

SENATE OF THE REPUBLIC

17TH PARLIAMENTARY TERM

Doc. XVIII
No 105

Resolution of the 8th Standing Committee

(Public works, communications)

(Rapporteur: MARGIOTTA)

approved at the session of 16 February 2016

ON THE

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL ON COMMON RULES IN THE FIELD OF CIVIL AVIATION
AND ESTABLISHING A EUROPEAN UNION AVIATION SAFETY AGENCY,
AND REPEALING REGULATION (EC) NO 216/2008 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL (COM (2015) 613 FINAL)

Pursuant to Article 144(1) and (6) of the Rules of Procedure

Sent to the President's Office on 18 February 2016

TABLE OF CONTENTS

Text of the resolution Page 3
Opinion of the 14th Standing Committee " 9

The Committee,

Having examined, pursuant to Article 144 of the Rules of Procedure, the proposal for a regulation of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council (COM (2015) 613 final), submitted for a reasoned opinion as regards subsidiarity;

Whereas:

The purpose of the proposal is an overall review of the aviation safety system in Europe, in particular of Regulation (EC) No 216/2008 which contains the core legislation, so as to create a regulatory framework that will guarantee passengers increasingly safe and environment-friendly conditions of air transport, enhance the sector's external competitiveness and stimulate production and employment.

To achieve this, the proposal introduces a more flexible approach to safety regulation based on risk and performance (eliminating unnecessary requirements and ensuring a modular regulatory framework), closes existing safety gaps and takes greater account of interdependencies between aviation safety and other technical domains of regulation such as aviation security or environmental protection.

The proposal also addresses the challenges that some national authorities face in finding the necessary resources for certification and oversight activities and sets out a framework for pooling technical resources between the national authorities and the European Union Aviation Safety Agency, including the option of transferring responsibility for implementing Union legislation on a voluntary basis.

Lastly, the proposal helps create an effective regulatory framework within which new business models and emerging technologies, in particular unmanned aircraft, can be safely integrated into the European airspace;

Noting, in particular, that:

Air transport and aeronautical production are, essentially, cross-border activities which can be better regulated at EU level. Indeed, under current Regulations (EC) Nos 1592/2002 of the European Parliament and of the Council of 15 July 2002 and 216/2008 of the European Parliament and of the Council of 20 February 2008, the Union is already responsible for tasks relating to the airworthiness and environmental compatibility of aeronautical products, flight operations, aircrew licensing, aerodromes and air traffic management and air navigation services (ATM/ANS), as well as safety of third country operators.

The proposal under examination expands the existing EU aviation safety framework to some specific areas, namely the safety of ground handling services,

unmanned aircraft and security aspects of aircraft and aviation systems' design, including cybersecurity;

Having examined the Government's report, drawn up pursuant to Article 6(4) and (5) of Law No 234 of 24 December 2012;

Having assessed the information provided by the national authorities responsible for aviation safety, i.e. the National Aviation Safety Agency (ANSV), Italian Air Navigation Services (ENAV S.p.A.) and the National Civil Aviation Authority (ENAC) at the hearing of 10 February 2016;

Having regard to the comments made at the advisory meeting of the 14th Committee;

issues, pursuant to Protocol 2 to the Treaty on the Functioning of the European Union on the application of the principles of subsidiarity and proportionality:

1) a partially negative opinion as regards compliance with the principle of subsidiarity, which appears not to be fully adhered to with respect to some of the regulated activities:

– Firstly, concerning the ground handling and apron management services referred to in Article 32 of the proposal, we acknowledge the need for action at Union level to introduce common safety standards for the providers in order to better prevent accidents linked to these services.

However, in view of the need to introduce more stringent rules at European level it seems contradictory in terms of both safety and operational efficiency that no provision is made for requiring certification of service providers as a precondition for commencing operations, as is currently required under the Italian legislation. Article 32 of the proposal merely provides for 'self-certification' whereby providers declare that they have the capability and means necessary to discharge the responsibilities associated with the services to be provided in compliance with the essential requirements set out in Article 29.

Yet this increases the level of risk, since it would allow operators not subject to any suitability assessment by the competent national authorities (for ground handling services) or airport managers (for apron management services) to access the overall airport system, and it would therefore not be possible to verify their actual capacity ability to provide the relevant services in a satisfactory manner. Under the proposed rules, providers of apron management services (a concept introduced by Article 32 of the proposal for a regulation) would even be exempted from oversight by the airport managers which, under Italian and EU law, are responsible for apron management and for the safety of operations taking place on the aprons they manage.

In this context, the current arrangement in Italy is more likely to meet the objectives of safety and security in the provision of ground handling and apron management services that are pursued by the Commission. As much as there is a need for action at European level, the lack of compulsory certification would not seem to bring any real added value and the subsidiarity principle does not, therefore, appear to be fully adhered to in this respect.

– The Committee supports action at European level to regulate unmanned aircraft, so-called 'drones' (Articles 45-47 of the proposal for a regulation) on the grounds that, although flight operations of this kind are mostly local, the

sector does have a cross-border dimension linked to operational requirements of the aircraft and adoption of common rules for the provision of services. In particular, the proposal gives the European Aviation Safety Agency exclusive competence for regulating all remotely piloted aircraft, by removing the reference to the 150 kg threshold below which, until now, this has been the responsibility of the Member States.

The proposal does, however, pose a serious problem in that, unlike the Italian legislation currently in force, it does not provide for any certificate or permit for pilots of this type of aircraft. This could have an adverse impact on flight safety, especially for low-level operations with drones of less than 25 kg used under visual flight conditions, for which the pilot has a central role in managing operations. This is of particular importance in view of the increasing number of reports of incidents where remotely piloted (unmanned) aircraft have disrupted the operations of manned aircraft, both in Italy and abroad.

In this respect, too, therefore, the proposal does not seem to fully comply with the principle of subsidiarity even though the subject matter justifies action at European level. Failing to provide for certificates or permits for pilots of unmanned aircraft does not bring any real added value in terms of improved safety compared to the Italian legislation, which sets more stringent eligibility requirements and thus ensures higher safety levels.

– Furthermore the proposal (Articles 53-55) allows a Member State to transfer all or part of its duties to the European Aviation Safety Agency or to another Member State if it is not itself in a position to conduct those tasks or comply with the requirements of the Regulation. It also enables the Commission to impose a transfer of authority (‘emergency oversight mechanism’, Article 55) where a Member State has essentially failed to fulfil its obligations arising from the common rules and does not remedy the shortcomings as and when required by the Commission.

In this context the principle of subsidiarity appears to be respected and EU action justified; however, there is a risk that if the provisions in question are not made sufficiently precise, their scope could become too broad in certain respects and thus disproportionate to the objectives pursued. First of all, it does not seem to be set out clearly enough under which circumstances a transfer of authority may take place. Moreover, it should be assessed whether there is a need to provide for such responsibility being reclaimed by the national authority in cases where it is duly substantiated that the difficulties leading to the transfer of authority have been addressed, or that the European Agency itself does not perform those tasks correctly.

– Furthermore the principle of subsidiarity appears not to be fully adhered to also because Article 117 of the proposal gives the Commission the power to adopt a large number of delegated acts in various areas. Whereas this makes sense so as not to encumber the Regulation with too many purely operational and technical provisions, it is also true that it is precisely provisions of this kind that will significantly affect aviation structures at European level and in the Member States, which will not, however, be able to comment on those provisions. In future this will therefore lead to a diminished role for national parliaments in terms of their power to adopt opinions on Union ‘draft legislative acts’, conferred on them by Protocols 1 and 2 to the Treaties, given that they have no such powers with respect to ‘draft delegated acts’.

Accordingly, we reiterate what was already stated by the Senate of the Republic in the resolution issued by the 14th Committee on the better regulation institutional package (Doc. XVIII, No 102), which underlined that appropriate mechanisms need to be set up for officially transmitting proposals for delegated acts to national parliaments as well as to the European Parliament and the Council. This would allow the control exercised by national parliaments on their governments' work within the Council to be extended by reference to the rights provided for by Article 290 of the Treaty on the Functioning of the European Union;

2) a favourable opinion as regards compliance with the principle of proportionality, since the proposal is consistent with the objectives it aims to achieve. Indeed, the proposal:

- aims to improve the current regulatory framework for aviation safety. It proposes to replace the current system of rigid rules with a new approach to air safety regulation based on risk and performance, which should benefit the entire aviation sector;

- provides for a modular system that is able to take better account of the differences between businesses of different sizes, leading to less red tape and other advantages for small and medium-sized businesses.

The Committee also takes a favourable view of the substantive elements that are relevant in the context of political dialogue with the Union institutions, making the following points:

- without prejudice to the general comments already made on the need for national parliaments to have their say on proposed Commission delegated acts, we would point out that there is also a need to better define the powers delegated to the Commission in the proposal for a regulation. Moreover, the national authorities (for Italy ENAC and ANSV in particular) should be allowed regular access to the Commission to be able to support the Italian Representation in monitoring the drafting of delegated acts and take action if they are not sufficiently thought out;

- the provisions of Article 55 on the emergency oversight mechanism should be removed or at least redrafted to allow for broad and in-depth consultation with the Member States concerned before the Commission activates the mechanism;

- in Article 32 of the legislative proposal it seems necessary to provide for certification of ground handling and apron management service providers. Alternatively, the airport manager should at least be in charge of the checks on providers prior to giving them access to the airport, since the airport manager is responsible for the safe, regular operation of the airport;

- with regard to Articles 45-47, the proposal should explicitly provide that pilots of unmanned aircraft must hold a certificate or permit, possibly with the exception of drones that are small in size or entail very low levels of risk owing to their technical characteristics and conditions for use;

- we consider it necessary to review Article 54 of the proposal, under which an organisation based in several Member States may ask the European Aviation Safety Agency to act as the authority responsible for certification and oversight, thereby circumventing and thus weakening their own national authority or that of the State where its head office is located. This rule could pave the way for circumvention

practices by such organisations and trigger an improper form of competition between European and national authorities for which we see no justification;

- Article 57 provides that aircraft and other aeronautical products manufactured in non-EU states can be imported only under a bilateral airworthiness agreement between the European Union and the State of manufacture, failing to take account of existing bilateral agreements between individual Member States and other countries (such as the one between Italy and Russia) which to date have been considered acceptable across the Union.

This provision should therefore be supplemented in order to recognise agreements already in force until such time as an equivalent agreement is reached at Union level;

- we take a negative view of the changes to the organisation of the European Aviation Safety Agency set out in Articles 85 *et seq.* of the proposal, since the new structure tends to concentrate strategic policy and decision-making functions in the hands of a small number of Member State representatives and reinforces the Commission's already substantial role within the Agency to the detriment of its balanced functioning;

- the provision in Article 109 for making grants and air navigation charges for ATM/ANS services part of the Agency's additional sources of funding appears inappropriate, both because this could lead to higher costs being charged to the recipients of the services (i.e. airlines) and because the Agency's costs are already covered by contributions from the Commission for its regulatory functions and by fees for certification tasks;

- Article 124, which amends Article 5 of Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 concerning safety investigations, should be supplemented by providing that, in addition to not initiating a safety investigation when certain conditions are met, the competent investigation authority may also decide to close an ongoing safety investigation based on the same assumptions and in cases where the findings would have no added value in terms of effective prevention.

This document is also to be regarded as being addressed to the Italian Government pursuant to Article 7 of Law No 234 of 24 December 2012.

OPINION OF THE 14TH STANDING COMMITTEE
(EUROPEAN UNION POLICIES)

(Rapporteur: Liuzzi)

11 February 2016

The Committee, having examined the document,

Whereas:

The objective of the proposal is to prepare the EU aviation safety regulatory framework for the challenges of the coming years and thus to continue to ensure safe, secure and environment-friendly air transport for passengers and the general public.

The proposal introduces a new approach to safety regulation based on risk and performance, closes certain safety gaps and better takes into account interdependencies between aviation safety and other technical domains of regulation such as aviation security and environmental protection.

The proposal also helps create an effective regulatory framework allowing the integration of new business models and emerging technologies such as unmanned aircraft.

Lastly, the proposal addresses the challenges that some national authorities face in maintaining and financing the necessary resources for certification and oversight activities, setting out a framework for pooling technical resources between the national authorities and the European Union Aviation Safety Agency, including the option of transferring responsibility for implementing Union legislation on a voluntary basis;

Having examined the Government's report, drawn up pursuant to Article 6(4) and (5) of Law No 234 of 24 December 2012;

comments favourably on the proposals, for matters within its area of responsibility, making the following points:

– the legal basis is Article 100(2) of the Treaty on the Functioning of the European Union on adoption of appropriate provisions for sea and air transport. The ordinary legislative procedure will apply, meaning that the European Parliament will participate on an equal footing in the decision-making process and that the Committee of the Regions and the Economic and Social Committee must be consulted;

– with regard to the principle of subsidiarity, we note that air transport and aeronautical production are, to a large extent, activities of a transnational character that

can best be dealt with at Union level. Accordingly, under Regulations (EC) Nos 1592/2002 of the European Parliament and of the Council of 15 July 2002 and 216/2008 of the European Parliament and of the Council of 20 February 2008, the European Union is already responsible for tasks relating to the airworthiness and environmental compatibility of aeronautical products, flight operations, aircrew licensing, aerodromes and air traffic management and air navigation services (ATM/ANS), as well as for the safety of third country operators.

A limited number of specific areas are proposed to be added to the overall Union aviation safety framework under this legislative proposal, namely unmanned aircraft, safety of ground handling services and security aspects of aircraft and aviation systems' design, including cybersecurity.

As regards unmanned aircraft, flight operations of this kind are mostly local but the sector nevertheless has a cross-border dimension linked to operational requirements of the aircraft and adoption of common rules for the provision of services.

The security aspects of aircraft and aviation systems' design, including cybersecurity, can be most effectively dealt with at Union level, also as regards the role of the European Union Agency for Aviation Safety, since such security aspects are closely linked to the safety of aircraft design and flight operations, where the Union is already responsible pursuant to Regulation (EC) No 216/2008.

With regard to ground handling services, action at EU level is necessary in view of the numerous incidents linked to these services and the fact that voluntary initiatives at Member State level to counter this risk have yet to produce satisfactory results. Moreover, there are currently no safety requirements directly applicable to providers of ground handling services at Union level.

However, given the need for more stringent safety rules at European level it seems contradictory that no provision is made for compulsory certification of service providers as a precondition for commencing operations. In this regard the arrangement currently applicable in Italy seems more likely to meet the objectives of safety and security in the provision of ground handling and apron management services that are pursued by the Commission. In other words, as much as action at European level is required, the lack of compulsory certification would not seem to bring any real added value and the subsidiarity principle does not, therefore, appear to be fully adhered to in this respect;

– the principle of subsidiarity also does not appear fully complied with because Article 117 of the proposal provides for adoption of a large number of delegated acts. In future this will lead to a diminished role for national parliaments in terms of their power to adopt opinions on Union 'draft legislative acts', conferred on them by Protocols 1 and 2 to the Treaties, given that they have no such powers with respect to 'draft delegated acts'.

We reiterate here what this Committee already stated in its resolution on the better regulation institutional package (Doc. XVIII, No 102), in which we underlined that appropriate mechanisms need to be set up for officially transmitting proposals for delegated acts to national parliaments as well as to the European Parliament and the Council. This would allow the control exercised by national parliaments on their

governments' work within the Council to be extended by reference to the rights provided for by Article 290 of the Treaty on the Functioning of the European Union;

– with respect to the principle of subsidiarity, but also for reasons of substance, we concur with the aim of strengthening and extending the tasks of the European Aviation Safety Agency. In the context of better aligning EU and national legislation, and in a sector with a clear cross-border dimension, a single European civil aviation agency should help prevent duplication of administrative tasks between the competent national authorities. Moreover, each Member State will have a representative on the Agency's Management Board pursuant to Article 86(1) of the proposal.

In this respect we take a positive view of the provisions of Article 53, according to which Member States may transfer to the Agency the responsibility for certification, oversight and enforcement with respect to any or all organisations, operators, personnel, aircraft, flight simulation training devices or aerodromes for which the Member State concerned is responsible under the regulation. Upon such transfer, the Agency will become the competent authority for the purposes of the transferred responsibility and the Member State concerned will be relieved of that responsibility.

It should be assessed, however, whether there is a need to provide for such responsibility being reclaimed by the national authority in cases where it is duly substantiated that the European Agency itself does not perform those tasks correctly;

– the principle of proportionality is one of the main objectives pursued by the proposal, which aims to improve the current regulatory framework on aviation safety. It introduces a risk-based approach to regulation in the area of aviation safety, which should benefit the whole aviation sector. Compliance with the principle of proportionality is also ensured by a modular system that is able to take better account of the differences between businesses of different sizes, leading to less red tape and other advantages for small and medium-sized businesses.