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Jean Monnet Module AIR-CARE

Policy Brief

Executive Summary

The present policy brief provides for a summary of selected topics addressed within the Jean Monnet Module AIR-CARE, that are of interests and at the core of debates and discussion especially at the EU legislative level, with the aim of highlighting critical issues and providing some recommendations.

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I. THE PROJECT

The [Jean Monnet Module “AIR-CARE”](#) (*AIR transport law, Consumers And other Related issues in Europe*) consisted in a 40-hour cycle of seminars dedicated to the air transport sector from a multidisciplinary perspective. Some of the topics covered by the project included the protection of air passenger rights, personal data, competition, border control, contracts and airport management.

The seminars were held by lecturers from the University of Bergamo, especially from the Department of Law and other colleagues from other Departments or Universities, as well as experts in the field, including representatives from the Italian Civil Aviation Authority (ENAC), the Italian Competition and Market Authority (AGCM) and the Italian Financial Police (Guardia di finanza).

The target groups were students in their final years of degree courses, professionals, especially lawyers, and stakeholders.

In summary, the project's **objectives** were: (i) to support the development of teaching and research activities to increase the knowledge and skills of the participants, which is particularly relevant from a territorial point of view; (ii) to contribute with scientific products to the study and deepening of this subject; (iii) to promote synergies with professionals and bodies working in the field.

The project lasted three years (from October 2022 to October 2025). The [seminars](#) took place within the second semester of each academic year (in the period from February to April) and an annual event has been organised at the beginning of each year.

The present **policy brief** provides for a summary of selected topics addressed within the Jean Monnet Module, that are of interests and at the core of debates and discussion especially at the EU legislative level, with the aim of highlighting some critical issues and providing some recommendations.

II. SELECTED TOPICS

The main topics explored during the project, within the seminars or the annual roundtables, are herewith examined with a view to pointing out key issues and submit considerations and some recommendations. Thus, the following sub-paragraphs concern the air passengers' rights framework (para. 1), competition policies (para. 2), sustainability (para. 3), privacy, artificial intelligence and cybersecurity (para. 4).

1) Air passengers' rights

As is well known, **Regulation (EC) No 261/2004**¹ has served for 20 years as a cornerstone for EU air passengers rights. Its scope lays down minimum rights to passengers affected by travel disruptions, placing specific obligations on operating air carriers. In general, operating air carriers are required to provide compensation (Article 7), re-routing or reimbursement (Article 8), care and assistance (Article 9), as well as clear information to passengers on their rights, in cases of denied boarding (Article 4), cancellation (Article 5) or long delay of flights (Article 6).

Back in March 2013 the European Commission proposed a **revision** of Regulation (EC) No 261/2004 and Regulation (EC) No 2027/97 to address grey zones and gaps², focusing on key issues – such as ‘extraordinary circumstances’, right to compensation in long delays, right to re-routing, to care, missed connecting flights – as well as on the strengthening of the role of National Enforcement Bodies (NEBs), improving handling of individual claims and complaints, and specifying rules concerning passengers with reduced mobility and mishandled baggage.

Then, the **2023 Passenger Mobility Package**³, intervening also on passenger rights regulatory framework and, *inter alia*, on Regulation (EC) No 261/2004, emphasized the importance of protecting air passengers. This is a “proposal for a regulation revising and strengthening passenger rights with regard to the enforcement of passenger rights in the Union”, containing amendments to existing regulations governing the various modes of transport, based on the most recent legislation on the subject.

The new act aims to encourage the use of collective modes of transport, acting as a cross-cutting measure to implement the **Green Deal**⁴ and the **2020 Strategy for Sustainable and Smart Mobility**⁵, as well as proposing effective solutions to address passengers' lack of awareness and resolve issues related to the enforcement of their rights.

¹ [Regulation \(EC\) No 261/2004](#) of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

² European Commission, ‘Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights’ ([COM\(2013\)130 final](#) of 13 March 2013).

³ European Commission, ‘Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards enforcement of passenger rights in the Union’ ([COM\(2023\)753 final](#) of 29 November 2023).

⁴ [COM\(2019\)640 final](#) of 11 December 2019.

⁵ European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Sustainable and Smart Mobility Strategy – putting European transport on track for the future’ ([COM\(2020\)789 final](#) of 9 December 2020).

As far as air transport is concerned, it should be noted that Article 1 of the proposal introduces amendments to Regulation No 261/2004, providing, among other things, for new provisions relating to reimbursement in the case of ticket reservations made through an intermediary; improving the information provided to passengers about their rights at the time of booking and during travel disruptions; establishing a common form for requests for reimbursement and financial compensation; sharing information with the responsible national bodies; and alternative dispute resolution. At first glance, the proposed amendments are in line with the need to ensure the effective implementation of the rights deriving from EU legislation, in compliance with the rules of the Charter, without however affecting areas still subject to national prerogatives, such as procedural aspects and the definition of the powers of the competent national authorities. Nevertheless, the new measures could make a valuable contribution to the pursuit of a high level of protection.

Due to political deadlock in the Council⁶, the 2013 proposal stalled for 12 years until June 2025, when the **Council** reached a political agreement⁷. The compromise text displays the Council's willingness to finally deliver a whole-comprehensive revision of Regulation 261/2004. In September 2025, the Commission issued a Communication considering the Council's position as a sufficiently acceptable basis for initiating negotiations with the European Parliament⁸. The legislative procedure is still ongoing.

It is worth mentioning that in July 2024 the European Commission updated its 2016 **Interpretative Guidelines** on air passenger rights (and air carrier liability in the event of accidents) with the aim of incorporating the numerous CJEU judgments delivered so far and clarifying the scope of Regulation 261/2004⁹.

In addition, it is important to point out that, with an amendment to Protocol No 3 on the Statute of the Court of Justice¹⁰, the questions raised by reference for a preliminary ruling on compensation and assistance to passengers in the event of delay, cancellation of transport services or denied boarding, are referred to the **General Court** of the European

⁶ See European Parliament resolution of 12 June 2013 on the deadlock on the revision of Regulation (EC) No 1049/2001 ([2013/2637\(RSP\)](#)).

⁷ Council of the European Union, 'Council sets position on clearer and improved rules for air passengers' (Press Release, 5 June 2025), <https://www.consilium.europa.eu/en/press/press-releases/2025/06/05/council-sets-position-on-clearer-and-improved-rules-for-air-passengers/>. Document 9795/25 ADD 1, <https://data.consilium.europa.eu/doc/document/ST-9795-2025-ADD-1/en/pdf>; Document 9795/25 ADD 2, <https://data.consilium.europa.eu/doc/document/ST-9795-2025-ADD-2/en/pdf>; Document 9795/25 ADD 3, <https://data.consilium.europa.eu/doc/document/ST-9795-2025-ADD-3/en/pdf>.

⁸ European Commission, 'Communication from the Commission to the European Parliament pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004' ([COM\(2025\)630 final](#) of 30 September 2025).

⁹ European Commission, '[Interpretative Guidelines](#) on Regulation (EC) No 261/2004 and Regulation (EC) No 2027/97', published on 25 September 2024 (C/2024/5687).

¹⁰ Regulation (EU, Euratom) 2024/2019 of the European Parliament and of the Council of 11 April 2024 amending Protocol No 3 on the Statute of the Court of Justice of the European Union.

Union from October 2024. This amendment was aimed at lightening the workload of the Court of Justice, limited to areas where a substantial body of case-law of the Court of Justice itself has already developed to guide the General Court in the exercise of its new functions. A divergence in the case-law of the European courts is therefore not expected, also in view of the technical nature of certain provisions of Regulation No 261/2004.

In the light of all the relevant CJEU judgements, documents and EU institutions' positions adopted so far, some **critical issues** can be pointed out.

Notions

Most of the provisions contain technical **notions** that must be interpreted and applied uniformly, but in practice they are not fully observed. For instance, this is the case of the obligation of re-routing under comparable transport conditions, that could be clarified in practice with a view of ensuring the protection of passengers. In this regard, it is also usual that air carriers do not provide alternative means and passengers must arrange by themselves the transport. Passengers sometimes receive few information and assistance, and must ask for the reimbursement of expenses, with uncertain results and unclear proceedings.

Similarly, the definition of extraordinary circumstances which could not have been avoided, even if all appropriate measures had been taken¹¹, raised uncertainty in many situations. Although lots of cases addressed by the Court of justice help to understand the nature of the factual circumstance, a clear definition should be provided with a view of both protecting passengers, providing clear notions, and supporting air carriers in operating flights. The case-by-case approach is surely needed, to specifically examine each situation, but more practical examples could be provided, for instance as to the appropriate measures to be employed by air carriers to avoid any disruptions, or as to the demonstration that the situation was beyond the actual control of the air carrier.

Another issue concerns the qualification as extraordinary circumstances of the air traffic management (ATM) decisions. Although they are indicated in Recital 15 of Regulation 261/2004, a clear definition of ATM is lacking, or at least guidance on whether the ATM decision itself, irrespective of its reasons, is necessary to exempt air carriers from compensation obligations, especially where the underlying cause of the ATM measure is unclear. This ambiguity has led to divergent approaches in national jurisprudence¹².

¹¹ For an examination of the extraordinary circumstances, see Interpretative Guidelines 2024, cited above, para. 5, and see specifically para. 5.1 and see para. 5.2.3 for a list of exceptional cases dealt with by the Court of Justice.

¹² See Claudia Bischof, 'Slot Postponements as Extraordinary Circumstances of EU261' (2023) 48(1) *Air and Space Law* 73–90.

In most cases, passengers are not aware of their rights whenever they are concerned with flight cancellations or delays. The **lack of knowledge** about their rights deriving from the Regulation should be addressed with clear and transparent information provided by air carriers, especially from their personnels. It is true that it is also up to the passengers to pay attention to all terms and conditions indicated in the booking website or other sites, however the obligation to inform shall be concretely implemented by air carriers.

This is also even more relevant when dealing with flights included in **package travels** and the regime provided by Directive (EU) 2015/2302 (Package Travel Directive)¹³ is complemented by the rules of Regulation 261/2004. In case a flight disruption affects a package travel, complex issues arise regarding the identification of the liable party and applicable framework, especially because intermediaries are involved. According to the 2023 Commission's Proposal to amend the Package Travel Directive¹⁴ it is necessary to reinforce consumer protections and enhance legal clarity, in the light of contemporary booking practices, particularly online transactions.

Remedies

Passengers are not familiar with the possibility of invoking their rights and the mechanisms to be employed for this purpose¹⁵. **Remedies** are not defined in the Regulation and must be determined in the light of the coordination of various legislative sources to initiate private actions, where domestic laws are thus relevant (*sub i*). Similarly, national legislations directly govern the powers of competent national bodies, but fragmentation and uncertainty may prejudice the effective protection of rights (*sub ii*).

(i) Private enforcement

Passengers must first submit a formal request for compensation or reimbursement to the operating air carrier. Generally, the claim can be found on the airline's website, or, failing that, passengers can complete 'form 261' available on the website of the competent national bodies. If then the air carrier fails to respond adequately or at all, the process

¹³ Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC.

¹⁴ Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/2302 to make the protection of travellers more effective and to simplify and clarify certain aspects of the Directive ([COM\(2023\)905 final](#) of 29 November 2023).

¹⁵ It also true that many claim agencies exist, but risks may be faced: the European Commission issued an Information Notice requiring transparency and guarantees: see 'Information Notice on Relevant EU Consumer Protection, Marketing and Data Protection Law Applicable to Claim Agencies' Activities in Relation to Regulation 261/2004 on Air Passenger Rights' (9 March 2017).

could continue and give rise to various proceedings, depending on the provisions of the applicable national law of the competent jurisdiction.

As to the **claim before the airline**, it must be noted that Regulation No 261/2004 remained silent about the **limitation period**¹⁶. The air transport contract concluded between a passenger and the airline, usually with transnational elements, contains clauses, terms and conditions, prepared by the airline and accepted by the passenger when purchasing tickets. So, the contract is governed by clauses chosen by the parties, the formal and substantive validity of which must be ascertained based on Articles 10 and 11 of Regulation (EC) No 593/2008, known as Rome I, which applies to contractual obligations in civil and commercial matters in the event of a conflict of laws.

It is then necessary to verify whether, when validly concluded, the contract contains provisions aimed at resolving any issues concerning the rights granted to passengers by Regulation No 261/2004, such as the deadline for submitting a complaint. In the event there is a clause establishing the aforementioned term, it must be considered accepted by the passenger upon conclusion of the contract, i.e. at the time of purchase, and, consequently, the term indicated therein must be respected, subject to verification of its legitimacy under the national law applicable to the contract and, in particular, any mandatory rules for consumer protection, which could render the clause in question unfair. The time limit for complaints shall be determined by virtue of the same national law, unless it has been contractually determined.

For the choice of law made by the parties to be legitimate, it must be one of the laws indicated in Article 5(2)(2) of the Rome I Regulation on contracts of carriage. In the absence of a choice, the applicable law corresponds, pursuant to paragraph 1 of the same article, to 'that of the country of the passenger's habitual residence, provided that the place of departure or destination is located in that country. If these conditions are not met, the law of the country in which the carrier has its habitual residence shall apply'. Nevertheless, if there is a manifestly closer connection with a different country, the law of that different country shall apply. The provisions of Article 6 of the Rome I Regulation dedicated to consumers are instead not relevant, even though the contract is between a passenger and a professional, since Article 6 itself is without prejudice to Article 5, which therefore prevails regardless of the passenger's vulnerability.

Once the national legal system whose substantive legislation is to be applied to the dispute concerning the right to compensation has been identified, it is necessary to examine the domestic provisions relating to the limitation period for bringing an action to enforce that right.

¹⁶ See, in this regard, Cinzia Peraro, 'La tutela dei passeggeri aerei: il diritto alla compensazione pecuniaria tra norme della Carta, rimedi e riforme', in *Papers di diritto europeo*, 2024, n. 2, [online](#).

Different rules apply for the **limitation period for bringing an action** to claim additional compensation, i.e. when seeking to assert the existence of further (individual) moral or material damage in addition to the lump sum provided for as compensation. In this case, the Montreal Convention¹⁷ and the two-year period set out in Article 35 thereof apply. Regulation No 261/2004 provides, in Article 12, for the possibility of claiming additional compensation, but refers to national laws, in which the Montreal Convention is in force.

When you intend to contest a negative or unsatisfactory response from the airline, whether because it has refused to pay the lump sum or has invoked exceptional circumstances, or because it has not provided evidence or has not responded, in order to initiate litigation or other proceedings, you must first identify the court with **jurisdiction** to hear the merits of the case relating to compensation.

In any case, jurisdiction cannot be determined unilaterally by the airline, since such a clause would be considered unfair¹⁸. It is therefore necessary to refer to Regulation (EU) No 1215/2012, known as Brussels I bis, according to which, as interpreted by the Court of Justice, in disputes concerning air transport contracts, the place of performance of the service corresponds to the place of departure or arrival of the flight. The provisions on special jurisdiction in matters relating to consumer contracts are not relevant, as Article 17(3) of the Brussels I bis Regulation excludes their application “to contracts of carriage which do not provide for combined transport and accommodation services for an inclusive price”.

For **actions for further damages**, pursuant to Article 71(1) paragraph 1, of the Brussels I bis Regulation, the Montreal Convention applies, which, in Article 33, indicates as alternative grounds for jurisdiction the domicile of the carrier or the main place of business, or the place where it has an establishment through which the contract was made, or the place of destination.

However, legal action to enforce the right to compensation must be brought in accordance with the **extrajudicial and judicial remedies**, the respective rules and conditions of admissibility determined by the *lex fori*, i.e. the national law of the competent court, which may include prior recourse to non-judicial dispute resolution procedures, known as alternative dispute resolution (ADR), to be conducted before national authorities or conciliation bodies.

¹⁷ Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention) of 1999.

¹⁸ When a clause attributing exclusive jurisdiction (for example, as in the present case, to the court in whose jurisdiction the carrier's headquarters are located) is included in a transport contract concluded between a passenger and an airline, and the same has not been the subject of individual negotiation, it must be considered unfair pursuant to Directive 93/13/EEC, even in the case in which the compensation action is brought by a third professional assignee of the passenger's credit. See Court of Justice, judgment of 18 November 2020, [case C-519/19](#), *Ryanair DAC v. DelayFix*,

The excessive delay associated with ADR mechanisms often discourages passengers from seeking the compensation, and its utility is also underestimated due to the lack of binding value of the mechanisms for the air carriers, that can strategically decide not to employ all means to find an amicable solution.

It is undoubtedly apparent that procedural systems can be complicated, not all passengers may be familiar with legal issues, so clear information must be provided to them. Terms and conditions determined by the air carriers shall also be transparent and in compliance with the relevant European and national legislations. Moreover, the “**multilevel system of protection**” requires knowledge of different sources, EU Regulations, Montreal Convention and domestic laws. Procedures shall then be user-friendly and simplified with a view to allow easy access to the remedies provided by the legislation.

In this context, the role of the **associations for consumers protection** could be enhanced, with clear and transparent rules. They have legal standing to act to protect the interests of consumers, and can bring collective redresses, which indeed constitute judicial remedies of concrete utility when it comes to asserting similar individual positions, sometimes of little value, involved in the same situation¹⁹.

(ii) Public enforcement

National enforcement bodies (NEBs) designated by virtue of Article 16 of Regulation 261/2004 supervise the implementation of the Regulation, but their **powers** may differ across Member States. In addition to carrying out the appropriate investigations and assessments, if the company is found to be in default, the body may impose administrative sanctions, but it does not have the power to condemn payment, or to satisfy passengers’ compensation claims, and cannot provide legal assistance or advice.

Divergence among Member States as to the different nature of the designated bodies and their powers, gives rise to **fragmentation** in the protection of passengers’ rights. In disputes involving a Member State whose enforcement body also has coercive powers, passengers may turn to that authority, which could impose sanctions on the air carrier and order the payment of compensation. This would offer passengers broader protection than in systems where the competent authority may only investigate.

The proceedings before the authority (which do not replace and do not prejudice the initiation of actions in other venues) and the outcome of the investigations, when in a favourable sense to the passenger, may represent useful elements to assert passengers’ rights. However, Article 16 of Regulation (EC) No 261/2004 does not specify the

¹⁹ The methods, terms and conditions of admissibility of collective actions may differ, based on the *lex fori*, but national laws are in any case harmonised thanks to Directive (EU) 2020/1828 of 25 November 2020 on representative actions, which also covers transport regulations, including Regulation (EC) No 261/2004.

conditions or procedures NEBs must follow in carrying out their tasks, ultimately leading to different solutions adopted by Member States²⁰.

Common powers of the competent national authorities could be determined for the purpose of grant uniform application of the Regulation and a uniform level of protection of rights across Member States.

Some recommendations

- The obligation to provide information to passengers shall be concretely implemented by air carriers, as well as passengers must enhance their knowledge and awareness on their rights.
- Some notions included in Regulation 261/2004 shall be clearly defined with the aim of granting legal certainty.
- Common provisions regarding the enforcement of rights under Regulation 261/2004 shall be introduced as to the procedural aspects of the claims against the air carriers with a view to ensuring uniform application by the air carriers.
- Uniform provisions concerning the national enforcement bodies shall be determined for the purpose of granting an equal level of protection across the EU.

2) Competition policies

In aviation markets, the Commission has found air carriers guilty of engaging in anticompetitive agreements in different occasions, that can have a negative impact on consumers. For the purpose of the present paper, it is relevant to note that due to the development of Artificial Intelligence (AI) also algorithmic collusion can boost anticompetitive behaviours.

Indeed, with specific regard to air transport sector, **pricing algorithms** used for airlines ticketing were recently under National Competition Authorities scrutiny. In December 2022, the Italian Competition Authority (AGCM) launched an investigation ([case I863](#)) into a possible infringement of Article 101 TFEU, concerning alleged collusive agreements between operating airlines, facilitated by algorithmic collusion, that led to significant price increases of routes connecting major Italian cities (Rome, Bologna, Turin, and Milan) to Sicily during the winter and summer holidays²¹. In November 2023, no sufficient elements to corroborate the investigated conducts have been identified, and the AGCM decided to launch a sector inquiry ([case IC56](#)) to examine the use of pricing

²⁰ Opinion of AG Richard de la Tour, 28 April 2022, Case C-597/20, *Polskie Linie Lotnicze 'LOT' S.A. v Budapest Főváros Kormányhivatala*, EU:C:2022:330.

²¹ Italian Competition Authority (AGCM), *Prezzo biglietti aerei da e per la Sicilia nel periodo natalizio*, Decision No 30408, [Case I863](#), 20 December 2022, published in Bulletin No 46/2022, para 19.

algorithms within the revenue management systems of airlines operating on domestic routes, aiming at assessing their main features and potential anti-competitive effects particularly through price differentiation and personalisation and lowered pricing transparency²². Then, in November 2024, the Authority published its preliminary report where it found no substantial concern regarding alleged algorithm collusion²³.

The recent case of pricing algorithms employed by airlines has raised concern of experts. The case highlighted the growing complexity of algorithmic pricing and its potential risks: new AI models could significantly hinder or distort competitive dynamics and prejudice consumers by affecting pricing policies and customization.

Recently, the Italian Antitrust Authority has initiated **discussions with the European Commission** on the measures to be taken, within the scope of its powers, to facilitate the comparability of air fares and thus improve the competitive functioning of the markets concerned²⁴.

The air transport sector has been also a central focus of evolving **state aid policy**. The Commission has issued a series of soft law instruments – such as the 1994 then 2005 Guidelines²⁵, superseded by the 2014 Aviation Guidelines²⁶ – aimed at clarifying the conditions under which aid granted to airports and airlines can be considered compatible with the internal market without distorting competition. In December 2024 a public consultation was launched with the aim of revising the guidelines on state aid in the aviation sector and align them with the objectives of the Green Deal, while preserving connectivity and supporting competition in the aviation sector²⁷.

In 2020, in response to the serious economic disruption caused by the COVID-19 pandemic, the Commission adopted a Temporary Framework for State Aid measures to support the overall EU economy²⁸, based on Article 107(3)(b) TFEU. Many airlines benefitted from state aids, that were also challenged by Ryanair claiming violations of

²² Italian Competition Authority (AGCM), *Algoritmi di prezzo nel trasporto aereo passeggeri sulle rotte nazionali da e per la Sicilia e la Sardegna*, Decision No. 30874, [Case IC56](#), 15 November 2023. For further reading, in Italian, on the AGCM inquiry see Mario Barbano, 'Pricing Algorithms: The AGCM Inquiry into Airline Fares from the Perspective of European Union Law' (2025) 1 *Quaderni AISDUE*, [online](#).

²³ See the English version of the Executive summary of the preliminary report, Italian Competition Authority (AGCM), *Executive Summary of the Preliminary Report: Pricing Algorithms in Passenger Air Transport on Domestic Routes to and from Sicily and Sardinia*, 26 November 2024, [online](#).

²⁴ See the press release of 3 July 2025, [online](#).

²⁵ European Commission, 'Community Guidelines on Financing of Airports and Start-up Aid to Airlines Departing from Regional Airports' of 9 December 2005 ([2005/C 312/01](#)).

²⁶ European Commission, 'Communication from the Commission — Guidelines on State Aid to Airports and Airlines' of 4 April 2014 ([2014/C 99/03](#)).

²⁷ See the initiative [here](#).

²⁸ European Commission, 'Communication from the Commission — Temporary Framework for State Aid Measures to Support the Economy in the Current COVID-19 Outbreak' (2020/C 91 I/01) [2020] OJ C 91/I/1, updated on 3 April, 8 May, 29 June, 13 October 2020, 28 January 2021 and on 18 November 2021.

the principle of non-discrimination, the undermining of the level playing field and the distorting competition by excluding low-cost carriers²⁹.

With the 2023 Communication, for the purpose of tackling the pandemic crisis and the impact of Russia's war of aggression against Ukraine, the Commission adopted further provisions to avoid the possible closure of regional airports and its negative impact on connectivity, and it extended until 4 April 2027 the transitional period during which EU Member States can grant aid to cover the operating costs of these airports³⁰.

In the light of current developments and events, updated guidance must therefore better reflect modern market dynamics, including airport networks and evolving airline relationships, as well as actual challenges and global situations affecting the sector.

Within state aid policy and competition in the air transport sector, also **public service obligations** (PSOs) on specific routes are at stake, governed by Regulation (EC) No 1008/2008³¹. In certain territorial contexts, in particular in remote or insular regions, air routes are essential to ensure **territorial continuity**, social and economic cohesion. This is relevant because the condition of insularity can disadvantage residents living in islands and limit their freedom of movement. In Italy, the principle of insularity is recognised in the Italian Constitution, and it could help improve air transport services to the islands and their territorial cohesion³². However, in the EU rules on air transport PSO there are not clear provisions about the disadvantaged condition caused by insularity, and within article 174 TFEU on cohesion policy there is not a specific attention to the peculiarities of islands.

Some recommendations

- Anticompetitive behaviours implemented through innovative practices and the use of algorithms shall be monitored with the aim of safeguarding fair market's dynamics and preventing disadvantages for consumers.
- The condition of insularity and the territorial continuity shall be ensured thanks to specific policies for air transport services, ensuring fair competition, integration, cohesion, and free movement of residents.

²⁹ *Inter alia*, see F Rosario, 'Turbulences Ahead: Nazionalismo economico o legittima tutela dell'economia nazionale negli aiuti di Stato al trasporto aereo?' (2021) 2 *Eurojus*.

³⁰ Communication from the Commission extending the transitional period provided for in the Guidelines on State aid to airports and airlines concerning regional airports, 11 July 2023 ([2023/C 244/01](#)).

³¹ Further guidance on PSOs is provided by the Commission's 2017 Interpretative Guidelines: *Interpretative Guidelines on Regulation (EC) No 1008/2008 of the European Parliament and of the Council – Public Service Obligations (PSOs)* [2017] OJ C194/1

³² See Andrea Patanè, 'Il rilievo costituzionale della normativa sulla "continuità territoriale" in materia di trasporto aereo dopo la modifica dell'art. 119 Costituzione sul riconoscimento della peculiarità delle isole e il ruolo delle infrastrutture aeroportuali', in *Federalismi.it*, 2023, n. 24, pp. 174-199, [online](#).

3) Sustainability

With **Regulation (EU) 2023/2405** the Union adopted harmonised rules on the uptake and supply of sustainable aviation fuels (SAF)³³. The Regulation has a significant scope, being universally applicable to all flights departing from European airports, regardless of the nationality of the airline, requiring them to blend a minimum share of SAF into the fuel supplied at major EU hubs. Binding targets start at 2% SAF in 2025 and rise to 6% by 2030, 20% by 2035 and 70% by 2050. Additionally, it addresses the environmentally harmful practice of fuel tankering – where airlines refuel outside the EU to avoid environmental obligations – by creating safeguards against distortions of competition and unnecessary emissions due to excess aircraft weight.

From a legal perspective, it can be observed that **legal basis** of the Regulation is Article 100(2) TFEU related to transport policy, but actually it deals with both the protection of the environment and competition policy. Recital 5 specifies that “it is essential to ensure a level playing field across the Union air transport market regarding aviation fuel, which accounts for a substantial share of aircraft operators’ costs while fostering the decarbonisation of air transport by promoting SAF. Variations in aviation fuel prices can affect aircraft operators’ economic performance and **negatively impact competition** on the market. Higher aviation fuel prices translating directly into higher end-consumer fares would reduce the connectivity of regions, the mobility of citizens and the competitiveness of the air transport sector and also mobility. Where differences in aviation fuel prices exist between Union airports or between Union and non-Union airports, this can lead aircraft operators to adapt their refuelling strategies for economic reasons. Fuel tankering increases aircraft’s fuel consumption and results in unnecessary greenhouse gas emissions. Fuel tankering by aircraft operators accordingly undermines the Union’s efforts towards **environmental protection**. Some aircraft operators are able to use favourable aviation fuel prices at their home bases as a competitive advantage towards other aircraft operators operating similar routes. This can have detrimental effects on the competitiveness of the air transport sector, leading to market distortions and harming air connectivity. This Regulation should set up measures to prevent such practices in order to avoid unnecessary environmental damage as well as to restore and preserve the conditions for **fair competition** on the Union air transport market”.

It also stems from Recital 14, according to which “uniform rules need to be laid down for the Union air transport market to complement Directive (EU) 2018/2001 and to deliver on its overall objectives by addressing the specific needs and requirements arising from

³³ [Regulation \(EU\) 2023/2405](#) of the European Parliament and of the Council of 18 October 2023 on ensuring a level playing field for sustainable air transport (ReFuelEU Aviation), to be applied from 1 January 2024, with some provisions from 1 January 2025. The measure is part of the Fit for 55 package to meet the emissions reduction target of 55% by 2030 (see Communication from the Commission, “Fit for 55: delivering the EU’s 2030 Climate Target on the way to climate neutrality, [COM\(2021\)550 final](#) of 14 July 2021).

the Union air transport market and promoting SAF. In particular, the present Regulation aims to avoid a fragmentation of the Union air transport market, prevent possible competitive distortions between economic actors, or unfair practices of cost avoidance as regards the refuelling of aircraft operators, while fostering the development of SAF in the Union”.

The Regulation is thus aimed at achieving different objectives, that fall within exclusive and concurrent competencies. In the Proposal³⁴, the Commission explained the respect of the principle of subsidiarity by underling that “Air transport is a matter of high EU relevance, since it is a highly integrated market operating in a network dimension across the whole of the EU and beyond. The cross-border dimension is inherent to air transport, which makes any fragmented regulatory framework a significant hurdle for air transport economic actors”. Moreover, it specified that “An intervention at EU level is necessary, as the competitiveness of the EU aviation internal market as a whole cannot be addressed adequately at national level”, “to avoid a patchwork of national measures with possible unintended effects”. Not only the Regulation aims at restoring a level playing field in the air transport market, but also different levels of obligations per Member State could have the opposite effect and distort further the aviation market, encouraging adverse practices by aircraft operators such as fuel tankering. So, the strict link between the needs of promoting the use of SAF, for environmental purposes, and of avoiding market disruptions in the air transport sector, has a European relevance. And Article 100 TFEU empowers the Union to lay down appropriate provisions in air transport.

Recently, in February 2025, the Commission has published a report³⁵ evaluating the development of the SAF market and assessing the effectiveness of the **SAF flexibility mechanism**, which currently allows fuel suppliers to average blending obligations across all EU airports they supply until 2035. The report finds that this mechanism is helping the industry progress toward the 2025 and 2030 targets. While no further flexibility mechanisms are deemed necessary at this stage, the report highlights the need to improve traceability, transparency, and administrative processes in SAF deployment through an EU Database for Biofuels³⁶.

³⁴ Proposal for a Regulation of the European Parliament and of the Council on ensuring a level playing field for sustainable air transport ([COM\(2021\)561 final](#) of 14 July 2021).

³⁵ European Commission, ‘Report from the Commission to the European Parliament and the Council — The ReFuelEU Aviation SAF Flexibility Mechanism’, [COM\(2025\)59 final](#) of 27 February 2025. See also European Commission, ‘[Frequently Asked Questions](#) on the Interpretation of Certain Provisions of Regulation (EU) 2023/2405 on Ensuring a Level Playing Field for Sustainable Air Transport (ReFuelEU Aviation)’ (2025), and Commission Implementing [Regulation \(EU\) 2024/3170](#) of 18 December 2024 laying down detailed provisions concerning the voluntary environmental labelling scheme for the estimation of the environmental performance of flights, established pursuant to Article 14 of Regulation (EU) 2023/2405 of the European Parliament and of the Council (Flight Emissions Label).

³⁶ See the [press release](#) on ‘EU Database for Biofuels Becomes Operational’ (15 January 2024).

Against this background, the economic burden of decarbonisation tends to be transferred to consumers via higher ticket prices, potentially having a **negative impact** on demand and consumer welfare³⁷. So, a more balanced policy framework on SAFs and decarbonisation that considers the risk of harming passengers by allocating corporate burden on consumers would be needed.

In addition, it could be important to provide **incentives** and regulatory support for SAFs, alternative propulsion technologies, and fleet renewal to achieve decarbonisation goals while minimising the impact on consumers. In September 2025, the Commission adopted a decision³⁸ on the allocation of EU ETS emission allowances to airlines for the use of sustainable aviation fuels (SAF) in 2024. This follows calculations by Member States' authorities for commercial airlines, and marks a key step in implementing the additional support mechanism under the EU Emissions Trading System (ETS) to promote SAF uptake. A dedicated support system has been introduced to accelerate the use of SAF by granting free EU ETS allowances for the uplift of these fuels. Starting in 2024, 20 million EU ETS allowances, worth around €1.5 billion (at an allowance price of €75), are set aside for this purpose. For the first year of application, 2024, the support amounts to about 1.3 million allowances, worth approximately €100 million, distributed between 53 operators³⁹.

Some recommendations

- The legislative framework concerning decarbonisation shall consider all related consequences with a view to pursuing the objectives of both environmental protection and fair competition jointly with avoiding negative impacts on consumers.

4) Privacy, Artificial Intelligence and Cybersecurity

New challenges are at stake when dealing with digital innovation and technologies in the aviation sectors, from the use of personal data through digital processing to cyberattacks.

The EU adopted a harmonised legal framework for the collection and transfer of **Advanced Passenger Information** (API) data to strengthen external border

³⁷ Claus Brand, Günter Coenen, John Hutchinson and Arthur Saint Guilhem, 'The macroeconomic implications of the transition to a low-carbon economy', *ECB Economic Bulletin*, Issue 5/2023, [online](#).

³⁸ Commission Decision of 12 September 2025 on instructing the central administrator to enter changes to the national aviation allocation tables of Member States into the Union Registry to account for the use of eligible aviation fuels in the year 2024 ([C/2025/6146](#)).

³⁹ See the [press release](#) 'EU allocates €100m-worth of ETS allowances to help airlines buy Sustainable Aviation Fuels' (17 September 2025).

management and control of illegal migration with the 2004 Directive⁴⁰, obliging air carriers at check-in to transmit passengers' personal data (biographic information and flight details) to border control authorities of the Member State of destination and exclusively upon their request. Subsequently, the **Passenger Name Record** (PNR) Directive has been adopted in 2016⁴¹.

However, its implementation raised significant concerns, in relation to respect of rights and the protection of personal data, also in compliance with the **GDPR**⁴². In its 2022 judgment in *Ligue des droits humains* case⁴³, the Court of Justice found that the "the PNR Directive entails undeniably serious interferences with the rights guaranteed in Articles 7 and 8 of the Charter, in so far, *inter alia*, as it seeks to introduce a surveillance regime that is continuous, untargeted and systematic, including the automated assessment of the personal data of everyone using air transport services" (para. 111).

To address the shortcomings and the lack of coherence caused by the inconsistent national implementation and coordination among the API Directive, PNR Directive, the Schengen Information System (SIS) and the GDPR, the European Commission presented two proposals in December 2022⁴⁴ to modernise and replace the API framework, align it with the PNR regime. The **new framework** now consists of Regulation (EU) 2025/12 (based on Articles 77(2) and 79(2) TFEU) and Regulation (EU) 2025/13 (based on Articles 82(1)(d) and 87(2) TFEU) on 19 December 2024⁴⁵.

Due attention is paid to the protection of **fundamental rights**, as stems from Recital 1, according to which "Such border checks are to be carried out in such a way as to fully respect human dignity and be in full compliance with relevant Union law, including the Charter of Fundamental Rights of the European Union".

⁴⁰ [Council Directive 2004/82/EC](#) of 29 April 2004 on the obligation of carriers to communicate passenger data.

⁴¹ [Directive \(EU\) 2016/681](#) of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

⁴² [Regulation \(EU\) 2016/679](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

⁴³ Judgment of the Court (Grand Chamber) of 21 June 2022, [case C-817/19](#), *Ligue des droits humains ASBL v Conseil des ministres*.

⁴⁴ European Commission, Proposal for a regulation on the collection and transfer of advance passenger information (API) for enhancing and facilitating external border controls, amending Regulation (EU) 2019/817 and Regulation (EU) 2018/1726, and repealing Council Directive 2004/82/EC, [COM\(2022\) 729 final](#) of 13 December 2022 and Proposal for a regulation on the collection and transfer of advance passenger information for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, and amending Regulation (EU) 2019/818 ([COM\(2022\) 731 final](#) of 13 December 2022).

⁴⁵ [Regulation \(EU\) 2025/12](#) of the European Parliament and of the Council of 19 December 2024 on the collection and transfer of advance passenger information for enhancing and facilitating external border checks, amending Regulations (EU) 2018/1726 and (EU) 2019/817, and repealing Council Directive 2004/82/EC, and [Regulation \(EU\) 2025/13](#) of the European Parliament and of the Council of 19 December 2024 on the collection and transfer of advance passenger information for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, and amending Regulation (EU) 2019/818.

In Regulation No. 13, Recital 6 provides that “The collection and transfer of API data affect the privacy of individuals and entail the processing of their personal data. In order to fully respect their fundamental rights, in particular the right of respect for private life and the right to the protection of personal data, in accordance with the Charter of Fundamental Rights of the European Union (the ‘Charter’), adequate limits and safeguards should be provided for”. The collection and processing of passengers’ data will be thus more coherently adapted to the broader principles of the GDPR.

In this regard, the European Data Protection Board (EDPB) has issued a formal Statement in March 2025⁴⁶. The EDPB’s intervention – following a first Statement of 13 December 2022⁴⁷ – underscores the necessity to limit the process of PNR data for the prevention, detection and prosecution of terrorist offences and serious crimes and only where these objectives hold an objective link to air travel. Moreover, the application of the PNR regime to intra-EU flights must be exceptional and based on a real and current threat, the retention of such data must be temporally limited to a five-year period, and subject to individual human review.

The protection of personal data is also concerned by the innovative technologies and the use of **artificial intelligence (AI)**. Increasing utilisation of AI systems further stresses the need for a more transparent and responsible data handling.

Facial recognition technology, as a high-risk system under the new EU AI Act⁴⁸, entails considerable privacy concerns since, in most instances, it does not need express consent, thereby facilitating the risk of mass surveillance.

In this context, in its Opinion 11/2024⁴⁹ – concerning the compatibility with the GDPR of facial recognition for the specific purpose of streamlining the passenger flow at airports (security checkpoints, baggage drop-off, boarding, and access to passenger lounges) – the EDPB provided guidance on the use of facial recognition at airports stressing, in all the evaluated scenarios, that the process of biometric data of passengers is subjected to passenger’s active enrolment and consent. Moreover, in another statement of July 2024⁵⁰, the EDPB advocated for data protection authorities to be designated as market surveillance authorities under the AI Act for high-risk systems, including those involving

⁴⁶ European Data Protection Board, [Statement 2/2025](#) on the Implementation of the PNR Directive in Light of CJEU Judgment C-817/19 (13 March 2025).

⁴⁷ European Data Protection Board, [Statement 5/2022](#) on the Implications of the CJEU Judgment C-817/19 Regarding the Implementation of the PNR Directive in Member States (13 December 2022).

⁴⁸ See Commission Guidelines on prohibited artificial intelligence practices established by Regulation (EU) 2024/1689 (AI Act), [C\(2025\) 5052 final](#) of 29 July 2025.

⁴⁹ European Data Protection Board, [Opinion 11/2024](#) on the Use of Facial Recognition to Streamline Airport Passengers’ Flow (Compatibility with Articles 5(1)(e) and (f), 25 and 32 GDPR) (24 May 2024).

⁵⁰ EDPB, [Statement 3/2024](#) on data protection authorities’ role in the Artificial Intelligence Act framework, 16 July 2024.

biometric identification like facial recognition. According to the EDPB, this would ensure that the AI Act and GDPR are enforced in a coordinated and rights-respecting manner.

The Irish Data Protection Commission launched an investigation into Ryanair for forcing travellers who made bookings via third-party intermediaries to use facial recognition verification⁵¹. Ryanair objected that this measure justified under the aim of deterring fraudulent activity and ensuring bookings made were valid.

Since the AI Act has only recently been adopted and its actual implementation must still be observed in practice in order to fully assess the impact of its provisions, it is certainly significant that biometric systems have been classified as high-risk and that guidance on some relevant aspects have been already delivered.

In the aviation sector, **cybersecurity** represents a strategic pillar in safeguarding operability, physical and digital security and resilience of the airport ecosystem. The growing digitalisation of infrastructure and processes – from air traffic control to luggage handling – has determined an increasing sensitivity and exposure of transport hubs to highly sophisticated and persistent cyber-attacks, as reported in recent events⁵².

Moreover, as highlighted by the recent Mario Draghi's Report, the transport sector as a critical infrastructure is key to Europe's security and defence not only because of its dual-use capabilities but also due to its growing vulnerability to terrorist attacks and hybrid threats, including cyber-attacks⁵³. In this context, the Commission has therefore included a proposal for the revision of the 2019 Cybersecurity Act⁵⁴ – by, *inter alia*, developing measures to ensure cybersecure use of Cloud services – as part of its new Strategy ProtectEU⁵⁵.

In the legislative framework other measures are included: *inter alia*, Directive (EU) 2022/2555 (NIS 2)⁵⁶, which expands the scope and stringency of cybersecurity obligations, particularly in risk management, governance, and incident reporting; Directive (EU) 2022/2557 (CER)⁵⁷, which mandates resilience planning and cross-sector

⁵¹ Data Protection Commission, 'Data Protection Commission Launches Inquiry into Ryanair's Customer Verification Process' ([Press release](#) of 4 October 2024).

⁵² See the [press release](#) EUnews of 21 September 2025.

⁵³ Mario Draghi, '[The Future of European Competitiveness](#): A Strategy for Europe – Part B' (European Commission 2024), at page 208.

⁵⁴ [Regulation \(EU\) 2019/881](#) of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act).

⁵⁵ Communication from the Commission 'on ProtectEU: a European Internal Security Strategy' ([COM\(2025\)148 final](#) of 1 April 2025). A targeted amendment of the Regulation was adopted on 15 January 2025 extended the certification scope to managed security services while a review of the Act is ongoing following a public consultation launched on 11 April 2025 (see the [press release](#), 'Commission opens consultation on revising EU Cybersecurity Act', 11 April 2025).

⁵⁶ [Directive \(EU\) 2022/2555](#) of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive).

⁵⁷ [Directive \(EU\) 2022/2557](#) of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC.

risk assessments; Implementing Regulation (EU) 2019/1583⁵⁸, which sets requirements for information security affecting aviation safety; and Delegated Regulation (EU) 2022/1645⁵⁹, which calls for the implementation of an Information Security Management System (ISMS) aligned with international principles.

A systemic approach to cyber risk management is a necessary step to ensure operational continuity and the protection of airport infrastructure, especially in current times when cybersecurity is no longer a support function but a fundamental resource for civil aviation safety.

Some recommendations

- The protection of personal data shall be granted effectively within the collection and transfer of passengers' data in air transport services by appropriately balancing rights, objectives and necessities of the authorities.
- The protection of personal data shall be carefully taken into consideration when dealing with new technologies and the use of artificial intelligence, as in the case of facial recognition and biometric data.
- Strong cooperation is needed for cybersecurity and risk management based on a systematic and collaborative approach among national and European authorities, jointly with all operators of airports and airlines.

III. CONCLUDING REMARKS

In the light of the above observations, the present policy brief intended to collect some critical issues that have been analysed within the Jean Monnet Module AIR-CARE with a view to stressing the variety of topics involved when dealing with aviation, that requires specific knowledge and competences.

The three editions of seminars have represented a starting point for further discussions, that can be developed taking into consideration the actual context, the legislative developments at European and national levels, and the factual events. A multidisciplinary and transversal approach is then fundamental, strengthening synergies among academics, experts and professionals from the competent national entities.

⁵⁸ [Commission Implementing Regulation \(EU\) 2019/1583](#) of 25 September 2019 amending Implementing Regulation (EU) 2015/1998 laying down detailed measures for the implementation of the common basic standards on aviation security, as regards cybersecurity measures.

⁵⁹ [Commission Delegated Regulation \(EU\) 2022/1645](#) of 14 July 2022 laying down rules for the application of Regulation (EU) 2018/1139, as regards requirements for the management of information security risks with a potential impact on aviation safety.