27 October 2025

ECA's Position Paper
Revision of the EU Air Services Regulation 1008/2008

European pilots welcome the revision of the EU Air Services Regulation and aspire for the process to result in a tangible hard law that addresses the loopholes, such as social and labour areas and wet-lease operations, that currently exist in the provision of air services within Europe's single aviation market. The European Cockpit Association has been asking for this revision for more than 10 years, and both the European Parliament and numerous EU Member States[1] have repeatedly called for such a revision: the inaction so far has resulted in the proliferation of grey zones, absence of oversight over certain types of air services, the distortion of competition, and a cost-cutting race with decreasing working standards. European pilots, therefore, consider that changes are necessary to address these shortcomings to make aviation more resilient and socially sustainable, to create legal certainty and to facilitate the Member States' oversight and enforcement.

Against this background, we welcome the fact that *difficulties in enforcing applicable labour law for aircrews* are identified by the European Commission as one of the key problems where action is needed. We also welcome the numerous airlines[2] have identified social engineering by certain market players, insufficient rule enforcement and competitive distortions as focus areas for legislative changes at the EU level.

We therefore fully support the call for socially responsible connectivity and such measures as:

1) **Introduction of the definition of the 'operational base' and corresponding notifications to authorities and link to applicable labour law**

Why? The internal market in aviation is no longer dominated by purely cross-border bilateral services. When an airline carries out a stable, habitual and continuous air transport activity, with employees who have the effective centre of their professional activity there, those activities should be governed by the freedom of establishment rules[3], rather than the freedom of services. These stable, habitual and continuous places of air transport activity are called an "operational base" in aviation terminology.

For example, a business owner decides to open a new branch of his/her factory (situated in country A) in a country B. Such owner will notify the authorities of the place of the branch, type

[1] E.g. Ministerial Declarations of Oct. 2018 (BE, DE, DK, FR, LU, NL, later joined by AT), and Dec. 2020, (AT, BE, DK, FR, IT, LU, NL, PT, later joined by ES) and joint Ministerial Letter to SE EU Presidency Feb. 2023 (AT, BE, FR, IT, LU, NL). In particular, they called upon the Commission to address the social dimension also when revising the EU Air Services Regulation 1008/2008.

[2] "... significant differences between the legal systems of EU Member States remain. Some EU airlines capitalise on these differences in social standards, practice social engineering and thereby substantially lower their labour costs. This not only negatively affects workers in the aviation sector but also the competitive strength of EU network airlines. To realise a socially sustainable industry, the European aviation market needs an improved regulatory framework for social standards that applies to all." See European Network Airlines Association (ENAA) Strategy Paper 2024.

[3] Chapter 2 of title IV of the Treaty Establishing the EU.

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of production, number of employees, acquire all necessary permits, apply the local employment, social and taxation law. The same logic shall be applied to airline operational bases.

What? We suggest the following definition: *"An 'operational base' is defined as the performance of a regular, stable and continuous air transport activity using technical, material and human resources, including the use of employees whose actual centre of professional activity is at the aerodrome concerned. Within the meaning of the above provisions, the centre of an employee's professional activity is the place where they habitually work or where they start and end their service."*

The introduction of this notion will help to avoid situations where airline X assigns the fake home base (see below) to its crew, and conducts operations from a different base in reality. By making this different base as an operational base, the airline will have to employ crews under the law of the state where such base is located.

Furthermore, Article 4c) should be amended to include a requirement to employ sufficient crewmembers at each operational base and to comply with the EU/national working conditions and standards/legislation of the countries where the airline intends to open operational bases.

To enhance Member States' oversight ability, airlines must notify to their licensing authorities the opening of operational bases outside their territory. This is to ensure the competent authority can determine the airline's fixed costs and its capability to fulfil financial and operational obligations, and to ensure proper compensation for damages in case of accidents or bankruptcies. Furthermore, the competent authority must have clarity on the operator's organizational structure to ensure that the operator's legal social responsibilities are not evaded through complex company set-ups, including multiple operational bases and cascade subcontracting.

The authority where an air carrier intends to open an operational base should be notified by the carrier, especially on the employment structure. This authority should inform the operator of the requirements applicable in their country.

2) Codification of current Recital 9

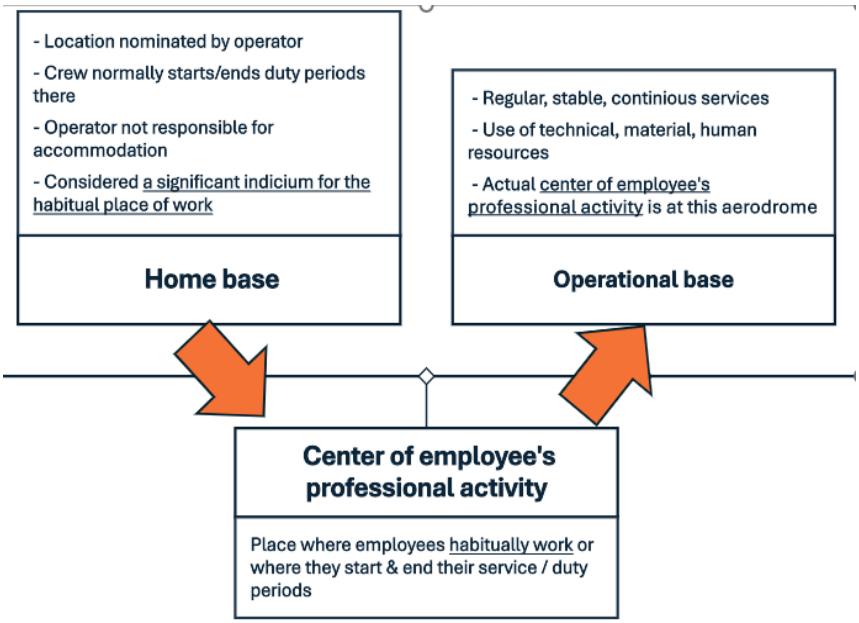
Why? The current Recital 9 was initially supposed to be an article in the body of the future Regulation 1008/2008, however, it was moved to the preamble part during the inter-institutional negotiation process. Since the preamble is not a binding part, it prevented due oversight and enforcement by Member States of the national law where the operational bases were established.

This amendment therefore would provide legal certainty, strengthen enforcement, and prevent distortions of competition arising from the unequal application of social legislation.

What? We propose that the substance of the current Recital 9 be codified into a binding article within the Regulation. *"With respect to employees of a ~~Union~~ air carrier operating air services from an operational base outside the territory of the ~~Member~~ State where that air carrier has its principal place of business, Member States shall ensure the proper application of Union and the operational base's national law, including social, employment and labour legislation."*

3) Reference to the home base

Why? The Regulation should explicitly include the definition of the home base as set in the Flight Time Limitation Regulation. Furthermore, it should be added that according to the CJEU in case 168/16 (Nogueira case), the concept of 'home base' constitutes a significant indicium for the purposes of determining the place where the employee habitually carries out his work, which means that this criterion can be disregarded if the reality does not correspond. This is important because it serves further for the determination of an operational base (see the table below).



What? We propose to include the following definition: *'Home base' means the location, assigned by the operator to the crew member, from where the crew member normally starts and ends a duty period or a series of duty periods and where, under normal circumstances, the operator is not responsible for the accommodation of the crew member concerned.*[4]

4) **Regulation of ACMI operations inside the EU**

Why? Wet-lease operations (ACMI – Aircraft with Crew, Maintenance & Insurance) are steadily gaining growth and scale in the EU. While being legal, such operations are not overseen to the extent that the authorities often do not know which plane with which crew operates from their airport. Moreover, wet-lease brings with it problematic forms of employment used by many ACMI operators as well as related safety issues.

According to the Ghent study 2025 on atypical aircrew employment[5], 65% of crew working for wet-lease operators work under atypical employment arrangements, i.e. other than direct, open-ended employment contracts with an airline. ACMI crew report significantly poorer outcomes across multiple domains, including mental health, dehumanization, job insecurity, fatigue, and perceptions of safety. Compared to other sectors, ACMI employees are less likely to be unionized and report less clarity about where to seek support for mental health issues, with some indicating fear of addressing such concerns within their company.

These findings indicate that ACMI employment creates a work context in which crew face multiple compounded risks, both in terms of psychosocial stressors and structural support, making them a highly vulnerable group within the aviation sector.

What? Regulation 1008/2008 should establish binding rules to provide a clear understanding of 1) what information shall air carriers submit (including information about workers on board); 2) which authorities shall be notified of such operations and which authority is responsible for the oversight and enforcement; 3) what national legislation is applicable to such operations.

5) Maintaining the exceptional nature of third-country wet-lease

[4] Commission Regulation 83/2014, available here.

[5] Jorens, Y. and Valcke, L. (2025). UGent 2.0. Evolving social challenges for aircrew and the need for regulatory response, available here.

Why? The maintaining of the exceptional and temporary nature of third-country wet-lease into the EU is necessary to prevent situations where the European aviation market is dependent on third countries in critical moments and to avoid potential social engineering resulting in social dumping. To this end, "temporary" and "exceptional needs" definitions need to be clarified to facilitate the Member States' assessment and approval process.

What? Regulation 1008/2008 should establish that 'exceptional' refers to a situation that is extraordinary, unforeseeable, and very unlikely to occur again. It should be strictly limited in time and fulfil safety standards equivalent to the safety rules of the EU and national legislation. To ensure the level playing field, the exceptional recourse to lease agreements must be conditional on the respect of adequate EU and national working regulation.

6) Maintaining current ownership & control rules

Why? While understanding the need for further financial assets due to additional costs from decarbonization, a change in the rules of ownership and control can cause a strategic vulnerability of the EU. Previous experiences of attracting foreign capital (e.g. Etihad's investment in Air Berlin and Alitalia; Qatar in Air Italy) have been negative.

Furthermore, the EU's rules are already more liberal than those in comparable markets, like the USA (49% ownership in the EU vs. 25% in the USA), and unilateral liberalisation – i.e. outside an EU-US agreement or within ICAO – would risk losing European airlines' traffic rights to third countries and hence connectivity and aviation jobs. Finally, from an economic and social perspective, 3rd country investors risk using their investment to privilege long-haul operations via hubs in third countries, rather than direct European connectivity to final destinations, thereby shrinking European production and related jobs.

What? Today's EU rules are fit for purpose and should not be changed, especially not unilaterally, and we strongly caution against losing a strategic sector like aviation to 3rd countries and non-EU interests (as e.g. in the energy and maritime sector, or with Russian assets in TUI).

7) Explicit inclusion of third-country carriers in the scope of Regulation

Why? One fundamental question of the Air Services Regulation is who can access the market and under what conditions (operating licence requirements). The current scope of the regulation concerns only EU license holders. However, the air service agreements negotiated by the EU contain clauses that grant non-EU carriers the right to establish operating bases and an access to the EU internal market. Currently, according to EASA, 67% of the flights between EASA MS to non-EASA MS are operated by foreign air carriers.

What? Non-EU airlines that have concluded air services agreements granting them access to operate within the internal market through 5th freedom traffic rights and beyond, should operate under EU regulations when doing business through operational bases established in the EU. This obligation is a guarantee for fair competition and to ensure the competitiveness of the EU airlines.

With respect to such airlines that established operational bases in the EU, Member States must ensure the application of national and EU rules applicable in the Member State where the operational base is located. Such legislation includes safety, employment, social and labour law, and the non-license related articles of this regulation.