



15.4.2016

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion of the Italian Senate on the proposal for a regulation of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council
(COM(2015)0613 – C8-0389/2015 – 2015/0277(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.

The Italian Senate has sent the attached reasoned opinion on the aforementioned proposal for a regulation.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for compliance with the subsidiarity principle.

SENATE OF THE REPUBLIC
2016
17th parliamentary term
RESOLUTION OF THE 8th STANDING COMMITTEE
(Public Works and Communications)

The Standing Committee,

– having considered, pursuant to Rule 144, the Union act COM (2015) 613 final, submitted for a reasoned opinion on subsidiarity, concerning 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,

– whereas:

the proposal aims to conduct a general review of the European aviation safety system and in particular of Regulation (EC) No 216/2008, which lays down the relevant rules, in order to establish a regulatory framework which, whilst ensuring increasingly safe, secure and environmentally friendly air transport conditions for passengers, also increases the external competitiveness of the sector and boosts productivity and employment;

to that end, the proposal introduces a more flexible approach to safety regulation, based on risk and performance (by eliminating unnecessary rules and providing a scalable framework of rules), which closes existing safety gaps and better takes into account relations between aviation safety and other technical domains of regulation, such as aviation security or environmental protection;

the proposal also addresses the problems some national authorities are having in acquiring the necessary resources for accomplishing the required certification and oversight work and sketches out a framework for the pooling and sharing of technical resources between the national authorities and the European Union Aviation Safety Agency, which includes the possibility of transferring responsibilities for implementation of Union legislation on a voluntary basis;

lastly, it seeks to lay down an effective regulatory framework for the integration of new business models and emerging technologies into the European airspace, including, in particular, unmanned aircraft;

– noting in particular that:

air transport and aeronautical production are, to a large extent, activities of a transnational nature which certainly require regulatory intervention at Union level. Indeed, existing Regulations No (EC) 1592/2002 of the European Parliament and of the Council of 15 July 2002 and No (EC) 216/2008, of the European Parliament and of the Council of 20 February 2008 have already made the Union responsible for tasks regarding the airworthiness and environmental compatibility of aeronautical products, flight operations, aircrew licensing, aerodromes and air traffic management and air navigation services (ATM/ANS), as well as safety of third country operators;

the proposal in question extends the existing Union aviation safety regulatory framework to a number of specific areas, namely to safety of ground handling services, unmanned aircraft and security aspects of aircraft and aviation systems' design, including cybersecurity;

– having considered the Italian Government report, drawn up pursuant to Article 6, paragraphs 4 and 5, of Law No 234 of 24 December 2012;

– having assessed the information provided by the national authorities responsible for aviation safety, namely the *Agenzia nazionale per la sicurezza del volo* (ANSV), the *Ente nazionale di assistenza al volo* (ENAV S.p.A.) and the *Ente nazionale per l'aviazione civile* (ENAC), during the hearings of 10 February 2016;

– taking into account the comments made by the 14th Standing Committee, consulted on the matter;

Expresses, pursuant to Protocol (No 2) to the Treaty on the Functioning of the European Union (TFEU) on the application of the principles of subsidiarity and proportionality:

(1) a partially negative opinion in respect of the principle of subsidiarity, which does not appear to have been fully complied with in relation to some of the regulated activities:

– firstly, with regard to the ground handling services and apron management services referred to in Article 32 of the proposal, it is acknowledged that there is a need for action at Union level to introduce common safety standards for service providers, with the aim of more effectively preventing incidents relating to these services.

However, with regard to the requirement to introduce more stringent regulation at European level, the decision not to require certification of service providers as a condition to start operations, as is, conversely, currently provided for under Italian law, appears to be contradictory in terms of both safety and operational efficiency. Indeed, Article 32 of the proposal for a regulation provides merely for self-certification, whereby the service providers declare they have the capability and the means necessary to discharge the responsibilities associated with the services provided, in compliance with the essential requirements referred to in Article 29 of the proposal.

This increases the level of risk, however, allowing operators who are not subject to any kind of suitability assessment by national competent authorities (for ground services) or by airport managing bodies (for apron services) to enter complex airport systems. It will therefore not be possible to check on their actual ability to provide the services in question in an appropriate manner. In the case of apron management service providers (introduced by Article 32 of the proposal for a regulation), the provision would mean that these operators can no longer be monitored by the airport managing bodies which, under Italian and EU law, are responsible for managing aprons and for the safety of the operations which take place in those areas.

Accordingly, the solution currently used in Italy is more suitable for achieving the safety and security objectives – in relation to the provision of ground handling services and apron management services – which the Commission seeks to pursue. Therefore, even though action at Union level is needed, there appears to be no real added value in the failure to

require certification; accordingly, as regards this aspect, the principle of subsidiarity does not appear to have been fully complied with;

– action at Union level to regulate unmanned aircraft, so-called drones (Articles 45-47 of the proposal for a regulation) is to be welcomed, as even though most flight operations are local, the sector has a cross-border dimension with regard to the operational requirements of the aircraft and the establishment of common rules for the provision of services. In particular, the proposal under consideration gives the European Union Aviation Safety Agency exclusive competence for the regulation of all remotely piloted aircraft systems (RPAS), removing the reference to the 150 kg threshold under which the Member States had hitherto exercised competence.

However, the proposal has a serious shortcoming as, unlike current legislation in Italy, it does not lay down any rules concerning attestations or licences for those who fly such aircraft. This could have a negative impact on flight safety, especially for low-level operations with drones weighing less than 25 kg used in visual flight conditions, for which the pilot takes on a key role in managing operations. These aspects are particularly important considering the growing number of reports of events in which unmanned aircraft interfere with manned aircraft flight operations, both in Italy and abroad.

In this regard too, therefore, the proposal for a regulation under consideration does not appear fully to comply with the principle of subsidiarity, because while action at Union level may be justified by the subject concerned, in not providing for attestations or licences for pilots of unmanned aircraft it does not appear to provide tangible added value, in terms of greater safety, when compared to Italian national legislation, which requires more stringent aptitudinal requirements and thus ensures higher safety levels;

– the proposal also provides Member States with the option (Articles 53-55) of transferring their responsibilities, in full or in part, to the European Union Aviation Safety Agency or to another Member State, in cases in which they are unable to perform their duties and to comply with the provisions of the regulation. Provision has also been made for a transfer of authority by the Commission (the 'emergency oversight mechanism', Article 55), where a Member State does not substantively comply with its obligations under the common rules and does not remedy the deficiencies in the time and manner prescribed by the Commission.

In this regard, the principle of subsidiarity appears to have been complied with and European intervention appears to be justified. However, some aspects of the rules in question might, if they are not properly specified, go beyond the objectives to be achieved, and be excessive. First of all, the cases in which the transfer of authority may occur do not appear to be sufficiently clearly indicated; in addition, consideration should be given to the option of a reappropriation of responsibility by the national authority in duly substantiated cases in which the difficulties that had led to the transfer of responsibilities, or to the incorrect exercise of those responsibilities by the European Agency, have been overcome;

– the principle of subsidiarity, moreover, does not appear to have been complied with in full also because Article 117 of the proposal confers on the Commission the power to adopt a large number of delegated acts on various matters. While that may be understandable, in order not excessively to burden the enacting terms with provisions of a strictly technical or operational nature, it is equally true that it will be precisely those detailed provisions that have

a significant impact on the structure of the European aviation system and the arrangements of the Member States, which will be unable, however, to express their views on those rules. The role of the national parliaments will thus be diminished in future, by removing the power conferred upon them by Protocols Nos 1 and 2 annexed to the Treaties, to adopt opinions on 'draft legislative acts' of the Union, when they do not have this power with regard to 'draft delegated acts'.

The Standing Committee therefore reiterates previous views already expressed by the Italian Senate in the resolution adopted by the 14th Standing Committee on the institutional package on 'better regulation' (Doc. XVIII No 102), whereby provision should be made for appropriate mechanisms to officially forward draft delegated acts not only to the European Parliament and the Council, but also to national parliaments. Accordingly, the latter's monitoring of the work of their respective governments within the Council could also be exercised with reference to the rights laid down in Article 290 of the Treaty on the Functioning of the European Union;

(2) a favourable opinion in respect of the principle of proportionality, as the proposal is consistent with the objectives it seeks to pursue, since it:

- seeks to make the current regulatory framework for aviation safety more appropriate. It introduces a risk- and performance-based approach to aviation safety regulation by moving beyond the current system of rigid rules, which should be of benefit to the entire aviation sector;

- it provides for the introduction of a scalable regime which will enable the differences which exist between different sizes of businesses to be better taken into account, with a reduction of the administrative burden and benefits for small and medium-sized enterprises;

expresses, moreover, a favourable opinion as regards the substance of the proposal, relating to political dialogue with the EU institutions, and makes the following comments:

- without prejudice to the general remarks already made about the need for national parliaments to be able to express their views on the Commission's draft delegated acts, action should be taken to ensure that, with regard to the proposal for a regulation under consideration, the powers of delegation to the Commission are defined in a more detailed manner. Moreover, the national authorities (for Italy, ENAC and ANSV in particular) should be able to have permanent delegates at the Commission, in support of the Italian representation, in order to monitor the development of the delegated legislation and to intervene should it not be sufficiently balanced;

- the emergency oversight mechanism referred to in Article 55 should be deleted, or at least re-worded, to provide for a wide-ranging, in-depth debate with the Member States concerned before the mechanism is implemented by the Commission;

- certification of the providers of ground handling services and of apron management services at aerodromes should be included in Article 32 of the legislative initiative under consideration. Alternatively, airport managing bodies should at least be given responsibility for conducting prior checks before granting access to the aforementioned service providers, given that it is the airport managing body that is responsible for ensuring that the airport functions regularly and safely;

- with regard to Articles 45-47, the proposal for a regulation should explicitly

provide for attestations or licences for pilots of unmanned aircraft and assess the possibility of introducing exemptions only for smaller drones or for those which, because of their technical features or conditions of use, are extremely low-risk;

- it is considered appropriate to revise Article 54 of the proposal for a regulation, which allows an organisation which is based in several Member States to request that the European Aviation Safety Agency take responsibility for certification and oversight, thereby circumventing, and thus weakening, its own national authority or that of the State in which the head office is based. This rule could, in fact, lend itself to avoidance practices on the part of organisations and trigger a form of improper competition between the European Agency and the national authorities, for which there appears to be no reason;

- Article 57 provides that aircraft and other aeronautical products built in non-EU countries may be imported only if there is an existing bilateral agreement on airworthiness between the European Union and the country of manufacture, without, however, taking into account the existence of bilateral agreements between individual Member States and other countries (for example the agreement between Italy and Russia), which have hitherto been deemed acceptable for the entire Union. It is therefore recommended that the rule in question be integrated with the recognition of existing agreements, until the relevant agreement is introduced at Union level;

- the Standing Committee's opinion is negative as regards the change to the organisation of the European Aviation Safety Agency referred to in Articles 85 et seq. of the proposal for a regulation, since the new structure tends to concentrate decision-making and strategic functions in the hands of a small group of representatives of the Member States and overly strengthens the already considerable influence of the Commission within the Agency, to the detriment of its balanced operation;

- the provision referred to in Article 109, which includes among the further sources of funding for the Agency air navigation grants and charges applied for ATM/ANS authority tasks, is inadvisable, both because it could lead to escalating costs to be borne by service users (i.e. airlines) and because the Agency's costs are already covered by the European Commission's contributions for regulatory functions and by the charges for certification;

- Article 124, which amends Article 5 of Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the subject of air safety investigations, should be supplemented by providing that the investigation authorities responsible may, in addition to not initiating safety investigations in certain circumstances, also decide to close safety investigations still under way, based on the same circumstances and where the conclusions do not add any value to an effective prevention measure.

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

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

(Rapporteur: Liuzzi)

11 February 2016

The Standing Committee, having considered the act,

whereas:

- the aim of the proposal is to prepare the aviation safety regulatory framework of the European Union for the challenges of the next few years and thus to continue to ensure safe, secure and environmentally friendly air transport for passengers and the general public;
 - the proposal introduces a risk and performance based approach to safety regulation, closes existing safety gaps, and better takes into account interdependencies between aviation safety and other technical domains of regulation such as aviation security or environmental protection;
 - it also seeks to establish an effective regulatory framework for the integration of new business models and emerging technologies, such as unmanned aircraft;
 - lastly, the proposal addresses the challenges that some national authorities face in maintaining and financing the resources necessary for accomplishing the required certification and oversight work, proposing a framework for pooling and sharing of technical resources between the national authorities and the European Union Aviation Safety Agency, which includes the possibility of transferring responsibilities for implementation of Union legislation on a voluntary basis;
- having assessed the Italian Government report, drawn up pursuant to Article 6, paragraphs 4 and 5, of Law No 234 of 24 December 2012;

makes the following remarks, as regards the matters falling within its area of responsibility, while having no particular objections to the proposal:

- the legal basis is Article 100(2) of the Treaty on the Functioning of the European Union (TFEU), concerning the adoption of appropriate provisions relating to sea and air transport. The ordinary legislative procedure is applicable, which means equal participation of the European Parliament in the decision-making process and mandatory consultation of the Committee of the Regions and the European Economic and Social Committee;
- as regards the principle of subsidiarity, it is worth pointing out that air transport and aeronautical production are, to a large extent, activities of a transnational nature which can be better addressed at Union level. In this regard, Regulations No (EC) 1592/2002 of the European Parliament and of the Council of 15 July 2002 and No (EC) 216/2008, of the European Parliament and of the Council of 20 February 2008 have already made the Union responsible for tasks regarding the airworthiness and environmental compatibility of aeronautical products, flight operations, aircrew licensing, aerodromes and air traffic management and air navigation services (ATM/ANS), as well as safety of third country operators;

The legislative initiative in question seeks to add a limited number of specific areas to this overall Union aviation safety framework, namely unmanned aircraft, safety of ground handling services and security aspects of aircraft and aviation systems' design, including cybersecurity.

The production of unmanned aircraft, even though most flight operations are local, has a cross-border dimension with regard to the operational requirements of the aircraft and the establishment of common rules for the provision of services.

The security aspects of aircraft and aviation systems' design, including cybersecurity, represent the most effective use of Union competence, also with regard to the role of the European Union Aviation Safety Agency, taking account of the fact that these security aspects are closely linked with safety of aircraft design and flight operations, for which the Union is already responsible pursuant to Regulation (EC) No 216/2008.

As regards ground handling services, action at Union level is necessary because of the numerous accidents related to these services and because voluntary initiatives at Member State level have not yet produced satisfactory results to address this risk. In addition, at present there are no safety requirements at Union level which directly concern the providers of ground handling services.

However, the decision not to require certification of service providers as a condition for starting operations appears to be at odds with the need for more stringent regulation at European level to improve safety; Accordingly, the different solution currently used in Italy appears to be more suitable for achieving the objectives of greater safety and security, which the Commission seeks to pursue, in relation to the provision of ground handling services. In other words, even though action at Union level is needed, there appears to be no real added value in the failure to require certification; therefore, as regards this aspect, the principle of subsidiarity does not appear to have been fully complied with;

– the principle of subsidiarity, in addition, does not appear to have been complied with in full also because the proposal establishes the adoption of a large number of delegated acts, referred to in Article 117. This means that the role of the national parliaments will be diminished in future, through the removal of the power conferred upon them by Protocols Nos 1 and 2 annexed to the Treaties, to adopt opinions on 'draft legislative acts' of the European Union, when such power does not exist for 'draft delegated acts'.

The Standing Committee therefore reiterates previous views already expressed in the resolution adopted by this committee concerning the institutional package on 'better regulation' (Doc. XVIII No 102), whereby provision should be made for appropriate mechanisms to officially forward draft delegated acts not only to the European Parliament and the Council, but also to the national parliaments. Accordingly, the latter's monitoring of the work of their respective governments within the Council could be exercised also with reference to the rights laid down in Article 290 of the Treaty on the Functioning of the European Union;

– with regard, once again, to the principle of subsidiarity, but this time in relation to the substance of the proposal, the strengthening and extension of the tasks of the European Union Aviation Safety Agency are to be welcomed. Indeed, with a view to greater integration between the European system and national systems, the presence of a single European civil aviation authority, in a sector with obvious cross-border connotations, should prevent the risk of administrative activities overlapping with those of the national competent authorities. Moreover, the Member States, under Article 86(1) of the proposal, will have their own

representative on the Agency's Management Board.

In this regard, equally commendable are the provisions of Article 53, whereby Member States may transfer to the Agency the responsibility for certification, oversight and enforcement with respect to any or all organisations, operators, personnel, aircraft, flight simulation training devices or aerodromes for which the Member State concerned is responsible under this Regulation. Upon such transfer, the Agency becomes the competent authority for the purposes of the transferred responsibility and the Member State concerned is relieved of that responsibility.

However, consideration should be given to the option of providing for a reappropriation of responsibility by the national authority in duly substantiated cases in which the European Agency has not exercised those responsibilities properly;

– the principle of proportionality is one of the primary objectives of the initiative under consideration, aiming at making the current regulatory framework for aviation safety more appropriate. It introduces a risk based approach to the regulation of aviation safety, which should benefit the entire aviation sector. Compliance with the principle of proportionality is, moreover, guaranteed by the scalable regime which will enable the differences which exist between different sizes of businesses to be better taken into account, with a reduction of the administrative burden and benefits for small and medium-sized enterprises.