



Brussels, 15.06.2016  
C(2016) 3707 final

*Dear President,*

*The Commission would like to thank the Senato della Repubblica for its Reasoned 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 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 aims to prepare the aviation safety regulatory framework of the Union for the challenges of the next ten to fifteen years. To that end, the proposal is intended to simplify and streamline the regulatory system, whilst maintaining high levels of safety at the same time. 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 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 Senato della Repubblica's support for the aims of the proposal. It notes the specific concerns expressed in relation to the certification of ground handling services, apron management and drones, the transfer of duties as well as the use of delegated acts. The Commission further notes the Senato della Repubblica's reservations concerning the governance and budget of the European Aviation Safety Agency (EASA).*

*The Commission has taken due account of the Senato della Repubblica's concerns as regards the proposal's compliance with the principle of subsidiarity. The Senato della Repubblica acknowledges that action at Union level is necessary to introduce common safety standards for providers of ground handling and apron management services. The Commission infers that the Senato della Repubblica does not contest that rules at that level are, in principle, justified in view of the principle of subsidiarity. By contrast, the Senato della Repubblica regrets that no provision is made for requiring the certification of service providers as a*

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*precondition for commencing operations, as currently required under Italian legislation. In that regard, the Commission would like to recall that the principle of subsidiarity does not as such imply that Union action must always introduce rules which are stricter than existing rules in some Member States. Currently, ground handling services are an important source of accidents, partially due to the fact that these services are not regulated by some Member States or that they rely on voluntary initiatives only. While the Commission opted for a declaration and not a certification procedure in its proposal, the proposed common rules aim at ensuring a higher uniform level of aviation safety throughout the Union. Having regard to the outcome of the consultations and to the impact assessment carried out in preparation of the proposal, the Commission considers this an adequate approach that also takes account, in a balanced manner, of the different practices followed by the Member States.*

*The Commission would also like to underline that the capability of a national competent authority to oversee an organisation does not depend on whether it does so on the basis of a declaration or on the basis of a certification. In addition, under the new Regulation, as proposed, detailed rules would be adopted by the Commission setting out the conditions under which the activities of ground handling service providers could be prohibited, limited or subject to certain conditions in the interest of safety {Article 34(1)(k) of the proposal}. Concerning apron management, the current legislation – Regulation (EC) No 216/2008 – already provides for the possibility of accepting declarations from apron management service providers.*

*In response to the more technical questions in the Reasoned Opinion, the Commission would like to refer the Senato della Repubblica to 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.*

*The Commission hopes that the clarifications provided address the issues raised by the Senato della Repubblica 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 Senato della Repubblica in its Reasoned Opinion and is pleased to offer the following clarifications.*

### Articles 45 - 47:

*The Commission appreciates the Senato della Repubblica's support for action at the European level on unmanned aircraft ('drones') and extending the EU remit below 150 kg. Articles 45 to 47 of the proposal seek to establish the essential requirements which would govern unmanned aircraft at Union level and provide for the possibility of imposing a requirement for a pilot certificate. The operations of unmanned aircraft for which a certification requirement would be imposed would be specified through delegated acts, as foreseen in Article 47(1)(b) of the proposal. These rules would lead to the same certification requirements throughout the Union and would contribute to harmonised safety levels, thereby improving Union-wide safety levels.*

### Articles 53 - 55:

*Articles 53 to 55 all concern a transfer of responsibilities between competent authorities to foster a better use of resources within the EU aviation safety system and to improve safety. As regards Article 53, such a transfer is voluntary and depends on the decision of Member States whether, and the extent to which, to make use of it. It is for the Member State concerned to decide on the scope of the responsibilities to be transferred and to define the situations in which the Member State would like to effectuate the transfer. Articles 53 and 54 both require a transition plan in which the details of a transfer of responsibilities would be set out and in both cases decisions on the transfer could be reversed.*

### Article 54:

*According to Article 54, an organisation or a group of organisations could choose the EASA as their competent authority. The Commission is of the opinion that for organisations having a multinational structure this possibility could lead to efficiency and safety gains by having oversight coordinated centrally by the EASA. The provision does not include a prior approval of the Member State concerned as the Commission considered that an organisation is in principle also free to choose its principal place of business within the EU. The question of prior consultation of a Member State is, however, being discussed in the Council working party on aviation. While the provision allows for the designation of a different competent authority, the same common aviation safety rules would continue to apply. Therefore, although the application of Article 54 would entail a change in responsibilities between competent authorities, this would not constitute a circumvention of EU rules which would continue to apply. The Commission expects a more consistent application of these rules as, for example, multiple organisations forming part of the same business grouping would be under the oversight of a single authority as opposed to multiple authorities. The consultations carried out in preparation of the proposal have shown that these organisations encounter difficulties due to being subjected to different national authorities.*

### **Article 55:**

*The proposed emergency oversight mechanism would, in practice, be a measure of last resort. In-depth contacts between the EASA and the Member State concerned would 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 being addressed by the Member State. The transfer of responsibilities under Article 55 would be limited to the areas where the deficiencies occurred, to what is strictly necessary 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 transfer and its details would take the form of a Commission implementing decision to be adopted with the involvement of Member States.*

### **Article 57:**

*Draft Article 126(4) provides that Member States shall terminate or adjust existing bilateral agreements that they concluded with third countries, for those fields covered by this Regulation as soon as possible following the entry into force of this Regulation and in any event before three years after its entry into force. Given the objective of creating a common aviation safety system, the Commission believes that bilateral aviation safety agreements between individual Member States and third countries should ideally be phased out within the above-mentioned transition period. Where no international agreement between the EU and a third country exists, and to avoid possible gaps in the legal framework, delegated acts as referred to in Article 57 point (b) would be adopted setting out the conditions under which certificates from third countries could be accepted or provide the basis for the issuance of an EU certificate. Acceptance of certificates issued by third countries, which at present are accepted under national bilateral safety agreements, could be provided for thanks to the same mechanism.*

### **Articles 85 et seq.:**

*The Commission understands the Senato della Repubblica's comments as referring to the introduction of an Executive Board pursuant to Article 90 of the proposal. According to the Common Approach on EU decentralised agencies, the establishment of such a Board may be contemplated where this promises more efficiency. As regards the EASA, the Executive Board would assist 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. Equally, the Executive Board would 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 hence contribute to the efficiency and effectiveness of the EASA's operations. The Executive Board would not have any decision-making powers, except in cases of urgency. Those decisions would be of a provisional nature and referred to the earliest meeting of the Management Board for confirmation. The Commission representative would provide administrative and budgetary expertise to the work of the Executive Board. The detailed rules of procedure of the Executive Board would be adopted by the Management Board.*

### **Article 109:**

*Under the text as proposed by the Commission, the revenue of the EASA would comprise inter alia grants and en-route charges. The receipt of grants is already current practice and needs to be reflected in the basic act. Grants only concern activities not covered by the annual EU contribution, thus avoiding a risk of double funding of the EASA.*

*With regard to en-route charges, the Commission proposal aims at reintroducing the 'user pays principle' that applied to air traffic management and air navigation services (ATM/ANS) related authority tasks before their transfer from Eurocontrol to the EASA. Despite the transfer, the cost-base of the common charging scheme for en-route charges in respect of Eurocontrol was not amended. The EASA finances these activities today also through the annual EU-contribution, i.e. tax money, and thus Member States pay for them twice. The Commission proposes that the EASA be enabled to receive a share of the en-route charges collected from airspace users in order to finance the ATM/ANS related authority tasks. To ensure that airspace users pay for these activities only once, the amount attributed to Eurocontrol under the en-route charges scheme would have to be reduced accordingly. Likewise, the annual EU contribution to the EASA could be reduced reflecting the financing of ATM/ANS authority tasks through en-route charges.*

### **Article 117:**

*Regarding the Senato della Repubblica's concerns on the use of delegated acts, the Commission has been careful in ensuring that all the essential elements of the area concerned are to 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.*

*The present proposal suggests the conferral of delegated powers only where needed in order to allow the adoption of technical rules with details pertaining to the provisions of the Regulation. Those latter provisions could hence remain relatively simple and stable. One example of such delegated powers concerns the conditions for establishing the type certification basis applicable to a product. 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, prior to the adoption of delegated acts, all necessary expertise including through the consultation of experts from the Member States.*

### **Article 124:**

*In accordance with good legislative practice, the proposed Regulation provides for amendments to other acts only insofar as they are consequential to the Regulation's other new rules. Hence, amendments to Regulation (EU) No 996/2010 going beyond what is necessary in order to take account of the draft Regulation's intended scope, encompassing all unmanned aircraft, would have to be subject to a separate, corresponding proposal and procedure. This applies notably to the suggestion put forward by the Senato della Repubblica to provide for the closure of an ongoing safety investigation in cases where the findings*

*would have no added value in terms of effective prevention. Where appropriate, such a rule should be envisaged as a separate amendment to Regulation (EU) No 996/2010. An evaluation of that Regulation is currently under preparation and the amendments suggested by the Senato della Repubblica could be considered in this context.*