

Aviation Intelligence Reporter
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Airline industry meeting in a basement? Must be a Summit

The Aviation Intelligence Reporter has in the past taken some delight in self-styled 'summits' that are held in basements, but this is getting beyond satire. In November the French presidency of the European Union convened a summit of the European aviation industry in Bordeaux, and yes! it was held in a basement. The great and the good of the European air transport industry duly assembled. Whereupon, the French presidency tried to ensure that all the delegates understood the implications of global warming by making the room insufferably hot. There was also a distinct shortage of cabin oxygen.

Then the usual dialogue of the deaf ensued.

The industry told itself that significant advances were being made in the technology and in the bio-fuel area and, ICAO's Group on International Aviation and Climate Change (GIACC) process proceeds on schedule, and gee, did we mention that the market is terrible out there? Then the regulators said: that that was all well and good, but we are going ahead with the Emission Trading Scheme (ETS).

Interestingly, in an aside, one of the regulators mentioned that in the discussions he had had with the airlines' representatives, there had never been any constructive dialogue on the issue of the auctioning of certificates for the ETS. The industry position was total opposition – yet at the summit the CEO of Air France, Jean-Cyril Spinetta, said he could accept 15% auctioning. With unconscious irony the regulator asked 'Where does the truth actually lie?'

It is fast becoming urgent that there be frank and open talks. Dogmatic opposition may not carry the day. There is a real risk now that airlines will be forced to purchase 100% of the necessary ETS certificates before 2020. A number of speakers from the transport side of the European house (the Commission, the Parliament, the Council) made clear that each of them were opposed to this outcome, but acknowledged that there was a real risk that it would happen. A major fight is at hand to prevent it from coming about. It is clear that a binary, visceral opposition will not help in that process. There must be constructive dialogue.

On a more positive note, the Summit also saw the signing of a memorandum of understanding to form a single FAB, (functional airspace block) across much of western Europe, comprising France, Germany, Switzerland, the Netherlands, Luxemburg and Belgium. Significantly, both civil and military air traffic controllers signed the MoU.

Eurocontrol currently anticipates that there will be nine functional airspace blocks such as this. 'Eight too many' muttered IATA, if not actually raining on the parade, then at least bringing some drizzle to the event.

Change: yes? Can we?

Ever keen to grab a boarding pass for a passing bandwagon, the air transport industry is currently working itself into a lather about the brave new dawn that will herald the inauguration of the new president of the United States. Perhaps fortunately for President-Elect Obama, much of that expectation appears to be well below his radar.

There are names flying about Washington concerning who he might make the Secretary of Transportation, and the Administrator of the FAA. But the only consensus surrounding any candidate in the mix is that everyone in the industry does not want it to be Rep Oberstar, currently the chair of the Aviation sub-committee. He is of course famous for his 'not on my watch' position regarding the liberalisation of ownership and control.

Taking up nearly as much rumour mill capacity is trying to second guess what might be on the transition team's transport agenda. Second guessing is a difficult art, more liable for disappointment than glory. Nevertheless, lists of issues are currently being discussed with the sort of certainty that only idle gossip can generate.

Interestingly, nearly as much time is being spent on the European side of the Atlantic as on the American side on this speculation. That is new. The longest, most public and most open election in history means that everyone feels that they have an interest in the outcome.

It is nearly certain to lead to tears. The interest in the outcome is traditionally measured in votes, something that all the interest in the world is not going to generate for Europeans. So Europe is left calling on the inner angels of the president's soul to see things their way. It is hard to see that leading to anything but disappointment. Because the European way is not necessarily the way that the US side sees things; and it is the Americans, after all, that have the votes.

The big two agenda items for Europe are the second round of the EU-US Open Skies agreement and the environment. President-Elect Obama's words have been scoured for hints in both these areas. On the US side, there is a strong emphasis on the upgrading of the US air traffic control system, NextGen. Three worthy aims, but does anyone spot the mis-match?

On the EU-US bilateral, as far as Europe is concerned there is only one issue: liberalisation of the ownership and control restrictions. There has been some movement. Most importantly, the United States Government has circulated a discussion draft of a possible 'Multilateral Convention on Foreign Investment in Airlines'.

Under the proposed convention, governments would accept the designation of an airline by one of the other Signatories, provided it is owned and controlled by citizens or governments of certain countries specified in a schedule of such acceptable countries. This would apply whether or not that country itself has signed this convention. The schedule of acceptable countries is for each of the Signatories to develop at their own choosing. The schedule can be amended on thirty days' notice.

Importantly, this is done by way of a waiver of rights under existing bilateral agreements. Therefore it does not disturb the terms of those agreements at all. According to the United States' government, this is one possible way to facilitate cross-border mergers and acquisitions in the industry and provide the airlines with the ability to raise capital and access international equity markets.

In the very few public comments on this issue, the transition team has seemingly come up with a finely nuanced and complex formulation that is consistent with the proposal outlined above. First, in homage to Rep Oberstar, there is a general reluctance to change the ownership and control rules. Indeed, an outright No. But, at the same time, there is an acknowledgement that in these difficult times, certain solutions might require access to foreign funding.

The question is whether that will be acceptable to the European side in the hand-to-hand combat of bilateral negotiation. The European side is under significant pressure to bring home the complete and full liberalisation deal. The European airlines and their governments, like the wives of Sparta farewelling the troops, are telling the European negotiators to come home holding the agreement – or not at all.

The environment has not been mentioned by the presidential transition team in the context of air transport at all. That has allowed speculation free reign. Team Obama has talked about a cap-and-trade system for emissions. So resolving all possible ambiguities in favour of themselves, many on the European side, particularly amongst the environmental lobby, think that the new aviation ETS scheme will be plain sailing.

They might be in for something of a let down. Even a crash landing.

There are currently two words circulating on the US side in relation to the ETS scheme – ‘hush kits’. Three words, if you also count the next word that always seems to be used as well: ‘debacle’ – as in ‘hush kit debacle’. You may recall that the US and others in the late 90s commenced action within ICAO (pursuant to Article 84 of the Chicago Convention) to oppose the accelerated introduction by the EU of chapter three noise restrictions which refused permission for hush-kitted chapter two aircraft permission to operate.

The US argued that the ICAO agreed schedule for the phase out of chapter two aircraft (which allowed for hush-kitted aircraft to operate for an extended interim period) was the internationally agreed schedule and that therefore hush-kitted chapter two aircraft continued to be acceptable at the time. It took time, but finally, the European side was forced into an embarrassing climb down. One assumes that the European ‘robust’ legal advice took this into consideration.

In any case, and in the face of considerable criticism from industry, the message from the EC is clear: Daniel Calleja, the Director of Air Transport for the Commission told airlines at the European Aviation Summit to acknowledge that the ETS is now law and will start to apply. Were he a teenager, he might have just said, ‘Get over it’. Whatever...

African airlines too look at Open Skies

The Reporter has previously discussed the privatisation of the international regulation of air transport. The Agenda for Freedom is one recent example. Now the African Airline Association (AFRAA) is doing something similar for Africa.

Whilst there has been in place for nearly twenty years now the Yamoussoukro Declaration of intent to create an open and liberal African air transport system, the CEO’s of Africa’s major airlines have agreed to form a coalition of the willing to mutually, unilaterally, attempt to create an open skies area, with the hope that the African Union will then be forced to move to formalise the arrangements and thus push forward the agenda. In turn, it is hoped the AU will push AFAC (the African grouping of civil aviation regulators) to pursue an open skies deal.

This matters for the African carriers. They have only 2% of the in-bound Africa-Europe market. Furthermore, under EU law (and in particular the ECJ ruling of 2002) each of the Member States is obliged to renegotiate their existing bi-lateral agreements with African States (and indeed all other States) to allow for the reference to the rights negotiated for that European State to be a

reference to all European States. In other words, European airlines can increasingly fly to all parts of Africa from any place in Europe; whereas African carriers continue to be limited to flying only from their home State to those countries with which they have a bi-lateral relationship.

Interestingly, if this initiative goes forward, we will be watching the first many-to-many open skies arrangement. To date, all of them have been either one-to-one or one-to-many arrangements.

Unfortunately, this otherwise laudable proposal for the major carriers to work together to implement the scheme uses the acronym CREW (the coalition of the ready and willing). The acronym department worked very hard on that one. The crew-members are currently airlines from Egypt, Ethiopia, Ghana, Kenya, Nigeria and South Africa, with eight other possible members being mooted.

Europe takes big step to approving the Cape Town Convention

Little commented upon, but extremely importantly – and isn't that so often the case – the European Parliament took a very major step towards the global ratification of the Cape Town Convention and Aircraft Protocol this month. The Legal Affairs Committee has approved the text of the Convention, and the Aircraft Protocol. It is now hoped that the Council will endorse that decision in mid-December.

The Convention provides for an internationally recognised and recorded right in security interests created over high value mobile assets. Aircraft, and aircraft engines are seminal examples. That right, and importantly, the priority of that right, is evidenced by its registration in a publically accessible international register. Registration gives priority over later registered interests. The right is created when an asset (such as an airframe or engines) is used as security in a leasing or other similar financial transaction. In most cases, this right has priority over any local title interests or claims.

Why this has been so poorly communicated is one of life's little mysteries. This is after all a significant step. Maybe it was the terrible timing. Ratifying a convention that eases access to credit to purchase aircraft this month almost looks in bad taste. Where it a piece of comedy it would have to have been labelled 'dark'. If only Europe had ratified the convention when the USA did, that might have been a different story. Then it would have been edgy, not gothic.

The Convention also provides remedies that allow creditors to repossess the assets in the case of the debtor defaulting or becoming insolvent. Clearly, that is very attractive to the banks, who can both secure their interest by registration (and of course, prior searching of the registry to confirm their priority) and then enforce their rights in the event of default. Depending on the particular option taken at the time of ratification, this may include a right, equivalent of the US Bankruptcy Code section 1110, to immediate re-possession. This is the Article XI option A. Option B calls for 'speedy judicial relief' for a creditor, but continues to require access to the national court system.

On this basis, various surveys have estimated that the saving in finance costs (at least, in an ordinary market) globally will be around 2%. On an asset like a new aircraft, that is a lot of money.

The banks and airframe manufacturers have been pushing for the convention to be ratified in Europe. The USA ratified the convention in the first Bush term. This was practically the only act of international comity in 8 years for the American administration. The American Export-Import Bank immediately agreed to a reduction in leasing rates equivalent to a third of the risk premium for airlines in countries that had ratified the convention (provided that the other country opts for option A in Article XI).

Which may make you think it strange that it is only now being ratified in Europe. It seems like a no-brainer: the convention reduces the cost of the asset to the purchaser without reducing the price for the manufacturer. The only people to lose out are the banks. Who doesn't vote for that? To be fair, the banks point out that they too win, in that their risk is reduced and thus so too are their rates.

So why, do you ask, was this delayed this long? The reason goes back to the War of The Spanish Succession of 1701, naturally. As you will recall, that war ended with the Treaty of Utrecht of 1714, which ceded Gibraltar to the UK 'in perpetuity'. The Spanish continue to protest that. For several years they did so by refusing to allow the EU to ratify any international treaties. Once that block was lifted, last year, there has been a backlog of documents needing translation and assent.

EU ratification is required for two areas within the competence of the EU, in the context of the Convention, namely jurisdiction and insolvency. However, the Member States long considered that the EU only had competence on the insolvency mechanisms and not the substantive insolvency and bankruptcy laws themselves. The Commission disagreed, so what can only be described as a European compromise has been put forward. The EU will not make a decision on the Article XI options, by opting out of the provision altogether. Therefore it is open to Member States to include the relevant option as part of their domestic law, but not as part of the treaty. Because of course, the EU considers that the Member State does not have competence to deal with the substantive matter as part of the treaty. So that is fairly clear then.

The other major airframe manufacturing nations, Canada and Brazil, as well as China, have also ratified the Convention and Protocol. It is hard to imagine a clearer non-tariff competitive distortion mechanism; only this time, the only thing holding back Europe was Europe itself. Probably, for the student of history, this is not surprising, given that Europe cannot even agree on the dates of the war of Spanish Succession. Spain was by then using the Gregorian calendar, the UK continued to use the Julian calendar, meaning there is an 11 day discrepancy in the dates.

Two European States in fact did ratify the Cape Town Convention ahead of the rest of Europe – for purely selfish reasons. Ireland and Luxemburg ratified it on the grounds that having been selected to host the registries (Ireland in the case of the aircraft registry; Luxemburg the railway registry) it seemed only polite that they had ratified it. Arguably, that ratification was imperfect, but no one was tasteless enough to say so.

In any event, if there were still champagne in the fridges of the executive board rooms of Europe's banks, it would have been out this month, toasting the advent of a long awaited, much prophesied delivery. How very seasonal.

CANSO: US air traffic control system a 1959 Cadillac – the fin edge of the wedge?

The Secretary General of CANSO Alexander ter Kuile stood up at the Air Traffic Control Association (ACTA) conference in Washington DC in early November and delivered a strong message. From the outside looking in, he said, the USA's air traffic control system, and its governance, was as out-dated as a 1959 Cadillac. To rub the point in, he showed a photo of such a vehicle, looking very fine indeed; more fins than a shark, and very sharp.

But, ter Kuile said, on a scale of maturity developed across CANSO's members, the FAA (and the Air Traffic Office, ATO) was a '54 Caddie stuck in first gear, or on the lowest level of maturity and development. The speech certainly got the crowd talking. To deliver such a message on the day of the US election was risky, almost treasonous, and all praise to Alexander for doing so.

The FAA's ATO is at what CANSO calls Stage 1: tax funded; government department. Stage 2 would call for the separation of the delivery of air traffic control services from safety oversight. Once, being at Stage 2 was a mandatory requirement for membership of CANSO, although that message has been quietly buried over time. Many other CANSO members are of course significantly further down the road again – Stage 3, perhaps, or even to infinity, and beyond. But not the ATO.

To be fair, Alexander's speech was not the first such call; the Brookings Institute also recently called for a continuation of the change that the last Democratic administration made, the creation of the ATO itself, at least creating a functional separation within the FAA. Mind you, the Brookings Institute paper acknowledges that going as far as almost all the other ANSPs in the world, to Stage 3, in the USA might be a job too hard, even for President Obama.

It seems incredible that politicians of all stripes can continue to be involved in such earth shattering managerial issues as resource allocation, facility location and operational procedures, but that is the reality of the current US set up. That, according to Alexander means that 'a nation will remain saddled with sub-optimal performance'. Without a restructure of the way the debate is conducted there will be little hope, 'The U.S. aviation debate looks utterly blocked by a stalemate between political parties, a stalemate between the various aircraft operator groups, and a stalemate between management and employees.'

But this might be a case of being careful what you wish for. If the ATO was unleashed, as Alexander calls for; then, it would get really interesting. As one FAA person noted, the ATO could deliver all the en-route and other air traffic control services necessary for all of Africa in two shifts. There would not need to be a further cent spent on technology or equipment. Doing all of Europe's air traffic control might take until the end of the year to sort out, but said a participant, it would be 'no big deal'.

Game on.

Well it would be, assuming first that one can unleash the ATO from the FAA and the FAA from Congress, and then secondly, if one could resolve the most seemingly intractable of all problems, sovereignty.

In the one part of his speech to the 'summit' in Bordeaux that was compelling, IATA's Bisignani made the point that it is the pointless debate about sovereignty that is slowing down all parts of

the Single European Sky, the creation of FABs and the reduction in ridiculous duplication and cost (oh and of course emissions) in Europe. As he very rightly pointed out, it is not as if there has not been a precedent for this: what is the Euro if not a master class in ceding sovereignty?

Dutch set up privatised dispute resolution for passengers

Whilst some European parliamentarians are of the view that there is a vacuum in rights for passengers, realistically, that is a difficult view to sustain. Already there is a passenger charter, various rights and obligations on airlines and to top it off, an EU passenger complaints hotline, a dedicated email address and a toll free number.

Now, in the Netherlands, the Dutch transport ministry, a consumer organization and the industry, represented by BARIN – the board of airline representatives in the Netherlands have agreed jointly to create a consumer complaint body for alternative dispute resolution to deal with issues surrounding denied boarding and passengers with reduced mobility.

Initially these complaints were left to the Department of Transport, but Dutch parliamentarians and consumer groups felt the DOT was not responsive enough. A hard line putsch was in the offing, so to head that off, the airlines acted pre-emptively.

BARIN had been approached in the past by various consumer bodies to create such a small claims court, but previously dismissed this idea, hoping (in a victory for hope over experience) that it would go away or perhaps thinking it should be dealt with on EU level. By participating this time, BARIN has succeeded, at least in the short term, in blocking out other consumer issues such as complaints over luggage handling and surcharges.

It is hard to see those issues not being included over time. The Commission is watching this closely, perhaps as a test of a precedent for other Member States to adopt. Speaking at the launch of the body, EU Commissioner Antonio Tajani noted that consumer rights were going to be a major focus of the Commission next year.

Latin American airports flex their muscles on slots

At their annual conference, held in Panama this month, the Airport Council International-Latin America and Caribbean regional division decided that they would fire the first shot in the debate about slot ownership. Who exactly owns the slots? Airports do, they declared in their formal declaration of the meeting.

This deserves close observation.

Muse-ing des Beaux Alitalia

(With huge apologies with W.H. Auden)

About Alitalia they were never wrong,
The Old Masters; how well, they understood

Its human position; how it carries on
While everyone else is competing or opening a new route or just flying dully along;
How, when the unions are reverently, passionately waiting
For the miraculous birth, there always must be
Outsiders who did not specially want it to happen, skating
On the truth at the edge of reason:
They never forgot
That even dreadful cronyism must run its course
Anyhow in a parliament, some untidy spot
Where the lobbyists go on with their dodgy life and the journalists
Scratch their innocent behinds on a tree.

In Breughel's Icarus, for instance: how everything turns away
Quite leisurely from the disaster; the travelling public may
Have heard the splash, the forsaken cry,
But for them it was not an important failure; the sun shone
As it had to on the white fins disappearing into the red
Ink; and the expensive delicate Commission, that must have seen
Something amazing, an airline and their own credibility falling out of the sky,
had somewhere to get to and issued a communication.

If you have any questions or concerns about any of these matters, please do not hesitate to contact us: info@aviationadvocacy.aero



(NB: Paperplane model can be found on the last page of the newsletter)

Paperplane model (please fold per instructions on pg9, with this side facing down)

Christmas Greetings

← Point tip

Aviation Advocacy