

## **The European Regions Airline Association position paper on the European Commission's Communication "An Aviation Strategy for Europe"**

*February 2016*

### **INTRODUCTION**

This paper provides a detailed position and response from the European Regions Airline Association (ERA) to the European Commission's (EC's) Communication ("An Aviation Strategy for Europe" – COM(2015) 598 final) published on 7 December 2015.

### **ABOUT ERA**

Founded in 1980, ERA is a non-profit trade association representing 50 airlines and 136 associate and affiliate members who jointly cover the entire spectrum of the aviation sector - airlines, airports, manufacturers and suppliers.

The association promotes the interests of intra-European airlines by lobbying the European regulatory bodies on policy matters, promoting the social and economic importance of air transport and its environmental commitments.

More information can be found at [www.eraa.org](http://www.eraa.org)

### **EXECUTIVE SUMMARY**

- ERA welcomes the EC's recognition in the Strategy that aviation is a key driver of economic growth, jobs, trade and mobility and that a strategic review of the sector is needed to ensure that European aviation maintains its leadership in the global market.
- ERA believes that a strong and successful aviation sector is vital to EU citizens and to ERA's members who provide connectivity to some of Europe's most remote regions where air transport is an essential mode of transport.
- Some of the Strategy's proposals are positive and will lead to a stronger (and safer) industry.
- The Strategy has identified the key issues that need to be tackled - many of which were in ERA's own Strategy released in 2015 ("*The Future of Regional Aviation*")<sup>1</sup> which can be found [here](#).
- Many of the actions proposed in the Strategy are short term, have no distinct timelines and do not provide a strong and clear action plan to strengthen Europe's aviation industry.
- In order to strengthen the Strategy, the Commission, Parliament and Council should focus on defining strong, actionable and time-scalable deliverables to implement the intent of the Strategy and definitive milestones in order to monitor their progress.

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<sup>1</sup> <http://www.eraa.org/sites/default/files/IKO034%20ERA%20Vision%20for%20Europe%202015%20lo.pdf>



- This paper focuses on nine key subjects and includes ERA's position on each as an input to the Strategy discussion:
  1. connectivity and Public Service Obligations (PSOs);
  2. taxes on aviation;
  3. air passenger rights legislation;
  4. limits to aviation growth both in the air and on the ground;
  5. investment in the aviation sector;
  6. aviation safety and security standards in Europe;
  7. airport charges;
  8. market access; and
  9. the EU social agenda.



## 1. CONNECTIVITY AND PUBLIC SERVICE OBLIGATIONS (PSO)

- ***ERA welcomes the Commission's clear acknowledgement of the value of regional connectivity.***
- ***The Strategy should propose substantive actions to promote a more efficient and transparent functioning of the PSO regime and a means of promoting air connectivity, especially to and from the regions.***

ERA members serve the parts of Europe where air transport is vital and often is the only mode available to residents in remote regions, islands and dispersed areas. The value of regional connectivity is recognised in the EC Strategy which is welcome news. However, other than a generic recommendation to “*work with the Airport Observatory to monitor trends of both intra-EU and extra-EU connectivity in Europe, identify any shortcomings and the appropriate measures to be taken*”, the EC proposes no substantive and immediate action to promote and encourage air connectivity, especially to the regions.

The Strategy recognises tools such as the Public Service Obligation (PSO) system as a means of encouraging regional operations. However, other than issuing guidelines on their implementation, there are no proposals to encourage their greater and more efficient use or means of ensuring air transport can be used to serve parts of Europe where it may not be economically viable to do so and where an actual social need exists.

ERA urges the Commission to make sure that a better, uniform and consistent enforcement and implementation of existing PSO rules across Europe is delivered across Europe as well as encouraging greater use of the PSO system to promote connectivity across Europe.

## 2. TAXES ON AVIATION

- ***The Strategy recognises the economic burden of aviation specific taxes, levies and disproportionate regulation on the industry but does not propose a plan to remove them.***
- ***The Strategy should propose a set of concrete measures to remove aviation specific taxes and levies as well as a full review of aviation regulation with the aim of reducing the regulatory onus.***

ERA members welcome the reference made in the Strategy to the burden of current aviation taxes and levies, however, the Strategy does not properly address the overall regulatory onus placed on aviation, and does not take into account studies that illustrate the detrimental impact of aviation-specific taxes and charges (including the intra-European scope of the EU ETS) on European jobs, competitiveness and the economy.

Although the Strategy acknowledges that aviation taxes and levies negatively impact connectivity and competitiveness, there is no clear plan to achieve their removal. There needs to be a thorough analysis of the regulatory framework in place and clear plans to remove unnecessary regulation and complex and disproportionate taxes that are often not consistent with the International Civil Aviation Organisation's policies and consolidated international agreements. The EC seems to focus only on the potential detriment from national taxes over and above the normal profit tax, without considering that the sector is often the target of both national and international fiscal policies (for example, the EU ETS legislation has not prevented member states from imposing new taxes on aviation, often justified by unfounded environmental reasons).

ERA does not see the strategic relevance of the announced initiative by the Commission to publish



an inventory of those taxes and levies and examine their impact but would prefer to see a clear action plan for their removal.

As recently reported by IATA (*“Fact sheet: Green taxes, December 2014”*)<sup>2</sup>, *“the only significant effect of taxes is a detrimental impact on jobs, competitiveness and the economy”* and *“by taking away funds from airlines, taxes do not incentivize investment in new technology but, on the contrary, weaken the ability of the sector to dedicate resources to newer, cleaner equipment. A third of the airlines’ operating costs is spent on fuel. This alone creates a major incentive for airlines to reduce fuel consumption and improve efficiency. Adding a tax to the already high cost of fuel will not create any additional incentive to reduce emissions. In contrast, a tax will in practice reduce the ability of the sector to reduce its emissions. Taxes increase the overall cost of air transport and discourage families and businesses from travelling. As passenger traffic decreases, the economic opportunities that air transport provides are negatively affected. The impacts of taxes ripple out in the air transport supply chain and in sectors that are particularly dependent on aviation, notably tourism. In addition, taxes put firms at a further competitive disadvantage and make it harder for air connections to develop. Increasing taxation in one country or region also undermines the competitiveness of local airlines against their competitors based in other countries. This is why member States of the International Civil Aviation Organization have agreed to implement policies that ensure an equitable treatment of international air transport across jurisdictions”*.

Notwithstanding the unquestionable sovereign powers held by states on their tax policy policies, the European Commission should endeavour to work more closely with member states to share its expertise about the international nature of aviation, the existing ICAO policies on levies, taxes and charges and, therefore, warn states about the potentially disruptive consequences of unilateral initiatives on the smooth functioning of the air transport sector.

To this effect, ERA members welcome the Strategy’s commitment to the ICAO process to develop a global market-based instrument to reduce aviation emissions as a positive sign of appeasement and lessons learnt by the EU institutions, following the step back dictated by political pressure from non-EU countries to amend the scope of the EU ETS legislation.

### 3. PROTECTING PASSENGERS' RIGHTS

- ***ERA fully supports the Strategy’s push for a rapid adoption of a new piece of legislation revising EU Regulation 261/2004 aimed at bringing more clarity to both consumers and industry operators.***
- ***It is important that EC’s proposal to adopt interpretative guidelines does not crystallise the existing unclear regime or risk delaying a much needed revision of the current legislation. Industry should be consulted in the development of the interpretative guidelines.***

The EC has rightly urged the European Parliament and Council to swiftly adopt the revised Regulation EU Regulation 261/2004. In the meantime, it has confirmed that it would ensure a strict application by the National Enforcement Bodies of the EU air passenger rights together with the judgements of the Court of Justice of the European Union. In this context, the EC will adopt interpretative guidelines.

ERA members welcome the EC’s aim to swiftly adopt a new piece of legislation, as the current divergent levels of enforcement across Europe are unacceptable. It should also be remembered

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<sup>2</sup> <https://www.iata.org/policy/environment/Documents/iata-factsheet-greentaxation.pdf>



that several controversial rulings by the Court of Justice of the European Union have unfortunately brought less clarity to consumers, departed from the spirit of the legislators and limited their legislative prerogatives.

The recent judicial “interpretations” have had the unintended result to impose a disproportionate and unsustainable burden on industry, which inevitably has to be passed through to consumers. The EC’s proposal to adopt interpretative guidelines simply risks crystallising the existing unclear regime and delaying a much needed revision of the current legislation, as interpreted and misinterpreted by judicial and national enforcement bodies across Europe.

ERA urges the EC and the Council to resume their discussions on the revision of EU Regulation 261/2004, to enable the institutions to be in a position to swiftly proceed with the co-decision procedure, as soon as the Gibraltar dispute is resolved.

There is a clear and urgent need on all sides to push the negotiations phase to an agreed and definitive text, reflecting the clear will of the legislators, without relying on contradictory interpretations by the courts.

#### **4. TACKLING LIMITS TO GROWTH BOTH IN THE AIR AND ON THE GROUND**

- **The EU should develop urgently an EU-wide plan for the development of new runway and terminal infrastructure expansion, particularly at European hub airports.**
- **The EU should complete urgently the implementation of the Single European Sky (SES) project and set a timescale to achieve it with member states.**

ERA fully supports the EC’s analysis on the imminent European airport capacity shortage at key hub airports and the associated economic costs due to the lack of new runway and terminal capacity. ERA also applauds the EC’s intention to tackle the existing limits to growth in the air and on the ground, which are seriously impeding the European aviation sector’s ability to grow sustainably, compete internationally and which are resulting in congestion, delays and escalating costs.

In addition to tackling limits to growth at key hub airports, the need for diversion airports in the event of weather or operational related congestion needs attention. Many of the hub airports that are under consideration in terms of expansion of runway and terminal capacity are geographically close and are often affected by common weather patterns. The increasing size and complexity of modern aircraft, coupled with predicted increase in movements, means that historical diversion airfields are no longer able to accommodate even moderate diversion levels.

ERA supports the Commission’s request that the Observatory continues working on airport congestion. However, this initiative in isolation, together with the revision to the EU Slot Regulation proposed in the Strategy, is insufficient and does not tackle the real causes for congestion, namely the poor and insufficient level of airport infrastructure in Europe.

European states must start investing in constructing and developing new runway and terminal infrastructure, especially at hub airports, now. While building new infrastructure is politically complex and remains the decision of individual member states, it is essential that more coordinated action is taken at a European level. Without the development of new infrastructure, Europe is at risk of losing its global position as a connecting point to the rest of the world. Equally, without adequate capacity at hub airports, regional services, operated by smaller aircraft, are the first routes to be lost: thereby reducing connectivity and mobility for citizens across the Continent. In its



Strategy, the Commission has missed an opportunity to urge the European institutions and member states to develop a master plan for airport capacity, similar to the plan that exists for air traffic infrastructure (Single European Sky - SES).

Priority must be given to the completion of the SES project. The Strategy does not propose credible and concrete steps or effective means to reach these agreed objectives, given member states reluctance to tackle the monopolistic grip that air traffic service providers have on the industry.

As reported in IATA's "Fact Sheet on Single European Sky", published on the Association's website<sup>3</sup> last December, "progress to achieve the SES high-level goals is not on track and the Performance Scheme for the first reference period (RP1) - 2012-14 did not deliver the expected performance improvements as several states failed to meet the already watered-down cost efficiency target. The RP1 outcome has been poor especially in terms of operational benefits and cost control. According to the Performance Review Body Annual Monitoring Report 2014 (Edition date: 14.10.2015) in 2014 en-route ATFM delays increased by 15% compared with 2013 and the EU-wide capacity KPI was 0.61 minutes ATFM delay per flight, which does not meet the 0.50 minute/flight targets set for 2014. In terms of cost efficiency, the targeted cost per flight at EU level of 53,92 euro was not reached in 2014, with the actual cost/flight higher than planned at 54.13 euro. The Performance Scheme framework to take effect from 2015-2019 lacks much needed enforceability, provides for "uncontrollable costs" to be added to the agreed charges, allows for congestion charging and defers again the inclusion of terminal charge target setting. Progress on Functional Airspace Blocks is recognised to have not met the 4 December 2012 deadline as stipulated by EU law. The European Commission is now progressing infringement proceedings against member states, but little practical consequence is expected in terms of improved performance and the Communication does not seem to propose any credible Strategy in this regard.

As also recommended by IATA<sup>4</sup>, significant progress on SES is unlikely to be achieved without key reforms such as the establishment of an independent economic regulator for air navigation charges. While the SESII+ package was supported by the EU Parliament, it is opposed by most of the larger EU member states.

## 5. INVESTMENTS

- **ERA welcomes the EC's recognition that investment is critical to the development of the industry.**
- **ERA urges the EC to strengthen its cooperation with international financial institutions to facilitate investments in new infrastructure, aircraft, systems and a skilled workforce.**
- **The Strategy should propose more concrete measures to enable organisations like the European Investment Bank to help finance airline and aviation industry projects.**

Investment in the aviation industry is essential. A European plan to expand and increase runway and terminal capacity in the long term, alongside a plan to fund this expansion, is both essential and urgent. With this aim, ERA members urge the EC to explore greater use of organisations, such as the European Investment Bank (EIB), to enable more investment in new infrastructure, aircraft, systems and people – currently it is limited to mainly air traffic management-related projects. ERA

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<sup>3</sup> [https://www.iata.org/pressroom/facts\\_figures/fact\\_sheets/Documents/fact-sheet-ses.pdf](https://www.iata.org/pressroom/facts_figures/fact_sheets/Documents/fact-sheet-ses.pdf)

<sup>4</sup> *Ibid.*





is already in discussions with the EIB, calling for an expansion of its aviation-related activities, specifically in terms of fleet acquisition and replacement.

The Strategy mentions the significant economic impact of aviation on the EU's GDP and seems to support research and innovation in the aviation sector through Public-Private-Partnerships, the Horizon 2020 Framework Programme, EU structural Fund and the European Strategic Investment Fund, Clean Sky and Single European Sky ATM Research. This includes, for instance, at EU level, major contributions from public-private partnerships such as the development of strategic infrastructures and sustainable transport, which are key objectives of the European Investment Bank (EIB) Transport Lending Policy. However, the Strategy does not appear to accompany these announced and ambitious goals with clear plans, deadlines, scheduled milestones and measurable steps for their implementation.

## 6. MAINTAINING HIGH EU SAFETY AND SECURITY STANDARDS

- ***ERA welcomes the Strategy's intention to shift to a risk and performance-based approach for safety regulation.***
- ***More clarity is needed about the allocation of additional costs beyond those required to achieve safety goals.***
- ***The Strategy should propose concrete measures to ensure states take responsibility for funding any additional anti-terrorist security measures that will be required in the future.***

ERA welcomes the Strategy's aim to shift to a risk and performance-based oversight approach to strike the right balance between safety and security-related costs and resources (human, financial or natural resources). The regulatory system has to be better equipped to identify and mitigate safety risks, taking into account interdependencies between aviation safety and other technical domains of regulation, such as aviation security or environmental protection.

The EC should also propose an updated Framework Regulation for common rules in the field of civil aviation safety, replacing the current Regulation (EC) No 216/2008 with the objective of introducing new mechanisms for more efficient safety oversight and new methods for more risk-based, proportionate and performance-based rulemaking.

The EC is presenting a revised European Aviation Safety Programme, describing the way in which safety is managed in Europe today.

High security standards are imperative. The threat of terrorism to civil aviation remains, and is likely to do so for the foreseeable future. ERA wants to ensure that security regulations are practicable and implemented consistently by all EU states and, wherever possible, adopted by other non-EU ECAC states. An important tool to optimise the investment in security is the one stop security concept and the Commission is seeking new ways to alleviate the burden of security checks on passengers, notably through the use of new technology, applying a risk-based approach.

However the threat from terrorism remains specifically to the state, not passengers or citizens and regrettably there is little support for the funding of additional costs by central tax by states for 'more stringent' security measures that could be implemented to counter these threats. It is essential that the Strategy proposes a clear commitment to states to fund additional security measures that might be required in the future.



## 7. AIRPORT CHARGES

- ***ERA supports a more robust measure than proposed in the Strategy to control monopoly airport providers, in particular at large hub airports.***
- ***The Strategy should propose more concrete measures to require transparency and robust consultation on airport charges between some airport managing bodies and the airline users at airports of less than 5m passenger per annum.***

The EC considers that airport charges should be a matter for airports and airlines to decide as commercial partners. When airports are subject to effective competition, the market should determine the level of charges and there is no need for regulation. However, when airports are not subject to effective competition, regulation is necessary to ensure the right level of charges. The EC also relies on “Thessaloniki Forum of Airport Charges Regulators” work and findings on the better implementation of the current Directive and on the use of market power assessment as a means of determining the optimal regulatory approach, transparency of airport charges and effective airline-airport consultation. The EC will then assess the extent to which the Airport Charges Directive needs to be reviewed.

ERA is disappointed that the Strategy does not propose any stronger measures to control monopoly airport providers where they exist, in particular at large hubs. The Strategy has also failed to broaden the scope of the existing EU Airport Charges Directive to cover airports of less than 5m passengers per annum.

Such an approach would ensure that airports (especially major hub airports) do not abuse their dominant position. The ever-increasing cost of infrastructure in Europe demonstrates the monopolistic nature of some large airports and therefore the urgency of a more effective regulatory framework.

At present the EU Airport Charges Directive does not apply to airports of less than 5m passengers per annum. It would be beneficial as part of the Strategy to propose concrete measures to apply a regulatory framework to small airports to require greater transparency and consultation on airports charges.

ERA is disappointed that the EC has not addressed directly the widespread lack of independent regulatory oversight within member states, the lack of transparency and poor consultation between some airport managing bodies and the airport users throughout the charges levying process. The fact that no reference has been made to the practice of imposing the pre-financing of the building of infrastructure on airline users through charges means that the EC has missed the opportunity to make it clear that any investment costs would be recovered once the infrastructure is operational.

## 8. MARKET ACCESS

- ***The EU should allow greater investment from non EU entities into European carriers and should focus on reducing competitive distortions with the EU, in particular between rail and air.***
- ***While important for EU/non-EU competition, the debate over traffic rights for third country carriers should not overshadow more urgent problems hindering the EU aviation sector’s growth and competitiveness outlined in the Strategy and this paper.***





ERA welcomes the EC's focus on the importance of attracting investment from third countries through the adoption of an ambitious external aviation policy and the reduction of a number of restrictions in relation to investment and market access. ERA also welcomes the commitment to issue interpretative guidelines on the application of Regulation 1008/2008 on the ownership and control of EU airlines.

Predominantly, ERA's membership operates within Europe and competition is mainly limited to intra EU/EEA operations. Many issues facing intra-European operators therefore will not be impacted by EU/non-EU competition. It is essential that addressing the considerable limitations within Europe (e.g. hub airport capacity, essential ATM improvements, runway infrastructure, over-regulation) that hold back the competitiveness of Europe *vis-à-vis* the rest of the world is not overshadowed by the debate over EU/non-EU competition between some European carriers and third country operators.

A greater focus should be put on competition within the EU, which is distorted from a regulatory and financing perspective, namely the differing regulatory and state financing framework imposed on different travel modes (especially rail and air) as well as the power of the large incumbent network and low-cost airline operators to market access.

## 9. SOCIAL AGENDA AND CREATING HIGH QUALITY JOBS IN AVIATION

- ***ERA supports the Strategy's plan to bring clarity to the applicable labour law, competent courts for labour disputes, as well as on the applicable social security regime to aviation workers.***

ERA members are aware of the recent developments in employment legislation, practice and dynamics within the aviation sector in Europe and welcome the EC's announcement to pay particular attention to highly mobile workers who have their operational basis ('home base') located outside the territory where the airline is licensed.

The resolution to bring clarity to the applicable labour law, to the competent court in charge of disputes, to the applicable social security regime and to consider, after evaluation, if regulatory changes for the aviation sector are necessary are an encouraging development that ERA members support.

ERA members agree that this plan might bring clarity to the legal framework for highly mobile workers through the issuance of interpretative guidelines on applicable labour law, competent courts and to the nature of existing arrangements affecting mobile workers.

## CONCLUSION

The publication of an EU aviation Strategy is a positive step forward for the industry and achieves recognition of the contribution of aviation to EU GDP growth, jobs and connectivity for all citizens. However, ERA believes that the Strategy, in its current form, will not increase the long-term competitiveness of the industry compared to other methods of transport or from non-European competitors as the measures proposed are not sufficiently substantive.

This paper lays out a list of proposed actions to strengthen the Strategy and ERA is ready to work with the EC, Council and Parliament to ensure that the Strategy is modified to deliver on its original intent - a stronger, fitter and more efficient air transport system.

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