

## DRAFT PROPOSAL

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### **Draft proposal for targeted initiatives in the aviation sector concerning fair competition**

The liberalisation of the aviation market has created business opportunities for European companies operating within the EU. The development of a competitive European aviation sector has stimulated growth and employment. Fierce competition among airlines to reduce operating costs has resulted in the emergence of new business and employment models. Market liberalisation, however, has also been a driver of unfair competition giving rise to concerns about the working conditions and social standards in the sector.

While new forms of company organisation, recruitment practices and terms of employment appear legitimate and in compliance with current EU rules, there are examples of EU airlines employing unfair business practices exploiting unintentional differences in the implementation, application and administration by Member States of Union rules and regulations.

The Danish Government finds that steps must be taken at EU-level to secure a level playing field for companies and to ensure acceptable working conditions for people employed in the European aviation sector. Airlines should compete on innovation, quality and price rather than on the basis of 'rule shopping' and the exploitation of loopholes. The Danish Government is a strong supporter of the EU internal market and free movement of workers, however some of the new business models and unfair employment practices can have a negative effect on fair competition between the airline companies, social and labour rights, wages, and overall employment standards within the aviation sector.

Legal certainty must be clearly articulated through provisions that ensure uniform interpretation and enforcement of the EU rules on employers and employees in the aviation sector. It should be clear to employees in which EU Member State they are entitled to *inter alia* social security, which should moreover not be subject to frequent changes. There should be a clear and unambiguous definition of the concept of home base in the sense of employees belonging to one home base only.

Furthermore, the working environment on board aircrafts in the EU should be made subject to uniform, standardised rules and supervision. Consequently, all



aircraft in the EU should be subject to an oversight of the working environment on board the aircraft. Uniform EU rules and guidelines must be provided.

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Consequently, the Danish Government urges the Commission and the Member States to closely and continuously monitor employment trends in European Aviation and, where necessary, regulate new business and employment models in close collaboration with the European Aviation Safety Agency (EASA). Moreover, given the complex nature of the issues it is essential that the Commission involves external as well as internal stakeholders and also in the field of employment.

The Danish Government proposes to address the issues as aviation sector legislation. A number of special circumstances apply to the aviation industry that makes it different from other industries; a highly mobile workforce, easy relocation of production facilities, the cross-border nature of airline activities, and special circumstances that apply with regard to the concept of home base. Consequently, a solution that applies only to the aviation sector is seen by the Danish Government as the more appropriate means of realising the desired effects while causing no side-effects to other sectors.

A way to address these issues could be as amendments to Regulation (EC) No 1008/2008 of the European Parliament and the Council of 24 September 2008 on common rules for the operation of air services in the Community. Several options for revised formulations to tackle the above mentioned challenges exist within this piece of legislation. It is essential to find a solution that carefully balances the various stakeholders' legitimate concerns and at the same time duly takes into account interactions with related legislation. To achieve this, it is envisaged that a number of iterations and consultations will be needed before the proper legislative formulations are found.

The Danish Government will be most willing to assist in any way possible in this work. In this context, an example of how Regulation (EC) No 1008/2008 may be amended is presented below, duly noting that – if taken further - this suggestion will be subject to additional analysis and possible adjustments.



## Draft proposal for further discussions

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### 1 The concepts of 'home base' and '[employer/employee]'

#### *Recital 9*

*With respect to employees of a Community air carrier operating air services from an operational base outside the territory of the Member State where that Community air carrier has its principal place of business, **the Community air carrier should appoint a stable single 'place of business for the [employer/employee]' for each crew member it employs. The Community air carrier should inform the crew member of the place of business of the [employer/employee].** Member States should ensure the proper application of Community and national social legislation.*

#### *Recital 9a*

***Recruitment and employment of crew members indirectly through employment agencies should not exempt the employer who benefits from the labour (i.e. the Community air carrier) from obligations of the Community. 'Self-employed' who actually work for an airline, along with employees recruited via employment agencies, are to be regarded as being employed directly by the airline.***

#### *Article 2*

*For the purpose of this Regulation:*

***26a 'place of business for the employer[/employee]' means a Member State nominated by the Community air carrier to the crew member it employs from where the crew member normally starts and ends a duty period, or a series of duty periods, and where, under normal conditions, the operator is not responsible for the accommodation of the crew member concerned.***

***26aa 'Crew member it employs' means a person from which the Community air carrier benefits from labour, regardless of whether the recruitment is directly or through other companies.***

#### *Article 4*



*An undertaking shall be granted an operating license by the competent licensing authority of a Member State provided that:*

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***ii) the Community air carrier has appointed a single place of business for the [employer/employee] for each crew member it employs***

## **2 Working environment on aircraft**

### ***Recital 4a***

***In order to ensure a more consistent supervision of the working requirements on board aircraft the competent licensing authority should ensure that Community air carriers with a valid AOC comply with Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.***

### ***Article 4***

#### ***Conditions for granting an operating license***

*An undertaking shall be granted an operating license by the competent licensing authority of the Member State provided that:*

***(hh) it complies with the provision on supervision of the working requirement on board aircraft as specified in Article 6a***

### ***Article 6a***

#### ***Working requirement on board aircraft***

***The competent licensing authority shall ensure that the Community air carrier with a valid AOC complies with Council Directive 89/391/ECC.***