



ECA
Piloting Safety

Updated ECA comments on the ICAO/ATRP proposal for a Multilateral Air Services Agreement

In this new and more advanced stage ECA would like to reiterate its previous concerns¹ about this atypical process and clarify its position based on progress made by WG1 and WG2 in Dubai (8-11 June 2015). ECA would like to highlight the following points:

- a) **Original mandate not followed:** notwithstanding some proposals made at the meeting, Working papers 2 – 7 prepared by the ICAO Secretariat and circulated after the meeting in Dubai do not contain any provisions on social, fair competition or regulatory convergence, thereby ignoring the mandate “*to ensure respect for the highest levels of safety and security and the principle of fair and equal opportunity for all States and their stakeholders.*”
- b) **The process lacks transparency and continues to be deliberately rushed:** the proposals are being developed within 2 small working groups. The amount of pressure that a small group of countries seems to be exerting on the Parties is unjustified and not helpful in achieving a mature outcome. There is in fact no valid reason to rush the process and even if there was one this should be clearly explained and legitimized by those who are leading the process.
- c) **The approach taken so far is tendentious:** the proposed agreement is presented as ‘harmless’, as it is of a voluntary nature. In reality, the risk that the agreement would quickly become the rule is very high due to its potential ‘snowball effect’. Ratification procedures are very unclear at the moment and the whole system seems to be designed to put pressure on the Parties. In fact, if a State does not want to sign in, it will run the risk of being isolated within its own Region and given the increasing pressure it may eventually decide to join despite its existing and fully justified concerns.
- d) **The proposals lack impact assessment:** there has been no analysis on the impact of such a Treaty. Member States should carefully assess the impacts of this Agreement for their air carriers, their aviation sector and related economic activities, for employment, as well as for the development of this strategic industry in their country (e.g. can they rely on their products to be exported or crucial components to be imported if air transport is in the hands of third country carriers?).
- e) **The proposals are short-sighted:** the draft Multilateral Agreement and Protocols only focus on liberalisation and de-regularisation² with no parallel reflection or

¹ ECA comments on the Draft Multilateral Air Services Agreement (April 2015):

https://www.eurocockpit.be/sites/default/files/eca_comments_new_multilateralasa_pp_15_0410_f.pdf

² See the covering note to the draft Multilateral Agreement drafted by the rapporteur of WG1: “the drafting approach is focused on reducing the economic regulatory burden on airlines, to look to reduce Government

analysis of key issues, such as regulatory convergence, labour protection, environment, fair competition, etc. These topics cannot be separated or left to be dealt with at a later stage. Negotiations should be comprehensive and ‘nothing should be agreed until everything is agreed.’ A text on liberalisation cannot be accepted until all issues are properly addressed and solved.

Moreover the proposed liberalisation is based on the simplistic replacement of the traditional concepts of Ownership and Control with the Principal Place of Business. This opens a number of important questions that need to be addressed, especially since the rapporteur has not even provided a definition of Principal Place of Business to support his proposal.

Given these circumstances, the **major risk** being run is putting aviation in the same situation as the maritime industry in the 1950’s and create the conditions for the development of FLAGS OF CONVENIENCE and SOCIAL DUMPING.

Conclusions:

If this worldwide Multilateral Agreement were to be signed and ratified it would overnight change hundreds of air services bilateral agreements that have been (or are being) subject to long and thorough negotiations and assessments. It would be the end of the Aviation Industry as we know it today. **ECA believes that such a radical change deserves more time and reflection** and should in no way be rushed by any Parties and/or interests. **Therefore, ECAC Member States should request more time to conduct proper analysis and provide reasoned and informed inputs to the proposed texts.**

As already stated in our previous submission (April 2015), we believe that any new economic regulation in ICAO should include recognition of the EU and the EU aviation market as a single entity. EU Member States should seriously consider the impact of the draft Multilateral ASA on the EU’s external aviation policy, and its detrimental effects on EU’s efforts to promote European safety standards and regulatory convergence through controlled and carefully evaluated opening of the market.

It is imperative that the Multilateral Agreement contains comprehensive provisions on **four fundamental regulatory issues**, notably:

1. Effective-in-reality Labour Clause (see annex 1).
2. Proper Fair Competition provisions;
3. Effective Principle Place of Business and Ownership and Control provisions, incl. clear definitions;
4. Environmental safeguards.

It is extremely important to bear in mind that **the proposed draft agreement will not only have economic repercussions on the aviation sector but will also and particularly impact safety**. Aviation safety could be heavily undermined unless Ownership & Control rules are maintained and the Principal Place of Business is clearly defined in order to tie aviation activities/operations to the actual place of establishment, thereby effectively allocating responsibilities including and especially related to liability and oversight.

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involvement in commercial decisions and operations, and to minimise the use of regulation in the Agreement’s text, except for a few important regulatory obligations on safety, security and the application of laws”.

ANNEX I

ECA proposal for a Labour Clause

(Reservation: ECA proposed language for an article on Labour is only valid if Ownership & Control provisions are maintained, Principle Place of Business is clearly defined and regulatory convergence on safety/security, fair competition, etc. is properly addressed).

Article xx Labour Protections

1. To foster the development of a sound and viable civil aviation system, in line with the United Nations commitments to respect all internationally recognized human rights and fundamental freedoms, including those defined in the core ILO conventions³.
2. The Parties recognize the importance of ensuring that liberalisation does not come at the expense of airline workers. The opportunities created by the Agreement shall not be used to undermine labour standards or the labour-related rights and principles contained in any signatory State's respective laws or practices.
3. If any Employee Organization or Employer Organization of the airlines workers affected, or signatory State believes paragraph (1) or (2) has been breached, they shall have access to arbitration of the unresolved aspects of the case using the process specified in Article xx.
4. Parties shall implement their Social and Labour responsibilities under their own rules and under the ILO core Conventions in such a way as to ensure that aircraft that fly the flag of any third State do not receive more favourable treatment than aircraft that fly the flag of that of any State that has ratified the Core ILO Conventions. Mechanisms that may be used by a Party to enable compliance with this Article may include:
 - i. Complaint procedures available to employee organisation;
 - ii. Supervision of conditions on aircraft entering a party's territory;
 - iii. Flag states' jurisdiction and control over their aircraft;
 - iv. Airport state, Employer or Employee Organisation inspections of aircraft operating under this agreement to verify compliance prior to operation

³ The ILO Core conventions are C29 (Forced Labour), C87 (Freedom of Association), C98 (Right to Organise), C100 (Equal Remuneration), C105 (Abolition of Forced Labour), C111 (Discrimination), C138 (Minimum Age) and C182 (Child Labour)