



## EUROPEAN COMMISSION

Brussels, 10.8.2016  
C(2016) 4939 final

*Dear President,*

*The Commission would like to thank the Senát for its Opinion concerning the Communication "An Aviation Strategy for Europe" {COM(2015) 598 final} and the proposal for a Regulation on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 {COM(2015) 613 final}.*

*The Aviation Strategy for Europe is designed to generate growth, foster innovation and enable passengers to profit from safer, cleaner and cheaper flights. The Strategy contributes directly to the Commission's priorities of Jobs and Growth, the Digital Single Market, the Energy Union and the EU as a global actor.*

*The above-mentioned proposal, which forms part of the Aviation Strategy, aims to prepare the aviation safety regulatory framework of the Union for the challenges of the next ten to fifteen years. To this end, the proposal simplifies and renders the regulatory system better fit for purpose. It promotes cooperative safety management processes to identify and mitigate safety risks to civil aviation. Gaps in the regulatory system are closed and consistency improved. The proposal fosters the smooth integration of new technologies into the regulatory framework, thereby encouraging innovation. Last but not least, it provides tools for rendering the aviation safety system more efficient.*

*The Commission welcomes the Senát's support for the aims of the strategy, especially as regards ensuring fair competition, passengers' rights and for the proposal for a new civil aviation safety regulation including unmanned aircraft. It notes the specific concerns expressed in relation to ensuring high environmental and social standards, the transfer of competences to and governance of the European Union Aviation Safety Agency and the use of delegated acts. The Commission also notes the Senát's reservations concerning security in airports. The Commission is pleased to have this opportunity to provide a number of clarifications regarding its proposal in the annex to this letter.*

*The points made in this reply are based on the initial proposal adopted by the Commission which is currently in the legislative process involving both the European Parliament and the Council in which your government is represented.*

*Mr Milan ŠTĚCH  
President of the Senát  
Valdštejnské náměstí 17/4  
CZ – 118 01 PRAGUE 1*

*The Commission hopes that the clarifications provided address the issues raised by the Senát and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Violeta Bulc  
Member of the Commission*

## ANNEX

*The Commission has carefully considered each of the issues raised by the Senát in its Opinion and is pleased to offer the following clarifications.*

### **Point 1 - EU ETS mechanism**

*The EU ETS is considered to be the cornerstone of EU climate policies, as recognised by the European Council's conclusions of October 2014. The EU ETS currently applies to aviation activities within all 28 Member States as well as Iceland, Liechtenstein and Norway and has succeeded in achieving very high compliance rates (over 99.5% of emissions) and emission reductions of around 16 million tonnes every year. The inclusion of domestic aviation activities emissions trading schemes is being implemented in some other countries such as South Korea and China.*

*The EU ETS does not exclude the development of other technological or operational improvements which reduce the environmental impact of aviation. On the contrary, these are mutually supportive: by putting a price on carbon emissions, the EU ETS creates an incentive to invest in other measures to reduce them and technologies that reduce emissions make compliance with the EU ETS less costly. Furthermore, the EU ETS legislation provides for additional incentives to develop technological changes aimed at reducing aviation emissions. For example, the use of sustainable biofuels is favoured by considering those fuels as non-emitting ones (i.e. airlines using them report zero emissions and do not need to surrender allowances) and proceeds from auctions of EU allowances are being used to develop cleaner technologies.*

### **Point 2, c) - Air Traffic Management**

*The Commission agrees that initiatives enhancing a safe, swift and efficient aviation system should be supported and that any transfer of authority from the local to the European level should be fully justified and backed by a thorough impact assessment. Proposals from the Commission have always been developed with this in mind and look at the benefit for the entire network at European level, thus avoiding partial optimisation, which leads to fragmentation and additional costs.*

### **Points 3 and 4 - Social Standards**

*The Commission shares the view that pressure on airlines to reduce operational costs has been significant over recent years. Network carriers have outsourced some of their activities to improve productivity and profitability in the context of restructuring. Against this background, the Commission updated its analysis on employment and working conditions in air transport and airports.<sup>1</sup> The latter confirmed that, since the completion of the aviation internal market in the late 1990s, the sector's direct employment has remained stable despite the market's fast expansion. This is mainly due to rapidly rising productivity and the growing trend of outsourcing which now also extends to core airline activities.*

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<sup>1</sup> See <http://ec.europa.eu/transport/modes/air/studies/doc/2015-10-employment-and-working-conditions-in-air-transport-and-airports.pdf>.

*The EU sectorial social dialogue committee for civil aviation (SSDC) commissioned a report on atypical employment in aviation which highlighted the rising numbers of self-employed, fixed-term and temporary agency workers as well as zero-hour contracts and pay-to-fly schemes. According to that study, these trends may affect fair competition, workers' rights and safety. The Commission's analysis, on the other hand, shows that the level of atypical jobs has remained significantly lower than in other transport sectors and the economy as a whole.*

*Action has been taken by the Commission to tackle social issues in air transport. The Aviation Strategy acknowledges the emergence of new business and employment models and addresses the situation of highly mobile workers who have their home base located outside the territory where the airline is licensed by promoting a clarification of the applicable labour law and on the competent court in charge of disputes.*

*Further Commission horizontal initiatives for 2016 include the Commission's engagement in a debate with EU authorities, social partners, civil society and citizens on the Social Pillar to move towards a deeper and fairer Economic and Monetary Union as well as the establishment of a European Platform to enhance Member States' cooperation in tackling undeclared work.*

*The assessment of the potential impact of working conditions on flight safety is an area that is under careful consideration by the Commission. Within this context, a European Aviation Safety Agency (EASA) Rule-Making Advisory Group made a recommendation in April 2015 on the need for airlines to manage the safety risks that may be introduced by different employment models. This Group continues to focus on implementing the recommendations it has already made, although as of yet no specific rule change initiatives have been proposed by the Commission as a result of its work.*

*The Commission considers that an active and comprehensive social dialogue is essential to address the concerns of both employees and employers.*

### **Point 5 – Fuel surcharges**

*The fuel price that airlines pay to fuel providers at a certain moment is not necessarily tied to the actual (prompt) crude oil or fuel price of the commodity markets. To minimise risks linked to the volatility of fuel prices, airlines usually practice fuel hedging where the fuel price is contracted with fuel supply providers in advance and remains applicable for a certain period of time.*

*Pursuant to Article 22 of Regulation (EC) No 1008/2008<sup>2</sup>, air carriers may freely set their prices. Article 23 of the same Regulation sets rules on price transparency and obliges air carriers to communicate the final price that includes all the price elements that are unavoidable and foreseeable at the time of publication of the ticket, including a fuel surcharge.*

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<sup>2</sup> OJ L 293, 31.10.2008, pp. 3-20.

*Whether the cost of fuel surcharges in the overall price of a flight ticket is displayed in a fair manner can be assessed under the provisions of the Unfair Commercial Practices Directive 2005/29/EC<sup>3</sup>. The directive prohibits traders from providing false or deceiving information on the main characteristics and price of the product if this is likely to influence the consumer to make a purchase decision he would not have made otherwise. Enforcement of the Directive is the responsibility of the national authorities.*

#### **Point 7 – Emergency Oversight Mechanism**

*The proposed emergency oversight mechanism would, in practice, be a measure of last resort. In-depth contacts between the European Aviation Safety Agency (EASA) and the Member State concerned would, therefore, precede any activation of the mechanism. The emergency mechanism would allow industry to continue to operate with the EASA as the competent authority while the underlying safety oversight problems are addressed by the Member State. The mechanism would be limited to the area where the failure occurred and to the time period during which the problem persists. In practice, the EASA would meanwhile be ready to assist the Member State concerned as much as possible in order to allow the discontinuation of the mechanism as soon as the underlying safety oversight deficiencies are resolved.*

*The Emergency Oversight Mechanism neither circumvents the infringement procedure pursuant to Articles 258-260 of the Treaty on the Functioning of the European Union because the Commission could still initiate such a procedure if it considers it appropriate, nor does it circumvent the division of powers between the EU institutions as it is intended as an additional instrument for control and enforcement of EU law, for which the Commission is responsible under the Treaty. The mechanism would provide a possibility to address, in a timely manner, serious and persistent deficiencies of a Member State in fulfilling certification, oversight or enforcement tasks that create an imminent danger to civil aviation. Infringement procedures, which take on average two years, do not necessarily allow for such a timely reaction to preserve safety.*

#### **Point 8 - Use of delegated acts**

*Regarding the Senát's concerns on the use of delegated acts, the Commission has been careful in ensuring that all the essential elements contained in the proposal will be adopted through a legislative procedure and hence in full compliance with the democratic principles underlying the Treaties.*

*Properly used, delegated and implementing powers are an integral tool of better law-making, contributing to simple and up-to-date legislation and its efficient and swift implementation.*

*As regards the present proposal, the Commission has proposed delegated acts to amend or supplement certain non-essential elements. These elements are considered as non-essential because they are subject to regular changes stemming from operational and technological developments which characterise the dynamic aviation sector. For this reason, there is a need to establish technical rules to detail the provisions of the Regulation so that the framework*

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<sup>3</sup> OJ L 149, 11.6.2005, pp. 22-39.

legislation can remain relatively simple and stable, for example as regards the conditions for establishing the type certification basis applicable to a product, while the detailed rules can be regularly updated to reflect the evolution of the aviation sector and operational needs of the industry. These proposed empowerments to adopt delegated acts, in particular for the different aviation domains addressed in Chapter III of the proposal, correspond to existing implementing rules and allow for their maintaining and updating. Industry and other air space users depend on a swift adaptation of these rules for safety and economic reasons. The use of the ordinary legislative procedure is not suitable to this effect. In accordance with the recent Inter-Institutional Agreement on Better law-making and with a view to enhancing transparency and consultation, the Commission is committed to gathering all the necessary expertise prior to the adoption of delegated acts, including through the consultation of experts from Member States.

### **Point 9 - Executive Board**

According to the Common Approach on EU decentralised agencies, the establishment of an Executive Board may be contemplated where this promises more efficiency. As regards the EASA, the Executive Board would be assisting the Management Board and the Executive Director in carrying out their functions. In preparing Management Board decisions, the Executive Board would alleviate the workload of the Management Board and allow it to concentrate on strategic issues. The Executive Board would also assist the Executive Director in implementing decisions of the Management Board. With its small size and specific functions relating to administrative and budgetary matters, the Executive Board would therefore contribute to the efficiency and effectiveness of the EASA's operations. Representatives of Member States to sit on the Executive Board would be selected by the Management Board. This would ensure appropriate and adequate representation of Member States. The neutrality of the Executive Body is not threatened because the Executive Board would not have any decision-making power, except in cases of urgency. Those decisions would be of a preliminary nature and referred to the Management Board at the next opportunity for confirmation. The detailed rules of procedure of the Executive Board would be adopted by the Management Board.

### **Point 10 - Unmanned aircraft**

The Commission welcomes the Sénat's support on EU-wide rules on drones and agrees on the urgent need to unlock the economic potential of this innovative technology, whilst providing adequate protection for citizens to maintain high levels of safety, security and privacy.

### **Point 11 - Aviation security**

After the recent terrorist attacks, the Commission, together with Member State authorities, considered how such attacks could be prevented in the future. The importance of the role of intelligence and law enforcement in thwarting terrorist attacks has been recognised, including the continued need to share information with transport authorities and operators as appropriate, so that risk assessments can be conducted in an effective and efficient manner as well as enabling the adoption of mitigating measures as necessary to potential threats. The

*Commission, together with Members State authorities, also considered that exchanges of experience and best practice on security approaches taken to protect landside areas of airports is a key asset. It has been recognised that different authorities are responsible for the security of landside areas of airports that are open to the public, and that regular local risk assessments are essential for determining proportionate, risk-based means for addressing such threats. The Commission intends to facilitate that exchange and to determine further steps, as appropriate.*