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linked to the commercial interests at stake in international aviation disputes, replies to the questions below will not be published as such, and the identities of respondents will not be disclosed by the European Commission services, unless the respondents explicitly allow doing so.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.

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

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

| Austria | Germany | Poland |
|----------------|-------------|------------------------|
| Belgium | Creece | Portugal |
| Bulgaria | Hungary | Romania |
| Croatia | Ireland | Slovenia |
| Cyprus | Italy | Spain |
| Czech Republic | Latvia | Sweden |
| Denmark | Lithuania | Slovakia |
| Estonia | Luxembourg | United Kingdom |
| Finland | Malta | Other (please specify) |
| France | 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)?*

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 |
| O 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

| | а | b | С | d | е | f |
|--|------------|------------|------------|------------|------------|---------|
| 2.1.2.1. the existence of subsidisation * | \bigcirc | \bigcirc | \bigcirc | \bigcirc | \bigcirc | \odot |
| 2.1.2.2. the existence of unfair pricing | O | O | O | O | © | O |
| 2.1.2.3. other unfair practices (Please specify below) | © | 0 | O | O | O | © |

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 | | | | | | |
|--|---------|------------|------------|---------|---------|------------|
| | а | b | С | d | е | 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 | O | © | © | 0 | 0 | O |
| 2.1.5.2. the ineffectiveness of Regulation 868/2004 | 0 | \bigcirc | \odot | 0 | 0 | \bigcirc |
| 2.1.5.3. the lack of ICAO rules on fair competition | O | \odot | \odot | 0 | 0 | |
| 2.1.5.4. other reasons (Please specify) | \odot | \odot | \bigcirc | \odot | \odot | \odot |

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?

| 2.2.1.1. Problem driver 1: Regulation 868/2004 follows the logic of trade defence instruments. This, for example, is related to: | | | | | | |
|--|---|---|---|---|---|---|
| a: Strongly disagree b: Disagree c: Neutral d: Agree e: Strongly agree f: No opinion | | | | | | |
| | а | b | с | d | е | f |
| 2.2.1.1.1. difficulty in identifying a subsidy granted by a third country to its non-EU air carrier * | O | ۲ | 0 | O | | 0 |
| 2.2.1.1.2. difficulty in determining the existence of unfair pricing (e.g. the third country airline benefits from a non-commercial advantage and charges air fares which are sufficiently below those offered by competing EU air carriers) | O | © | © | © | © | © |

2.2.1.2. Problem driver 2: Impracticable/unclear concepts used in Regulation 868/2004, such as: a: Strongly disagree b: Disagree c: Neutral d: Agree e: Strongly agree f: No opinion b d f С а е 2.2.1.2.1. the application of the "Like air ۲ ۲ ۲ ۲ ۲ ۲ service" concept 2.2.1.2.2. difficulty in proving injury ۲ ۲ ۲ ۲ ۲ ۲ 2.2.1.2.3. threshold for defining the ۲ ۲ ۲ ۲ ۲ ۲ Community industry 2.2.1.2.4. difficulty in proving the Community interest as required by Article ۲ ۲ \bigcirc ۲ ۲ ۲ 16*

| 2.2.1.3. Problem driver 3: Ineffective procedural framework of Regulation 868/2004 such as: | | | | | | | |
|--|------------|---------|------------|---------|------------|------------|--|
| a: Strongly disagree b: Disagree c: Neutral d: Agree e: Strongly agree f: No opinion | | | | | | | |
| | а | b | С | d | е | f | |
| 2.2.1.3.1. initiation of the procedure only if there is sufficient evidence already available | \odot | O | O | O | © | Ô | |
| 2.2.1.3.2. burden of proof lies with the complainant | \odot | © | © | © | \odot | Ô | |
| 2.2.1.3.3. inappropriate deadlines | \bigcirc | \odot | \bigcirc | \odot | \bigcirc | \bigcirc | |
| 2.2.1.3.4. inadequate consultation mechanism: the cooperation of the third countries, their airlines and other stakeholders affected by a European Commission investigation cannot be effectively imposed | 0 | 0 | 0 | 0 | 0 | 0 | |
| 2.2.1.3.5. too limited investigative powers for the European Commission * | O | 0 | 0 | 0 | O | 0 | |

| 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 | | | | | | |
| | а | b | С | d | е | 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 | 0 | 0 | | 0 | 0 | |
| 2.2.1.4.2. the possibility of "other measures" is not well defined * | 0 | 0 | 0 | 0 | 0 | O |
| 2.2.1.4.3. the voluntary conflict resolution in the form of acceptable undertaking by the third party is not useable in practice | 0 | 0 | 0 | 0 | 0 | 0 |

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 | followin | g policy | objective | es? | |
|--|------------|------------|----------|-----------|------------|---|
| a: Strongly disagree b: Disagree c: Neutral d: Agree e: Strongly agree f: No opinion | | | | | | |
| | а | b | С | d | е | 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 | 0 | © | © | © | © | © |
| 3.1.2. Reinforce the competitive position of the EU aviation industry | \bigcirc | \bigcirc | \odot | \odot | \bigcirc | |
| 3.1.3. Deter unfair practices in the supply of air services from non-EU countries to and from the EU market * | 0 | ۲ | 0 | 0 | ۲ | |

| 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

4.1. To what extent do you agree with the following policy options in relation to Regulation 868/2004?

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

4.1.1. Regulation 868/2004 will remain unchanged. Fair competition clauses in air transport agreements between the EU and/or Member States and third countries will be further promoted, as well as further work in ICAO will be pursued to seek to ensure fair competition. Moreover, where relevant, EU competition law will be

applied.*

4.1.2. Regulation 868/2004 will be repealed, while maintaining the focus on the other measures available to safeguard fair competition as mentioned under the

first policy option above.

4.1.3. Regulation 868/2004 will be amended e.g. by reconsidering the scope, providing additional clarifications, adjusting the procedures and introducing new sanction mechanisms, while maintaining the current logic of the Regulation ("light"

revision).*

4.1.4. Regulation 868/2004 will be thoroughly revised by reconsidering the current approach of a trade defence instrument and replacing it by a new, sector specific instrument e.g. a simplified instrument similar to the US International Air Transportation Competition Act ("full" revision). This policy option could also include the considerations as set out under

the previous option.

| | а | b | С | d | е | f |
|----------------|---|---|---|---|---|---|
| air s er | O | O | 0 | 0 | 0 | O |
| rd | 0 | 0 | | | | 0 |
| e, ng " | © | 0 | 0 | 0 | 0 | O |
| ed I der | O | 0 | | | | 0 |

4.2. Would you like to identify any other way to approach a possible revision of Regulation 868/2004? (maximum 2000 characters)

4.3. How could Regulation 868/2004 be made more effective? Please indicate which provisions of the Regulation should be subject to revision and how?

(This is without prejudice to your view whether the current Regulation should be amended or replaced by a new instrument.)

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

| | а | b | С | d | е | f |
|--|---|---|---|---|---|---|
| 4.3.1. The scope of the Regulation should be extended to cover a wider range of unfair practices e.g. discrimination in setting charges | 0 | © | © | © | 0 | O |
| 4.3.2. Given the difficulties in its application, the unfair pricing track of the Regulation should be abandoned * | 0 | | 0 | 0 | 0 | Ô |
| 4.3.3. The definition of subsidy as currently used in the Regulation should be widened * | O | | 0 | 0 | 0 | O |
| 4.3.4. The definition of injury as currently used in the Regulation should be reconsidered | O | O | O | O | © | 0 |

| 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 | 0 | 0 | 0 | 0 | 0 | ۲ |
|--|---|---|---|---|---|---|
| 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 * | © | 0 | 0 | 0 | 0 | © |
| 4.3.7. The obligation to cooperate for third countries, their airlines and other stakeholders affected by a European Commission investigation should be strengthened | 0 | 0 | 0 | 0 | 0 | © |
| 4.3.8. Procedural aspects of the current Regulation such as deadlines, consultation mechanisms, investigation proceedings etc. should be reviewed | 0 | 0 | 0 | 0 | 0 | © |
| 4.3.9. Sanctions other than duties should be clearly defined together with the situations to which they apply | 0 | 0 | 0 | 0 | 0 | 0 |
| 4.3.10. Possible sanctions should include restrictions on the use of traffic rights available under air transport agreements * | 0 | 0 | 0 | 0 | 0 | 0 |
| 4.3.11. The methodology for the calculation of duties should be revised | © | 0 | © | © | © | o |
| 4.3.12. The "Community interest test" required by Article 16 of the Regulation should be dropped | 0 | 0 | 0 | 0 | 0 | 0 |

4.4. Would you like to elaborate on your replies to the above questions and specify how the Regulation could be made more effective? For example, how to redefine injury, other types of sanctions, burden of proof etc. (maximum 5000 characters)

4.5. Would you like to identify and rate any other measure which could improve the effectiveness of Regulation 868/2004? (maximum 5000 characters)

4.6. To what extent do you think that a revision of Regulation 868/2004, and more specifically the policy measures as specified in the question above, could have an impact on the following indicators?

| a: Strongly disagree | | | | | | | |
|--|---------|---------|------------|------------|------------|---------|--|
| b: Disagree | | | | | | | |
| c: Neutral | | | | | | | |
| d: Agree | | | | | | | |
| e: Strongly agree | | | | | | | |
| f: No opinion | | | | | | | |
| | а | b | С | d | е | f | |
| 4.6.1. Fair competition in the external aviation market | \odot | 0 | \odot | \odot | \odot | O | |
| 4.6.2. Better functioning of the internal EU aviation market | \odot | \odot | \odot | \odot | \odot | 0 | |
| 4.6.3. Operating costs of EU air carriers* | 0 | \odot | \bigcirc | \bigcirc | \bigcirc | \odot | |

| 4.6.4. Administrative burden for EU air | 0 | \bigcirc | \bigcirc | \odot | 0 | \bigcirc |
|--|---------|------------|------------|---------|---------|------------|
| 4.6.5. Market share of EU businesses in air services to and from the EU \star | \odot | 0 | © | © | © | o |
| 4.6.6. Administrative burden for public authorities in the EU | \odot | © | © | \odot | \odot | O |
| 4.6.7. Operating costs for non-EU air carriers | © | \odot | O | O | O | O |
| 4.6.8. Administrative burden for non-EU air carriers | 0 | \odot | 0 | 0 | O | 0 |
| 4.6.9. Market share of non-EU businesses in air services to and from the EU $*$ | \odot | \bigcirc | O | 0 | 0 | 0 |
| 4.6.10. Administrative burden for non-EU | \odot | \bigcirc | \odot | O | 0 | 0 |
| 4.6.11. Flight prices for customers of air services to and from the EU \star | \odot | \bigcirc | O | O | 0 | 0 |
| 4.6.12. Service level on flights for customers of air services to and from the EU [*] | 0 | 0 | O | O | © | 0 |
| 4.6.13. EU/Member States relations with third countries | 0 | \odot | 0 | 0 | \odot | O |
| 4.6.14. Employment in the EU aviation | 0 | O | O | O | \odot | O |
| 4.6.15. Job quality in the EU aviation | O | Ô | O | O | O | O |
| 4.6.16. Employment in the non-EU aviation | O | O | O | O | O | O |
| 4.6.17. Job quality in the non-EU aviation | 0 | \odot | 0 | 0 | 0 | O |
| 4.6.18. Other (please specify) | \odot | \odot | \odot | \odot | O | 0 |

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? \star

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?* | |
| O 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

Background documents

Policy context:

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