



## **COVID-19: SUPPORTIVE MEASURES PROPOSED BY THE EU COMMISSION FOR THE AVIATION SECTOR**

According to estimations made by the International Air Transport Association (IATA), the COVID-19 pandemic will result in airlines seeing passenger revenues drop by \$314 billion in 2020, a 55% decline compared to 2019. Urgent measures are thus required to help mitigate the difficulties faced by the aviation sector.

On 29 April, the EU Commission published a package of legislative proposals aimed at providing significant relief in the context of the COVID-19 crisis to the transport sector. These legislative proposals still need to go through the necessary legislative procedure before officially being adopted and may be subject to further change.

As far as the aviation sector is concerned, the Commission has put forward a proposal that includes a temporary amendment of Regulation (EC) No. 1008/2008 (which is the fundamental EU regulation on aviation) and a number of other aviation related provisions. The Commission more specifically proposes:-

1. A relaxation of the air carrier licensing rules in the event of financial problems caused by the COVID-19 pandemic.
2. A simplification of the procedure regarding the restriction of traffic rights.
3. The possibility of prolonging certain ground handling contracts until 31 December 2021.
4. A process for the appointment of new ground handlers for a maximum period of 6 months without reference to the normal selection procedure.

## 1. Air Carrier Licences

EU carriers will welcome an expected relaxation of their licensing framework, the effect of which could otherwise oblige regulators to strip such carriers of their operating licences and compound the unprecedented pressures which they are already facing.

The relevant EU licensing structure for its mainstream airlines is currently set out in Regulation (EC) No. 1008/2008 and can be summarised as follows:-

- To reduce risks to passengers, Community air carriers failing to fulfil the requirements for maintaining a valid operating licence should not be allowed to continue operations. In such cases, the competent licensing authority should revoke or suspend the operating licence.

- The financial requirements for the granting of an operating licence in essence demand evidence that each carrier: (i) can meet its actual and potential obligations for a period of 24 months from the start of operations; and (ii) can meet its fixed and operational costs according to its business plan and established under realistic assumptions for a period of three months from the start of any operations.
- Whenever there are clear indications that financial problems exist or when insolvency or similar proceedings are opened against a Community air carrier licensed by it, the competent licensing authority shall without delay make an in-depth assessment of the financial situation and on the basis of its findings review the status of the operating licence within a time period of three months.
- The competent licensing authority may at any time assess the financial performance of a Community air carrier which it has licensed. Based upon its assessment, the authority **shall** suspend or revoke the operating licence if it is no longer satisfied that this Community air carrier can meet its actual and potential obligations for a 12-month period.
- An operating licence must be re-submitted for approval when a Community air carrier has ceased operations for more than six months.

Against the backdrop of COVID-19 and the implications which it has created for the broader airline industry, the above framework has the potential to create yet further problems.

In response, the European Commission has now signalled a willingness to temporarily suspend these licensing requirements on condition that safety is not in any way compromised. Elaborating, the EC has announced that “it is likely that many airlines, which were financially healthy before the crisis, will end up in a situation whereby their liquidity problems lead to the legal need for their operating licence to be suspended, revoked or replaced

by a temporary licence”. The EC has acknowledged that even the imposition of a temporary licence would send “a very negative signal” to the market about the airline’s ability to survive, potentially impeding cash-flow and compounding existing financial pressures.

Whilst it remains to be seen how the specific measures will operate – and, in particular, how regulators will satisfy themselves over safety – it would seem highly unlikely that any EU carrier formally entering insolvency will be relieved from the current regulatory framework.

## 2. Prolongation of ground handling services

In some countries, access to the ground handling market is restricted pursuant to Directive 96/64/EC. In these instances, ground handlers are elected for a period of 7 years. This 7-year period gives handlers the necessary time to recover their costs. Since the onset of the COVID-19 outbreak, the costs for ground handling companies have become significantly higher than their revenues.

There is an obvious need to afford security to the creditors of ground handlers. This is so that they can grant loans or suspend payments in order to avoid bankruptcy scenarios. In turn, this will remove a further unwanted obstacle to the recovery of airline operations. Addressing this, the Commission proposes that, in derogation of Article 11(1)(d) of Directive 96/67/EC, contracts of suppliers that have been selected on the basis of the procedure laid down in Article 11(1) of Directive 96/67/EC and which expire between the date of entry into force of the proposed Regulation and 31 December 2020, may be prolonged until 31 December 2021.

## 3. Urgent selection of a new ground handlers

Article 11(1) (e) of Directive 96/67/EC provides that if a supplier of ground handling services ceases its activity before the end of the period for which it has been selected, it shall be replaced on the basis of the procedure laid down in Directive 96/67/EC. Hence, if a ground handler ends up going bankrupt during the



period for which it was selected, a new selection procedure would have to be launched.

As this is not feasible in light of the COVID-19 pandemic, the Commission proposes to amend Directive 96/67/EC temporarily in order to allow an airport managing body to choose directly a ground handling service provider for a maximum period of six months without having to adhere to the normal selection procedure.

### **Conclusion**

Whilst the measures proposed by the European Commission are certainly welcomed by the industry, their scope is still somewhat limited taking into account the extent of the crisis and will not provide immediate financial relief to the industry. Amongst various cash flow challenges, airlines today are still having to respond to numerous refund claims under Regulation 261/2004. We can only hope that the Commission adds its voice to the industry calls and will soon adopt further measures, most pressingly a suspension of the reimbursement requirement under Regulation 261/2004.

We will aim to update the position in the event of material developments.

For more information, please contact:



#### **PIERRE FRÜHLING**

Partner, Brussels/Paris

**T** +32 (0) 2643 3406/  
+33 1 44 94 40 50

**E** pierre.fruhling@hfw.com



#### **EDWARD SPENCER**

Partner, London

**T** +44 (0)20 7264 8314

**E** edward.spencer@hfw.com



#### **YASMIN BHATTI**

Senior Associate, Brussels/Paris

**T** +32 (0) 2643 3437/  
+33 1 44 94 40 50

**E** yasmin.bhatti@hfw.com

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