



**MEMORANDUM ON 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)**

Implementing Ministry	Ministry for Transport and Infrastructure (MTI)	
Participating Ministries	Ministry for Tourism (MOT)	
Originating Department / Entity	Transport Malta, Civil Aviation Directorate, MTI	
Approvals	Chairperson, Inter-Ministerial Committee for European Union Affairs	Permanent Secretary, MTI
	Permanent Secretary, MOT	
Copy	Director Policy Development, MTI	Director, Policy Development and Programme Implementation, MOT
Reference Documents	COM (2015) 613	
DMS Reference Number	TTE(P) CIVILAVIATIONEU 110216	
Signature	Minister for Transport and Infrastructure	

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1 Background

- 1.1 This Proposal is part of the 2015 European Commission's Aviation Strategy to enhance the competitiveness of the EU Aviation Sector. Its objective is to prepare the EU aviation safety regulatory framework for the challenges of the next years and thus to continue to ensure safe, secure and environmentally friendly air transport for passengers and the general public. This is a general review of the European Aviation Safety System and of Regulation (EC) No 216/2008, which is the EU's framework regulation for aviation safety.
- 1.2 The current problem comprises of four components namely being safety, overregulation, new market developments and oversight. The main causes for these components are mainly due to shortages and inefficient use of resources, gaps and inconsistencies in the regulatory system, and predominantly prescriptive, one-size-fits-all regulation. The problem not only affects all actors in the aviation safety system but also affects the travelling public indirectly.
- 1.3 Safety and consideration for environmental protection are pre-requisites for a competitive aviation sector. With the aviation traffic in Europe predicted to increase by 50% of the 2012 figures by 2035, the Commission's objective is to make sure that the system continues to maintain the current low number of accidents, allowing the EU aviation sector to safely grow in the future and thus to contribute to its competitive edge. For this purpose the present initiative proposes to introduce a risk and performance based approach to safety regulation, close existing safety gaps, and better take into account interdependencies between aviation safety and other technical domains of regulation such as aviation security or environmental protection.
- 1.4 While aviation safety is the principal objective of this Proposal, it is not the only one. This Proposal must also be seen in the context of the Commission priorities of fostering jobs and growth, developing the internal market and strengthening Europe's role as a global actor. This initiative aims at contributing to a competitive European aviation industry and aeronautical manufacturing which generates high value-jobs and drives technological innovation. It will create an effective regulatory framework for the integration of new business models and emerging technologies. In particular this initiative proposes to create a Union framework for safe integration of unmanned aircraft into the European airspace.
- 1.5 This Proposal also responds to the calls from the Member States, industry and airspace users for a more proportionate and flexible approach to safety regulation and to eliminate rules which can stifle entrepreneurship with too prescriptive requirements. It notably proposes to introduce a scalable framework which recognises the differences existing between the various sectors of civil aviation and the risks involved therein. This approach is expected to benefit the whole aviation sector in the Union and will be particularly suited to the needs of small and medium sized enterprises.
- 1.6 With the transition to a risk and performance based approach on regulation and oversight, Member States and the European Union Aviation Safety Agency (EASA) will need to develop new skills and competences, and to be continuously abreast with the latest technologies developed by the industry. This initiative supports the achievement of these objectives by

proposing better arrangements for coordination and development of aviation research and training.

- 1.7 Finally the present Proposal addresses the challenges that some national authorities face in maintaining and financing the resources necessary for accomplishing the required certification and oversight work. To this end the present initiative proposes a Framework for pooling and sharing of technical resources between the national authorities and the European Union Aviation Safety Agency, and which includes the possibility of transferring responsibilities for implementation of Union legislation on a voluntary basis.
- 1.8 Additional to the above, a limited number of specific areas are proposed to be added to this overall Union Aviation Safety Framework, namely involving unmanned aircraft, safety of ground handling services and security aspects of aircraft and aviation systems' design, including cyber security.
- 1.9 Unmanned aircraft manufacturing has a cross-border dimension since many unmanned aircraft are bought online, are imported or at least have imported parts. Mutual recognition in the internal market is difficult to achieve in the presence of detailed and diverging national standards and rules. Also with regard to unmanned aircraft services, many operators are developing cross-border activities, for instance, infrastructure inspections are being organised at an international level. Even if operations have a limited scope, operators should be in a position to use the same unmanned aircraft and the same operating requirements with the same pilot at different places in the Union to develop their businesses, especially if they operate in niche markets. Subsidiarity applies at the level of the implementation of the common operational rules, e.g. Member State authorities will carry out local risk assessments and decide which airspace shall be open or closed to unmanned aircraft operations, and under which conditions. Most of the light unmanned aircraft operations have a local dimension and it should be for the local authorities to assess the level of risk and authorise the specific type of operation.
- 1.10 With regards to ground handling services, the need for action at Union level is necessary given the fact that accidents related to ground handling constitute the fourth biggest accident category in the period of the last ten years, while the voluntary initiatives at Member State level have as yet not produced satisfactory results to address this risk. There are at present no safety requirements at Union level which address directly the providers of ground handling services. In order to ensure a proportionate approach, it is proposed that there is no need for certification of service providers as a condition to start operations. It is also the Commission's view that the common requirements for ground handling should be based on recognised industry standards and best practices. At the same time Member States should be given the necessary regulatory tools to ensure effective oversight with respect to the providers of such services.
- 1.11 With respect to security aspects of aircraft and systems' design, it has to be pointed out that the Union is already involved in some of these issues. The interaction between Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/20025 and the current Regulation (EC) No 216/2008 is not always clear, including the role of the European Union Aviation Safety Agency. This initiative proposes to clarify the role of the Union in this regard,

taking account of the fact that these security aspects are closely linked with safety of aircraft design and flight operations, where the Union is already responsible pursuant to Regulation (EC) No 216/2008.

2 Legal basis

2.1 Basic Treaties

2.1.1 Article 100(2) of the Treaty on the Functioning of the European Union

2.2 European Parliament's involvement in decision-making procedure

2.2.1 Ordinary legislative procedure: The European Parliament shares legislative power with the Council on the Proposal.

2.3 Majority required in Council

2.3.1 Qualified Majority Voting

3 Subsidiarity

3.1 Applicable.

3.2 The Proposal does not conform with the requirements of subsidiarity.

3.3 In this context, Government proposes that Parliament submits a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission, in line with the provisions of Article 6 of Protocol 2 on the Application of the Principles of Subsidiarity and Proportionality annexed to the Treaty of Lisbon. A draft reasoned opinion for the consideration of Parliament's Standing Committee on Foreign and European Affairs is attached.

4 Malta's position

4.1 Malta's position on the dossier in concrete terms

The following is the consolidated position of the Ministries concerned (Implementing: Ministry for Transport and Infrastructure; Participating: Ministry for Tourism) with regards to 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.

4.1.1 The Government of Malta favours initiatives that aim at enhancing and ensuring the safe operation and growth of the aviation industry. Furthermore, the Government believes that in such a dynamic sector it is important to prepare for the challenges ahead, thus taking a proactive approach rather than reactive approach.

4.1.2 In principle, the Government supports a more flexible system which allows more efficiency, eliminating ineffective regulation, facilitating innovation and boosting the competitiveness of the aviation industry. However, with respect to the proposed move towards a performance-

based regulation (PBR), the Government is of the opinion that any such move should be done with caution so to achieve the right balance without compromising on safety.

- 4.1.3 The potential use of unmanned aircraft as an aide to industries is an innovation which is increasing in demand and must be addressed. More is to be discussed on this new market niche in order to achieve an appropriate level of regulation, and thus safety, without jeopardising commercial air transport.
- 4.1.4 The Government believes that the responsibility for civil aviation safety oversight belongs, in terms of international law, to the Member States, and therefore certain safety oversight tasks cannot be transferred to central European institutions. The Government does not support increased administrative burdens and increased costs on the national competent authorities and operators and is also against the establishment of new measures that might affect the sovereignty of the Member States and their responsibilities towards international institutions.
- 4.1.5 Furthermore, the Government does not agree with the proposed scope and extent of delegated acts which significantly exceeds the mandate given in Article 290 of the Treaty on the Functioning of the EU. The delegated acts should be kept to an absolute minimum and the objectives, content and scope of the remaining implementation acts should be explicitly and clearly defined (particularly Article 51 related to inspectors).
- 4.1.6 The Maltese Government considers that 'safety' should remain the overall objective of the proposed regulation which is to be achieved in the most effective and cost-efficient way possible. The International Civil Aviation Organisation (ICAO) is the leading and principal forum that serves international aviation safety and the EU needs to ensure uniformity and compliance with ICAO Standards and Recommended Practices. Maintenance and synchronisation of EU rules with those of ICAO is therefore essential. The obligations and responsibilities of the Member States towards ICAO should not be compromised. The possibility for EASA to act as a competent authority with the possibility of issuing Air Operator Certificates is not desirable as this would complicate matters from a legal perspective. Moreover, the same Agency would be subject to compliance and it is not clear by whom such compliance / auditing is to be carried out.
- 4.1.7 The Government believes that the main role of the EASA should remain that of exercising continuous oversight on the national competent authorities based on standardisation and continuous monitoring activities across the Member States. The proposed new role of EASA would require additional resources to be engaged in activities the cost of which is incurred by users. There is a risk that such measures would result in excessive rigidity and additional costs which should definitely be avoided.
- 4.1.8 With respect to the financing of EASA through en-route charges collected by EUROCONTROL, the Government is of the opinion that this should be revised. Moreover, the various tasks done by institutional entities operating at a European level, the European Commission, EASA and EUROCONTROL need to be clearly distinguished from one another in order to avoid duplication and overlapping of responsibilities.

4.1.9 The Government considers that the requirements regarding the adoption of delegated acts as defined in Article 290 of the Treaty on the Functioning of the European Union are not sufficiently complied with. It needs to be established whether it would be more appropriate to make use of implementing acts rather than delegated acts. In particular, the European Commission should not be granted delegated powers with respect to the conditions of the qualifications of inspectors and other staff of the national competent authorities.

4.1.10 Consequently, it is recommended that the Maltese Parliament objects to the Proposal and submits the attached reasoned opinion in accordance with the procedure established in Article 6 of Protocol No 2 on the application of the Principles of Subsidiarity and Proportionality, annexed to the Treaty on the Functioning of the European Union.

4.2 *Economic and financial repercussions of the dossier*

4.2.1 Referring to the Impact Assessment SWD (2015) 263, the following effects on national budgets and administrations were highlighted:

With respect to implementation costs Member States that have not yet introduced State Safety Programmes will be required to do so. Further costs arise from the need for additional training. Certain Member States will have to develop expertise in cyber security and ground handling. Nevertheless, the majority of the measures proposed will be applied on a voluntary basis, and would be activated by a Member State predominantly on the basis of a positive cost-benefit analysis.

After some initial set-up and training costs, positive impacts on the resources of national aviation administrations are expected in the mid and long run, by achieving efficiency gains through the pooling and sharing of resources and the move to more targeted, risk-based oversight. The pooling and sharing of resources will be financed by fees and charges based on the 'user pays principle'.

The preferred ground-handling and security options do not involve new certification requirements and thus oversight costs for Member States are not expected to be significant.

5 National Context

5.1 *Internal Consultations*

5.1.1 The Ministry for Tourism was consulted.

5.2 *External Consultations*

5.2.1 N/A

5.3 *Related national legislation*

5.3.1 N/A

5.4 *Changes required in national legislation*

5.4.1 N/A