

The legal regime of air transport in Cyprus

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This paper aims to provide an understanding on the legal regime of air transport in Cyprus. In the first part, the basic laws of Cyprus are presented and analysed. There is a brief reference to statistical data regarding the number of passengers and flights to the two major airports of Cyprus, Larnaca and Paphos. In the second part, we examine the decision of the European Commission of 2015 regarding the Cyprus Airways. Cyprus Airways received illegal state aid from the Republic of Cyprus, and without being able to return it to the state in the middle of the financial crisis, it finally ended up its operation after many years of performing air transport. We conclude this paper by explaining the interface between competition policy and air transport policy in Cyprus and in the EU. Useful data regarding airlines and airports are presented in the appendices.

1. Cypriot air transport law

It is clear that Cypriot air transport law has adopted the entire EU and international law instruments^[1].

Law 213(I)/2002 as amended by laws of 2004, 2005, 2006, 2007, 2008, 2011, 2012, 2014, 2015 is the main codified law on Civil Aviation in Cyprus, also implements the EU legal instruments^[2].

The civil matters of air transport^[3] are protected along with the criminal and public issues (Laws 30/72, 31/72, 22(III)/2000, 33(III)/2001) in a systematic way in Cyprus. We may emphasise that Cyprus has adopted most international law instruments long before its accession to the European Union (2004). A specific case study on Cyprus, the

EU Accession and the Civil Aviation Regime has been published in 2003 (Papatheodorou, A., Busuttil, L.). Furthermore, the main Law 213(I)/2002 regulates all air transport matters, including registration of aircrafts, safety rules, training of crew, powers of the captain, operation of airports, air carriers, rights of passengers. According to sections 261(1) and 261(2) of Law 213(I)/2002, the Conventions of Chicago 1944, Tokyo 1963, Hague 1970, Montreal 1971/ (Protocol) 1988 apply not only to international but also to domestic flights.

The public body which has the powers to apply the aforementioned legal instruments for domestic and international air transport is the Department of Civil Aviation of Cy-

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^[1] At a more detailed examination, Decree 1953 adopts Warsaw Convention of 1929 (air carriage or air transport), Law 66/70 implements the Hague Convention of 1955 and the Guadalajara Convention of 1961 (air carriage), Law 30/72 embodies the Hague Convention of 1970 (suppression of unlawful seizure of aircraft), Law 31/72 implements the Tokyo Convention of 1963 (offences committed on board aircraft), Law 213/88 applies the Chicago Convention of 1944 and Thirteen Protocols of 1947-1984 (civil aviation), Law 97/89 implements the Paris Conventions of 1987 (establishment of tariffs), Law 173/89 applies the Guatemala Convention of 1971 and the Protocols of Montreal of 1975 (amending the Warsaw Convention on air transport), Law

22(III)/2000 adopts the Brussels Convention of 1997 amending Eurocontrol Convention, Law 33(III)/2001 adopts the Montreal Convention 1973 and Protocol 1988 (suppression of unlawful acts against the safety of civil aviation) and Law 2(III)/2002 applies the Montreal Convention of 1999 (air carriage or air transport).

^[2] Namely Directives 80/51, 89/629, 92/14, 93/65, 94/56, 96/67, 97/15, 98/20, 1999/28 and Regulations 3975/87, 2410/92, 3976/87, 2299/89, 295/91, 3922/91, 3925/91, 1823/92, 2407/92, 2408/92, 2409/92, 3089/93, 95/93, 2176/96, 2027/97, 323/1999, 925/1999, 1069/1999

^[3] Decree 1953, Laws 66/70, 213/88, 97/89, 173/89, 2(III)/2002

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prus which organically belongs to the Ministry of Transport, Communications and Works. The Minister of Transport, Communications and Works recently issued a Ministerial Decree on the Conditions for the Operation of Flights by Unmanned Aerial Vehicles in the Republic of Cyprus (Republic of Cyprus, Minister of Transport, Communications and Works (2015), The Civil Aviation Decree,) responding to the new need to regulate such activities.

2. Department of civil aviation of Cyprus

The Department of Civil Aviation of Cyprus belongs to the Ministry of Transport, Communications and Works. It has the apparent power to apply the air transport laws in Cyprus.

It is the competent authority (Republic of Cyprus, Ministry of Transport, Communications and Works, Department of Civil Aviation (2016) *Competencies*) for the supervision of airports, the development of air links between Cyprus and other countries, the provision of air traffic services within the Nicosia Flight Information Region (FIR) and at airports, the development, design and supervision of aviation security system (Aviation Security), the provision of communications and air navigation equipment for the safe and orderly conduct of flights within the Cypriot airspace, the implementation of EU legislation and the continuous monitoring of developments in the EU in the area of Civil Aviation, the participation in EU Committees, the coordination and cooperation with the International Civil Aviation Organization (ICAO), the European Civil Aviation Conference (ECAC), the European Organization for the Safety of Air Navigation (Eurocontrol), the European Aviation Safety Agency (EASA), the coordination and cooperation with other government departments such as the Department of Public Works, Customs, Meteorology, Fire Service, Police and semi-governmental organizations such as the Cyprus Tourism Organization, the Cyprus Telecommunications Authority, the Association of Cyprus Travel Agents (ACTA), the Asso-

ciation of Airport Users, the Board of Airline Representatives in Cyprus (BARIC), and the education and training of Department staff for the efficient discharge of their duties.

Furthermore, in 2010 it issued a Circular for Aircraft registration and certification in Cyprus (Republic of Cyprus, Ministry of Communications and Works, Department of Civil Aviation (2010) Aeronautical Information Services). It describes the procedure for the registration of an aircraft, how the airworthiness certification is governed, and other relevant details on the issue of certificates and the operational and licensing matters.

The Department of Civil Aviation does not apply in principle the competition laws and the state aid laws. Such competence falls within the scope of the activities of the Commission for the Protection of Competition of Cyprus. For instance, in 2012 it issued a decision in favour of the monopolistic consortium Hermes Airports Ltd and Goldair Handling SA, Servisair UK Ltd/CLIN Company Ltd, whilst in 2015 the Commission found that Hermes Airports Ltd infringed competition laws 2008 and 2014 (Commission for the Protection of Competition of Cyprus (2012), (2015)). Such decisions will be explained below.

3. Cypriot National Procedure for limited air traffic rights

The Cypriot national procedure for the distribution among eligible Community carriers of limited air traffic rights was published by the European Commission in 2009 in the Official Journal of the EU, in accordance with article 6 of Regulation (EC) No 847/2004 on the negotiation and implementation of air service agreements between Member States and third countries. The 2008 Civil Aviation Decision defined as competent authority the Department of Civil Aviation of the Ministry of Communications and Works (now Ministry of Transport, Communications and Works). The Department of Civil Aviation is responsible, according to article 2(1) of the aforementioned decision, for implementing

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the procedures provided for by the Decision for granting access licences.

Access licence means the granting of access to an interested Community carrier to scheduled services between Cyprus and a third country under the relevant Bilateral Air Services Agreements (BASAs). Cyprus has concluded bilateral agreements with all EU Member States, and also with third countries (such as Egypt, see RIK (2016) Conclusion of significant agreements by Cyprus and Egypt).

After Cyprus' accession to the EU on 01/05/2004 and the consequent liberalisation of services within the Union, the status of bilateral agreements with member countries, became inactive. Therefore, 22 out of 51 existing BASAs signed with member countries have become inactive while the rest concerning bilateral agreements with third countries, continue to exist.

According to Regulation (EC) 847/2004 all existing agreements with third countries should be amended or replaced to comply with the *Acquis Communautaire* on air transport. For this purpose, they must include the Standard Clauses set by the EU, especially on the recognition of the term "Community air carrier" from the third country concerned. The amendment of a bilateral air service agreement between a member state and a third country gives the right to a community air carrier to perform the service that stems from the provisions of this bilateral aviation agreement, provided that there are available commercial rights. Additionally, the European Commission may amend the existing bilateral agreements of member states with a specific third country in order to avoid amendment through bilateral negotiations. The result of this procedure is known as a Horizontal Agreement.

The geographical position of Cyprus and its accession to the European Union create favourable conditions for the development of air transport. In the last three years, the Aeronautical Authorities of Cyprus had contacts with the respective Authorities of the

United Arab Emirates, Egypt, Jordan, Qatar, Ukraine, Ethiopia, Iraq and Russia. During these meetings the two parties signed memoranda designating airlines for the operation of the routes, increasing the frequency of flights, the number of airlines operating on the routes and the number of routes.

According to article 4 of the Decision, access licences shall be granted and withdrawn by the Minister pursuant to articles 5 and 6 of Regulation (EC) No 847/2004.

Any Community carrier with an Aircraft Operator's Certificate (AOC) (in the USA it is called Air Carrier Operation Certificate^[4]) and valid operating licence issued by a Member State under Regulation (EEC) No 2407/92 which is established in Cyprus may apply to the competent authority (i.e. the Department of Civil Aviation) for an access licence for available commercial rights and any new commercial rights granted under the relevant BASA.

Applications shall be made in Greek or English, as article 5(1) of the Decision provides, and must include at least the following documentation and information: (a) copy of AOC, (b) copy of valid operating licence and proof of establishment in Cyprus, (c) description of the desired service (e.g. route, type of aircraft to be used, flight period, frequency and times, nationality and registration State of aircraft, information on any leased aircraft), (d) date services are to commence, (e) type of flight, (f) data demonstrating the Community carrier's operational and financial capacity to operate the route in accordance with article 5 of Regulation (EC) No 2407/92, (g) the pricing policy the applicant intends to implement, (h) a detailed three-year forecast of the financial results for the route, including data enabling the viability of the route to be assessed.

The competent authority, i.e. the Department of Civil Aviation may ask the applicant for further information, where deemed necessary (article 5(2) of the Decision).

The Minister appoints a three member evaluation committee composed of officers

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^[4] see Stamelos, H., English-Greek, Greek-English Dictionary of Legal Terms

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serving either in the Ministry or in the Department of Civil Aviation.

The evaluation committee, according to article 5(3) of the Decision, accepts only those applications which contain all the required documentation and/or information and/or clarifications asked from the Department of Civil Aviation.

The designation criteria, pursuant to article 6 of the Decision, for the evaluation committee to take into consideration are: (a) implementation of the provisions of BASAs between Cyprus and third countries, (b) air traffic on the route in question, (c) type of air traffic, (d) current air links, flights via other destinations/ frequency of flights, (e) the pricing policy, (f) date flights are to begin on the requested route, (g) flight period, (h) environmental impact, (i) business plan showing the carrier's capacity to discharge its operational and financial obligations, (j) quality of the services provided, (k) continuity of the service provision, (l) satisfaction of air travel demand, (m) maximisation of benefit to the travelling public at the lowest possible prices, (n) protection of healthy competition among carriers within the Community, (o) further development of Cyprus' tourism industry.

Respectively, the evaluation committee after the assessment procedure may grant the licence or may withdraw the licence (the Minister issues the decision through the evaluation committee), according to article 11 of the Decision, if there are substantial changes to the data on the basis of which the Community carrier was selected (article 11(a) of the Decision), a partial or complete failure properly and effectively to use the commercial rights granted under the access licence (article 11(d) of the Decision), or, inter alia, failure on the part of the Community carrier to comply with the provisions of the Decision and/or the terms of the access licence and/or the provisions of the relevant BASA (article 11(e) of the Decision).

« one of the selection criteria is (n) the protection of healthy competition among carriers within the Community »

^[5] Article 107 of the Treaty on the Functioning of the European Union (TFEU) (ex Article 87 of the Treaty on European Community -TEC) provides the following:

‘1. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or

It is worth mentioning that one of the selection criteria is (n) the protection of healthy competition among carriers within the Community (the most suitable term should be the Union, due to the Lisbon Treaty, according to which a Single European Union is established).

We mentioned that the competent authority for competition is the Commission for the Protection of Competition. Clearly, the competent authority for air transport is the Department of Civil Aviation along with the Minister of Transport, Communications and Works. However, we see here that one criterion to grant a licence to a Community carrier, according to article 5(n) of the Decision, is the protection of healthy competition. By healthy competition, it would be meant free competition and possibly fair competition (see Joannin). At such case, the evaluation committee may communicate and cooperate with the Commission for the Protection of Competition, or even with the European Commission and its Directorate General for Competition. The European Commission may communicate and advice the Department of Civil Aviation on issues regarding air transport and competition policies and laws. However, the European Commission, according to the Treaty on the Functioning of the European Union, shall implement EU law in the entire EU, in particular article 107 and 108 which forbid illegal state aid to any company, such as to any airline. In the next paragraph, we will examine such a case, where the European Commission found that Cyprus illegally granted state aids to Cyprus Airways.

4. Commission decision (EU) 2015/1073 (Cyprus Airways)

Legal framework

As it is obvious from the wording of paragraphs (2) and (3) of article 107^[5], there are

threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

2. The following shall be compatible with the internal market:

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three major exceptions and five discretionary exceptions to the rule that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market, according to article 107(1).

The reasoning for the major exceptions is limited to cases of natural disaster, social circumstances, or the special situation of areas of the former East Germany^[6]. The unification of Germany was a success story for the European Union. The united Germany is considered to be the enlarged continuation of the Federal Republic of Germany (Bundesrepublik Deutschland) and not a successor state. As such, it retained all of West Germany's memberships in international organizations and in the EU. However,

“rich” West Germany took the responsibility to restore “poor” East Germany. This burden is almost unbearable for just one Member State of the European Union. This is why all the EU Member States decided to set as a primary law provision that they will prove their solidarity to West Germany. Historical, geographical, social and natural disaster grounds allow state aid, even if such state aid may distort competition. In other words, the EU legislator balances the two legal interests of competition (to protect economic freedom) and the exceptional circumstances (to protect the decent life of the society) at their possible conflict, and decides in favour of the latter based on the common understanding and solidarity of all the Member States which are the contracting parties of the Treaty for the Functioning of the European Union.

From the wording of articles 101 and 108^[7], it is apparent that state aids are allowed, but

(a) Aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) Aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) Aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.

3. The following may be considered to be compatible with the internal market:

(a) Aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;

(b) Aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) Aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) Aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;

(e) Such other categories of aid as may be specified by decision of the Council on a proposal from the Commission'

^[6] DDR, Deutsche Demokratische Republik.

^[7] Article 108 TFEU (ex Article 88 TEC) provides the following:

'1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the internal market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 258 and 259, refer the matter to the Court of Justice of the European Union direct.

On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the internal market, in derogation from the provisions of Article 107 or from the regulations provided for in Article 109, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first

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not at all times. If there are specific circumstances, the granted aids may be held illegal. In such case, the European Commission has the power to order the benefited company to return the illegal received state aids back to the Member State from which the company received them. In such case, if the company is a failing firm, then it may fall to bankruptcy, a procedure for winding up and liquidation of its assets. Such a case occurred as regards Cyprus Airways in 2015 after a long chain of events.

The First Formal Investigation Procedure (SA.35888)

In February 2012 the Commission departments were informed through the press that the Cypriot government intervened in favour of Cyprus Airways (Public) Ltd. In order to clarify whether any state aid issues could arise, by respecting articles 107 and 108 TFEU, the Commission opened a case ex officio.

The Cypriot authorities confirmed in their comments that Cyprus Airways has been a firm in difficulty since 2009 (paragraph 68 of Commission Decision 2015/1073).

However, they insisted that they could rescue Cyprus Airways. The same were argued by Cyprus Airways and the trade union of Cyprus Airways. On the contrary, Air France, Ryanair, International Airlines Group and a competitor who wanted to remain unnamed (paragraphs 87-90 of Commission Decision 2015/1073) commented that disagreed with the arguments by the Cypriot authorities. At the same time, they declared themselves ready to expand routes to/from Cyprus.

After those exchanges of information, meetings, the Decision, the publication, and

the comments the first formal investigation procedure ended.

The Second Formal Investigation Procedure (SA.37220 and SA.38225)

A similar procedure was followed during the Second Formal Investigation Procedure.

On 22 July 2013 and later on 23 October 2013 the Cypriot authorities communicated to the Commission a draft restructuring plan for Cyprus Airways (SA.37220). Meanwhile, the Commission asked information amongst others on training aid to Cyprus Airways (SA.38225).

On 4 February 2014, the Commission issued a Decision to initiate procedure laid down in Article 108(2) TFEU in respect to, amongst others, the following measures:

The tranches of the rescue aid loan granted to Cyprus Airways in total of 34.5 million Euros; the granted amount would not be repaid by Cyprus Airways and the corresponding debt would be converted into equity.

The Cypriot State had provided a guarantee for a loan of 78 million Euros, and the outstanding amount to be repaid was 28.5 million Euros.

Cyprus should cover 8.6 million Euros for the Cyprus Airways Provident Fund for Cyprus based employees (for a recent case on air transport employee selection see Supreme Court of Cyprus, Case 1132/2011) excluding pilots. The Fund's property was transferred in Athens, Greece.

There was also the State participation of 31.33 million Euros to the capital increase of Cyprus Airways already granted in 2012. This was a total amount of 102.9 million Euros as state aid within the context of the new 2013 restructuring plan presented by Cyprus in favour of Cyprus Airways. And

« The tranches of the rescue aid loan granted to Cyprus Airways in total of 34.5 million Euros; the granted amount would not be repaid by Cyprus Airways and the corresponding debt would be converted into equity»

subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known. If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan

is not compatible with the internal market having regard to Article 107, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

4. The Commission may adopt regulations relating to the categories of State aid that the Council has, pursuant to Article 109, determined may be exempted from the procedure provided for by paragraph 3 of this Article'.

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there was a relatively small amount of 269,317.94 Euros received by Cyprus Airways under the scheme for constant training programmes for individual enterprises implemented by the Cypriot authorities pursuant to Commission Regulation (EC) No 800/2008^[8] known as “General Block Exemption Regulation”.

The Decision was held on 4 February 2014^[9]. It was obvious that there was distortion of competition in the market of air transport in Cyprus due to the state aids granted to Cyprus Airways from Cyprus. This is why Cypriot authorities proposed to minimise the impact on competition and competitors. In particular the proposed measures were the following: discontinuing profitable routes, reduction of capacity of profitable routes, Sale of the two airport slots, fleet reduction by seven aircrafts.

Cyprus also added the operation of an “illegal” airport in the occupied northern part of Cyprus which Turkish Airlines are allegedly using to bring tourists from European destinations to Cyprus. Such argument was not actually relevant to the facts of the case.

Thus, the Commission expressed doubts that the restructuring plan was founded on prudent assumptions and would restore the viability of Cyprus Airways within a reasonable timescale in line with relevant case practice.

The Commission raised also doubts as to the circumstances justifying an exception from the ‘one time, last time’ principle. It noted that Cyprus Airways expanded its domestic flights in Greece between 2011 and 2013 and was thus consciously increasing its exposure to the Greek market. The Turkey overflight ban on Cypriot aircrafts and the operation of an airport on the occupied territory of the island could not qualify as exceptional circumstances, as they had been in place for a long time. It must be reminded that Cyprus has applied for membership in Treaty on Open Skies since 2012, but the application is still pending due to the known conflicts with Turkey (Republic of Cyprus, Ministry of Defence, see also Christou).

The Cypriot authorities claimed that the rescue was the minimum cash required by Cyprus Airways until a new restructuring plan would be finalised. The Cypriot authorities maintained their view that the 2013 restructuring plan would allow Cyprus Airways to restore its viability. For the loss-making routes which the 2013 restructuring plan envisaged to maintain, the Cypriot authorities argued that they all had positive gross contribution (that is to say covering at least their variable costs and that the Company needed to maintain a critical size of its network, in order to attract passengers. Cyprus also argued that all of the routes proposed to be abandoned or to reduce capacity (see above (a)), except for one, were profitable on a gross contribution level in 2012, that is to say covering their variable costs.

The Cypriot authorities confirmed that the Provident Fund is part of Cyprus Airways but a separate legal entity and that the transfer of property in Athens meant that Cyprus Airways would no longer have control over it.

As regards the ‘one time, last time’ principle, the Cypriot authorities in various submissions have reiterated their arguments as regards the impact of the financial crisis in Greece and Cyprus, the Turkey overflight ban on Cypriot aircrafts, the operation of an “illegal” airport in the occupied northern part of Cyprus, the unstable political situation in the Middle East.

They also pointed out that the total number of passengers in the Cypriot market remained relatively stable during the recent years.

On contrary, Air France, Ryanair (see Theoharidis), International Airlines Group and the one competitor wished to remain unnamed disagreed with the Cypriot authorities, stressing that the restoration of the viability of Cyprus Airways was in question, expressing doubts as to the effectiveness of the maintained network and fleet and whether the assumptions of the restructuring plan of 2013 were realistic. Competitors also doubted the existence of truly exceptional and unforeseeable circumstances that

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^[8] OJ L 214, 09/08/2008, 3.

^[9] It was published in the Official Journal of the EU, SA.37220 and SA.38225, C 117, 16/04/2014, 125.

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would justify an exception to the ‘one time, last time’ principle (paragraphs 91-93 of Commission Decision 2015/1073).

After those exchanges of information, meetings, the second Decision, the publication, and the comments the second formal investigation procedure ended.

Decision

The Commission by its Decision 2015/1073 concluded that the aforementioned implemented measures of Cyprus, namely the participation of the state to the capital increase of Cyprus Airways (31.33 million Euros), the rescue aid loan of Cyprus to Cyprus Airways (34.5 million Euros) and the training aid (269,317.94 Euros), amounting to a total 66.09 million Euros, unlawfully granted to Cyprus Airways by Cyprus in breach of article 108(3) TFEU and were incompatible with the internal market.

The figures and the reality were impossible to overcome for Cyprus, Cyprus Airways and the trade union of Cyprus Airways. The financial crisis argument was not enough. Cyprus Airways was a failing firm. The European Commission could not decide in favour of Cyprus Airways and against the free competition in Cyprus and in the EU as regards the air transport market.

According to the Treaty on the Functioning of the EU and the European Court of Justice established case-law^[10], the Commission is competent to decide that the Member State concerned must abolish or alter aid when it has found that it is incompatible with the internal market. The Court has also

consistently held that the obligation on a Member State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation^[11].

In this context, the Court has established that this objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored (ECJ, C-75/97, *Belgium v Commission*, paragraphs 64-65).

In line with the case-law, article 14(1) of Council Regulation (EC) No 659/1999^[12] provided that ‘where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary’.

Thus, given that the measures in question in the total amount of 66,099,317.94 Euros were implemented in violation of article 108 TFEU, and were to be considered as unlawful and incompatible aid, they should be recovered in order to re-establish the situation that existed on the market of air transport prior to their granting. Recovery should cover, according to the Decision of the Commission, the time from when the advantage accrued to Cyprus Airways, that is to say when the aid was put at the disposal of the beneficiary, until effective recovery, and the sums to be recovered should bear interest (pursuant to Commission Regulations 794/2004 and 271/2008) until effective recovery^[13], ^[14].

« given that the measures in question in the total amount of 66,099,317.94 Euros were implemented in violation of article 108 TFEU, and were to be considered as un-lawful and incompatible aid, they should be recovered»

^[10] ECJ C-70/72, *Commission v Germany*, paragraph 13.

^[11] ECJ, C-278,279,280/92, *Spain v Commission*, paragraph 75

^[12] OJ L 83, 27/03/1999, 1.

^[13] Paragraph 199 of Commission Decision 2015/1073

^[14] The Decision of the Commission 2015/1073 is the following (...):

Article 2

The State aid amounting to at least EUR 66,099,317.94, which results from the sum of EUR 31.33 million in the form of the State’s participation to the capital increase, EUR 34.5 million in the form of the rescue aid loan and EUR 269,317.94 in the

form of the training aid, unlawfully granted to Cyprus Airways by Cyprus in breach of Article 108(3) of the Treaty, is incompatible with the internal market.

Article 3

Any State aid in addition to the amounts referred to in Article 2 which Cyprus has granted or might want to grant to Cyprus Airways in the context of measure 4 is incompatible with the internal market.

Article 4

1. Cyprus shall recover the incompatible aid referred to in Article 2 from the beneficiary. It shall also recover any additional aid as referred to in Article 3 from the beneficiary.

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The aftermath of the Decision

At the same day, on 9 January 2015, Cyprus Airways went bankrupt through the procedure of winding up and liquidation. The press reacted immediately (BBC, Euractiv) following the developments even a year after (Evripidou).

A possible arrest of the Minister of Finance of Cyprus for the debts of Cyprus Airways finally was avoided after the intervention of the state and the judicial authorities (Kathimerini of Cyprus).

Today, after a year and a half, the liquidators have already published their first report for the first year of liquidation. The main figures are depicted in Appendix G (receipts and payments) (see the long version of the article). On the website of Cyprus Airways, the report is published, and also there are several objects, such as electronic equipment and furniture which are on sale. Although the Minister of Finance and the Minister of Transport said that Cyprus Airways could operate again, no private investor has expressed interest to re-establish the air company. And as it is shown in the table (Appendix G) of receipts and payments, the logo of Cyprus Airways has not been sold yet.

State aid to airlines has a long history in Europe (see Stamelos, H., State aid to airlines) and shall remain a significant issue in the

EU (see Risk Advisory Group (2015) Financial and other governmental subsidies and benefits provided to European carriers), as there are two different philosophies in competition law: in the USA, dominant position is not permitted, it is considered to be a monopoly which distorts competition; in the EU, dominant position is permitted, and state aid to such companies, mainly “public companies” are allowed only under the restrictive conditions of articles 107 and 108 TFEU.

In the case we examined, we could say that a series of wrong business decisions along with the financial crisis and the huge European and global competition led to the result of the closing of Cyprus Airways. This is why a closer look at Cyprus and the EU is needed to realise how things work in these two areas of law and policies as regards air transport and competition.

5. Air Transport and competition policies in Cyprus and the EU

Air transport and competition policies are interrelated, in particular as regards the liberalisation of air transport, including airlines

2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004, and to Commission Regulation (EC) No 271/2008 amending Regulation (EC) No 794/2004.

4. As regards measure 4 [capital increase and rescue loan, new 2013 restructuring plan], Cyprus shall inform the Commission whether it has granted any additional amounts above those referred to in Article 2 in the context of this measure and shall also inform the Commission about the exact amounts granted and granting dates.

5. As regards measure 5 [training aid], Cyprus shall inform the Commission about the dates when the individual amounts were granted.

6. Cyprus shall abolish measure 4 and cancel all outstanding payments of the aid referred to in Article 2 and 3 with effect from the date of adoption of this Decision.

Article 5

1. Recovery of the aid referred to in Article 2 and Article 3 shall be immediate and effective.

2. Cyprus shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

Article 6

1. Within two months following notification of this Decision, Cyprus shall submit the following information:

(a) Information requested under Article 4 paragraphs 4 and 5;

(b) The total amount (principal and recovery interests) to be recovered from the beneficiary;

(c) A detailed description of the measures already taken and planned to comply with this Decision;

(d) Documents demonstrating that the beneficiary has been ordered to repay the aid.

2. Cyprus shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 2 and Article 3 has been completed. (...)."

« on 9 January 2015, Cyprus Airways went bankrupt through the procedure of winding up and liquidation »

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and airports, in the EU^[15] and internationally^[16].

For the EU aviation industry to remain competitive, it is essential that market access is based on a regulatory framework which promotes EU values and standards, enables reciprocal opportunities and prevents distortion of competition, as the Commission argues (the Commission's Communication, An Aviation Strategy for Europe, II.2.1, 5).

As the Commission also adds, a catalyst for the development of aviation, and its function as an enabler of growth, will be innovation and digitalisation. The Commission is convinced that appropriate private and public investments into technology and innovation will secure Europe's leading role in international aviation. The European Union has planned to invest 430 million Euros each year, until 2020, in the Single European Sky ATM Research (SESAR) project. It has been estimated that the timely deployment of SESAR solutions can potentially result in the creation of over 300,000 new jobs (III.3.2, 20).

As regards airports, the Commission recognises that "the availability of highly performing, competitive airport services, including runways, passenger terminals and ground handling, is critical for the competitiveness of the EU aviation sector and the service quality experience of passengers"^[17].

Not surprisingly, in Cyprus, the Commission for the Protection of Competition issued, inter alia, two decisions as regards air transport on Hermes Airports Ltd, in 2012 denied the complaint against Hermes, but in 2015 notified it regarding a prima facie infringement of the protection of competition laws of 2008 and 2014^[18].

6. Conclusion

By examining the laws of Cyprus on competition law and on air transport and the Commission Decision on Cyprus Airways, we conclude that the interface between air transport and competition has been established in the EU and in Cyprus. Even for a small state or a small state-owned airline, it is inevitable to follow and respect the EU rules on competition and air transport. The financial crisis could be an argument for rescuing purposes, but only for gaining some time. In essence, no one can avoid realistic economic analysis based on facts and figures. Cyprus Airways was not performing in the air transport market. The legal and logical solution was to repay the state the 66 million Euros of the illegal state aids. As it was in default to repay it, the next step was to go bankrupt. Now, Cyprus Airways is in the liquidation process. The Cyprus airports are live and of high demand. New opportunities arise for air carriers to take their place in the competitive air transport market of Cyprus and beyond.

At the European level, the Aviation Strategy is an ambitious, long-term plan of the European Commission communicated to the other major EU institutions and to private parties. It is of high significance that the European Commission calls for a common understanding of all public and private stakeholders, including airlines, airports, air navigation service providers, manufacturers, and the social partners, to take a "holistic approach". It will probably be years before all the implications of the Communication of the Commission are fully understood and related procedures and responsibilities clearly described. A framework now exists for public and private stakeholders to compete in the air transport sector in the EU and at the global level. Cyprus and Cypriot airlines and airports shall be part of it.



« For the EU aviation industry to remain competitive, it is essential that market access is based on a regulatory framework which promotes EU values and standards, enables reciprocal opportunities and prevents distortion of competition»

^[15] see Albania, Almunia, Balfour, Dobruszkes, European Cockpit Association, European Commission, Communication-Aviation Strategy, European Parliament, Resolution on aviation, Joannin, Koo, Kroes, Lieshout, Moussis, Roosens, Thomas, Žabokrtský

^[16] see Commission on Air Transport of the ICC (EU-US), Gremminger (EU-US), Lykotrafiti, A.

(2015) Liberalisation, Papatheodorou, A., Arvanitis, P.

^[17] the Commission's Communication, An Aviation Strategy for Europe, II.2.1, 10

^[18] see Commission for the Protection of Competition of Cyprus).