



Central Arbitration Committee

Decision

Decision

Updated 25 September 2026

Applies to England, Scotland and Wales

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Case Number: EWC/0048 (2025)

17 September 2026

CENTRAL ARBITRATION COMMITTEE

THE TRANSNATIONAL INFORMATION AND CONSULTATION OF
EMPLOYEES REGULATIONS 1999 AS AMENDED

DECISION ON A COMPLAINT UNDER REGULATION 21 OF THE
REGULATIONS

The Parties:

easyJet European Works Council

and

easyJet plc

1. Introduction

1) On 23 December 2025 the easyJet European Works Council (“the EWC”) submitted an application to the Central Arbitration Committee (“the CAC”) under regulation 21 of the Transnational Information and Consultation of Employees Regulations 1999 (as amended) (“TICER”). The application related to the decision by easyJet plc (“easyJet”) to open a new easyJet base at Marrakesh Menara Airport in Morocco (“the RAK Base”).

2) Regulation 21 provides that where a European Works Council has been established before exit day by virtue of regulation 18, a complaint may be presented to the CAC by an EWC where it considers that, because of the failure of central management, regulation 18A has not been complied with, or the information which has been provided by the management under regulation 18A is false or incomplete in a material particular. The complaint must be brought within a period of six months beginning with the date of the alleged failure or non-compliance. Where the CAC finds the complaint well-founded it must make a decision to that effect and may make an order requiring management to take such steps as are necessary to comply with the relevant provisions of TICER, including (a) the steps which management

is required to take; (b) the date of the failure; and (c) the period within which the order must be complied with.

3) In accordance with section 263 of the Trade Union and Labour Relations (Consolidation) Act 1992, the CAC Chair established a Panel to deal with the case. The Panel consisted of Mr Stuart Robertson, Panel Chair, and, as Members, Mr Alastair Kelly and Ms Claire Sullivan. The Panel has been supported by Ms Kate Norgate as Case Manager.

2. The application

4) In the application the EWC contended that, because of easyJet's central management's failure to inform and consult the EWC about the opening of the RAK Base, the terms of the Subsidiary Requirements contained in the Schedule to TICER under which the EWC operated, specifically paragraphs 7 (as to annual information and consultation meetings) and/or 8 (as to exceptional information and consultation meetings) and paragraph 9 (relating to procedural matters) and the provisions of regulation 18A (as to information and consultation generally) had not been complied with. The EWC maintained that the very substantial investment involved in opening the RAK Base was a transnational matter which concerned easyJet as a whole or at least two of its establishments or group undertakings situated in at least two Relevant States and this engaged the EWC's competence to be consulted under paragraphs 7 and/or 8 of the Subsidiary Requirements.

3. The employer's response

5) In its response to the application, submitted by Lewis Silkin solicitors on its behalf on 2 January 2026, easyJet accepted that it did not inform and consult the EWC about the establishment of the RAK Base at either a paragraph 7 annual meeting or a paragraph 8 exceptional meeting. It maintained, however, that neither paragraph 7 nor paragraph 8 of the Subsidiary Requirements imposed any such obligation on it, and rejected the EWC's assertion that it had failed to comply with regulation 18A and paragraph 9 of the Subsidiary Requirements, asserting that it was under no obligation to inform and consult with the EWC in any particular manner. EasyJet's primary position was that its plans relating to the RAK Base did not fall within the competence of the EWC under paragraph 6(1) of the Subsidiary Requirements as they were not transnational matters concerning the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Relevant States.

4. The hearing

6) The Panel held a hearing in London to determine the application on 18 August 2026. At the hearing Mr Philip Sack, Director, EWC Legal Advisers, represented the EWC and Mr Andrew Burns, King's Counsel, easyJet. They called evidence, respectively, from Mr Nick Charnley, Chair of the EWC, and Mr Gary Butler, easyJet's Head of Industrial Relations. The parties provided ahead of the hearing agreed Bundles of Evidence, Correspondence and Authorities, together with written submissions, for all of which the Panel was grateful. Mr Sack and Mr Burns KC supplemented their written submissions with oral submissions at the hearing. The Panel has carefully considered in reaching its decision all of the material supplied by the parties to which it was directed.

5. Application for postponement

7) At the beginning of the hearing Mr Sack applied on behalf of the EWC for the postponement and re-listing of the hearing. He contended that the EWC was not on an equal footing at the hearing following easyJet's decision to instruct Mr Burns KC. Mr Sack said that he had not known of Mr Burns KC's involvement until he received details of the attendees two weeks before the hearing and had not known that easyJet intended to instruct senior counsel. He had had no time to instruct equivalent counsel and to agree costs with easyJet^[footnote 1]. In consequence, he said, the EWC was disadvantaged and not on an equal footing.

8) Mr Burns KC opposed the application. He observed that Mr Sack had long and deep specialist experience in the field of EWCs and had been involved in many of the hearings before the CAC on the subject. Mr Sack and the EWC had known from the outset that Mr Hopper, partner in Lewis Silkin, was representing easyJet in the matter. Mr Hopper was almost as experienced in the field as Mr Sack, who knew, therefore, that easyJet would have the benefit of experienced legal representation, and had had ample time to arrange whatever representation he and the EWC wanted. There was not, therefore, in his submission, the disparity of representation that at first sight might appear and there was no inequality of arms.

9) The Panel refused the application for postponement. The question for the Panel was whether it was in the interests of justice to postpone the hearing. The Panel's responsibility was to ensure there was a fair hearing of the application and in this case, the issue was the unequal footing asserted by Mr Sack. The Panel did not accept that the parties were on an unequal

footing. The Panel noted Mr Sack's over 25 years' experience in the specialist field. Whilst he was not professionally qualified, the Panel knew him to be probably the most experienced representative in the area of EWCs. The Panel noted that he had already prepared detailed written submissions for the hearing and had regard to the relatively informal procedure at CAC hearings and its responsibility to ensure a fair hearing. Given these factors, and whilst recognising Mr Burns KC's seniority, the Panel did not consider that his involvement created an inequality of arms with Mr Sack. The Panel noted also that the EWC had known from the outset that easyJet was legally advised (by Mr Hopper) and had been free to appoint whatever representative it wished for the hearing. In all these circumstances, the Panel considered that a postponement was not in the interests of justice and the hearing would continue.

6. The relevant legal principles

10) In order to provide some context for the findings which follow, the Panel sets out at this stage the material legislative provisions which it must apply in considering the application. These are found in TICER, which transposes into UK law the terms of European Directive 94/45/EC (as recast as Directive 2009/38/EC).

11) In broad terms, European Works Councils provide a means whereby larger employers operating multinationally across the European Economic Area must inform and consult their workforces on transnational issues concerning them. Following the United Kingdom's exit from the European Union, regulation 2(4A) explains what matters are transnational:

“(4A) In ... regulation 18A, matters are transnational where they concern—

(a) the Community-scale undertaking or Community-scale group of undertakings as a whole, or

(b) at least two undertakings or establishments of the Community-scale undertaking or Community-scale group of undertakings situated in two different Relevant States.”

12) “Relevant States” are defined as states within the European Economic Area (“the EEA”), and the United Kingdom. It is accepted that Morocco, the location of the RAK Base, is not a Relevant State.

13) In accordance with regulation 18 of TICER, easyJet operates its EWC, which was established before Exit Day, under the Subsidiary Requirements set out in the Schedule to TICER. The Subsidiary Requirements apply to EWCs where the parties have not established a binding negotiated agreement for the operation of the EWC and set out a default framework

under which an employer engages in informing and consulting of employees on transnational matters.

14) Regulation 18 of TICER provides as follows:

“18. The provisions of the Schedule continue to apply on and after exit day in any case where they applied before exit day.”

15) Regulation 18A, headed “Information and consultation” then provides, as far as relevant:

18A.— (1) This regulation applies where—

(b) a European Works Council has been established [before exit day] by virtue of regulation 18.

(2) The central management, or any more appropriate level of management, shall give information to—

(a) members of a European Works Council; or

in accordance with paragraph (3).

(3) The content of the information, the time when, and manner in which it is given, must be such as to enable the recipients to—

(a) acquaint themselves with and examine its subject matter;

(b) undertake a detailed assessment of its possible impact; and

(c) where appropriate, prepare for consultation.

(4) The central management, or any more appropriate level of management, shall consult with—

(a) members of a European Works Council; or

in accordance with paragraph (5).

(5) The content of the consultation, the time when, and manner in which it takes place, must be such as to enable a European Works Council to express an opinion on the basis of the information provided to them.

(7) The information provided to the members of a European Works Council and the consultation of the members of a European Works Council ... shall be limited to transnational matters.

16. The Schedule to TICER, containing the Subsidiary Requirements, then states, as far as is relevant, as follows:

“SCHEDULE

SUBSIDIARY REQUIREMENTS

Establishment of European Works Council

1. A European Works Council shall be established in the Community-scale undertaking or Community-scale group of undertakings in accordance with the provisions in this Schedule.

Competence of the European Works Council

6.— (1) The competence of the European Works Council shall be limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different [Relevant States].

Information and consultation meetings

7.— (1) Subject to paragraph 8, the European Works Council shall have the right to meet with the central management once a year in an information and consultation meeting, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects.

(2) The central management shall inform the local managements accordingly.

(3) The information provided to the European Works Council shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales of the Community-scale undertaking or Community-scale group of undertakings.

(4) The information and consultation meeting shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts of such undertakings or establishments, and collective redundancies.

Exceptional information and consultation meetings

8.— (1) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed. It shall have

the right to meet in an exceptional information and consultation meeting, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted

...

(3) The exceptional information and consultation meeting referred to in subparagraph (1) of this paragraph shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of management of the Community-scale undertaking or Community-scale group of undertakings, on which an opinion may be delivered at the end of the meeting or within a reasonable time.

(4) The exceptional information and consultation meeting referred to in subparagraph (1) of this paragraph shall not affect the prerogatives of the central management.”

17) Paragraph 9 of the Subsidiary Requirements provides for the procedures for the operation of EWCs. It is unnecessary to set out its terms here.

18) It will be seen that regulation 18A (7) and paragraph 6(1) of the Subsidiary Requirements (the wording is slightly but not materially different) limit information and consultation under TICER to transnational matters (as defined in regulation 2(4A)). If matters are not transnational as defined, there is no obligation to inform or consult the EWC about them, whatever their content or significance. Further, the obligation to inform and consult an EWC on transnational matters is confined to (1) a meeting once a year under paragraph 7 for the purposes set out there and (2) providing information and, if requested by the EWC, holding an information and consultation meeting, where there are exceptional circumstances affecting the employees’ interests to a considerable extent. There is no obligation to inform or consult beyond these requirements.

19) In *Olsten (UK) Holdings Limited v Adecco European Works Council* [2024] ICR 1, the Court of Appeal considered the meaning of transnational matters under TICER, in the context of construing the terms of an agreement setting up a European Works Council which was accepted to be aligned with the terms of TICER and the underlying Directive. Simler LJ (as she then was), giving the lead judgment, said this:

“59. In this context a “matter” must include a decision, proposal or policy at a formative or sufficiently early stage for information and consultation about it to have utility. Although at one point Mr O’Dair sought to argue that it extended also to concluded decisions, he ultimately accepted that could not be so.

1. “Concerns” is a broad linking verb. It means relates to or affects. In other words, there must be some kind of nexus, relationship or link between two matters, or in the way that a single matter affects undertakings in each of two states. Consistently with recital (16), a matter’s potential effects are also relevant when considering whether it is transnational. The transnational character of a matter is determined objectively, unaffected by the subjective views of either party. This is a question of substance not form. If in fact, and as a matter of substance, proposals to make redundancies in two countries are linked, no matter how or when they are presented, they should be regarded as a transnational matter triggering the relevant obligations.

61. It is clear therefore that the scope of the Agreement (like the Directive and the 1999 Regulations) is limited and applies only where there is a transnational matter in play, as defined by clause II. To engage the main information and consultation obligations under the Agreement, collective redundancy proposals affecting undertakings in two countries must therefore have a common link or nexus of some kind or there must be some way in which each proposal affects or has potential effects on undertakings in each of two different countries. If that link or nexus is not present, the matter is not transnational for these purposes.

....

67. The EAT reasoned that it is “inherently likely” that collective redundancies in one member state will have “indirect or knock-on effects” on employees in another member state. I disagree. If as a matter of substance and fact they do, that would make the proposal a “transnational matter”, but if they do not, and only have national effects, they are not a “transnational matter”, and the question of inherent likelihood does not arise. Nor is there any difficulty or inconsistency between this interpretation and the definition of local matters in clause II.1. Clause II.1 simply draws the distinction between transnational matters and those which only have effects in a single country, consistently with the limited scope of the obligations under the Agreement. The staffing level of a single country is a national matter while staffing levels across two countries is potentially a transnational matter.

20) The key principles to be derived from Olsten are that:

(a) a “matter” must include a decision, proposal or policy at a formative or sufficiently early stage for information and consultation about it to have utility;

(b) the transnational character of a matter is determined objectively, irrespective of the subjective views of the parties, and is a question of substance not form. If in fact, and as a matter of substance, proposals in two countries are linked, no matter how or when they are presented, they

should be regarded as a transnational matter triggering the relevant obligations;

(c) potential effects are relevant; and

(d) if as a matter of substance and fact proposals have indirect or knock-on effects on employees in another member state, that would make the proposals a “transnational matter”, but if they do not, and only have national effects, they are not a “transnational matter”, and the question of “inherent likelihood” does not arise.

21) Whilst accepting that it is not binding in UK law, Mr Burns KC also draws the attention of the Panel to the clarification provided in Recital (6) to Directive 2025/2450 amending the 2009 Directive, as to the meaning of “transnational matters”, which he says provides useful guidance on the meaning of the term:

“Evidence shows that legal uncertainty regarding the concept of transnational matters has led to differences in interpretation and disputes. In order to improve legal certainty and reduce the risk of such disputes, it is necessary to clarify the concept of transnational matters. To that end, it is appropriate to clarify that Directive 2009/38/EC not only covers cases where measures considered by the management of an undertaking or group of undertakings can reasonably be expected to affect workers of that undertaking, of that group, or of any establishment of that undertaking or group, in more than one Member State, but also cases where such measures can reasonably be expected to affect such workers in only one Member State and the consequences of those measures can reasonably be expected to affect such workers in at least one other Member State. Such clarification is necessary in light of cases where an undertaking envisages measures, such as lay-offs, redundancies, the allocation of production activities or the outsourcing of activities, which explicitly target establishments in only one Member State but which can reasonably be expected to have consequences affecting workers of that undertaking, of that group, or of any establishment of that undertaking or group, in another Member State, for instance due to changes in the cross-border supply chain or in production activities. The concept of transnational matters covers measures which could affect employees in a substantial and not in a merely trivial manner and which do not concern only individual employees or ordinary operational decisions. To that end, it should be clarified that the scope of the potential effects of transnational issues on the workforce and the level of management involved are to be taken into account to determine whether a matter falls within the competence of a European Works Council.”

22) In the Panel’s view, two things should be emphasised from this. First, to be transnational, a matter must affect employees in a substantial and not merely trivial manner; second, potential effects are relevant; of course, actual effects may be known at the formative stage, but there may also be potential effects which even if not certain, can reasonably be anticipated at

that formative stage, but whether they occur, if at all, will not be known until after implementation. This, however, will not extend to effects which are wholly subjective or speculative.

7. Factual background

23) easyJet is a UK-headquartered company which operates directly and through subsidiaries the well-known airline of the same name. It has (as at summer 2026) in the region of 10,000 employees, a fleet of about 360 aircraft and 33 operational bases where aircraft are located at airports across the UK, EEA and Switzerland and from which it flies to short-haul destinations across Europe, North Africa and Turkey. Since March 2026 it has had a base at the Marrakesh Manara airport in Morocco (“the RAK Base”) and it is the proposed establishment of this base which gives rise to this application.

24) As already stated, easyJet has a European Works Council which it operates under the Subsidiary Requirements. In February 2025 it held its annual information and consultation meeting with the EWC under paragraph 7 of the Subsidiary Requirements (Evidence Bundle p3). There was no mention of the establishment of a base in Morocco at that meeting but the Panel has no evidence that there was any proposal at that time that was at a stage where an information or consultation process could have taken place about it.

25) On 11 September 2025, easyJet held what Mr Butler, easyJet’s recently appointed *Head of Industrial Relations, who was the main contact between easyJet’s management and the EWC, described as an “information and consultation meeting” with the EWC [Evidence Bundle pp4 and 47 to 49]. In line with easyJet’s practice for several years past, this was the second meeting with the EWC that year, after the annual meeting with it in February 2025. The main purpose of the meeting, as it had been in previous years, was to provide information to the EWC about the following year’s provisional Fleet Plan for the deployment of aircraft to bases and the reasons behind it [Evidence Bundle pp 40 to 48]. This was information which had significance for the recruitment and deployment of assets and crew members across the business. The parties accept that this information about the Fleet Plan was not available at the time of the paragraph 7 annual meeting in February and was therefore provided at a separate meeting in September when the Fleet Plan was sufficiently developed. Mr Butler described this meeting as being held on a voluntary basis, a contention to which the Panel will return. Although the information provided at the meeting was fairly detailed, there was no mention of the proposed establishment of the RAK Base.

26) Mr Sack contends that this September meeting was in reality part of the paragraph 7 annual meeting, and therefore subject to the requirements of paragraph 7 about what should be discussed there. The Panel does not agree. There is no evidence that the meeting was arranged or regarded as part of the annual meeting. Rather, it was a separate and additional meeting, held in September on a voluntary basis to reflect easyJet's business and operational timings and availability of a provisional Fleet Plan for the next year. The entitlement under paragraph 7 is to a meeting once a year, and in this case that was the usual February meeting. There is no entitlement to more than one paragraph 7 meeting.

27) Mr Butler told the Panel, and the Panel accepts, that Morocco had been a significant destination market for easyJet for a number of years. Until March 2026 when the RAK Base commenced operations, easyJet operated flights there from up to eight of its European bases across the Netherlands, France and Italy, but did not base aircraft there.

28) Mr Butler told the Panel that in September 2025, easyJet remained engaged in confidential negotiations with the Morocco National Tourism Office about the proposed base there, and disclosing information to the EWC would have breached confidentiality obligations^[footnote 2]. He said also that the plans were not at a sufficiently developed stage to have been part of meaningful consultation with the EWC at that point had this been required; Mr Sack disputed this, but in the light of its findings and decision, the Panel needs not make any finding about this.

29) On 14 October 2025, easyJet entered into a development partnership with the Morocco National Tourism Office which facilitated the launch of the RAK Base from the summer of 2026. The same day, Mr Butler advised Mr Charnley, the Chair of the UK EWC, about the plans to open the RAK Base. This was the day before easyJet publicly announced the RAK Base [Evidence Bundle pp 50-53].

30) Mr Butler informed Mr Charnley that easyJet intended to assign three aircraft to the RAK Base. Following a short transition and training period, cabin crew would be supplied locally through an employment agency in Morocco called Storm Global, and pilots would be engaged on a self-employed basis. During the transition and training period, up to approximately 100 full-time equivalent employees would be temporarily seconded to the RAK Base from easyJet's bases in the EEA/United Kingdom or Switzerland to operate flights from there. The secondments were required to enable cabin crew and pilots to be recruited locally and to complete a four-to-five-week training period. Mr Butler told the Panel, and the Panel accepts, that the number was equivalent to less than 1% of easyJet's total workforce.

31) Although geographically this was easyJet's first base outside Europe, it was not the first base outside the EEA and United Kingdom, as it already had two bases in Switzerland. It was, however, the first location at which

workers were to be engaged on a non-standard or atypical contractual basis. Unlike in the case of certain competitors, all existing easyJet workers were direct employees of easyJet or its operating subsidiaries. This was an established and communicated policy within easyJet.

32) It was abundantly clear from the evidence before the Panel, and the submissions made on its behalf by Mr Sack, that the EWC was, and remains, for reasons related to protection of employment terms and conditions of service and possible safety implications, severely concerned about easyJet's adoption, for the first time, of non-standard or atypical contractual arrangements. However, the Panel finds no evidence that easyJet had at the time, or communicated anything which might suggest it had, any proposals, actual or prospective, for the use of similar employment structures elsewhere within its business or, in particular, in any of the Relevant States.

33) On 17 October 2025, Mr Charnley requested a Teams meeting to enable the EWC select committee to understand the plans better and set out their concerns and separately he sent a set of questions directed to the EWC's concerns [Evidence Bundle pp 54-55]. The meeting took place on 24 October 2025 when the EWC's concerns and questions were discussed [the notes appear at Evidence Bundle pp 58-61]. Those concerns were around the business decision to open a base in Morocco, the possible effect on workers at bases from where flights had previously operated to Morocco, and the use of atypical employment structures.

34) On 19 November 2025, Mr Charnley asked Mr Butler to explain why easyJet chose not to inform or consult with the EWC in line with the definitions of information and consultation contained in TICER regarding the plan to open the base in Morocco, deploying three aircraft there from summer 2026, either as an extraordinary topic or as part of the September routine consultation meeting which was specifically held to discuss the summer 2026 fleet plan [Evidence Bundle p 63]. Mr Butler replied on 20 November 2025 to say that opening new bases was a common operational activity and was not unusual [Evidence Bundle p 62]. He commented that the new base in Morocco was outside the EEA/EU and it did not impact significantly on the workforce so as to bring it within the remit of the EWC.

35) Having taken advice, Mr Charnley wrote disagreeing with this on 5 December 2025. He contended that even if opening a new base was a normal operational activity, this was the first time a base had been opened outside Europe. He noted that a different, non-employment model was being proposed. He suggested that basing three aircraft at the RAK Base would reduce the number of aircraft deployed elsewhere and three aircraft could become 10 by summer 2027. He contended that decisions outside Europe fell within the EWC's scope if they affected employees in more than one member state or the UK. He said that the EWC should have been consulted at the fleet plan meeting in September 2025 and concluded in terms which the Panel will set out in full:

“We would suggest that the EWC is now informed properly on the decision to open RAK and be given the opportunity to produce an opinion on this which is presented to the appropriate level of management (those making the decision). The alternative would be for us to raise a complaint with the EWC that easyJet have failed to properly inform and consult with the EWC.”

[Evidence Bundle pp 64-65].

36) The Panel has set these words out verbatim as there is an issue whether the EWC requested an information and consultation meeting as paragraph 8 requires it to do. Mr Sack said in oral submissions about these words: “If that is not a request for a meeting, I do not know what it is.” Mr Burns KC asserted that no such meeting had been requested.

37) The Panel has some sympathy with Mr Sack’s contention, but cannot agree with it. Paragraph 8 provides that the EWC has the right to meet, in an exceptional information and consultation meeting, at its request, the central management, so as to be informed and consulted about the proposals. The EWC’s letter of 5 December 2025 did not request an exceptional information and consultation meeting; it did not refer to a meeting at all. The Panel finds that the EWC did not make a request for a meeting in conformance with paragraph 8.

38) Mr Butler’s final communication was on 22 December 2025 [Evidence Bundle pp 66-67], and the Panel quotes it in full:

“I’m coming back to you on your letter regarding your view that we have an obligation to inform and consult with the EWC on the opening of RAK. From your letter, I understand your position is that this should have formed part of the annual EWC meeting which took place on 11 September 2025.

We’ve considered the contents of your letter carefully, and our position remains that the opening of RAK, a non-EU base, using a different employment model are not matters that fall within the scope of the EWC. Therefore, there was no requirement for this to form part of the EWC agenda for the annual meeting in September. We discussed the company’s fleet plan relating to the UK and EU as part of our meeting in September, and have fully complied with our obligations in this regard.

By opening the base in RAK, there is no impact on employees in the EU, EEA or the UK (in the case of our UK EWC under TICER) in the manner that you are suggesting. We are not removing/transferring any aircraft from any EU territory to place into RAK. We have not taken any decision to implement an atypical employment model in any EU territory where we currently operate. The fact RAK is the first base easyJet is establishing outside the EU does not in itself mean that this would be in the EWC’s scope for the purposes of our annual meeting (or at all).

Our EU employees remain and are likely to remain our biggest population so they will continue to enjoy significant employment, promotion and transfer opportunities within the EU territory. Further, easyJet continues to heavily invest in its EU jurisdictions. In the event that any decisions in the future are taken in relation to RAK which impact employees in two or more Member States, we will ensure that we inform and consult the EWC in line with our obligations at the relevant time.

Finally, we dispute that introducing an atypical employment model in RAK would in any way compromise safety and the wellbeing of UK/ EU crew or indeed any crew operating in RAK.

For the above reasons, we will not be providing any further detailed information to the EWC as requested, or seeking an opinion from the EWC on this matter.”

39) Following receipt of this communication, the EWC duly presented its application to the CAC the next day, 23 December 2025.

40) In his evidence to the Panel, Mr Butler sought to clarify the statement in the letter of 22 December 2025 that “We are not removing/transferring any aircraft from any EU territory to place into RAK”. He did so in the admitted context that as Mr Sack observed at paragraph 9 of his submissions, the three aircraft allocated to the RAK Base at opening were in fact existing aircraft in the fleet which had been stationed at bases in the EU. Mr Butler acknowledged this, but stated that the overall number of aircraft at easyJet’s existing bases was always to be unaffected by the establishment of the RAK Base, even though the specific aircraft based at the RAK Base were ones that easyJet already owned. This was because the three aircraft were “incremental” in the sense that they were part of an overall increase of 10 aircraft in the fleet in 2026. Thus, in Mr Butler’s view, easyJet were not removing any aircraft, as the numbers of aircraft at the relevant bases was not reducing, but in the Panel’s view, this could have been more clearly expressed.

41) Mr Butler explained in his evidence, and the Panel accepts, that aircraft frequently operationally transfer between bases, as Mr Sack accepts at paragraph 11 of his submissions, and indeed only one of the three aircraft assigned to the RAK Base is still there, having been replaced during 2026 by other aircraft. He also provided a spreadsheet [Evidence Bundle p78) showing that except for one location in Paris where the number of aircraft reduced by one for a reason wholly unrelated to the establishment of the RAK Base, the number of aircraft located at the eight European bases from where flights had operated to Morocco had remained the same. Mr Butler asserted that there had been no impact on workers at those locations or on their profitability or financial performance as a result of the RAK Base; instead of flying to Morocco, crew based at those locations had simply flown as usual but to other destinations, which was in line with easyJet’s flying rosters generally, which frequently changed.

42) Mr Sack took the Panel to a spreadsheet (Evidence Bundle p76, a document prepared by the EWC) which set out a comparison of the number of flights between Europe and Morocco operated from the eight European bases and from the RAK Base in the years 2025 and 2026. In 2025 no flights had operated from the RAK Base as it was not open and 1,710 flights had operated to RAK from the European bases. In 2026, out of (an increased total number of) 2,194 flights in total, 1,282 flights had operated (or were scheduled to operate) from the bases in Europe and 912 from the RAK Base. This was a reduction of 25% in the number of flights from the European bases to Morocco.

43) Mr Butler accepted that in 2026, some flights from European bases to RAK had been “reversed”, that is that they were operated from RAK by RAK-based crew to the relevant European destinations rather than the other way round. He said that this was for operational reasons linked to the timings of flights and the freeing up of space at some airports (such as Naples) where there was limited capacity to add flights to other destinations. However, he said, the “lost” flights had been replaced by flights to other destinations from those bases; he reminded the Panel that there had been no reduction in the number of aircraft based at the locations; they just flew to different places.

44) Mr Charnley told the Panel that a concern of the EWC was that RAK-based crews might operate flights from bases within the EEA. He suggested that this had happened and that authorities in France and the Netherlands had challenged it because the crews did not have the required work permits, and that easyJet had responded that work permits were not needed as the staff were based at RAK.

45) Mr Butler told the Panel, however, and the Panel accepts, that RAK-based crew had flown on flights from European bases only as part of their initial on the job training period; Mr Charnley was not in a position to dispute this. He said that there had not been, and there was not now, any intention to operate other flights from European bases using RAK-based crews.

46) As to secondment, Mr Butler said that only 44 pilots, and no cabin crew, had been seconded to Morocco, fewer than the up to 100 full-time equivalents in the proposals. He said that the secondees were all volunteers from various bases where there was surplus capacity and the secondments would be for up to six months. He reminded the Panel that the initial estimate of up to 100 secondees was fewer than 1% of easyJet’s workforce. He accepted that crew members and pilots might have to cover for seconded employees by flying to different destinations but this kind of cover was part of normal operational patterns and resilience plans and no secondments had taken place from location unless there was excess capacity.

47) As will be apparent, the Panel heard evidence and submissions based on what had happened in practice following the opening of the RAK Base.

The Panel reminds itself that whilst this evidence may be relevant to what effects existed or could reasonably have been anticipated at the time of the proposals for the RAK Base in early autumn 2025, the question for the Panel is what the effects and potential effects were at the time it is alleged information and consultation under paragraphs 7 and 8 should have taken place, and the Panel must be cautious about placing too much reliance on what ultimately ensued.

Submissions, discussion and conclusions

Introduction

48) As the Panel has already observed, regulation 18A(7) of TICER and paragraph 6(1) of the Subsidiary Requirements provide that the obligation to inform and consult an EWC under TICER arises only if the matter in question is transnational. Regulation 2(4A) defines “transnational”:

“(4A) In ... regulation 18A, matters are transnational where they concern—

(a) the Community-scale undertaking or Community-scale group of undertakings as a whole, or

(b) at least two undertakings or establishments of the Community-scale undertaking or Community-scale group of undertakings situated in two different Relevant States.”

49) If a matter is not transnational, there is no obligation under TICER to inform and consult about it. A fundamental question for the Panel, therefore, is whether the proposed establishment was transnational.

Was the opening of the RAK Base “transnational”

Introduction

50) The Panel begins with a preliminary observation relating to this issue.

51) Mr Sack and Mr Burns KC agree that the location of the RAK base outside of the Relevant States does not by itself mean that the opening of the base is not a transnational matter.

52) As the Panel has explained, under regulation 18A(7) and paragraph 6 of the Subsidiary Requirements, the EWC’s competence is limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Relevant States. As held in *Olsten*, the transnational character of a matter is to be determined objectively, and is a question of substance not form. If in fact, and as a matter of substance, proposals outside a Relevant State (in this case, Morocco) are linked, either directly or by way of indirect

or knock-on effects on employees within the employer's (in this case, easyJet's) undertaking as a whole across the EEA and the United Kingdom, or in two or more Relevant States, they should be regarded as a transnational matter, and potential effects are relevant; but if they are not so linked, and only have national effects, they are not a "transnational matter", and no question of "inherent likelihood" arises.

Was the opening of the RAK Base "transnational"

The EWC's submissions

53) In his submissions, Mr Sack begins by noting that investment occurring outside the Relevant States, such as a company's customer service function previously situated in two Relevant States being consolidated into a single operation in a third country, could well have consequences for the employees in those States (eg redundancy). Similarly, the relocation of work or assets or employees from two or more Relevant States to a third country could have consequences for the employees in those Relevant States and more broadly for the company's financial situation.

54) Mr Sack notes that routes between easyJet bases in more than two Relevant States (specifically, the Netherlands, Italy and France) and Marrakesh have been reversed as a result of opening the RAK base. Mr Sack submits that this means that the profits from those routes, which were formerly allocated to bases in the Relevant States, will be taken away from those bases and allocated to the RAK base. This can be expected to reduce the profitability of those bases in the Relevant States. He accepts that if a route is taken away from a base, a replacement route could be started up, but there is no guarantee of this, the base could be downsized. If the route taken away from the base was one of the more profitable ones, it will have a correspondingly greater impact on the profitability of the base. He says that in the case of Bordeaux, the RAK route was its most profitable.

55) Mr Sack says that the EWC's particular concern was the financial impact on the easyJet bases in the Netherlands, Italy and France from reversing the routes to Marrakesh, since that would probably have implications for employment at those bases. He says that the opening of the RAK base and the reversing of routes "concerns" (relates to or affects) the bases in three Relevant States, and the EWC should have been informed and consulted about this financial impact.

56) Mr Sack observes that aircraft formerly based at two or more easyJet bases in different Relevant States have been relocated to Marrakesh. EasyJet's contention that no aircraft would be relocated to the RAK Base from its existing bases in any Relevant States was not correct. Mr Sack says that through the Fleet Plan, management allocates a specific number of aircraft to each of its bases, then recruits and employs people (mainly pilots and cabin crew) at each base in accordance with the Fleet Plan. This, Mr Sack says, has implications for employees at those sites.

57) Firstly, he says, fewer jobs will be created or retained within the Relevant States than would be the case if the aircraft had been based in the EEA/UK, as had always been the case in easyJet previously. This will reduce opportunities for employment for pilots and cabin crew in the Relevant States.

58) Secondly, because of the way the promotion system works within easyJet, many pilots choose to transfer temporarily to a different base to obtain promotion and then become “commuters” while they wait for an opening to appear in their previous home base. Moving aircraft out of the EEA/UK and employing new operating crew on atypical contracts will reduce the number of transfer and promotion opportunities for existing easyJet pilots. This is true whether the aircraft based at RAK are new aircraft or existing aircraft transferred from another easyJet base. The opening of the RAK base and the transfer of aircraft to that base from three Relevant States “concerns” (relates to or affects) those bases. The EWC should have been informed and consulted about this.

59) Mr Sack submits that the opening of the RAK base concerned easyJet as a whole because it was an important part of the progress of the business and its prospects. In addition to the specific impacts on the EEA/UK bases and the easyJet employees based at them, the investment in the RAK base was part of “the progress of the business of [easyJet] and its prospects”.

60) Mr Sack submits that the opening of the new RAK base concerned other undertakings or establishments of easyJet in two or more Relevant States. The aircraft to be based at Marrakesh were initially to be operated by EEA-based pilots and cabin crew from two or more Relevant States on a secondment arrangement until sufficient workers based in Morocco were contracted and it was possible that seconded employees would continue to be needed to cover for dips in crew availability due to sickness or other issues, as is the case in other small bases around the network. He says that pilot and cabin crew training was being delivered by EU-based training instructors in easyJet’s training centre in Milan, Italy, and the relevant pilot licences and cabin crew attestations were being issued by the Austrian Aviation Authority, governed by EU regulations. Administrative work to service the aircraft would be carried out by employees in the Integrated Control Centre and the Maintenance Operations Centre in the UK. The aircraft were owned by easyJet Airline Company Limited, a UK company, and would be EU-registered aircraft flying under an Airline Operating Certificate issued by the Austrian Aviation Authority.

Was the opening of the RAK Base “transnational”

easyJet’s submissions

61) Mr Burns KC says that easyJet accepts that the new RAK Base would have been a transnational matter if the proposal had involved a potentially significant impact on employees in Relevant States. However, the

establishment of the RAK Base was a purely national expansion of easyJet's operations in Morocco and the alleged adverse impacts on employees in Relevant States were all illusory. In short, no effects were proposed and none occurred.

62) Mr Burns KC observes that the EWC has served an analysis (Evidence Bundle p77) showing that the RAK Base now covers routes that used to be flown from eight airports in France, Italy and the Netherlands. This is accepted and obviously correct. However, it does not show that there have been any changes affecting working methods, employees or levels of business at any of those airports. It does not mean that any effects (considerable or otherwise) have been experienced by those employees.

63) Mr Burns KC says that Mr Butler, easyJet's Head of Industrial Relations and its main point of contact with the EWC, has confirmed that the aircraft assigned to the RAK Base were incremental aircraft and that additional "cabin crew would be supplied locally through an employment agency in Morocco, with pilots engaged on a self-employed basis". This supports easyJet's assertion that the impact of the RAK base would be on national-level recruitment in Morocco. Mr Burns KC accepts that Mr Butler told the EWC that no aircraft would be transferred or removed from the UK or any country in the EU or the EEA to the RAK Base but by that he meant (as set out at paragraph 9 of his witness statement) that the overall number of aircraft at the existing bases would be unaffected by the establishment of the RAK Base, even though the specific aircraft based at the RAK Base were ones that easyJet already owned, and there would be no change to the employment model of employees in those countries. Mr Butler confirmed at paragraph 11 of his witness statement that "the proposal for the establishment of the RAK Base was not expected to affect either our employment levels or employees' terms and conditions in any of [the UK and countries in the EU or the EEA". The evidence is that the RAK Base would not affect employees in any Relevant State – particularly not to a "considerable extent".

64) Mr Burns KC observes that the opening of bases is a normal operational matter for easyJet (Butler witness statement, paragraph 12). Employees are also rostered on different routes on a monthly basis. The RAK Base started operations on 29 March 2026 and "has not affected employment levels or terms and conditions in any other country. The EWC might have feared or speculated that we had such proposals, but we did not" (Butler witness statement, paragraph 13).

65) Mr Burns KC contends that the EWC has not served any evidence indicating any effect, adverse or otherwise, considerable or ordinary, on employees in any Relevant State.

66) Mr Burns KC submits that whilst the EWC argues that the RAK Base opening was a transnational matter, it has provided no grounds whatsoever for suggesting that it amounted to "exceptional circumstances affecting

employees' interests to a considerable extent". It does not say that it ever requested an exceptional information and consultation meeting.

67) Mr Burns KC submits that is a tacit admission by the EWC that the RAK Base opening had no actual or potential adverse effects on employees' interests. Employees (if affected at all) were only affected to a trivial extent and certainly not to a 'considerable extent' which would have given the EWC grounds to request an exceptional information and consultation meeting.

68) This is because, he says, that as Mr Butler explained to the EWC at the time and has explained in more detail in his witness statement, none of the employees at the bases listed in the EWC's analysis would have noticed any significant difference to their working conditions, patterns, terms or arrangements.

69) Mr Burns KC says that employees based at Amsterdam, Bordeaux, Paris, Lyon, Milan, Naples, Nice or Nantes who might in 2025 have been rostered to do an occasional trip to Marrakech will in 2026 have flown to another short-haul destination instead. Those employees' rosters change monthly and indeed can be altered at fairly short notice as required. For them, 2026 has been a 'business as usual' year with no changes to work or working patterns, no change to the type of rosters or job availability, no redundancies or relocations, and no down-sizing at any of those locations. The opening of the RAK Base just means that they have all been busy flying on other routes. It has not been an 'exceptional' event at all for them and has not affected them at all – or only trivially. The RAK Base opening was purely an expansion of the easyJet business in Morocco which has allowed employees at the airports listed to work in the same way on other routes. Flight slots are constrained at airports such as Nantes and Naples, and so flights being based from Marrakech freed up slots at those airports for other routes. There have been none of the reductions, downsizing or any other change at all that the EWC speculated about in its complaint.

70) Mr Burns KC submits that as there were no effects in a Relevant State, the establishment of the RAK Base was not a transnational matter as interpreted in *Olsten*. There must be some kind of link between two matters in two Relevant States (or in the way that a single matter affects undertakings or establishments in each of two Relevant States). The issue is to be objectively determined "as a matter of substance" to see if a proposal is transnational or not.

71) In the same way that a large employee reduction in one state is not inherently transnational, the opening of a new base of employment in one state is not inherently transnational, especially when it is not even situated in a Relevant State. The EWC's speculation or scaremongering is not evidence – it requires "substance and fact". The evidence shows that no significant effects were planned or experienced.

Was the opening of the RAK Base “transnational”

Conclusions

72) As already indicated, the issue for the Panel to decide is whether the establishment of the RAK Base was a transnational matter so as to engage easyJet’s obligations under TICER at all.

73) The Panel set out the key legal considerations at paragraphs 18 to 20 of this decision. The transnational character of a matter is to be determined objectively, and is a question of substance not form. If in fact, and as a matter of substance, proposals in two countries are linked, no matter how or when they are presented, they should be regarded as a transnational matter triggering the relevant obligations; potential effects are relevant; and if as a matter of substance and fact proposals have indirect or knock-on effects on employees in another member state, the proposals will be a “transnational matter”, but if they do not, and only have national effects, they are not a “transnational matter”. Further, the Panel adopts the Recital 6 interpretation of TICER referenced by Mr Burns KC: the concept of transnational matters covers measures which could affect employees in a substantial and not in a merely trivial manner and which do not concern only individual employees or ordinary operational decisions.

74) The Panel has concluded that the establishment of the RAK Base was not a transnational matter, which means that there was no obligation on easyJet to inform and consult the EWC about it under TICER. The Panel’s reasons are as follows.

(a) The Panel has considered the issue on the basis of the actual or potential effects which could reasonably have been anticipated at the time any obligation to inform or consult arose, that it in September or October 2025 (the difference is immaterial);

(b) Objectively determined, the proposals concerned only the undertaking in Morocco (the RAK base). Morocco is not a Relevant State for the purposes of TICER.

(c) The proposals involved the use, for the first time, by easyJet of atypical employment structures for pilots and cabin crew. Without expressing any view of its own about the desirability (or the commercial reasons) for such structures, the Panel understands why the EWC was concerned about their introduction. But the proposed use of them concerned only workers based at RAK, and whatever the EWC’s suspicions, there is no evidence of any proposals for actual or potential extension of the structures into easyJet’s undertakings in the EEA or the United Kingdom or any likelihood that as a result of their use at the RAK Base, they would be used elsewhere.

(d) Viewed objectively and as a matter of substance, the proposals for establishment of the RAK Base were not intended to have, and did not

have, any significant impact or effects on employees in two or more Relevant States.

(e) First, only three aircraft were involved, less than 1% of easyJet's fleet. In the Panel's view, this was not a significant relocation of resources and the EWC could have no reasonable expectation that employees at existing bases would be affected to a significant degree by such a small exercise. As Mr Butler commented in evidence, the establishment of new bases was commonplace and the EWC had not raised issues in the past, for example when a base was established at Newcastle.

(f) Mr Butler informed the EWC that reversing routes into current bases allowed new destinations to be run from those bases, for example making Egypt a year-round destination from Amsterdam. The EWC could have no reasonable expectation that as a potential effect of the establishment, the position of employees at the sites from which the routes had previously been flown would be affected to a significant degree. Employees there would simply fly to different destinations, and this is exactly what happened. Whilst Mr Butler could have expressed himself better about the possible transfer or removal of aircraft, it was true that no aircraft were to be removed as the establishment was part of an increase in fleet (and the Panel has accepted that in fact there was no reduction of number of aircraft in any of the bases where routes were reversed).

(g) There was not, and there was not intended to be, any significant change in activities at any bases in Relevant States, including the eight bases from which flights had operated to Marrakesh, by the establishment of the RAK Base. The Panel has accepted Mr Butler's evidence about the operational business reasons for the reversal of routes and notes that the number of aircraft at each of the eight locations was not affected by the establishment of RAK. The Panel accepts Mr Burns KC's submission that put simply, employees at the bases stopped flying to Marrakesh and instead, flew to other locations. Changes in the locations to which pilots and cabin crew flew was part of the normal day to day rostering of crew. Any impact on promotion prospects caused by the opening of the RAK Base would be trivial, if any; in any event, there was no reduction in the number of bases in Relevant States as a result of the establishment of the RAK Base.

(h) As part of the proposals, up to 100 employees (in fact, the number was considerably fewer) were to be invited to be seconded to operate flights from RAK. This was a temporary arrangement for up to six months whilst local workers were recruited and trained in Morocco. Volunteers were sought from locations only where there was spare capacity. Even at the maximum number envisaged, the secondees would amount to less than 1% of easyJet's workforce. This was not, given its size and anticipated duration, a significant relocation of employees.

75) For these reasons, the Panel concludes that the establishment of the RAK Base was not a transnational matter. There was therefore no obligation

on easyJet under TICER to inform and consult the EWC about it, and the EWC's complaint that there was a failure to comply with TICER is not upheld.

Paragraph 7 of the Subsidiary Requirements

Introduction

76) The Panel's decision that the establishment of the RAK Base was not a transnational matter strictly renders otiose the remaining issues in this case, namely if it was transnational, was there an obligation upon easyJet to inform and consult the EWC within either or both of paragraphs 7 or 8 of the Subsidiary Requirements. However, in the interests of completeness, the Panel has considered these issues.

77) The Panel begins its analysis with what Mr Burns KC describes in his written submissions as Complaints 1 and 3. These are that easyJet should have informed or consulted the EWC about the establishment of the RAK Base at an annual meeting or meetings under paragraph 7 of the Subsidiary Requirements.

78) The Panel set out at paragraph 16 above what paragraph 7 of the Subsidiary Requirements requires as to information and consultation. The core entitlement is that under paragraph 7(1), subject to paragraph 8, the EWC has the right to meet with central management once a year in an information and consultation meeting, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects.

79) As the Panel has already stated, easyJet held annual meetings with the EWC, as required by paragraph 7, in February 2025 and February 2026.

Paragraph 7 of the Subsidiary Requirements

The EWC's submissions

80) Mr Sack submits that information and consultation over the opening of the base in Marrakesh, the reversal of routes, the transfer of aircraft and the introduction within easyJet of atypical employment contracts fell within the scope of the topics listed in paragraph 7. He accepts that paragraph 7 provides for a meeting "once a year",

81) Mr Sack says, however, that the EWC has always accepted that consultation on the next year's Fleet Plan could not take place at the annual meeting in February each year, so in February 2025 for the 2026 Fleet Plan. That would be too early, as the Fleet Plan would not be sufficiently developed that far in advance. Accordingly, it is not the EWC's case that management should have consulted on the RAK Base opening at the

annual meeting held in February 2025. Mr Sack also accepts that it would have been too late to have consulted on it at the annual meeting held in February 2026, as the Fleet Plan for 2026 had been adopted by then and consultation would have served no purpose. But Mr Sack contends that the opening of the RAK Base should have been included in the meeting on 11 September 2025 which was held specifically to consult on the 2026 Fleet Plan, that is, on the allocation of aircraft to easyJet bases in 2026.

82) Mr Sack notes easyJet's contention that the meeting on 11 September 2025 was held voluntarily, but says that management was obliged to hold the meeting either as a second part of the annual meeting held in February 2025 or as an exceptional meeting within paragraph 8. The Panel will consider paragraph 8 separately below. In the alternative, Mr Sack says, at the very latest, the topic should have been included in the 2026 annual meeting, but management refused to include it.

Paragraph 7 of the Subsidiary Requirements

easyJet's submissions

83) Mr Burns KC says that there was no duty to inform or consult at the September 2025 meeting as that was purely a voluntary, additional meeting. It was not a meeting to which TICER applied, as easyJet's obligations were those under the Subsidiary Requirements alone.

84) Mr Burns KC contends that in any event, the EWC is out of time to complain that easyJet should have informed or consulted it on the RAK Base as part of the annual meeting held on 5 February 2025 under paragraph 7. There is a six-month time limit under regulation 21(1B) of TICER, beginning with the date of the alleged failure or non-compliance. There is no provision for the CAC to extend that time limit.

Paragraph 7 of the Subsidiary Requirements

Conclusions

85) In the Panel's view, the insurmountable difficulty facing Mr Sack in contending that management should have consulted the EWC about the RAK Base under paragraph 7 in September or October 2025 is that paragraph 7 allows only for a meeting once a year. There is no provision within paragraph 7 for a second meeting. EasyJet held its once a year annual meetings with the EWC in February 2025 and February 2026. The meetings in September and October 2025 did not fall within the Subsidiary Requirements and the provisions of TICER did not apply to them.

86) The Panel has rejected on the facts the EWC's contention that the meeting in September 2025 was a second part of the paragraph 7 meeting which had begun in February 2025. The Panel agrees with Mr Butler that the information and consultation in September and October 2025 was

voluntary and outside of the process under TICER which did not impose on easyJet an obligation to hold a further paragraph 7 process at that time.

87) The Panel also finds for completeness that any complaint about failure to inform and consult about the RAK Base in February 2025 is out of time. It was not presented to the CAC within six months beginning with the alleged failure, as required by regulation 21(1B).

88) Further, the Panel finds that the CAC cannot consider any complaint which the EWC seeks to pursue that there was a failure to inform and consult about the RAK Base at the February 2026 annual meeting. The EWC's application was presented to the CAC on 23 December 2025 and the CAC cannot consider as part of it any complaint about events that had not yet happened. In any event, Mr Sack acknowledged that it was too late to have consulted about it at the February 2026 annual meeting, and he was right to have acknowledged this; by February 2026, the decision to open the RAK Base was fully developed and had been announced in October 2025. There was no utility in informing and consulting by that stage.

89) Accordingly, the Panel rejects the EWC's complaint that easyJet failed to inform and consult it within paragraph 7 of the Subsidiary Requirements and that part of this application under regulation 21 of TICER is not upheld for this reason also.

Paragraph 8 of the Subsidiary Requirements

Exceptional Circumstances

Introduction

90) The Panel turns then to whether there were exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, so as to engage the requirement to inform and consult under paragraph 8 of the Subsidiary Requirements.

Paragraph 8 of the Subsidiary Requirements

Exceptional Circumstances

The EWC's submissions

91) Mr Sack submits that the opening of the RAK base fell within paragraph 8 of the Subsidiary Requirements, specifically because:

(a) The reversal of routes between EEA bases and RAK, with its consequent impact on the profitability of those EEA bases and therefore on employment at the bases, formed part of the "prospects" of the business, its "financial situation", "the probable development of the business and of

production and sales”, as well as “the probable trend of employment, investments and substantial changes concerning organisation”. It also constituted a “transfer of production” as understood in the context of an airline and could also be said to constitute a “relocation” (of financial attribution within the group) as provided in paragraph 8.

(b) The transfer of three aircraft from EEA bases to RAK, with its consequent impact on employment at those bases, also forms part of “the probable development of the business, as well as “the probable trend of employment, investments and substantial changes concerning organisation”. It also constitutes a “transfer of production” as understood in the context of an airline. Additionally, the transfer constitutes a “relocation” (of assets) as provided in paragraph 8.

(c) The new base forms an important part of the Fleet Plan, on which the EWC has the right to be informed and consulted.

(d) The transfer of pilots on secondment from EEA bases to RAK constitutes a “relocation” (of employees) as provided in paragraph 8.

(e) This was the first time easyJet had made use of atypical contracts, up to now having employed all crew directly on standard employment contracts. The use of atypical contracts, initially for cabin crew, and later for pilots, constitutes the “introduction of new working methods” and raises concerns about employment terms and conditions and safety issues.

92) Mr Sack contends at paragraph 53 of his submissions that matters in scope of paragraph 7 should in principle also be within scope of paragraph 8 where they affect employees’ interests to a considerable extent but arise between annual meetings such that it would be too late to wait until the next annual meeting to be consulted. He draws to the Panel’s attention that Directive (EU) 2025/2450 of 26 November 2025 amends the 2009 Directive so as to provide that where there are exceptional circumstances or decisions which are reasonably to be expected to affect the employees’ interests to a considerable extent and urgency does not allow for information or consultation to take place at the following scheduled European Works Council meeting, the European Works Council shall have the right to be informed in a timely manner and at its request, to meet central management into be informed and consulted (Authorities Bundle, p280)^[footnote 3].

93) Mr Sack notes that easyJet says that the meeting on 11 September 2025 was held voluntarily, but considers that management was obliged to hold the meeting either as a second part of the annual meeting held in February 2025 (which the Panel has already rejected) or as an exceptional meeting.

94) In any event, Mr Sack submits that the RAK Base opening did involve the relocation of aircraft, routes and seconded employees from easyJet

bases in two or more Relevant States, which is one of the events particularised in paragraph 8. He submits that the financial implications for the EEA bases of the route reversals, combined with the implications for employment of relocating the aircraft, together with the personal implications for seconded employees and the financial implications for employees and the bases where they work from the introduction of much cheaper atypical “employment” contracts, constitute exceptional circumstances affecting the employees’ interests to a considerable extent as provided for in paragraph 8 of the Subsidiary Requirements.

Paragraph 8 of the Subsidiary Requirements

Exceptional Circumstances

easyJet’s Submissions

95) Mr Burns KC notes that on 19 November 2025, the EWC asked why easyJet had not informed and consulted about the RAK Base proposal. easyJet promptly responded on 20 November 2025 that opening new bases was a common operational activity (and so not extraordinary), and the base was outside the EWC’s geographic scope and did not impact significantly on employees in Relevant States to bring it within the remit of the EWC.

96) Mr Burns KC submits that under paragraph 8 of the Subsidiary Requirements, an exceptional information and consultation meeting must be requested by the EWC. The EWC has complained that it was not informed and consulted at the annual meeting in February 2025 and the additional, voluntary meeting in September 2025, but it never requested an exceptional information and consultation meeting or said that there were grounds for one. The Select Committee of the EWC did request one meeting for more information. Such a meeting was then held promptly on 24 October 2025 and is not part of the complaint.

97) Mr Burns KC says that the EWC has provided no grounds whatsoever for suggesting that the establishment of the RAK Base amounted to “exceptional circumstances affecting employees’ interests to a considerable extent”.

98) That, Mr Burns KC says, is a tacit admission by the EWC that the RAK Base opening had no actual or potential adverse effects on employees’ interests. Employees (if affected at all) were only affected to a trivial extent and certainly not to a ‘considerable extent’ which would have given the EWC grounds to request an exceptional information and consultation meeting.

Paragraph 8 of the Subsidiary Requirements

Exceptional Circumstances

Conclusions

99) In paragraph 8 of the Subsidiary Requirements, the list of categories set out in paragraph 8(1) which might amount to exceptional circumstances is not closed or exhaustive – see for example the decision of the CAC in *HP Inc European Works Council v HP Inc* [EWC/24/2019] at paragraph 111. The stated events are examples only. But, if a matter falls within the description of one or more of those events, that does not of itself render it exceptional.

100) In considering whether the opening of the RAK Base amounted to exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the Panel has had regard to three questions.

101) First, were the circumstances “exceptional”? In the Panel's view, the opening of a new base was not in itself exceptional. As Mr Butler observed, easyJet regularly opened new bases as part of the operational management of its activities, and the EWC had not sought to be informed or consulted about such openings, for example as to the new base at Newcastle. Nor was the RAK Base the first base outside the EEA; there were already two bases in Switzerland. Further, the Panel does not accept Mr Sack's submission that paragraph 8 should be taken to include within exceptional circumstances proposals which even if not exceptional in themselves, would fall within the matters about which information and consultation under paragraph 7 would be required but where urgency or the timing of the next annual meeting did not allow consultation to be deferred to that meeting. That would be a distortion of the wording of paragraph 8; and the Panel can assume that the amendment to the Subsidiary Requirements to which Mr Sack refers was made by the 2025 Directive (which the parties accept is not binding in UK law) because the existing Subsidiary Requirements did not permit that interpretation. In any event, the amendment appears still to require there to be “exceptional circumstances or decisions which are reasonably to be expected to affect the employees' interests to a considerable extent.”

102) However, what was exceptional in this case was that this was the first time that easyJet had proposed to engage crews and pilots at the new base on atypical, non-employment contracts. Given what the Panel accepts was the controversial nature of such structures, the Panel finds that the proposed opening for the first time on this basis was, objectively judged, exceptional.

103) Second, did the circumstances affect the employees' interests to a considerable extent? As a preliminary matter arising under the wording of paragraph 8(1), the Panel finds that the arrangements for the secondment of crew and pilots to the RAK Base amounted to a “relocation” in that albeit temporarily, seconded employees moved from one base location to another.

But the Panel also finds that that relocation did not affect the interests of employees to a significant extent so as to engage the responsibility to inform and consult under paragraph 8; the maximum number of employees who might have been seconded (100 full-time equivalents) was less than 1% of easyJet's workforce and the secondment was only anticipated to be for a limited period of six months. Objectively judged, this did not affect the employees' interests to a considerable extent.

104) More generally, the considerations in relation to this issue overlap with the question of transnational effects. The Panel refers to and repeats its conclusions at paragraph 91 of this decision. The Panel considers that for those reasons, the proposals for the establishment of the RAK Base did not as a matter of substance and objective assessment affect employees' interests within two Relevant States or across easyJet's business in the EEA and United Kingdom to a considerable extent so as to trigger the entitlement of the EWC to be informed and consulted under paragraph 8. The opening of the RAK Base affected employees' interests significantly only in Morocco; as the Panel has explained, any effects, elsewhere, actual or potential, were trivial at most.

105) Finally, agreeing in this respect with Mr Burns KC, the Panel has found that the EWC did not request an information and consultation meeting with management, as paragraph 8 requires it to do if it is to be entitled to a meeting. As the Panel has said, the EWC's letter of 5 December 2025 on which Mr Sack relies as constituting a request under regulation 8, whilst asking that the EWC be properly informed, did not request any meeting at all..

106) Accordingly, the Panel rejects the EWC's complaint that easyJet failed to inform and consult it within paragraph 8 of the Subsidiary Requirements and that part of this application under regulation 21 of TICER is also not upheld.

8. Decision

107) For the reasons given above, the Panel's decision is that the EWC's application is not upheld.

Panel

Mr Stuart Robertson, Panel Chair

Mr Alastair Kelly

Ms Claire Sullivan

17 September 2026

1. Under paragraph 9 of the Subsidiary Requirements, the employer is responsible for meeting the EWC's costs.
2. During the hearing, Mr Sack contended that easyJet was not entitled to withhold information from the EWC on this ground, and drew the Panel's attention to regulations 23 and 24 of TICER about the confidentiality obligations of EWC members and withholding of information by central management. As these considerations are not material to the Panel's conclusions, nothing more will be said about them.
3. The Panel notes that the 2025 Directive also amends the 2009 Directive to provide for two information and consultation meetings each year, now called "ordinary meetings" rather than annual meetings.



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