

EXECUTIVE SUMMARY

This publication identifies 16 legislative measures and policies in place that currently discriminate against air transport, with a further 8 measures that have been published by the European Commission and are currently going through Europe's legislative process.

This discrimination against air transport is against the spirit of the Treaties of the European Union.

The Treaties of the European Union require a common transport policy that does not distort competition between modes of public transport.

The European Commission's White Paper on Transport Policy for 2010, published in 2001, proposes a common transport policy that will significantly distort competition between air transport and other modes of public transport.

Whilst ERA supports some of the legislation that currently applies only to air transport, it is essential that equivalent legislation is applied to all modes of public transport.

ERA calls for an immediate end to legislative discrimination against air transport.

The European Commission applies more stringent rules for the approval of **state aid** to airlines than it applies for other modes of transport. As a consequence, rail passengers in general pay fares well below full costs as a benefit from substantial state aid.

In air transport, **direct subsidies** are subject to stringent rules that cover public service obligations. These rules do not apply to other modes of transport.

In contrast to views frequently expressed by Europe's regulators, airline passengers pay more in **direct taxation** than do other travellers, due to the existence of taxes specific to air passengers. These taxes more than compensate for the very limited favourable treatment under VAT (value added tax) rules.

Europe's airlines and most of Europe's rail transport are exempt from **energy tax**. However, the European Commission has announced that it intends to apply a fuel tax specific to air transport alone.

Europe's airlines pay full **market prices for energy** that they use. Many of Europe's railways benefit from low electricity prices due to subsidies paid to Europe's coal industry.

Air passengers in general pay the full **costs of current and future infrastructure**. Much of the infrastructure for other transport modes is subsidised by government rather than charged to passengers through the fare structure.

The European Commission has developed "**economic instruments to mitigate greenhouse gas emissions** from air transport in Europe". No similar measures have been developed for other modes of public transport. The European Commission has not considered other measures that, if applied to all modes of public transport, could provide greater environmental benefits.

Most air passengers pay a premium on their fares to cover **costs of noise protection** for members of the public affected by aircraft noise. No other mode of transport protects affected citizens in this way.

Despite the fact that air transport requires much less land than other modes of transport, and can be demonstrated to cause no greater noise disturbance to Europe's citizens than other modes, much of the air transport infrastructure is subject to **night-time curfews**. Similar closures do not affect other modes of transport.

The European Commission has indicated that the growth in air (and road) transport should be restricted by limiting **infrastructure development**. Meanwhile, it advocates continuing government subsidies to fund infrastructure development for other modes.

European Union law governs the **allocation of scarce airport resources**. Proposals to amend this law are targeted at reducing regional air services between regional airports and major hub airports. No similar legislation is planned to interfere with the allocation of scarce infrastructure resources for other modes of transport.

Europe's air passengers have, by law, rightly been entitled to guaranteed **compensation in the event of an accident** since 1997, in addition to their rights under international Treaties. No similar law has been enacted for other modes of public transport.

Since 1991, whenever an airline requires that some passengers should travel on a different flight from the one for which they have reservations - for example due to the substitution of a smaller aircraft for safety reasons - the airline must pay **denied boarding compensation**. There is no equivalent legislation for other modes of transport.

Legislation to provide Europe's air passengers with **compensation and assistance in the event of cancellations and delays**, including events caused by factors outside an airline's control, was proposed by the European Commission in 2001, and is expected to become law later in 2003. No similar legislation is proposed for other modes of public transport.

Airlines' **contracts with passengers** were the subject of an investigation by the European Commission in 1997. Many contracts have subsequently been amended following reviews by various national authorities. The European Commission indicated, in a consultation started in 2002, that it would publish a new legislative proposal on airline contracts. No similar action has been taken for any other mode of public transport.

The European Commission encouraged, in a Communication published in 2000, the development of **voluntary air transport commitments for passenger service standards**. These became effective in 2002. The European Commission has taken no similar steps for other modes of public transport.

The European Commission has announced its intention to propose legislation governing standards for access to air transport for **passengers with reduced mobility**. No similar measure has been announced for any other mode of public transport.

ERA supports the European legislative framework that governs air transport **safety**. Much has existed since 1993, but the European Commission has failed to propose equivalent legislation for other modes of public transport. Meanwhile other, less

significant, legislation has been, and continues to be, developed for air transport alone. This calls into question the European Commission's priorities for the protection of Europe's citizens.

ERA supports the introduction of proposed new **safety rules governing air transport operations**. Whilst these new rules were proposed in 2001, no similar action has been taken for other modes of transport.

ERA welcomes recently introduced legislation on **safety incident reporting**. This will lead to improved safety performance. It is difficult to understand why the European Commission proposed that this legislation should be applicable to air transport alone.

Air transport is now subject to new legislation on **security**. No other mode of transport is subject to such stringent rules.

Air transport is responsible for bearing much of the **cost burden of new security measures** aimed at protecting the overall interests of states and their citizens. No other mode of transport is responsible for the cost burden of such measures.

The European Commission has proposed mandatory **minimum insurance requirements** for passengers, freight, and third party liabilities. These will be applicable to air transport, but not to any other mode of transport.

Alone amongst modes of public transport, air transport is obliged to purchase very substantial and costly third party **war risk insurance**, including cover for terrorist action, on the open insurance market.

WHAT IS NEEDED – ERA’S 37 POINT PLAN

ERA calls for an immediate end to legislative discrimination against air transport.

ERA calls on Europe’s legislators to respect their obligations under the Treaty by creating a common transport policy that does not distort competition between modes of public transport, especially between air transport and rail transport.

ERA calls on Europe’s legislators to ensure that actions taken under the Treaty relating to safety, environmental protection and consumer protection do not distort competition between modes of public transport.

ERA calls on the European Commission to publish a revised transport White Paper that respects the obligations imposed by the Treaty establishing the European Community, particularly those relating to the avoidance of distortion of competition.

In the absence of a transport White Paper that respects the obligations of the Treaty, ERA calls on all Europe’s legislative bodies to create a legislative framework that does not distort competition between modes of transport.

ERA calls on Europe’s legislators to introduce legislation for all modes of transport, equivalent to that which exists for air transport that will introduce transparency in subsidies provided for services operated under public service obligations, to ensure that competition between modes of transport is not distorted.

ERA calls on the European Commission to apply state aid policies equivalent to those that apply to air transport to other modes of transport in order to eliminate the present distortion of competition between modes.

ERA calls on the European Commission to retract its statements in the White Paper and elsewhere that European air passengers benefit from more favourable direct taxation than passengers on other modes of transport.

ERA calls on the European Parliament and the Council of Ministers to ensure that proposals for revisions to existing legislation, or new legislation, that affect the relative tax positions between modes of transport are developed using factual evidence rather than on the basis of commonly held misconceptions.

ERA calls on the European Commission to propose tax measures that will reduce rather than increase the distortion of competition between modes of transport.

ERA calls on Europe’s legislators to work towards a regime of indirect taxation, subsidy, and infrastructure and environmental charging that does not distort competition between modes of transport. Europe’s legislators should develop this regime from a factual base that takes into account all existing taxes, subsidies and charges.

ERA calls on Europe’s individual legislators and legislative bodies to avoid statements that inaccurately distort the public perception of differential treatment of taxes, subsidies and charges between modes of transport.

ERA calls on Europe’s legislators to eliminate existing discrimination between modes of transport by ensuring that equivalent environmental laws and charging policies

apply to all modes of competing public transport, and that any specific measures become applicable across all modes at the same time.

ERA calls on the European Commission and professional research organisations to treat all modes of public transport equally, including equality of funding for research, and to avoid distorted comparisons that corrupt the basis for public opinion and political action.

ERA calls on the European Commission to end its discriminatory policy as stated in the White Paper that preference should effectively be given to the subsidised development of rail infrastructure in preference to the unsubsidised development of air transport infrastructure.

ERA calls on Europe's legislators to ensure that, after allowing for full costs including environmental and infrastructure costs to be included in fares charged to air transport users and to users of competing modes of transport, the legislative framework exists for infrastructure developments necessary for the projected growth in transport for all modes of public transport including air transport.

ERA calls on Europe's regulators to recognise that Regulations that govern the allocation of scarce infrastructure resources must not distort competition between modes of transport and are not a substitute for the development of increased capacity.

ERA calls on Europe's legislators and Air Traffic Service Providers to deliver the benefits of the "Single Sky" initiative, within reasonable timescales and within agreed cost targets.

ERA calls on Europe's infrastructure providers to recognise that congestion adds to the environmental burden, and that the provision of additional capacity to overcome major bottlenecks for all modes of public transport will produce significant environmental benefits.

ERA calls on Europe's legislators to act quickly to ensure that all European passengers are adequately covered in the event of an accident by introducing measures equivalent to existing air transport legislation for other modes of transport.

ERA calls for Europe's legislators to perform an independent impact assessment of any legislation to be applied.

ERA calls for all modes of transport to be subject to equivalent legislation, and for this to be applied at the same time for all modes.

ERA calls for all modes of transport to be treated equally under generic laws that apply to all other European suppliers of services.

ERA calls on Europe's regulators to suspend activity on measures covered by the voluntary codes of conduct until the impact of the codes has been assessed.

ERA calls on the European Commission to consider the transport needs of people with reduced mobility across all modes of transport at the same time.

ERA calls on the European Commission to establish equivalent rights for passengers on all modes of public transport, to publicise those rights effectively, and to create equivalent facilities for all modes of transport for those passengers who have complaints.

To provide the best protection for Europe's citizens, ERA calls on the European Commission to assess its legislative priorities in order to ensure that a regulatory safety framework equivalent to that for air transport is established as a matter of urgency for all modes of public transport.

ERA calls on the European Union to establish safety agencies for all modes of public transport, in addition to EASA and the European Maritime Safety Organisation (EMSO).

ERA calls on Europe's legislators to ensure that the cost of safety regulation and oversight is treated in similar ways across all modes of transport.

ERA calls on those responsible for the establishment of EASA to ensure that its introduction leads to an overall reduction in the cost of European air transport safety regulatory activity.

ERA calls on European governments to bear the costs of protecting their citizens from terrorist or other unlawful attack whilst travelling on any mode of public transport, including air transport.

ERA calls on European governments to bear the costs of protecting aircraft from unlawful interference that may threaten the security of its citizens on the ground.

ERA calls on Europe's legislators to impose equivalent passenger (and possibly freight) insurance requirements on all modes of public transport at the same time.

ERA calls on Europe's legislators to ensure that mandatory third party insurance requirements are not inflated to levels that are required only for a truly exceptional circumstance.

In particular, ERA calls on Europe's legislators to ensure that any requirement for mandatory levels above those recommended by ECAC are subject to a comprehensive impact assessment, and that similar requirements are imposed on other modes of public transport.

ERA calls on governments to impose similar requirements on all operators of public transport with regard to war risk insurance. Any exemptions, liability limits, offers of re-insurance et cetera should apply equally to all modes of transport.

ERA calls on governments to act as insurers of last resort in the event that an unlawful attack against an aircraft, or any other vehicle used for public transport, causes loss of life, injury and other damage beyond the level that might reasonably be covered by commercial insurance companies.