COMMISSION IMPLEMENTING DECISION (EU) 2016/2019

of 16 November 2016

on the approval pursuant to Article 19 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of modified traffic distribution rules for the airports Milan Malpensa, Milan Linate and Orio al Serio (Bergamo)

(notified under document C(2016) 7244)

(Only the Italian text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community ([1]), and in particular Article 19(3) thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

(1) By letter of 13 May 2016, received by the Commission on 20 May 2016, the Italian authorities informed the Commission, pursuant to Article 19(3) of Regulation (EC) No 1008/2008, of a new draft Decree on modified traffic distribution rules for the airports Milan Malpensa, Milan Linate and Orio al Serio (Bergamo).

2. BACKGROUND AND DESCRIPTION OF THE MEASURE

2.1. The Bersani and Bersani 2 Decree

(2) By Commission Decision of 21 December 2000, the Commission declared compatible with Council Regulation (EEC) No 2408/92 ([2]), which has since been repealed and replaced by Regulation (EC) No 1008/2008, the traffic distribution rules for the Milan airport system set out in the Decree of the Minister for Infrastructure and Transport of 3 March 2000 ([3]) (hereinafter the 'Bersani Decree'). The Commission's decision was subject to these rules being amended as indicated by the Italian authorities in a letter of 4 December 2000. This amendment took place through the Decree of the Minister for Infrastructure and Transport of 5 January 2001 ([4]) (hereinafter the 'Bersani 2 Decree').

(3) The Milan airport system comprised the airports of Malpensa, Linate and Orio al Serio (Bergamo).

(4) The objective of the Bersani Decree and Bersani 2 Decree was to ensure the realisation of the full development potential of Milan Malpensa airport as an international hub, whilst at the same time describing Milan Linate airport as a facility for point to point services. To this end, the Bersani Decree and Bersani 2 Decree contained several provisions; in particular they imposed, at Milan Linate airport, limitations on the number of daily return services to EU airports identified on the basis of passenger traffic volume, as follows:

— one daily return service per carrier for routes with traffic between 350 000 and 700 000 passengers,

— two daily return services per carrier for routes with traffic between 700 000 and 1 400 000 passengers,

— three daily return services per carrier for routes with traffic between 1 400 000 and 2 800 000 passengers,

— no limit for routes with traffic above 2 800 000 passengers.

([1]) OJ L 293, 31.10.2008, p. 3.
([2]) Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992, p. 8). As regards this repeal, see Article 27 of Regulation (EC) No 1008/2008.
([3]) Italian Official Gazette No 60 of 13 March 2000.
([4]) Italian Official Gazette No 14 of 18 January 2001.

(5) From Linate, Community carriers may, with the arrangements set out immediately above, operate a daily return service using two time slots to airport systems or individual airports located in 'Objective 1' regions which in the course of the 1999 calendar year registered passenger traffic of fewer than 350 000 units in the Milan airport system.

(6) The Bersani 2 Decree specifies that all European capitals will have at least one return trip connection per day with Linate and that Community airports with annual traffic of more than 40 million passengers in 1999 will be connected to Linate by at least two return trips per day.

(7) The Bersani Decree and Bersani 2 Decree also restricted Milan Linate airport to single aisle aircraft for point-to-point scheduled connections within the EU only.

2.2. **The Lupi Decree and the Commission decision**

(8) By letter of 21 April 2015, received by the Commission on 21 April 2015, the Italian authorities informed the Commission, pursuant to Article 19(3) of Regulation (EC) No 1008/2008, of the Ministerial Decree No 395 of 1 October 2014 amending Decree No 15 of 3 March 2000 on the distribution of air traffic within the Milan airport system, as amended [1] (hereinafter the 'Lupi Decree').

(9) On 17 December 2015 the Commission adopted pursuant to Regulation (EC) No 1008/2008 a negative decision on Ministerial Decree No 395 of 1 October 2014 [2]. The Commission found that, contrary to the provisions of this Regulation, Italy had failed to consult interested parties before modifying the traffic distribution rules.

2.3. **The new draft Decree**

(10) Italy therefore prepared a new draft Decree and informed the Commission thereof. The draft Decree, when adopted and entered into force, will modify the traffic distribution rules for the airports of Malpensa, Linate and Orio al Serio (Bergamo) in the same way as the Lupi Decree did. It will thus remove the limitations at Linate airport as set out in recitals 4 to 6 above, i.e. based on the number of daily return services to EU airports identified on the basis of passenger traffic volume. The limitation regarding Linate airport to point-to-point scheduled connections within the EU only, operated with narrow-body (single-aisle) aircraft (recital 7 above), will remain in place.

(11) The notified draft Decree will repeal the Lupi Decree.

(12) The Italian authorities summarised the objectives of the new draft Decree as follows:

— to optimise the use of Milan Linate Airport, thereby facilitating the free movement of persons within the EU, while fully exploiting the development potential of the Malpensa hub in its specific role as an intercontinental gate,

— to improve Milan's connectivity with all other European cities, thereby making access easier for EU passengers, including through better use of the capacities of Linate airport.

(13) Thus, Milan Malpensa will be available for intercontinental and non-EU traffic operated by European and non-European airlines without any restrictions on the type of aircraft or destinations, within the limits of the airport's capacity, while Milan Linate will be available solely for intra-EU traffic operated by European airlines using a specific type of aircraft (narrow-bodied) and on the basis of point-to-point connections.

(14) The Italian authorities argue that, in view of the forecasted growth and congestion of the main EU airports due to the rapid expansion of low-cost carriers and non-EU carriers, it is necessary to adapt the offer of air traffic services and lift restrictions. Further, initially the limitations on Linate were imposed to support Milan Malpensa in its start-up phase. The authorities argue that traffic data shows that this is no longer necessary.

(15) The new draft Decree also allows airlines to determine their own connections with European cities on the basis of their own commercial requirements and meet passenger demands more effectively. This is expected to boost competition and benefit passengers.

[1] Italian Official Gazette No 237 of 11 October 2014.
[2] OJ L 333, 19.12.2015, p. 124.

2.4. **Consultation conducted by the Italian authorities**

(16) The Italian authorities conducted a consultation prior to the notification of the intended amendments to the Commission.

(17) Three meetings were organised with interested parties, namely airlines which hold slots at Linate, associations representing the airlines (IBAR and Assaereo) and the airport coordination committee (AOC). These meetings took place on 23 November 2015, 17 December 2015, and 27 January 2016. The Commission has received the minutes of those meetings.

(18) According to the Italian authorities, only a minority of European airlines expressed negative opinions about the measures and no proposals for amendments were made.

3. **CONSULTATION CONDUCTED BY THE COMMISSION**

(19) The Commission published a summary of the modified traffic distribution rules notified by the Italian authorities in the *Official Journal of the European Union* ([1]) and invited interested parties to submit comments.

(20) The Commission received comments from six interested parties, most of which wished to remain anonymous.

3.1. **Comments from interested parties**

(21) Some interested parties argued that the Italian authorities failed to properly consult with the airline users, as airlines were invited to a number of meetings at very short notice and without agendas published prior to the meeting. In addition, no feedback on the comments of the parties was provided.

(22) Other interested parties expressed their support to the new draft Decree pointing out that the Decree has the effect of rationalising air traffic at Linate, and allows airlines to use their slots at Linate more efficiently. These interested parties further stated that the consultation, which has been carried out by the Italian authorities, has shown that no airline has been negatively affected by the Lupi Decree; on the contrary, subsequently to the adoption of the Linate Decree there has been the opening of new routes to/from Linate on European and national destinations, not allowed under the previous regulation.

4. **THE TERMS OF ARTICLE 19 OF REGULATION (EC) No 1008/2008**

(23) Article 19(2) of the Regulation (EC) No 1008/2008 provides that a Member State, after consultation with interested parties, may regulate, without discrimination among destinations inside the Community and on grounds of nationality or identity of air carriers, the distribution of air traffic between airports satisfying the following conditions:

(a) the airports serve the same city or conurbation;

(b) the airports are served by adequate transport infrastructure providing, to the extent possible, a direct connection making it possible to arrive at the airport within 90 minutes including, where necessary on a cross-border basis;

(c) the airports are linked to one another and to the city or conurbation they serve by frequent, reliable and efficient public transport services; and

(d) the airports offer necessary services to air carriers, and do not unduly prejudice their commercial opportunities.

(24) Further, the distribution of air traffic between the airports concerned shall respect the principles of proportionality and transparency, and shall be based on objective criteria.

([1]) OJ C 204, 8.6.2016, p. 7.

(25) Article 19(3) of the Regulation (EC) No 1008/2008 provides that a Member State concerned shall inform the Commission of its intention to regulate the distribution of air traffic or to change an existing traffic distribution rule. It also provides that the Commission shall examine the application of Article 19(2) and, within 6 months of receipt of the information from the Member State, and after having asked the Committee set up in Article 25 of Regulation (EC) No 1008/2008 for opinion shall decide whether the Member State may apply the measures. It adds that the Commission shall publish its decision in the *Official Journal of the European Union* and that the measures shall not be applied before the publication of the Commission's approval.

5. **ASSESSMENT**

(26) At the outset, the Commission observes that the three airports in question, Milan Linate, Milan Malpensa and Orio al Serio (Bergamo), satisfy the requirements set out in the first subparagraph of Article 19(2). The airports serve the conurbation of Milan (point (a) of the provision referred to). The infrastructure and public transport links between the airports and between them and the city of Milan are such as to comply with points (b) and (c) thereof. In addition, the airports provide the necessary services to air carriers in a manner that satisfies the requirements of point (d) thereof.

(27) On the substance, the new draft Decree removes certain limitations imposed on services at Linate airport. This constitutes a change in the measures of the Bersani Decree and Bersani 2 Decree on traffic distribution between the airports serving the city of Milan within the meaning of Article 19(3) of Regulation (EC) No 1008/2008.

(28) The measure concerns the removal of existing limitations that were based on passenger traffic volume and, as such, liberalise air traffic, without having restrictive effects in other ways. It should enable air carriers to operate more efficiently, which is in line with the general objective of Article 15 of Regulation (EC) No 1008/2008.

(29) Insofar as the measures constitute the removal of limitations concerning the access to and from Linate, in order to allow airlines greater efficiency and choice in setting their schedules according to passenger demand, the question of proportionality does not arise.

(30) The most recurrent comment put forward by interested parties relates to the consultation carried out by the Italian authorities.

(31) In this respect, it is observed that Article 19(2) does not specify in detail in which way such consultation should take place, but implies that the consultation be meaningful.

(32) As regards the present case, the Commission notes that the Italian authorities organised three meetings at which interested parties had the opportunity to express their views on the measures. While, as stated by some of the interested parties, the first two meetings were arranged at short notice, the third meeting was postponed at the request of the interested parties, so that the appropriate representatives of the respective parties could attend. Further, the Italian authorities provided the minutes of the three meetings to the Commission, which show that the parties did make their positions known to the Italian authorities.

(33) Thus, since the interested parties were notified of the new measures and had the opportunity to meaningfully comment on the measures, the Commission considers that Italy complied with the consultation requirement laid down in Article 19(2).

6. **CONCLUSION**

(34) In conclusion, the Commission considers that the intended amendment to the traffic distribution rules is compatible with Article 19 of Regulation (EC) No 1008/2008.

(35) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee referred to in Article 25 of the Regulation,

HAS ADOPTED THIS DECISION:

Article 1

The measures provided for in the new draft Decree, submitted to the Commission on 13 May 2016, are hereby approved.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 November 2016.

For the Commission
Violeta BULC
Member of the Commission