

Preliminary translation

Decision restricting traffic rights on the route from Skopje in North Macedonia to Turku

Decision

The Finnish Transport and Communications Agency suspends air service on the route from Skopje in North Macedonia to Turku from 28 August to 10 September 2020.

Grounds for the decision

Exploratory work on the background of the decision

The Finnish Institute for Health and Welfare (hereinafter THL) has stated to the Ministry of Transport and Communications in a memorandum dated 17 August 2020 that passenger transport from the Balkans to Finland has been oriented to Finland especially via air service from Skopje to Turku during the last weeks. The difficult epidemic situation of the Balkans and travel from the area to Finland have clearly increased the number of Covid-19 cases detected in Finland and have caused a serious risk of a large epidemic among the population. THL considers that, at present, air service from Skopje to Turku poses a clear threat on general health security in Finland and the authorities should therefore quickly assess the possibilities given by legislation to temporarily suspend the air service in question.

In the assessment, it has been assessed whether there are grounds for suspension of air service under section 11 or 167 of the Aviation Act, taking into consideration article 21 of the Regulation (EC) No 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services in the Community (hereinafter Air Services Regulation). According to article 21 of the Air Services Regulation, a Member State may refuse, limit or impose conditions on the exercise of traffic rights to deal with sudden problems of short duration resulting from unforeseeable and unavoidable circumstances. Such action shall respect the principles of proportionality and transparency and shall be based on objective and non-discriminatory criteria.

The Finnish Transport and Communications Agency (hereinafter Traficom) has requested THL's opinion on whether the suspension of incoming air traffic is, according to the assessment by health authorities, as a means, proportionate to the aim pursued by the measure.

In its opinion, THL states that, according to the information received by THL from the City of Turku, coronavirus cases have been detected on the flights arriving from North Macedonia as follows:

- flight on 8 August 2020: 157 passengers, all were tested, 26 positives (16.6%)
- flight on 11 August 2020: 146 passengers, 129 were tested, 5 positives (3.9%)
- flight on 15 August 2020: 115 passengers, 109 were tested, 12 positives (11%)
- flight on 18 August 2020: 127 passengers, 113 were tested, 17 positives (15%)
- flight on 22 August 2020: 86 passengers, 61 were tested, 2 positives (3.3%).

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As to the latest flight, the airline has reported that it required a negative coronavirus test result from all the passengers.

In its opinion, THL states that it can be deduced from testing and the measures adopted that, on the flights in question, there have been exceptionally many people that can spread the coronavirus infection and that the decision of Turku's authorities in the field of communicable diseases to impose a quarantine on all the passengers has been justified. It is possible that the requirement on advance testing has reduced the risk of infection caused to other passengers. However, the evidence on the materialisation and efficiency of advance testing is not yet sufficient. Because participation in tests performed in Finland has not been extensive and because it is, in practice, not possible to supervise the materialisation of passengers' quarantine, there is a possibility that the continuation of air service poses, despite the current measures, a risk of spreading infections among the population.

THL considers that a temporary suspension of air service is, as a means, proportionate to the aim to protect the population from the spread of the generally hazardous disease.

Provisions that apply

The Finnish Transport and Communications Agency has been assigned the tasks of a national aviation authority especially in Aviation Act (864/2014), Act on Transport Services (320/2017) and Act on the Finnish Transport and Communications Agency (935/2018).

According to section 167(1) of the Aviation Act, for reasons of public order and safety, the Finnish Transport and Communications Agency may prohibit an aircraft from departing, order it to land, require identification, assign a heading or flight altitude or otherwise intercept an aircraft in flight.

According to article 21 of the Air Services Regulation, a Member State may refuse, limit or impose conditions on the exercise of traffic rights to deal with sudden problems of short duration resulting from unforeseeable and unavoidable circumstances. Such action shall respect the principles of proportionality and transparency and shall be based on objective and non-discriminatory criteria.

Even if North Macedonia is not a Member State of the European Union, the Regulation is also applied to air traffic between Finland and North Macedonia under the Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the Establishment of a European Common Aviation Area (ECAA) (OJ L 285, 16.10.2006, p. 1–46) and under the Decision No 1/2019 of the ECAA Joint Committee replacing Annex I to the ECAA Agreement on the rules applicable to civil aviation (C/2019/5285; OJ L 211, 12.8.2019, p. 4–19).

Assessment of the situation in light of the provisions that apply

In its opinion, THL considers that a temporary suspension of air service is, as a means, proportionate to the aim to protect the population from the spread of the generally hazardous disease. Traficom considers that THL is, as the national health authority and especially as the national specialist authority as to the Covid 19

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pandemic, in the best position to assess the proportionality of different means that can be used to combat the pandemic to the aim pursued. In the context of combating the Covid 19 pandemic, it has been considered that the measures related to combating the pandemic are a part of securing public order and safety.

The Covid 19 pandemic that has already spread globally must be considered an unforeseeable and unavoidable circumstance. The communicable disease is combated globally with different means, including restrictions related to mobility and travel. The status of infections varies between different countries and different areas, and travel from countries with a high incidence to countries with a lower incidence increases the risk of increasing infections in countries with a lower incidence. The health authorities have monitored infections and performed tests at airports. There has been a significant number of carriers of the virus among the passengers arriving from Skopje in North Macedonia to Turku, and North Macedonia is currently a country with a high incidence. The increased risk of the spread of the infectious disease specifically via the passengers of flights arriving from Skopje in North Macedonia must be considered a sudden problem of short duration.

Under section 167 of the Aviation Act, and taking into account article 21 of the Air Services Regulation, Traficom suspends air service on the route from Skopje in North Macedonia to Turku from 28 August to 10 September 2020. According to section 181(7) of the Aviation Act, the decision shall be observed irrespective of appeal, unless ruled otherwise by the appellate authority.

Provisions applied

Sections 167(1) and 181 of the Aviation Act (864/2014)

Section 2(1) of the Act on the Finnish Transport and Communications Agency (935/2018)

Article 21 of the Regulation (EC) No 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services in the Community (Air Services Regulation)

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Director-General

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signature can be verified using document reader software that supports electronic signatures or by contacting the Traficom Registry.

Annex

Instructions for making a claim for a revised decision