

EVALUATION ROADMAP			
TITLE OF THE EVALUATION/FC	Evaluation of the Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community		
LEAD DG RESPONSIBLE UNIT	DG MOVE UNIT E4	DATE OF THIS ROADMAP	21/11/2016
TYPE OF EVALUATION	Evaluation	PLANNED START DATE	Q3 / 2016
	Ex-post	PLANNED COMPLETION DATE	Q2 / 2018
	Mixed	PLANNING CALENDAR	http://ec.europa.eu/smart-regulation/evaluation/index_en.htm
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A. Purpose
(A.1) Purpose
<p>The purpose of this evaluation is to assess to which extent Regulation No 1008/2008 on common rules for the operation of air services in the Community (hereinafter Air Services Regulation)¹ contributed to the creation of an efficient internal aviation market, an improved safety level and better consumer protection. The evaluation will provide an up-to-date overview of the application of the provisions of the regulation in the Member States and of the benefits they delivered. It will also seek to identify evidence based areas of concern in their application, taking into account the current market reality.</p> <p>Based on the evaluation, conclusions will be presented indicating whether improvements would be necessary, which would then provide a basis for a possible impact assessment on the changes to be introduced.</p>
(A.2) Justification
<p>The Aviation Strategy² while acknowledging a significant expansion of the EU air transport sector also pointed out that barriers to growth in the internal market still exist and need to be tackled. The indicative Action Plan of the Aviation Strategy foresees an evaluation of the Air Services Regulation to assess whether it poses barriers or produces inefficiencies that need to be addressed. At the same time, it foresees the adoption of interpretative guidelines as to two specific issues covered by the Air Services Regulation i.e. ownership and control of EU carriers and public service obligations. This work - which aims to bring more legal certainty as to the application of the relevant current legislation - is expected to be completed early 2017 and will be fed into the evaluation of the Air Services Regulation.</p> <p>Furthermore, respondents to the open public consultation on the Aviation Strategy identified 'regulatory harmonization' and 'market access' among the five most important areas to be addressed. They also mentioned price transparency and rules on ownership and control of EU air carriers as areas of concern. The reasons for these concerns need to be investigated in a more comprehensive evaluation.</p>

¹ Regulation No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community

² COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: An Aviation Strategy for Europe, COM/2015/0598 final.

B. Content and subject of the evaluation

(B.1) Subject area

The Air Services Regulation has consolidated into one single act three existing regulations which have marked the final stage in the process of liberalization of air transport in the Community³. In doing so, it has also introduced changes regarding a number of issues. For these reasons, the Air Services Regulation is considered as the legal successor of the various packages of measures which have established the EU internal aviation market as of 1987, and is the basic legal act organising the internal aviation market.

The regulation establishes the concept of an EU air carrier. In particular, it establishes who delivers the operating licence and at which conditions. Conditions include the possession of a valid air operator certificate (AOC) and require air carriers to be majority owned and effectively controlled by EU Member States and/or their nationals (the so called ownership & control requirement stemming from bilateral and multilateral air service agreements to ensure that traffic rights exchanged under such agreements are exploited by the contracting parties only). Once in possession of a valid operating licence, all EU air carriers are entitled to operate air services on any route within the EU (in particular the transport of passengers, cargo and mail) without further authorisation. The regulation also provides for a regular monitoring of EU air carriers' financial situation.

Moreover, the regulation establishes some exceptions to the freedom to operate. In particular, it allows Member States to impose - under specific conditions - public service obligations to ensure air services to and from underserved regions. Similarly, it allows Member States to regulate the distribution of air traffic between airports provided certain conditions are met. The regulation also establishes that airlines are free to set the price of their intra-EU air services provided they respect price transparency provisions. Finally, it contains provisions on code-sharing⁴ as well as on aircraft leasing⁵.

(B.2) Original objectives of the intervention

The Air Services Regulation was intended to consolidate and improve existing provisions governing the licensing of air carriers, the access of Community air carriers to intra-Community air routes and fares and rates for air services. The preparatory work carried out by the Commission in 2006 to support the proposed regulation⁶ had indicated that there was a problem of lack of level playing field in the EU internal aviation market due to an inconsistent application of EU legislation across the Member States leading to competition distortions and market inefficiency. Besides that, there were persisting safety risks related to the continued operation of financially unsound air carrier, and passengers were unable to fully reap the benefits of the internal aviation market because of a lack of price transparency and price competition.

Based on this, its underlying objectives are to reduce competition distortions, increase market efficiency, improve the safety of air services and increase passenger protection. More specifically, the regulation aims to impose stricter requirements and conditions in all EU Member States in the areas of operating licence, public service obligations and traffic distribution; to ensure the overall sound financial health of EU air carriers through regular monitoring; to lift subsisting restrictions applied by Member States on the freedom to operate intra-EU air services; to enhance price competition and price transparency to the benefit of EU passengers.

(B.3) How the objectives were to be achieved

In order to achieve its objectives, the Air Services Regulation introduces some stricter information requirements and conditions for the airlines to obtain and maintain an operating licence. The overall granting process of a licence is made more transparent and homogeneous while the monitoring of the financial health of EU air carriers, notably start-ups, is made more regular. A clear procedure for revoking an operating licence is also introduced. Instead, the regulation maintains the previous ownership & control requirement as a condition to obtain an operating licence.

Moreover, the regulation requires subsisting restrictions applied by Member States i.e. restrictions on code sharing

³ Council Regulations No 2407/92 on licensing of air carriers, 2408/92 on access of Community air carriers to intra-Community air routes and 2409/92 on fares and rates for air services.

⁴ An aviation business arrangement where two or more airlines share the same flight and where a seat can be purchased from an airline on a flight that is actually operated by another airline under a different flight number or code.

⁵ Airlines lease aircraft from other airlines or leasing companies with or without crew.

⁶ COMMISSION STAFF WORKING DOCUMENT: Impact assessment - proposal for a regulation of the European Parliament and of the Council on common rules for the operation of air services in the European Community (recast) SEC(2006)943

on routes to 3rd countries and on price setting on routes to 3rd countries with an intermediate stop in another Member State, to be lifted. It also introduces some further requirements and clarifications with respect to public service obligations (e.g. objective assessment of the needs of a region but also improved tender procedure) and traffic distribution (e.g. clearer definitions and stricter control). Finally, the regulation establishes pricing freedom for EU carriers and ensures consumers get complete information on terms and conditions of carriage and the air fares, and are treated equally.

The full intervention logic diagram is attached to this roadmap.

C. Scope of the evaluation/FC

(C.1) Topics covered

The present evaluation does not cover all areas comprised in the Air Services Regulation and focuses on a limited number of issues, namely:

1. Operating licence
2. Ownership and Control of EU air carriers
3. Provision of intra-EU air services
4. Public Service Obligations
5. Traffic Distribution
6. Transparency concerning pricing of intra-EU air services

The remaining provisions of the Air Services Regulation i.e. on insurance requirements, leasing and environmental and emergency measures will not be evaluated. With respect to insurance, it is only marginally covered by the regulation⁷. In addition, to the knowledge of the Commission, the insurance provisions are not considered as problematic by the stakeholders. Regarding leasing, it is currently being investigated in a different context in relation to a specific problem identified⁸. In the case of environmental and emergency measures, to the knowledge of the Commission, no problem has been identified so far.

Social issues in civil aviation have been extensively discussed by the stakeholders over the past years and the Commission drew specific attention to them in its 2015 Aviation Strategy⁹. Recently, a Practice Guide on the relevant current legal provisions (including case law) on matters of private international law and posting in the area of employment contracts has been drafted by the European Judicial Network in civil and commercial matters upon request of the Commission to assist practitioners¹⁰. The regulation does not contain any provisions on social related matters. This said, the concept of principal place of business contained in the regulation will be evaluated as part of the provisions on operating licence. In this context, due attention will be given to the emergence of new business models in civil aviation.

For the issues selected for this evaluation, the starting point will be the legal text itself while the impact assessment carried out in 2006 in view of the proposal and the Commission's Fitness Check of the internal aviation market carried out in 2013 will also be looked at¹¹. Furthermore, for the issues addressed in the regulation on the basis of previous legislation, the Commission will take account of the relevant objectives set at that time. For ownership & control of EU air carriers, the Commission will take account of the overall rationale and international context. The expected Commission's interpretative guidelines on the application of the relevant current legal provisions on ownership & control and public service obligations will also be looked at as to the effects they might have produced following their adoption.

Finally, the Commission in its examination will look at any relevant unintended consequences of EU legislation and

⁷ Regulation (EC) No 785/2004 transposes all other issues related to insurance from international law

⁸ The seven-month limitation period for wet-leasing with third countries.

⁹ See An Aviation Strategy for Europe, COM/2015/0598 final - Chapter 2.4 'Reinforcing the social agenda and creating high quality jobs in aviation'.

¹⁰ Practice Guide available at http://ec.europa.eu/justice/civil/files/employment_guide_en.pdf

¹¹ COMMISSION STAFF WORKING DOCUMENT: Fitness Check - Internal Aviation Market. Report on the suitability of economic regulation of the European air transport market and of selected ancillary services, SWD(2013) 208 final

developments that occurred in the industry following the entering into force of the Air Service Regulation, especially in the fields of operating licence and Ownership & Control of EU air carriers.

The evaluation will cover the 28 Member States in the period from 1992 up to now.

(C.2) Issues to be examined

On the basis of the five criteria (relevance, effectiveness, efficiency, coherence and EU added-value), the evaluation will review the implementation of the Air Services Regulation and determine to what extent the original objectives of this Regulation have been met.

Indicative evaluation questions:

Effectiveness:

- To what extent have the existing range of requirements and conditions for operating licence been successful in creating a level playing-field, increasing market efficiency, improving the safety of air services and increasing consumer protection?
- To what extent and how has the existing provision on ownership & control of EU carriers been successful in allowing the EU carriers to maintain their traffic rights?
- To what extent have the existing provisions on freedom to operate intra-EU flights been successful in ensuring equal treatment of EU air carriers and creating a level playing field within the EU internal aviation market?
- To what extent have the existing procedures for imposing public service obligations and regulating traffic distribution been successful in minimising competition distortions?
- To what extent have the existing range of requirements and conditions in terms of pricing freedom and price transparency been successful in enhancing price competition and price transparency?
- To what extent has the regulation contributed to improve the competitiveness of the aviation sector in general?

Relevance:

- To what extent do the objectives address the problems and needs identified at the time?
- To what extent are the original objectives and instruments still adequate in the current context and how do they still correspond to the current problems and needs of the mature internal aviation market?

Efficiency:

- Were the costs incurred by EU air carriers, aviation authorities and national authorities as a result of the regulation reasonable in relation to the benefits?
- Has the regulation resulted in regulatory burdens or inefficiencies? What were the reasons for this?

Coherence:

- Are the requirements set in the regulation coherent with one another?
- To what extent is the regulation in line with other EU interventions in the field (e.g. market access, air navigation services, ground handling services, slots, airport charges, safety, security, passenger rights, assistance to disabled persons and persons with reduced mobility, merger and State aid control, antitrust rules)?
- To what extent is the regulation in line with wider EU policy (e.g. jobs, growth, trade, mobility, competition policy, a forward-looking Climate Change Policy)?

EU added-value:

- What is the added value resulting from EU intervention in operation of air services compared to what could be done at national, regional or international level without such intervention?
- What would be the most likely consequences of stopping or withdrawing existing EU intervention?

(C.3) Other tasks

D. Evidence base

(D.1) Evidence from monitoring

Commission monitoring

Significant information as to the application of the regulation by the Member States is available to the Commission through its normal monitoring activity. This information has shown for instance that Member States have encountered problems in applying current legal provisions governing ownership & control of EU air carriers and public service obligations.

National Authorities

Relevant information is available also through national authorities, notably the competent licensing authorities responsible to grant, suspend or revoke operating licences. In particular, the annual publication of their decisions has allowed the Commission to be informed about the situation concerning licences and about possible issues faced in this context by the airlines and/or the authorities. Moreover, the Commission publishes the envisaged impositions of public service obligations by the Member States in the Official Journal of the European Union. It does the same also for invitations to tenders in case of restricted access to a certain route. All in all, this information has permitted the Commission to be better informed about the justification for imposing Public Service Obligations.

Committee

Since the entering into force of the Air Services Regulation, the Commission has been assisted by an Advisory Committee on the application of the legislation on access for Community air carriers to intra-EU air routes. Within the Committee, competent EU national civil aviation authorities and transport ministries are represented. So far, the Committee has provided information on how the legislation has been applied as to operating licence, provision of intra-EU air services, public service obligations, traffic distribution and pricing of intra-EU air services.

Moreover, to support the group in assessing specific issues in civil aviation including social matters, an Expert Group on the application of the legislation on access for Community air carriers to intra-Community air routes was set up in 2014. So far, the Group has allowed exchanges of views and of best practices in particular on new business models in aviation.

(D.2) Previous evaluations and other reports

In 2013 the Commission published a Fitness Check of the internal aviation market covering certain provisions of three central pieces of legislation for the internal aviation market, including the Air Services Regulation¹². Broadly, the Fitness Check concluded that the regulatory framework in place continued to serve the aims it had been designed for. However, it also identified issues where more detailed guidance would be useful. The exercise also helped to detect a number of new industry developments requiring monitoring by the Commission's services (e.g. new employment and working conditions in civil aviation). At that stage, however, no legislative changes were deemed warranted. The forthcoming Commission's interpretative guidelines on ownership & control and public service obligations are expected to provide some detailed guidance although as to the mere application by the Member States of the relevant current provisions governing these two issues, which have proved to be difficult to apply.

Over the past few years, a number of studies have also been prepared by the sector or international bodies on issues including the operation of air services in the Community, foreign investment in airlines and employment and working conditions in civil aviation. These findings and conclusions should also be considered for the purposes of the present evaluation¹³.

(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)

In its work of assessing the application and implementation of the Air Services Regulation, the Commission has launched investigations against a number of Member States, either on its own initiative or emanating from complaints from airlines, airlines associations or citizens. The issues at stake covered O&C of EU carriers (seven cases), provision of air services (two cases), imposition of public service obligations (five cases) and traffic

¹² Available at: http://ec.europa.eu/transport/modes/air/internal_market_en

¹³ This includes the study prepared for the European Commission on 'Employment and working conditions in air transport and airports' available at: http://ec.europa.eu/transport/modes/air/studies/air_en

distribution rules (in three cases, the Commission adopted an implementing decision).

To date, there have been five rulings of the European Court of Justice on the interpretation of the regulation:

- C-112/11 *ebookers.com Deutschland* on transparent pricing with regard to optional price elements of the ticket;
- C-573/13 *Air Berlin* on transparent pricing with regard to publishing final price of the ticket;
- C-487/12 *Vueling* on transparent pricing with regard to optional price supplement for transporting baggage;
- C-628/11 *International Jet Management*, with regard to the non-discrimination of EU carriers; and
- C- 240/14 *Prüller-Frey*, with regard to the EU operating licence as a condition for the application of the Montreal Convention to national flights.

(D.4) Consultation

The roadmap will be open for feedback during a 4-week period, indicatively during November/December 2016. The feedback will be used where appropriate to revise the approach to the evaluation.

The consultation of stakeholders will seek their opinion on the main evaluation criteria (relevance, efficiency, effectiveness, coherence and EU added-value). It will also look for identification of any unexpected impacts of the regulation and the general view on the scope and approach set in the regulation.

The key stakeholders for this evaluation include:

- National ministries or equivalent regional organisations/agencies in charge of air transport
- National competent licensing authorities
- Airlines and aircraft operators and their associations
- Airports and their associations
- Aircraft financiers, leasing companies, investors
- Workers' organisations (unions)
- Research/Academia
- Consultancies
- Logistic companies and integrators
- Tour operators
- EU citizens / general public
- Consumer protection associations, European Consumer Centres, Single Liaison Offices under Regulation (EC) 2006/2004 on cross-border enforcement and cooperation

An extensive consultation process will be undertaken structured around two main axes of actions:

- A 12-week, open, internet-based public consultation provisionally planned to take place in the second quarter of 2017. It will give the opportunity to individual companies and consumers to express their views on the topic. The questionnaire will be available in all official EU languages and the replies can be submitted in all official EU languages as well.
- A set of targeted consultation activities tailored for particular stakeholders' groups, including surveys, interviews and case studies to be conducted in the context of the evaluation study run by a consultant.

The consultation will be published on http://ec.europa.eu/transport/index_en.htm as well as on Your Voice in Europe (http://ec.europa.eu/yourvoice/consultations/index_en.htm). The synopsis report summarising the results of all consultation activities linked to this initiative will be published on the consultation web page.

(D.5) Further evidence to be gathered

