



Brussels,  
Ares(2018)

## Opinion

### **Title: Evaluation of the Air Services Regulation 1008/2008**

(version of 26 September 2018)\*

### **Overall opinion: NEGATIVE**

#### **(A) Context**

The EU regulates its internal aviation market with regard to operating licences, routes and pricing of fares. An airline must meet certain financial requirements to obtain a licence. A licensed airline can offer air services anywhere in the EEA. Authorities may impose public service obligations as well as restrictions to manage traffic distribution between airports that serve the same city. There are legal safeguards on fares to prevent discrimination by country of residence and to promote price transparency.

In 2008, Regulation 1008/2008 replaced and consolidated three earlier Regulations (the “Third Package”). This report assesses the effects, both intended and unintended. It examines whether the framework is consistent with internal market rules and with international obligations. It studies whether the Regulation is still fit for purpose.

#### **(B) Main considerations**

**The Board notes that DG MOVE undertook considerable work to collect and analyse large amount of data at granular level and to report extensively and in detail on the outcomes of the stakeholders' consultation.**

**However, the Board considers that the report contains important shortcomings that need to be addressed particularly with respect to the following issues:**

- (1) The scope of the evaluation is not clear. The report does not properly explain that it aims to evaluate the overall impact of the Regulation and not just the changes of 2008, as its title suggests. Due the unclear scope, the two baselines are confusing. The wider context of the exercise is vague.**
- (2) The evaluation does not draw conclusions from the available evidence. As such, it does not allow for an informed decision on the need for further action.**

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\* Note that this opinion concerns a draft evaluation report which may differ from the one finalised.

**(3) The report does not provide for a comprehensive analysis of the unintended social and, in particular, environmental adverse impacts of the economic aviation rules at hand. It does not draw substantiated conclusion on these aspects.**

**(4) The report is very dense and difficult to read and absorb. It requires expert-level knowledge and lacks guidance through its structure.**

**Against this background, the Board gives a negative opinion and considers that in its present form this report does not provide appropriate input for any forthcoming related policy initiative.**

**(C) Further considerations and adjustment requirements**

**(1) Scope:** The report should clarify from the beginning that it takes a holistic approach, i.e. that it evaluates the whole set of economic aviation rules (since the adoption of the Third Package in 1992) and not just the changes made in Regulation 1008/2008. To clarify this distinction, it should present the main changes introduced in 2008. Note that the title of the report is also misleading as it only refers to the 2008 changes. The report should not only explain the two different baselines but also clearly separate analyses depending to which baseline they refer. It should also inform on the scope and the results of the fitness check carried out in 2013 and if (and why) some of its conclusions are no longer valid today. Furthermore, the report should explain the wider context to this evaluation, and in particular what to expect from parallel and related evaluations and nearly finalised studies. The report should, where relevant, build on the information already available out of these exercises.

**(2) Conclusions:** The report should build on the extensive data and granular presentation of the stakeholder's opinions to combine this information into conclusions and lessons learned. It should indicate whether the available information allows concluding on the magnitude, the source of the problems and the need for further action. In particular, it should clarify to what extent the observed shortcomings find their source in the legislation itself or in its implementation. It should clearly indicate uncertainties due to insufficient or unavailable information. The (intermediate and final) conclusions should be more granular and transparent. The final conclusion could usefully provide for a prioritisation of the issues depending on their magnitude and urgency.

**(3) Control and ownership:** The report should clearly present to what degree control and ownership restrictions are still needed for maintaining traffic rights with third countries or to what extent observed shortcomings require a change in the rules. The report should provide more factual evidence that goes beyond the stakeholder contributions and acknowledge that research comes to divergent conclusions on this topic. The way in which the aviation market currently works is not sufficiently analysed to reach any meaningful conclusions on this issue.

**(4) Link with other EU policies:** The report valuably addresses the unintended social impacts of the economic aviation rules from the Third Package (1992) and Regulation 1008/2008. The report should explain the wider context of this evaluation. It should include and explain the parallel stock taking exercise of the EU social agenda for air transport and the ongoing interinstitutional negotiations on the Commission proposal COM(2016)818 regarding further liberalisation of wet-leasing. The intermediate and final conclusions of the report should reflect the findings concerning the adverse impacts of the

economic aviation rules on working conditions and collective labour rights. Overall, the report should better clarify the observed trade-offs between the economic aviation rules at hand and the EU social policy.

For the environmental aspects, the report does not sufficiently analyse the effects of economic aviation rules on the environment. The report should provide data on the impact of higher traffic growth rates on observed CO2 emissions. The report should elaborate on the effects of aviation growth on EU environmental and climate objectives.

The report should also analyse whether the economic aviation rules lead to interferences with fundamental rights and impacts on public health.

(5) **Presentation:** The report should be redrafted to make it accessible to non-specialised readers. It should explain the key elements of the Regulation and what changes it brought to the Third Package. The presentation should be more ventilated and point to the key elements (for details, the report could usefully refer to the annexes). At the beginning, the report should introduce the various issues and explain (for instance with a table) which parts of the report deal with them.

*Some more technical comments have been transmitted directly to DG MOVE.*

#### **(D) RSB scrutiny process**

**The lead DG is advised not to proceed with launching the interservice consultation before substantially amending and complementing the report, so as to mitigate the above-mentioned shortcomings.**

**The lead DG may decide to resubmit this report to the Board, in which case the report should be adjusted in accordance with the above-mentioned requirements prior to its resubmission.**

|                     |   |
|---------------------|---|
| Full title          | Evaluation of the Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community |
| Reference number    | PLAN/2016/45  |
| Date of RSB meeting | 24/10/2018  |



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
Ares(2019)

## Opinion

### **Title: Evaluation of the Air Services Regulation**

(version of 30 January 2019)\*

### **Overall opinion: POSITIVE**

#### **(A) Context**

The EU regulates its internal aviation market with regard to operating licences, routes and pricing of fares. An airline must meet certain financial requirements to obtain a licence. A licensed airline can offer air services anywhere in the EEA. Authorities may impose public service obligations as well as restrictions to manage traffic distribution between airports that serve the same city. There are legal safeguards on fares to prevent discrimination by country of residence and to promote price transparency.

In 2008, the EU adopted Regulation 1008/2008. It replaced and merged three earlier regulations (the “Third Package”). This report assesses the effects, both intended and unintended. It examines whether the framework is consistent with internal market rules and with international obligations. It studies whether the Regulation is still fit for purpose.

#### **(B) Main considerations**

**The Board acknowledges that the revised report reads easier. The structure is clearer and the intermediate conclusions give a better overview.**

**The Board gives a positive opinion, but considers that the DG should improve the report regarding the following key aspects:**

- (1) The conclusions do not sufficiently stress the uncertainties due to insufficient information.**
- (2) The evaluation is not transparent on the climate impact of aviation. The conclusions avoid highlighting the impact of traffic growth on greenhouse gas emissions. They do not clarify whether the existing measures to counter these effects are deemed sufficient.**

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\* This opinion concerns a draft evaluation report which may differ from the final one.

**(3) The evaluation does not build on the underlying study to provide conclusions on unintended social impacts.**

**(4) When assessing issues with enforcement, the evaluation does not sufficiently analyse the role and actions of the national authorities and of the Commission.**

### **(C) Further considerations and recommendations**

(1) The revised analysis better documents the uncertainties due to the lack of data/evidence. The (intermediate and final) conclusions should properly reflect these uncertainties. For the control and ownership rules, the report concludes that airlines struggle to access capital although the analysis is not clear-cut on this issue. Moreover, the stakeholders have mixed views: some of them fear that foreign air carriers could invest in EU carriers to deviate traffic to their non-EU hubs. Other conclusions are not based on sufficient evidence: e.g. impacts of aviation on the economy, impacts on safety, the genuine use (or not) of public service obligations or the ban on the bundling of PSO routes.

(2) The revised report contains two sections on the environmental impact. However, the final conclusions hardly mention them. The evaluation should refer to the recently published “European Aviation Environmental report 2019”<sup>1</sup>. Its data should be consistent with this environmental report (e.g. share of aviation in emissions). The evaluation should report the likely impact of climate measures on greenhouse gas emissions from aviation. Moreover, an annex could explain the European emissions trading and the UN offsetting mechanism (CORSIA) for aviation.

(3) The evaluation should build on the analysis provided in the underlying study and the stakeholders’ views to draw transparent intermediate and final conclusions on the unintended social impacts of the air services regulation. Overall, the report should clarify the observed trade-offs between the economic aviation rules at hand and EU social policy. It should update the information regarding the Commission proposal on wet-leasing of third country aircraft. Regulation 2019/2 has already been adopted. The report should describe its content and its expected impact on the evaluation's findings.

(4) The report should clarify under which circumstances Member States may grant a temporary licence. It should explain that a temporary licence only serves after the withdrawal of the "normal" licence and for the restructuring of the airline. The report should also clarify the link with the Regulation on slots.

(5) The report better distinguishes between problems due to the legislation and those due to their implementation. However, it tends to put the blame for the lack of enforcement on unclear rules. It should also assess whether the responsible national authorities have the necessary resources and legal means. The report should also describe enforcement action by the Commission. This concerns in particular public service obligations, leasing, and control and ownership rules.

(6) The report should present the relevant findings of the 2013 fitness check. It should describe the follow-up actions. For airline insolvencies, the report should explain the Commission Communication on airline insolvencies<sup>2</sup> and its follow-up actions.

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<sup>1</sup> [https://ec.europa.eu/transport/modes/air/news/2019-01-24-aviation-environmental-report\\_en](https://ec.europa.eu/transport/modes/air/news/2019-01-24-aviation-environmental-report_en)

<sup>2</sup> COM(2013)0129

(7) The report should explain why traffic distribution rules are among the priorities for action. The report found that these rules are hardly used, as there already exist other possibilities to reach the same objectives.

(8) The report is much too long. References are still missing which gives the impression of an unfinished document.

**(D) RSB scrutiny process**

**The lead DG is advised to ensure that these recommendations are duly taken into account in the report prior to launching the interservice consultation.**

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|---------------------|---|
| Full title          | Evaluation of the Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community |
| Reference number    | PLAN/2016/45  |
| Date of RSB meeting | Written procedure   |