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ETF VIEWS ON PUBLIC FLIGHT COST- SHARING

I. INTRODUCTION

The purpose of this document is to present the analysis and position of ETF regarding public flight cost-sharing¹ at EU level².

According to Regulation (EU) 965/2012, Article 2(1), commercial air transport (CAT) operation means "*an aircraft operation to transport passengers, cargo or mail for remuneration or other valuable consideration*". CAT is ruled by the Air OPS Part-CAT. GA is ruled by Air OPS Part-NCO³. In general terms, CAT flights are subject to a greater degree of regulation than GA flights.

Regulation (EU) 379/2014 introduces an article 6 §4bis in the Air-OPS Regulation stating that cost-shared flights by private individuals on certain aircraft may be conducted in accordance with GA rules on the condition that the direct cost is shared by all the occupants of the aircraft, pilot included and the number of persons sharing the direct costs is limited to six.

The ETF believes that this derogation raises a number of questions with regards to safety compliance and level playing field between CAT operators and private persons.

¹ *Unless explicitly mentioned otherwise, when referring to flight cost-sharing" (FCS) in the following text, we mean public flight cost-sharing without holding an Air Operator Certificate (AOC)" under the General Aviation (GA) rules. This also implies the use of pilots that do not hold commercial pilot license.*

² *These views will be part of the International Transport Workers' Federation (ITF) approach at global level*

³ *Non-commercial with other-than-complex motor-powered-aircraft*

II. ETF ANALYSIS

a. FCS websites description

FCS websites offer to put in relation pilots with passengers, with the pilot providing the aircraft. The pilot posts on the website a flight offer to potential passengers by setting the date of the flight as well as its departure and destination airports.

The economic model is “cost-sharing”: the passenger(s) are paying the pilot a “financial participation in the flight costs”.

b. 'Booking' a shared flight

The 'booking' process of a shared flight is very similar to a regular commercial flight: as for any airline, the passenger has to select a route and fill in his/her identification details. The excuse that prospective passengers have to register before seeing the flight offers, used by some FCS operators, does not exclude them from commercial air transport.

Similarly, the ETF does not consider the absence of an obligation to bring the passengers to their destination in the FCS model, as opposed to scheduled air transport's obligations, to be an excuse to derogate from the CAT rules. There are other forms of air transport, such as charter flights, for which the obligation to bring passengers to their final destination and to provide the associated compensations does not exist.

c. Different safety standards between CAT and GA

Statistics show a huge differential safety level between GA and CAT. This difference can be explained by a greater degree of regulation for CAT operations. The requirements in terms of minimum weather conditions, minimum fuel obligations or flight time limitations for pilots are not the same in GA as in CAT. Similarly, the level of training, especially as regards to human factors training, is significantly different.

Promoting the implementation of lower standards is clearly against the aim to constantly increase safety levels. The sharing economy cannot be an excuse to bypass the rules. Allowing the introduction of a model based on the circumvention of standards is questioning the role of the regulators.

d. "Press-on-itis"

“Press-on-itis is simply the decision to continue to the planned destination or toward the planned goal even when significantly less risky alternatives exist. Press-on-itis is also known as [...] “goal fixation”.”⁴

http://www.skybrary.aero/index.php/Press-on-itis_%28OGHFA_BN%29

ETF considers that FCS increases the risk of accidents due to the high level of “destination-mindedness” brought on by the model referred to as “press-on-itis”. We believe that only operations with CAT regulation are in measure to keep pilots and passengers in a safety focused environment opposed to the mission focused environment of unregulated FCS illustrated by “press-on-itis”.

e. The red line between CAT and GA operations

The rule prohibiting a private pilot to transport people unknown to him/her or to advertise publicly is the red line separating CAT and GA operations.

This red line is and shall remain the same: “the opening” to the general public”. This red line is defined by an FAA circular AC120-12A published on April 24th 1986 defining the expression “holding out”. Offering flights to the general public is public transport, financial gain or not. This red line is the base of the separation between ICAO Annex 6 Part I (CAT) and Part II (GA).

This rule has even been reaffirmed by the FAA⁵ and confirmed by the US Court of Appeals for the District of Columbia Circuit after a FCS website filed a lawsuit against the FAA’s position and lost⁶.

f. Social impacts of sharing economy

The ETF acknowledges the emergence of new business models but we cannot support this kind of 'sharing economy' which has negative impacts on jobs, working conditions and remuneration of professional pilots.

III. ETF POSITION

Aware of the emergence of new business models, ETF is opposed to the development of Flight Cost-Sharing (FCS) between private persons unless proven that this economic activity renders an economic benefit to the Society by paying “ad hoc” business taxation and if they are in compliance with the regulations applicable to CAT operations, which means as a bare minimum:

- The use of pilots holding at least a Commercial Pilot License (CPL)
- That the Operator of the flights holds a valid Air Operator Certificate (AOC)

Such regulatory framework ensures that the necessary level of safety is guaranteed to people wishing to participate as a pilot or passenger in public flight cost-sharing.

5 Federal Aviation Administration in the United States of America

6 Flytenow vs FAA Argued September 25, 2015, Decided December 18, 2015
[https://www.cadc.uscourts.gov/internet/opinions.nsf/77E3D4B73DFDB22685257F1F005456E8/\\$file/14-1168-1589331.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/77E3D4B73DFDB22685257F1F005456E8/$file/14-1168-1589331.pdf)

ETF requests to complete Regulation (EU) 379/2014 by including that:

- Opening to the general public is Public Air Transport;
- Publicly advertising flights or carrying members of the public is opening to the general public, so it's Public Air Transport;
- Public Air Transport requires the application of Commercial Air Transport (Regulation (EU) 965/2012).

Therefore, ETF calls on the EU Institutions to integrate this revision as a part of the implementation of the Commission 'Aviation strategy for Europe'