

**COMMISSION IMPLEMENTING DECISION (EU) 2022/1415****of 18 August 2022****on the partial 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(2022) 5783)***(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 <sup>(1)</sup>, and in particular Article 19(3) thereof,

After consulting the committee established by Article 25(1) of Regulation (EC) No 1008/2008,

Whereas:

**1. PROCEDURE**

- (1) On 22 February 2022, 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) (the 'draft Giovannini decree').

**2. BACKGROUND AND DESCRIPTION OF THE MEASURE****2.1. The draft Giovannini decree**

- (2) Article 1 of the draft Giovannini decree modifies Article 4 of the decree of 3 March 2000 on traffic distribution rules for the airports Milan Malpensa, Milan Linate and Orio al Serio (Bergamo), as amended, in the following way:

'Paragraph 1:

Air carriers may operate point-to-point scheduled routes, using narrow-body aircraft, between Milan Linate airport and other airports in the European Union, or airports belonging to a State which has entered into a vertical-type agreement with the European Union regulating its air services and which are also located within a radius of 1 500 km – measured according to the great circle route method – from Milan Linate airport, within the limits of the defined operating capacity of Milan Linate airport. Only the following air carriers may operate such routes:

- (a) carriers defined as Community air carriers under Article 2(10) and (11) of Regulation (EC) No 1008/2008, of the European Parliament and of the Council of 24 September 2008 and meeting the requirements laid down by the competent aviation authorities, in accordance with that Regulation;
- (b) carriers designated by a country to operate air services based on a vertical-type agreement entered into by that country with the European Union, provided that the route concerns an airport within a radius of 1 500 km – measured according to the great circle route method – from Milan Linate airport.'

<sup>(1)</sup> OJ L 293, 31.10.2008, p. 3.

- (3) Article 1 of the draft Giovannini decree also modifies Article 4 of the decree of 3 March 2000 on traffic distribution rules for the airports Milan Malpensa, Milan Linate and Orio al Serio (Bergamo), as amended, in the following way:

‘Paragraph 2:

To guarantee compliance with the provisions of paragraph 1, the distribution and sale of tickets and the carriage of passengers on point-to-point routes flying from or to Milan Linate airport shall be permitted only in respect of airports located within the geographical boundaries defined by paragraph 1.’.

- (4) The recitals of the draft Giovannini decree state that the amendment of existing rules on traffic distribution between Milan airports is needed to ensure that Milan Linate airport remains a ‘city airport’ serving short-haul destinations, and to fully exploit the development of Milan Malpensa as a hub airport. Furthermore, Milan Linate airport should also be connected to airports outside the Union, provided that they are within a radius of 1 500 km, and the Union has concluded a horizontal or comprehensive air transport agreement with the third country the airport is located in.
- (5) In the explanations accompanying the notification the Italian authorities indicated that the application of Article 1 of the draft Giovannini decree as referred to in recital 2 would enable continued operations of routes between Milan Linate and countries such as the United Kingdom, the European Common Aviation Area Member States or Morocco, within the defined capacity limits of the airport, namely 18 hourly movements.
- (6) Pursuant to Article 1 of the draft Giovannini decree as referred to in recital 2, the radius of 1 500 km around Milan Linate airport is to be measured in accordance with the great circle route method. The Italian authorities in their notification explained that that distance is used in Union legislation as a threshold to categorise flights of different distances (e.g. Regulation (EC) No 261/2004 of the European Parliament and of the Council <sup>(2)</sup>).
- (7) As to Article 1 of the draft Giovannini decree as referred to in recital 3, the Italian authorities explained that this provision is intended to ensure enforcement of the draft Article 4 paragraph 1, and it reflects the approach of the current traffic distribution rules. The current rules task the national Civil Aviation Authority with monitoring air traffic at Milan Linate and Milan Malpensa airports and reporting to the Ministry of Infrastructure and Transport, in order to assess whether those rules are complied with and any additional action is necessary.

## 2.2. Consultation conducted by the Italian authorities

- (8) On 6 September 2021 the Italian Civil Aviation Authority (ENAC), in accordance with Article 19(2) of Regulation (EC) No 1008/2008, invited interested parties to a consultation to be held on 8 September 2021, at Milan Linate airport.
- (9) According to the information submitted by the Italian authorities, the consultation was attended by the Airport Users Committees of Linate and Malpensa airports composed of air carriers, ground handling companies, the airport managing body and the slot coordinator.
- (10) According to the consultation report, the majority of parties were in favour of the proposed amendment.

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<sup>(2)</sup> 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, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1).

### 3. CONSULTATION CONDUCTED BY THE COMMISSION

- (11) On 25 March 2022, the Commission published in the *Official Journal of the European Union* <sup>(3)</sup> a summary of the proposed amendments to the traffic distribution rules, as notified by the Italian authorities, and gave interested parties 20 days to submit comments.
- (12) The Commission received comments from five interested parties, most of which wished to remain anonymous.
- (13) All interested parties supported Article 1 of the draft Giovannini decree as referred to in recital 2, although one party asked that the radius is extended beyond the 1 500 km to include more destinations.
- (14) Three interested parties expressly supported Article 1 of the draft Giovannini decree as referred to in recital 3, arguing that it would enhance compliance with the draft Article 4, paragraph 1, and maintain Linate airport as a true point-to-point airport. One interested party expressed concerns about Article 1 of the draft Giovannini decree as referred to in recital 3 arguing that the prohibition of ticket sales to destinations outside the scope of the draft Article 4, paragraph 1, is disproportionate. That party also had serious concerns as to how the provision would be implemented and doubted that the provision would be appropriate to deal with capacity problems.

### 4. ASSESSMENT

- (15) At the outset, the Commission observes that the three airports to which the notified traffic distribution rule applies, Milan Linate, Milan Malpensa and Orio al Serio (Bergamo), satisfy the four conditions set out in Article 19(2), first subparagraph, of Regulation (EC) No 1008/2008. The airports serve the conurbation of Milan, which satisfies the first condition. The infrastructure and public transport links between the three airports and between them and the city of Milan are such as to comply with the second and third conditions. In addition, the airports provide the necessary services to air carriers in a manner that satisfies the fourth condition.
- (16) Furthermore, the Commission notes that previous Commission decisions approved the adoption of traffic distribution rules which had the objective of establishing Milan Malpensa airport as an international hub and Milan Linate as a point-to-point airport to limit the flow of traffic at that airport.
- (17) More specifically, the Bersani and Bersani 2 Decrees of 5 January 2001, approved by Commission Decision 2001/163/EC <sup>(4)</sup>, imposed, at Milan Linate airport, limitations on the number of daily return services to Union airports identified on the basis of passenger traffic volume. The Bersani Decree and Bersani 2 Decree also restricted Milan Linate airport to single aisle aircraft for point-to-point scheduled connections within the Union only. This had the effect of pushing remaining traffic to Malpensa airport.
- (18) The Del Rio Decree of 18 November 2016, approved by Commission Implementing Decision (EU) 2016/2019 <sup>(5)</sup>, had the objective of optimising the use of Milan Linate airport and improving its connectivity with all other European cities, while fully exploiting the development potential of the Malpensa hub in its specific role as an intercontinental gate. The Del Rio Decree therefore removed the limitations on frequencies based on passenger traffic volumes that could be operated to and from Linate, but it maintained that only destinations within the Union could be served using narrow-body aircraft.

<sup>(3)</sup> Notification by Italy of the application of Article 19(2) of Regulation (EC) No 1008/2008 concerning traffic distribution rules between the airports of Milan Malpensa and Milan Linate (OJ C 134, 25.3.2022, p. 28).

<sup>(4)</sup> Commission Decision 2001/163/EC of 21 December 2000 on a procedure relating to the application of Council Regulation (EEC) No 2408/92 (Case TREN/AMA/12/00 – Italian traffic distribution rules for the airport system of Milan) (OJ L 58, 28.2.2001, p. 29).

<sup>(5)</sup> 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) (OJ L 312, 18.11.2016, p. 73).

- (19) Based on the foregoing, the Commission does not question Italy's policy regarding Milan Malpensa and Linate airports.
- (20) As regards Article 1 of the draft Giovannini decree as referred to in recital 2, the Commission notes that it removes certain limitations imposed on air services at Linate airport. New third country destinations may be served to and from Linate airport which fall within a 1 500 km radius of the airport and are in a country with which the Union has concluded a horizontal or comprehensive air transport agreement.
- (21) Based on the approach taken in Implementing Decision (EU) 2016/2019, insofar as Article 1 of the draft Giovannini decree as referred to in recital 2 removes limitations on the access to and from Linate airport in order to allow air carriers greater efficiency and choice in setting their schedules according to passenger demand, the question of proportionality does not arise.
- (22) In any case, the application of Article 1 of the draft Giovannini decree as referred to in recital 2 would result in new destinations being added to Linate airport in a transparent way and based on objective criteria which do not lead to discrimination between Union air carriers or Union destinations.
- (23) As regards Article 1 of the draft Giovannini decree as referred to in recital 3, the Commission finds that problems arise with regard to proportionality and transparency, contrary to Article 19(2) of Regulation (EC) No 1008/2008.
- (24) The provision prohibits the distribution and sale of tickets between Milan Linate airport and any destination outside the scope of the draft Giovannini decree as referred to in recital 2, and any connecting travel itinerary (as opposed to a direct point-to-point route). As clarified by the Italian authorities during meetings with the Commission services on 4 April 2022, and 30 June 2022, as a follow up to written questions sent by the Commission services on 1 April 2022, this not only prevents air carriers from offering travel itineraries with Milan Linate airport as the transfer point, but also travel itineraries to or from Linate airport that subsequently connect at other airports outside Milan. In effect, the provision regulates the flow of passenger transfer at airports outside Milan.
- (25) The Commission considers that restricting connecting flights and transfer of passengers at Linate airport is proportionate to achieve the objective of maintaining it as a point-to-point airport and furthering the development of Malpensa airport as an international hub. However, regulating the flow of transfer passengers at airports outside Milan, exceeds the legitimate scope of traffic distribution rules for airports serving a given city or conurbation, in this case Milan.
- (26) Furthermore, the proposed amendment goes beyond what is necessary to achieve Italy's airport policy objectives and unduly interferes with air carriers' business freedom and freedom to provide services at airports outside Milan.
- (27) Moreover, Article 1 of the draft Giovannini decree as referred to in recital 3 raises transparency issues, as it is not clear how the rules will be enforced by the Italian authorities. The provision in question does not clarify whether only air carriers' schedules will be monitored, or whether travel agents and ticket distributors would also be held liable for displaying certain itineraries connecting outside Linate airport. Neither is it clear whether that provision would aim to capture self-connecting passengers over whose travel itineraries neither air carriers nor travel agents or other ticket distributors have control.

## 5. CONCLUSION

- (28) In conclusion, the Commission considers that Article 1 of the draft Giovannini decree as referred to in recital 2, amending the existing traffic distribution rules for the airports Milan Malpensa, Milan Linate and Orio al Serio (Bergamo), is compatible with Article 19(2) of Regulation (EC) No 1008/2008.
- (29) Regarding Article 1 of the draft Giovannini decree as referred to in recital 3, the Commission considers it not to be compatible with Article 19(2) of Regulation (EC) No 1008/2008,

HAS ADOPTED THIS DECISION:

*Article 1*

The measures provided for in Article 1 of the draft Giovannini decree on modified traffic distribution rules for the airports Milan Malpensa, Milan Linate and Orio al Serio (Bergamo) submitted to the Commission on 22 February 2022 and as referred to in recital 2, are approved.

Approval of the measures provided for in Article 1 of that draft decree as referred to in recital 3 is denied.

*Article 2*

This Decision is addressed to the Italian Republic.

Done at Brussels, 18 August 2022.

*For the Commission*  
Adina VĂLEAN  
*Member of the Commission*

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