

EUROPEAN AVIATION UPDATE

What this paper is about

- To provide, for the information of the Liaison Group, a brief round-up of current EU activity in the field of aviation *not* covered by reports which appear elsewhere on the Agenda for this meeting including:
 - Airport capacity, efficiency and safety in Europe – para 1
 - EU Emissions Trading Scheme (EU ETS) – para 5
 - Air Quality – para 9
 - Rules and Procedures for Introducing Noise Related Operating Restrictions – para 11
 - Airport Charges – draft EU Directive – para 13
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Points for Discussion

The paper is largely for the information of members and there are no particular points for discussion. It should be noted that paragraphs 23-26 about *Slot Allocation* are relevant to another paper on the Agenda - "UK regional domestic air services – preservation of slots at key UK airports"

Points for Possible Action

The meeting will wish to ask the Secretariat to keep members up to date on the various issues outlined in this paper

Note: Most of the regulations, directives, consultation papers and reports referred to in this report can be readily accessed from the Euro Round-up page of the Liaison Group's website at <http://www.ukaccs.info/euro.htm>. The Secretariat is happy to provide electronic or hard copies of any of these documents if required. The web page is regularly updated and is a ready source of current information on European initiatives in aviation.

Airport capacity, efficiency and safety in Europe

1. As reported last year the European Commission (EC) on 24th January 2007 published a *Communication* on airport capacity, efficiency and safety in Europe¹. According to the Commission's press release² the communication "provides a comprehensive action plan detailing a coherent strategy for responsibly tackling congestion at European airports".
2. The measures described in the Communication aim to accommodate traffic growth in an environmentally sustainable manner as follows:
 - to optimise the use of existing capacity;
 - to provide a coherent approach to air safety operations at aerodromes;
 - to promote "co-modality";
 - to improve the environmental capacity of airports and the planning framework of new airport infrastructure; and
 - to develop and implement cost efficient technological solutions
3. There is a useful summary of the proposals in the Commission's impact assessment on their website³.
4. Early in October 2007 the EU Council reviewed the Commission's *Communication* and their conclusions were recorded in a press release⁴ issued at the end of the meeting.

EU Emissions Trading Scheme (EU ETS)

5. As previously reported the EC on 20th December 2006 published its proposal for legislation⁵ for aviation to be brought into the EU ETS.
6. On 30th March 2007 the UK Government launched a consultation on the Commission's proposals and on the Government's initial analysis of the changes required to them. The comments received would guide the UK Government's negotiating position. Details of the consultation document and associated papers were circulated to all members. They can also be seen on the DfT's website⁶. The closing date for comments was 1st June 2007.
7. On 20th December 2007 the EU's Environment Council reached political agreement on the proposals. The Council's position is close to the Commission's original proposal and most of the changes are technical improvements. There are, however, some changes of a more political nature, including:
 - The one-year introductory phase for intra-EU flights proposed by the Commission has been dropped and the scheme will now become operational in a single phase, starting in 2012.
 - Emissions will be capped at 100 percent of the average level for the years 2004-2006.
 - The level of auctioning has been increased to 10 percent and revenue from the auctioned allowances is to be used to combat climate change.
 - An exemption has been introduced for operators with very low traffic levels on routes to, from or within the EU. Under this mechanism many operators from developing countries with only limited air traffic links with the EU will be exempt. This will not have a significant effect on the emissions covered by the scheme.
 - A special reserve of free allowances for new entrants or very fast-growing airlines has been added. While this was not contained in the original proposals of the

¹ http://ec.europa.eu/transport/air_portal/airports/doc/2006_communication_action_plan_en.pdf

² [Click here](#) to see the press release

³ <http://register.consilium.europa.eu/pdf/en/07/st05/st05886-ad02.en07.pdf>

⁴ <http://www.ukaccs.info/eucouncilpr1007.pdf>

⁵ http://ec.europa.eu/environment/climat/pdf/aviation_ets_com_2006_818-21273_en.pdf

⁶ <http://www.dft.gov.uk/consultations/closed/aviationemissionstrading/>

Commission, it was found to be acceptable as the reserve is taken from within the overall cap and does not therefore affect the environmental effect of the scheme.

- A new mechanism to ensure consistent and robust enforcement throughout the EU has been introduced. As a last resort, Member States could ask for an operator to be banned from operating in the EU if it persistently has failed to comply with the scheme and other enforcement measures have proven ineffective.
8. The next stage is for the political agreement to be formally adopted as a "common position" and the proposal will then be sent to the European Parliament for its second reading.

Air Quality

9. As previously reported the EC in September 2005, published a thematic strategy on air pollution and a proposal for a new air quality directive. The draft Directive would revise the current ambient air quality legislation:
- by merging five legal instruments into a single directive.
 - introducing air quality standards for fine particulate matter (PM2.5) in the air, because of the large health benefits to be obtained.
10. Since then the proposed Directive has been working its way through the EU's legislative procedures. At its plenary session of 11 December 2007 the European Parliament adopted a compromise package of 26 amendments which had been agreed with the European Council with a view to reaching a second reading agreement. In April 2008 the EC accepted the 26 amendments. The conclusion of the compromise package was facilitated by the adoption of a Declaration⁷ by the Commission on Community measures necessary for reducing emissions at source. The Secretariat will keep members in touch with the progress of this Directive.

Rules and Procedures for Introducing Noise Related Operating Restrictions

11. EU Directive 2002/30, which came into effect on 28th March 2002, prescribes rules and procedures for introducing noise related operating restrictions at Community Airports. In July 2003 the UK Government made the *Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003 (SI 2003/1742)*. These came into effect on 6th August 2003 and provide that the responsibility for undertaking the assessments required by the Directive, and for reaching any consequent decision about operating restrictions (which may include prohibiting the noisiest aircraft from the airport either at certain times or completely), should rest with:
- the Secretary of State for Transport, in the case of airports designated for the purposes of Section 78 of the Civil Aviation Act 1982 (currently the three London airports - Heathrow, Gatwick and Stansted)
 - the airport operator, in the case of all other (i.e. non-designated) airports to which the Directive applies.

and that these bodies would be "competent authorities" under Article 3 of the Directive.

12. Article 14 of the Directive requires the EC to report to the European Parliament and to the Council on the application of the Directive no later than five years after its entry into force. The report, published on 15th February 2008, can be seen on the EC's website⁸

Airport Charges – draft EU Directive

13. At the last annual meeting members received a paper⁹ on this proposed directive noting that the Department for Transport (DfT) was currently seeking views on the EC's proposals so as to establish a UK negotiating position.

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0163:FIN:EN:PDF>

⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0066:FIN:EN:PDF>

14. The Secretariat told the meeting that if implemented as currently drafted the Directive would have significant implications for the airport operators, airlines and the CAA. It was explained that in order to deal with problems at a handful of airports in Europe which act in an anti-competitive or discriminating way, it was likely that the Directive would give rise to more problems than solutions at UK airports. The meeting considered the issues of concern set out in the paper and agreed that they should be included in a response to the DfT together with a suggestion that the thresholds for the present system of economic regulation under the Airports Act 1986 should be reviewed. It was felt that the £1million turnover threshold was now out of date and that it should be reviewed so as to release some airports from CAA regulation.¹⁰
15. On 15th January 2008 the DfT wrote to stakeholders describing the progress of negotiations. The letter said that the text currently agreed by Member States contained a number of key amendments to the original draft, which they believed improved the draft Directive:
 - The scope of the Directive was now drafted to apply to airports with 5 million passengers per annum. This reduces the number of UK airports covered by the Directive from 20 to 11. Based on 2006 data, these are Heathrow, Gatwick, Stansted, Manchester, Luton, Birmingham, Glasgow, Edinburgh, Bristol, Newcastle and Belfast International.
 - An amendment allowed the UK 's current system of economic regulation under the Airports Act 1986 to continue in place of the Directive's provisions on right of appeal to the regulator in the event of disagreement over airport charges. The principle of establishing objective and transparent criteria for appeals to the regulator about airport charges in other Member States has also been incorporated into the text.
 - The requirement for airports and users to consult over the level of charges was no longer a yearly obligation, but allowed for multi-annual agreements. A greater degree of flexibility had also been introduced to the proposed timeframe for announcing changes in charges.
 - The extent of information which airports need to provide to users when consulting over charges was now more proportionate. This had to be provided by all airports in the Directive's scope, including those which are in airport networks.
 - There were also a number of other more minor changes about service level agreements (which are no longer a requirement), the treatment of airport networks and the length of the Directive's implementation period.
16. The proposed Directive is still working its way through the EU's legislative procedures. The Secretariat will keep members in touch with its progress.

Aviation Security

17. Members will recall that in September 2005 the Commission announced that it proposed to strengthen the provisions of Regulation EC 2320/2002 which established common rules for civil aviation security. The announcement followed on from a report of the EC published the same month on the implementation of the 2002 Regulation. Subsequently the Commission published a new draft Regulation (COM 2005/429) - which was finally approved as Regulation (EC) No 300/2008¹¹ of 11 March 2008. This replaced the 2002 Regulation.
18. For an update on Aviation Security at UK level see the paper *UK Security Update* elsewhere on the Agenda for this meeting

⁹ <http://www.ukacccs.info/07almfiles/07airportcharges.pdf>

¹⁰ For more about this see the UK Aviation update paper elsewhere on the Agenda for this meeting

¹¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:097:0072:0084:EN:PDF>

Passenger Name Record (PNR)

19. This proposal for a Council framework decision, adopted on 6th November 2007 and now with the Council and the European Parliament for approval, proposes that air carriers should make available Passenger Name Record (PNR) data for flights entering or departing from the EU to a Passenger Information Unit which will be designated in each Member State. The proposal is made in the context of the fight against terrorism and transnational organised crime.
20. The data would be processed for the purpose of carrying out a risk assessment of the threat level of unknown passengers. Thus, the competent authorities of the Member States would receive the data in electronic form and well in advance of a flight's arrival.
21. Arrangements for the transmission of PNR data have been concluded with the United States and Canada. The EC believes it can be anticipated that more third countries are likely to request the provision of PNR data from air carriers operating flights from the EU.

European Aviation Safety Agency

22. It is the EC's intention progressively to extend the functions and responsibilities of EASA. On 15 November 2005 they put forward proposals to:
 - make EASA responsible for pilots' licences "to guarantee that they comply with common European rules on knowledge, skills and language proficiency".
 - lay down the essential requirements that aircraft must observe when operating in the EU, whether they are EU or third country planes. These requirements would henceforward be the responsibility for EASA.
 - make EASA responsible for certifying compliance by third country operators with the essential requirements for operating aircrafts in the EU.
23. This legislation - Regulation (EC) No 216/2008¹² - was approved (with amendments) earlier this year.

Slot Allocation

24. As noted last year the EC in September 2004 issued a Staff Working Document¹³ setting out ideas for further changes to European legislation on airport slot allocation and seeking the views of Member States. Members noted that the response of the UK Government¹⁴. included support for the Commission's proposal that parties other than air carriers could participate in slot trading. This proposal would in theory allow regional bodies to buy slots to protect regional services.
25. In preparing for further amendments to the European slots legislation the EC engaged a consortium consisting of Mott MacDonald & Oxera to undertake a study on the secondary trading of slots. The study¹⁵ was published in December 2006.
26. On 29 January 2008 the Commission organised a stakeholder hearing on the functioning of the slots Regulation. A report of hearing can be seen on Commission's website¹⁶ - the key conclusions were:
 - The Commission will concentrate on ensuring better implementation of the existing Regulation. In addition, the Commission would shortly issue a Communication to clarify a number of provisions which may not be uniformly applied across Member States, in particular with respect to the secondary trading of slots.
 - Later the Commission might consider reviewing a number of provisions of the Regulation if ultimately this proved to be necessary. In any case, the Commission

¹² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:079:0001:01:EN:HTML>

¹³ http://ec.europa.eu/transport/air_portal/consultation/doc/2004_12_01/2004_consultation_paper_en.pdf

¹⁴ <http://www.dft.gov.uk/pgr/aviation/airports/ukresponsetoeuropeancommissi2842>

¹⁵ http://ec.europa.eu/transport/air_portal/airports/doc/2006_slots_final_report.pdf

¹⁶ http://ec.europa.eu/transport/air_portal/airports/doc/2008_01_29_presentations/conclusions.pdf

would facilitate the involvement of stakeholders and Member States in further developments regarding slot allocation. In this respect, “the *Community Observatory* on airports, which will be set up in the coming months, may be a forum in which all qualified parties will be in a position to effectively tackle slot issues”.

27. The UK Government supports the secondary trading of slots and to help inform its position on the use of alternative market mechanisms (e.g. auctions) to allocate new capacity it commissioned a study by *DotEcon Ltd*. The study was published in October 2006¹⁷. The UK's position on all slots matters is of course subject to the details of any proposals of the Commission as and when they emerge. The Secretariat will keep members in touch with its progress.
28. Meanwhile on 15th November 2007 the Commission issued a *Communication*¹⁸ reporting on the operation of Regulation (EC) No 793/2004 adopted in April 2004 to give more clarity and transparency to the current rules, notably by taking away any ambiguity in relation to the principles and procedures of slot allocation, the status of the slot coordinator and the imposition of sanctions to prevent any abuse of slots that would further worsen the scarcity of slot capacity at congested Community airports. The amendments also included clarification of the definition of a slot as a ‘permission’ rather than ‘entitlement’, thus eliminating any risk of a slot being interpreted by airlines as a property right. This was backed up by a further *Communication*¹⁹ issued at the end of April 2008 which noted that some stakeholders and Member States consider that a number of the 2004 provisions are still not fully or completely implemented and in particular:
 - In spite of the obligation on Member States to guarantee the functional and financial independence of the coordinator at coordinated airports, there still appear to be cases of insufficient application of these requirements in some Member States, which could impede the coordinator’s functioning under the Regulation in a neutral, non-discriminatory and transparent way.
 - In some Member States significant problems remain with ensuring full transparency of the information that coordinators and schedules facilitators hold regarding historical, requested, allocated and available slots. This could hinder a more efficient use of slots and distort competition as not all interested parties may have the same degree of access to this schedule data.
 - While local guidelines have the potential to allow for the better use of the existing slots at coordinated airports, it should be ensured that they comply with Community law.
 - At a number of congested Community airports, air carriers exchange slots for monetary and other consideration. Some doubts have been raised regarding the compatibility of such exchanges with the Regulation.
 - Finally, there is a greater need for effective consistency between slots and flight plans in order to avoid slot abuse and to guarantee compliance with the Regulation, as evidence suggests that verification of flight plans against slots rarely takes place in a systematic manner, even though the possibility to do so is provided for in the Regulation.

Revision of the third package for liberalisation of air transport

29. Members will be aware from previous submissions that during 2003 the EC carried out a consultation about the revision of Regulations (EEC) 2407/92, 2408/92 and 2409/92

¹⁷ <http://www.dft.gov.uk/pgr/aviation/airports/alternativeallocationmechani1040>

¹⁸ http://ec.europa.eu/transport/air_portal/airports/doc/2007_11_15_communication_slots_regulation_en.pdf

¹⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0227:FIN:EN:PDF>

together known as "the third package" for liberalisation of air transport. The consultation paper, and the responses, can be seen on the EC website²⁰.

30. Firm proposals²¹ for the revision of the third package were finally issued on 18th July 2006.
31. Many of the matters covered by the proposed Regulation lie outside the ordinary remit of Airport Consultative Committees but some of the proposals might be of interest to some delegates. For example it is proposed:
 - that the procedures for public service obligations (PSOs) should be revised. PSOs allow member states to arrange air services to isolated or developing areas where these appear vital and to provide financial support. The revisions aim to reduce the administrative burden, avoid excessive recourse to PSOs for closing certain markets to competition and attract more competitors to the tender process.
 - that there should be revisions to the right of member states to establish non-discriminatory rules for the distribution of air traffic between airports within the same "airport system" - Heathrow, Gatwick and Stansted is defined in the 1992 Regulation as one such system. It is suggested that the definition of an airport system could be tightened up by adding the criterion that there must be sufficient links between the airports and the centre of the conurbation they serve (e.g. a public transport system).
32. On 25th October 2006 the UK Department for Transport launched a consultation exercise with the aim of ensuring that the final regulation would benefit consumers and operators. The closing date for responses was 19 January 2007 and the Department's summary of the replies was published in May 2007. These documents can be seen on the Department's website²²
33. In November 2007 it was reported that agreement had been reached between the Council and the European Parliament on the shape of the new Regulation²³ and this was the subject of a Communication²⁴ from the Commission to the Parliament on 21st April 2008. The proposed Regulation is now going through the second reading of the co-decision procedure. It is expected that the European Parliament will vote on the Commission proposal in its July 2008 plenary session. Since a common position has been agreed by the European Parliament and the Council the new legislation is expected to come into force in September or October of this year.

Ground Handling

34. This is another long running saga – see paragraphs 31-36 of last year's European Aviation Update²⁵.
35. The last word on the subject was in January 2007 when the EC, as part of its 'Airport Package', published a report on the implementation of the 1996 ground handling directive. According to the Commission's press release this "demonstrates the positive effects that the initial phase of liberalisation has had on opening up access to ground handling markets at European airports to competition and opens the door for a debate as to the next steps that need to be taken".
36. Nothing more has been heard.

²⁰ http://ec.europa.eu/transport/air_portal/consultation/2003_05_15_en.htm

²¹ http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0396en01.pdf

²² <http://www.dft.gov.uk/pgr/aviation/international/thethirdaviationpackageanint1071/>

²³ [See Press Release](#)

²⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0175:FIN:EN:PDF>

²⁵ <http://www.ukaccs.info/07almfiles/07euroroundup.pdf>

Computerised Reservation Systems

37. Computerised Reservation Systems (CRSs) provide customers with instantaneous information about the availability of air transport services and the fares for such services. They permit travel agents, whether brick and mortar or on-line, to make immediate confirmed reservations on behalf of the consumer.
38. The EU's Code of Conduct for Computerised Reservation Systems ("the Code of Conduct") was first established in 1989 with the adoption of *Regulation 2299/89* on 24 July. Given that the vast majority of airline bookings were made through CRSs and that most CRSs were owned and controlled by airlines, it was felt that, in order to deal with the competition concerns arising in the supply chain of air transport products, it would be more efficient in terms of transport policy and market efficiency to develop an ad hoc regulatory framework rather rely on the generally applicable provisions of competition law.
39. The Code of Conduct has been revised twice since 1989. Since the last revision the airline distribution market has gone through important developments: most airlines have given up their participation in CRSs – although some airlines still hold minority ownerships - and alternative distribution channels are gaining ground, mainly because of the development of direct Internet sales.
40. In November 2007, following a consultation exercise earlier that year, the Commission issued new proposals to simplify and modernise the rules²⁶. If approved the new Code will introduce pricing freedom into the CRS market. Unlike today, CRSs and airlines will be free to negotiate the booking fees charged by the reservation systems and the information content provided by the airlines. More competition will contribute to higher efficiency in the sector in terms of price and service quality.
41. At the same time, the revised Code maintains safeguards to protect against competitive abuse by airlines that own or control CRSs. It contains provisions to ensure an unbiased presentation of travel options in the CRS displays as well as the display of 'all-inclusive' air fares. The Code also provides for the protection of personal data.
42. The EC's proposals are now working their way through the EU's legislative procedures. The Secretariat will keep members in touch with its progress.

European Single Sky

43. As previously explained the Single European Sky means a fundamental change in air traffic management in Europe. Working together, the EC and Eurocontrol are aiming for a single European Air Traffic Management (ATM) infrastructure, known as SESAR.
44. The *Definition Phase* of SESAR has been in progress for some time. The aim is to produce an ATM Master Plan for Europe defining the content, development and deployment plans of the next generation of ATM systems. This definition phase is being led by Eurocontrol and co-funded by the EC under the Trans European Network-Transport programme. The work is being executed by "a consortium of air transport stakeholders".
45. The next phase will be the *Development Phase* (2008-2013). This will produce the required new generation of technological systems and components as defined in the definition phase. For this phase the Commission has proposed the creation of "a joint undertaking, based on the GALILEO model, which will federate public and private funds (Community, Eurocontrol, industry and third countries) and guarantee a single management structure for the project, as well as a governance model associating all actors involved (public and private)".

²⁶ [See press release](#)

46. The final phase will be the *Deployment Phase* (2013-2020). This will seek to build the new infrastructure both in Europe and in partner countries. This will be carried out by the industry without further public funding.
47. For more information visit the SESAR website²⁷

Insurance for Air Carriers and Aircraft Operators

48. The absence of legislation requiring private aircraft to have third party insurance was one of the issues raised at the 2002 Annual Meeting of ACCs at London Gatwick. The following year in Birmingham, the Annual Meeting received a paper noting that in the wake of the terrorist attacks in New York on 11th September 2001, the question of the insurance requirements for air carriers and aircraft operators was already under consideration by the European Commission.
49. European Regulation EC 785/2004, which includes a sliding scale of cover, finally took effect at the end of April 2005.
50. The Regulation requires the EC to submit a report to the European Parliament and the Council on the operation of this Regulation by 30 April 2008. In preparation for this the Commission in mid-2007 issued a discussion paper²⁸. The closing date for comments was 22nd November 2007.
51. The Commission's 15 page report²⁹ was issued on 24th April 2008. It concludes that the Regulation "has been effective in ensuring insurance coverage of all aircraft operators flying within, to or from the Community. There have been very few cases of aircraft operators not complying with the insurance requirements. Civil aviation authorities from Member States reported that some third-country carriers – usually charter carriers from Central Asia – suspended their operations after the entry into force of the Regulation. The insurance market provides all air carriers and aircraft operators with the coverage required by the Regulation." The report mentions a number of issues which need "further clarification". These are concerned mostly with insurance certificates.

Stuart Innes
May 2008

²⁷ <http://www.sesar-consortium.aero/>

²⁸ http://ec.europa.eu/transport/air_portal/consultation/doc/2007_11_17/09_21_discussion_paper_insurance.pdf

²⁹ http://ec.europa.eu/transport/air_portal/internal_market/doc/insurance/comm_en.pdf