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COMMUNICATION FROM THE COMMISSION

**European Commission Guidelines:
Facilitating Air Cargo Operations during COVID-19 outbreak**

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Summary

- *Air cargo accounts for approximately 35% of world trade by value. It is a key part of freight transport, complementing both land and sea transport, in particular for time-sensitive cargo. Following the COVID-19 outbreak, restrictions on flights and/or on the movement of passengers and transport personnel have been imposed, with a view to containing the pandemic. European and global supply chains have consequently been severely disrupted.*
- *Continued and uninterrupted air cargo services are vital for the economy and for fighting COVID-19, and European and global supply chains depend on them being operated unhindered. Air cargo should therefore be able to continuously deliver critical products such as food, medical supplies and personal protective equipment (PPE), and other products which are vital for the functioning of sensitive supply chains.*
- *The extraordinary situation caused by the COVID-19 outbreak may give rise to the need for cooperation between the European and international aviation community, including air cargo and express service providers to ensure the supply and fair distribution of scarce products.*
- *As part of the EU's overall efforts to keep essential transport flows moving, including notably the most sensitive ones, Member States are requested to facilitate air cargo operations during the COVID-19 outbreak. The European Commission is therefore inviting Member States to implement the operational measures set out in these Guidelines with the understanding that these exceptional measures will be temporary for the duration of the COVID-19 crisis.*

The Guidelines for border management measures to protect health and ensure the availability of goods and essential services adopted by the European Commission on 16 March 2020¹, stress the principle that all EU internal borders should stay open to freight and that the supply chains for essential goods such as food supplies, including livestock, medical equipment, PPE and substances of human origin must be guaranteed. It is in the interest of all, in these times of emergency that goods continue to flow freely. This requires that Member States respect and fully implement those Guidelines at all border-crossings at internal borders. In addition, the Communication on the implementation of Green Lanes adopted by the European Commission on 23 March 2020², intends to engender a cooperative process across the EU to ensure all freight, including but not limited to essential goods such as food and medical supplies, gets quickly to its destination without any delays. Finally, in the joint statement by the European Competition Network on application of competition law during

¹ C(2020) 1753 final

² C(2020) 1897 final³ https://ec.europa.eu/competition/ecn/202003_joint-statement_ecn_corona-crisis.pdf

the Corona crisis³ the European Competition Network noted that the extraordinary situation caused by COVID-19 may give rise to the need for cooperation between companies in order to ensure the supply and fair distribution of scarce products to all consumers. In the current circumstances, it will not actively intervene against necessary and temporary measures put in place in order to avoid a shortage of supply. However, its joint statement also makes clear that the European Competition Network will not hesitate to take action against air cargo operators taking advantage of the current situation by cartelising or abusing their dominant position, including with regard to pricing.

This Communication builds on the aforementioned documents and Member States are invited to implement them in full. The current Guidelines are intended to assist Member States in maintaining and facilitating air cargo operations, including the transport by air of essential goods such as food and medical supplies, in particular those whose delivery is time-sensitive. They invite Member States to put in place the necessary operational and organisational measures, with the understanding that these exceptional measures will be temporary for the duration of the COVID-19 crisis, until the exceptional air traffic and travel restrictions are lifted.

1. Introduction

1.1 Impact of COVID-19

1. The COVID-19 outbreak is having a devastating impact on international and European aviation. Air traffic is down over 80%, and nearly all passenger flights are cancelled. Apart from a significant drop in demand for travel, this situation is also partially due to the containment measures, such as travel restrictions and flight bans, imposed by States.

1.2 Importance of air cargo

2. European supply chains are maintained through an extensive network of freight transport services involving all modes of transport. Continued and uninterrupted air cargo services are of essential strategic importance for the EU. They play a vital role in the quick delivery of essential goods, medicines, medical equipment and supplies, organs or other substances of human origin. More generally, air cargo is keeping global supply chains functioning for many of the most time-sensitive and high value materials and is a critical complement to the transport of freight by land and sea.
3. Around half of all air cargo is carried in the hold of passenger aircraft. However, in the context of the COVID-19 outbreak, nearly all of these aircraft are no longer flying. Whilst all-cargo flights are still being operated at similar levels as this time last year, they are unable to compensate for the loss of cargo capacity on passenger aircraft. Shippers, including the medical sector, are reporting lack of capacity and a surge in air cargo shipping rates.
4. In addition, cargo and express airlines are reporting practical difficulties in operating into certain airports due to indiscriminate restrictions on flights or personnel. These issues are threatening the functioning of critical supply chains.

1.3 Restrictions on air cargo

³ https://ec.europa.eu/competition/ecn/202003_joint-statement_ecn_corona-crisis.pdf

5. The effectiveness of COVID-19 containment measures is not dependant on the restriction of the movement of aircraft but on that of passengers. Therefore, temporarily restricting the movement of travellers rather than flights is the best way to avoid disrupting air cargo, including the transport of essential goods.
6. Specific types of flights, such as ferry flights, flights carrying system-critical cargo (such as medicines, PPE or testing equipment), flights carrying assistance in the framework of the Union Civil Protection Mechanism, State flights, flights for special operations as referred to in Article 4 of Commission Implementing Regulation (EU) No 923/2012 (such as medical flights), should, as a rule, be permitted to operate at all times. A significant number of Member States have not clearly exempted cargo flights from their national restrictions on aviation.
7. The European Commission considers that, in general, flight restrictions within the EU which prohibit air cargo flights in the absolute or which render the operation of such flights de facto impossible, for example as a result of unjustified restrictions on aircrew servicing air cargo flights, would be disproportionate. Thus, such flight restrictions would in particular not satisfy the conditions laid down in Article 21 of Regulation (EU) No 1008/2008⁴. Any restrictions incompatible with Union law must be lifted.
8. Third countries should also refrain from unnecessary restrictions on air cargo operations, in the common interest of supply chain continuity for essential goods, including highly specialised and critical products such as medical supplies. The European Commission recalls that restrictions on air cargo operations imposed by third countries must comply with relevant international rules set out in applicable agreements. The European Commission, following any necessary consultations, will take all practical steps to ensure that third countries comply with their international obligations, in particular vis-à-vis Union air carriers, and to promote the application of these principles by third countries and international organisations.

2. Ensuring the continuity of air cargo operations

Recommended operational measures

9. In view of the importance of air cargo and emergency air cargo in particular in the fight against COVID-19, and as part of the EU's overall efforts to keep essential transport flows moving and to preserve the EU-wide operation of supply chains, the European Commission invites Member States to implement a series of operational measures to facilitate air cargo transport and help reduce additional costs, with the understanding that these exceptional measures will be temporary for the duration of the COVID-19 crisis.
10. These measures should include in particular:
 - a. For transport from outside the EU, granting without delay all necessary authorisations and permits, including, where legally possible, temporary traffic

⁴Article 21 of Regulation (EU) No 1008/2008 allows Member States to impose restrictions on flights within the EU under certain strict conditions. It is based on a case-by-case assessment of individual notifications by Member States. The position expressed by the European Commission in respect of air cargo flights is without prejudice to the individual assessment under Article 21 of the full set of restrictions implemented by Member States.

- rights for additional air cargo operations, even when conducted with passenger aircraft;
- b. Temporarily removing, or applying flexibly, night curfews or slot restrictions at airports for essential air cargo operations;
 - c. Facilitating the use of passenger aircraft for cargo-only operations, including for the re-positioning of air cargo flight crew, medical staff and anyone involved in the transport of goods regardless of the transport mode;
 - d. Ensuring that air cargo crew as well as handling and maintenance personnel are qualified as critical staff in cases of lockdown or curfew;
 - e. Ensuring that, where possible, sufficient cargo capacity is maintained when regional airports are closed for economic reasons or considering keeping airports open for air cargo only, and in any case ensuring that open airports maintain sufficient air cargo handling capabilities to ensure timely treatment and delivery;
 - f. Exempting from travel restrictions asymptomatic transport personnel, including aircrew, engaged in the transport of goods;
 - g. Exempting from containment measures asymptomatic aircrew, cargo personnel and airport personnel working on the ramp, if adequate health protocols are in place;
 - h. Allowing fast-track ad-hoc exemptions to address unforeseen situations such as sudden and unforeseen emergency operations;
 - i. Allowing ramp personnel to do their work both safely as well as efficiently, by providing staff with guidance on health precautions in an air cargo environment and support them with appropriate supplies of hygiene products;
 - j. Encouraging that cargo and express airlines exceptionally reserve capacity for the supply of essential goods, in particular medical and emergency supplies, and apply reasonable shipping rates for such supplies.
11. All of the above measures should apply to EU citizens and third country nationals alike if they are essential to provide free movement of cargo to and inside the EU.
12. In respect of emergency measures, Member States are reminded that they must comply with Article 21 of Regulation (EC) No 1008/2008, including as regards information of the Commission and other Member States. Beyond these obligations, Member States are invited, to notify any measures covered by this Communication in advance to the European Commission and to all other Member States, and to make them public in such a way that all air cargo stakeholders are informed sufficiently in advance to adapt their operations accordingly.
13. The joint statement of the European Competition Network of 23 March 2020 highlights that the EU's competition authorities "*will not actively intervene against necessary and temporary measures put in place in order to avoid a shortage of supply*". The joint statement also makes clear that the competition authorities will not hesitate to take action against air cargo operators taking advantage of the current situation by cartelising or abusing their dominant position. Should cargo and express airlines consider it necessary to cooperate in order to ensure the supply of scarce products and would have doubts about the compatibility of such cooperation initiatives with EU/EEA competition law, they are invited to seek informal guidance from the European Commission, the EFTA Surveillance Authority or the national competition authorities concerned.

3. Conclusion

14. The European Commission calls on all Member States to implement the measures set out in points 8 to 11 as a matter of urgency.
15. In close cooperation with the Member States, the European Commission will consider all practical steps to encourage third countries to apply these principles, including through engagement with the International Civil Aviation Organisation (ICAO), with the international aviation partners and with the international air transport industry.
16. The European Commission will continue to monitor the situation, and will provide further guidance, as appropriate.