

NON-SCHEDULED FLIGHTS		
	Existing regulation	Proposed new regulation
Denied boarding	Not covered	As above
Cancellation	Not covered	As above
Long delay	Not covered	As above

Brussels, 17 July 2002.

The President
of the Economic and Social Committee
 Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the safety of third countries aircraft using Community airports'

(COM(2002) 8 final — 2002/0014 (COD))

(2002/C 241/06)

On 31 January 2002 the Council decided to consult the Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 June 2002. The rapporteur was Mr Santillán.

At its 392nd Plenary Session of 17 and 18 July 2002 (meeting of 17 July 2002), the Economic and Social Committee unanimously adopted the following opinion.

1. Introduction

1.1. In the wake of the Puerto Plata air crash ⁽¹⁾, the Council called on the Commission to draw up proposals aimed at improving the safety of European air travellers. In response to this call the Commission convened a high-level group of aviation safety experts and with its help drew up a Community Aviation Safety Improvement Strategy ⁽²⁾ and undertook two initiatives. The first of these was a Regulation establishing

common rules in the field of civil aviation and creating a European Aviation Safety Agency (EASA), which was adopted on 27 September 2000 ⁽³⁾.

1.2. The second initiative aimed to ensure that third countries actually apply aviation safety standards. To this end, in 1997 the Commission proposed a Directive establishing a safety assessment of third countries aircraft using Community airports ⁽⁴⁾. This proposal, on which the Economic and Social Committee issued an opinion ⁽⁵⁾, lapsed on expiry of the time limits laid down by Article 252 of the EC Treaty.

⁽¹⁾ Dominican Republic. In 1996 a Turkish aircraft chartered by a German tourist operator crashed, killing 176 passengers.

⁽²⁾ SEC(96) 2083 final.

⁽³⁾ COM(2000) 595 final.

⁽⁴⁾ COM(97) 55 final.

⁽⁵⁾ TRA/333, rapporteur Mr Mobbs.

1.3. As agreement has now been reached between the Spanish and British governments on Gibraltar airport, the Commission has decided to submit a new proposal which takes into account the comments made by the Council in its common position of 4 June 1998⁽¹⁾ and by the European Parliament at its second reading⁽²⁾.

1.4. As far as the proposal is concerned, the High Level Group, having considered the FAA⁽³⁾ procedure (which checks whether national regulatory authorities have the legal means and the resources, workforce and expertise to meet their international safety supervisory responsibilities properly) concluded that the US system would not be suited to Europe.

1.5. The High Level Group opted, however, for the SAFA⁽⁴⁾ procedure, which is of a gradual nature, being activated in the event of suspected or proven safety shortcomings at a third-country airline.

1.6. On the basis of compliance with the Chicago Convention⁽⁵⁾, the main points of the report of the High Level Group of relevance to this opinion are:

- A safety improvement strategy targeted at third-country carriers and aircraft must be compatible with principles governing international civil aviation.
- Each contracting state is responsible for issuing or rendering valid certificates of airworthiness and of competency in respect of every aircraft or operation crew registered in that state. Such certification has to be accepted by all other contracting states so long as certification is equal or above minimum international standards. As a consequence a contracting state may not recognise certificates which it considers not to be in compliance with ICAO⁽⁶⁾ standards. When this occurs it is possible to consider that unilateral action may be taken to protect a state's citizens. However it cannot be implied that collective action is possible.

- Bilateral agreements, whilst recognizing the right of each party to designate carriers, do not usually include explicit provisions for safety oversight nor unilateral action which could allow one party to deprive the other of its recognised rights.
- Thus it is very difficult, in terms of international aviation law, to establish 'black lists' of particular third-country airlines — quite apart from considerations of the inevitable risks of retaliation or other adverse diplomatic consequences.

2. The Commission proposal⁽⁷⁾

2.1. The aim of the Commission proposal is to establish a common framework for an assessment mechanism to improve safety by means of the SAFA procedure while maintaining the right of the Member States to inspect any aircraft, subject to compliance with Community law.

2.2. ICAO Annex 8 'Airworthiness of Aircraft' requires that all aircraft must be maintained in an airworthy condition. Where a contracting state has reason to doubt that this is the case, then that state is no longer obliged to accept the validity of the airworthiness certificate, and is able to carry out a check of the aircraft, grounding it if necessary. National laws vary but some agency of each Member State has the authority to ground any aircraft of its own, of any other Member State and of any third country when there is reason to doubt its airworthiness. ICAO Annex 13 'Aircraft Accident and Incident Investigation', operates in a similar manner when an incident is believed to have occurred.

2.3. The Commission proposes three kinds of measures aimed at improving safety (Article 1):

- a) the collection and dissemination of information necessary in order to adopt measures to ensure the safety of the travelling public;
- b) inspections of third-country aircraft, their operation and crew whenever there is reasonable suspicion that safety standards are not being met. Aircraft may be grounded if necessary;

⁽¹⁾ OJ C 227, 20.7.1998, p. 18.

⁽²⁾ OJ C 313, 12.10.1998, p. 32.

⁽³⁾ US Federal Aviation Administration.

⁽⁴⁾ Safety assessment of foreign aircraft.

⁽⁵⁾ Convention on International Civil Aviation, signed in Chicago on 7 December 1944.

⁽⁶⁾ International Civil Aviation Authority.

⁽⁷⁾ For an overview see the Communication from the Commission — A European Community contribution to world aviation safety improvement, COM(2001) 390 final.

- c) adoption of appropriate measures for rectification of any shortcomings identified.

2.4. The information collected (Article 4) will include reports (from pilots, maintenance firms and organisations independent of the authorities), other documentation (e.g. relating to incidents or complaints), information on action taken pursuant to ground-based inspections and follow-up information concerning the operator and corrective action taken.

2.5. The Member States will be required to publish half-yearly information available to the public concerning: the number of aircraft grounded over the preceding six-month period, the type of aircraft, the state of registration, the airport, the date on which the grounding was imposed, the country of origin etc (Article 7(2)).

2.6. The confidentiality of the information (Article 7(4)) must be respected, particularly where it is provided by the crew of the aircraft, by ensuring the anonymity of the source of the information.

2.7. The procedure for ramp inspections is set in motion 'when there is suspicion' that third-country aircraft 'do not comply with international safety standards' (Article 5). The procedure is described in detail in Annex II and includes the checking of documentation, crew conditions (composition, qualifications), the presence of equipment such as the 'black box', and many other aspects.

2.8. An aircraft may be grounded 'where non-compliance with international safety standards is clearly hazardous to safety' (Article 8(1)). In the event of such an extreme measure being taken, the competent authority is required 'immediately' to inform the competent authorities of the state of the operator concerned and of the state of registration of the aircraft.

There is provision, subject to due safety precautions, for allowing an aircraft to be flown safely, without fare-paying passengers or cargo, to an airport for repair.

2.9. The corrective measures may include surveillance of a specific operator or of all the operators of a specific third country (Article 9) or a ban or conditions on operation (Article 10).

2.10. In implementing the proposal for a directive the Commission will be assisted by a committee established under Article 12 of Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation ⁽¹⁾.

2.11. The deadline for implementation of the directive in national law is two years after its entry into force (Article 12). Not later than two years after the directive's entry into force the Commission is required to draw up a report on its application and, if necessary, to propose a revision (Article 13).

3. General comments

3.1. The European Economic and Social Committee welcomes the Commission proposal, aimed at improving the safety of European air travellers, which is based on the SAFA procedure, which is managed by the JAA ⁽²⁾ on behalf of the ECAC ⁽³⁾.

The SAFA procedure is part of a general Commission strategy for participating in the improvement of civil aviation safety and it responds to growing passenger anxieties, which are a global phenomenon exacerbated by events unrelated to aircraft conditions, such as the terrorist attacks of 11 September in the USA.

It is essential that this procedure enter into force, even if it does not offer a complete solution to the problem, given the specific characteristics of this mode of transport, such as the fact that aircraft do not normally remain long at airports, which makes it difficult to carry out exhaustive inspections.

3.2. The information measures contemplated in the proposal are related to other requirements, such as those concerning occurrence reporting in civil aviation ⁽⁴⁾. As has been pointed out, this proposal does not restrict the right of the Member States to inspect, ground, ban or impose safety conditions on aircraft in accordance with Community law.

⁽¹⁾ OJ L 373, 31.12.1991.

⁽²⁾ Joint Aviation Authorities.

⁽³⁾ European Civil Aviation Conference.

⁽⁴⁾ COM(2001) 532 final.

3.3. The Community's air carriers are among the safest in the world. Not only do they have to comply with the 1944 Chicago Convention on International Civil Aviation and its annexes laying down minimum safety standards for aircraft which have been adopted by the ICAO, but also with a variety of technical standards and administrative procedures⁽¹⁾. However, the safety record of some third-country aircraft makes it necessary to lay down standards to protect passengers when third-country airlines use Community airports.

3.4. The Committee points out that, even when this proposal for a directive enters into force, the safety standards of third-country operators may therefore still be lower than those of European operators.

3.5. The Committee reiterates that this measure must be part of a broader package of joint measures covering not only third-country aircraft but also general air transport conditions in Europe, as suggested by the High-Level Group.

3.6. The Committee agrees that it is necessary for the measures relating to information, inspections, the grounding of aircraft and restrictions on the use of airports to be common to the Member States to prevent aircraft identified as having defects in one Member State being able to continue to operate at other Community airports. Moreover, common standards will also make it more difficult for third countries to retaliate in the event that a Member State adopts measures against a specific operator.

3.7. The Committee agrees that, in accordance with the subsidiarity principle, administrative and judicial recourse against decisions of the implementing authorities should be governed by the national law of the Member States.

3.8. The Committee welcomes the requirement for publication of a half-yearly report on the grounding of aircraft.

4. Specific comments

4.1. Chartered aircraft. Scope of application. The proposal refers in general to 'third country aircraft', meaning 'aircraft which (are) not used or operated under the control of a

competent authority of a Member State' (Article 3). The only exemptions from inspection are for: a) 'state aircraft'⁽²⁾ and b) 'aircraft of a maximum take off weight of less than 5 700 kg not engaged in commercial air transport' (Article 2).

The Committee proposes that the following definition be added to Article 3:

'Third-country aircraft means aircraft used by an airline whose operating certificate has been issued by a state which is not a member of the European Community or aircraft belonging to undertakings which do not have their administrative headquarters or principal place of business in the Community.'

The Committee notes that the Commission believes that Directive 2407/92 covers chartered aircraft. However this proposed amendment leaves no room for ambiguity.

4.2. ICAO standards. Annex II should spell out more clearly the requirement on the Member States to carry out checks to ensure that the operator is meeting the ICAO standards on flight time limitations, minimum crew qualifications, and training.

4.3. Article 5. Ramp inspections. The Committee considers that a minimum number of random checks should be required in order to improve the safety of third-country aircraft.

Article 5(1) should be amended to read: '... shall be subject to immediate ramp inspections'.

4.4. Article 7. Protection and dissemination of information. It is not made sufficiently clear exactly what the competent authorities of the Member State are expected to do when they receive information on aircraft used by a specific operator which have been grounded. If the seriousness of the case so warrants, there should be provision for grounding all the aircraft of the airline in question.

4.5. Minor defects. The SAFA procedure focuses on mayor defects, which may even lead to an aircraft being grounded.

⁽¹⁾ Council Regulation 3922/91 of 16 December 1991 — OJ L 373, 31.12.1991, p. 4.

⁽²⁾ Aircraft used in military, customs and police services (Chicago Convention, Article 3).

The Committee noted that defects would be graded on a scale of 1 to 3. The Committee suggests that the directive should require the various competent authorities to exchange information on a quarterly basis on all defects in addition to circulating information on the most serious defects.

4.6. English language: the Committee stresses the need for all crews to have a fluent command of the English language in the interests of safety. This requirement should be included in the ICAO standards.

4.7. The exchange of information between the competent authorities and the Commission (Article 6) should be effected as rapidly as possible using information technologies. The authorities' access to databases is essential.

4.8. Competence of the European Aviation Safety Agency (EASA). The Committee feels that responsibility for application of the SAFA programme should in future be taken on by the EASA.

4.9. Entry into force. In view of its objective, the SAFA procedure should enter into force as soon as possible. Whilst appreciating the technical complexity of the matter, the Committee therefore suggests that the proposed period of two years for implementation of the proposal for a directive be reduced to 12 months.

— In this context it should be borne in mind that a proposal for a directive relating to this area has been in existence since 1997, so that the Member States have had five years to adopt the necessary measures.

Brussels, 17 July 2002.

*The President
of the Economic and Social Committee*
Göke FRERICH

Opinion of the Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the granting of Community financial assistance to improve the environmental performance of the freight transport system'

(COM(2002) 54 final — 2002/0038 (COD))

(2002/C 241/07)

On 21 February 2002, the Council decided to consult the Economic and Social Committee, under Article 71 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for drawing up the Committee's work on the subject, adopted its opinion on 19 June 2002. The rapporteur was Mr Levaux.

At its 392nd Plenary Session (meeting of 17 July 2002), the Economic and Social Committee adopted the following opinion with 124 votes in favour and one abstention.

1. Introduction: Presentation of the proposal for a Regulation

1.1. The European Commission's White Paper of 12 September 2001 entitled 'European transport policy for 2010: time to decide' provides for the replacement of the PACT programme, which came to an end on 31 December 2001, by a new programme to promote intermodality, to be known as the 'Marco Polo programme'.

1.2. This new programme takes account of the lessons drawn from the PACT programme, as set out in the Com-

mission Staff Working Paper entitled 'Results of the PACT programme 1997-2001'; the PACT programme has also been the subject of an external evaluation covering the period 1997-1999.

1.3. The main aim of the Marco Polo programme is to reduce road congestion and to improve the environmental performance of the whole transport system by shifting part of