



EU-Gulf Negotiating Mandate – ECA Recommendations

The European Cockpit Association (ECA), representing over 38,000 pilots from national pilot associations in 37 European States, promotes a safe, competitive and socially responsible aviation sector, generating growth, connectivity and providing quality employment in Europe.

General remarks

In December 2015, the Commission submitted a proposal for a Council Decision on a mandate to open negotiations on comprehensive air transport agreements between the EU and the six Member States of the Gulf Cooperation Council (GCC).

Given the particular concerns about state involvement in the Gulf countries' aviation sector and its impact on fair competition, clear conditions to guarantee a level playing field need to be set upstream in the mandate. This includes that comprehensive chapters on financial transparency, fair competition, and social standards must be an integral part of the agreement. In particular, provisions allowing social matters / disputes to be raised and swiftly solved must be laid down in any agreement, and in particular with countries that do not apply ILO core conventions, such as the Gulf States¹.

Essential requirements for the negotiations

The mandate given to the Commission should make the conclusion of the agreements conditional to the full achievement of regulatory cooperation and convergence by the Parties. In fact, regulatory convergence must be the main driver of such negotiations, meaning that only if and when such convergence is demonstrated to be achieved, the market opening opportunities granted by the agreements (3rd and 4th freedoms) should take effect. It is important that this principle of 'strict parallelism' between regulatory convergence and market opening is specifically spelled out in the mandate.

ECA therefore also cautions against an 'open mandate' regarding 'phased implementation', 'provisional application', and 'transitional periods' that may be granted to provide flexibility to the Parties.

To achieve fair competition, several essential conditions must be included in the mandate and be reflected in the final agreements:

- a) **Safety.** Each party commits to achieve and observe highest standards of aviation safety – comparable to those reached in the European Union.
- b) **Social standards.** To ensure high levels of protection in the labor and social domain and to make sure that the opportunities created by the agreements do not weaken domestic social legislation and standards, and their enforcement, the Parties shall agree on a robust and effective-in-reality social clause.

¹ The Gulf States - with the exception of Qatar - are not signatories of the ILO Core Conventions (i.e. ILO C29 (Forced Labour), C87 (Freedom of Association), C98 (Right to Organize), C100 (Equal Remuneration), C105 (Abolition of Forced Labour), C111 (Discrimination), C138 (Minimum Age) and C182 (Child Labour)).

Such a clause must have a more explicit language than the one contained, for instance, in Art. 17bis of the EU-US agreement, in order to prevent that the clause can be circumvented. Crucially, it must include a practicable and effective enforcement mechanism to allow not only the Parties, but also any Employee Organization or Employer Organization, to formally raise concerns and to have access to arbitration. For this, the agreements need to clearly define the procedures that allow a Party or an Employee or Employer Organisation to ensure compliance with the clause. In addition, the agreements should require compliance with internationally agreed labour standards and agreements, in particular with the ILO Core Conventions.

- c) **Fair competition**. It is paramount that the Parties accept and agree to the basic competition rules of an open and liberalised market. To ensure a level playing field for all market operators, the EU template clause on Fair Competition shall be included in all agreements.
- d) **Ownership & Control**. Further liberalisation of air carriers' Ownership & Control must not be considered during these negotiations, not even on the basis of reciprocity. This precaution is necessary due to the ownership structures in the Gulf countries, and the real risk of state money being used (directly or indirectly) to invest into EU carriers. Hence, in a "first generation" agreement – like the ones to be negotiated – Ownership & Control liberalisation should be excluded (whilst it might be covered in a future 2nd generation agreement, when the 1st generation agreement has proven to be effective).
- e) **Transparency**. The financial transparency of all (legal) entities involved in air transport is a precondition to guarantee a level playing field. Provisions requiring disclosure to the Parties' relevant Authorities of the accounts of these entities shall be included in the agreements and made mandatory.
- f) **Stakeholder participation**. The mandate needs to specify that the Joint Committee is to be open to stakeholder representatives, in particular from Employee and Employer Organizations concerned by the agreements.
- g) **Remedies / Safeguard procedures**. In the event either Party does not comply with its obligations under the agreement, the other Party shall be allowed to enforce effective safeguards measures, such as suspension of traffic rights.
- h) **'Sun-rise' clause**. To reflect the principle of 'strict parallelism' the agreements should include a 'sun-rise' clause that conditions the taking effect of market opening opportunities to the completion of regulatory convergence – in particular in the areas listed above.
- i) **Review clause**. To allow the EU to promptly adjust to changes that may occur in the industry during the negotiations, a review clause should be added to the mandate, allowing EU Member States to reshape the mandate, if needed.

Conclusion

In the event the Commission is granted a mandate to start negotiations, it is paramount that the level of ambition set by the EU is and remains the highest possible all along the negotiating process and, crucially, that the above listed conditions are reflected both in the negotiating mandate and in the final agreements.

03/03/2016