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## COVER NOTE

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| From:            | Secretary-General of the European Commission,<br>signed by Mr Jordi AYET PUIGARNAU, Director                                                                                       |
| date of receipt: | 9 July 2019                                                                                                                                                                        |
| To:              | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of<br>the European Union                                                                                             |
| No. Cion doc.:   | SWD(2019) 296 final                                                                                                                                                                |
| Subject:         | COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY<br>OF THE EVALUATION of the Regulation (EC) No 1008/2008 on common<br>rules for the operation of air services in the Community |

Delegations will find attached document SWD(2019) 296 final.

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Brussels, 9.7.2019  
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**COMMISSION STAFF WORKING DOCUMENT**

**EXECUTIVE SUMMARY OF THE EVALUATION**

**of the Regulation (EC) No 1008/2008 on common rules for the operation of air services  
in the Community**

{SWD(2019) 295 final}

## ***Introduction***

The Air Services Regulation (hereafter ‘Regulation’) was adopted in 2008 as the legal successor of three packages of measures, which have helped establishing the EU internal aviation market as of 1987. It is the basic legal act organising the EU internal aviation market.

## ***Objective and scope of the evaluation***

The objective of the evaluation was to provide insight into the actual performance of the Air Services Regulation and its overall intended and unintended impacts. Based on this, it also aimed to provide evidence-based conclusions on the future of this legislative framework.

The Regulation contains provisions on the following main topics: 1) Operating Licence including carriers’ Principal Place of Business; 2) Ownership and control (O&C) of EU air carriers, 3) Leasing; 4) Freedom to provide intra-EU air services; 5) Public Service Obligations (PSOs); 6) Traffic distribution rules (TDR); and 7) Price transparency. While the Regulation does not include specific social provisions, the indirect impacts associated with the application of the Regulation and the liberalisation of the air services market on employment and social conditions formed part of the analysis. The evaluation covered the period 2008-2017 and 1992 (i.e. when the Third Aviation Package was adopted) to 2017 for the assessment of the effectiveness. It covered the European Economic Area, namely the EU28 plus Iceland Lichtenstein, and Norway.

## ***Evaluation methodology***

The methodology followed the Commission’s Better Regulation guidelines and covers the standard evaluation questions i.e. effectiveness, efficiency, relevance, coherence and EU added value. The evaluation draws on an external support study, a social fact-finding study, the Commission's experience of monitoring the implementation of the Regulation and other input provided by relevant stakeholders. A 12-week Open Public Consultation attracted 106 responses.

## ***Main findings***

### ***Effectiveness and EU added value***

The Third Aviation Package (adopted in 1992) and the Air Services Regulation have been very effective in achieving the objectives of market efficiency, consumer protection and safety. They have brought sizeable EU added value in creating the EU internal aviation market by removing barriers to competition, such as restrictions on the routes, increasing the number of flights, allowing entry of new market operators, in particular in the low cost segment, and increasing the range of advertised fares. In particular, the **freedom to provide**

**air services in the internal aviation market, intra-EU O&C liberalisation** and a harmonised liberal legal framework across Member States regarding **operating licenses** and **leasing** have allowed air carriers to organise their operations more efficiently. The provisions on **PSOs** have improved connectivity by providing for a system where Member States can impose, under certain conditions, PSOs to support links to certain development or peripheral regions. The provisions on **traffic distribution rules** have brought some transparency to the process of Member States imposing them to manage traffic at airports. **Price transparency** provisions have contributed to more competitive pricing and have ensured consumers have access to transparent information on fares. Finally, while the Regulation did not aim to directly improve safety, provisions on market liberalisation have not compromised safety. Consumers, airlines, airports and employees have all benefited as this policy has overall led to more activity, new routes and airports, new business models, that resulted in a wider range of advertised fares and an increased overall quality of service for consumers.

Having said this, the evidence collected suggests that there are still some issues with the functioning of the Air Services Regulation. Although these issues may look secondary as compared to the overall positive effects of the Air Services Regulation, they may disproportionally affect certain parts of the market and/or stakeholders (see below within the section headed “Lessons learned and possible areas for improvement”).

### *Efficiency*

The magnitude of the positive impacts presented above are impossible to monetize, making it difficult to draw overall quantitative conclusions about the efficiency of the Air Services Regulation. The estimated total cost<sup>1</sup> across the EU-28 over the period 2008 – 2017 is EUR 39.17 million to licensing authorities, EUR 1.25 million for price transparency authorities, and EUR 118.32 million for air carriers. The general view is that the benefits brought by the Air Services Regulation have largely offset the costs it has generated.

### *Relevance*

The objectives of the Air Services Regulation and the balance between them remain highly relevant in light of the changed market, political and technological context. The objective of ensuring market efficiency remains necessary for the maintenance of an EU internal market where air carriers have the opportunity to freely provide services in a system of effective competition. In this respect, it is important that the Air Services Regulation remains up to date taking into account practical experience and the evolving market and technological context. At the same time, complete commercial freedom must be balanced against the interests of the society, such as safety of operations and consumer protection. The evolution of the market, in particular the multiplication of operational bases outside the Principal Place of Business, brought new challenges to aircrews and may have led, in some cases, to

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<sup>11</sup> All the figures are inflation adjusted

unintended indirect impacts on their working and employment conditions. This might also have had the effect of undermining the level playing field.

### *Internal and external coherence*

In terms of internal coherence, certain objectives and measures counter-balance each other (e.g. freedom to provide services vs imposing PSOs, or carriers' commercial freedom within the EU vs restrictions on financing).

In terms of coherence with other EU instruments, the evaluation has identified a need to clarify approaches as to some aspects involving, next to the Air Services Regulation, the Slot Regulation and the new EASA Basic Regulation.. Regarding the coherence with other EU policies, when reviewing the Ownership and Control rules, and in addition to balancing the different interests, regard should be had to ease of application, bearing in mind inter alia the fact that in many cases, the EU Merger Regulation needs to be applied at the same time, often in circumstances of "joint control" within the meaning of the latter Regulation. The EU commitment towards environmental protection is not fully in line with the effects of the Air Services Regulation, however, a number of initiatives at EU and international level aim at addressing such environmental concerns. Lastly, one should mention a possible interplay between the O&C rules and the newly established EU framework for screening of foreign direct investment into the EU.

### **Lessons learned and possible areas for improvement**

The analysis performed has allowed detecting areas for improvement in particular in three priority areas i.e. operating licence (including home base), Ownership & Control and traffic distribution. Regarding **operating licence**, special attention should be paid to the following points: 1) carriers' market exit, and whether this issue is more adequately addressed in the context of the Air Services Regulation or the Slot Regulation; 2) carriers' principal place of business in light of developing business models (notably pan-European airlines operating in several Member States or subsidiaries, holding multiple Air Operator Certificates (AOC) and Operating Licenses (OL) in different Member States), including the question of which functions should be exercised in the Member State of the PPoB or which competent authority is best placed to ensure the financial monitoring of air carriers without stifling their development if adequate monitoring can be ensured in other ways; 3) carriers' principal place of business and home base of aircrews where further action regarding the rules concerning the applicable labour law and the enforcement of the applicable rules may be necessary to guarantee a level playing field; 4) lastly, new business opportunities such as drones and cost-shared flights advertised through online platforms, for which questions arise as to whether, and if so to what extent they should be covered by the Air Services Regulation.

Several problems have emerged in the practical application of **the O&C provisions**. One crucial issue is the potentially more difficult access to financing stemming from the O&C

rules. EU air carriers have, as such, an interest in continued access to capital to the extent necessary to run profitable operations like operators in other sectors of the economy. The evidence remains inconclusive whether greater access to capital would have invigorated EU airlines and whether certain airlines could have been rescued from collapse in the absence of the ownership and control restrictions.

The need to facilitate the maintenance of traffic rights with third countries seems to be the main justification for the restrictions. However, experience within the EU with liberalising ownership and control has shown that it has been a success, and that it is possible to mitigate problems arising from the bilateral air services agreements, either by the carriers adapting their ownership and control structure themselves, or by negotiation between States. The opportunity and the impact of any further relaxation of control and ownership rules on the EU aviation sector needs to be assessed carefully.

**Traffic distribution rules** can "de facto" force air carriers to give up slots at well-connected airports, and to hand them over for free to competitors. Due to the considerable value of slots at congested airports, the very possibility for Member States to provide for traffic distribution rules is strongly criticised by airlines, also given the possible impact on the application of the Slot Regulation. The Commission may need to consider an amendment to the existing rules, so as to preserve opportunities of the air carriers to access the internal market freely, while also addressing strains on airport capacity.

Regarding the other areas, feedback from airlines suggests that the existing prior approval for intra-EEA **dry- and wet-leasing** hinders the efficiency of airlines' operations unnecessarily, particularly for pan-European airlines holding multiple AOC and OL, especially given that safety standards are fully harmonized in the EU. Also, while wet-leasing of third-country aircraft has remained limited, there are arguments to facilitate it in respect of like-minded third-countries (in terms of safety and working conditions) allowing air carriers more flexibility to address seasonal capacity changes.. However, the concerns expressed by the trade unions as to current provisions and legal uncertainty about non-EU crew on these aircraft operating in the EU have also to be considered. Regarding **price transparency**, issues remain in the way air carriers break down taxes, fees, charges and surcharges on websites resulting in sub-optimal price transparency. In addition, there is no requirement in the regulation as to the labelling of the amount that is refundable in case of voluntary ticket cancellation. Moreover, differing practices and interpretations as to what constitutes a final price or optional supplements make effective price comparison difficult. Finally, important **PSO** notions are very general in nature and are not further explained in the Regulation. This can lead to inconsistent and even improper application of the rules on Public Service Obligations. Also, issues remain in the tendering process, and PSO contracts are perceived as complex procedures.