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US DOT Notice for Proposed Rulemaking on Security Programs of Foreign Carriers – Docket No. FAA-1998-4758; Notice No. 98-17

Presentation at the FAA hearing on behalf of the Association of European Airlines by Sefik B. Yüksel, General Manager for Trade Affairs

Introduction

AEA has closely cooperated with ECAC during the preparation- for their presentation at this hearing. I will therefore content myself to say that the 27 members of the Association of European Airlines fully support the ECAC intervention. I would then like to use the brief time allocated to us to emphasize some salient points of importance to our members and, we believe, to **all** airlines operating to the United States **from** European Airports.

General consequences of the proposed measures

The members of the Association of European Airlines are continuously assessing threats directed at air transport services and taking the appropriate security counter measures. In Europe, in addition to Baggage/Passenger Reconciliation long in practice, we will soon be moving to 100% hold baggage screening employing sophisticated X-Ray equipment, including CTX when necessary. Some of our members are already practicing the 100% screening and other tight security measures including passenger profiling based on their **individual** threat assessment evaluations. Therefore, we do not **see** the need to impose “identical security measures” with those presently practiced by US airlines indiscriminately on all **AEA** member airlines at all airports in Europe regardless of necessity. In fact the US proposals are seen by our members not to be really security oriented. They are essentially and fundamentally viewed as “commercial” in nature.

I would like to first point out today that the application of “identical” security measures at European airports by both United States and European carriers would not bring “identical” consequences. Far from it, the negative consequences will be far more serious for AEA member airlines operating out of their hub airports in Europe than for American carriers operating the return leg of services to the United States.

Adria Airways, Aer Lingus, Air France, Air Malta, Alitalia, Austrian Airlines, Balkan, British Airways, British Midland, Cargolux, Croatia Airlines, CSA, Cyprus Airways, Finnair, Iberia, Icelandair, JAT, KLM, Lufthansa, Luxair, Malev, Olympic Airways, Sabena, SAS, Swissair, TAP Air Portugal, Turkish Airlines.

American carriers take passengers **from** airports in Europe to their hub airports **in** the US where they make connections on flights to other airports. In any **one** day an American carrier would typically have a few flights from any given European airport and the security measures at the transatlantic departure point, however burdensome, would have no consequences on their hub operation in the United States. We in Europe have the reverse of this situation. Numerous incoming flights to our hubs feed outbound flights to many US destinations. Therefore, the entire burden of the security clearance of both the passengers originating , from that airport and the connecting passengers and their baggage falls on the hub. With many connecting arrivals and transatlantic departures concentrated within a brief period during the day, the dire consequences of the proposed security measures could cause the **whole** hub system in Europe to implode under the strain.

To test the truth of this, FAA or ECAC could request the application of these same security measures from US hub airports for transatlantic departures, together with mandatory passenger/baggage reconciliation. In all probability you would then find a mirror image of the European airlines' 'position in the reactions that you would receive from the US carriers. In this context it would be good to remember that when a baggage reconciliation system was considered for application in the US some years ago, the US airlines raised strong objections arguing that "Reconciliation would destroy their hub system". If you combine the effects of the existing reconciliation requirements in Europe together with the potential consequences of the FAA proposed new security measures on operations at a hub airport, you will better understand the dilemma posed by the US proposals for European airlines.

Hidden effects of the proposed measures

This is where the hidden consequences of the proposed measures at hub airports become apparent. The preliminary studies made by some of our member airlines have brought to light the most damaging consequences of the proposed measures - beyond those of providing the necessary -money and manpower to put them into operation. These are:

1. The negative effects from a reduction of slots;
2. The necessity to increase minimum connection times which would lead to missed connections for passengers.

The effects on slots

As you are hearing in detail from other speakers today, it is estimated that tens of thousands of slots would be lost at airports like London's Heathrow and Gatwick because passengers could not be processed quickly enough under the proposed security measures. This scenario would be repeated at most major airports in

Europe which do not possess the terminal space necessary to put the proposed measure into practice – particularly passenger profiling – for so many flights **and** passengers during the short period of time when most transatlantic flights depart for the US. Further, in order to share the burden evenly, these slot losses. **would** have to be spread evenly among all airlines – European and US – operating the North Atlantic routes. Given their known scarcity, the loss of slots at European airports is something both European and US airlines can ill afford. If on nothing else, I am sure you will agree with AEA on this point.

The effects on minimum connection times

The severe impact of the security checks on connecting flights is the second hidden consequence of the proposed measures. Since the checks are **required to** be performed at the transatlantic departure point, the minimum connection times would need to be increased, and in many cases doubled, to allow the necessary time for the connecting passengers' profiling and baggage checks. Some of **our** member airlines which rely heavily on connecting traffic have reported the number of passengers who would be unable to use their presently connecting services. For the airports in Austria, Denmark, Ireland, Netherlands, Sweden **and** Switzerland, the annual figure would be 261,000 passengers. I can project this number to be well over one million passengers in Europe for **AEA as a whole** when airports in France, UK and others are also included.

Missed connections could, of course, be partly avoided if the schedules were rearranged to fit the increased minimum connection times. But, then I would have to give here instead the consequences to airlines **from** reduced daily aircraft utilization and crew rotation problems. They may well be even more severe.

Total costs

The direct application (including capital investment) cost of the proposed security measures for ten AEA members who have provided preliminary figures is estimated to be almost equal to the \$1.19 **billion** figure provided by FAA in the NPRM for worldwide ten year total costs. If the indirect costs from slot losses and the revenue losses from passengers' missed connections are added to this, we reach substantial figures for Europe alone. We would therefore propose that the FAA reviews their cost figures and draws the appropriate consequences.

Conclusion

Our principle is that no amount of cost can be considered to be excessive when the expense is required to comply with measures absolutely necessary to ensure the security of airline passengers. But, in taking the necessary security measures, we want to match the resources employed directly with the degree of assessed threat. In doing so we particularly wish to avoid duplicating measures and thus needlessly increasing costs for the airlines and their passengers. We

believe that introducing profiling and other security measures identical to those applied today by US airlines and at the same time administering baggage reconciliation and, very soon, the 100% **hold** baggage screening in Europe will certainly mean unnecessary duplication bringing little “added value” for security.

The NPRM has given us the opportunity to review the consequences and costs associated with the security measures required by the US Government. Based on this, one can express understanding of the excessive security cost burden borne by the US **carriers** at airports abroad. Hence one can better comprehend the term “level playing field legislation” used informally in the professional circles in referring to the amendment proposed by Senator Hatch. Understanding and comprehension, though, do not amount to agreement on our side. A solution must be found to the issue of security measures without duplicating efforts and unnecessarily **overburdening** the American and European carriers. This is also particularly important if we want to safeguard the operation of the **alliances** between US and European airlines ‘which rely on hubs on -both sides of the Atlantic to provide seamless connections and service for their passengers. Any disruption of the functioning of a hub airport in Europe from the reduction of slots and increase of minimum connection times will have seriously damaging consequences for both the US and European airline alliance partners using the airport. The problems being experienced today at a few hub airports in Europe in the application of the US required security measures to connecting traffic between US and **European alliance** partners could provide ample evidence for the US authorities.

The answer to all this is in the hands of the governments on both sides of the Atlantic. They could jointly frame a set of security measures for common application by US and European carriers operating in the North Atlantic **from** European airports. Then none of us should have objections to administering “identical security measures” based on such a **US/ECAC** agreement.

Thank you.

PRESENTATION BY THE UK GOVERNMENT TO FAA HEARING ON 24 FEBRUARY 1999

Good Morning. My name is David Lord. I am **the** UK's Director of Transport **Security**, responsible to the Deputy Prime Minister for the regulations governing aviation **security at** UK airports.

2. I am grateful for this opportunity to address the Panel. The UK will be submitting a written response, setting out our objections to this legislation in detail. However my Government regarded it as essential to leave you in no doubt at all as to the UK's strong *opposition to what is proposed, and for me therefore to appear personally before you to urge the Administrator to revert to Congress to explain why the new law is **fundamentally** flawed and **ultimately** unworkable.

Legal Issues

3. At the outset I **should point** out that this attempt to apply US law outside the territorial limits of the United States is objectionable to my Government. In effect, the US is seeking to dictate how we should **run** our affairs in Britain. Such an infringement of our sovereignty cannot be simply ignored. Moreover the provisions in the Act run contrary to the internationally agreed arrangements under the Chicago Convention, to which the US is a Contracting Party. The UK attaches importance to these issues of principle; and accordingly we shall be making representations to the US Government at the highest political level. I know other speakers today will be making similar points, so I intend now to focus on the issues raised by implementation - some of which would not necessarily have been **apparent** to Congress when the Act was passed.

Countering Terrorism

4. The UK is at one with the US Government in believing that international cooperation is absolutely vital in the fight against terrorism. Also, that major efforts must continue to be made to raise aviation security standards world-wide. It was after all the UK and the US who led the world in the aftermath of the Lockerbie tragedy in pressing for much needed improvements. But by seeking to impose its particular regime on other countries against their wishes, the US will certainly damage cooperation. As America's staunchest ally against the terrorist threat, the UK can only view with dismay this misguided attempt to force through implementation of the Act.

5. Nor is it going too far to say that the new legislation is a complete nonsense in security terms. The **Act** ignores the cardinal principle of Risk Management - that is, matching the degree of security to the level of threat. The “identical measures” provision also removes all discretion, as to how best to protect. If implemented, the Act would result in the introduction of unnecessary and inappropriate **procedures**: unnecessary because they would not be consonant with the level of threat, and inappropriate because they would not necessarily suit the airport environment outside the US. There would be a diversion of expensive resources and effort away **from** areas which are far more important. In short, pursuit of the Act as it stands would actually be prejudicial to aviation security, and would **further** delay **the** implementation of adequate standards throughout the world. Was that what Congress intended? I think not.

6 Rather, what the Act **seems** to be designed to do is to ensure a commercial level playing field between US Carriers and their foreign competitors so far as security **costs** are **concerned**, and in reality to have nothing to do with better security. Indeed, **the NPRM** states that the identical measures requirement will only be applied where foreign carriers are competing with US carriers on a given route to the US.

Practicalities

7. The Act also flies in the face of the sensible principle of Host State responsibility set out in the Chicago Convention. If all nations behaved in the same way as the US is currently behaving, the result would be complete chaos. For example, the UK could take the same approach, and insist on all carriers flying to the **UK from** the US applying measures set by me as the British regulator. Quite apart **from** the inevitable resentment this would cause, implementation of a UK-style regime would necessitate the expenditure of hundreds of millions of dollars at US airports on the type of sophisticated automated baggage reconciliation and screening facilities which we deploy at our airports.

8. As fellow professionals, I know FAA colleagues are well aware that appropriate protection can be achieved in a variety of ways; and that a choice needs to be made according to the operating environment. But the identical measures provision in the new Act allows for no variation, and pays no regard to the situation which exists at UK and other foreign airports. At London's Heathrow for example, some 80% of the traffic is international and some 40% on transfer. The facilities, including the security arrangements, are designed accordingly. The UK has been quite prepared to grant the FAA's long-standing

request, properly made under the **arrangements** in Annex 17 to the Chicago Convention, for **special** measures to be applied in the **UK** to US Carriers in order to counter the particular **terrorist** threat to **them**. But what may in the view of the FAA be feasible and justified **for US airlines** and for other carriers at special risk simply isn't possible or **necessary for** all.

Economic Consequences

9. Which brings me on to the economic consequences of implementation. Substantial additional costs would accrue as a result of implementing the provisions of the Act in the UK : these will be outlined in our written response to the NPRM. However I would point out that because of the way aviation security is financed in Britain, some of these costs would result in increased landing charges. US carriers complain already about the level of such fees : in this way, the provisions in the Act would further increase the burden on all carriers, including US airlines.

10. I have **left** until last a major stumbling block for the UK, which would also have very significant consequences for the US carriers, if the proposed rule were to have effect. A careful analysis of the impact which implementing the Act would have our larger airports has shown that the measures which the FAA requires under its ACSSP would result in the loss of a large number of departure slots - and therefore services - due to terminal space limitation and consequent lengthening of times for aircraft being on-stand. Such slot losses would have the most serious economic consequences far exceeding the costs of providing the staff and equipment which would be needed to extend the FAA's measures to foreign carriers.

11. Any reduction in the number of slots would affect all carriers: in this way, US airlines would lose out along with the others. In addition, there would have to be a spreading of departures, which would mean some flights could not leave at the most popular times. There would be a lengthening of minimum connecting times, and further congestion caused by the denial of off-airport check-in. My colleagues from BAA and BA whose presentations follow mine will explain the implications in more detail.

In Conclusion

12. If this was a genuine attempt to improve security, the UK would be the first to try to reach an accommodation with the US. My Government remains steadfastly committed to the highest standards achievable in practice, and for

continuous efforts to be **made** to upgrade aviation security as new techniques become available. As any knowledgeable individual in the business will tell you, standards in the UK are now among the best in the world.

13. But as I have outlined in this **presentation**, this isn't about improving security; indeed it will actually be counter-productive so far as preventing international terrorism is concerned. Moreover the economic consequences of implementation would be **plainly** so great that, **the UK** Government cannot possibly accept them, even if it was prepared to forego its sovereign right to determine what security measures should be applied in Britain.

14. Unless action is taken by the US to change course, implementation of the Rule as proposed is **bound to** cause immense and wholly **unnecessary** damage to the aviation industries in the UK, the US and elsewhere, as well as being detrimental to the fight against terrorism. The matter lies in your hands.

15. Thank you for **listening**.

Further questions: **Tricia Hayes, British Embassy**
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