

QUESTIONS FOR ALL THOSE TO BE CONSULTED

Introduction

Article 62 of EU Regulation 216 of 2008 stipulates that an independent external evaluation of the implementation of the Regulation shall be undertaken at five-yearly intervals. The evaluation will, inter alia, examine how effectively EASA is fulfilling its mission and assess the impact of the Regulation, the EASA Agency and its working practices in establishing a high level of civil aviation safety in Europe. An independent expert Panel has now been commissioned to undertake this evaluation.

In commissioning the Panel, the Management Board of EASA indicated that the evaluation to be made would consider the EASA system as a whole and report and make recommendations on the following three questions:

- a) What are the main challenges the EASA system will face in the period up to 2020?

EASA depicts itself as “the centrepiece of the European Union's strategy for aviation safety.” EASA further claims it “promotes the highest common standards of safety and environmental protection in civil aviation in Europe and worldwide”.

Currently, this strategy is mainly perceived as a regulatory system comprising rulemaking activities resulting in sometimes unnecessary invasive, burdensome and complex rules followed by standardization.

However, promotion differs from regulation.

The main challenge will therefore be a threefold one:

a) to eliminate unnecessary regulation,

b) to reduce the remaining regulatory burden to an as low as possible level, adopting a risk-based and differentiated approach, adapted to the regulated entities and to their possibilities

c) to promote sustainable, smart regulation and proactively support a shift from a compliance based to a performance based oversight system where promotion of safety replaces old fashioned compliance management and control ("tick the box").

- b) Does the present performance of the system indicate that it is fit to face these challenges

It is not a question of fitness, but a question of given frame and of mindset driving the system. There must be a trigger towards a change, which in our opinion could result and follow-up the present evaluation.

The rate of dissatisfaction with the regulatory pressure, especially among stakeholders of the general aviation sector, is indicative of a fundamental problem.

- c) What steps should be taken, including possible amendments to the EASA Basic Regulation (Reg. 216 of 2008), to adapt or develop the system to meet the challenges?

One must keep in mind that aviation was already regulated before the adoption of the EASA Basic Regulation: it is therefore good to know that the cost/benefit ratio of this regulation is questioned; we suggest a thorough assessment to be conducted in this respect and its result should be used for the purpose of the next steps.

To meet the challenges, action is required at various levels: a) building up the political awareness, b) reviewing the existing political decisions and rules, c) implementing the change.

In ADR matters, once the IRs, CSs, AMCs and GM will be known in their definitive version and applied, the full range of consequences of the formulations retained until now in the Basic Regulation will come up. This process also will show if there is any gain in safety of public interest and, on the other hand, reveal the extent of additional burden on aerodrome operators, which will have to be eliminated.

This will definitively deliver a confirmation of the need to amend the Basic Regulation; the BR is a political product initiating a top down approach of safety in aviation. But aviation is neither a political abstraction nor a monolithic construct. It has public and private aspects. It is a multi-faceted, quite complex batch of activities and services requiring proportionality and experience from the field to be correctly regulated. Moreover, safety and safety culture cannot be decided by law. A major step towards smart, sustainable, proportional, promotional and differentiated regulation is needed.

Experience should therefore be collected at stakeholder's level - at the end of the chain – in order to list all amendments which are necessary or desirable, keeping in mind that the most important challenge will be the shift from a compliance based to a performance based oversight system where promotion of safety replaces compliance management and control.

The present evaluation is a good starting point of such a process. But only a starting point.

Any comments that you might wish to offer on these three issues would greatly assist the work of the Panel as would your responses to the following complementary detailed questions. Your cooperation would be appreciated.

1. PRINCIPAL OBJECTIVE

The principal objective of Regulation 216 of 2008 is to establish and maintain a high uniform level of civil aviation safety in Europe. Do you believe that this should remain the Regulation's sole principal objective or should the Regulation contain other objectives deemed to be principal?

The Regulation should contain otherwise formulated objectives.

One of the first objectives of this supranational Regulation should be the mutual recognition of commonly admitted values, services, standards and certificates. With respect to safety, the objective should base upon responsibility and proportionality, from the principles down to the detailed rules.

The scope of the public interest and the responsibility of the States should then be reviewed. State action should clearly be assigned in the domains where only the State can act: obstacles in the surroundings of aerodromes, for instance.

On the stakeholders' side and as responsibility awareness cannot be ordered, it should be encouraged, promoted and safety concerns configured according to the kind of aeronautical activity. Airline transportation is not the same activity as private aviation.

A switch from a compliance based to a performance based system is therefore highly desirable in a sector which already has a very high level of safety: almost 97% of all transport deaths in the EU were caused in 2001 by road

accidents, not by air transportation (Transport Safety Performance Review in the EU, a statistical overview, 2003, European Transport Safety Council).

Our suggestion is to change the general objective from:

...is to establish and maintain a high uniform level of civil aviation safety in Europe

into

...is to facilitate mutual recognition and to support actions of public interest towards a high level of civil aviation safety in Europe

2. ROLE AND PERFORMANCE

2.1. Are you satisfied with the services provided by EASA? If not, please elaborate.

Yes and no.

Yes from a human point of view: friendly contact with qualified personnel, open to discussion and sharing time and experience with stakeholders.

No from a material point of view: the output of the Agency is complex, heavy, burdensome, too detailed and the rate of rejected contributions from the industry is negatively affecting a relationship as did the fact – for instance – that in the process of the NPA 2011-20, the Agency's opinion has been published less than 48 hours after the reaction period has expired...

2.2. In considering the current EASA system as a whole what are your views on its ability to face future challenges e.g. new technologies, moving

towards a risk-based system, enhancing worldwide recognition of EASA certificates etc?

The experience made in the framework of the ADR rulemaking process, as well as the existing risk of cumulated requirements emerging from the future standardization process, appeal for changes. During the ADR rulemaking process, ERAC's representatives made inputs towards better regulatory impact assessments and towards a risk-based system, underlining for instance why the draft Certification Specifications for aerodromes should refer to risk-based elements. The regulatory impact assessment did not fulfil ERAC's expectations. And although the discussions showed the need to develop risk-based systems, the Agency does neither have an adequate programme nor a mandate therefore. Moreover, it still has to be demonstrated how a risk-based system and flexibility can be achieved with a standardization process meant to maintain a high uniform level of civil aviation safety in Europe...

2.3. Do you believe that civil aviation stakeholders are sufficiently involved in the rule making process of EASA?

Stakeholders are formally involved indeed. But formal involvement is not sufficient. In the process of the NPA 2011-20 for instance, the Regulatory Impact Assessment has not assessed the potential effects of the intended regulation but sampled the past implementation of ICAO rules. The review process has been dealt with in a very selective way. And the Agency's opinion has been published less than 48 hours after the reaction period has expired, leaving contributors with a doubt that all reactions filed have been duly taken into consideration.

To be represented and to ensure adequate contributions, smaller entities, stakeholders and organizations should dedicate resources which are not proportionate to a demonstrated need for safety improvement. This is the symptom of an unbalanced system.

2.4. Are you satisfied with the degree of cooperation with third country Safety Authorities?

Assuming that Switzerland is not considered as a third country, I have no experience in this respect.

2.5. How would you see the current bilateral agreement with the United States FAA developing in the years up to 2020?

With a defined research program, FAA is able to solve questions among risk based systems, new technologies, public economy and more (e.g. ACRP report 51 or the report "General Aviation Airports: A National Asset")

2.6. Are there lessons to be drawn from the FAA's role, functions and management of safety that could usefully be applied to Europe's safety system?

I have no experience in this respect.

3. GOVERNANCE ISSUES

3.1. There is a complex infrastructure and a multiplicity of relations among the various European institutions that have a responsibility for civil aviation safety. Would you consider it desirable to restructure the institutional architecture of Europe's civil aviation safety system? If yes, in what way?

Aviation is a multifaceted activity; interactions will remain whatever changes could happen within the safety system.

As far as the safety related to aeronautical infrastructure and its use are concerned (ADR-ATM), priorities should be set in order to refrain from

regulating whenever there is not a demonstrated need to take legislative action, to revalorise the self responsibility of aerodrome users, to be proportionate and to focus the State's legislative prerogatives where the aviation actor cannot act. More than a question of architecture, it is a question of legality and social accountability, of a better balanced approach of the difference between private activities and public tasks.

An example of important contributions to aviation safety should be the clear attribution of responsibility to the State for limiting obstacles outside of the scope of competence of aerodrome operators.

3.2. In any such new institutional architecture, what would be the future role of the National Aviation/Supervisory Authorities (NAAs/NSAs)?

In the ADR certification domain at least, the national competencies should remain preserved and local flexibility guaranteed.

3.3. With or without any institutional restructuring of Europe's civil aviation safety system, do you consider that modifications to the Basic Regulation could yield efficiencies and improved safety levels? Please identify the modifications that you would like to see.

Yes. There are many ways to reduce the regulatory burden, to yield efficiencies and to improve safety.

A first step should be to trim the regulation, to refrain from regulating whenever there is not a demonstrated need to take legislative action, and base it as far as possible on self responsibility: there is no need for rules in already regulated domains, nor a need to address the use of boom or throat microphones below the transition level/altitude or dealing with long sleeves and trousers made out of natural fibres or mixed fibres for hot air balloon occupants.

Public regulation should not extent into fields of private initiative, especially in private aviation, without demonstrated need to address a threat on public interests or overshooting this objective. Wherever possible, contractual arrangements should be admitted as the expression of the self responsibility.

Another action to take in the course of the first step is to define clear allocation of responsibilities among the aviation actors on one hand, between State and aviation on the other hand.

Priorities should also be set in order to use the State's legislative prerogatives where the aviation actors cannot act.

Among necessary amendments to the Basic Regulation, I suggest to review:

- a) the general objective as described under Nr 1 above,*
- b) a general wording shift from "shall" towards "should"*
- c) Art. 3, (i), definition of commercial operations: In absence of publicly offered availability, aircraft operation should not be considered as commercial even if the customer has no control over the operator.*
- d) Art. 3 (j), definition of Complex Motor-Powered Aircraft: by setting higher limits, in order to better match with the reality. An aircraft with two turbines cannot by definition be considered as a complex one !*
- e) Art. 4, para 3a, exemption of certain aerodromes: by setting much higher limits (size, complexity, passengers volume, type of activity) combined with a decision by the Member State to certify the aerodrome according to the Basic Regulation.*
- f) Art. 8a, para 2, (b) (ii): replace equivalent level of safety ELOS by acceptable level of safety ALOS (as in ICAO)*

- g) Art. 8a, para 2, (b) (iii) special conditions, by replacing the requirements for special conditions (SC) by an approval by the NAA,*
- h) Art. 8a, para 3, the responsibility of the States should then be reinforced and go beyond the mere obligation to have provisions in place. The State should ensure safety outside the aerodrome's scope of influence.*
- i) Art. 8a, para 5, in general: by reducing the bureaucracy*
- j) Art. 8a, para 5, (g): grandfathering rights: a general clause for existing deviations on all existing aerodromes,*
- k) Art. 14, flexibility provisions: the system should allow more flexibility and not be limited to response necessity, urgent cases, unforeseen circumstances, etc...*
- l) Appendix Va, Essential Requirements for aerodromes: a thorough review is required together with representatives from aerodromes of all sizes. This review will have to take account of the need for a more comprehensive approach of aerodrome issues (one rule does not fit all), a risk based approach and performance based oversight, enhanced national decision potential and a larger place for self-responsibility.*

These are only a few examples of desirable and necessary improvements.

4. HUMAN RESOURCES

4.1 Do you think that the EASA system is adequately staffed to enable it to fully execute its present and prospective functions and responsibilities?

Smart and lean regulation as well as performance based oversight, combined with a re-evaluation of the role of NAAs are drivers for another trend: one could and should rather consider a reduction of staff: The less

important a staff, the less invasive an organisation is and the more importance has to be given to priorities.

4.2 Do you share the European Parliament's view that no extra responsibilities should be assigned to EASA without ensuring the necessary resources or, if no increase in staffing is possible, without reduction of some other tasks?

See 4.1 above

4.3 Are the present recruitment procedures, as laid down in EU Regulation, appropriate in the context of a continuing and future need to recruit high level expert staff?

Recruitment procedures should focus on the need for field-oriented staff.

4.4 Should EASA increase or decrease its outsourcing of certification tasks to NAAs and/or Qualified Entities other than NAAs?

My answer is definitively to increase the outsourcing.

5. FINANCES

5.1. Do you think that the EASA system has adequate financial resources to enable it to fully execute its present functions and responsibilities as required in Regulation 216 of 2008?

The answer is yes, given the desirable reduction in functions and responsibilities which I am calling for.

5.2. How in your view can EASA's financing be guaranteed on an adequate, predictable and stable basis in the years up to 2020 in the context of foreseeable constraints on public budgets?

Constraints on public budgets are excellent trimming initiatives and should act as an incentive to eliminate unnecessary activities.

5.3. Can you suggest innovative ways to raise alternative sources of financing for EASA's activities?

No. I am in favour of a reduction of EASA's rulemaking and oversight activities.

5.4. In your view are EASA's fees and charges, imposed under current rules, fair and proportionate to services rendered? What impact do you believe they have on the competitiveness of the European air transport industry?

Every fee and charge has to be analysed in light of its return. Unproductive fees and charges and those having negative impact on competitiveness should therefore be avoided.