

Ex-post evaluation on common rules for the operation of air services in the Community

Interview questions for National Unions and EU Worker Associations

A. Objectives of the study

The European Commission is carrying out an ex-post evaluation of Regulation No 1008/2008 on common rules for the operation of air services in the Community.

Regulation No 1008/2008 ('Air Services Regulation') is the basic legal act organising the EU internal aviation market. It consolidated and improved on various packages of measures which have established the EU internal aviation market as of 1987.

The aims of this study are to assess the application, effects and performance of the Regulation in light of the evolution of the European aviation industry since 1992. Your responses will be used to help us assess the actual performance of the intervention in terms of achieving its objectives, the costs associated and the overall impacts (both intended and unintended) on societal and economic issues.

Use of your input

The study team will keep detailed notes of the discussion and will make use of your contribution (information/data provided) only for the needs of this study. Please indicate how you would like us to present the information provided during our discussion and any other information or data you provide to us:

- Publication of your contribution with reference to the organisation represented;
- Anonymised publication of statements made (without the name/ name of the organization);
- No publication but use of the contribution for statistical and analytical purposes

B. Contact information

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Provisions on operating licence and principal place of business

1. How common is the use by air carriers of multiple operating bases? Do you consider that this represents a problem for authorities in terms of ensuring that employment and working conditions for aircrew staff are respected?

It's getting more common – see that big network carriers have only limited number of bases and usually within one country. Small carriers have multiple bases all over Europe – many operating in this way.

Authorities are struggling with small groups of cabin crew from different nationalities working in their country (but HQ of airline in another country). Difficulties in understand the social situation in which the cabin crew is. E.g. issues with home base and A1, 1001 certificate - evidence that authorities are struggling with how this should be organised and to understand how well companies are taking care of their employees. In addition, cabin crew from other countries do not know the legislation of the new country that well and fail to report where there is a misuse of regulation. It's a combination of the two factors that gives rise to issues.

2. Do you consider that the current approach where the principal place of business is used to identify the national authority responsible for granting the operating licence is appropriate?
 - a. Does it allow for the most effective financial supervision? If not, why?

It's a good thing to do - OL should be linked to PPB - financial supervision should take place where PPB is since that's the country most affected by the operations of that airline. Otherwise, situation where different authorities supervising different aspects of the same company operating in different countries. Linking PPB to OL is a good thing.

3. Are you aware of any cases of air carriers selectively using the rules of different jurisdictions to benefit from a most favourable regulatory regime (also called rule shopping)?

Yes – e.g. Norwegian, Ryanair - they use it to avoid paying social security for cabin crew in more “expensive” EU countries. Business model followed by many low cost carriers - they employ cabin crew from low salary countries – it puts downward pressure on the working conditions.

- a. If any, are these isolated cases or is this a common practice in the sector?

Isolated cases are quite big – there is a strong divide between network carriers and pan-European airlines as to how they go about using European rules. Abuse becomes substantial because of the size of the company.

- b. To what extent do these cases of rule shopping have an impact on employment and working conditions of employees in air services among Member States? (e.g. employee remuneration, contract types, and non-monetary benefits between Member States)

That's usually the case. Local legislation provides social network for the employment of cabin crew. There are now a lot of temporary contracts, differences in remuneration of cabin crew when looking at multi-based airlines: differences for cabin crew working for the same company but in different bases.

Tendency to work only with temporary contracts because allows them to keep moving people around Europe. Difficult for MS to supervise if abuse because it has no access to the previous history of employment of cabin crew from other countries.

These airlines tend to look for countries where salaries are not that high.

4. To what extent do the existing provisions of the Regulation (or absence of) contribute to this phenomenon?

Not a problem of existing provisions – more a question of air carriers using provisions design to provide free movement of people and services within Europe as their business model - ability of local authorities to supervise is low. There is a set of well intended rules to organise the internal market but they are being stretched to the limit and even abused - used as an economic model to lower costs – leads to fierce competition for airlines who are not rule shopping.

5. Have the recent decisions of the European Court of Justice concerning the applicable employment and working conditions legislation contributed to reduce rule shopping? If so, how?

Yes, judgements on home base and A1 certificates are very important – loopholes were found and these two judgements have helped a lot.

6. From your point of view, do the provisions on financial and operational monitoring (particularly of new air carriers and to changes to the business that require monitoring) ensure that air carriers are in a sound financial situation?

They could lead to sound financial situation but only if all air carriers are monitored in the same way. On the other hand, the fact that air carriers are not monitored in the same way leads to more fiercely and unfair competition - which threatens financial standing of other air carriers. EU should ensure harmonisation and be very strict in enforcing this.

7. Has regular monitoring and the granting of temporary licences:

- a. reduced the risk of (unexpected) air carrier bankruptcy?

No comment

- b. ensured that safety issues are not neglected?

Ensuring safety also entails ensuring that crew are safe and healthy and can report potential safety risks within a just culture situation - monitoring should extend to these factors as to fully monitor safety issues.

Monitoring associated to OL should be extended to this to ensure crew are fit and encouraged to report any risks e.g. not the case with temporary contract - will typically refrain from this because employer won't be happy about it.

8. How important are the requirements for granting an operating licence given that the operational and financial conditions of air carriers is also assessed as part of the provision of the Air Operator Certificate (AOC)?

This is the part where we could introduce the requirements on fitness of cabin crew - leaving the assessment to AOC would leave out the fact that apart from technical safety of airline there's also the human factor - Opportunity for the EU to introduce the human factor as a requirement of the monitoring activity for OL.

9. Are there any issues/problems with the relevant provisions?

No - biggest gap is the fact that human factor is an important factor for safety - crew is providing safety

Ownership and control rules

10. What impact (positive/negative) have the ownership and control requirements had on the capacity of air carriers to attract investment? To what extent has this affected their ability to meet their financial needs?

No comment

11. How important is the requirement of EU majority ownership and control to maintain traffic rights to third countries? How well does it correspond to the problems and needs of today's internal aviation market?

No comment

Wet leasing

12. The Regulation requires air carriers to obtain prior approval for wet leasing aircraft registered in third countries subject to the following conditions:

- a. Demonstrating equivalent level of safety to that resulting from the application of EU requirements

- b. Demonstrating that any of the following points cannot be satisfied through wet-leasing of an EEA registered aircraft
 - i. Demonstrating exceptional needs for period of up to 7 months that can be renewed once more
 - ii. Demonstrating seasonal needs
 - iii. Demonstrating operational difficulties – limited duration strictly necessary

Do you consider that the current requirements on wet leasing of aircrafts from third countries are appropriate to ensure that employment and working conditions are protected?

It's very important to obtain approval and these requirements should be very strict.

These requirements only concern the employment of staff but not their protection – no requirement on this.

We should not only look at the requirements but also look at the working conditions of crew – enter of these employees into the EU market creates competition and can lead to a race to the bottom in terms of working conditions.

Who gives the approval should take into account not only the provisions (to protect employment) but also approval on the working conditions which should be in sync with EU standards.

13. Is the prior approval mechanism for leased aircraft an effective process to ensure safety?

This is very much related to the protection of working conditions – we don't want a race to the bottom whereby airlines need to lower their standards to avoid losing out to the competition. Safety has a human factor – aircraft can be very fit but if the cockpit is not fit there's an increased chance of accident, same applies to cabin crew, need to be fit for e.g. evacuation of aircraft according to standards.

Safety is being approached from a very technical angle - human factor is not in focus anywhere. Analysis of accidents show that human factor always plays an important role in accidents - see that crew is fit, healthy, well trained is very important - introduction of just culture where airline learns and encourages report of risks is very important in aviation - that costs a lot of money but if they cut corners then safety is not served.

14. Are there any issues related to the application of the rules? Are there any loopholes?

No

General

15. Besides the aspects analysed above, the evaluation also covers the following provisions of the Regulation:

- a. Provisions intended to ensure price transparency: intended to protect consumers from being misled by published flight fares and from facing price discrimination on the basis of their place of residence.

The problem is that there is no harmonisation on costs (differences among MS) - e.g. airport security costs – leads to differences based on place of residence - airlines put that into their fares.

If there is no harmonisation of costs - airlines should be able to make flight fares that meet their cost level.

- b. Freedom to provide intra-EU air services: intended to foster competition and choice in the internal aviation market
- c. Traffic distribution rules: intended for Member States to have an ability to manage traffic between airports in a transparent, non-discriminatory manner

MS should be able to manage traffic between their airports, in a transparent and non-discriminatory manner.



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d. Provisions for setting Public Service Obligations (PSOs): intended to reduce misuse and competition distortions by extensive use of PSOs

Are there any direct or indirect impacts on the employment and working conditions from any of these provisions? What are they?

16. Are there any other impacts of the Regulation?

Thank you for your participation.