

AIR TRANSPORT

Austria



Air Transport

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Quick reference guide enabling side-by-side comparison of local insights into the applicable regulatory framework; safety regulations; market access; ownership and control; licensing; competition policy; requirements for foreign carriers; public service obligations; charter services; regulation of airfares; regulation of aircraft and airports; liability and accidents; competition law; financial support and state aid; consumer protection; insurance and security issues; and recent trends.

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REGULATORY FRAMEWORK

Regulators and primary legislation

Which bodies regulate aviation in your country? Under what basic laws?

The Supreme Civil Aviation Authority of Austria is the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology. Other aviation authorities are subordinate to it and include the Federal Safety Investigation Board, Austro Control GmbH, the Austrian Aeroclub, the provincial governors and the district administration.

The Supreme Civil Aviation Authority is tasked with regulatory matters at the national level (issuing both generally applicable ordinances and individual decisions in specific cases), the representation of Austria in the European Union and international aviation bodies, and the negotiation of bilateral aviation agreements.

In practice, the most important aviation authority is Austro Control GmbH, which is responsible for safety in the entire Austrian airspace. Its tasks include air navigation services, certification and airworthiness matters, various authorisations, and oversight and surveillance of the operations of air carriers and other aviation industry players.

The core legislation applicable to the aviation industry in Austria is the Austrian Aviation Act. Many laws and ordinances have been enacted by the Supreme Civil Aviation Authority and its subordinate bodies on the basis of the Austrian Aviation Act. Other important sources of aviation law are bilateral and multilateral international agreements, such as the Chicago Convention on International Civil Aviation 1944, as well as a vast body of EU legislation and delegated and implementing acts, which are all directly applicable in Austria.

Law stated - 26 August 2022

AVIATION OPERATIONS

Safety regulations

How is air transport regulated in terms of safety?

Austria has ratified the Chicago Convention on International Civil Aviation 1944, the air safety provisions of which are thus binding in Austria. Due to Austria's membership of the European Union, the most significant air safety regulations are found in an ever-growing body of EU legislation and tertiary legal acts (ie, delegated and implementing regulations as well as decisions of EU administrative bodies). The most important of the EU legal acts that regulate air safety are:

- Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018, as amended, on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency;
- Commission Regulation (EU) No. 965/2012 of 5 October 2012, as amended, laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No. 216/2008 of the European Parliament and of the Council;
- Commission Regulation (EU) No. 748/2012 of 3 August 2012, as amended, laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations;
- Commission Regulation (EU) 2015/340 of 20 February 2015 laying down technical requirements and administrative procedures relating to air traffic controllers' licences and certificates;
- Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management, air navigation services and other air traffic management network functions and their oversight; and
- Commission Regulation (EU) No. 72/2010 of 26 January 2010 laying down procedures for conducting European Commission inspections in the field of aviation security.

In areas that fall outside the scope of EU (harmonised) law, Austrian legislation remains applicable. Aviation law is mostly codified in the Austrian Aviation Act, which, especially in its Part 8, contains many relevant air safety provisions. The Austrian Aviation Security Act contains detailed provisions related to security measures applicable to passenger controls, airport security concepts and qualifications of security personnel. The Federal Minister of Climate Action, Environment, Energy, Mobility, Innovation and Technology has issued several ordinances, which all contain important air safety regulations, including:

- the Ordinance on Civil Aircraft and Civil Aircraft Equipment 2010 (ZLLV 2010);
- the Ordinance on Civil Aviation Personnel 2006 (ZLPV 2006);
- the Ordinance on Civil Aerodromes 1972; and
- the Ordinance on Air Operator Certificate and Flight Operations 2008.

Other sources of safety regulations are Austro Control GmbH's guidelines, which are published and regularly updated on its website.

Law stated - 26 August 2022

What safety regulation is provided for air operations that do not constitute public or commercial transport, and how is the distinction made?

Safety rules applicable to non-commercial flight operations are found in Commission Regulation (EU) No. 965/2012, particularly in its Annexes VI (Part-NCC) and VII (Part-NCO). This regulation also contains special air safety provisions on both commercial (Part-SPO) and non-commercial aerial work (Part-NCO), referred to in the regulation as 'specialised operations'.

The key distinction criterion for the air safety regimes is whether the air operations in question are commercial in nature. Article 2(1d) of Commission Regulation (EU) No. 965/2012 defines 'commercial operation' as any operation of an aircraft, in return for remuneration or other valuable consideration, that is available for the public or, when not made available to the public, that is performed under a contract between an operator and a customer, where the latter has no control over the operator.

Law stated - 26 August 2022

Market access

How is access to the market for the provision of air transport services regulated?

To obtain general access to the Austrian market for the provision of air transport services, the operator must have an operating licence according to Regulation (EC) No. 1008/2008. Further operational and technical requirements are set forth in the Ordinance on Air Operator Certificate and Flight Operations 2008.

For certain operators, to which Regulation (EC) No. 1008/2008 does not apply, sections 104 et seq of the Austrian Aviation Act set forth separate rules for obtaining an Austrian licence.

Law stated - 26 August 2022

Ownership and control

What requirements apply in the areas of financial fitness and nationality of ownership regarding control of air carriers?

When applying for an operating licence for the first time, it must be proven that the financial requirements set forth in article 5 of Regulation (EC) No. 1008/2008 are met. In detail, it must be demonstrated that the licence holder can meet:

1. at any time, its actual and potential obligations established under realistic assumptions for a period of 24 months from the start of operations; and
2. its fixed and operational costs incurred by operations according to its business plan and established under realistic assumptions for a period of three months from the start of operations, without taking into account any income from its operations.

To enable the competent authority to assess this, a business plan for at least three years of operations must be submitted. This business plan must also detail the applicant's financial links with any other commercial activities in which it is engaged directly or through related undertakings.

If the operating licence should only cover operations with aircraft of less than 10 tonnes maximum take-off mass or less than 20 seats, or both, the applicant is, in general, only required to demonstrate that its net capital is at least €100,000 or provide, upon request by the authority, the information described in (1) above. However, the competent authority may nevertheless apply the above-mentioned criteria (1) and (2) to such an applicant if it intends to operate scheduled air services or if its turnover exceeds €3 million per year.

Regarding nationality requirements, article 4 of Regulation (EC) No. 1008/2008 sets forth that the applicant must have its principal state of business in the applicable member state and that member states or nationals of member states, or a combination thereof, own more than 50 per cent of the company and effectively control it, except as provided for in an agreement with a third country to which the European Union is a party.

Law stated - 26 August 2022

Licensing

What procedures are there to obtain licences or other rights to operate particular routes?

The operation of intra-Community flights (ie, flights within the European Union, including domestic routes) by EU carriers has been liberalised and is not subject to any permit or authorisation (see article 15 of Regulation (EC) No. 1008/2008).

The operation of international flights between non-EU states and Austria, and of domestic flights by non-EU operators, is subject to the provisions of:

- any existing bilateral international agreements between Austria and non-EU states; or
- in the absence of such agreements, subject to the provisions of the Federal Act on Interstate Air Transport.

In the case of bilateral agreements, the procedures differ and are laid down in interstate agreements. If no bilateral agreements exist with a given non-EU state, then the air carriers of that state must apply to the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology for special (individual) rights to operate

particular routes at least 30 days before the start of the intended operations. Furthermore, (scheduled) commercial airline operations may only be carried out after Austro Control GmbH has approved the flight plan, which must be submitted to it at least 30 days before the intended start of the scheduled operations or 60 days before that date if the air carrier has not yet been granted the right to operate by the Federal Minister. The flight plan may only be authorised if the airline has already acquired the right to operate a particular non-EU route.

Law stated - 26 August 2022

What procedures are there for hearing or deciding contested applications for licences or other rights to operate particular routes?

Negative decisions of the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology and those issued by Austro Control GmbH may be appealed against within four weeks of service of the decision in question. The appeal must be lodged with the issuing authority but addressed to the Federal Administrative Court, which ultimately hears the appeal. The decisions of the Federal Administrative Courts are, themselves, under strict conditions, subject to revision by the Supreme Administrative Court and may, under exceptional circumstances, be contested before the Constitutional Tribunal.

Law stated - 26 August 2022

Competition policy

Is there a declared policy on airline access or competition? What is it?

The applicable Single European Sky Policy aims to liberalise the aviation market within the European Union and eliminate the national barriers restricting access to this market. Therefore, there are no national policies on airline access or competition in Austria.

Law stated - 26 August 2022

Requirements for foreign carriers

What requirements must a foreign air carrier satisfy to operate in your country?

There are no significant differences between domestic and foreign air carriers in this respect. The operations of the foreign carrier must not, however, be subject to EU or Austrian sanctions.

Law stated - 26 August 2022

Public service obligations

Are there specific rules in place to ensure aviation services are offered to remote destinations when vital for the local economy?

In Austria, Regulation (EC) No. 1008/2008 applies, which sets forth in its article 16 that EU member states may, under certain conditions and following consultations with other member states concerned, impose public service obligations to ensure that routes to certain airports serving a peripheral region, a developing region or thin routes are being serviced, provided that such routes are being considered vital for the economic and social development of the region that the airport serves.

Charter services

How are charter services specifically regulated?

There is no specific regulation of charter services in Austria. However, the Federal Act on Interstate Air Transport provides simplified procedures for obtaining rights to operate charters.

Law stated - 26 August 2022

Regulation of airfares

How are airfares regulated?

According to article 22 of Regulation (EC) No. 1008/2008, Community air carriers and, on the basis of reciprocity, air carriers of third countries shall freely set airfares for passengers and cargo for intra-Community air services.

Regarding airfares for passengers and cargo for air services between an EU member state's territory and a third country, EU member states may not discriminate in favour of Community air carriers on grounds of nationality or identity.

The final price to be paid must be indicated and shall include the airfare as well as taxes and charges, surcharges and fees that are unavoidable and foreseeable at the time of publication. This is not only set forth in Regulation (EC) No. 1008/2008, but also stipulated in the Austrian Pricing Act. Breaches can lead to administrative penalties.

In cases in which Regulation (EC) No. 1008/2008 does not apply, section 17 of the Act on International Air Transport 2008 authorises the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology to require air carriers to have their airfares approved by it under certain conditions.

Law stated - 26 August 2022

Drones

How is the operation of unmanned aircraft systems (drones) regulated?

If unmanned aircraft have an operating mass of more than 150kg, their technical and aeronautical certification falls within the competence of the European Union. For unmanned aircraft with a weight of up to 150kg, this competence lies with the EU member states. Unmanned aircraft systems that fall under EU competences are regulated by the provisions of section VII of Regulation (EU) No. 2018/1138.

Unmanned aircraft with a weight of up to 150kg is regulated by sections 24c to 24l of the Austrian Aviation Act, which lay down the conditions for their civilian use. Further special provisions for unmanned aircraft are contained in the Austrian Air Traffic Regulations and in Austro Control GmbH's guidelines. The latter specify further aeronautical authorisations, and define mechanical, operational and personnel criteria.

Law stated - 26 August 2022

AIRCRAFT

Aircraft register

Who is entitled to be mentioned in the aircraft register? What requirements or limitations apply to the ownership of an aircraft listed on your country's register?

The Austrian Aircraft Registry (administered by Austro Control GmbH) is an operator-based registry. Consequently, only the operator of the aircraft is registered and thus appears on the registration certificate. It is, therefore, the operator (and not the owner) of the aircraft that must submit the application for registration. However, the owner of the aircraft must give its written consent to the registration by means of a 'transfer of holdership' of the aircraft. Furthermore, the aircraft owner must give their written consent before the aircraft may be deregistered by Austro Control GmbH (on the operator's application).

An aircraft may be entered into the Austrian Aircraft Registry upon application of the operator, if:

- the operator:
 - if an individual, is a citizen of an EU member state or a qualified third country (based on a bilateral agreement), provided that, if the operator is not located in Austria, an Austrian processing agent is appointed; or
 - if a company, is a legal entity or a partnership that was established under the laws of an EU member state or a qualified third country (based on a bilateral agreement) and has its seat, central administration or main business within the European Union or a qualified third country (based on a bilateral agreement), provided that an Austrian processing agent is appointed;
- the aircraft is not registered in any other state; and
- if the aircraft was acquired within the European Union, the operator submits a (specific) tax confirmation.

There are no further requirements as to the ultimate beneficial owner of aircraft.

Law stated - 26 August 2022

Mortgage register

Is there a register of aircraft mortgages or charges? How does it function?

There is no mortgage register for aircraft mortgages and charges. This does not mean, however, that mortgages and charges over an aircraft or its parts cannot be created. The creation of such a security interest is effectuated by certain dispositions in relation to the aircraft and usually requires the physical possession of the aircraft by the mortgagee (or the person that holds similar security rights in the aircraft).

Law stated - 26 August 2022

Detention

What rights are there to detain aircraft, in respect of unpaid airport or air navigation charges, or other unpaid debts?

Depending on the legal nature of the charges and debts in question (eg, private debts, tax debts, public debts), different legal regimes may apply to their enforcement (eg, Tax Enforcement Code, Administrative Enforcement Act, Civil Enforcement Act). All of the aforementioned regimes allow, under different circumstances, for state seizure of the debtor's aircraft and an (auction) sale of the aircraft, provided that the creditor has obtained an enforceable title (court judgment, decision of administrative authority, etc).

Additionally, section 471 of the Austrian Civil Code sets forth the right (granted also to private actors) to detain an object to secure claims based on expenses made with regard to this object or damages caused by this object. Such detention requires an element of connection between the object and the reason for the detention. The right to detain does not authorise the detaining party to sell the detained object to satisfy its claim and the detention may be avoided by providing a security.

Section 369 of the Austrian Commercial Code stipulates that, among entrepreneurs, the right to detain the object does not require connectivity. Furthermore, the detaining party may sell the detained object to satisfy its claims. In doing so, it must follow the legal provisions generally applicable to liens.

Law stated - 26 August 2022

Maintenance

Do specific rules regulate the maintenance of aircraft? What are they?

The maintenance of aircraft is subject to detailed provisions of several EU regulations, including Commission Regulation (EU) No. 1321/2014, Commission Regulation (EU) No. 748/2012 and Regulation (EU) No. 2018/1139.

In Austria, the Ordinance on Civil Aircraft and Civil Aircraft Equipment 2010 and the Ordinance on Air Operator Certificate and Flight Operations 2008 contain detailed rules regarding the maintenance of aircraft.

Non-compliance with the above-mentioned provisions may lead to administrative penalties in accordance with the Austrian Aviation Act. In Austria, the competent authority for aircraft maintenance matters is Austro Control GmbH.

Law stated - 26 August 2022

AIRPORTS

Ownership

Who owns the airports?

Airports in Austria are often owned by private corporations, which are often (at least partly) directly or indirectly owned by the (federated) state or city in which the airport is located. Austria's main airport, Vienna International Airport, is owned by a joint-stock corporation listed on Vienna's stock exchange. Twenty per cent of the shares of this corporation are held by the City of Vienna and another 20 per cent are held by the state of Lower Austria, while the rest are held by smaller investors.

Law stated - 26 August 2022

Licensing

What system is there for the licensing of airports?

The system for the licensing of airports is set forth in the Austrian Aviation Act and the Ordinance on Civil Aerodromes 1972, and involves a two-step procedure. The competent authority for the licensing of airports is the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology.

At first, a civil airport licence is required, which is granted by the Federal Minister upon receiving an application. This application must outline the details of the project of establishing a new airport. One of the relevant criteria is that there is a public demand for establishing the new airport.

After obtaining the civil airport licence, the airport's owner must prove that the airport has been built in accordance with

the plan approved by the Federal Minister in the original application for the operating licence.

Law stated - 26 August 2022

Economic regulation

Is there a system of economic regulation of airports? How does it function?

According to the Austrian Aviation Act, the conditions under which an airport may be used must be approved by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology and published.

The Airport Charges Act sets forth that airport charges must be determined for a maximum of one year, approved by the Federal Minister and published by the airport. These charges must be calculated based on objective criteria – such as aircraft type and weight – and must not be discriminatory.

The above-mentioned rules regarding conditions of use and airport charges do not apply to private airports.

Law stated - 26 August 2022

Access

Are there laws or rules restricting or qualifying access to airports?

The conditions of use of an airport usually include rules regarding access to this airport. These conditions of use must not be discriminatory and the airport must not exclude prospective users from accessing the airport under the conditions set forth in the conditions of use.

Private airports are freer to restrict access to their infrastructure.

Law stated - 26 August 2022

Slot allocation

How are slots allocated at congested airports?

In the European Union, slot allocation rules are laid down in Council Regulation (EEC) No. 95/93, which has been amended several times. On a national level, the Ordinance on Slot Coordination 2008 must also be observed.

Coordinated airports and schedules-facilitated airports, as defined in Council Regulation No. 95/93, must be distinguished from one another. In Austria, SCA Schedule Coordination Austria GmbH (SCA) acts as the slot coordinator and schedule facilitator.

At coordinated airports, slots are allocated by SCA, while at schedules-facilitated airports, SCA merely has a supervisory and coordinative function. Slots are allocated on the basis of defined capacity parameters, which are established by airport operators. A basic principle of the slot allocation process is historical precedence (ie, that airlines may keep slots that have been allocated to them in the next scheduling season if they have been used in at least 80 per cent of (scheduled) operations).

Law stated - 26 August 2022

Ground handling

Are there any laws or rules specifically relating to ground handling? What are they?

Ground handling in Austria is regulated by the Austrian Airport Ground Handling Act, which implements Commission Directive 96/6/EC.

All ground handling services are listed in the Annex to the Austrian Airport Ground Handling Act. In principle, professional airport users may carry out ground handling themselves (self-handling) or use ground handling services offered by third-party service providers (third party-handling).

For third party-handling of baggage, ramp services, and cargo and mail handling, the number of service providers is limited to two, which are selected by means of an EU-wide tender.

Other ground handling services may be provided by all providers if they meet certain administrative requirements and have been approved by the competent federal minister.

Self-handling is generally permitted, but the competent authority must be notified in advance. There may be restrictions on self-handling for capacity reasons and the number of self-handlers is limited in certain areas.

Law stated - 26 August 2022

Air traffic control

Who provides air traffic control services? And how are they regulated?

Air traffic control services are provided by Austro Control GmbH under the supervision of the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology.

In the case of airfields (but not in the case of airports), the Federal Minister may, under certain conditions, appoint other service providers.

The service charges levied by Austro Control GmbH for air traffic control services are regulated by Commission Implementing Regulation (EU) 2019/317.

Law stated - 26 August 2022

LIABILITY AND ACCIDENTS

Passengers, baggage and cargo

What rules apply in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage?

The relevant rules are found in sections 146 et seq of the Austrian Aviation Act and are in conformity with international standards. The scope of application of these provisions is limited, as liability provisions set forth in international treaties or in Council Regulation (EC) No. 2027/97 on air carrier liability in the event of accidents prevail over national rules. Council Regulation (EC) No. 2027/97 is also applicable in cases of domestic carriage when a Community air carrier is involved.

Law stated - 26 August 2022

Surface damage

Are there any special rules about the liability of aircraft operators for surface damage? What are they?

Sections 146 et seq of the Austrian Aviation Act stipulate that air carriers are strictly liable for deaths, injuries or damages of goods resulting from an accident during the operation of an aircraft.

This liability is limited and calculated in special drawing rights (SDR). The limit depends on the maximum take-off mass and varies from 750,000 SDR to 700 million SDR. One-third of this sum is reserved for damages of goods while two-thirds are reserved for damages resulting from death or injury. If the limit is not exceeded in one category, the remaining amount will be used for compensating damages of the other category.

The aircraft operator or the person operating the aircraft without the operator's permission is liable for such damages. However, the operator remains liable (together with the person that actually operated the aircraft) if the person operating the aircraft without the operator's permission was able to do so due to a negligent action or omission on the operator's side.

To ensure the applicability of this strict liability regime, the person who suffered the damage must report the accident to the operator within three months of the moment they were able to establish the damage and the operator's identity.

Law stated - 26 August 2022

Accident investigation

What system and procedures are in place for the investigation of air accidents?

In air accidents in Austria, in particular the provisions of Regulation (EU) No. 996/2010 on the investigation and prevention of accidents and incidents in civil aviation, the Austrian Accident Investigation Act and the Austrian Aviation Act must be observed.

Pilots, aircraft operators, airport operators and other relevant parties must report air accidents and serious incidents to Austro Control GmbH without undue delay. This report is then forwarded to the Federal Safety Investigation Board (SUB), which is a body established within the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology but enjoys functional autonomy from it.

The SUB decides whether investigation proceedings are initiated and conducts such investigations. Its objective is to determine the reasons for an air accident or serious incident and, if necessary, issue safety recommendations. During its investigations, the SUB can access the place of the accident, hear witnesses, request documents and consult with experts, among other functions. Each safety investigation shall be concluded with an investigation report, which shall be made public (in an anonymised form) in the shortest possible time and, if possible, within 12 months of the date of the accident or serious incident. The SUB's objective is not to decide or comment on liability issues.

Additionally, air accidents may lead to civil or criminal (investigation) proceedings.

Law stated - 26 August 2022

Accident reporting

Is there a mandatory accident and incident reporting system? How does it operate?

According to section 136 of the Austrian Aviation Act, pilots, aircraft operators, airport operators and other relevant

parties must report air accidents and serious incidents to Austro Control GmbH without undue delay. This report is then forwarded to the SUB, which is a part of the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology, but acts independently. The SUB decides whether investigation proceedings can be initiated and conducts such investigations.

The Austrian Civil Aviation Reporting Regulation sets forth the details of the reporting system.

Law stated - 26 August 2022

COMPETITION LAW

Specific regulation

Do sector-specific or general competition rules apply to aviation?

General competition rules apply to the aviation sector. Relevant Austrian provisions are set forth in the Austrian Act Against Unfair Competition and the Austrian Cartel Act 2005.

Relevant EU provisions can be found in articles 101 et seq of the Treaty on the Functioning of the European Union as well as in several regulations, directives and guidelines.

Law stated - 26 August 2022

Regulator

Is there a sector-specific regulator, or are competition rules applied by the general competition authority?

Competition rules are applied by the general competition authorities. In Austria, the main competition authority is the Federal Competition Authority. Additionally, there is a federal antitrust prosecutor, who represents the public interest in competition-related matters.

Besides the Austrian authorities, the European Commission and the Court of Justice of the European Union are of importance in competition-related matters with an EU dimension.

Law stated - 26 August 2022

Market definition

How is the relevant market for the purposes of a competition assessment in the aviation sector defined by the competition authorities?

The relevant market is defined on a case-by-case basis following general market definition principles. In the aviation sector, the relevant market includes all relevant services provided on an origin-and-destination city pair, including both direct and indirect flights. Additionally, sometimes flights from neighbouring airports or connections involving other modes of transport (eg, air-and-rail tickets) are taken into account when defining the relevant market.

Law stated - 26 August 2022

Code-sharing and joint ventures

How have the competition authorities regulated code-sharing and air-carrier joint ventures?

While the European Commission, acting as a competition authority, acknowledges that code-sharing can generally bring benefits for passengers, it has the right to decide on a case-by-case basis that a code-sharing agreement restricts competition.

Joint ventures require a case-by-case analysis, since the term 'joint venture' is not uniformly defined and may, therefore, be used for very different forms of collaboration between airlines.

Law stated - 26 August 2022

Assessing competitive effect

What are the main standards for assessing the competitive effect of a transaction?

To assess the competitive effect of a transaction, the European Commission compares the relevant markets of the parties involved. In the aviation sector, the relevant market includes all relevant services in the origin-and-destination city pair. In its assessment, the European Commission examines whether the relevant markets of the involved parties overlap and, therefore, whether, in the absence of the particular transaction, the involved parties would be actual or potential competitors. The overlap of relevant markets (and especially hub-to-hub routes) is, in general, considered to affect competition in the relevant market. However, the European Commission may also decide that a transaction affects competition if there is no overlap at all.

With regard to airline alliances, the European Commission has shown its willingness to accept the positive effects of such alliances, especially for consumers (broader services, cheaper prices) and, therefore, to approve such alliances.

If the European Commission has concerns regarding a certain transaction, the involved parties may offer remedies (ie, propose certain modifications that would guarantee continued competition in the relevant market).

Law stated - 26 August 2022

Remedies

What types of remedies have been imposed to remedy concerns identified by the competition authorities?

As types of remedies, the following obligations have been imposed in a number of cases:

- the surrender of slots at congested airports;
- regarding interlining codeshares;
- regarding conditions pertaining to blocked space agreements;
- to open up frequent flyer programmes of the parties to new members; and
- to freeze or reduce frequencies.

In specific cases, in particular, the following obligations have been imposed:

- the sale of certain assets;
- tariffs; and
- for the parties to enter into intermodal agreements.

FINANCIAL SUPPORT AND STATE AID

Rules and principles

Are there sector-specific rules regulating direct or indirect financial support to companies by the government or government-controlled agencies or companies (state aid) in the aviation sector? Is state aid regulated generally?

In Austria, there are no national sector-specific rules in this regard. However, applicable EU law must be observed.

The relevant provisions are mainly set forth in articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU) as well as several regulations, directives and guidelines. According to article 107 of the TFEU, any aid granted by an EU member state or through state resources that distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall be deemed – insofar as it affects trade between member states – to be incompatible with the internal market. Several forms of aid, such as aid to compensate the damage caused by natural disasters or exceptional occurrences, are viewed as compatible with the internal market, while other forms of aid, such as aid to promote the economic development of certain areas, may be considered compatible with the internal market.

Additionally, the European Commission has issued several guidelines regarding state aid in connection with airlines and airports, like the Guidelines on State Aid to Airports and Airlines 2014 (OJ C 99/03).

In response to the covid-19 pandemic, the European Commission published a communication regarding the temporary framework for state aid measures to support the economy during the crisis. This communication applied across sectors (including the aviation sector) and provided more flexibility in connection with state aid. Regarding the aviation sector, the European Commission further qualified the covid-19 pandemic to be an exceptional occurrence and, therefore, state aid to compensate the damage caused by it to be compatible with the internal market.

Law stated - 26 August 2022

What are the main principles of the state aid rules applicable to the aviation sector?

In principle, any state aid that distorts or threatens to distort competition and affects trade between EU member states is regarded to be incompatible with the internal market and, therefore, prohibited.

For assessing whether certain measures constitute prohibited state aid, the European Commission applies certain principles, namely the market-economy-operator principle, the one-time-last-time principle, the principle of neutrality of property ownership and the proportionality principle. These principles also apply to the aviation sector.

Of particular relevance for the aviation sector are the Guidelines on State Aid to Airports and Airlines 2014 (OJ C 99/03), published by the European Commission. According to these guidelines, state aid given to airports and airlines is regarded as compatible with the internal market if it:

- contributes to a well-defined common interest;
- is necessary;
- is appropriate;
- has an incentive effect;
- is proportionate; and

- has no undue negative effects on competition and trade between EU member states.

Law stated - 26 August 2022

Exemptions

Are there exemptions from the state aid rules or situations in which they do not apply?

Article 107 of the TFEU defines some exemptions for certain forms of state aid, such as aid to compensate the damage caused by natural disasters or exceptional occurrences.

According to Commission Regulation (EU) No. 1407/2013, certain aid measures are exempt from the restrictions of articles 107(1) and 108(3) of the TFEU. In particular, aid granted by a member state to a single undertaking that does not exceed €200,000 over any period of three fiscal years is subject to this exemption. Further, a loan is subject to the exemption if it is secured by collateral that covers at least 50 per cent of the loan and the loan amounts to either €1 million over five years or €500,000 over 10 years. A guarantee is subject to the exemption if it does not exceed 80 per cent of the underlying loan, and either the amount guaranteed is €1.5 million and the duration of the guarantee is five years or the amount guaranteed is €750,000 and the duration of the guarantee is 10 years.

Commission Decision 2012/21/EU defines the conditions under which state aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (SGEI) is compatible with the internal market and thus exempt from the notification requirement set forth in article 108(2) of the TFEU. According to this decision, public service compensation for the provision of SGEI for airports for which the annual traffic does not exceed 200,000 passengers is exempt as well as compensation for the provision of SGEIs regarding air links to islands on which the average annual traffic does not exceed 300,000 passengers.

The European Commission further published the principles it uses in connection with state aid provided to airports and airlines in its Guidelines on State Aid to Airports and Airlines 2014 (OJ C 99/03), which are valid for a transitional period of 10 years and that commenced in 2014.

Finally, the European Commission Communication titled Temporary Framework for State Aid Measures to Support the Economy in the Current COVID-19 Outbreak 2020 (C 91 I/01) gave EU member states more flexibility as the European Commission stated that the covid-19 pandemic must be regarded as exceptional occurrences, as defined in article 107(2) of the TFEU.

Law stated - 26 August 2022

Clearance of state aid

Must clearance from the competition authorities be obtained before state aid may be granted?

What are the main procedural steps for doing so?

According to article 108(3) of the TFEU, the European Commission shall be informed of all new aid measures and EU member states shall not put the proposed measure into effect until the European Commission has rendered its final decision on it. Aid granted without prior authorisation by the European Commission is unlawful.

However, there are some exemptions to this, such as aid covered by a block exemption, de minimis aid not exceeding €200,000 per undertaking over any period of three fiscal years or aid granted under an aid scheme already authorised by the European Commission.

Having been notified of an intended aid measure, the European Commission will initiate a preliminary investigation and

has two months to decide whether the measure constitutes state aid at all, and if so, whether the intended aid is compatible with EU rules or the European Commission has serious doubts as to the compatibility of the measure with EU rules. The latter case leads to more in-depth investigations.

The European Commission renders a final decision at the end of the formal investigation. There is no legal deadline for these investigations and their actual length depends on the circumstances of the specific case.

All decisions and the procedural conduct of the European Commission are subject to review by the General Court and, ultimately, by the Court of Justice of the European Union (CJEU).

Law stated - 26 August 2022

Recovery of unlawful state aid

If no clearance is obtained, what procedures apply to recover unlawfully granted state aid?

If the European Commission renders a negative decision (ie, it is of the opinion that aid measures are incompatible with EU rules), the proposed measures must not be implemented by the member state. Further, the European Commission requires EU member states to recover aid (with interest) that has already been paid out. The limitation period for the recovery is 10 years.

If the member state fails to comply with the European Commission's decision in due time, the European Commission may refer it to the CJEU.

Law stated - 26 August 2022

CONSUMER PROTECTION

Passengers

What rules regulate denied boarding, cancellation or (tarmac) delay?

The relevant rules are laid down in Regulation (EC) No. 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and cancellation or long delay of flights. This regulation applies to:

- passengers departing from an airport located in the territory of an EU member state; and
- passengers arriving at an airport located in the territory of an EU member state, provided that the operating air carrier of the flight concerned is a Community carrier.

Since its conception, this regulation has been extensively and dynamically interpreted by the Court of Justice of the European Union.

In cases in which this regulation does not apply, the general national rules regarding the non-fulfilment of a contract and damages must be observed.

Law stated - 26 August 2022

Package holidays

What rules apply to the sale of package holiday products?

The relevant rules are set forth in the Austrian Act on Package Holidays and the Austrian Ordinance on Package Holidays, which implement Directive (EU) 2015/2302 on package travel and linked travel arrangements.

Law stated - 26 August 2022

Other consumer legislation

Is there any other aviation-specific consumer legislation?

In this context, the following legislation is of particular importance:

- Regulation (EC) No. 80/2009 on a code of conduct for computerised reservation systems;
- Regulation (EC) No. 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air; and
- Regulation (EC) No. 1008/2008 on common rules for the operation of air services in the Community.

Law stated - 26 August 2022

INSURANCE AND SECURITY

Insurance for operators

What mandatory insurance requirements apply to the operation of aircraft?

According to the Austrian Aviation Act and Regulation (EC) No. 785/2004 (as amended), aircraft carriers and operators shall be insured as regards their aviation-specific liability in respect of passengers, baggage, cargo and third parties in the amount specified by law. The insurance must cover at least 250,000 special drawing rights (SDR) per passenger, 1,131 SDR per item of luggage and 19 SDR per kilogram of cargo.

Law stated - 26 August 2022

Aviation security

What legal requirements are there with regard to aviation security?

The principles of aviation security management are set forth in the Austrian Aviation State Safety Programme (AASSPP) and serve as a basis for the development of safety management systems by aviation service providers. The AASSPP was implemented in accordance with the requirement stipulated in Annex 19 of the Chicago Convention on International Civil Aviation 1944 establishing the International Civil Aviation Organization.

The relevant provisions with regard to aviation security in Austria are set forth in the Austrian Aviation Security Act. According to its provisions, the security authorities are responsible for security checks of persons entering security areas at airports or boarding aircraft. These security checks may also be assigned to trustworthy private parties by the competent authorities.

Relevant European provisions in connection with aviation security are set forth in Regulation (EC) No. 300/2008 and Commission Implementing Regulation (EU) 2015/1998.

Law stated - 26 August 2022

Serious crimes

What serious crimes exist with regard to aviation?

Austrian criminal law contains special provisions sanctioning 'aerial piracy' (section 185 of the Austrian Criminal Code) and 'intentional endangerment of aviation safety' (section 186 of the Austrian Criminal Code). The former provision prohibits the hijacking of aircraft (eg, unlawfully taking control of the aircraft from on or off board) by any means, whereas the latter provision prohibits the endangerment of aviation safety by means of violence or threat of violence against other passengers and staff onboard of an aircraft, intentional destruction of the aircraft or its parts, or any other action that compromises the safe operation of the aircraft.

Law stated - 26 August 2022

UPDATE AND TRENDS

Emerging trends

Are there any emerging trends or hot topics in air transport regulation in your jurisdiction?

As in a lot of other European countries, flight cancellations or delays and lost baggage are currently hot topics in Austria. Meanwhile, discussions on a reform of Regulation (EC) No. 261/2004 on passenger rights continue but have not yet led to any actual amendments. Further, many stakeholders in the aviation sector are currently affected by the sanctions imposed on Russia by the European Union, the United Kingdom and the United States, which is why their scope, interpretation and possible future amendments continue to be discussed in Austria (especially in the sector of business aviation).

Additionally, both policymakers and stakeholders in the aviation industry continue to seek new ways to reduce the aviation sector's effects on the environment, including the chances offered by the use of sustainable aviation fuel and to substitute short-distance flights with multimodal (code-share) connections offered together with the state railway.

Law stated - 26 August 2022

Jurisdictions

| | | |
|---|-----------------------|------------------------------------|
|  | Argentina | Freidenberg Freidenberg & Lifsic |
|  | Armenia | Concern Dialog Law Firm |
|  | Austria | Weisenheimer Legal |
|  | Brazil | Basch & Rameh Advogados Associados |
|  | Chile | Prat & Cía |
|  | China | KaiRong Law Firm |
|  | European Union | Reed Smith LLP |
|  | Germany | Urwantschky Dangel Borst |
|  | Greece | Bahas Gramatidis & Partners |
|  | India | I.L.A. Pasrich & Company |
|  | Israel | Fischer (FBC & Co) |
|  | Italy | Pierallini Studio Legale |
|  | Luxembourg | Pinsent Masons Luxembourg |
|  | Malaysia | Shearn Delamore & Co |
|  | Malta | Dingli & Dingli Law Firm |
|  | Portugal | VdA |
|  | Spain | Augusta Abogados |
|  | Sweden | Astra law |
|  | United Kingdom | Clyde & Co LLP |