

# Proposal for improved protection against subsidisation and unfair pricing practices causing injury to EU air carriers in the supply of air services from non-EU countries

The questionnaire below is part of the work the European Commission services are conducting in the context of a possible European Commission proposal for better protection of EU air carriers against unfair practices from non-EU air carriers which cause injury to the EU industry. A possible proposal will recommend to revise or replace **Regulation (EC) No 868/2004 of the European Parliament and of the Council of 21 April 2004 concerning 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**. The results of this consultation will feed into the European Commission impact assessment which will accompany a possible proposal. Because of confidentiality reasons linked to the commercial interests at stake in international aviation disputes, replies to the questions below will not be published as such, and the identities of respondents will not be disclosed by the European Commission services, unless the respondents explicitly allow doing so. However, the European Commission will publish the aggregate results.

We invite you to read the **policy context document**, which explains the context of the consultation, before answering the questionnaire.

The questionnaire is structured as follows:

1. Respondent's profile
2. Problems to be addressed
3. Identification of policy objectives
4. Policy options and their impacts
5. Other

Questions marked with an asterisk \* require an answer to be given.

## 1. Respondent's profile

Please provide information to help us build your profile as a respondent. In accordance with Regulation 45/2001, all personal data collected through this survey will be kept securely and will ultimately be destroyed.

If you are speaking on behalf of an organisation, please note that as part of the European Transparency Initiative, organisations are invited to use the register of interest representatives to provide the European Commission and the public at large with information about their objectives, funding and structures:

[http://europa.eu/transparency-register/index\\_en.htm](http://europa.eu/transparency-register/index_en.htm).

If you are a registered organisation, your contribution will be considered as representing the views of your organisation. If your organisation is not registered, your contribution will be considered as an individual contribution.

1.1. Are you answering as an individual or on behalf of an organisation or an institution? \*

- I am answering as an individual
- I am answering on behalf of an organisation or institution (business organisation, NGO, public authority etc.)

 1.2. If you are responding as an individual, please specify in what capacity you are answering: \*

- EU citizen
- customer of a non-EU airline
- employee of an EU airline
- employee of an EU airport
- employee of an EU public authority/public administration
- employee of an EU non-governmental organisation (e.g. consumer organisation)
- employee of an EU industry association or a chamber of commerce (national/regional/local)
- employee of an EU institution
- other (please specify)
- customer of an EU airline
- employee/researcher in a research organisation/university
- employee of a non-EU airline
- employee of a non-EU airport
- employee of a non-EU public authority/public administration
- employee of a non-EU non-governmental organisation (e.g. consumer organisation)
- employee of a non-EU industry association or a chamber of commerce (national/regional/local)
- employee of an international organisation

 1.3. Please specify (maximum 500 characters)



1.4. If you are responding on behalf of an organisation or an institution, please specify the type of organisation you represent: \*

- I represent a research organisation/university
- I represent a non-EU airline
- I represent a non-EU airport
- I represent a non-EU public authority/public administration
- I represent a non-EU non-governmental organisation (e.g. consumer organisation)
- I represent a non-EU industry association or a chamber of commerce (national/regional/local)
- I represent an international organisation
- I represent a non-EU Small or Medium Enterprise (SME)
- I represent an EU airline
- I represent an EU airport
- I represent an EU public authority/public administration
- I represent an EU non-governmental organisation (e.g. consumer organisation)
- I represent an EU industry association or a chamber of commerce (national/regional/local)
- I represent an EU institution
- I represent an EU Small or Medium Enterprise (SME)
- other (please specify)



1.5. Please specify (maximum 500 characters)

1.6. Please provide your country of residence.

*If answering as an individual, please provide your place of residence.*

*If answering on behalf of a company/organisation/institution, please provide the country of seat of your company/organisation/institution.\**

- |                                      |                                   |  |
|--------------------------------------|-----------------------------------|--|
| <input type="radio"/> Austria        | <input type="radio"/> Germany     | <input type="radio"/> Poland                 |
| <input type="radio"/> Belgium        | <input type="radio"/> Greece      | <input type="radio"/> Portugal               |
| <input type="radio"/> Bulgaria       | <input type="radio"/> Hungary     | <input type="radio"/> Romania                |
| <input type="radio"/> Croatia        | <input type="radio"/> Ireland     | <input type="radio"/> Slovenia               |
| <input type="radio"/> Cyprus         | <input type="radio"/> Italy       | <input type="radio"/> Spain                  |
| <input type="radio"/> Czech Republic | <input type="radio"/> Latvia      | <input type="radio"/> Sweden                 |
| <input type="radio"/> Denmark        | <input type="radio"/> Lithuania   | <input type="radio"/> Slovakia               |
| <input type="radio"/> Estonia        | <input type="radio"/> Luxembourg  | <input type="radio"/> United Kingdom         |
| <input type="radio"/> Finland        | <input type="radio"/> Malta       | <input type="radio"/> Other (please specify) |
| <input type="radio"/> France         | <input type="radio"/> Netherlands |  |



1.7. Please specify (maximum 500 characters)

1.8. Name and contact details.

*Please note that the questionnaire will be available for your full contribution only if your name and contact details are provided. If you choose not to provide your name and contact details, you still have the option of submitting a general comment (up to 5000 characters).*

*Because of confidentiality reasons linked to the commercial interests at stake in international aviation, replies to the questions will not be published as such, and the identity of any respondent will not be disclosed, unless the respondent explicitly allows the European Commission services to do so. However, the European Commission will publish the aggregate results.\**

- Yes, I will provide my name and contact details
- No, I prefer to provide a general comment only (questionnaire ends after your comment)



1.9. General comment (maximum 5000 characters)



1.10. Name\* (maximum 500 characters)



1.11. Organisation\* (maximum 500 characters)



1.12. Address\* (maximum 1000 characters)



1.13. Is your association/organisation registered in the Transparency Register of the European Commission ([http://europa.eu/transparency-register/index\\_en.htm](http://europa.eu/transparency-register/index_en.htm))? \*



*In the interests of transparency, organisations (including, for example, NGOs, trade associations and commercial enterprises) are invited to provide the public with relevant information about themselves by registering in the Interest Representative Register and subscribing to its Code of Conduct. If you are a Registered organisation, please indicate the name and address of your organisation and your Register ID number on the first page of your contribution. Your contribution will then be considered as representing the views of your organisation.*

Yes

No



1.14. Please indicate the identification number



1.15. Telephone \* (maximum 500 characters)



1.16. Email \* (maximum 500 characters)



1.17. Received contributions will not be published as such, and the identity of any respondent will not be disclosed on the European Commission's website, unless the respondent explicitly allows the European Commission services to do so. However, the European Commission will publish the aggregate results.

Therefore, do you agree with your contribution being published under your name? \*

- My contribution may be published under the name indicated.
- I do not agree that my contribution is published under the name indicated, but I do agree that my contribution may be used to publish aggregate results.

## 2. Problems to be addressed

The aim of this section is to obtain stakeholders' views on the problems currently encountered with the protection against unfair practices causing injury to EU air carriers in the supply of air services from non-EU countries to and from the EU market.

### 2.1. Core problem

2.1.1. EU air carriers are currently facing unfair practices causing injury to them in the supply of air services from non-EU countries to and from the EU market. \*

- Strongly disagree
- Disagree
- Neutral
- Agree
- Strongly agree
- No opinion

2.1.2. The above mentioned injury to EU air carriers is mainly caused by the following unfair practices in the supply of air services from non-EU countries to and from the EU market to and from the EU market:

- a: Strongly disagree
- b: Disagree
- c: Neutral
- d: Agree
- e: Strongly agree
- f: No opinion

	a	b	c	d	e	f
2.1.2.1. the existence of subsidisation *	<input type="radio"/>					
2.1.2.2. the existence of unfair pricing practices *	<input type="radio"/>					
2.1.2.3. other unfair practices (Please specify below) *	<input type="radio"/>					

2.1.3. Please specify the other unfair practices. (maximum 2000 characters)

2.1.4. The current legislative framework does not effectively guarantee protection to EU air carriers against unfair practices causing injury to them in the supply of air services from non-EU countries to and from the EU market. \*

- Strongly disagree
- Disagree
- Neutral
- Agree
- Strongly agree
- No opinion

### 2.1.5. This is mainly due to:

- a: Strongly disagree
- b: Disagree
- c: Neutral
- d: Agree
- e: Strongly agree
- f: No opinion

	a	b	c	d	e	f
2.1.5.1. the ineffectiveness or non-existence of fair competition clauses in Bilateral Air Service Agreements (ASAs) between EU Member States and non-EU countries *	<input type="radio"/>					
2.1.5.2. the ineffectiveness of Regulation 868/2004 *	<input type="radio"/>					
2.1.5.3. the lack of ICAO rules on fair competition *	<input type="radio"/>					
2.1.5.4. other reasons (Please specify)	<input type="radio"/>					

### 2.1.6. Please specify the other reasons (maximum 2000 characters)

### 2.1.7. Please identify any other core problems hindering the effectiveness of protection against unfair practices causing injury to EU air carriers in the supply of air services from non-EU countries to and from the EU market.

(maximum 3000 characters)

2.1.8. Please provide information if you consider to have been subject to unfair practices by competitors or authorities from a non-EU country.

- Could these unfair practices be addressed by measures that could be taken under Regulation 868/2004 or by the bilateral Air Service Agreements (ASAs)?
- Please explain the main obstacles in applying the Regulation / ASAs to your case.
- Please provide information what counter measures you would propose to tackle these unfair practices.

(maximum 5000 characters)

## 2.2. Problem drivers

The following questions ask your opinion on the preliminarily identified problem drivers contributing to the above-mentioned core problem of ineffective protection of EU air carriers against unfair practices causing injury to them in the supply of air services from non-EU countries to and from the EU market.

### 2.2.1. Regulation 868/2004

In relation to Regulation 868/2004, to what extent do you agree that the following problem drivers are preventing an effective protection of EU air carriers against unfair practices causing injury to them in the supply of air services from non-EU countries to and from the EU market?







### 2.2.1.4. Problem driver 4: Ineffective possible remedies under Regulation 868/2004 (sanctions)

- a: Strongly disagree
- b: Disagree
- c: Neutral
- d: Agree
- e: Strongly agree
- f: No opinion

	a	b	c	d	e	f
2.2.1.4.1. the calculation of duties in the aviation sector is impossible due to the nature of the pricing practices in the aviation market *	<input type="radio"/>					
2.2.1.4.2. the possibility of "other measures" is not well defined *	<input type="radio"/>					
2.2.1.4.3. the voluntary conflict resolution in the form of acceptable undertaking by the third party is not useable in practice *	<input type="radio"/>					

2.2.1.5. Would you like to identify any other problem driver in relation to Regulation 868/2004 hindering the effectiveness of protection against unfair practices causing injury to EU air carriers in the supply of air services from non-EU countries to and from the EU market? (maximum 2000 characters)

### 2.2.2. Bilateral Air Service Agreements

2.2.2.1. In relation to Bilateral Air Service Agreements (ASAs) between EU Member States and Third Countries, what do you think are the main problem drivers preventing an effective protection of EU air carriers against unfair practices causing injury to them in the supply of air services from non-EU countries to and from the EU market? (maximum 2000 characters)

### 2.2.3. Other problem drivers

2.2.3.1. Would you like to highlight any other problem drivers which are hindering an effective protection of EU air carriers against unfair practices causing injury to them in the supply of air services from non-EU countries to and from the EU market? (maximum 2000 characters)

## 3. Identification of policy objectives

Based on a first assessment, the European Commission services have identified a number of preliminary policy objectives linked to the problems described above. Therefore, in this section the European Commission services seek to identify the degree to which stakeholders agree with these objectives and to identify other objectives that may be taken into consideration in the legislative review.

### 3.1. To what extent do you agree with the following policy objectives?

- a: Strongly disagree
- b: Disagree
- c: Neutral
- d: Agree
- e: Strongly agree
- f: No opinion

	a	b	c	d	e	f
3.1.1. Provide EU air carriers more effective protection against unfair practices causing injury to them in the supply of air services from non-EU countries to and from the EU market *	<input type="radio"/>					
3.1.2. Reinforce the competitive position of the EU aviation industry	<input type="radio"/>					
3.1.3. Deter unfair practices in the supply of air services from non-EU countries to and from the EU market *	<input type="radio"/>					

### 3.2. Would you like to identify any other objective that this initiative should pursue? (maximum 2000 characters)

## 4. Policy options and their impacts

In this section, you are invited to indicate which policy options offer the greatest potential to reach the objectives specified in the previous section





4.3.5. Concepts coming from trade defence instruments such as "Community industry", "like air service" and "non-commercial advantage" should be reconsidered or abandoned \*



4.3.6. The burden of proof and the required initial evidence as currently provided by the Regulation should be reviewed in order to be able to initiate proceedings more effectively when justified \*



4.3.7. The obligation to cooperate for third countries, their airlines and other stakeholders affected by a European Commission investigation should be strengthened \*



4.3.8. Procedural aspects of the current Regulation such as deadlines, consultation mechanisms, investigation proceedings etc. should be reviewed \*



4.3.9. Sanctions other than duties should be clearly defined together with the situations to which they apply \*



4.3.10. Possible sanctions should include restrictions on the use of traffic rights available under air transport agreements \*



4.3.11. The methodology for the calculation of duties should be revised \*



4.3.12. The "Community interest test" required by Article 16 of the Regulation should be dropped \*







4.7. Please specify "other" (maximum 2000 characters)

4.8. Would you like to identify any other policy measure that could be more effective in providing EU carriers protection against unfair practices causing injury to them in the supply of air services from non-EU countries to and from the EU market (e.g. Air Service Agreements, ICAO rules on fair competition)? If yes, please explain why and if you consider them as alternative or complementary to Regulation 868/2004. (maximum 5000 characters)

4.9. Would you like to provide any additional information on the topics (e.g. the possible impacts of the policy measures on various areas) discussed in this section? (maximum 5000 characters)

## 5. Other

5.1. Do you have experience with trade defence instruments applied by **non-EU states** in the aviation sector? \*

- No
- Yes (please specify)



5.2. How have you been involved? \*

- as a complainant
- as a defendant
- as a national authority from the country of the complainant
- as a national authority from the country of the defendant
- as a representative of an international organisation
- as a third party
- other (please specify)



5.3. Please specify (maximum 500 characters)



5.4. Please briefly describe your experience and identify lessons that can be learned by EU authorities. Could they be applied in the EU legal framework? If yes, please explain how. If not, please explain why.

(maximum 5000 characters)

5.5. Please feel free to provide any other information or suggestions that you may find useful in relation to the topics discussed in this public consultation. (maximum 5000 characters)

5.6. May the European Commission services contact you if further details on the submitted information are required? \*

Yes

No

## Useful links

Europa page on this consultation:

[http://ec.europa.eu/transport/modes/air/consultations/2014-01-20-protection-against-subsidisation\\_en.htm](http://ec.europa.eu/transport/modes/air/consultations/2014-01-20-protection-against-subsidisation_en.htm)

## Background documents

Policy context:

<http://ec.europa.eu/transport/modes/air/consultations/doc/2014-01-20-protection-against-subsidisation/policy-context.pc>