Basic information

2017/0116(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Safeguarding competition in air transport Repealing Regulation (EC) No 868/2004 2002/0067(COD) **Subject** 2.60 Competition 3.20.01 Air transport and air freight	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
TRAN Transport and Tourism	PIEPER Markus (PPE)	30/06/2017
	Shadow rapporteur PREUSS Gabriele (S&D) FOSTER Jacqueline (ECR) TELIČKA Pavel (ALDE) PIMENTA LOPES João (GUE/NGL) DALUNDE Jakop G. (Verts/ALE) AIUTO Daniela (EFDD) ARNAUTU Marie-Christine (ENF)	

Committee for opinion	Rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs	TREMOSA I BALCELLS Ramon (ALDE)	05/10/2017
ITRE Industry, Research and Energy	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
General Affairs	3685	2019-04-09
Transport, Telecommunications and Energy	3623	2018-06-07

European Commission	**Commission DG**	**Commissioner**
	Mobility and Transport	BULC Violeta
European Economic and Social Committee		
European Committee of the Regions		

Key events

Date	Event	Reference	Summary
08/06/2017	Legislative proposal published	COM(2017)0289	Summary
15/06/2017	Committee referral announced in Parliament, 1st reading		
20/03/2018	Vote in committee, 1st reading		
20/03/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
28/03/2018	Committee report tabled for plenary, 1st reading	A8-0125/2018	Summary
16/04/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
18/04/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72)		
10/01/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations		
13/03/2019	Debate in Parliament		
14/03/2019	Decision by Parliament, 1st reading	T8-0209/2019	Summary
14/03/2019	Results of vote in Parliament		
09/04/2019	Act adopted by Council after Parliament's 1st reading		
17/04/2019	Final act signed		
17/04/2019	End of procedure in Parliament		
10/05/2019	Final act published in Official Journal		

Technical information

Procedure reference	2017/0116(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Repealing Regulation (EC) No 868/2004 2002/0067(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 100-p2
Mandatory consultation of other institutions	European Economic and Social Committee European Committee of the Regions

Stage reached in procedure	Procedure completed
Committee dossier	TRAN/8/10184

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE613.412	10/11/2017	
Amendments tabled in committee		PE616.689	24/01/2018	
Committee opinion	ECON	PE613.502	23/02/2018	
Committee report tabled for plenary, 1st reading/single reading		A8-0125/2018	28/03/2018	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0209/2019	14/03/2019	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00077/2018/LEX	17/04/2019	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2017)0289	08/06/2017	Summary
Document attached to the procedure	SWD(2017)0182	08/06/2017	
Document attached to the procedure	SWD(2017)0183	08/06/2017	
Commission response to text adopted in plenary	SP(2019)393	30/04/2019	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2017)0289	26/07/2017	
Contribution	IT_SENATE	COM(2017)0289	04/08/2017	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES3714/2017	17/01/2018	

Additional information		
Source	**Document**	**Date**
European Parliament	Briefing	
European Commission	EUR-Lex	

Final act	
Regulation 2019/0712 OJ L 123 10.05.2019, p. 0004	Summary

Safeguarding competition in air transport

2017/0116(COD) - 08/06/2017 - Legislative proposal

PURPOSE: to safeguard competition in air transport.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: aviation plays a **fundamental role** in the European Union economy. In 2014, the sector supported the employment of up to 9.3 million people and accounted for over EUR 510 billion of EU Gross Domestic Product.

In 2015, more than **1.45 billion passengers** departed from or arrived at EU airports.

The Union's overall connectivity relies on air services performed by Union air carriers (average of 7 million flights per year) and on third country air carriers (1.3 million flights per year).

The liberalisation and deregulation of international air transport has fostered unprecedented competition within the Union market and globally. **Global competition is expected to further intensify** in coming years with projected international aviation growth of around 5% per year until 2030.

Principles of fair competition have **not yet been defined through specific multilateral rules**, notably in the context of the International Civil Aviation Organization (ICAO) nor of World Trade Organization (WTO) agreements, from the scope of which air transport services have largely been excluded.

EU rules ensure that all carriers, European and non-European, are granted the same rights and same opportunity of accessing air transport related services. This may not however be the case in some third countries where discriminatory practices and subsidies may give unfair competitive advantages to air carriers from those third countries.

In its Communication on an Aviation Strategy for Europe, the Commission stated its intention to assess the effectiveness of Regulation (EC) No 868 /2004 with a view to revising or replacing it with a more effective instrument that would **ensure fair competition conditions between all carriers** and thereby safeguard connectivity to and from the Union.

IMPACT ASSESSMENT: the chosen option consists of replacing Regulation (EC) No 868/2004 with a new instrument and increasing efforts on the international scene including as regards the negotiation of air transport or services agreements.

CONTENT: the proposed Regulation shall replace Regulation (EC) No 868/2004 and aims to **ensure fair competition between Union air carriers and third country air carriers**, in the interest of maintaining conditions conducive to a high level of Union connectivity.

The proposal lays down rules on the conduct of **investigations** by the Commission and on the adoption of **redressive measures**, relating to violation of applicable international obligations and to practices affecting competition between Union air carriers and other air carriers and causing or threatening to cause injury to Union air carriers.

Proceedings: the proposal stipulates that an investigation shall be initiated following a written complaint submitted by a Member State, a Union air carrier or an association of Union air carriers, or on the Commission's own initiative.

The Commission may decide not to initiate an investigation where the adoption of measures would be against the Union interest. It may seek all the information it deems necessary to conduct the investigation and may verify the accuracy of the information it has received or collected.

The proposal also defines (i) the rules under which an investigation is to be conducted, and the conditions under which interested parties may have access to information relating to the investigation; (ii) the rules relating to cooperation with Member States, confidentiality and disclosure.

Redressive and compensatory measures: in order to be able to propose a measure, the Commission will have to demonstrate that an EU airline has been affected by an unfair practice on the part of a third country.

To this end, the proposal:

- establishes the conditions under which conditions the existence of injury or threat of injury may be found;
- sets out the conditions according to which proceedings may be suspended or concluded, with or without the adoption of redressive measures;
- provides for the possibility to adopt financial or operational measures intended to offset injury or threat of injury and requires that the measures must not exceed what is necessary for such offsetting bearing in mind that the objective of such measures does not consist in punishing the third country air carrier concerned but in restoring fair competition;
- defines the conditions under which the redressive measures may be reviewed.

BUDGETARY IMPLICATIONS: these are related to the initiation and conduct of investigations by the European Commission, and to financial duties. This instrument is expected to require nine officers for its implementation.

The impact on administrative expenditure is estimated at **EUR 3.786 million** for the period 2018-2020.

Safeguarding competition in air transport

2017/0116(COD) - 28/03/2018 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Transport and Tourism adopted the report by Markus PIEPER (EPP, DE) on the proposal for a regulation of the European Parliament and of the Council on safeguarding competition in air transport, repealing Regulation (EC) No 868/2004.

The proposed Regulation lays down rules on the conduct of investigations by the Commission and on the adoption of redressive measures, relating to violation of applicable international obligations and to **practices distorting competition between Union air carriers and other air carriers** and causing or threatening to cause injury to Union air carriers.'

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows:

Union interest: Members considered it necessary to clarify the concept of Union interest when deciding whether or not to apply redressive measures in the event of unfair practices by a carrier from a third country.

When determining the Union interest, priority shall be given to the need to:

- restore effective and fair competition,
- ensure transparency,
- avoid any distortion to the internal market,
- avoid undermining Member States' socio-economic situation,
- maintain a high level of connectivity for passengers and the Union.

When determining whether or not the Union interest calls for intervention, the Commission shall **take into account the views of all interested parties**. In order to organise consultations with all interested parties and to give them the **opportunity to be heard**, time-limits for providing information or for requesting a hearing shall be specified in the notice of initiation of the investigation. Interested parties should be aware of the conditions of disclosure for the information they provide and should be **entitled to respond** to other parties' comments.

Procedure: the Commission may decide not to initiate an investigation where the facts put forward in the complaint neither raise a systemic issue, nor have a significant impact on one or more Union air carriers, and are unwarranted.

The decision not to initiate an investigation shall be **duly substantiated** by a statement of reasons. The European Parliament may call on the Commission to further justify its decision. Complainants may appeal such a decision within 60 days from its publication. The investigation should be completed within **12 months**, which may be extended in duly justified cases.

In case of urgency, such as in situations where there is a risk of immediate and irreversible injury to Union air carrier(s), the proceedings may be shortened to six months or, as a last resort, the Commission may adopt **provisional redressive measures** to prevent or offset such injury.

Bilateral agreements: where bilateral air transport or air services agreements with third countries include fair competition clauses or similar provisions, exhausting dispute settlement procedures foreseen in such international agreements shall not be a precondition for opening a procedure under this Regulation.

Concluding the investigation: the Commission shall conclude the investigation after gathering all necessary information from relevant stakeholders and on the basis of best available evidence. Only the Commission may terminate the investigation without adopting redressive measures where the complaint is withdrawn. Union carriers have the right to appeal against a Commission decision to terminate the investigation. The Commission shall further justify its decision before the competent committees of the European Parliament.

Redressive measures: the redressive measures shall have regard to the proper functioning of the Union air transport market and shall **not result in an undue advantage being given to any air carrier** or group of air carriers. The redressive measures may be provisional and may be adopted, where necessary, when the investigation determines, on the basis of available facts, that a threat of injury exists.

Safeguarding competition in air transport

2017/0116(COD) - 14/03/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted, by 478 votes to 100 with 18 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on safeguarding competition in air transport, repealing Regulation (EC) No 868/2004.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Objective

The Regulation lays down rules on the conduct of investigations by the Commission and on the adoption of redressive measures, relating to practices distorting competition between Union air carriers and third-country air carriers and causing, or threatening to cause, injury to Union air carriers.

Discrimination shall mean differentiation of any kind without objective justification in respect of the supply of goods or services, including public services, employed for the operation of air transport services, or in respect of their treatment by public authorities relevant to such services, including practices relating to air navigation or airport facilities and services, fuel, ground handling, security, computer reservation systems, slot allocation, charges, and the use of other facilities or services employed for the operation of air transport services.

Union interest

A determination of the Union interest shall be made by the Commission based on an appreciation of all the various interests, which are relevant in the particular situation, taken as a whole. When determining the Union interest, priority shall be given to the need to protect consumer interests and to maintain a high level of connectivity for passengers and for the Union. In the context of the whole aviation chain, the Commission may also take into account relevant social factors. The Commission shall also take into consideration the need to eliminate the practice distorting competition, to restore effective and fair competition, and to avoid any distortion to the internal market.

The Union interest shall be determined on the basis of an economic analysis by the Commission based on information collected from the interested parties provided that this information is supported by actual evidence.

Interested parties shall be given the opportunity to make themselves known, present their views in writing or request a hearing by the Commission within a specified time limit.

Proceedings

An investigation shall be initiated following a written complaint submitted by a Member State, one or more Union air carriers or an association of Union air carriers, or on the Commission's initiative. When it receives a complaint, the Commission shall inform all Member States.

When deciding not to initiate an investigation, the Commission shall inform the complainant and all Member States. The information shall contain the reasons for the decision and be forwarded to the European Parliament.

The Commission shall decide to open an investigation within a maximum period of 5 months from the lodging of the complaint and inform the Member States and the European Parliament.

Suspension

The Commission may suspend the investigation if it appears more appropriate to address the practice distorting competition exclusively under the dispute settlement procedures established by an applicable air transport or air services agreement to which the Union is a party, or to any other agreement which contains provisions on air transport services to which the Union is a party. The Commission shall notify the Member States of the suspension of the investigation.

The Commission may resume the investigation if the practice distorting competition has not been eliminated within 12 months from the date of suspension of the investigation.

Duration of proceedings and suspension

The investigation shall be concluded within 12 months while the proceedings shall be concluded within 20 months. That period may be prolonged in duly justified cases. In the case of urgency, that is in situations where, following clear evidence submitted by the complainant or the interested parties, the injury to Union air carriers might be irreversible, the proceedings may be shortened to 9 months.

Redressive measures

The Commission shall adopt implementing acts, laying down redressive measures if the investigation determines that a practice distorting competition, adopted by a third country or a third-country entity, has caused injury to the Union air carriers concerned.

The redressive measures shall not lead the Union or the Member States concerned to violate air transport or air services agreements, or any provision on air transport services included in a trade agreement or any other agreement concluded with the third country concerned.

The Commission shall regularly report to the European Parliament and the Council on the application of the Regulation. The European Parliament and the Council may invite the Commission to present and explain any issue related to its application.

Safeguarding competition in air transport

2017/0116(COD) - 10/05/2019 - Final act

PURPOSE: to safeguard competition in air transport.

LEGISLATIVE ACT: Regulation (EU) 2019/712 of the European Parliament and of the Council on safeguarding competition in air transport, and repealing Regulation (EC) No 868/2004.

CONTENT: in a context of increased competition between air transport actors at a global level, fair competition is an indispensable general principle in the operation of international air transport services.

At the international level, there is currently no World Trade Organization (WTO) or International Civil Aviation Organization (ICAO) framework regulating competition between air carriers. The purpose of this Regulation is to provide the EU with an effective mechanism to combat unfair commercial practices that have so far been lacking.

Subject matter

This Regulation repealing Regulation (EC) No 868/2004 lays down rules on the conduct of investigations by the Commission and on the adoption of redressive measures, relating to practices distorting competition between Union air carriers and third-country air carriers and causing, or threatening to cause, injury to Union air carriers.

Procedure

A single procedure for launching investigations and deciding on possible redressive measures shall apply to both global agreements at EU level and bilateral air transport agreements between EU and third countries.

When determining the Union interest, priority shall be given to the need to protect consumer interests and to maintain a high level of connectivity for passengers and for the Union. In the context of the whole aviation chain, the Commission may also take into account relevant social factors. The Commission shall also take into consideration the need to eliminate the practice distorting competition, to restore effective and fair competition, and to avoid any distortion to the internal market.

An investigation shall be initiated following a written complaint submitted by a Member State, one or more Union air carriers or an association of Union air carriers, or on the Commission's own initiative, if there is prima facie evidence of the existence of all the following circumstances: (i) a practice distorting competition, adopted by a third country or a third-country entity; (ii) injury or threat of injury to one or more Union air carriers; and (iii) a causal link between the alleged practice and the alleged injury or threat of injury.

When deciding not to initiate an investigation, the Commission shall inform the complainant and all Member States. The information shall contain the reasons for the decision and be forwarded to the European Parliament.

The Commission shall decide to open an investigation within a maximum period of 5 months from the lodging of the complaint and inform the Member States and the European Parliament.

The investigation shall be concluded within 12 months while the proceedings shall be concluded within 20 months. That period may be prolonged in duly justified cases. In the case of urgency, that is in situations where, following clear evidence submitted by the complainant or the interested parties, the injury to Union air carriers might be irreversible, the proceedings may be shortened to 9 months.

Distortive practices and redressive measures

A finding of injury shall be based on evidence and shall take account of the relevant factors, in particular:

- the situation of the Union air carriers concerned, notably in terms of aspects such as frequency of services, utilisation of capacity, network effect, sales, market share, profits, return on capital, investment and employment;

- the general situation on the affected air transport services markets, notably in terms of level of fares or rates, capacity and frequency of air transport services or use of the network.

A determination of a threat of injury shall be based on clear evidence and not merely on allegation, conjecture or remote possibility.

Redressive measures - financial or operational – shall be adopted by means of a Commission implementing act, but operational measures shall be subject to a stricter procedure. The Commission shall regularly provide a written report to the European Parliament and to the Council on the effectiveness and impact of redressive measures.

ENTRY INTO FORCE: 30.5.2019.