediate and proportionate compensation and assistance: This includes compensation to be offered to the passengers under special circumstances, such as denial of boarding, short-notice cancellation of flights and under certain conditions long delays. It also includes the right for passengers to have assistance at departure or at connecting points in the form of, for example
 - 1) right to care, especially meals, refreshments, telephone calls, hotel accommodation and transport between the airport and place of accommodation; and
 - 2) right to rerouting or reimbursement and rebooking.

— END —

⁵ See EU-ECAC Working Paper ATConf/6-WP/55