

June 2015

Review of the aviation package

Main instrument: Regulation 216/2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (EASA)

This briefing is one of a series of 'Implementation Appraisals', produced by the European Parliamentary Research Service (EPRS), on the operation of existing EU legislation in practice. Each such briefing focuses on a specific EU law which is, or will shortly be, subject to an amending proposal from the European Commission, intended to update the current text. 'Implementation Appraisals' aim to provide a succinct overview of material publicly available on the implementation, application and effectiveness of an EU law to date - drawing on available inputs from, inter alia, the EU institutions and advisory committees, national parliaments, and relevant external consultation and outreach exercises. They are provided to assist parliamentary committees in their consideration of the new Commission proposal, once tabled.

This Implementation Appraisal focuses on [Regulation 216/2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency \(EASA\)](#) and on its amending acts [Regulation 1108/2009](#) and [Regulation 6/2013](#). Where relevant, reference to related pieces of legislation such as [Regulation 300/2008](#) on common rules in the field of civil aviation; Commission [Regulation 965/2012](#) on technical requirements and administrative procedures related to air operations and its recent amendment via [Regulation 83/2014](#) will be included in the text.¹

EP committee responsible at the time of adoption of the EU legislation: Transport and Tourism (TRAN).
Date of adoption of original legislation in plenary: 12 December 2007.
Date of entry into force of legislation: 8 April 2008 (Article 70); successive amendments via Regulation 1108/2009 and 6/2013 entered into force on 14 December 2009 and 29 January 2013 respectively.
Date foreseen for review: evaluation of EASA activities three years after taking up of duties in 2003 and then every five years (Article 62).
Timeline for new amending legislation: The Commission's Roadmap of 26 March 2014 indicates that impact assessment work and supporting studies started in the first quarter of 2014. A first consultation on a possible revision of Regulation 216/2008 was concluded in 2014. A second consultation is still ongoing and will be closed on 10 June 2015. During a meeting of the TRAN Committee, the European Commission indicated that an Aviation Package containing both legislative and non-legislative initiatives will be submitted in the fourth quarter of 2015. The package is expected to include - among others - a revision of the EASA Regulation and new rules on remotely piloted aircraft systems (RPAS).

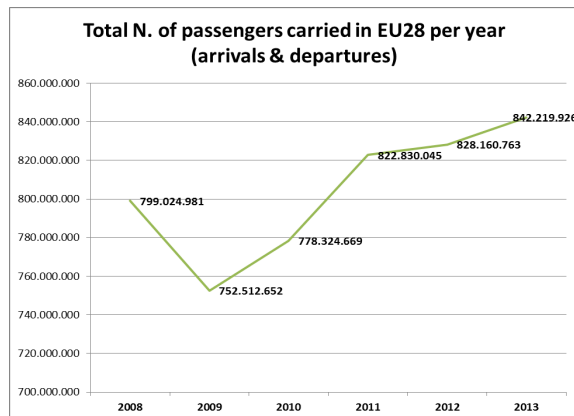
Background

The aviation sector comprises all activities linked to the operation and manufacturing of civil aircraft, namely aeronautical manufacturing, airports, airlines, ground services, air navigation service providers, and general aviation. The EU is a major player in this sector, being the second aviation region after Asia in terms of capacity and a global key provider in aircraft manufacturing with Airbus. Since the liberalisation of air transport in the 1990s and the creation of a single aviation market, air transport has successfully contributed to economic growth in the EU. Liberalization has

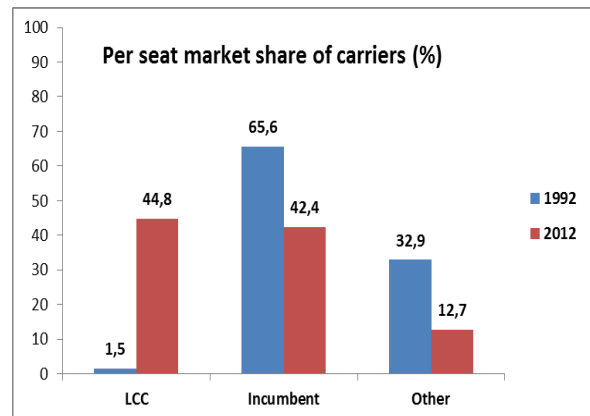
¹ The European Commission put forward two additional proposals, [COM \(2013\) 409](#) and [COM \(2013\) 410](#), to align Regulation 216/2008 with the revised [Single European Sky package SES+2](#). Both initiatives are still pending under the ordinary legislative procedure and awaiting Council's first reading position.

also drastically changed the landscape of European aviation. Among the most tangible results is the development of a network of 400 airports across Europe, a vast choice of scheduled airlines (over 150)² including low-cost carriers (LCCs), growing competition on the most popular passenger routes, and constantly increasing passenger and cargo traffic. The sector supports over 5 million direct and indirect jobs and contributed €365 billion to the EU's GDP (i.e. 2.4%) in 2012. Recent trends in passenger traffic and the evolution in the per seat market share of various types of carriers are illustrated in the two figures below.

These changes do not come without challenges: some of most notable ones include increased congestion at airports; the growing diffusion of atypical employment in the sector, the sometimes suboptimal allocation of funding for airport infrastructure (as noted in Special Report 21/2014 on EU-funded infrastructure by the European Court of Auditors)³, and the need to revise state aid rules.



Source: Eurostat (2015) - ttr00012



Source: Author's elaboration on [EC \(2013\)](#)

[Aviation safety](#) is a cornerstone of the sector and is the specific subject of this implementation appraisal. The EU's performance in this field is excellent: safety records have steadily improved in a context of growing traffic, with the European system holding the best record worldwide in 2012, and the best record on fatal accident rates for commercial scheduled flights in 2013.⁴ The [European Aviation Safety Agency](#) (EASA) lies at the core of the current system, as all aviation safety rules have been gradually transferred into a single legal framework under Regulation 216/2008 to ensure legal consistency. Under this framework, EASA is the single safety body tasked with preparing, implementing and monitoring the application of existing rules. As mentioned, safety results have been impressive; however it cannot be automatically assumed that such achievements will continue in light of the forecasted surge in air traffic, unless the EASA system is adjusted to remain fit for purpose. Indeed, international civil aviation is a dynamic industry and airline manufacturers expect the total number of commercial aircraft to double between today and 2030 and [global air transport to grow](#) by around 5% annually in the same timeframe. This will obviously put pressure on the system and require some adaptations e.g. in terms of available skills and resources and in air traffic management to maintain present safety records.

1. EASA and the EASA system

The European Aviation Safety Agency was established by [Regulation \(EC\) No 1592/2002](#) to maintain the highest common standards of safety and environmental protection in civil aviation. Headquartered in Cologne (DE), with about 750 aviation experts and administrators, EASA is in fact part of a broader network of authorities known as the "EASA system" including the European Commission, EASA, Member States and national aviation authorities (NAAs) from the EU28, Iceland, Liechtenstein, Norway and Switzerland, [Eurocontrol](#) and, for some aspects, the [International Civil Aviation Organisation](#) (ICAO). EASA is responsible for strategy and safety management, the certification of aviation products and the oversight of approved organisations and EU Member States. Specifically, [EASA's tasks](#)

² Note that the sector has witnessed a consolidation of scheduled airlines: a decade ago registered carriers were 179. Further details can be found in the [fitness check of the aviation sector](#) performed by the Commission in 2013. As of 2011, low cost carriers have overtaken incumbents in terms of market share of available seat capacity.

³ Please see also further information on this Special Report available in the study [Special Reports of the European Court of Auditors - A Rolling Checklist of Recent Findings](#) compiled by DG EPRS, Policy Performance Appraisal Unit.

⁴ More recent data were not available or do not cover the same geographical area, i.e. they are not comparable. For further details, see EASA's [latest aviation safety reports](#).

include: rulemaking (drafting aviation safety legislation and provision of technical advice to the European Commission); inspection, training and standardization; safety and environmental certification of aircraft, engines and parts; approval of aircraft design and maintenance organisations; authorization of third-country operators; coordination of the European Community programme on Safety Assessment of Foreign Aircraft (SAFA); and data collection, analysis and research to improve aviation safety.

Regulation 216/2008 also known as the "Basic Regulation" extended Community competence to air operations, flight crew licenses and aircraft used by third country commercial operators flying into or from the EU. [Regulation 1108/2009](#) extended EASA's rulemaking and standardisation role to aerodrome operations and operators, air traffic management and air navigation service provision. This progressive expansion of the EASA system and the agency's remit is motivated by a desire to provide a comprehensive and uniform approach to all phases of flight and across all fields of aviation in order to maintain and improve current safety records. A possible revision of Regulation 216/2008 foreseen for the last quarter of 2015 should thus be seen in this context.

To ensure that it can fulfil its mission, EASA has technical, financial and legal autonomy. In 2014, [EASA's budget](#) amounted to €162 million, mostly composed by fees paid by the industry (72%), EU budget contributions (21%) and fees paid by third countries (7%). The agency's activities are evaluated every five years by an independent panel of external experts, in line with Article 62 of the Basic Regulation.

2. EU-level reports, evaluations and studies

This section briefly summarises the main findings of recent studies on aviation safety and the implementation of Regulation 216/2008 and related acts. In view of a possible revision of the Basic Regulation and the functioning of EASA, as announced in the [European Commission's Roadmap](#), greater prominence is given to the latest evaluation of the agency's performance, as this input will feed directly into the impact assessment supporting a potential initiative. Other studies touching on issues that have emerged during the implementation of existing rules are also briefly examined below.

Article 62 Panel Evaluation - Final Report of December 2013

Article 62 of Regulation 216/2008 requires EASA's Management Board to commission an independent evaluation three years after the establishment of the agency and subsequently every five years. The [latest evaluation](#) of December 2013 was set to address three specific points:

1. the challenges facing the EASA system up to 2020,
2. whether the current performance of the system indicates that EASA is able to cope with such challenges, and
3. possible steps to be taken, including amendments to the Basic Regulation 216/2008 to meet such challenges.

The analysis and recommendations had to take into account some contextual factors, in particular existing budgetary and resources constraints and the growing divergence in National Aviation Authorities' (NAAs) capabilities and ambitions in regulating aviation safety.

The report identifies several challenges but puts particular emphasis on three issues:

1. the need to implement a risk-based policy approach across the board. This is deemed chiefly important for rulemaking activities and oversight by EASA and NAAs;
2. Members States have different (and diverging) abilities to meet their oversight duties. Existing weaknesses and gaps need to be identified to propose adequate solutions;
3. a necessity to improve cooperation, coordination and the efficient use of resources within the EASA system. Other challenges identified by the expert panel include the need to adapt to new responsibilities e.g. in air traffic management; finding the right balance between the central role of EASA and the respect of subsidiarity and proportionality principles; achieving the right equilibrium between the adoption of new regulation and the effective implementation of existing rules; and securing sufficient resources to cope with future needs.

Main Recommendations of the Panel Evaluation

In light of the challenges identified, the report provides a series of recommendations on the governance of the EASA system, a risk-based approach to regulation and some suggestions for the long-term. Indeed, in some instances the ten panel members decided to look beyond the 2020 timeframe set in the evaluation mandate in order to ensure a proper reflection of on-going and future developments in the aviation sector. The main recommendations of the report are summarised below.

Risk-based approach to regulation

- Complete the rulemaking tasks assigned to EASA under the Basic Regulation and avoid any new regulation that is not driven by confirmed safety risks.
- Consolidate and improve the current system by taking a risk-based and data-centred policy approach. This would allow moving from a reactive system (i.e. where new rules are implemented after an accident) to a proactive one that anticipates and manages potential safety risks, in line with agreed international practice. A cornerstone of this proactive approach is data collection and exchange between EASA and NAAs.
- Amend the Basic Regulation to ensure the establishment of a comprehensive Safety Management System: this entails extending relevant elements to all areas falling in EASA's remit and making this extension a mandatory requirement (this is not the case under the current rules).
- Entrust EASA with the safety aspects of EU security measures and the safety aspects of ground handling, commercial space transport and remotely piloted aircraft.

Governance of the EASA system and management of the agency

- Urgently find a solution to discrepancies in Member States' ability to fulfil their oversight duties to ensure both the trust of the travelling public and the credibility of European safety in a global perspective. The report suggests a systems-based solution: e.g. one or several Member States/NAAs could voluntarily ask EASA to take on oversight duties; the same "gap-filling" role could also be played by a regional grouping of Member States/NAAs, who would accept the duties that some of their counterparts are unable to perform. Alternatively, set up a mechanism to ensure complete oversight activities in case no voluntary request for help is initiated by Member States/NAAs unable to comply with their oversight duties. This second approach has logistic, financial and human resources implications. The Panel recommends a mandatory approach on the sharing of resources and expertise. This change would require an amendment of the Basic Regulation and would make EASA responsible for reporting to the European Commission which Member States are unable to fully perform their duties.
- Initiate a study to clarify the institutional roles and responsibilities of the different players in the EASA system, identify and address gaps, overlaps and instances where resources could be pooled to guarantee a more efficient and effective functioning of the system. This process should lead to the development of a Common Understanding between the various actors of the system.
- Secure stable and predictable funding for EASA, with a stronger emphasis on the user-pay approach.

Long-term suggestions

- Growing technological complexity in European air transport could lead to a shortage of skills in the medium and long term. Tapping into the expertise of the manufacturing industry may be a solution: this could include the delegation of limited and legally established self-oversight duties to the industry to ease pressure on the system.
- Do not wait for the next evaluation (in 5 years) to start considering the option of a single integrated agency. This is possibly the best approach to ensure continued levels of safety in European skies in the face of growing traffic and fast technological developments. Despite its impressive performance, the EASA system in its present form is unsustainable in the medium-long term, mostly because of its institutional complexity.

Source: author's elaboration on EASA's [Article 62 Panel Evaluation](#) (2013)

EASA documents

Following the findings of the Panel Evaluation, EASA's Management Board established a restricted sub-group to prepare recommendations on future regulatory developments in the aviation sector. The group's [Final Report on the Future of the European Aviation Regulatory System](#) will be part of the supporting evidence-base leading to the potential revision of Regulation 216/2008 in the second half of 2015. The sub-group reacted directly to the recommendations of the Article 62 Panel Evaluation and put forward a series of specific actions to be implemented as of 2015. In several cases the sub-group supports the recommendations of the Panel Evaluation, sometimes suggesting the adoption of a more gradual approach (e.g. in the establishment of a Safety Management System). In other instances, the sub-group takes a different position: for instance it does not support the recommendation of carrying out an additional study to clarify institutional roles and responsibilities of the different players in the EASA system; it is also against delegating self-oversight duties to private players. In any event, the final decision on the revised content of Regulation 216/2008 will be taken through the ordinary legislative process. The table below summarises the recommendations and actions put forward by the sub-group on the Future of the European Aviation Regulatory System so as to facilitate a comparison with the actual proposal when it will be tabled.

EASA Recommendations and Actions for the Future of the European Aviation Regulatory System

<u>Recommendation</u>
<ul style="list-style-type: none">- Enable sharing of resources within the EASA system for specific tasks, through contractual and voluntary mechanisms.- Extension of the remit to safety aspects in the field of ground handling, security (for oversight activities), environment (for product-related aspects), and RPAS.
<u>Action</u>
<ul style="list-style-type: none">- EASA Member States to identify tasks and corresponding resources for which they would be ready to set up mechanisms to enable sharing across the system.
<u>Recommendation</u>
<ul style="list-style-type: none">- Avoid potential overregulation and promote performance and risk-based regulations where appropriate. The principles of proportionality and subsidiarity need to be respected.
<u>Action</u>
<ul style="list-style-type: none">- EASA to help progressing on the Performance-Based Regulation (PBR) concept, and prepare a plan, based on strategic objectives detailing how, on what items, and to what extent, to manage transition to PBR, including preparation of rule-makers, authorities/inspectors, and regulated entities.- EASA Member States to identify practical examples where there is overregulation and where they would like EASA and the Commission to act upon.
<u>Recommendation</u>
<ul style="list-style-type: none">- Risk-based oversight (RBO) - More effective, well planned use of oversight resources based on detected risks.- Performance based oversight (PBO) concentrating on the required outcome or performance in relation with the agreed safety objectives.
<u>Action</u>
<ul style="list-style-type: none">- EASA to coordinate/facilitate the development of best practices to carry out risk/ performance based working methods.
<u>Recommendation</u>
<ul style="list-style-type: none">- Facilitate the implementation of a Safety Management System (SMS) at European/State/EASA and organisation level, in a consistent manner, as an enabler for a risk/performance-based environment.
<u>Action</u>
<ul style="list-style-type: none">- EASA to design/develop an operational data/Flight Data Monitoring repository (together with Air Traffic Management and Meteorological data), run independently and accessible to all NAAs for trend analysis and benchmarking. Other actions may be identified.- EASA Member States to submit to EASA best practices, e.g. experiences made so far, implementation models, etc.
<u>Recommendation</u>
<ul style="list-style-type: none">- Have due regard to the competitiveness of the European industry, and avoid putting undue regulatory burden on it, as well as reviewing its role in the rulemaking process.
<u>Action</u>
<ul style="list-style-type: none">- EASA to establish an advisory committee composed of industry CEOs providing advice on a regular basis.
<u>Recommendation</u>
<ul style="list-style-type: none">- EASA shall enhance its presence at international level.
<u>Action</u>
<ul style="list-style-type: none">- EASA Member States to further enhance coordination and cooperation to strengthen EU positions vis-à-vis our partners.

Recommendation

The group recognises that there are resources shortages in some areas:

- Ensure the necessary resources are available, especially for certification and oversight purposes;
- Identify areas where resources could be released without compromising performance;
- Ensure continued availability of resources matching the evolving needs e.g. in safety analysis and PBO;
- New funding mechanisms based on the user-pays principle should be explored/made available, especially when the conditions change (e.g. remit expansion), but without generating new costs for the airlines;
- The continuous efficiency in the use of financial resources should be ensured and prioritised.

Action

- EASA to coordinate the establishment and practical use of pools of resources, based on voluntary and contractual mechanisms between NAAs, or EASA and NAAs.
- EASA to carry out a review of the qualification and deployment of resources within the NAAs and the Agency.
- EASA Member States to identify areas where efficiency gains can be made through better/more efficient (re)deployment of resources (e.g. use of type-rated inspectors).

Source: author's elaboration on [EASA's Final Report on the Future of the European Aviation Regulatory System](#) (2014)

The Safety Management System

Europe has already started implementing a [Safety Management System](#) to support a proactive approach in identifying hazards and managing safety risks. In this context, it regularly adopts dedicated safety plans for those areas where coordinated and collective action by all relevant stakeholders contributes to avoiding accidents and serious incidents, so as to maintain or improve current safety records. EASA's latest [European Aviation Safety Plan \(EASP\)](#) identifies the risks and priorities for Europe for the timeframe 2014-2017. The EASP was developed by EASA together with safety experts from the Member States, the European Commission, Eurocontrol, the Performance Review Body (PRB) and industry. Once endorsed by EASA's Management Board, the EASP becomes a reference document to be implemented on a voluntary basis by all affected stakeholders. The latest EASP covers four areas: operational issues and in particular commercial transport operations; systemic issues (system-wide problems affecting aviation as a whole and calling for a reactive approach); emerging issues calling for a proactive and forward-looking approach and; human factors and human performance, which affect all safety areas. The document contains both a complete lists of measures that have been implemented under each area and proposes a set of new safety actions for the coming years. Progress on implementation is evaluated and documented to improve Europe's risk management capabilities.

In August 2014, EASA also issued a report on a [Harmonised European Approach to a Performance-Based Environment \(PBE\)](#) to clarify key concepts behind PBE and thus enable a more effective management of safety and its associated risks. Among others, the report outlines key definitions that need to be agreed at the European level as well as the enablers that should facilitate the move to a more risk-based approach. This work is meant to contribute to the potential revision of Regulation 216/2008 by fostering a common European understanding on the concepts of Performance-based Rules (PBR), Risk-based Oversight (RBO) and Performance-based Oversight (PBO).

3. European Parliament positions

Discharge procedure 2013

The European Parliament discharges EASA's accounts every year, following a report by the European Court of Auditors (ECA). For the year 2013, the [Court's report](#)⁵ confirms that accounts for the year 2013 are reliable and the underlying transactions legal and regular. It suggested however that the agency improve transparency and documentation of specific certification tasks (amounting to €22 million in 2013) outsourced to NAAs and qualified entities. ECA also encouraged the Agency to establish a proper headquarters agreement with its host Member State.⁶ The European Parliament adopted a Resolution⁷ with a set of recommendations that form an integral part of the discharge decision. Among others it focused on the agency's headquarters agreement; EASA's procurement procedure already highlighted by ECA; the prevention of conflicts of interests (see also the section below on ECA's Special Report) and two revolving

⁵ European Court of Auditors, Report on the annual accounts of the European Aviation Safety Agency for the financial year 2013 together with the Agency's replies.

⁶ The [European Parliament's discharge report](#) of 29 April 2015 was adopted by 553 votes to 105, with 30 abstentions.

⁷ With 579 votes in favour to 74 against, 38 abstentions. Text awaiting publication at the time of writing.

door cases identified by EASA. On this point the Parliament invites EASA to publish by the end of 2015 the curriculum vitae and declarations of interests of the panel of experts, and also to put in place procedures to reallocate duties or dismiss officials if necessary. Finally, the European Parliament called for the agency to be given the financial, material and human resources it needs to properly perform its duties.

Legislative files

On 11 June 2013, the European Commission published a proposal on [Aerodromes, air traffic management and air navigation services: simplifying and clarifying the legal framework](#), amending Regulation 216/2008. The European Parliament adopted its [first reading position](#) on 12 March 2014 including [42 amendments](#).⁸ The text is now awaiting the Council's first reading position. Amendments proposed by the European Parliament touched on the following aspects of the original proposal: scope; EASA's role on safety and at the international level; the accreditation of national authorities by EASA; pilots and delegated acts; the delegation of powers, the role of EASA's Executive Director and its Executive Board; the agency's revenues; the question of conflict of interests; and the need to grant EASA real flexibility in the management of staff to complete its tasks. In its response to the proposed amendments, the European Commission accepted in full 17 amendments; eight were deemed acceptable in principle with some redrafting and three acceptable only in part. The Commission rejected the remaining ten amendments. It is worth noting that in [its reply](#) the Commission considers the Parliament's proposal of attributing to EASA the task of accrediting national authorities an interesting one; however a move in this direction is considered premature and should be subject to further assessment. This aspect might be taken up in the potential revision of Regulation 216/2008.

The Commission's draft implementing regulation on [Technical requirements and administrative procedures related to air operations](#) was [not rejected by Parliament](#) on 9 October 2013.⁹ A tabled motion for a resolution suggesting the withdrawal of the proposed implementing regulation, based on the grounds that flight time issues involve clear political decisions that should be subject to greater transparency towards citizens, the European Parliament and the Council, did not receive the necessary majority.¹⁰

Oral and written questions

Several Members of the European Parliament have raised written questions on aviation safety and EASA, with an increased focus on the former, following the recent crashes of MH17 in the summer of 2014 and of Germanwings flight in March 2015. Questions can be grouped around three topics:¹¹ 1) the European Commission's Work Programme for 2015; 2) aviation safety issues, including the role of EASA in monitoring compliance with existing rules, in particular the screening of the medical and physical conditions of pilots; and 3) social rights of pilots, the growing phenomenon of atypical contracts and the general conditions of employment in the aviation sector. As many questions were submitted in the last two months, they are still awaiting an official reply from the European Commission. Other issues raised by Members of the European Parliament in previous years concern the impact of Regulation 216/2008 on e.g. gliding activities and on non-commercial aviation.¹²

⁸ With 614 votes in favour, 56 against and 8 abstentions.

⁹ With 387 votes against, 218 in favour and 66 abstentions. According to the regulatory procedure with scrutiny, in case of no opinion from the European Parliament, the Commission shall adopt the proposal.

¹⁰ The proposed resolution also stated that the Commission had exceeded its mandate under Regulation 216/2008 by transferring to EASA the power to alter essential parts of the Regulation through certification specifications in the areas of standby and reduced rest; finally the resolution indicated that the Commission failed to provide sufficient scientific evidence to support various parts of its proposal.

¹¹ [E-004359-15](#); [E-005981/2015](#); [E-005181/2015](#); [E-006012-15](#); [E-005589-15](#); [E-003792-15](#); [E-005707/2015](#); [E-005091/2015](#); [E-005250/2015](#); [E-005242/2015](#); [E-000080-15](#); [E-004928/2015](#); [E-009481-14](#); [P-008811-14](#); [E-010759-13](#); [E-006956-14](#); [E-005964-14](#); [E-006884-14](#); [E-005002/2012](#); [E-6268/2010](#). Specifically on EASA: on marketing budget: [E-004544/2015](#); on personnel composition and remunerations [E-004543/2015](#); [E-004070/2015](#); on EASA's environmental budget: [E-002783-15](#); on EASA's competences, drones and other security issues: [P-010384-14](#); [E-009010-14](#); [P-005696-14](#).

¹² Respectively questions [E-007767-13](#) and [E-009032-12](#).

Citizens' questions - [AsKEP](#)

Since 2014, citizens submitted to the European Parliament 20 questions on the topic of aviation safety. In terms of geographical distribution, 6 questions came from Germany, 2 from Spain one each from Austria, Belgium, Denmark, Estonia, France, Sweden and the United Kingdom. Other questions were from third countries, in particular the United States and Turkey. Some of these enquiries revolved around the accidents mentioned in the previous section and applicable rules; others are about privacy and safety; specific airports, and one question reports a case of harassment by airport police.

4. European Commission and EASA consultations

Between May and September 2014, the European Commission held a public [stakeholder consultation](#) with 44 open and multiple choice questions on aviation safety and a possible revision of Regulation 216/2008. The consultation document clarifies that the potential initiative aims at improving the performance of the European aviation system on the following aspects: safety, competitiveness, environmental protection, and the quality of air services provided to citizens. 330 contributions were submitted, with the majority of replies (68%) coming from individuals,¹³ followed by organisations (28%), including 56 enterprises, nine National Aviation Authorities and one contribution from Eurocontrol. [Consultation results](#)¹⁴ indicate that the overall level of satisfaction with present levels of aviation safety in Europe is very high. Yet, some respondents - individuals and microenterprises in particular - declared that they are not satisfied with the way aviation safety is managed in their country of establishment. The consultation also asked respondents to provide feedback on specific problem areas. Responses indicate that the excessive level of detail of the current regulation is perceived as an issue. Reportedly current safety levels would be achievable with lower compliance costs and regulatory complexity. One of the shortcomings of existing rules is that they may lead organisations to overly focus on demonstrating compliance, with potential risks for safety. In some cases, rules are interpreted inconsistently and in more restrictive terms than the original intention of the legislator. As regards the ability to identify risks and accommodate new technologies and business models, the majority of NAAs (77%) and of other organisations (75%) concur on the fact that the EU should improve its ability to identify and mitigate safety risks. However, 21% of organisations disagreed on this point. Views seem to converge instead on the fact that the current system is unable to accommodate new technologies such as remotely piloted aircraft systems (RPAS) and new business models. On the latter, aviation employees raised the issues of the possible deterioration of working conditions in the sector. Another set of questions touched upon the institutional set up of the EASA system. While respondents from Member States found the division of responsibilities between EASA and NAAs to be clear, this view was not shared by individual respondents and other organisations. Shortcomings in the way EASA and Member States carry out oversight were reported by respondents among individuals and organisations, with EASA's performance faring better than its national counterparts. On the contrary, NAAs did not see any shortcomings in oversight abilities. Respondents' views were split as regards the EU's international leadership on aviation safety.

Most respondents agree that the scope of existing rules needs revision, raising in particular the question of RPAS. NAAs also mentioned the case of Commercial Space Transport. Other suggested extensions to the scope of Regulation 216/2008 include: ground-handling services, the certification of state aviation activities and aircraft (e.g. police and fire-fighters). The issue of Member States' uneven capability to meet their oversight obligations was confirmed; however respondents did not reach a clear position on whether this represents a safety risk. Diverging oversight abilities were attributed to the limited financial and human resources available in some countries and to differing volumes of aviation activity; conversely the majority of respondents believe that EASA has enough resources available. Views from various categories of respondents converge on the fact that there are gaps, overlaps and contradictions between the various domains of aviation safety legislation, and competing requirements between safety rules and other domains of aviation legislation. Specific examples of gaps and inconsistencies were provided (e.g. on cyber-security threats, on the REACH Regulation,¹⁵ inconsistent requirements for airborne and ground-based components of

¹³ Note that individual contributions included a particularly high number of submissions from German private pilots, which might affect some of the findings of the consultation.

¹⁴ Due to space constraints this implementation appraisal only covers the key points of the responses submitted to the European Commission. A complete analysis and weighting of the consultation responses is still being performed by the Commission in the context of the impact assessment that will support a potential initiative.

¹⁵ Specifically, respondents explain that compliance with certain aviation safety requirements under Regulation 216/2008 may lead to contravening existing rules on chemicals set by the [REACH Regulation](#).

the air traffic management system). The consultation also touched on the question of [subsidiarity](#). A clear role for the EU was supported whenever risks concern more than one Member State and whenever this has an impact on the functioning of the internal market and the creation of a level playing field. Respondents expressed a preference for regulating at the national level e.g. sport and recreational aviation as well as commercial operations with helicopters, although some respondents were in favour of leaving to operators and manufacturers the choice between a national or EU regime. One of the [policy objectives](#) included in the consultation refers to the need for an EU aviation safety target. Views were split on this point, although most respondents agree that the EU should at least be able to freeze the current [rate of fatal accidents](#) (1.8 per million flights in 2013). Practically all respondents agreed on the objective of making the current regulatory system more proportional and less costly. Broad support was also expressed for improving the system's ability to identify and mitigate the most pressing safety risks and to monitor safety performance. As regards [policy options](#), while respondents concur with the view that prescriptive regulation delivers clear guidance, legal certainty and straightforward compliance, this approach does not necessarily ensure that current safety levels will be preserved in the future. Commitment and professionalism were indicated as the most important factors to guarantee aviation safety. On the downside, prescriptive rules were seen as a barrier to innovation, the source of high compliance costs and of a competitive disadvantage. In this respect, [risk-based approaches](#) were perceived as less costly and allowing a more flexible and targeted use of resources by several categories of respondents; however 55% of NAAs and 30% of other organisations disagree on the fact that such an approach would reduce authorities' enforcement costs. A risk-based approach also requires setting up reliable data collection and monitoring systems, which would generate additional costs and administrative burdens according to the majority of respondents (a third disagreed on this point). Most agree that this approach would not create uncertainty for operators and employees, provided it is well implemented. Respondents agreed that implementing a Safety Management System allows for a better prevention of accidents and the improvement of aviation safety; yet its implementation is not cost-free (particularly for smaller organisations) and requires time and cultural change. Finally, stakeholders expressed their view on the [governance of the current system](#). Here opinions diverge depending on the type of respondent. For instance, the option of centralising responsibilities of competent NAAs at EASA is strongly opposed by respondent organisations (63%) and particularly by NAAs who also believe that the current allocation of responsibilities should be maintained. There is strong support among various respondents for allocating more tasks to operators themselves or, in some cases, to private authorised organisations such as sport aviation associations. Views were split on whether to move responsibilities from national authorities to EASA (or vice versa) and from the European Commission to EASA; however there was strong opposition to the possibility of moving back some responsibilities from EASA to the European Commission.

The consultation was complemented by an [EASA's advance notice consultation](#) on proposed amendments, with a set of open questions on more specific issues of aviation safety and the EASA system. This second consultation targets public and private aviation experts. As mentioned above, the main rationale of a potential aviation initiative is to identify which amendments to the Basic Regulation might be needed to ensure that current levels of aviation safety are maintained and improved in the mid and long-term future. To this end, EASA's consultation aims at forming a high-level policy direction focused on seven areas, namely: performance based and integrated approach to safety; how to modernize and update EASA's safety remit; a possible extension of EASA's remit beyond safety; more efficient use of available resources; ensuring a stable and adequate funding for EASA; further integration of aviation aspects; and aviation regulation beyond EASA. Drawing on the 6,000 replies to the consultation, EASA issued [Opinion 01/2015](#) suggesting a set of substantial changes to the EASA Basic Regulation and to some related aspects in order to make the current framework fit for future developments. Suggested changes (accompanied by detailed summaries of stakeholders responses and EASA's reply) concern: [general aviation](#) (such as sailplanes and balloons)¹⁶; the optional and partial inclusion of State services (e.g. fire-fighters, police) in the current framework; adjustments to the categories of aircraft currently included in Annex II of the Regulation; modifications to security aspects already subject to EU competency; new provisions on ground-handling services providers; a consolidated role in Single European Sky matters; EASA's role in research coordination; and recommendations on robust funding solutions.

Finally, a [third consultation](#) on an aviation package to improve the competitiveness of the EU aviation sector is ongoing until 10 June 2015. Its results are expected to feed into the impact assessment that the Commission is preparing in view of the forthcoming aviation package proposal expected in the last quarter of 2015.

¹⁶ In this field and in cooperation with the European Commission, EASA strives to make the regulatory framework lighter and simpler, as general aviation activities are subject to less risk exposure than e.g. commercial aviation.

5. European Court of Auditors Special Reports

In the field of aviation, the Court of Auditors (ECA) has recently focused on the value for money (or absence thereof) of selected investments in [airport infrastructure](#), a topic that falls outside the scope of this implementation appraisal. There are no specific reports on aviation safety; however in 2012, ECA published [Special Report 15/2012 on the management of conflict of interest](#)¹⁷ in selected EU Agencies. EASA is covered by the report and the ECA found that the agency does not have agency-specific conflict of interest policy and procedures. In particular EASA does not obtain or assess the conflict of interests of its staff, of Management Board members, experts involved in e.g. rule-making and standardization inspections, and members of its Board of Appeal. It seems that specific procedures on conflict of interest are also absent from the framework contract that EASA uses to outsource some of its duties. Finally and contrary to some other agencies, EASA does not publish the minutes of meetings where conflict of interest matters might be discussed. However it regularly publishes the minutes of the consultative bodies' meetings on rulemaking activities. In light of the above, the Court of Auditors recommends that EASA develop comprehensive and agency-specific policies and procedures on conflict of interest; this effort should also target those performing outsourced tasks for the agency, to ensure they manage conflict of interest situations to a comparable standard. Gifts and invitation policies as well as breach of trust policies and procedures, both currently absent, should also be set up.

Reactions to the Special Report

As the Special Report covered several bodies, the European Commission provided an answer applicable to all EU decentralised agencies stating its intention to develop a Common Approach on conflict of interest for all such bodies. [Dedicated guidelines](#) were published as a follow-up in December 2013.

EASA's reply to the Special Report clarifies that several procedures had already been put in place to address some of the shortcomings identified by the Court of Auditors; it also explained that there is a clear distinction between agency staff and EASA's Management Board, as they have different functions and competences and follow different procedures to adopt decisions. In particular, EASA has no direct influence on certain appointments (e.g. Management Board, Board of Appeal, Committee members directly appointed by Member States), thus candidate screening can only be performed for staff directly employed by the agency. As of June 2012, all members of EASA's Executive Committee completed a declaration of interests. The declarations of EASA's Directors are published on the EASA website and this publication requirement will be extended to all staff playing an important role in EASA's decision-making. As regards its approach to decision-making, EASA follows the "no single point of decision" rule (i.e. collegiality of decision-making) to prevent and mitigate conflict of interests. In this respect, the [European Parliament's Resolution of 10 May 2012](#) (see point 16) recognised that EASA's approach is sound if the circumstances in which it operates are taken into account: indeed, while the agency's technical staff members are commonly recruited from NAAs and the aviation industry in order to ensure that they have the necessary competences - a situation that can generate conflicts of interest with past or future jobs, the collegiality of decision-making ensures impartiality. Finally, as regards certification tasks outsourced to NAAs and qualified entities, a standard Framework Contract containing a clause on conflict of interest is systematically used. Additional procedures will be developed and are being monitored also by the European Parliament, e.g. during the discharge procedure for EASA's budget (see the dedicated section above).

6. Positions of European Economic and Social Committee (EESC) and Committee of the Regions (CoR)

The European Economic and Social Committee (EESC) is currently debating a draft own initiative opinion on [new social dumping in the European civil aviation sector](#). While the draft text concentrates on the issue of social dumping in aviation and the possible exploitation of loopholes in the legislation under new and emerging business models, aviation safety and the role of EASA are also referred to in the text. In particular the draft opinion calls on EASA to propose changes to the basic regulations so as to ensure safety regardless of the business models. It also states that EASA should contribute an opinion on 'the increasing extension of wet-leasing both inside and outside Europe; virtual airlines (registered office, operation and crews in different locations); the increased use of (bogus) self-employed and temporary agencies in the industry which makes it difficult for the administrations concerned to perform any checks and for personnel in terms of their flight hours, health and training'.

¹⁷ The Court uses OECD's definition stating that: 'A *potential* conflict arises where a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future'.

In a recent [Briefing Note](#) on the occasion of a meeting with Commissioner Bulc on 2 February 2015, the European Economic and Social Committee notes that when compared to other modes of transport, air receives greater attention in the European Commission's 2015 work programme. While the EESC expects the forthcoming aviation package to strengthen the role of EASA and the Commission, it believes that more should be done to further integrate the EU aviation market. For instance, current airport policy should be thoroughly revisited. The EESC will put forward an exploratory opinion to complement the Commission's work with the views of the civil society.

In its [2015 TEN Section Work Programme](#) the EESC confirms its intention to contribute 'actively to the further harmonisation of civil air transport in the EU and neighbouring countries' with a particular focus on the completion of the Single European Sky.¹⁸ The document stresses the importance of implementing agreed policies at the national level to end 'the anachronistic fragmentation of European airspace and to finally create an air traffic management that is economically efficient and environmentally sustainable'. An exploratory opinion on airport capacity is expected for 2015; in addition the EESC will seize the opportunity of the upcoming review of Regulation 216/2008 to voice its concerns on the slow progress in turning the non-punitive "Just Culture"¹⁹ into the common standard for all stakeholders in case of aviation incidents and accidents.

At the time of writing, the Committee of the Regions had not issued specific contributions on aviation safety, EASA and the potential revision of Regulation 216/2008.

7. New policy issues: Remotely Piloted Aircraft Systems

A recent technological innovation that is not covered by the existing framework are remotely piloted aircraft systems (RPAS), i.e. the so-called drones. Because of their growing diffusion and their potential impact on aviation safety, the European Commission is expected to include a dedicated measure on RPAS in the forthcoming aviation package.²⁰ As mentioned above, the Article 62 Panel Evaluation as well as feedback gathered during the public consultations also raised the issue of providing a clearer framework for drones.

Once mainly used for military (e.g. intelligence gathering) and security purposes, drones have increasingly spread to civil and commercial activities ranging from agriculture to disaster prevention, border control, photography and potentially logistics (e.g. the delivery of small parcels). As noted in a new [EPRS publication](#), this development comes with several legal, ethical and political implications.²¹ For instance, drones are able to collect a significant amount of data: but who owns the information? And how can privacy concerns be balanced with commercial benefits?²² What will be the economic impact of drones and their effects on existing business models, jobs and skills? What about third party liability concerns in case of accidents? As mentioned, drones also affect aviation safety, e.g. helicopters flying at an altitude of about 150 m.²³

These and other considerations have led over half of the Member States to introduce rules on RPAS; in other EU countries instead drones are not regulated at all: this situation risks creating fragmentation and legal uncertainty in a market that is still developing. In 2012 the European Commission published a first Staff Working Document on a [European strategy for the development of civil applications of RPAS](#) which led to the creation of the European RPAS Steering Group, followed in 2014 by the [Communication on A new era for aviation: Opening the aviation market to the civil use of remotely piloted aircraft systems in a safe and sustainable manner](#).²⁴ More recently EASA issued a [Concept of Operation for Drones](#) that is expected to feed into the upcoming debate. In particular EASA clarifies that the operation of drones should be integrated in a safe and proportional manner into the current aviation system and its

¹⁸ On this, see also [Recast of the Single European Sky Regulation and amendment of the EASA Regulation \(Rolling Programme\)](#), TEN/530, and [other EESC Opinions on an Integrated European Aviation Policy](#).

¹⁹ Defined as a 'culture in which front-line operators and others are not punished for actions, omissions or decisions taken by them which are commensurate with their experience and training, but where gross negligence, wilful violations and destructive acts are not tolerated'. For further details, see the dedicated section on [Eurocontrol](#).

²⁰ See a recent [speech by Commissioner Bulc](#), Riga 6 March 2015.

²¹ For a comprehensive overview, see also the dedicated EPRS webpages on [civil drones in the EU](#) and on the [international debate on the use of drones](#); some additional information on the forthcoming initiative can be found at: http://europa.eu/rapid/press-release_MEMO-14-259_en.htm

²² See also the recent [Opinion of the European Data Protection Supervisor](#).

²³ On this point, see the [infographic](#) provided by the European Commission.

²⁴ See also the final report of the [European RPAS Steering Group](#) published in 2013.

set of rules and indicates, in line with what has been explained in the previous sections, a risk-based approach as the preferred solution to regulate civil uses of drones. Indeed, a simple transposition of existing rules for manned aircraft to RPAS is not expected to achieve the right balance between providing acceptable social and environmental safety levels and keeping the necessary flexibility to foster innovation and competitiveness in an industry still in its infancy. To this end EASA classifies drones and their operations in three different categories: open (no authorisation by Aviation Authorities needed); specific (aviation risk to be assessed and mitigation measures suggested by the operator, with possible review and approval by Aviation Authorities), and certified (for risk levels similar to those of manned aviation, thus following procedures akin to those applied to piloted aircrafts). The proposed regulatory approaches would be complemented by promotional actions on safety initiated by EASA to support the Member States. In view of the forthcoming debate on a revised aviation package the European Parliament is also studying the issue.²⁵

8. Conclusion

The aviation market has changed considerably in the last few decades; among others the forecasted surge in passenger traffic and the diffusion of Remotely Piloted Aircraft Systems are likely to put pressure on the current system, thus requiring adjustments to the existing regulatory framework. The European Commission is expected to table a proposal for an "aviation package" in the last quarter of 2015. The proposal will include a revision of Regulation 216/2008 and of the mandate of the European Aviation Safety Agency (EASA), and potentially introduce EU-level rules on RPAS for the first time.

The European Parliament, the European Economic and Social Committee and EASA itself have called several times for an update of existing rules to ensure that the current impressive safety record in Europe is maintained in a changing and growing aviation market. In particular the move to a risk-based approach to regulation in certain areas of aviation safety, a simpler governance of the EASA system, and stable and predictable funding for EASA feature among the most commonly suggested changes to current rules.

9. Other useful documents

- Broderick Sean, [EASA Proposes Pooling Of State Resources](#), The Weekly Of Business Aviation, Mar 30, 2015.
- Casalprim Eva, [The added value of EU policy for airline services and air passenger rights](#), European Value in Action, EPRS, published on 07 July 2014, updated on 09 July 2014.
- Cîrlig Carmen-Cristina, [Use of armed drones](#), EPRS Briefing, 20 February, 2014.
- EPRS, [Low-cost air carriers in Europe](#), posted on 26 June, 2014.
- European Commission, Impact Assessment accompanying Commission Regulation amending Regulation (EU) N° 965/2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) N° 216/2008 of the European Parliament and of the Council, [SWD\(2014\)24](#).
- Nogaj Monika, [Cost of Non-Europe in the Single Market for transport and tourism: air and maritime transport \(Annex II\)](#), EPRS Study, published on 28 October 2014, updated on 29 October 2014.
- [Occurrence Reporting and Accident / Incident Investigation in EU Civil Aviation](#), Policy Department B, PE 438.605, 2010.

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www.europarl.europa.eu/thinktank (Internet) – www.eptthinktank.eu (blog) – www.eprs.sso.ep.parl.union.eu (Intranet)

²⁵ See for instance: <http://www.politico.eu/article/drone-rules-hover-into-view/>