Brussels, 04/10/2022

Position Paper

Revision of Regulation (EC) 1008/2008
Wet-leasing

A wet-lease arrangement is a type of commercial contract in which one airline (the lessor) gives another airline (the lessee) an Aircraft with complete Crew, Maintenance, and Insurance (ACMI). A wet-lease is typically used by a carrier to meet specific, unanticipated, or short-term requirements, such as seasonal activity peaks, annual heavy maintenance checks, or the start of new routes. The lessor bears operational responsibility because the aircraft is operated under their Air Operator Certificate (AOC).

From the industry perspective, wet-lease arrangements are viewed as a benefit to airlines' operational flexibility and they are frequently used as a transfer of a flight code with the temporary concession of a route between two airlines.

These arrangements serve specific operational needs, but they have direct effects on operations' safety in terms of flight time limitations (FTL), scheduling, licensing, operational control, safety management system (SMS), as well as oversight responsibility and working conditions for aircrews.

The European airline industry is undergoing rapid changes, and the wet-lease model was initially intended as a short-term and exceptional tool, which is quickly becoming a regular and permanent part of airline operations, has led to new business models that are complicated, sometimes dangerous, and not socially responsible.

With the intention of becoming pure "wet-lease" airlines, leasing platforms are also beginning to apply for an AOC. This will increase the number of what are known as "empty shell companies." These are businesses that don't own any aircraft or only a small number of aircraft and don't directly employ crew members. Instead, they demonstrate a lack organizational stability, a strong safety culture, and either no control over safety standards or very little control over them.

Regulation (EC) 1008/2008, Article 4, set in the conditions for granting an operating license to a community air carrier. One of those is that the carrier has **one** or more aircraft at its disposal through ownership or a dry lease agreement. One owned or leased aircraft is sufficient to operate air services within and from the EU.

According EurECCA, wet-lease must not be used in excess and should not be part of an airline's business model, and the effects on health and safety at work as well as working conditions for aircrews must always be thoroughly evaluated.

EurECCA is also of the opinion that Article 13 of Regulation (EC) 1008/2008 needs significant modifications and adjustments in order to adequately address concerns regarding wet-lease within the EU and wet-lease of aircraft registered outside the EEA (European Economic Area).

Violation of fundamental social rights and distortion of competition:

On one hand Article 13 does not provide a precise definition of "exceptional need" and is not sufficiently prescriptive regarding the application of the "Community preference principle."

On the other hand, the EU's policy regarding wet-leasing from airlines based in third countries is very well summarized in Recital 8 of the Regulation:

"In order to avoid excessive recourse to lease agreements of aircraft registered in third countries, especially wet lease, these possibilities should only be allowed in exceptional circumstances, such as a lack of adequate aircraft on the Community market, and they should be strictly limited in time and fulfil safety standards equivalent to the safety rules of Community and national legislation."

Regulation (EC) 1008/2008 also states that an EU airline can only wet lease an aircraft registered in a non-EEA country in three specific situations:

i) when it needs to satisfy seasonal capacity needs;
ii) when it needs to overcome operational difficulties;
iii) or on the basis of exceptional needs. In the latter case, an approval may be granted for a period of maximum 7 months that can be renewed once, for a further period of 7 months (14 months maximum).

Seasonal capacity needs and operational difficulties are both considered to be of a short-term nature by the EU legislator, despite the fact that Regulation (EC) 1008/2008 does not specify a specific duration.

The first should only last one or two seasons, and the second should only last as long as it is absolutely necessary to overcome operational difficulties. This Regulation also stipulates that an EU air carrier attempting to bring an aircraft from a third country into the EU market must "demonstrate that its need cannot reasonably be satisfied through leasing aircraft registered within the Community" in the event of a wet-lease to either meet seasonal capacity needs or overcome operational difficulties.

Exceptional wet-leases, on the contrary, are neither defined nor subject to the "Community preference principle" a difference that makes this category of wet-lease particularly attractive to EU airlines.

As a consequence of this, a growing number of EU airlines are opportunistically looking for wet-lease possibilities outside of the EU in accordance with this section iii) of Article 13, particularly in third countries with more accommodating regulatory frameworks, standards that are less stringent, and/or where the leased aircraft are being contracted at a preferential rate.

A clear and unambiguous definition of "exceptional needs" must be introduced.

EurECCA also considers that one of the major sources of concern is when a company seeks a wet-lease arrangement, whether within the EU or with the operator of a third country, with the sole purpose of resolving a traffic disruption in the market caused by a legal industrial action.

According EurECCA, the mandatory prior approval from national authorities in the case of intra-EU wet-lease needs to be maintained, and an additional safety/oversight requirement needs to be implemented in accordance with the conclusions of the ruling from the German Federal Court of Justice[1], the lessee must be held equally responsible for the operations performed by the lessor, including compliance with safety and labour/social regulations.

As a consequence of this, the lessee airline's state of registration or licensing will be obligated to cooperate with the lessor's state of registration or licensing, which is currently the sole state authorized by EU law to oversee operations, in order to ensure that the leased aircraft operates as intended.

As it is actually implemented by Regulation (EC) 1008/2008, wet lease can be easily diverted from its original purpose by ignoring the Charter of Social Rights and in particular its article 31[2] on fair and just working conditions as well as the fifth category of Fundamental Principles and Rights at work on Occupational Safety and Health recently adopted by ILO[3].

EurECCA asks for an application of fundamental social/labour rights to aircrew working under wet-lease agreements for both EEA nationals and non-EEA nationals coming from third countries and an adequate definition of "exceptional needs" as well as the application of the "Community preference principle" currently applying only to seasonal and operational difficulty types of wet-lease.

EurECCA represents, protects and develops the rights and needs of all cabin crew all over Europe

About EurECCA: established in Brussels in 2014, the European Cabin Crew Association, EurECCA, represents, protects and develops the rights and needs of cabin crew all over Europe. It is composed of cabin crew unions from European Union Member States as well as accession and bordering states and represents some 33,000 cabin crew accounting for 70% of all organized cabin crew in Europe. EurECCA has no political connections. EurECCA's work is around Cabin Crew working conditions, wages, social protection and health and safety at work.

EurECCA European Cabin Crew Association AISBL
Avenue Louise 143/4
1050 Brussels, Belgium

www.eurecca.eu
contact@eurecca.eu

[1] Fluggastrechte bei "Wet Lease"

[2] Charter of Fundamental Rights of the European Union TITLE IV – SOLIDARITY Article 31 Fair and just working conditions

[3] https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_848132/lang--en/index.htm