



ASSEMBLY — 41ST SESSION

ECONOMIC COMMISSION

Agenda Item 35: Economic Regulation of International Air Transport — Policy

ENSURING THAT, DURING CRISES IMPACTING INTERNATIONAL AVIATION, AIR SERVICES AGREEMENTS CONTINUE TO PROVIDE A PREDICTABLE FRAMEWORK

(Presented by Czechia on behalf of the European Union and its Member States¹, and the other Member States of the European Civil Aviation Conference² and by the United States of America)

EXECUTIVE SUMMARY

Most international air services are governed by bilateral or multilateral Air Services Agreements (ASAs) among States or regional groups of States. ASAs are therefore highly relevant to any discussion about the mitigation of such crises and the recovery of air transport.

Several factors are important to facilitating the continuation of traffic during a crisis and a return to “normal” afterwards, including ASAs, which are indispensable to international air transport because they provide a predictable framework where air carriers can operate and sustain future air services.

This paper recommends that the Air Transport Regulation Panel (ATRP) is asked to prepare guidelines based upon principles as presented in paragraph 5.3, in order to provide States with the flexibility to temporarily adjust their international obligations whilst protecting the integrity of ASAs.

Action: The Assembly is invited to direct the ICAO Council and its working bodies, in particular the ATRP, to develop guidelines based upon the principles in paragraph 5.3.

<i>Strategic Objectives:</i>	This working paper relates to the Strategic Objective – <i>Economic Development of Air Transport</i>
<i>Financial implications:</i>	None
<i>References:</i>	

¹ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

² Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Iceland, Republic of Moldova, Monaco, Montenegro, North Macedonia, Norway, San Marino, Serbia, Switzerland, Türkiye, Ukraine and the United Kingdom.

1. INTRODUCTION

1.1 International air transport is highly vulnerable to global shocks and crises. From the 1991 Gulf War, the 1997 and 2008 financial crises to the 9/11 terrorist attacks, through to natural catastrophes, the COVID-19 pandemic and the Russian war of aggression against Ukraine, on each occasion the disruption has been significant.

1.2 Most international air services are governed by bilateral or multilateral ASAs among States or regional groups of States. ASAs are therefore highly relevant to any discussion about the mitigation of such crises and the recovery of air transport.

1.3 This paper recommends that any restrictions introduced in response to a crisis should be kept to a minimum but it outlines considerations for reconciling any such restrictions with the requirements of ASAs. This paper focuses in particular on lessons learned from the COVID-19 pandemic, which has been a shock of unprecedented scale to the international aviation system.

2. EXPERIENCE WITH THE COVID-19 PANDEMIC

2.1 In response to the COVID-19 pandemic, States worldwide reacted in many different ways and applied travel-related restrictions on passengers. These included quarantines upon arrival; the obligation to show the result of a test or proof of vaccination; entry bans; and general lockdowns, amongst other things. These various restrictions contributed to a very significant drop in international air traffic.

3. INTERNATIONAL OBLIGATIONS

3.1 As recognized in the Convention on International Civil Aviation dated 7 December 1944 (*Chicago Convention*), it is a State's sovereign right to determine the international air services that can be operated to/from its territory. Generally, such rights are exchanged through ASAs and the purpose of these treaties is to provide a legal framework and create guarantees for air services. Amongst other things, these treaties often provide for the right to impose rules on passenger entry.

3.2 A fundamental consideration for ASAs is the principle of reciprocity. In effect, if one party unilaterally limits bilaterally agreed traffic rights, it is in clear breach of its international obligations unless, of course, the terms of the ASA allows such action.

4. CONTINUATION OR RESUMPTION OF AIR TRAFFIC

4.1 The following factors are important to facilitating the continuation of traffic during a crisis and a return to "normal" afterwards:

- Airlines, not governments, are best placed to decide, perhaps on a daily basis, how to adjust their capacity to meet demand, whilst ensuring the health of their passengers. Similarly, at the end of a 'crisis period', allowing airlines to decide how and when to increase their operations should help bring about a smooth return to "normal".
- Restrictions on passenger entry compared to, say, "flight bans" are in line with the World Health Organization (WHO) policy, since the continuation of direct links enables sanitary authorities to keep track of travel flows. Keeping direct flights makes pandemic track and trace systems work better, whereas flight bans generate indirect journeys that are far more difficult to trace

5. RECOMMENDED PRINCIPLES

5.1 It should be recognized that in response to a major crisis emerging at short notice, a State may need to act quickly and decisively. Such considerations might make it difficult for a State to fulfil all its obligations under existing ASAs.

5.2 ASAs are indispensable to international air transport because they provide a predictable framework where air carriers can operate and sustain future air services.

5.3 In order to provide States with the flexibility to impose restrictions whilst protecting the integrity of ASAs, it is recommended that the ATRP be asked to prepare guidelines based upon the following principles:

- In the first instance, Parties to an ASA should seek to identify a way forward that is least disruptive for the functioning of the ASA.
- The immediate introduction of any restrictions on public health grounds, etc., should only be permissible in extremis.
- A State requiring any restrictions should endeavour to consult with other Parties if requested. Such consultations should explain the reasons behind any restrictions and promote broader cooperation on mitigating the effects of the crisis.
- Parties should ensure that restrictions include an expiry or review date and should endeavour to consult on any extensions if requested.
- Restrictions should only last as long as is strictly necessary due to the crisis and the shared intent should always be to return to normal as quickly as possible.
- Explaining the rationale for any restriction is important and therefore airlines should be informed in a clear and transparent way of why it is necessary to restrict their operations and what they need to do to facilitate a return to normal.
- Any measures taken must be fully transparent and non-discriminatory, taking due regard of the need for continued access during the crisis to essential services required to provide air services (e.g. adequate crew facilities, other airport services).
- Finally, Parties should identify an exit strategy enabling a return to normality, based upon objective criteria, for the resumption of air services. This would allow airlines and passengers to plan for the future with confidence.