



EUROPEAN COMMISSION

*Brussels, 15.6.2016
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Dear President,

The Commission would like to thank the Bundesrat for its Opinion concerning 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}.

This proposal forms part of the Aviation Strategy for Europe designed to generate growth, foster innovation and let passengers 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 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 makes the regulatory system more proportionate. It promotes cooperative safety management processes to improve the ability to identify safety risks. Gaps in the regulatory system are closed and consistency improved. The proposal fosters the smooth integration of new technologies and market developments 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 general support from the Bundesrat for the aims of the proposal, especially with regard to ensuring high safety and environmental standards, efficiency and competitiveness of European civil aviation. However, the Commission also takes seriously the concerns expressed by the Bundesrat, in particular as regards the proposed extension of the scope of the Regulation, the transfer of competences to the European Union Aviation Safety Agency (EASA) and the use of delegated acts. The Commission is pleased to have this opportunity to provide a number of clarifications in the annex to this letter.

The points made in this reply are based on the initial proposal presented 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 Stanislaw TILLICH
President of the Bundesrat
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The Commission hopes that these clarifications address the issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Violeta Bulc
Member of the Commission*

ANNEX

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

On the capacities of national competent authorities:

The Commission's proposal aims at addressing the challenges that some national authorities face, without targeting a specific Member State, in providing the necessary resources to carry out the required certification and oversight tasks. The Commission's conclusion that such challenges exist within the civil aviation safety system of the Union is based on public consultations, stakeholder consultations and studies.

On Article 2(7):

The Commission has opted for prior approval by the Commission of the Member State exemptions for small aerodromes in order to have a consistent approach for all the opt-out and opt-in provisions provided for under the proposed new Regulation. Such an approach will also help ensure legal certainty for the aerodrome operators and other interested parties. The Commission also took into account that a high number of exemptions have already been granted under the rules of the current Regulation (EC) No 216/2008, which would not be affected by the proposed provision.

On the use of delegated acts to modify annexes:

Two possibilities exist to amend or supplement the annexes to the proposed new Regulation, either on the basis of the ordinary legislative procedure or on the basis of empowering the Commission to adopt delegated acts to do so. Whether the elements contained in Annexes II to IX are essential or not within the meaning of the Treaties does not depend on the title of these annexes, which were already established under the current Regulation (EC) No 216/2008 before delegated acts came into existence, but rather on their content. While the Commission acknowledges that it is the competence of the Union legislator to decide whether, and to what extent, to empower the Commission to adopt delegated acts within the limits of the Treaties, the Commission is of the opinion that those annexes comprise details that are subject to changes related to technological developments or experience gained. Using delegated acts to modify those annexes would allow for the rapid response that is expected from industry and other users. The use of the ordinary legislative procedure seems less suitable to this effect.

On Article 29 – ground handling services:

The Commission shares the point of view of the Bundesrat that the introduction of essential requirements for ground handling services should not lead to a duplication of work. Common requirements should be based on recognised industry standards and practices. The Commission has, however, decided to introduce safety requirements that are directly applicable to ground handling service providers, as mere voluntary initiatives have not led to a significant improvement of the safety situation. The sector still constitutes the fourth biggest accident category of accidents involving aeroplanes operated by an operator established, residing or with a principal place of business in a EU Member State or a European Free

Trade Association (EFTA) state over the last ten years and additional measures are therefore required.

On Article 52:

As regards the proposal to introduce a European pool of inspectors, the Commission would like to clarify that the participation in such a pool by the Member States is intended to be voluntary. This regards the designation of inspectors for the pool as much as the possibility to resort to the mechanism for national certification and oversight tasks.

On Article 53(2):

The transfer of responsibility from one Member State to another Member State is another voluntary tool that the Commission proposes to foster a better use of resources within the EU aviation safety system. No Member State would be obliged to consent to such a transfer.

On Article 55:

Similarly to what has been explained with respect to the capacities of national competent authorities above, it is not the Commission's intention to target a specific Member State by proposing an emergency oversight mechanism. The proposed emergency mechanism would be a measure of last resort, to be used only in cases where the alternative would be to stop the operation concerned completely. The emergency mechanism would allow industry to continue to operate with the EASA as the competent authority while the underlying safety oversight problems are being addressed by the Member State. The mechanism would be limited to the area where the failure occurred and be of temporary nature.

On Article 76:

The Commission would like to stress that Article 76(2) of its proposal does not entail the shifting of Commission competences under Regulation (EC) No 300/2008 to the EASA. Instead, the provision only creates the possibility for the Commission to ask for assistance from the EASA, where the EASA has relevant expertise. Such expertise can be particularly useful where there are interdependencies between safety and security.

As regards the implementation of measures under Article 76(3) without undue delay, it is possible for the EASA to conduct the procedures provided for within a short time frame so as to ensure an expedient response.

On the scope of the proposed Regulation regarding noise:

The Commission agrees with the assessment of the Bundesrat that environmental protection in the vicinity of airports, in particular with regard to noise, should in principle be taken care of by national authorities. The present Commission proposal does not suggest otherwise. As regards emissions and noise, its scope is limited to matters of environmental compatibility of aeronautical products.