

ROADMAP			
TITLE OF THE INITIATIVE	Amendment of EU Regulation 1008/2008 with regard to the wet-leasing of third-country aircraft		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG MOVE/ E.1	DATE OF ROADMAP	07/03/2016
LIKELY TYPE OF INITIATIVE			
INDICATIVE PLANNING	<i>Insert hyperlink to forecast report</i>		
ADDITIONAL INFORMATION	<i>Insert link to "Commission decides" or to the specific website for the initiative</i>		
<p style="text-align: center;"><b>This indicative roadmap is provided for information purposes only and can be subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.</b></p>			

## A. Context, Subsidiarity Check and Objectives

<p><b>Context</b></p> <ol style="list-style-type: none"> <li>1. <i>How does this new initiative relate to past and possible future initiatives, and to other EU policies?</i></li> <li>2. <i>Has existing policy been evaluated? Is it part of the REFIT agenda?</i></li> <li>3. <i>Consider recently adopted initiatives whose effects will only materialize after their implementation and other initiatives under preparation (also of other policy fields) touching upon the same problem. Describe how policy coherence is ensured.</i></li> </ol> <ul style="list-style-type: none"> <li>• <i>See Toolbox Tool #1 'Principles of Better Regulation'</i></li> </ul> <p><b>Context:</b></p> <p><b>Introduction:</b></p> <p>Recital 8 of the EU Regulation 1008/2008 indicates that "<i>in order to avoid excessive recourse to lease arrangements 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</i>".</p> <p>Article 13, paragraph 3 of the same Regulation states:</p> <p><i>"A Community air carrier wet leasing aircraft registered in a third country from another undertaking shall obtain prior approval for the operation from the competent licensing authority. The competent authority may grant an approval if:</i></p> <p><i>(a) the Community air carrier demonstrates to the satisfaction of the competent authority that all safety standards equivalent to those imposed by Community or national law are met; and</i></p> <p><i>(b) one of the following conditions is fulfilled:</i></p> <ol style="list-style-type: none"> <li><i>(i) the Community air carrier justifies such leasing on the basis of exceptional needs, in which case an approval may be granted for a period of up to seven months that may be renewed once for a further period of up to seven months;</i></li> <li><i>(ii) the Community air carrier demonstrates that the leasing is necessary to satisfy seasonal capacity needs, which cannot reasonably be satisfied through leasing aircraft registered within the Community, in which case the approval may be renewed; or</i></li> <li><i>(iii) the Community air carrier demonstrates that the leasing is necessary to overcome operational difficulties and it is not possible or reasonable to lease aircraft registered within the Community, in which case the approval shall be of limited duration strictly necessary for overcoming the difficulties."</i> <p>Paragraph 4 of Article 14 of the same Regulation makes an explicit reference to reciprocity when it states that</p> <p><i>"The competent authority may attach conditions to the approval. Such conditions shall form part of the wet lease</i></p> </li></ol>
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agreement.

The competent authority may refuse to grant an approval if there is no reciprocity as regards wet leasing between the Member State concerned or the Community and the third country where the wet-leased aircraft is registered...."

A comprehensive evaluation of the existing policy has not taken place since the initiative does not foresee a general relaxation of the limitations for all third countries. The initiative would aim to create a "carve out" that would be applicable to U.S. only which would be in compliance with EU's international obligations.

**Scope of this initiative:**

This initiative aims to introduce a derogation from the conditions set out in Article 13(3)b of the EU Regulation 1008/2008 in order to provide more flexibility in the conclusion of international agreements on wet-leasing, in so far as these present economic and social advantages for the EU.

The derogation would only apply to Article 13(3)b of the Regulation where conditions (extraordinary circumstances, seasonal needs, operational difficulties) are laid out. Hence, is very restricted in scope. The other provisions of Article 13 (e.g. on safety standards and rights of the competent authority) would continue to apply.

In the short term, the derogation from the limitations would be granted to the U.S. which would be the first third Country with which the EU has a wet-lease agreement. Other third countries may line up in the future to seek similar derogations, but each request would be dealt with on a case by case basis and exemptions would be granted only when justified. Any direct impacts will result from the wet lease agreements themselves (the US case is dealt with in a separate roadmap), not from the amendment of the regulation. The latter has no direct impact in itself; it's merely an issue of ensuring legal consistency.

**Issue**

1. *Describe the reasons behind the initiative. What is the issue/problem(s) it is expected to tackle?*
  2. *Describe the size of the problem and its main drivers*
  3. *Describe who is affected and how (stakeholder mapping)*
  4. *Explain why this is a problem at EU level and describe how it is likely to develop in the future in case no policy action is taken.*
- *See Toolbox Tool #11 'How to analyse problems'*

**Problem:**

The current wet-lease restrictions in Regulation 1008/2008 do not allow the conclusion of an unrestricted wet-lease arrangement between the EU and a third country through a bilateral international agreement, even if such an agreement would be beneficial for the EU in terms of increased traffic opportunities to that third country.

This is, for example, currently the case with regard to the possible conclusion of a wet-lease agreement between the U.S. and the EU.

**Subsidiarity check**

- *Indicate the legal basis giving the EU the right to act*
- *If your policy field falls under the exclusive competence of the EU, use the standard formulation: "The initiative falls under the exclusive competence of the EU according to Article xx of the Treaty on the Functioning of the European Union (TFEU). Therefore, the subsidiarity principle does not apply".*
- *Necessity check & Added-value test*
- *See Toolbox Tool #3 'Legal basis, subsidiarity and proportionality'*

**Legal basis:** The initiative falls under the exclusive competence of the EU according to Article 3 (2) of the Treaty on the Functioning of the European Union (TFEU). Therefore, the subsidiarity principle does not apply.

**Main policy objectives**

- *What is the initiative aiming at? What should be achieved?*

- *What is the link to the problem (coherent intervention logic)?*
- *Beware of too specific objectives which could pre-empt a 'preferred' option*
- *See Toolbox Tool #13 'How to set objectives'*

**Objectives of the initiative:** The initiative aims to allow the liberalisation of wet-lease agreements through international air transport agreements where this is advantageous for the EU..

## B. Option Mapping

- *What are the various ways to achieve the policy objectives? What legislative and non-legislative instruments could be considered? Always consider 'no EU action resp. no change in EU action' (baseline).*
- *Who would be targeted by the different policy options? Could there be exemptions for micro-enterprises or lighter regimes for SMEs?*
- *Explain how the options compare to the baseline in terms of effectiveness and efficiency.*
- *See Guidelines page 23 and Toolbox Tool #14 'How to identify policy options' and Tool #15 'The choice of policy instruments'.*

### **Assessment of Options:**

**Do Nothing:** the current restrictions on wet-leases of third country aircraft would continue to apply. It would not be possible to lift them in the context of air transport agreements with third countries..

**Amendment of Regulation 1008/2008:** The wording of Article 13(3)b would be modified to include a phrasing such as "unless otherwise provided for in an International Agreement concluded with the EU" to allow for relaxation limitations for wet-leases from third countries, subject to the conclusion of a separate wet-leasing agreement with the third country concerned.

This relaxation of the wet-leasing conditions would only materialise after the conclusion of an international agreement to this effect with a third country. Any agreement with a Third Country would need to have its own assessment before signature. They would also be contained since only the provisions defining the conditions (extraordinary circumstances, seasonal needs, operational difficulties) would be affected. The other provisions of Article 13 (e.g. on safety standards and rights of the competent authority) would continue to apply.

While this amendment itself would enable relaxing the time restrictions for cases where EU carriers wet-lease from the U.S. airlines, the wet-lease agreement itself would enable bringing further clarity to wet-lease arrangements of EU and U.S. carriers in general within the framework of the ATA.

**Impact:** Any impacts will result from the wet lease agreement itself, not from the amendment of the regulation. The latter has no impact in itself; it's merely an issue of ensuring legal consistency.

Note: It is also possible to envisage an option which would allow for derogation from the provision of 7+7months for all countries with which an Air Transport Agreement has been concluded. However, such an option would go beyond a "carve-out" for a particular case and would create a significant relaxation of the rules. The associated wider impact would then be needed to be explored by separate RMs for each of the Third Countries concerned. This would also necessitate exploratory talks/contacts with these States (similar to the ones conducted with the U.S. for the past two years at the JC meetings) to assess mutual economic benefits.

### **Proportionality check**

- *Even when the EU has exclusive competence or the subsidiarity test is positive, any EU action must be proportionate i.e. not go beyond what is necessary to solve the problem. Describe and substantiate the proportionality of the foreseen EU action.*
- *See Toolbox Tool #3 'Legal basis, subsidiarity and proportionality'*

The amendment of the Regulation is the only existing instrument available to address the issue at stake.

## C. Data collection and Better Regulation instruments

### **Data collection**

- *What information and data are required? How and when will they be gathered?*
- *How far can available data be used (e.g.: available evaluations, impact assessment analysis or studies)?*
- *See Toolbox Tool #2 'Evidence Based Better Regulation'*

### **Data collection and analysis:**

This amendment is of a horizontal nature but it is triggered for the moment by the EU-U.S. wet lease agreement. This is at present the only agreement which will aim to establish non-restrictive wet-lease arrangements. Data collection and analysis for this agreement is summarised in the associated roadmap. If similar future cases arrive

with other third countries, dedicated analysis will be carried out.
<b>Consultation approach</b>
<ul style="list-style-type: none"> <li>• Describe the key elements of the proposed consultation strategy. Which stakeholders and information gaps will be targeted (consistency with "who is affected" - part A) and over which time frame?</li> <li>• A standard sentence 'The launch of stakeholder consultations related to this initiative will be announced in the consultation planning that can be found at <a href="http://ec.europa.eu/yourvoice/consultations/docs/planned-consultations_en.pdf">http://ec.europa.eu/yourvoice/consultations/docs/planned-consultations_en.pdf</a>. If the consultation has already been launched or is already closed a link to the relevant website should be included.</li> <li>• See <i>Toolbox Tool #50 'Stakeholder Consultation Tools'</i></li> </ul>
<b>Consultations:</b>
<p>All EU MS and industry (including social partners) as well as Norway and Iceland (who are parties to the ATA) have been actively involved in the analysis and the assessment of the case through</p> <ul style="list-style-type: none"> <li>• Special Committee/Consultative Forum (SC/CF) meetings (typically every two months) - with participation of EU MS, Industry, Norway and Iceland;</li> <li>• Joint Committee Meetings: January 2014, June 2014, November 2014 (an extraordinary meeting dedicated to wet-lease and another topic), January 2015, June 2015 – with presence of government and industry representatives from both sides;</li> <li>• Coordination meetings of EU delegations: One before every meeting of the JC</li> </ul> <p>At the last SC/CF meeting that took place on 8 July 2015, the Commission services indicated their willingness to request a negotiating authorisation from the Council to start formal negotiations with the U.S. for a wet-lease agreement. There was overwhelming support in the forum for this demarche and the willingness to promptly sign an agreement setting out a clear and non-restrictive wet-lease arrangement in the spirit of the ATA,.</p> <p>Given that the amendment involves a social dimension, social partners will be consulted through the civil aviation group of the European Social Dialogue.</p> <p>It was also understood that such an agreement would trigger an amendment to Regulation 1008/2008.</p>
<b>Will an Implementation plan be established?</b>
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <ul style="list-style-type: none"> <li>• If no implementation plan will be established substantiate why.</li> <li>• See <i>Toolbox Tool #32 'The Implementation Plan'</i></li> </ul>
<p>Due to the exclusive competence and the type of the instrument (a regulation), the case constitutes a straightforward issue that does not require any additional implementing measures.</p>
<b>Will an impact assessment be carried out for this initiative and/or possible follow-up initiatives?</b>
<ul style="list-style-type: none"> <li>• See <i>Toolbox Tool #5 'When is an IA necessary?'</i></li> <li>• IAs are required for all initiatives likely to have significant economic, environmental and/or social impact.</li> <li>• If you plan an IA, please use the template 'Inception Impact Assessment' instead of this roadmap template.</li> <li>• If no impact assessment is foreseen - substantiate why you assume that no significant impacts are likely. See also <i>Toolbox Chapter 3 'How to identify impacts'</i></li> <li>• If you plan to carry out IA work for related later initiatives, please indicate this and explain the envisaged approach.</li> </ul>
<p>The initiative has a very specific aim and a limited scope. As the options are very restricted and the expected impact is limited, it is not proposed to carry out an impact assessment. However, the initiative will be accompanied by an analytical working paper that will explain possible – even if limited – economic and social impacts.</p>