



ECA position towards the European Union Air Transport Negotiations with third countries

Introduction: The EU and its external aviation policy

6 years after the European Court of Justice's famous judgement on "Open Skies" the European commission has developed a variety of instruments to develop the external dimension of the aviation market.

I. The EU differentiates 4 types of relations with third countries:

- In most cases the EU concludes "traditional agreements" with third countries which replace or supplement the bilateral agreements of Member States, adding the recognition of the "EU designation clause" and technical cooperation. The EU also leaves this kind of treaty to be negotiated by individual Member States.
- In other cases the European Commission wants to extend the scope of these traditional agreements and extend cooperation in the field of aviation. The elements added concern the harmonisation or the mutual recognition of aviation regulations (safety, security etc.) and/or in the increase of market openness. The countries with whom the Commission usually negotiates these types of agreement are usually neighbouring countries or privileged economic/historical partners.
 - o **Neighbouring Countries** with whom the Commission wants to create '**common aviation areas**' in which airlines will be able to operate freely (complete liberalisation) under the same type of safety, security, economic and some social legislative framework. Examples of these are the agreements with Switzerland, the Balkans' countries and Morocco.
 - o Equally there are the countries with whom the Commission wants to conclude '**open aviation area**' agreements: the **Privileged Economic Partners**. In these areas air services will be completely liberalised but the operators of each party will continue to apply their own legislation. At the same time the Parties agree to pursue "regulatory convergence" in the safety, security and economic fields. An example of this could be the agreement with Canada and maybe with Australia and New Zealand.
 - o Finally the Commission also negotiates with '**Privileged Economic Partners**' not wishing to enter into "open aviation area" but seeking a high level of "open skies" type liberalisation. In this case the parties do pursue high levels of market openness but may retain sovereignty in areas such as market access or ownership and control. This is currently

the case with the US and could be also of Japan and Russia in the future.

II. The social impact of the different types of Agreements:

The Impact on labour is different depending on the type of agreement concluded by the Commission. The objective of ECA is therefore different:

- In the case of 'traditional agreements' ECA's concern is about a fair share of the market: equal access to the other party's market, and recognition of the EU internal Market.
- For the Open skies Agreements with 'neighbouring countries' and 'privileged economic partners', the concerns of ECA would vary depending on the degree of market openness.

It is evident that ECA would have the same concerns as for traditional agreements but when new rights and opportunities are created ECA has to evaluate the social impact of such measures. That is why ECA considers necessary in any case to establish **Social Monitoring Mechanisms** which could lead the parties to address any eventual problem linked to the new measures' impact on labour.

When an agreement reaches a high degree of liberalisation (removal of the restrictions on investment, ownership and control) both in the case of negotiations with a country of the 'open aviation area' or the 'Common aviation area', the concerns of ECA are to:

- **prevent social dumping,**
- **prevent flags of convenience and**
- **ensure the effective representation and enforcement of employees' rights**

An example of social provisions to be annexed to the Open Skies Agreement has been developed in Annex 1.

III. Full liberalisation: How to avoid 'Social Dumping'?

ECA has identified three tools that are essential:

- Ensuring Effective Representation and Enforcement of Employees' Rights
- Determining the Applicable law for individual employment contracts
- Mutual recognition and legal enforcement of Collective Labour Agreements

a. Ensuring Effective Representation and Enforcement of Employees' Rights

If the airlines of a "common aviation area" will be able to operate without obstacles within the new market, ECA believes that some measures should be put in place to ensure that all employees of that company can negotiate collective agreements with the central management and that the agreements concluded are enforceable in all

states. Furthermore, these agreements should not undermine the basic social laws of the states in which the airline operates.

To attain this objective, the agreements completely liberalising the market should contain a Social Chapter that addresses these questions. ECA believes that in order to guarantee the rights of the aviation employees in the “Common Aviation Area” the following provisions should be added to the “Social Chapter”:

b. Applicable law to individual employment contracts

Article 8 of the regulation 593/2008 is a key element for the functioning of the Internal Market and provides, in its article 8,¹ the rules to be applied to individual employment contracts. This article is a “minimum safety net” that ensures that employees working in, or from, one place (“base” in aviation terms) have the same basic social rights.

Regulation 593/2008 should be part of the list of regulations to be applied by our partners in “Common Aviation Areas”. In the case of “Open Aviation Areas”, a similar provision to article 8 should be integrated in the body of the Agreements.

c. The Mutual recognition and legal enforcement of Collective Labour Agreements

This is a key element for both the pilots and the airlines. Guaranteeing the enforceability of the CLA allows cockpit crew to work in stable, transparent and reliable conditions, avoiding any competition among them that could affect their behaviour and therefore safety. Furthermore it is important for employees to have access to effective representation.

A fair working environment brings a better quality of work that is highly beneficial to the airline. The stability of the relationship between employers and employees also allows for efficient human resource management.

¹ Article 8 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 :

1. An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.

2. To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.

3. Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.

4. Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply.

IV. Example of existing Social National declaration and possible way forward: particular regard to Canada

According to the Canada web site, the Canadian government has committed to promote the ILO standards in the context of liberalisation. Here is a quote of Canada's Government's web:

“The Government of Canada has taken an international leadership role in addressing the social, and particularly, the labour dimensions of globalization. This leadership is integral to the Government's overall foreign policy direction to support human rights and democratic governance. Promoting fundamental labour rights internationally directly supports equitable growth and social stability in developing countries, and contributes to reducing the growing global divide between rich and poor.

The Labour Program addresses the social and labour dimensions of globalization by:

- 1. Representing Canada in international forums;*
- 2. Negotiating and implementing innovative international labour agreements in the context of multilateral and bilateral trade initiatives;*
- 3. Implementing capacity-building programs to promote improved domestic labour affairs governance in developing countries;*
- 4. Promoting respect for internationally-recognized core labour standards at home and abroad; and*
- 5. Managing partnerships and consultations with stakeholders”*

<http://www.hrsdc.gc.ca/en/lp/ila/index.shtml>

The Canadian commitment is concurrent to the EU's declared objective in the Lisbon Agenda to preserve and enhance European Social models and to include social concerns in all the policies from the Union.

In this framework, the Canadian Government has a policy to promote the “ILO Declaration on Fundamental Principles and Rights at Work of 1998”.

This policy has led Canada to conclude different Memorandums of Understanding on Labour Cooperation in the context of free trade agreements (with Chile, Costa Rica, Peru, Brazil and NAFTA). Singapore and Korea will follow.

The importance of this is that one of the 4 issues contained on the ILO declaration is the “freedom of association and effective recognition of the right to collective bargaining.” The protections contained in the ILO declaration should also apply to the employees of the new “Open Aviation Area” when working in one country for a Company established in the territory of the other party.

As it is difficult to build up this protection now, ECA believes that the most realistic solution would be the adoption of an agreement on labour cooperation that would be able to guarantee that mobile staff employed in the common aviation area established between the EU and Canada can exercise their fundamental rights to “effective recognition and to the right to collective bargaining.”

The ILO defines this right as the workers' and employers' right to form and join groups for the promotion and defence of their occupational interests. The ILO says that to realise the principle of association and collective bargaining it is necessary to provide for:

- Legal basis guaranteeing that these rights are enforced
- An enabling institutional framework between employer' and employees' organisations

That is basically what ECA is asking the Commission to deliver now: that we set a framework allowing EU and Canada to take actions in order to guarantee the fundamental social rights and notably the right to effective representation and collective bargaining, for employers and employees operating in the common aviation area created by the EU and Canada.

We attach below an example of a possible draft text to be incorporated as Annex to an "Open Aviation" type Agreement such as the one we are negotiating with Canada:

ANNEX

Example of a labour cooperation agreement to be annexed to an 'Open Aviation Areas' type agreements.

Article 1. Objectives

The objectives of the Parties shall be to:

- a) promote better understanding of each Party's labour systems related to mobile aviation employees, sound labour policies and practices and improve the capacities and capabilities of the Parties, including non-government sectors;
- b) provide a forum to discuss and exchange views on labour issues of interest or concern related to mobile aviation workers with a view to reaching consensus on those issues amongst the involved Parties;
- c) ensure or promote the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations;
- d) promote better understanding and observance of the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)², notably the freedom of association and effective recognition of the right to collective bargaining;
- e) support the commitments made by the Parties in this annex, with a view to improving the working conditions and quality of work life amongst employees in their respective countries;
- f) improve the development and management of human capital for enhanced employability, business excellence, and greater productivity for the benefit of both the workers and enterprise; and
- g) facilitate co-operation and dialogue in order to strengthen the broader relationship between the Parties.

² See Attachment 1 (ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998))

Article 2. Commitments

- a) Parties that are members of the ILO reaffirm their obligations as such;
- b) The Parties affirm their commitment to the principles of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), notably the right to freedom of association and effective recognition of the right to collective bargaining;
- c) With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements³;
- d) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests⁴;
- e) The Parties respect their sovereign rights to set their own policies and national priorities and to set, administer and enforce their own labour laws and regulations;
- f) The Parties recognise that it is inappropriate to set or use their labour laws, regulations, policies and practices for trade protectionist purposes.
- g) The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labour laws;
- h) Each Party shall implement domestically the agreed specific cooperative actions.

³ European Social Charter. Art. 6 (enforceable only for European Member States)

⁴ Convention for the Protection of Human Rights and Fundamental Freedoms

Article 3. Cooperation

- a) Taking account of their national priorities and available resources, the Parties agree to cooperate on labour matters affecting mobile staff in civil aviation. The Parties shall jointly decide specific labour cooperative activities.
- b) Each Party should, as appropriate, invite the participation of its unions and employers and/or other persons and organisations of their countries in identifying potential areas for cooperation and in undertaking cooperative activities.
- c) Cooperative activities should include but not be limited to the following areas:
 - i. Establishing an institutional framework for aviation employers' and mobile aviation employees' organisations to of airlines operating both in Canada and in the EU to negotiate agreements in full respect of the social law of the parties.
 - ii. Establishment of legal basis to ensure compliance and enforcement systems for collective agreements concluded between aviation employers and mobile staff in civil aviation of companies operating both in Canada and in the EU; management of labour disputes concerning companies operating both in Canada and in the EU;
 - iii. Labour consultation; labour/management co-operation in companies operating both in Canada and the EU;
 - iv. Determination of the law applicable to individual contracts of mobile workers in civil aviation operating in the territory of the parties
 - v. Social security; and occupational safety and health for mobile staff of companies operating both in Canada and in the EU; and
 - vi. Pension and insurance rights.
- d) Cooperative activities may be implemented through a variety of means, such as the exchange of best practice and information, joint projects, studies, exchanges, visits, workshops and dialogue as the Parties may agree, including in relation to international labour forums and matters.
 - i. The funding of cooperative activities shall be decided by the Parties on a case-by-case basis.

Article 4. Institutional Arrangements

- a) Each Party shall designate a national contact point for labour matters to facilitate communication between the Parties.
- b) The Parties, including the representatives of its unions and employers organisations, shall meet within the first year of the signing of this MOU, unless otherwise agreed, and then as mutually agreed, to:
 - i. establish an agreed work programme of cooperative activities;
 - ii. oversee and evaluate cooperative activities;
 - iii. serve as a channel for dialogue on matters of mutual interest;
 - iv. review the operation and outcomes of this MOU; and
 - v. provide a forum to discuss and exchange views on labour issues of interest or concern with a view to reaching consensus on those issues amongst the involved Parties.
- c) Each Party may consult with members of its public or specific domestic non-government sectors over matters relating to the operation of the labour component by whatever means that Party considers appropriate.
- d) The Parties may exchange information and coordinate activities between meetings using email, video conferencing or other means of communication.

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