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EurECCA Position Paper

Preventing fake home bases through recognition of operational bases

Our position

EurECCA calls for a binding EU definition of Operational Base, supported by disclosure obligations and coordinated enforcement. Recognising where an airline conducts regular, stable and continuous operations would help authorities verify whether its crew members' declared home bases correspond to their actual professional activity.

A home base assigned on paper must not be used to disconnect cabin crew from the employment protections associated with their real place of work. Artificial base designations create a risk of social dumping, weaken legal certainty and place compliant airlines at a competitive disadvantage.

Home Base and Operational Base serve different, complementary purposes. Home Base concerns the individual crew member. By contrast, an Operational Base relates primarily to the organisation and activities of the air carrier. It may be described as for example an aircraft or an aerodrome from which an airline conducts regular, stable and continuous air transport operations using the necessary technical, material and human resources. EU legislation should connect these two factual realities while preserving the distinct rules governing safety, employment contracts, jurisdiction and social security.

Home base already requires a factual connection

Under Annex III to Regulation (EU) No 965/2012, ORO.FTL.200 requires an operator to assign a home base to each crew member. ORO.FTL.105(14) defines Home Base as follows: [1]

“‘home base’ means the location, assigned by the operator to the crew member, from where the crew member normally starts and ends a duty period or a series of duty periods and where, under normal circumstances, the operator is not responsible for the accommodation of the crew member concerned;”

The definition requires a connection with the normal start and end of a duty period or a series of duty periods, together with the accommodation criterion. Assignment by the operator does not, by itself, make an arbitrary location a genuine home base.

The weakness lies in allowing a declared designation to escape effective verification. EurECCA seeks stronger enforcement of the existing definition alongside legal recognition of the airline's operational presence. The proposal would give authorities an additional means of identifying discrepancies before workers are forced to challenge them individually.

Operational base makes the airline presence visible

An airline can hold an Air Operator Certificate in one Member State while maintaining stable operations and staff at aerodromes in others. Recognising those operational bases would make this territorial organisation easier to identify and inspect. It would also help establish where individual crew members actually carry out, organise and begin and end their work.

An illustrative fake home base arrangement

Consider Airline A, which holds a Polish Air Operator Certificate and maintains stable activities in Italy, Portugal and Germany. To seek the advantages it associates with Polish employment rules, it designates Kraków as the home base for all its crew and includes clauses choosing Polish law in their employment contracts.

Its actual workforce includes Italian crew living in Italy, Portuguese crew living in Portugal and German crew living in Germany. Their normal work pattern is as follows.

Crew group	Normal duty start and end	Stable airline activity
Italian crew living in Italy	Rome	Rome
Portuguese crew living in Portugal	Lisbon	Lisbon
German crew living in Germany	Frankfurt	Frankfurt

These crew members never, or only rarely, report to Kraków. In the scenario described, Kraków is a nominal designation that does not reflect their normal professional activity. Rome, Lisbon and Frankfurt are the locations that should be examined for genuine home-base assignment. Occasional positioning or visits to Kraków would not by themselves establish the required normal duty pattern.

This is a hypothetical illustration of the mechanism, not a finding against a particular airline or a claim that Polish law is inherently less protective. Nationality and residence provide context; they do not, by themselves, determine the law applicable to an employment contract.

A contractual choice cannot remove mandatory protection

Article 8 of Regulation (EC) No 593/2008, the Rome I Regulation, allows a contractual choice of law but protects employees against losing the non-derogable provisions of the law otherwise applicable. In the absence of choice, its primary connection is the country in which, or from which, the employee habitually works. Subsidiary rules and the closer-connection exception must also be considered. [2]

The Polish AOC and the selection of Polish law therefore do not establish that Polish employment rules govern every aspect of these crews' protection. On the stated facts, Rome, Lisbon and Frankfurt provide strong evidence of habitual place of work in the respective countries. The final legal assessment must address each employment relationship.

Complementary concepts within distinct legal frameworks

In *Nogueira and Others*, the Court of Justice treated home base as a significant indicator when identifying where aircrew habitually work for employment jurisdiction. It nevertheless required assessment of the actual circumstances and rejected automatic equivalence between home base and habitual place of work. That judgment concerns jurisdiction; it is not an automatic rule selecting the law of the employment contract. [3]

Social security has its own connecting rule. Article 11(5) of Regulation (EC) No 883/2004 links flight and cabin crew activity to the Member State where the home base is located. Verification of the genuine home base is therefore particularly important, but social security affiliation must not be confused with the determination of applicable employment law. [4]

EurECCA proposes Operational Base as an additional factual and enforcement concept. Its recognition should strengthen identification of the real employment connection without replacing Rome I, the rules on jurisdiction or the social security coordination framework. Safety compliance also remains distinct from compliance with social legislation.

EurECCA proposed definition

“An Operational Base is defined as the exercise of a regular, stable and continuous air transport activity using technical, material and human resources, including the use of employees whose actual centre of professional activity is at the aerodrome concerned (the centre of an employee’s professional activity is the place where he/she usually works or where he/she starts and ends his/her service).”

This definition links the airline’s activity to observable resources and the actual centre of employees’ work. The assessment should consider the continuity of operations, staff deployment, reporting points, duty records and the resources used at the aerodrome, including resources supplied through contractors. A destination served by occasional flights should not become an operational base solely because aircraft land there.

Legislative action requested by EurECCA

1 Recognise operational bases in EU aviation legislation. Introduce a binding definition in the EU air services framework, including through amendment of Regulation (EC) No 1008/2008, with the legal instruments necessary to ensure coherence with employment and social security rules. Each operational base should be identifiable irrespective of where the airline holds its AOC.

2 Require transparent declarations backed by records. Require airlines to declare their operational bases to competent authorities and keep accurate records of crew home bases, duty reporting locations and changes. Where declared home bases differ from the actual organisation of work, operators should provide an evidence-based explanation.

Enforcement and protection of cabin crew

3 Verify home bases against actual duty patterns. Authorities should compare crew rosters and reporting records with the declared location. An enduring pattern of duties beginning and ending at another operational base should trigger verification and, where justified, correction. Temporary assignments and genuine rotations should be assessed on their facts.

4 Give operational bases clear evidential weight. EU measures should make stable operational activity and an employee’s actual centre of work explicit evidence for identifying the habitual place of work. EurECCA supports a rebuttable evidential presumption where these coincide. This proposal must preserve the assessment required by Article 8 of Rome I, including its closer-connection exception; an operational base should not mechanically determine every employee’s applicable law.

5 Coordinate inspections and cross-border follow-up. Labour inspectorates, social security institutions and aviation authorities should exchange relevant information within their respective competences. The European Labour Authority should support cooperation within its mandate. EurECCA calls for the competence and resources needed for effective aviation enforcement, including cases involving employment agencies and subcontracting.

6 Provide accessible remedies without retaliation. Cabin crew and their representatives should be able to challenge an artificial base designation, obtain relevant employment records and seek correction through effective procedures. Proven infringements should lead to proportionate and dissuasive sanctions and appropriate remedies for affected workers. Verification should avoid unjustified interruptions in social security coverage.

The outcome EurECCA seeks

European aviation needs enforceable connections between declared bases, stable airline operations and the actual work of cabin crew. Recognising Operational Base would make those connections visible and support the enforcement of rights already protected by EU law. EurECCA calls on the European Commission, Parliament and Council to establish this framework and ensure that artificial home-base designations cannot be used to evade applicable worker protection.

Key legal references

[1] Regulation (EU) No 965/2012, Annex III, ORO.FTL.105(14) and ORO.FTL.200. EASA Easy Access Rules for Air Operations.

[2] Regulation (EC) No 593/2008 on the law applicable to contractual obligations, Article 8.

[3] CJEU, Joined Cases C-168/16 and C-169/16, Nogueira and Others, 14 September 2017, ECLI:EU:C:2017:688, particularly paragraphs 63–75.

[4] Regulation (EC) No 883/2004, Article 11(5) and recital 18b, introduced by Regulation (EU) No 465/2012.

Legislative framework for the proposal: Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community.

**EurECCA represents, protects and develops the rights
and needs of all cabin crew all over Europe.**

FLYING TOGETHER – _PROTECTING EACH OTHER

About EurECCA: established in Brussels in 2014, the European Cabin Crew Association, EurECCA, represents, protects and develops the rights and needs of cabin crew all over Europe. It is composed of cabin crew unions from European Union Member States as well as accession and bordering states and represents some 50,000 cabin crew in Europe. EurECCA has no political connections. EurECCA's work is around Cabin Crew working conditions, wages, social protection and health and safety at work.

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HOME BASE + OPERATIONAL BASE

Two concepts. One reality.



HOME BASE

Crew-related

Assigned to the crew member
Where duties normally start and end



OPERATIONAL BASE

Airline-related

Stable, continuous airline activity
Real technical, material and human resources

EurECCA proposal



Match the crew's real workplace
with the airline's real operations.

Make fake home bases easier to identify.

FAKE HOME BASE

Declared in Kraków. Working elsewhere.



Crew rarely or never report to Kraków.

The declared base must reflect the reality of work.

Hypothetical example • Choosing a law does not remove mandatory worker protections.