

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:

- EU Emissions Trading Scheme (EU ETS) – paras 1-7
- Air Quality – paras 8/9
- Rules and Procedures for Introducing Noise Related Operating Restrictions – paras 10/12
- Airport Charges – paras 13/18
- Slot Allocation – paras 19/22
- Revision of the third package for liberalisation of air transport – paras 23/26
- Ground Handling – paras 27/30
- Computerised Reservation Systems – paras 31/34
- Integrated Air-Rail Ticketing – paras 35/38
- Single European Sky (SES) – paras 39/44

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 19-22 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.

EU Emissions Trading Scheme (EU ETS)

1. As previously reported the EC on 20th December 2006 published a draft legislative proposal for including aviation in the EU ETS.
2. The proposal to include aviation in the EU ETS was adopted by the Council of the European Union on 24 October 2008 and the relevant Directive (2008/101/EC), which amends the existing EU ETS Directive (2003/87/EC), was published in the Official Journal of the European Union on 13 January 2009¹. It entered into force on 2 February 2009.
3. The Directive as adopted contains some important changes when compared with the proposals originally drawn up by the Commission:
 - Aviation will be included in the EU ETS in 2012 (although monitoring of emissions and benchmarking data will begin in 2010); a proposed one-year introductory phase for intra-EU flights starting in 2011 has been dropped.
 - Net CO₂ emissions from aviation in the EU will be under a legally-binding cap of 97% of average 2004-2006 levels in 2012 with the cap tightening to 95% of average 2004-2006 levels from 2013, although there is a provision to amend the level of the emissions cap in the General Review of the EU ETS Directive.
 - Airlines will receive 85% of their emission allowances for free in 2012. The auctioning level for 2013 onwards will be negotiated in the wider EU ETS Directive Review negotiations.
 - An exemption has been introduced for operators who operate at a frequency lower than 243 flights into, out of, or within the EU in a four month period or who emit less than 10,000 tonnes of carbon dioxide per year. This means 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 EU ETS.
 - A special reserve of free allowances has been added for new entrants or very fast-growing airlines. The reserve will be 3% of the total capped allowances for that phase. These allowances will be allocated to operators in the 3rd year of a phase - to those who begin operating between the year for benchmarking data and 2nd year of phase and also to those whose revenue tonne kilometres total has increased by more than 18% per annum in the same period. The reserve does not increase the overall cap on allowances and therefore does not affect the environmental impact of the system. Airlines that are growing will be able to benefit from the reserve by a maximum allocation of one million allowances. A review of the continuing need for this reserve will also be included in the wider EU ETS Directive Review.
 - A new mechanism has been introduced to ensure consistent and robust enforcement throughout the EU. The mechanism is an escalation process where, at the point where a Member State has taken all reasonable action unilaterally, the matter is referred to the Community and subsequent action is taken by the Community as a whole. As a last resort, Member States could ask for an operator to be banned from operating in the EU if it persistently fails to comply with the system and other enforcement measures have proven ineffective.
4. Within Europe the legislation carries a fair amount of approval within the industry but elsewhere there is little support and, indeed, both IATA and the US Government have expressed their opposition.
5. Member States have until 2 February 2010 to transpose the directive into national law by bringing into force the laws, regulations and administrative provisions necessary to comply with the Directive. The UK Government announced the appointment of the Environment Agency (EA) as the UK regulator on 4 March 2009². The same day DfT

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:008:0003:0021:EN:PDF>

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

and DECC launched a joint consultation together with the Devolved Administrations for Northern Ireland, Scotland and Wales to seek views on the first set of draft implementing regulations. The regulations provide for a voluntary system for aircraft operators to apply for a free allocation if they fulfil certain conditions and also to require operators to submit a plan setting out how they will monitor emissions and to start monitoring their emissions from January 2010 in accordance with that plan. Details of the consultation were sent to all members. The closing date for responses is 14 May 2009.

6. A second set of draft Regulations to transpose the EU Directive into UK law in full will be subject to consultation later in 2009.
7. There is a useful article³ on the EU-ETS in the March 2009 issue of *Low Fare and Regional Airlines*. It deals with how the scheme will work for airlines and the preparations they will need to make for its introduction.

Air Quality

8. 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 aimed to 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.
9. The proposal was finally approved as Directive 2008/50/EC⁴ dated 21 May 2008 which appeared in the European Journal on 11th June 2008. Member States have until 11 June 2010 to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive. So draft regulations from the UK Government can be expected. The Directive obliges the Commission in 2013 to review the provisions related to PM2.5 and, as appropriate, other pollutants, and report to the European Parliament and the Council.

Rules and Procedures for Introducing Noise Related Operating Restrictions

10. As previously reported EU Directive 2002/30, which came into effect on 28 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 6 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.

11. Article 14 of the Directive required 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 15 February 2008, can be seen on the EC's website⁵. Among other things the Commission said it would examine ways of clarifying the provisions of Directive and its scope. It would also consider whether changes in the

³ <http://www.ukacccs.info/etsarticle0309.pdf>

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:152:0001:01:EN:HTML>

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0066:FIN:EN:PDF>

current Directive, such as the definition of marginally compliant aircraft, are needed. In doing so, it will take account of the outcome of estimates predicting that the growth in the number of people affected by noise could be reduced by a more stringent definition of marginally compliant aircraft.

12. In July 2008 the UK Department for Transport launched a consultation⁶ noting that it proposed to liaise further with the Commission and other member states in the autumn on plans for taking forward the Commission's review, so as to clarify the provisions and scope of the Directive. To inform those discussions the Department asked for comments from interested parties in the UK about the application of the Directive, possible ways to improve it and key elements which should not be lost. The closing date for comments was 19 September 2008. The Department is now waiting for the Commission to finalise its plans and timetable for reviewing the Directive.

Airport Charges

13. This Directive has been under consideration for some long time. It aims to set common principles to be observed by airport operators when determining their airport charges. It aims to clarify the relationship between airport operators and airport users by requiring transparency, user consultation and the application of the principle of non-discrimination when calculating charges levied on users. In addition, it aims to create strong, independent national authorities in the member states to arbitrate and settle disputes, in order to reach a speedy resolution.
14. At the annual meeting at Stansted two years ago members noted a number of problems with the original draft of the Directive (COM 2006/820) and agreed that these should be brought to the notice of the DfT together with a suggestion that the thresholds for the present system of economic regulation under the Airports Act 1986 should be reviewed.
15. Then on 15 January 2008 the DfT wrote to stakeholders describing the progress of negotiations. The letter said that the text then agreed by Member States contained a number of key amendments to the original draft, which they believed improved the draft Directive:
 - The Directive would apply to airports with 5 million passengers per annum. This reduced the number of UK airports covered by the Directive from 20 to 11. Based on 2006 data, these were 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 an annual 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 would 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 minor changes about service level agreements (which were no longer a requirement), the treatment of airport networks and the length of the Directive's implementation period.
16. In June 2008 the EU Council adopted a "common position" on the proposals and this was considered by the European Parliament when it gave the Directive a second

⁶ <http://www.ukaccs.info/dftbalancedapproach.doc>

reading in October 2008. The Parliament adopted a number of amendments⁷ and these were all adopted by the EU Council when it gave final approval to the Directive on 19 February 2009.

17. The proposal was finally signed off as Directive 2009/12⁸ dated 11 March 2009. Member states have until 15th March 2011 to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive. As expected the Directive applies to airports "open to commercial traffic whose annual traffic is over five million passenger movements and to the airport with the highest passenger movement in each Member State".
18. Elsewhere on the Agenda members will be considering the UK Government's proposed new system of regulation for airports. The 5 mppa threshold referred to in the EU's directive is compatible with the Government's proposed new regime which, as the Government notes, provides a proportionate and effective means to implement some of the provisions of the European directive.

Slot Allocation

19. The EU has been talking about changes to the EU rules on airport slot allocation since September 2004 when the Commission issued a *Staff Working Document*⁹ setting out ideas for further changes to European legislation on slot allocation and seeking the views of Member States.
20. The slot allocation rules are contained in *Regulation (EEC) No 95/93*¹⁰ as amended. The latest amendments are contained in *Regulation (EC) No 793/2004*¹¹ which aimed to provide more clarity and transparency to the current rules notably by taking away any ambiguity in relation to the principles and the 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 2004 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.
21. At the last Annual Meeting at Heathrow we reported that at the end of April 2008 the Commission had issued a *Communication*¹² on the application of the slot allocation Regulation. The Communication aimed to clarify a number of issues in order to ensure a better implementation of the existing rules and to improve the efficient use of scarce capacity at congested Community airports. In particular, it signalled the acceptance of "secondary trading" of airport slots between air carriers. The Communication also explained how the rules relating to the independence of the slot coordinator, new entry, and local guidelines were to be interpreted. There is more about this communication on the Liaison Group's website¹³.
22. No more has been heard from the Commission but in the UK the slot allocation rules continue to surface from time to time:
 - There have been press reports about the transfer of Heathrow slots by airlines for large sums of money.
 - There has been consultation on whether London City Airport should be designated as 'coordinated' for the purposes of the slot allocation regulations and, if so, whether the *Airport Coordination Limited (ACL)* should be appointed as the

⁷ See the EP's [Explanatory Statement](#)

⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:070:0011:0016:EN:PDF>

⁹ http://ec.europa.eu/transport/air_portal/consultation/doc/2004_12_01/2004_consultation_paper_en.pdf

¹⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993R0095:EN:HTML>

¹¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0793:EN:HTML>

¹² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0227:FIN:EN:PDF>

¹³ <http://www.ukaccs.info/euro.htm#slot>

coordinator. If this proposal is approved all the London Airports will be 'coordinated'.

- There has been discussion in the *Working Group* of the impact of the slot allocation regulations on the preservation of regional UK services to and from Heathrow and Gatwick which are important for passengers bound to from the regions who need to interline between air services. Elsewhere on the Agenda there is a paper on the whole issue of regional air services to London.
- The Commission in March 2009 submitted proposals (COM 121/200) temporarily to suspend the "use it or lose it rule". Currently rules force airlines to use the slots at busy airports at least 80 percent of the time or face losing them in the following season. But some airlines argued this obliges them to keep flying even when, because of the recession, this would be uneconomical. The Commission says this measure is planned for only one season. However, depending on how serious the situation appears as the 2009-2010 winter season approaches, the Commission might decide to renew all or part of the scheme. This has stirred up a good deal of controversy with criticism from the low cost carriers and the ACI Europe.

Revision of the third package for liberalisation of air transport

23. Members will be aware from previous submissions that the EC has been working on the revision of Regulations (EEC) 2407/92, 2408/92 and 2409/92 together known as "the third package" for liberalisation of air transport. Firm proposals for the revision of the third package were issued on 18th July 2006.

24. The new Regulation 1008/08 finally came into force on 1st November 2008. Many of the matters covered by the Regulation lie outside the ordinary remit of Airport Consultative Committees but some of the proposals might be of interest to some delegates. For example among other changes the new Regulation revises the rules relating to:

(a) Public Service Obligations

25. The regulation recognizes the possible need for a PSO when the economic development of a remote region or an island depends on it. In addition:

- The maximum "concession" period when the route is restricted to one single operator has been increased from three to four years and five years for "ultra-peripheral" regions. It is hoped this will attract more competitors to submit tenders given that depreciation costs of route-specific equipment will be reduced. At the same time, the longer concession periods reduce the administrative burden on the Member States.
- The regulation provides for an emergency procedure to appoint an alternative airline in situations of failure of the airline providing the PSO route.
- While recognizing the importance of PSOs, the regulation also aims to avoid abuse of the PSO system. It thus explicitly provides for proportionality between the obligations imposed and the economic development goals pursued. Furthermore, in case of doubt, it confers the right to the Commission to request a detailed economic report from the Member State concerned justifying the need for the PSO.

(b) Traffic Distribution Rules

26. A Member State may regulate the distribution of air traffic between airports provided they:

- serve the same city or conurbation (e.g. the London Airports – Heathrow, Gatwick, Luton, Stansted and London City);
- are served by adequate transport infrastructure, providing to the extent possible, a direct connection making it possible to arrive at the airport within 90 minutes, including when necessary, on a cross-border basis;

- are linked to one another and to the city or conurbation they serve by frequent, reliable and efficient public transport services; and
- offer necessary services to air carriers and do not unduly prejudice their commercial opportunities.

Ground Handling

27. This is another long running saga – see paragraphs 34-36 of last year's European Aviation Update¹⁴.
28. 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".
29. According to an article on Ground Handling on the Commission's website¹⁵ the Commission is considering the launch of a proposal to modify the present Directive. This proposal would aim "at a gradual increase of competition in the ground handling market while taking into account appropriate social protection of ground handling staff, and at a clarification and simplification of a number of provisions where necessary."
30. Nothing more has been heard. The Commission has been asked for an update but so far there has been no response.

Computerised Reservation Systems

31. Computerised Reservation Systems (CRS's) 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.
32. The EU's Code of Conduct for Computerised Reservation Systems was first established in 1989 with the adoption of *Regulation 2299/89*. Since then the airline distribution market has gone through important developments: most airlines have given up their participation in CRS's – although some still hold a minority stake - and alternative distribution channels are gaining ground, mainly because of the development of direct Internet sales. There was a growing feeling there was a need for change.
33. Following a period of consultation the Commission in November 2007 issued proposals to simplify and modernise the rules. The Commission's press release said the revision of the Code of Conduct would:
 - bring more competition by reducing booking fees and pushing airlines to offer more travel options via the CRS's.
 - ensure that all booking channels compete on a level playing field,
 - introduce pricing freedom into the CRS market. Unlike today, CRS's and airlines would be free to negotiate the booking fees charged by the reservation systems and the information content provided by the airlines. More competition would "contribute to higher efficiency in the sector in terms of price and service quality".
 - maintain safeguards to protect against competitive abuse by airlines which own or control CRS's. There was provision to ensure an unbiased presentation of travel options in the CRS displays as well as the display of 'all-inclusive' air fares.
 - provide for the protection of personal data.

¹⁴ <http://www.ukaccs.info/08almfiles/08euroroundup.pdf>

¹⁵ http://ec.europa.eu/transport/air/airports/ground_handling_market_en.htm

34. During 2008 the proposals worked their way through the EU approval machinery and Regulation 80/2009¹⁶ finally came into force on 29 March 2009. The Regulation requires the Commission by 29 March 2013 to report on the application of the new Regulation, including the need to maintain, amend or repeal it.

Integrated Air-Rail Ticketing

35. At the end of July 2008 the Commission launched a consultation¹⁷ on the integration of air-rail ticketing.
36. On the basis that integrated ticketing can be an important factor in generating demand for intermodal air-rail services, the consultation was part of a process to examine the organisational and technical opportunities related to the sale and promotion of such services and to open a debate on a voluntary engagement of stakeholders towards the development of integrated ticketing as announced in the EC Communication on passenger rights and reaffirmed in the EC Communication on airport capacity.
37. According to the Commission the need for integrated ticketing arises when a passenger intends to travel using several transport modes and/or several transport operators within the same mode. Such a service requires the availability of easily accessible information on the various parts of the journey as well as the adoption of interactive reservation systems which make it possible to make reservations for the whole journey. However, information is often available only separately for each mode of transport and/or by operator. Consequently, says the Commission, the introduction of integrated ticketing requires the development of integrated information, reservation and sales systems.
38. The deadline for responses was 30 September 2008. It is understood that following the consultation the Commission consider that a specific study will be required to help develop further policy. Key issues which need to be covered include the role of airport express services and integration with local transport. The Commission are expected to announce further details later this year.

Single European Sky (SES)

(a) Single European Sky ATM Research (SESAR)

39. As previously reported the Single European Sky initiative will mean 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 (formerly SESAME). This will “fully coordinate airspace users, operators and the supply industry and bring together the regulatory framework, funding sources, and implementing actors across Europe”. As reported last year the SESAR project has three phases:
- The *Definition Phase*: 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.
 - The *Development Phase* (2008-2013): This will produce the required new generation of technological systems and components as defined in the definition phase.
 - The *Deployment Phase* (2013-2020): This will seek to build the new infrastructure both in Europe and in partner countries.
40. The Definition Phase was launched in June 2005. It was “a collective effort, bringing together the full range of stakeholders including the manufacturing industry, airports, airlines and air navigation service providers”. The work brought about the publication

¹⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:035:0047:01:EN:HTML>

¹⁷ <http://www.ukaccs.info/intticketingconsult.pdf>

November 2008 of the *Air Traffic Management Master Plan*¹⁸ which provides the roadmap for the development and deployment phases of the SESAR programme. This was formally approved by the Single Sky Committee on 30 March 2009.

41. The Development Phase is now in progress. To give effect to the governance structure planned by the Commission to run the Development Phase - a Joint Undertaking under Article 171 of the EC Treaty – the Council on 27 February 2007 passed Regulation (EC) No 219/2007¹⁹.

(b) *New Legislation (SES II)*

42. Meanwhile, on the legislative front the EC on 25 June 2008 unveiled its second package of legislation for a Single European Sky (SES II). In publishing proposals the Commission noted that the Single European Sky regulation adopted in 2004 (SES I) had not delivered the expected results in some important areas. The process of integration within functional airspace blocks (FABs), regardless of national borders, had encountered numerous hurdles. Air traffic control is mistakenly related to national sovereignty. This is a complex argument, but, instead of prompting innovative solutions for exercising sovereignty, it has been used to block cross-border integration. Moreover, There has been “little progress in the overall efficiency of the design and use of the European air network”.

43. This second package is based on four pillars:

- First Pillar: “Regulating performance”

The first *pillar* introduces several enhancements to the original SES legislation to improve efficiency, enhance capacity and reduce the environmental impact of aviation. These enhancements include the setting of binding performance targets (including economic and environmental targets) which will be overseen by an independent performance review body, a definitive date for Member States to implement Functional Airspace Blocks and the strengthening of the network management function.

- Second Pillar: “Second Pillar “A single safety framework”

The *safety pillar* provides for EASA's competence to be extended into the areas of air traffic management and aerodromes in order to ensure harmonised safety standards across Member States as well as the sound oversight of their implementation.

- Third Pillar: “New technologies”

The *technological pillar* focuses on introducing better technology. The SESAR programme brings together all aviation stakeholders to develop and operate a new generation, Europe-wide air traffic management system. Its deployment will enable the safe, sustainable and cost-effective handling of twice the current traffic by 2020.

- Fourth Pill: “Managing capacity on the ground”

Finally, the *airport capacity pillar* tackles the shortage of runways and airport facilities, which currently threatens to become a major bottleneck. The initiative seeks to coordinate better the airport slots issued to aircraft operators with air traffic management measures as well as establishing an airport capacity observatory to integrate fully the airports in the European aviation network.

44. Negotiations on the two legislative proposals contained within the SESII package (the revision of the SES regulations and the extension of EASA'S remit) began in July 2008 and have concluded with the European Parliament and Council of Ministers reaching a first reading deal on both proposals. It is expected that they will be formally adopted later this summer and are expected to come into effect in Autumn 2009. The Airport Observatory held its first meeting in November 2008 and has set up 3 working groups

¹⁸ http://ec.europa.eu/transport/air_portal/sesame/doc/com_2008_0750_en.pdf

¹⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:064:0001:01:EN:HTML>

on Capacity, Gate to Gate and Intermodality. The observatory will meet again in September 2009.

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May 2009