Air Services Between Germany and the Russian Federation and the Power of Reciprocity

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On 23 May 2021, Ryanair flight FR4978 from Athens to Vilnius was diverted by Belarusian air traffic control under the pretext of a dubious bomb threat. Upon landing at Minsk airport, one of the passengers on board, Belarusian blogger and political activist Roman Protasevich was arrested on charges of inciting unrest against the government of President Alexander Lukashenko. His partner, Sofia Sapega, was also arrested. Western States condemned the landing on false grounds as a serious attack on the rules governing civil aviation.

As a consequence, the European Union Aviation Safety Agency (EASA) recommended that European airlines avoid Belarusian airspace. This led German carrier Lufthansa to decide to bypass Belarusian airspace on its flights to Moscow and St. Petersburg. However, new flight schedules, including new flight paths, required Russian approval, which initially was not given because Russia wanted to support its close ally Belarus. The avoidance of Belarusian airspace would have impacted the country's revenue due to the loss of overflight fees. Russia defended Belarus' action as being in line with international rules. The spokesperson for the Russian President declared: 'When planes bypass Belarus, they ask to fly to different places which are absolutely not coordinated, which leads to technical problems.' The lack of approval of its flight schedules forced Lufthansa to cancel several flights to Russia on 1 and 2 June 2021. This led the Federal Aviation Authority to deny permits to Russian airlines for flights from Moscow to Frankfurt and Berlin-Brandenburg airports. On 2 June 2021 in the morning the Federal Ministry of Transport issued the following statement:

> [The] Russian aviation authority FATA did not issue approvals on time for Lufthansa flights for the month of June, so Lufthansa flights that were scheduled in the early morning of June 2 had to be cancelled on June 1 in the evening. Due to the practice of reciprocity, the … Federal Aviation Authority has not issued any further permits for flights by Russian airlines as long as the permits on the Russian side were pending.

In another statement, the Federal Ministry said:

> The Federal Ministry of Transport and the German embassy are in close contact with Russian agencies regulating aviation. As soon as the Russian

Federal Air Transport Agency gives permission for Lufthansa flights, Russian aircraft will be allowed to fly.

After seven flights by Russian airlines to Germany had to be cancelled, Lufthansa announced on 2 June 2021 in the evening that the matter had been resolved and that it had received the necessary approval for flights to Moscow and St. Petersburg for the entire month of June.

International air services between Germany and the Russian Federation were generally governed by the Air Transport Agreement of 14 July 1993. In the agreement, the parties granted each other traffic rights for the operation of international air services by designated airlines. In order to ensure equitable and equal treatment of all designated airlines, the flight schedules were subject to approval by the aeronautical authorities of the Contracting Parties. However, due to coronavirus pandemic, Russia unilaterally suspended the agreement from 27 March 2020. While the agreement provided only for termination but not suspension, Germany did not object to Russia's action. Since then, there was only a limited number of charter flights between the two countries, approved on a monthly basis and on the basis of reciprocity. This arrangement allowed Germany to respond in kind to Russia's non-approval of Lufthansa's new flight schedules bypassing Belarus.

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