



*European Economic and Social Committee*

**TEN/597**  
**Aviation package II**

## **OPINION**

European Economic and Social Committee

**Aviation package II,**  
including a

**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 – 2015/0277 (COD)]

and a

**Report from the Commission to the European Parliament and the Council –  
The European Aviation Safety Programme**  
[COM(2015) 599 final]

Rapporteur: **Raymond HENCKS**

Co-rapporteur: **Stefan BACK**

Consultation	Council of the European Union, 19/01/2016
Legal basis	Article 100(2) of the Treaty on the Functioning of the European Union
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	15/11/2016
Adopted at plenary	14/12/2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	184/01/02

## 1. **Conclusions and recommendations**

- 1.1 The EESC is favourable to the new approach based on risk assessment and performance, provided that prescriptive rules remain in place wherever required to ensure safety. The EESC considers that successful implementation of this change in working methods and culture requires time and adequate resources. The EESC also underscores that this transition must take place with the close involvement with staff and stakeholders.
- 1.2 The EESC agrees that EASA should share greater responsibility for security, in cooperation and in agreement with the Member States, including with regard to the specific rules on emergencies, on condition that adequate resources are granted to enable the EASA to successfully carry out its tasks in this field. The EESC further believes that Regulation (EC) No 300/2008 should be revised in view of the developments since 2008.
- 1.3 The EESC draws attention to the rapidly changing context in which civil aviation operates, due both to rapid technical development, including digitalisation, and to the development of new business models and new models of employment and service provision. The EESC attaches great importance to the regular evaluation of the new Regulation every five years provided for in the proposal. It is important that the potential safety and security aspects of such developments are exhaustively evaluated in the impact assessment and that appropriate measures are planned and undertaken in time.
- 1.4 The EESC welcomes the inclusion of ground handling in the scope of this Regulation and suggests considering a certification requirement on ground handling providers and staff with safety-critical roles.
- 1.5 The EESC welcomes the development of certification standards for cabin crew but regrets that the Commission does not propose a licensing system for cabin crew.
- 1.6 The EESC endorses the inclusion of unmanned aircraft in the scope of the proposal and underlines the importance of setting high standards.
- 1.7 The EESC would warn against unnecessary complexity and the duplication of certification or control requirements regarding aerodrome equipment, except where clearly warranted for safety reasons.
- 1.8 The EESC takes favourable note of the tasks of oversight, cooperation and assistance in relation to national authorities that are provided for in the proposal and hopes that these will lead to continued high, harmonised and efficient standards as regards safety, improved exchange of information and benchmarking, which will ensure better resource efficiency. In this context, the EESC takes note of the European Aviation Safety Plan and the European Aviation Safety Programme and the possibility they will provide for developing and implementing higher and harmonised safety standards.
- 1.9 The EESC supports the proposed mechanism for the voluntary transfer of functions from national authorities to EASA, including the specific rules on emergencies.

- 1.10 The EESC takes the view that the possibility provided for European operators operating in several EU countries to opt for EASA as their competent authority must require the notification of the competent national authority or authorities. The possibility for the above mentioned operators to opt for EASA as competent authority cannot be applied for measures falling under articles 59 and 60.
- 1.11 The EESC notes the importance of exchanging information and emphasises that information obtained for safety improvement purposes should not be used in the judicial system except in exceptional circumstances, such as wilful misconduct. The just culture must be safeguarded and EESC repeats its proposal that a Just Culture Charter should be developed and implemented.
- 1.12 The EESC also takes note of the proposal to introduce a provision on charges for Single Sky Services as a means of financing EASA activities despite the fact that the substantive rules on these charges will be inserted in provisions that are not yet in place. It is furthermore not clear how the planned charges are to relate to the route-charging system currently managed by EUROCONTROL on behalf of the States Parties to a multilateral agreement. Bearing this in mind, the EESC considers that it would be premature to legislate on the use of a charge that does not yet exist and where several options are possible as to its configuration. The EESC therefore suggests that this proposal be rejected.
- 1.13 Considering that the EASA is to establish rules on certification and safety criteria that may also be of interest to the general public, the EESC suggests that texts of this nature be translated into all EU official languages. For the sake of transparency, the EASA website should also be available in languages other than English. In this context, the EESC would also draw attention to the EU Charter of Fundamental Rights, in particular Article 21 thereof.
- 1.14 With regard to the proposal to alleviate formalities on the wet lease of aircraft, the EESC points out that the proposal primarily deals with safety, whereas issues concerning wet lease relate to commercial operations, market access and competition. They may also have a significant socio-economic dimension. The EESC therefore advises against amending the substantive provisions on wet lease at this stage and considers that this issue should be addressed when Regulation 1008/2008 is reviewed.
- 1.15 With respect to the ongoing evaluation of Regulation (EU) 996/2010, the EESC refers to importance of the European Network of Civil Aviation Safety Investigation Authorities (ENCASIA) network and considers it essential that adequate resources are provided for this important activity. The EESC also refers to its statement on Just Culture in 1.11 above.

## 2. Introduction

- 2.1 The proposal for a safety regulation<sup>1</sup> (the proposal) is to replace the 2008 regulation<sup>2</sup>. The proposal maintains and/or updates some of the provisions of the 2008 regulation and introduces

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<sup>1</sup> [COM\(2015\) 613 final](#).

<sup>2</sup> [OJ L 79, 19.3.2008, p. 1](#).

new measures. It is based on the standards of the International Civil Aviation Organisation (ICAO) and on public consultations among the Member States and stakeholders, including the social partners. It is based on a Commission report on the European Aviation Safety Programme<sup>3</sup> and on a number of studies. It is a step towards implementation of the communication *An aviation strategy for Europe*<sup>4</sup>.

- 2.2 The proposal introduces an approach to safety rules based on anticipation, risk assessment and performance, to improve resource efficiency and better target oversight work at all levels. Its aim is to close safety gaps and take greater account of the interlinkage between aviation safety and other areas, such as aviation security and environmental protection.
- 2.3 The proposal aims to ensure a high degree of enforcement and oversight throughout the EU by means of close cooperation between authorities at European and national levels, including exchanges of information and effective control and monitoring. It updates the 2008 regulation to cover technical developments, such as unmanned aircraft.
- 2.4 The Commission is undertaking an evaluation of Regulation (EU) 996/2010 on the investigation and prevention of accidents in civil aviation (the regulation) and has sought the views of the EESC (Commission Staff Working Document on the implementation of the Regulation (EU) 996/2010). In 2010 the EESC issued an opinion on the proposal for this regulation<sup>5</sup>.

### 3. General comments

- 3.1 The EESC endorses the proposal's aims to strengthen the rules on safety and security in civil aviation, and to clarify the role of the European Aviation Safety Agency (EASA) in security. The EESC also agrees with the proposal for the EASA to provide technical assistance to the Commission in the implementation of safety legislation and for it to be empowered to take related measures, with the agreement of the Commission and after consultation of the Member States.
- 3.2 The EESC agrees that EASA should share more responsibility for security, in cooperation and in agreement with the Member States, including the specific rules on emergencies, on condition that adequate resources are provided to enable the EASA to successfully carry out its tasks in this field. The EESC also holds that *Regulation (EC) No 300/2008 establishing common rules in the field of civil aviation security* has been superseded by developments since 2008 and should be put back on the drawing board.
- 3.3 The proposal seeks to prepare the EU's aviation safety regulatory framework for the challenges of the next ten to fifteen years. The EESC believes that projections over such a long period will be overtaken by technological development and the constantly changing safety risks, such as, the emergence of unmanned aircraft, new forms of cybercrime, the risk of landings being

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<sup>3</sup> [COM\(2015\) 599 final](#).

<sup>4</sup> [COM\(2015\) 598 final](#); [OJ C 389, 21.10.2016, p. 86](#).

<sup>5</sup> [OJ C 21, 21.1.2011, p. 62](#).

disrupted by lasers, etc. Therefore, the EESC considers that civil aviation safety rules should be reviewed regularly and frequently. The EESC consequently supports the proposal for an evaluation of the new regulation every five years.

- 3.4 The EESC reaffirms<sup>6</sup> that safety is the cornerstone of a sustainable aviation strategy and that there is no room for complacency on this subject. Therefore, the proposal's approach should be assessed against these requirements, particularly in the light of the Commission's aim<sup>7</sup> of identifying and addressing safety risks more quickly and more effectively by shifting to a risk- and performance-based mind-set, while maintaining at least the same level of overall safety.
- 3.5 The method proposed is *a more proportionate and flexible approach to safety regulation*. The aim is to identify and reduce safety risks more quickly and more effectively through an approach based on risk assessment and performance to ensure a higher level of overall safety. The EESC welcomes this approach, but points out that some prescriptive rules have to remain in place to guarantee a level-playing field. In addition, such a significant transition requires adequate resources and a transition process that is transparent to all stakeholders, including staff, and which offers the time needed for the change of culture necessary to fully implement the new approach.
- 3.6 A study commissioned by the Commission on the availability, efficiency of use and evolution of the human resources of aviation authorities, as well as the financing of the European aviation safety system (the support study on resources) found that the resource-to-workload balance has deteriorated over the last ten years and identified shortcomings as regards the qualifications of staff. The study outlines a series of options to solve this dilemma. The EESC stresses the need to find a solution within the framework of social dialogue.
- 3.7 A second study, on performance schemes and the performance-based approach, explored the possibility of incorporating performance elements into aviation safety management (the support study on performance). It concluded that this is feasible, but cautioned against a rapid introduction for technical reasons. The study found it impossible to quantify the benefits of a performance-based approach prior to its implementation. In the EESC's view, the conclusions of this study highlight the importance of implementing the new approach prudently and consistently.
- 3.8 In this context the EESC draws attention to the question of societal and social development, including new forms of employment and new forms of business models often linked to the digital economy also in the aviation market and the safety implications of this development. The communication on an Aviation Strategy for Europe<sup>8</sup> and several EESC opinions<sup>9</sup> consider that due consideration should be given to these questions. The EESC considers that they must also

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6 [OJ C 13, 15.1.2016, p. 169.](#)

7 [COM\(2015\) 598 final.](#)

8 [COM\(2015\) 598 final](#), Section 2.3.

9 [OJ C 13, 15.1.2016, p. 169](#), point 3.1.3; [OJ C 13, 15.1.2016, p. 110](#), point 2.7 and [OJ C 389, 21.10.2016, p. 86](#), point 1.3.

be taken into account when implementing the Proposal, including when assessing the impact of implementation measures.

- 3.9 The EASA is to assess the performance of bodies in the context of the European Plan for Aviation Safety (EPAS) but it has not yet set safety performance targets for the bodies under its responsibility. This again highlights the importance of swiftly and effectively resolving the resource problems referred to in point 3.6 above.
- 3.10 The rules, activities and procedures included in the European Aviation Safety Programme (EASP) should be monitored, in order to assess their relevance and effectiveness. Monitoring should be based on indicators such as regulatory compliance, the frequency of certain types of events affecting safety, the number of accidents and fatalities and the maturity of safety management systems. Such indicators are used by States to determine the “acceptable level of safety performance” in their country, in accordance with ICAO requirements. The proposal emphasises cooperation between the EASA and national authorities, including the role of the EASA as manager of the new repository of information referred to in Articles 61 to 63. The EESC stresses the importance of this move to improve the oversight and enforcement system.

#### **4. Specific comments**

##### **4.1 Environmental Protection**

The EESC approves the addition of a new provision on environmental issues, including the environmental review to be published by the EASA every three years.

##### **4.2 Recognition of third-country certificates**

The EESC underlines the importance of reciprocal recognition agreements with important partner countries, in order to support the EU avionics industry and international trade in this sector.

##### **4.3 Ground handling**

4.3.1 The EESC welcomes the fact that ground handling, as an important part of the civil aviation safety chain, has been included in the scope of this regulation.

4.3.2 However, the EESC would suggest considering a certification requirement on ground handling providers as well as for ground handling staff with safety critical roles. The essential requirements included in Annex VII to the proposal should be further developed and detailed, mainly regarding training standards and qualifications.

4.3.3 Further issues for consideration include:

- the number of staff and different providers around the aircraft in relation to turn-around times;
- health risks stemming from exposure to air pollution on the tarmac.

#### **4.4 Aerodrome equipment**

4.4.1 Regarding the certification requirement for aerodrome equipment set out in Article 31 of the regulation, the EESC takes note that aerodrome equipment is typically certified under schemes for electrical equipment and other systems. A further certification scheme could mean double regulation for no or insignificant benefits. The EESC therefore suggests replacing the proposed Article 31 by a text saying that the EASA will respond appropriately when safety data demonstrate that equipment used or intended to be used at aerodromes subject to the new regulation poses a safety risk.

#### **4.5 Cabin crew**

The EESC welcomes the new essential requirements in Annex IV and the consolidation of cabin crew provisions in Article 21. It regrets the proposal's uses of the term "attestation" and not "license" despite the fact that the requirements in Annex 4 (4) regarding cabin crew are equivalent to those warranting a licence or a certificate. To ensure consistency, cabin crew should therefore be granted a licence issued by a National Aviation Authority or by the EASA.

#### **4.6 Safeguard and flexibility provisions, Agency measures**

4.6.1 The EESC draws attention to the extension of emergency measures and flexibility provisions in Articles 59 and 60 of the Proposal compared to the current provisions of Article 14 and 22 of Regulation (EC) 216/2008, especially regarding flight-time limitations and other measures affecting the working conditions of staff.

4.6.2 The EESC is of the opinion that the period of two months without notifying the EASA in cases of safeguard-related measures (Article 59) or flexibility provisions (Article 60) must not be extended. Along the same lines, the EESC is opposed to the extension to eight months in Article 65(4) Agency measures.

4.6.3 The EESC considers that there should be an obligation to seek the agreement of the staff concerned prior to a decision on urgency and flexibility measures that affects their working conditions. Where a decision has been taken without such an agreement, the EASA should immediately start the assessment procedure provided for in Article 59(2) and 60(2).

#### **4.7 Cooperation between the competent authorities and the EASA, transfer of responsibilities**

4.7.1 The EESC welcomes the proposal to reinforce cooperation between the competent authorities of the Member States, the Commission and the EASA regarding certification, oversight and enforcement. It supports measures such as the establishment of a pool of inspectors and the emergency transfer of responsibilities to the EASA provided it does not adversely affect the employment terms and conditions of the workers involved. Both the criteria for emergency transfers and the requirements for returning oversight to the Member State must be clearly documented.

4.7.2 The EESC underscores the voluntary nature of the transfer of responsibilities to the EASA by a Member State under Article 53, except for the emergency transfer under Article 55, to resolve urgent safety shortcomings. Article 53.2, last paragraph, ensures that transfers take place with due regard to the national law and the agreement of the Member State concerned. The EESC considers that procedural and other safeguards ensure that a transfer works adequately and with due regard to legal security. The EESC therefore supports the proposed transfer mechanism.

4.7.3 The ability of Member States to transfer oversight to another Member State must remain voluntary providing the possibility for a State to regain the delegated authority.

4.7.4 The EESC takes note of the introduction of the possibility for multinational operators to select the EASA as their competent authority. In line with its views on the voluntary transfer of responsibilities the EESC can approve this proposal, subject to the consent of the national authority or authorities concerned and provided that that the measure does not adversely affect the employment terms and conditions of the staff involved.

#### **4.8 Information gathering, exchange and analysis**

4.8.1 As with the proposals for increased cooperation between the EASA and National Aviation Authorities, the EESC supports the reinforced provisions on information gathering, exchange and analysis. However, it requests further action to ensure the protection of personal data such as including this item in the IT audit system or improving the level of anonymity of data. In order to increase transparency, the de-identified data should be made available to all stakeholders.

4.8.2 The EESC also welcomes the establishment of a repository containing certificates, accreditations, measures, Commission decisions, Member State decisions, transfers of responsibilities, notifications, requests and other information.

#### **4.9 Aviation Safety Management**

4.9.1 While the EESC supports the inclusion of the reference to EASP, as well as National Aviation Safety Programmes, it draws attention to the challenge of making measures and material understandable for frontline workers. Therefore, it is essential that the EASP and national plans are based on a bottom-up approach wherever possible. Otherwise, the texts may not be helpful in delivering the desired change.

#### **4.10 Unmanned aircraft (drones)**

4.10.1 The EESC endorses the inclusion of unmanned aircraft in the scope of the proposal but reiterates its call for prudence in implementing the performance-based approach.

4.10.2 Therefore, comprehensive regulations have to be developed to ensure proper safety. The EESC considers it a challenge to ensure the compatibility of these new aviation activities involving drones with general air traffic; regulation on this topic is essential. Air Traffic Management is already a complex domain, with air traffic controllers bearing considerable responsibilities and

the EESC calls for these workers not to be given unjustified responsibilities in order to adapt to a situation in which unmanned aircraft are flown. A coherent approach to licensing for the operation and possession of drones must be put in place including as regards registration. An obligation to obtain a licence – depending on the characteristics of the drone – would create awareness, would require knowledge of the applicable regulations and restrictions and would help to develop the necessary skills.

#### **4.11 Cyber-threats**

4.11.1 The EESC is particularly concerned about cybersecurity. Despite digitalisation, the human factor will remain key for data verification and protection against unlawful interference. While the availability of relevant data on board improves safety, the EESC points out that flight crews must remain in control of the airplane. Likewise, a robust system of protection against cyber-threats must be developed for drones.

#### **4.12 Shift to a performance-based approach**

4.12.1 One of the main advantages of the compliance-based system is the guarantee of equal treatment among operators. The EESC considers that the transition to a system based on risk assessment and performance must facilitate adjustments to a new culture and must uphold confidence in the safety system and its ability to ensure continuous improvement of safety levels in a performance-based system. This requires adjustment and adaptation at all levels. Developing the general comments in points 3.4 and 3.5 above, the EESC considers that the following elements are essential for a successful transition:

- sufficient resources must be available to ensure adequate safety levels at all times;
- the transition must be implemented in such a way that staff working conditions can be planned in advance. There must be transparency on planned changes;
- implementation of the new system must be accompanied by ongoing dialogue with stakeholders, including social dialogue;
- the pace of implementation must allow for a safe transition to the new system, taking account of the need to ensure a change of culture.

4.12.2 The EESC considers that a gradual transition to a new system and a new culture will take time. For the moment, it is doubtful as to whether safety will ever be completely covered by performance-based regulation.

#### **4.13 Occurrence reporting and Just Culture**

4.13.1 As in its previous opinions<sup>10</sup>, the EESC maintains that Just Culture must be applied in the whole aviation industry. The EESC doubts whether the proposal or any other existing EU legislation alone is enough to ensure compliance with just culture. Much work needs to be done in the Member States to promote just culture and to maintain a clear and predictable line

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<sup>10</sup> [OJ C 21, 21.1.2011, p. 62](#) and [OJ C 198, 10.7.2013, p. 73](#).

between safety-related reporting and the judicial system. The EESC therefore reiterates its proposal for a charter or code of conduct to support good practice.

#### **4.14 Fines and penalties**

4.14.1 The EESC believes that the current system of fines and periodic penalty payments has been proven ineffective. The wording of Article 72 (1) stating that "*The Commission may [...] impose on a legal or natural person [...] a fine*" should be changed to "*The Commission shall [...]....*" It should be recalled that Article 72 (3) still grants a margin of discretion. When considering whether or not to levy a penalty, the Commission must liaise with the relevant national authorities to ensure an approach consistent with national law enforcement.

#### **4.15 EASA funding**

The EESC considers that the proposal to include charges paid in accordance with provisions to come in the Regulation on the implementation of the Single European Sky is premature, and too unclear. It is, for instance, not clear whether a separate Single Sky charging system will be created or if the aim is to modify the current Route Charging system, currently handled by EUROCONTROL (Multilateral Agreement Relating to Route Charges – Non official edition – October 2006, available at the EUROCONTROL website). Nor is it clear if the planned charges will be for Single Sky services only, or be used toward financing the Agency's general budget. For these reasons, The EESC considers that this proposal is premature and should be rejected.

#### **4.16 Working methods and stakeholder involvement**

4.16.1 Stakeholder involvement is and must remain an essential feature of the EASA's work. Therefore, we suggest that the wording "*whenever necessary*" be removed from Article 104(1)(b) to avoid arbitrary decisions on whether or not stakeholders will be involved in the activities of the Agency.

#### **4.17 Language arrangements**

Despite the fact that English is largely spoken in the aviation community, there are still some geographical and activity areas where national languages prevail. The EESC believes that in line with the prohibition of discrimination for language reasons set out in Article 21 of the Charter of Fundamental Rights, at least Certification Specifications and Acceptable Means of Compliance should be translated and published in all official EU languages. In addition, the EASA's website should be available in EU languages other than English, in order to increase transparency and public awareness.

#### **4.18 Internal structure**

The proposed wording of Article 90 will give significantly more power to the Commission at the expense of the European Parliament. The EESC therefore insists that one representative of the Commission and one representative of the European Parliament be given a place on the Management Board.

#### 4.19 Leasing

The EESC strongly opposes the proposal to amend the provisions of Regulation 1008/2008 on leasing. Since the assessment of this regulation is scheduled to take place in 2017-2018, it should be dealt with separately.

#### 5. **Evaluation of Regulation (EU) 996/2010 on the investigation and prevention of accident and incidents in civil aviation**

As already referred to in point 4.13 above, the EESC reiterates the need to safeguard the just culture and its suggestion of a charter to that effect. The EESC supports a soft-law approach and supports the successful cooperation within ECANSIA as a forum for pooling resources and knowledge and as an arena to instigate studies and issue safety recommendations and set benchmarks. To achieve this, it is vitally important that adequate resources are available.

In the opinion of EESC, future work in the field governed by this regulation should focus on proper implementation rather than on changing the legal framework.

Brussels, 14 December 2016

Georges DASSIS

The President of the European Economic and Social Committee

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