

**RESPONSE BY EUROPEAN REGIONS AIRLINE ASSOCIATION (ERA) TO
EUROPEAN COMMISSION CONSULTATION ON THE
DRAFT COMMISSION IMPACT ASSESSMENT GUIDELINES**

ERA believes that a consistent approach to impact assessments for all regulatory proposals is to be welcomed. This includes proposals initiated by agencies such as the European Aviation Safety Agency in addition to all those initiated by the Commission.

However, ERA believes that the present system of undertaking regulatory impact assessments within the EU institutions is not satisfactory and fails to meet the European Union's objective for "better regulation".

There are three key areas where improvements would produce immediate advantages in terms of achieving better legislative outcomes.

Preparing to undertake an impact assessment

1. At all times, there should be adherence throughout the development of legislation to the principles of "better regulation" enshrined in the July 2007 *Report of the High Level Group for the Future of European Aviation Regulatory Framework*. In particular, Section 3.3 of the report makes the following recommendations:
 - identify the problem and outline the current consequences
 - assess the significance of the problem
 - identify the affected parties
 - outline the objective to be achieved
 - establish whether regulatory action is necessary
 - identify the minimum legislative action necessary
 - conduct impact assessments.
2. The identified problem must be real and not based solely on theoretical objectives.
 - For example, during recent Commission consultations with stakeholders on possible amendments to Council Regulation (EEC) 95/93 on common rules for the allocation of slots at Community airports, some officials stated that the Regulation should be amended to overcome the "problem" of "lack of mobility of slots". However, this "problem" is not recognised by key stakeholders, including both industry and consumers. The mere statement that a "problem" exists is insufficient proof that a real problem exists which in fact requires a solution.
3. It should be recognised that external consultants involved in identifying possible means of correcting a problem may be biased towards a solution they have identified.
 - Consultants that have assisted the Commission in the preparation of a legislative proposal may be judged to have expertise not available elsewhere. However, these consultants will have an automatic tendency to support a proposal that they helped to design, thus potentially biasing the impact assessment.
 - The Commission should consult with stakeholders throughout the performance of the impact assessment to check for, and eliminate, any bias introduced by external consultants.

4. The College of Commissioners should require impact assessments to cover their own areas of responsibility.
 - For example, the Commissioner for Enterprise and Industry and the Commissioner for Employment, Social Affairs and Equal Opportunities accepted the assessment performed by the Commissioner for Environment for the impact of including aviation in the EU Emissions Trading Scheme. The assessment of the impacts on industry and employment was inadequate as was demonstrated by an independent assessment conducted by the stakeholders. All Commissioners should ensure that impact assessments include an adequate assessment of the impacts in their areas of responsibility.

Undertaking an impact assessment

5. Underlying assumptions made within impact assessments should be identified, quantified, stated and, where appropriate, checked with stakeholders to ensure that valid results are obtained.
 - For example, many small regional aircraft are not fitted with equipment that is standard on larger aircraft, but an impact assessment has been based on an assumption that the equipment is already fitted. This has led to a significant underestimate of the cost impact of the proposal.
 - Where a major objective of a legislative proposal is to improve safety, the safety benefits must be explicitly quantified according to stated assumptions (for example the value of a life), and these quantified benefits must be compared with the costs of implementing the proposal.
6. The impact of legislative proposals in respect of achievement of stated objectives should be clearly quantified.
 - For example, the impact assessment performed for the Commission's proposal to include aviation in the EU Emissions Trading Scheme failed to quantify either how much CO₂ would be saved (and what other environmental benefits would be achieved) or in what timescale any savings would be made.
7. Impact assessments should include adequate consultation with all stakeholders including industry experts.
 - The bodies best placed to assess impacts, particularly financial impacts, are experts working in the field to be assessed. It is essential that their inputs are sought, and equally essential that their inputs are validated in broad terms to ensure that the assessed impacts are neither grossly exaggerated nor grossly understated.

Re-evaluating an impact assessment

8. At present, there is a general failure to reassess impacts when major changes are proposed by co-legislators or when underlying assumptions become significantly outdated, resulting in a lack of awareness and understanding of the impacts which will result from final legislation. Impact assessments should be revised whenever there are significant changes to a legislative proposal.
 - An initial impact assessment based on the Commission's proposal is essential.
 - However, the Commission should not react to any major changes proposed by the co-legislators without a revised impact assessment that addresses the proposed changes – this may be performed by either of the co-legislators acting independently, or acting together, or by the Commission. The revision should cover all areas impacted by the revised draft of the proposed legislation.
 - For example, in its First Reading the European Parliament proposed very significant amendments to the European Commission's proposal to include aviation in the EU



Emissions Trading Scheme (ETS). The Commission responded to these amendments without updating the impact assessment. None of Parliament, Council or Commission were aware of the massive financial implications of the Parliament's First Reading amendments.

- The Commission should also insist on a revision to the impact assessment when key assumptions become significantly outdated.
- Industry experts and other stakeholders should be consulted as these experts can readily reassess the impacts of major changes to assumptions or to proposals.

Taking account of the outcome of an impact assessment

9. Where an impact assessment fails to show that the benefits of proposed action will outweigh the total costs (including non-financial costs) of the action, the proposed action should be discontinued. The proposed action may subsequently be amended, subject to a revised impact assessment.

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