



Brussels, 17/02/2022

Position Paper

Revision of Regulation (EC)1008/2008 on common rules for the operation of air services in the Community

“An abuse ends when a right begins”

Regulation (EC)1008/2008 is a European Union legislation aimed at defining common rules for the operation of air services within the European Union. It was adopted in 2008 and replaced the previous regulation on air transport (CEE)2407/92.

Regulation (EC)1008/2008 aims to create a single air transport area within the European Union by ensuring the free movement of air transport services between Member States promoting competition and cooperation between airlines.

The current regulation was established over a decade ago and much has changed since then. For example, the rapid growth of low-cost airlines has had a significant impact on the air transport market, requiring stricter regulation to ensure aircrews' safety and rights. Furthermore, new technologies, digitalization and fleet management systems have changed the way airlines operate, and it is important that regulation also reflects these developments.

At the same time this old regulation still in force leaves room for abuses regarding aircrews' working conditions such as atypical forms of employment, zero-hour contracts, temporary agency work, bogus self-employment, wet-leasing, ACMI and posting of the workers. These businesses models have become increasingly common for aircrews and often result in unstable and unpredictable working conditions.

These conditions have a negative impact on the health and safety at work and well-being of aircrews and can also lead to decreased job satisfaction and higher levels of turnover with a negative impact on safety on board and quality of the air transport service provided to the passengers.

EurECCA urges the European Commission to take action to address atypical forms of employment for aircrews with a proposal on revising Regulation (EC)1008/2008 as soon as possible with a clear content to ensure that aircrews have stable and predictable working conditions taking into account their health and safety as well as access to benefits such as social security and health insurance.

It is vital that the rights and interests of aircrews in the air transport sector are protected, and EurECCA believes that a revision of Regulation (EC)1008/2008 could ensure this. This will not only protect the interests of aircrews, but also ensure that air transport companies continue to provide quality public service to the citizens of the European Union with a fair competition.

In summary, Regulation (EC)1008/2008 is a significant piece of legislation for air transport in Europe, aimed at enhancing passenger protection, improving the quality and safety of air transport, and promoting competition and cooperation between airlines. It has a significant impact on the air transport industry and on the rights of air passengers within the European Union.

When it comes to social aspects it is urgent for the Commission to address such important issue. Through an interaction of tangled Directives, Regulations, Decisions and Opinions that are not easily readable by the uninitiated, the airlines are free to do their own market and apply what they think best corresponds to the expectations, not of the passengers and certainly not of the aircrews, but of the shareholders for whom the return on investment must prevail over any social reason.

Flags of convenience, delocalization, outsourcing of work, aircrews' bogus self-employment, concealed work and subcontracting aircrews are the supply-sides policy inevitably leading to a race for the lowest fare with its attendant cost-cutting, job insecurity, loss of purchasing power and destruction of social benefits.

The airlines now have a whole legislative, legal and operational arsenal at their disposal to bring European aircrews to their knees.

What could be the solution?

1. Necessity of having a specific Directive for aircrews

The actual Directive on the posting of the workers has been a source of abuses, particularly through the use of intermediary companies called "mailboxes" with salaries and social charges referenced to the country of origin instead of the posted country. Such abuses have been possible due to the Commission's assumption that aircrews should be treated as highly mobile workers and do not fall in the scope of the Posted Workers Directive and its obligations, a view which is not supported by EurECCA. We are asking for a specific Directive applicable to aircrews to prevent the abuses and protect the workers affected.

Futhermore EurECCA stresses the necessity of the enforcement of the upcoming role of the European Labour Authority (ELA) to give guidance, clarification and coordination on the on the posting rules to the member states and their role to enforce the correct application.

2. Necessity to have a binding definition of the operational base

The aviation industry by its nature is highly complex because of the mobility of the operation. The freedom of movement and the freedom to provide services across the Union, may be used in various creative manners, in order to circumvent relevant tax or social security legislation. This lack of legal certainty caused by a lack of specific provisions can be interpreted by some employers and some members states in different ways and de facto creates room for fraudulent behaviour as tax optimisation, precarious working conditions and leads to social dumping and distortion of competition.

To safeguard a fair treatment and legal certainty for all stakeholders involved, EurECCA asks for a legal binding definition of the operational base. In the course of the revision of Regulation (EC)1008/2008 EurECCA has already proposed a binding definition of the operational base.

3. Necessity to have legal binding definition of an employment relationship

The aviation industry experiences rising figures in (bogus) self-employed aircrews¹ leading to social dumping and the circumvention of correct social payments in the member states. Therefore, it is crucial to determine in which (often very complex) scenarios it is in fact a (bogus) self-employed aircrew. For further clarification the CJEU laid down three criteria which characterise an employment relationship:

- There is an authority relationship²
- The worker forms part of the employer's economic unit³
- There is a relation of subordination⁴

Member states must be empowered to clearly identify the fraudulent use of (bogus) self-employed aircrews especially occurring in the context of employment agencies which are posting their aircrews to a customer in another member state.

Social aspects for aircrews must be taken into account by the Commission and they must stop ignoring the Charter of Social Rights, in particular its article 31⁵ 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 ILO⁶.

"There is no alternative", "It's a necessary evil", "We have no other choice", such are the messages distilled all day long by our alchemist leaders to remain competitive in the face of the market mechanisms such as Exchange Traded Funds, which, like the philosopher's stone of civil aviation, would turn lead into gold to the detriment of working conditions, jobs, health and safety of aircrews. The desire to build a financial Europe to the detriment of a social Europe is increasing poverty and exclusion, which in turn are the seeds of conflict, and not just social conflict...

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 Ricardo Study 2019, page 101, 102, 105 and 106

² CJEU of 4 December 2014, C-413/13, FNV Kunsten Informatie en Media v Staat der Nederlanden

³ CJEU of 16 December 1975, cases 40-48, 50, 54-56, 111, 113 and 114/73, Suiker Unie UA e.a. v CE.

⁴ CJEU of 11 November 2010, case C-232/09, Dita Danosa v LKB Līzings SIA.

⁵ [Charter of Fundamental Rights of the European Union TITLE IV – SOLIDARITY Article 31 Fair and just working conditions](#)

⁶ https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_848132/lang--en/index.htm