

## **ERA INDUSTRY AFFAIRS GROUP – REPORT FOR 2016**

### **Objectives of the Industry Affairs Group**

The Industry Affairs Group (IAG) considers policy issues and advises ERA members in understanding aero-political legislation and preparing ERA's lobbying activities. IAG focuses on passengers' rights, economic, social, legal, infrastructure and environmental issues. Past external speakers include influential MEPs, senior representatives of the EC, EASA and Eurocontrol as well as representatives from other representative industry trade associations.

### **Meetings and work of the group**

There were two physical meetings of the IAG during 2016. On average, twenty-five participants attended each of the events, with an encouraging increase compared to past levels of attendance. IAG meetings included a recently introduced 'closed' (not minuted) session allowing the attendees to openly discuss and share experiences regarding the impact of European legislation on their day-to-day business and operations.

The **June** event was hosted in London by member law firm Kennedys. Distinguished speakers discussed some of the most topical regulatory developments affecting ERA members' business.

IATA delivered a comprehensive presentation on the new EU Passenger Name Record (PNR) directive (n. 681/2016) and on various PNR programmes currently in place across Europe. This triggered a very wide debate that made attendees aware of some critical aspects of the new legislation: EU States' need to tailor their PNR-related requirements to the complex nature of the aviation industry and to the heterogeneous business and operating models currently on the market (e.g., ACMI, ad-hoc charter, scheduled and non-scheduled flights, non commercial operations) and the legal basis for imposing a systematic transfer of API to national authorities.

A representative of the PNR Mission of the French Interior Ministry, in charge of building the API-PNR national programme - including legal, organisation and IT architecture - discussed the existing French system and the legal basis for collection, retention and processing of API and PNR data. Due to the recent terrorist attacks in Paris, proposals have been put in place in France to amend the existing rights to privacy and protection of personal data in compliance with the principles of necessity and proportionality. France aims at including all 230 air carriers (scheduled, charters, low-costs) in the PNR scheme for inbound and outbound international flights from and to third countries (including French overseas territories) as a first step in the process. Intra-EU flights collection will be started in 2017. Following the meeting the French Interior Ministry shared with the IAG some guidelines on the implementation of the legislation, with particular attention to the certification rules and the documentation required from both the airlines and the data providers.

In a joint presentation, two senior speakers from the UK Border Force shared the views and experiences of the Home Office, showing the complexity and importance of accurate transmission of PNR data to prevent serious crimes (organised crime, murders, rapes, illegal immigration, custom-related crimes, drug smuggling, child abduction, human trafficking, and terrorism).

In a Q&As session, airlines emphasized that, according to the new PNR directive, issues may arise when a booking is made through a travel agent or a tour operator as the air carrier may have very limited and insufficient information on the passenger to comply with the new PNR directive.

Some attendees asked whether airlines are allowed to obtain evidence from states' Border Force authorities to support, defend and justify their decision to deny boarding to a passenger based on the



communication received from the authorities to do so. It is yet to be clarified whether such communication has a binding force (order) or is a simple recommendation.

Air carriers that can reasonably expect to be unable to meet the deadline or quality standards to submit PNR data according to the new Directive, were strongly urged to take a strictly coordinated approach with their own associations and airlines. Airlines agreed that increased levels of security should trigger a less burdensome and less annoying (to passengers) approach to the traditional screening and security controls at airports. More attention to profiling technology and techniques may represent the future for a seamless, secure and more consumer-friendly travel experience.

Member law firm Kennedys provided a comprehensive update on the latest developments on aviation and climate change agreements, particularly on the December 2015 Paris Climate Change Conference, and on recent court decisions on extraordinary circumstance according to EU Regulation 261/2004 (air passenger rights).

Finally, a representative from AVINOR discussed about the role of airport operators to improve the competitiveness of regional aviation and the vital importance of Public Service Obligations (PSOs) in Norway.

The **December** meeting in Brussels was hosted by Airport Regions Conference (ARC). A representative from the European Commission's (DG CLIMA) provided a comprehensive update on the recently-adopted ICAO Market-Based Mechanism, called CORSIA (*Carbon Offsetting and Reduction Scheme for International Aviation*) to tackle CO2 emissions. Particular attention was paid to the expected environmental soundness of CORSIA and to the operators' offsetting requirements.

The Commission is now expected to propose new legislation on the EU ETS for aviation with particular focus on the scope of flights caught by the European scheme from 2017 onwards. The proposal is expected to be issued by the Commission in January/February 2017 in view of final adoption before March 2018. ERA members re-emphasized their opposition to any discriminatory intra-EU only scheme that may result in a double system (the EU ETS and the CORSIA) of Monitoring, Reporting and Verification (MRV) obligations, imposing unnecessary costs particularly on regional operators.

The Technical Attaché at Malta Permanent Representation to the EU delivered a speech on its Country's priorities during its imminent term of Presidency to the EU Council (1 January 2017 – 30 June 2017): the migration crisis, the Mediterranean instability and maritime transport.

As far as air transport is concerned, Malta will follow up the ambitious goals set by the EC Aviation Strategy (December 2015), with particular attention to safety, security and tackling existing congestion both on the ground and on the European airspace.

New regulation on the drones' operations will also be a priority for the next EU Presidency, along with the attempt to find an agreement with the European Parliament to finalise the revision process of the EASA Basic Regulation.

During the Maltese Presidency, a legislative proposal is expected to revise EU Regulation 868/2004 on "*Protection against subsidisation and unfair pricing practices causing injury to Community air carriers in the supply of air services from countries not members of the European Community*".

As far as EU ETS is concerned, Malta will seek to clarify the actual link and interaction between the European scheme and the recently-agreed ICAO CORSIA.

During the Q&As session, ERA members expressed their concerns that a double and diverging system of MRV (i.e., one for EU ETS and one for CORSIA) might result in unnecessary costs to European regional operators, bringing no environmental benefits and simply adding burden on the airlines operating intra-EU flights. It is unlikely that Malta will tackle some of the current 'blocked' files, e.g. revision of EU 261/2004 due to the current intention of the UK to exit from the EU.



A representative from the European Commission - DG MOVE delivered a useful status update on the revision of the EASA basic Regulation (EU Regulation 216/2008) and provided a comprehensive description of the main elements of the proposal, focusing his attention on the emergency oversight mechanism; the urgency and flexibility measures; safety information and data; aviation security; international relations; EASA governance and budget. The rationale behind the initial proposal, presented by the Commission last December, was to prepare the regulatory framework for the next ten years, ensuring a safe, secure and environmentally friendly air transport, promoting jobs, growth, a deeper and fairer internal market and supporting a strengthened industrial base.

The debate with the Commission was an important opportunity for ERA members to convey their concerns and priorities on various aspects of the complex proposed revision: ground-handling, cybersecurity, environment, wet and dry leasing, EASA governance and budget, and certification requirements for cabin crew. The industry's instances were summarized in a lobbying position paper that was agreed and co-signed by ERA and other user associations, including IATA, IACA and A4E.

A Representative from Airports Conference International (ACI-Europe) provided an update on recent developments on EU legislation on state aid, particularly on the General Block Exemption Regulation (GBER), proposed by the European Commission to simplify the rules and reduce un-necessary administrative burden on airports benefitting from state aid. The GBER legislation identifies situations where airports are exempted from the notification obligations, bearing in mind that compliance with applicable state aid rules is still made necessary. According to ACI-Europe's estimates, 106 commercial services airports in Europe would have been covered by the notification exemptions in 2015.

Another speaker from ACI-Europe presented the latest environment-related developments concerning air transport. The importance of the agreement reached last October in ICAO on a global market-based mechanism (CORSIA) was emphasized once again and some very useful recommendations were discussed to manage the impact from aircraft noise. From the airport community's perspective, key success factors for local noise-management initiatives are: deeper collaboration between all operational stakeholders, including airspace users; proactive and continuous involvement of local communities in the decision-making and implementation of Performance Based Navigation (PBN); more attention in managing expectations.

EUROCONTROL's specification on Collaborative Environmental Management (CEM), which was developed over a number of years with the close involvement of ACI-Europe and other industry stakeholders, was also widely discussed by the IAG attendees. CEM was produced to help airports and their operational partners - including airlines and ANSPs - manage an increasing stock of environmental regulations with a view to enable them to arrive at speedier and more effective joint solutions for the sustainable operation and development of airports.

A speaker from Airport Regions Conference (ARC) covered the sensitive topic of Brexit and presented very detailed scenarios on some potential consequences on air transport from the UK leaving the EU. At the moment, uncertainty is widespread and on the terms of the negotiations (hard or soft Brexit?) and on the exact timeframe of the whole process.

Brexit may impact airports' profitability, air connectivity and even local tourism and real-estate market in some regions. The complexity of the Brexit is also caused by the fact that it implies various interlocking sets of negotiations: FTA on future economic ties (and an interim cover for the UK economy before the FTA enters into force); accession to the WTO and negotiating new schedules and membership; a set of deals to replace the EU's 53 FTAs; cooperation in foreign, defence and security policy.

It is unclear yet whether a crisis for air transport in Europe is to be expected as a direct consequence of the Brexit. Nevertheless this turmoil shows that it would be important for all stakeholders - especially local Governments - that have often several airports on their territories and provide them with financial aid - to tackle these issues, to anticipate and to design regional strategies for airports.



Member law firm Hill Dickinson delivered a presentation on some of the most recent regulatory developments on aviation.

Key topics discussed included the possible revision to the EU Airport Charges Directive, following the ongoing evaluation, by the European Commission, of the current legislation. Consultation through stakeholder focus groups will be held from now until Q3 of 2017, whilst a 12-week online public consultation is expected to take place in Q1 of 2017. Members were urged to participate in the consultation.

The European Commission is also planning to launch, on Q2 of 2017, an online public consultation on the functioning of the Air Service Regulation (ASR - EU Regulation 1008/2008) seeking responses to the two main questions: how far has the ASR contributed to the creation of an efficient internal aviation market, improved safety and better consumer protection? What market entry barriers and inefficiencies still need to be addressed?

In its evaluation process, the European Commission will focus on some areas of the Regulation:

- Operating licences;
- Ownership and Control of EU air carriers: easing requirements on foreign ownership for EU airlines and “effective reciprocity”?
- Provision of intra-EU air services: freedom to provide services and non-discrimination;
- Public Service Obligations (PSOs): main criteria, EU Interpretative Guidelines, DfT Guidelines for regional air access to London;
- Traffic Distribution: EC Statement of Objections to Brussels Airlines and TAP Portugal 27 October 2016; Recast EU Slot Regulation;
- Transparency of pricing for intra-EU air service.

