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III

(Preparatory acts)

COUNCIL

POSITION (EU) No 8/2014 OF THE COUNCIL AT FIRST READING

with a view to the adoption of a Regulation of the European Parliament and of the Council on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach and repealing Directive 2002/30/EC

Adopted by the Council on 24 March 2014

(2014/C 128/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) A key objective of the common transport policy is sustainable development. This requires an integrated approach aimed at ensuring both the effective functioning of Union transport systems and protection of the environment.
- (2) Sustainable development of air transport requires the introduction of measures aimed at reducing the noise impact from aircraft at Union airports. Those measures should improve the noise environment around Union airports in order to maintain or increase the quality of life of neighbouring citizens and foster compatibility between aviation activities and residential areas, in particular where night flights are concerned.
- (3) Resolution A33/7 of the International Civil Aviation Organization (ICAO) introduces the concept of a 'Balanced Approach' to noise management (Balanced Approach) and establishes a coherent method to address aircraft noise. The Balanced Approach should remain the foundation of noise regulation for aviation as a global industry. The Balanced Approach recognises the value of, and does not prejudice, relevant legal obligations, existing agreements, current laws and established policies. Incorporating the international rules of the Balanced Approach in this Regulation should substantially lessen the risk of international disputes in the event of third-country carriers being affected by noise-related operating restrictions.

⁽¹⁾ OJ C 181, 21.6.2012, p. 173.

⁽²⁾ OJ C 277, 13.9.2012, p. 110.

⁽³⁾ Position of the European Parliament of 12 December 2012 (not yet published in the Official Journal) and Position of the Council at first reading of 24 March 2014. Position of the European Parliament of ...

- (4) Following the removal of the noisiest aircraft pursuant to Directive 2002/30/EC of the European Parliament and of the Council ⁽¹⁾ and Directive 2006/93/EC of the European Parliament and of the Council ⁽²⁾, an update of how to use operating restriction measures is required to enable authorities to deal with the current noisiest aircraft so as to improve the noise environment around Union airports within the international framework of the Balanced Approach.
- (5) The report from the Commission of 15 February 2008 entitled 'Noise Operation Restrictions at EU Airports' pointed to the need to clarify in the text of Directive 2002/30/EC the allocation of responsibilities and the precise rights and obligations of interested parties during the noise assessment process so as to guarantee that cost-effective measures are taken to achieve the noise abatement objectives for each airport.
- (6) The introduction of operating restrictions by Member States at Union airports on a case-by-case basis, whilst limiting capacity, can contribute to improving the noise climate around airports. However, there is a possibility of distorting competition or hampering the overall efficiency of the Union aviation network through the inefficient use of existing capacity. Since the achievement of the specific noise abatement objective of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of harmonised rules on the process for introducing operating restrictions as part of the noise management process, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective. Such a harmonised method does not impose noise quality objectives, which continue to derive from Directive 2002/49/EC of the European Parliament and of the Council ⁽³⁾, other relevant Union rules or legislation within each Member State, and does not prejudice the concrete selection of measures.
- (7) This Regulation should only apply to Member States in which an airport with more than 50 000 civil aircraft movements per calendar year is located and when the introduction of noise-related operating restrictions is being considered at such an airport.
- (8) This Regulation should apply to aircraft engaged in civil aviation. It should not apply to aircraft such as military aircraft and aircraft undertaking customs, police and fire-fighting operations. Furthermore, various operations of an exceptional nature, such as flights for urgent humanitarian reasons, search and rescue in emergency situations, medical assistance, and disaster relief, should be exempted from this Regulation.
- (9) While noise assessments should be carried out on a regular basis in accordance with Directive 2002/49/EC, such assessments should only lead to additional noise abatement measures if the current combination of noise mitigating measures does not achieve the noise abatement objectives, taking into account expected airport development. For airports where a noise problem has been identified, additional noise abatement measures should be identified in accordance with the Balanced Approach methodology. In order to ensure a wide application of the Balanced Approach within the Union, its use is recommended whenever it is considered adequate by the individual Member State concerned, even beyond the scope of this Regulation. Noise-related operating restrictions should be introduced only when other Balanced Approach measures are not sufficient to attain the specific noise abatement objectives.
- (10) While a cost-benefit analysis provides an indication of the total economic welfare effects by comparing all costs and benefits, a cost-effectiveness assessment focuses on achieving a given objective in the most cost-effective way, requiring a comparison of only the costs. This Regulation should not prevent Member States from using cost-benefit analyses where appropriate.
- (11) The importance of health aspects needs to be recognised in relation to noise problems, and it is therefore important that those aspects be taken into consideration in a consistent manner at all airports when a decision is taken on noise abatement objectives, taking into account the existence of common Union rules in this area. Therefore, health aspects should be assessed in accordance with Union legislation on the evaluation of noise effects.

⁽¹⁾ Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (OJ L 85, 28.3.2002, p. 40).

⁽²⁾ Directive 2006/93/EC of the European Parliament and of the Council of 12 December 2006 on the regulation of the operation of aeroplanes covered by Part II, Chapter 3, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988) (OJ L 374, 27.12.2006, p. 1).

⁽³⁾ Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise

- (12) Noise assessments should be based on objective and measurable criteria common to all Member States and should build on existing information available, such as information arising from the implementation of Directive 2002/49/EC. Member States should ensure that such information is reliable, that it is obtained in a transparent manner and that it is accessible to competent authorities and stakeholders. Competent authorities should put in place the necessary monitoring tools.
- (13) The competent authority responsible for adopting noise-related operating restrictions should be independent of any organisation involved in the airport's operation, air transport or air navigation service provision, or representing the interests thereof and of the residents living in the vicinity of the airport affected by noise. This should not be understood as requiring Member States to modify their administrative structures or decision-making procedures.
- (14) It is recognised that Member States have decided on noise-related operating restrictions in accordance with national legislation based on nationally acknowledged noise methods, which, as yet, might not be fully consistent with the method described in the authoritative European Civil Aviation Conference Report Doc 29 entitled 'Standard Method of Computing Noise Contours around Civil Airports' (ECAC Doc 29) nor use the internationally recognised aircraft noise performance information. However, the efficiency and effectiveness of a noise-related operating restriction should be assessed in accordance with the methods prescribed in ECAC Doc 29 and the Balanced Approach. Accordingly, Member States should adapt their assessments of operating restrictions in national legislation towards full compliance with ECAC Doc 29.
- (15) A new and wider definition of operating restrictions as compared to Directive 2002/30/EC should be introduced in order to facilitate the implementation of new technologies and new operational capabilities of aircraft and ground equipment. Its application should not lead to delay in the implementation of operational measures which could immediately alleviate the noise impact without substantially affecting the operational capacity of an airport. Such measures should therefore not be considered to constitute new operating restrictions.
- (16) The centralisation of information on noise would substantially reduce the administrative burden for both aircraft operators and airport operators. Such information is currently provided and managed at the level of individual airports. Those data need to be placed at the disposal of aircraft operators and airports for operational purposes. It is important to use the databank of the European Aviation Safety Agency ('the Agency') concerning noise performance certification as a validation tool with the European Organisation for the Safety of Air Navigation (Eurocontrol) data on individual flights. Such data are currently already systematically requested for central flow management purposes, but are not at present available to the Commission or to the Agency, and need to be specified for the purpose of this Regulation and for performance regulation of air traffic management. Good access to validated modelling data, determined in accordance with internationally recognised processes and best practices, should improve the quality of mapping of noise contours of individual airports to support policy decisions.
- (17) To avoid unwanted consequences for aviation safety, airport capacity and competition, the Commission should notify the relevant competent authority if it finds that the process followed for the introduction of noise-related operating restrictions does not meet the requirements of this Regulation. The relevant competent authority should examine the Commission notification and should inform the Commission of its intentions before introducing the operating restrictions.
- (18) In order to take account of the Balanced Approach, provision should be made for the possibility of exemptions in special circumstances for operators from developing third countries, without which such operators would suffer undue hardship. Reference to 'developing countries' is to be understood in the light of this specific aviation context and does not include all countries that would otherwise be referred to as such, within the international community. In particular, it is necessary to ensure that any such exemptions are compatible with the principle of non-discrimination.
- (19) In order to reflect the continuous technological progress in engine and airframe technologies and the methods used to map noise contours, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission with respect to regularly updating the noise standards for aircraft referred to in this Regulation and the reference to the associated certification methods, taking into account, when appropriate, changes in relevant ICAO documents and updating the reference to the method for computing noise contours, taking into account, when appropriate, changes in relevant ICAO documents. In addition, changes to ECAC Doc 29 should also be taken into consideration for technical updates through delegated acts, as appropriate. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of all relevant documents to the European Parliament and to the Council.

- (20) While this Regulation requires a regular assessment of the noise situation at airports, such an assessment does not necessarily entail the adoption of new noise-related operating restrictions or the review of existing ones. Therefore, this Regulation does not require the review of noise-related operating restrictions already in place at the date of its entry into force, including those resulting from court decisions or local mediation processes. Minor technical amendments to measures without substantive implications for capacity or operations should not be considered as new noise-related operating restrictions.
- (21) Where the consultation process preceding the adoption of a noise-related operating restriction was launched under Directive 2002/30/EC and is still ongoing at the date of entry into force of this Regulation, it is appropriate to allow the final decision to be taken in accordance with Directive 2002/30/EC in order to preserve the progress already achieved in that process.
- (22) Considering the need for the consistent application of the noise assessment method within the Union aviation market, this Regulation sets out common rules in the field of noise operating restrictions.
- (23) Directive 2002/30/EC should therefore be repealed,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject-matter, objectives and scope

1. This Regulation lays down, where a noise problem has been identified, rules on the process to be followed for the introduction of noise-related operating restrictions in a consistent manner on an airport-by-airport basis, so as to help improve the noise climate and to limit or reduce the number of people significantly affected by potentially harmful effects of aircraft noise, in accordance with the Balanced Approach.
2. The objectives of this Regulation are:
 - (a) to facilitate the achievement of specific noise abatement objectives, including health aspects, at the level of individual airports, while respecting relevant Union rules, in particular those laid down in Directive 2002/49/EC, and the legislation within each Member State;
 - (b) to enable the use of operating restrictions in accordance with the Balanced Approach so as to achieve the sustainable development of the airport and air traffic management network capacity from a gate-to-gate perspective.
3. This Regulation shall apply to aircraft engaged in civil aviation. It shall not apply to aircraft engaged in military, customs, police or similar operations.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (1) 'aircraft' means fixed-wing aircraft with a maximum certificated take-off mass of 34 000 kg or more, or with a certificated maximum internal accommodation for the aircraft type in question consisting of 19 passenger seats or more, excluding any seats for crew only;
- (2) 'airport' means an airport which has more than 50 000 civil aircraft movements per calendar year (a movement being a take-off or landing), on the basis of the average number of movements in the last three calendar years before the noise assessment;
- (3) 'Balanced Approach' means the process developed by the International Civil Aviation Organization under which the range of available measures, namely the reduction of aircraft noise at source, land-use planning and management, noise abatement operational procedures and operating restrictions, is considered in a consistent way with a view to addressing the noise problem in the most cost-effective way on an airport-by-airport basis;
- (4) 'marginally compliant aircraft' means aircraft which are certified in accordance with limits laid down in Volume 1, Part II, Chapter 3 of Annex 16 to the Convention on International Civil Aviation signed on 7 December 1944 (the Chicago Convention) by a cumulative margin of less than 8 EPNdB (Effective Perceived Noise in Decibels) during a transitional period ending on ... (*), and by a cumulative margin of less than 10 EPNdB following the end of that

(*) Four years after the entry into force of this Regulation.

transitional period, whereby the cumulative margin is the figure expressed in EPNdB obtained by adding the individual margins (i.e. the differences between the certificated noise level and the maximum permitted noise level) at each of the three reference noise measurement points defined in Volume 1, Part II, Chapter 3 of Annex 16 to the Chicago Convention;

- (5) 'noise-related action' means any measure that affects the noise climate around airports, for which the principles of the Balanced Approach apply, including other non-operational actions that can affect the number of people exposed to aircraft noise;
- (6) 'operating restriction' means a noise-related action that limits access to or reduces the operational capacity of an airport, including operating restrictions aimed at the withdrawal from operations of marginally compliant aircraft at specific airports as well as operating restrictions of a partial nature, which for example apply for an identified period of time during the day or only for certain runways at the airport.

Article 3

Competent authorities

1. A Member State in which an airport as referred to in point (2) of Article 2 is located shall designate one or more competent authorities responsible for the process to be followed when adopting operating restrictions.
2. The competent authorities shall be independent of any organisation which could be affected by noise-related action. That independence may be achieved through a functional separation.
3. The Member States shall notify the Commission, in a timely manner, of the names and addresses of the designated competent authorities referred to in paragraph 1. The Commission shall publish that information.

Article 4

Right of appeal

1. Member States shall ensure the right to appeal against operating restrictions adopted pursuant to this Regulation before an appeal body other than the authority that adopted the contested restriction, in accordance with national legislation and procedures.
2. The Member State in which an airport as referred to in point (2) of Article 2 is located shall notify the Commission, in a timely manner, of the name and address of the designated appeal body referred to in paragraph 1 or, where appropriate, of the arrangements for ensuring that an appeal body is appointed.

Article 5

General rules on aircraft noise management

1. Member States shall ensure that the noise situation at an individual airport as referred to in point (2) of Article 2 is assessed in accordance with Directive 2002/49/EC.
2. Member States shall ensure that the Balanced Approach is adopted in respect of aircraft noise management at those airports where a noise problem has been identified. To that end, they shall ensure that:
 - (a) the noise abatement objective for that airport, taking into account, as appropriate, Article 8 and Annex V of Directive 2002/49/EC, is defined;
 - (b) measures available to reduce the noise impact are identified;
 - (c) the likely cost-effectiveness of the noise mitigation measures is thoroughly evaluated;
 - (d) the measures, taking into account public interest in the field of air transport as regards the development prospects of their airports, are selected without detriment to safety;
 - (e) the stakeholders are consulted in a transparent way on the intended actions;
 - (f) the measures are adopted and sufficient notification is provided for;
 - (g) the measures are implemented; and
 - (h) dispute resolution is provided for.
3. Member States shall ensure that, when noise-related action is taken, the following combination of available measures is considered, with a view to determining the most cost-effective measure or combination of measures:

- (a) the foreseeable effect of a reduction of aircraft noise at source;
- (b) land-use planning and management;
- (c) noise abatement operational procedures;
- (d) not applying operating restrictions as a first resort, but only after consideration of the other measures of the Balanced Approach.

The available measures may if necessary include the withdrawal of marginally compliant aircraft. Member States, or airport managing bodies, as appropriate, may offer economic incentives to encourage aircraft operators to use less noisy aircraft during the transitional period referred to in point (4) of Article 2. Those economic incentives shall comply with the applicable rules on State aid.

4. The measures may, within the Balanced Approach, be differentiated according to aircraft type, aircraft noise performance, use of airport and air navigation facilities, flight path and/or the timeframe covered.

5. Without prejudice to paragraph 4, operating restrictions which take the form of the withdrawal of marginally compliant aircraft from airport operations shall not affect civil subsonic aircraft that comply, through either original certification or re-certification, with the noise standard laid down in Volume 1, Part II, Chapter 4 of Annex 16 to the Chicago Convention.

6. Measures or a combination of measures taken in accordance with this Regulation for a given airport shall not be more restrictive than is necessary in order to achieve the environmental noise abatement objectives set for that airport. Operating restrictions shall be non-discriminatory, in particular on grounds of nationality or identity, and shall not be arbitrary.

Article 6

Rules on noise assessment

1. The competent authorities shall ensure that the noise situation at airports for which they are responsible is assessed on a regular basis, in accordance with Directive 2002/49/EC and the legislation applicable within each Member State. The competent authorities may call on the support of the Performance Review Body referred to in Article 3 of Commission Regulation (EU) No 691/2010 ⁽¹⁾.

2. If the assessment referred to in paragraph 1 indicates that new operating restriction measures may be required to address a noise problem at an airport, the competent authorities shall ensure that:

- (a) the method, indicators and information in Annex I are applied in such a way as to take due account of the contribution of each type of measure under the Balanced Approach, before operating restrictions are introduced;
- (b) at the appropriate level, technical cooperation is established between the airport operators, aircraft operators and air navigation service providers to examine measures to mitigate noise. The competent authorities shall also ensure that local residents, or their representatives, and relevant local authorities are consulted, and that technical information on noise mitigation measures is provided to them;
- (c) the cost-effectiveness of any new operating restriction is assessed, in accordance with Annex II. Minor technical amendments to measures without substantive implications on capacity or operations shall not be considered new operating restrictions;
- (d) the process of consultation with interested parties, which may take the form of a mediation process, is organised in a timely and substantive manner, ensuring openness and transparency as regards data and computation methodologies. Interested parties shall have at least three months prior to the adoption of the new operating restrictions to submit comments. The interested parties shall include at least:
 - (i) local residents living in the vicinity of the airport and affected by air traffic noise, or their representatives, and the relevant local authorities;
 - (ii) representatives of local businesses based in the vicinity of the airport, whose activities are affected by air traffic and the operation of the airport;

⁽¹⁾ Commission Regulation (EU) No 691/2010 of 29 July 2010 laying down a performance scheme for air navigation services and network functions and amending Regulation (EC) No 2096/2005 laying down common requirements for the provision of air navigation services (OJ L 201, 3.8.2010, p. 1).

- (iii) relevant airport operators;
- (iv) representatives of those aircraft operators which may be affected by noise-related actions;
- (v) the relevant air navigation service providers;
- (vi) the Network Manager, as defined in Commission Regulation (EU) No 677/2011 ⁽¹⁾;
- (vii) where applicable, the designated slots coordinator.

3. The competent authorities shall follow up and monitor the implementation of the operating restrictions and take action as appropriate. They shall ensure that relevant information is made available free of charge and that it is readily and promptly accessible to local residents living in the vicinity of the airports and to the relevant local authorities.

4. The relevant information may include:

- (a) while respecting national law, information on alleged infringements due to changes in flight procedures, in terms of their impact and the reasons why such changes were made;
- (b) the general criteria applied when distributing and managing traffic in each airport, to the extent that those criteria may have an environmental or noise impact; and
- (c) data collected by noise measuring systems, if available.

Article 7

Noise performance information

1. Decisions on noise-related operating restrictions shall be based on the noise performance of the aircraft as determined by the certification procedure conducted in accordance with Volume 1 of Annex 16 to the Chicago Convention, sixth edition of March 2011.

2. At the request of the Commission, aircraft operators shall communicate the following noise information in respect of the aircraft that they operate at Union airports:

- (a) the aircraft nationality and registration mark;
- (b) the noise documentation of the aircraft used, together with the associated maximum take-off weight;
- (c) any modification of the aircraft which affects its noise performance and is stated on the noise documentation.

3. Upon request of the Agency, holders of an aircraft type certificate or a supplemental type certificate issued in accordance with Regulation (EC) No 216/2008 of the European Parliament and of the Council ⁽²⁾, and legal or natural persons operating aircraft for which no type certificate has been issued under that Regulation, shall provide aircraft noise and performance information for noise modelling purposes. The Agency shall specify the data required and the timeframe for, and the form and manner of, its provision. The Agency shall verify the received aircraft noise and performance information for modelling purposes and shall make the information available to other parties for noise modelling purposes.

4. The data referred to in paragraphs 2 and 3 of this Article shall be limited to what is strictly necessary and shall be provided free of charge, in electronic form and using the format specified, where applicable.

5. The Agency shall verify the aircraft noise and performance data for modelling purposes in relation to its tasks performed in accordance with Article 6(1) of Regulation (EC) No 216/2008.

6. Data shall be stored in a central database and made available to competent authorities, aircraft operators, air navigation service providers and airport operators for operational purposes.

⁽¹⁾ Commission Regulation (EU) No 677/2011 of 7 July 2011 laying down detailed rules for the implementation of air traffic management (ATM) network functions and amending Regulation (EU) No 691/2010 (OJ L 185, 15.7.2011, p. 1).

⁽²⁾ Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ L 79, 19.3.2008, p. 1).

*Article 8***Rules on the introduction of operating restrictions**

1. Before introducing an operating restriction, the competent authorities shall give to the Member States, the Commission and the relevant interested parties six months' notice, ending at least two months prior to the determination of the slot coordination parameters as defined in point (m) of Article 2 of Council Regulation (EEC) No 95/93 ⁽¹⁾ for the airport concerned for the relevant scheduling period.
2. Following the assessment carried out in accordance with Article 6, the notification shall be accompanied by a written report in accordance with the requirements specified in Article 5 explaining the reasons for introducing the operating restriction, the noise abatement objective established for the airport, the measures that were considered to meet that objective, and the evaluation of the likely cost-effectiveness of the various measures considered, including, where relevant, their cross-border impact.
3. At the request of a Member State or on its own initiative, the Commission may, within a period of three months after the day on which it receives notice under paragraph 1, review the process for the introduction of an operating restriction. Where the Commission finds that the introduction of a noise-related operating restriction does not follow the process set out in this Regulation, it may notify the relevant competent authority accordingly. The relevant competent authority shall examine the Commission notification and inform the Commission of its intentions before introducing the operating restriction.
4. Where the operating restriction concerns the withdrawal of marginally compliant aircraft from an airport, no additional services above the number of movements with marginally compliant aircraft in the corresponding period of the previous year shall be allowed at that airport six months after the notification referred to in paragraph 1. The Member States shall ensure that the competent authorities decide on the annual rate for reducing the number of movements of marginally compliant aircraft of affected operators at that airport, taking due account of the age of the aircraft and the composition of the total fleet. Without prejudice to Article 5(4), that rate shall not be more than 25 % of the number of movements of marginally compliant aircraft for each operator serving that airport.

*Article 9***Developing countries**

1. In order to avoid undue economic hardship, the competent authorities may exempt marginally compliant aircraft registered in developing countries from noise operating restrictions, while fully respecting the principle of non-discrimination, provided that such aircraft:
 - (a) are granted a noise certification to the standards specified in Chapter 3, Volume 1 of Annex 16 to the Chicago Convention;
 - (b) were operated in the Union during the five-year period preceding the entry into force of this Regulation;
 - (c) were on the register of the developing country concerned in that five-year period; and
 - (d) continue to be operated by a natural or legal person established in that country.
2. Where a Member State grants an exemption provided for in paragraph 1, it shall forthwith inform the competent authorities of the other Member States and the Commission thereof.

*Article 10***Exemption for aircraft operations of an exceptional nature**

The competent authorities may, on a case-by-case basis, authorise individual operations at airports for which they are responsible in respect of marginally compliant aircraft which could not otherwise take place on the basis of this Regulation.

The exemption shall be limited to:

- (a) operations which are of such an exceptional nature that it would be unreasonable to withhold a temporary exemption, including humanitarian aid flights; or
- (b) non-revenue flights for the purpose of alterations, repair or maintenance.

⁽¹⁾ Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14, 22.1.1993, p. 1).

Article 11

Delegated acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 12 concerning:

- (a) technical updates to the noise certification standards provided for in Article 5(5) and point (a) of Article 9(1), and to the certification procedure provided for in Article 7(1);
- (b) technical updates to the methodology and indicators set out in Annex I.

The purpose of those updates shall be to take into account changes to relevant international rules, as appropriate.

Article 12

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 11 shall be conferred on the Commission for a period of five years from... (*). The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 11 may be revoked by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the powers specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 11 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 13

Information and revision

Member States shall upon request submit information on the application of this Regulation to the Commission.

No later than... (**), the Commission shall report to the European Parliament and to the Council on the application of this Regulation.

That report shall be accompanied, where necessary, by proposals for revision of this Regulation.

Article 14

Existing operating restrictions

Noise-related operating restrictions which were already introduced before ... (*) shall remain in force until the competent authorities decide to revise them in accordance with this Regulation.

(*) Date of entry into force of this Regulation.

(**) Five years after the entry into force of this Regulation.

*Article 15***Repeal**

Directive 2002/30/EC is repealed with effect from ... (*).

*Article 16***Transitional provisions**

Notwithstanding Article 15 of this Regulation, noise-related operating restrictions adopted after ... (*) may be adopted in accordance with Directive 2002/30/EC where the consultation process prior to their adoption was ongoing at that date and provided that those restrictions are adopted at the latest one year after that date.

*Article 17***Entry into force**

This Regulation shall enter into force on ... (**).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...

For the European Parliament
The President

...

For the Council
The President

...

(*) Date of entry into force of this Regulation.

(**) Twenty four months following the date of the publication of this Regulation in the *Official Journal of the European Union*

ANNEX I

ASSESSMENT OF THE NOISE SITUATION AT AN AIRPORT

Methodology:

1. Competent authorities will ensure the use of noise assessment methods which have been developed in accordance with the European Civil Aviation Conference Report Doc 29 entitled 'Standard Method of Computing Noise Contours around Civil Airports', 3rd Edition.

Indicators:

1. Air traffic noise impact will be described, at least, in terms of noise indicators L_{den} and L_{night} which are defined and calculated in accordance with Annex I to Directive 2002/49/EC.
2. Additional noise indicators which have an objective basis may be used.

Noise management information:

1. Current inventory
 - 1.1. A description of the airport, including information about its size, location, surroundings, air traffic volume and mix.
 - 1.2. A description of any environmental objectives for the airport and the national context. This will include a description of the aircraft noise abatement objectives for the airport.
 - 1.3. Details of noise contours for the relevant previous years – including an assessment of the number of people affected by aircraft noise, carried out in accordance with Annex II to Directive 2002/49/EC.
 - 1.4. A description of the existing and planned measures to manage aircraft noise already implemented in the framework of the Balanced Approach and their impact on and contribution to the noise situation, by reference to:
 - 1.4.1. For reduction at source:
 - (a) information on the current aircraft fleet and any expected technology improvements;
 - (b) specific fleet renewal plans.
 - 1.4.2. For land-use planning and management:
 - (a) planning instruments in place, such as comprehensive planning or noise zoning;
 - (b) mitigating measures in place, such as building codes, noise insulation programmes or measures to reduce areas of sensitive land use;
 - (c) consultation process in respect of the land-use measures;
 - (d) monitoring of encroachment.
 - 1.4.3. For noise abatement operational measures, to the extent that those measures do not restrict the capacity of an airport:
 - (a) use of preferential runways;
 - (b) use of noise-preferential routes;

- (c) use of noise abatement take-off and approach procedures;
- (d) indication of the extent to which those measures are regulated under environment indicators, as mentioned in Annex I to Regulation (EU) No 691/2010.

1.4.4. For operating restrictions:

- (a) use of global restrictions, such as a cap on movements or noise quotas;
- (b) use of aircraft-specific restrictions, such as the withdrawal of marginally compliant aircraft;
- (c) use of partial restrictions, drawing a distinction between daytime measures and night-time measures.

1.4.5. The financial instruments in place, such as noise-related airport charges.

2. Forecast without new measures

- 2.1. Descriptions of airport developments, if any, already approved and in the pipeline, for example, increased capacity, runway and/or terminal expansion, approach and take-off forecasts, projected future traffic mix and estimated growth and a detailed study of the noise impact on the surrounding area caused by expanding the capacity, runways and terminals and by modifying flight paths and approach and take-off routes.
 - 2.2. In the case of airport capacity extension, the benefits of making that additional capacity available within the wider aviation network and the region.
 - 2.3. A description of the effect on noise climate without further measures, and of those measures already planned to ameliorate the noise impact over the same period.
 - 2.4. Forecast noise contours – including an assessment of the number of people likely to be affected by aircraft noise – distinguishing between established residential areas, newly constructed or planned residential areas and planned future residential areas that have already been granted authorisation by the competent authorities.
 - 2.5. Evaluation of the consequences and possible costs of not taking action to reduce the impact of increased noise, if it is expected to occur.
3. Assessment of additional measures
- 3.1. Outline of the additional measures available and an indication of the main reasons for their selection. Description of those measures chosen for further analysis and information on the outcome of the cost-efficiency analysis, in particular the cost of introducing those measures; the number of people expected to benefit and the timeframe; and a ranking of the overall effectiveness of particular measures.
 - 3.2. An overview of the possible environmental and competitive effects of the proposed measures on other airports, operators and other interested parties.
 - 3.3. Reasons for selection of the preferred option.
 - 3.4. A non-technical summary.
-

ANNEX II

ASSESSMENT OF THE COST-EFFECTIVENESS OF NOISE-RELATED OPERATING RESTRICTIONS

The cost-effectiveness of envisaged noise-related operating restrictions will be assessed taking due account of the following elements, to the extent possible, in quantifiable terms:

- (1) the anticipated noise benefit of the envisaged measures, now and in the future;
- (2) the safety of aviation operations, including third-party risks;
- (3) the capacity of the airport;
- (4) any effects on the European aviation network.

In addition, competent authorities may take due account of the following factors:

- (1) the health and safety of local residents living in the vicinity of the airport;
 - (2) environmental sustainability, including interdependencies between noise and emissions;
 - (3) any direct, indirect or catalytic employment and economic effects.
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STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 1 December 2011, the Commission submitted to the European Parliament and the Council its proposal for a Regulation on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach and repealing Directive 2002/30 ⁽¹⁾.

On 7 June 2012, the Council reached a general approach on the draft proposal.

In carrying out its work, the Council took account of the opinions of the European Economic and Social Committee and of the Committee of the Regions.

On 12 December 2012, the European Parliament voted its opinion at first reading ⁽²⁾.

Following the vote in the European Parliament, negotiations took place between the European Parliament, the Council and the Commission with a view to reaching an agreement on the proposal. On 27 January 2014, a final compromise was agreed, which was subsequently endorsed by the Committee of Permanent Representatives on 29 January 2014. The European Parliament Committee on Transport and Tourism (TRAN) also confirmed the agreement on 11 February 2014, and to this effect addressed a letter to the Chairman of the Permanent Representatives Committee.

On 17 February 2014, the Council reached a political agreement on its position at first reading ⁽³⁾. On basis of the draft Regulation attached to the above-mentioned letter from the European Parliament, and the Council's political agreement, the text has been subject to legal-linguistic revision by both institutions.

II. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

1. General

The airport noise proposal is part of the so-called 'airport package', a set of three legislative proposals aimed at fostering competitiveness in European airports and at increasing their performance in terms of efficiency, quality and resilience. The main objective of this proposal is to ensure the consistent application in the European Union of the International Civil Aviation Organisation (ICAO) set of principles and guidance known as the 'Balanced Approach' for the introduction of noise-related operating restrictions at EU airports. It replaces and repeals Directive 2002/30/EC, the current basic act establishing the rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports.

2. The Council's position on the Parliament's amendments concerning key issues

i) *Right of scrutiny*

The Commission proposed to give the Commission the right to scrutinise and suspend decisions to introduce noise-related operating restrictions prior to their implementation. The Council agreed with the European Parliament that the Commission should only be allowed to review the process in this regard, and accepted therefore to a large extent the spirit of amendment 32. However, the Council did not share the European Parliament's position in not putting any obligation on Member States' authorities in relation to the Commission's notification on the review.

At the same time, the general orientation of the Council's position was also to maintain the discretionary power of local authorities when deciding on operating restrictions. Therefore, in the spirit of compromise, the Council accepted to reflect the European Parliament's concern in its first reading position, whereby the competent authorities have to examine the Commission notification and inform the Commission of their intentions on the operating restrictions to be introduced.

⁽¹⁾ Doc. 18010/11.

⁽²⁾ Doc. 17488/12.

⁽³⁾ Doc. 6258/14.

ii) *Health*

The European Parliament has adopted several amendments concerning the inclusion of the harmful effects of human health in the noise assessment process set up by the Regulation. While acknowledging the importance health in the process, the Council has a different approach and considers that health related aspects are covered by the procedures set up by Directive 2002/49/EC on the assessment and management of environmental noise. The inclusion of health among the compulsory, and quantifiable list of elements to be taken into account for assessing cost effectiveness was assessed especially problematic, since health constitutes a criterion which at the current stage of scientific development is difficult to evaluate and quantify objectively.

In the compromise text links to the European Union *acquis* on the assessment of environmental noise are reinforced, thus building a bridge toward the future inclusion of health aspects in the noise assessment process, based on objective and scientific criteria. More specifically, the European Parliament's concerns are accommodated by a new recital stressing the need for the assessment of health aspects, a new reference to health among the objectives of the airport noise Regulation, and an obligation to assess the noise situation at an airport in accordance with Directive 2002/49/EC. In this context, the Commission accepted to make a statement on the ongoing revision of Directive 2002/49/EC, as set out in Annex to this document.

iii) *Transitional periods*

a) Definition of 'marginally compliant aircraft'

According to the initial Commission proposal, the threshold for the definition of marginally compliant aircraft should have been set at a cumulative margin of less than 10 EPNdB (Effective Perceived Noise in Decibels), without a transitional period. Moreover, the Commission proposed to have the possibility to update this threshold through delegated acts in order to follow future developments in ICAO. The Council could not subscribe to this approach, and agreed with the European Parliament in lowering the cumulative margin to less than 8 EPNdB for a transitional period of four years, in order to take into account the composition of current aircraft fleets and investments already made.

The co-legislators also agreed that the Commission should not be empowered to update the definition by delegated acts, and that this aspect should remain subject to the ordinary legislative procedure.

b) *Entry into force*

The compromise text maintains a delayed entry into force of 24 months, allowing time for Member States to amend or repeal national provisions adopted for the application of Directive 2002/30/EC, and to designate the national bodies entrusted with the new tasks set out in the Regulation. This longer period will effectively also extend the transitional application of the less than 8 EPNdB threshold for 'marginally compliant aircraft' to six years.

iv) *Existing operating restrictions and mediation*

Both the Council and the European Parliament expressed concerns on the effects of the new noise Regulation on existing operating restrictions already in force, and the decisions relating to them. These concerns were further explored during the negotiations and are reflected in the compromise reached, which also takes into account the need for legal clarity. Namely, the compromise text ensures that existing operating restrictions shall remain in force until the competent authorities decide to review them. Also, the article on transitional provisions allows for the operating restrictions to be considered under Directive 2002/30/EC, if the necessary consultation processes have already started before the entry into force of the new Regulation, and the operating restrictions are adopted within a period of one year. On mediation, it is clarified that the consultation with interested parties may also take the form of a mediation process. In addition, a new recital specifies that the concept of existing operating restrictions encompasses those resulting from court decisions and mediation processes.

3. Other European Parliament amendments

- In addition to the obligation to provide regular information to local residents on the implementation of noise mitigating measures, the compromise text adds an additional layer of transparency by listing information elements, the availability of which should be encouraged.
- In order to alleviate the burden on aircraft operators in relation to the provision of information on noise modelling data, the relevant provisions are streamlined in order to avoid duplication in the submission of already existing data, and to ensure that the information provided is fit for purpose.

III. CONCLUSION

The Council's position at first reading reflects the compromise reached in negotiations between the Council and the European Parliament, facilitated by the Commission. This compromise is confirmed by the letter that the Chair of the European Parliaments' Committee on Transport and Tourism (TRAN) addressed to the Chairman of the Permanent Representatives Committee on 11 February 2014.

In this letter, the TRAN Chair indicates that he will recommend to the members of the TRAN Committee, and subsequently to the plenary, that they approve the Council's position at first reading without amendments, and conclude the ordinary legislative procedure at the stage of the European Parliament's second reading, in accordance with Article 294 of the TFEU.

Statement by the Commission on the revision of Directive 2002/49/EC

'The Commission is discussing with the Member States Annex II to Directive 2002/49/EC (noise calculation methods) with a view to adopting it in the coming months.

Based on work the WHO is currently undertaking regarding the methodology to assess health implications of the noise impact, the Commission intends to revise Annex III to Directive 2002/49/EC (estimation of health impact, dose response curves).'

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