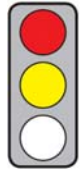


KEY ISSUES

Objective of the Regulation: The Commission wishes to establish a harmonised procedure for the introduction of noise-related operating restrictions.

Parties affected: Airport neighbouring residents, airlines, airport operators and aircraft producers.



Pros: The reference made to the international ICAO procedure for the introduction of noise-related operating restrictions reduces the costs for the airlines for complying with the respective legal provisions.

Cons: (1) The Commission's power to change by means of delegated acts the terms "aircraft" and "MCA", as well as the method used to assess noise by way of delegated acts is unlawful as they constitute essential provisions. Moreover, the Commission's power to change the terms "aircraft" and "MCA" reduces the legal certainty for airlines.

(2) The Commission's right of scrutiny and final decision-making power over national decisions regarding the introduction of operating restrictions infringes the principle of subsidiarity.

(3) The transition from a Directive to a Regulation infringes the principle of proportionality.

CONTENT

Titel

Proposal COM(2011) 828 of 1 December 2011 for 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 of the European Parliament and of the Council.

Brief Summary

Note: Unless otherwise provided for, the pages and articles quoted refer to the Regulation Proposal COM(2011) 828.

► Background

- According to the "balanced approach" of the International Civil Aviation Organization (ICAO), noise abatement around airports is to be achieved by selecting the "most cost-effective range of measures". Such measures comprise (ICAO Decision A33-7)
 - reducing the noise of aircraft;
 - making best use of land surrounding airports;
 - introducing "operational noise abatement procedures" (e.g. steeper takeoff angles, noise abating runways); and
 - imposing noise-related operating restrictions (e.g. night ban, phasing out of noisier aircraft).
- In the EU, the following currently applies:
 - the Directive on noise-related operating restrictions at airports (2002/30/EC) which set the "first steps" (p. 2) towards harmonising noise management measures both with ICAO requirements and also within the EU;
 - the environmental noise Directive (2002/49/EC), which sets evaluation methods for the identification of noise (2002/49/EC, Art. 1);
 - the Directive for noise standards relating to aeroplanes (2006/93/EC) and
 - national rules.

► Targets

- The amendment proposed with regard to the Directive on noise-related operating restrictions at airports (2002/30/EC) serves to improve coherence both within the EU and also with ICAO requirements (Recital 4).
- This applies in particular to "noise-related operating restrictions" (Art. 1 (1)).
- Moreover, the Regulation is to contribute to (Art. 1 (2)):
 - reducing noise at individual airports; and
 - selecting the most cost-effective noise abatement measures (Art. 2 No. 5) in line with the "balanced approach" (Art. 2 No. 2).

► **Scope**

- The Regulation applies to airports which in the previous three years have had more than 50,000 take-offs or landings of civil aircraft per calendar year (Art. 2 No. 1).
- The Regulation applies to “aircraft” used for civil purposes only (Art. 1 Abs. 3) and which have
 - a certificated take-off mass of at least 34 tons (Art. 2 No. 3) or
 - a certificated capacity of more than 19 passenger seats (Art. 2 No. 3).
- The Commission may change the definition of the term “aircraft” (Art. 11) through a delegated act (Art. 290 TFEU).

► **General rules on aircraft noise management**

In order to combat aircraft noise, Member States must carry out the following procedural steps (Art. 4 (1)):

- assess the noise situation at an individual airport;
- define the environmental noise abatement objective;
- identify measures available to reduce the noise impact;
- evaluate the likely cost-effectiveness of the available measures;
- decide on and implement the measures; and
- provide for dispute resolution.

► **Noise assessment**

- The Member States’ authorities responsible for the adoption of measures on operating restrictions (Art. 3 (1)) must regularly assess the noise situation at airports (Art. 5 (1)).
- The Regulation stipulates the method for noise assessment (Art. 5 (2); Annex I); such method is
 - identical with the method of the environmental noise Directive (2002/49/EC), and
 - may be amended by the Commission through a delegated act (Art. 11).

► **Noise abatement measures**

- Should a noise assessment reveal that “noise abatement measures” (Art. 2 No. 5) are needed, then these should be in line with the “balanced approach” of the ICAO (ICAO Decision A33-7) (Art. 5 (3), Annex I).
- The following measures are possible (Art. 4 (2)):
 - “the foreseeable effect of a reduction of aircraft noise at source” (aircraft noise),
 - land-use planning and management;
 - noise abatement operational procedures; and
 - operating restrictions, though “not as a first resort”.
- In choosing the appropriate combination of measures, authorities must take into account the cost-effectiveness of the new measures (Art. 5 (5); Annex II).

► **In particular: noise-related operating restrictions**

- Decisions on noise-related operating restrictions are based on the noise performance of the aircraft as determined by the Chicago Convention (Art. 6 (1)).
- Before introducing an operating restriction, the competent authorities shall give notice of six months in advance to Member States, the Commission and parties affected – e.g. airlines, airport operators and aircraft manufacturers (Art. 7 (1)).
- “If so deemed necessary”, “marginally compliant aircrafts” (MCA) may be withdrawn (Art. 4 (2)).
 - MCA are aircraft which fall below certification limits laid down in the Convention on International Civil Aviation (Chicago Convention) by a cumulative margin of less than 10EPNdB (Effective Perceived Noise in decibels) (Art. 2 No. 4).
 - The cumulative margin is the sum obtained by adding the differences between the certificated noise level and the maximum permitted noise level at each of the three reference noise measurement points (Art. 2 No. 4).
 - The Commission may amend the MCA definition through a delegated legal act (Art. 11).
 - Where the operating restriction concerns the withdrawal of marginally compliant aircraft from an airport, no new services shall be allowed with MCA at that airport six months after the notification (Art. 7 (3)).
 - The competent authority specifies the annual rate for removing MCA aircraft from that airport. This rate shall not be more than 20% of that operator’s fleet of MCA serving that airport. (Art. 7 (3))
- The Commission may assess operating restrictions (Art. 10 (1))
 - before their application, or
 - suspend them if they infringe the Regulation or any other EU law.

Changes to the Status quo

- Until now, the term MCA has referred to aircraft which fell below certification limits laid down in the Convention on International Civil Aviation (Chicago Convention) by a cumulative margin of less than 5 EPNdB. Now it refers to aircraft which fall below noise limits by a cumulative margin of less than 10 EPNdB (Art. 2 No. 4).
- New are the steps prescribed by Member States to combat aircraft noise (Art. 4 (1)).

- ▶ New are the concrete requirements which Member States must take into account when taking noise abatement actions (Art. 4 (2)).
- ▶ New is the requirement to apply a method to assess the noise situation at airports (Art. 5 (2), Annex I).
- ▶ New is that the Commission may change the definitions of the terms “aircraft” and “MCA”, as well as the method to assess the noise situation at airports (Art. 11).
- ▶ New is that the Commission may evaluate and suspend decisions made regarding the introduction of operating restrictions before they are introduced (Art. 10 (1)).

Statement on Subsidiarity by the Commission

According to the Commission, only an EU-wide harmonised approach for the introduction of noise-related operating restrictions can contribute to a green air transport sector, create a foreseeable business environment for airlines and reduce the risk of distorted competition. Such an approach would, in particular, release airlines – which “by definition operate an international network” – from a “patchwork of different noise requirements” (p. 7).

Policy Context

In a report [COM(2008) 66] on the application of the existing Directive on noise-related operating restrictions on airports (2002/30/EC) the Commission refers to the fact that the allocation of competencies and the rights and obligations of the parties affected should be stated more precisely in the noise assessment process. As part of a 2008 Consultation on the amendment of this Directive, the Member States spoke out in favour of maintaining flexibility in assessments. Airport operators stressed the necessity for a stricter definition of “marginally compliant aircraft”. Airlines stressed that the operating restrictions should only be applied for noise abatement as the last possible option.

Legislative Procedure

01 December 2011	Adoption by the Commission
12 December 2011	Debate in the Council
Open	Adoption by the European Parliament and Council, publication in the Official Journal of the European Union and entry into force

Options for Influencing the Political Process

Leading Directorate General:	DG Mobility and Transport
Committees of the European Parliament:	Transport and Tourism (leading), rapporteur: Jörg Leichtfried (S&D Group, AT);
Committees of the German Bundestag:	N.N.
Decision mode in the Council:	Qualified majority (Adoption by a majority of Member States and 255 of 345 votes; Germany: 29 votes)

Formalities

Legislative competency:	Art. 100 (2) TFEU (Aviation)
Form of competency:	Shared competency (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMEN

Economic Impact Assessment

Ordoliberal Assessment

An EU-wide harmonised approach to introducing noise-related operating restrictions creates a level playing field for airlines and airports in the EU.

Impact on Efficiency and Individual Freedom of Choice

Using the ICAO “balanced approach” as a common framework for noise abatement allows for an appropriate decision making process for finding noise mitigating measures, taking into account the efficient utilisation of capacities on the one hand and noise abatement on the other hand. The EU is thus in line with an international agreement on the introduction of noise-related operating restrictions. As many airlines operate at an international level, this **reduces** in principle **the costs for airlines for complying with the respective legal requirements**.

The target to reduce air noise is principally appropriate in view of the increased number of people affected and the noise-related damages to health. The stricter definition of “marginally compliant aircraft”, proposed for this purpose, leads to the withdrawal of the currently loudest aircraft from airports. This reduces noise and encourages innovation amongst aircraft producers to design quieter aircraft. However, changing the MCA definition from less than 5 EPNdB to less than 10 EPNdB represents an enormous step, as this allows for the

withdrawal of aircraft that are still currently being produced (e.g. A321). This leads to high costs for airlines and thus to higher prices for transport services for personnel and cargo. The Commission should, in consideration of international agreements, submit a roadmap by which, at fixed intervals and allowing for a sufficient period of adjustment, the cumulative margin is gradually increased, step-by-step, to a specific value. This would increase the planning certainty for airlines.

Enabling the Commission to change the definitions of “aircraft” or “MCA” through a delegated act **reduces legal certainty** for airlines. For through such changes, the Commission could enforce the withdrawal of further aircraft types. The purchase of aircraft is a long-term investment for airlines. Therefore, planning is very important here.

The Commission's power to change the method of assessing the noise situation could lead to a double burdening of the competent authorities, for when carrying out assessments, they would have to apply both the new method pursuant to the Directive on noise-related operating restrictions and the previous method pursuant to the Environmental Noise Directive (2002/49/EC).

Impact on Growth and Employment

Closing airports reduces cross-border mobility and leads to higher prices for transport services for personnel and cargo. This tends to have a negative impact on growth and employment.

Impact on Europe as a Business Location

Stricter noise rules reduce the likelihood of investments in hubs by airlines with louder aircraft. Less legal certainty reduces the likelihood of investments in the business location Europe as a whole.

Legal Assessment

Competency

Unproblematic. The EU has the power to adopt “appropriate provisions” for aviation (Art. 100 (2) TFEU).

Subsidiarity

Unlike the Commission, national authorities are better able to assess by making use of their knowledge of specific local circumstances whether or not the introduction of noise-related operating restrictions at an individual airport is necessary. The verifiability of such decisions is ensured through national courts. Hence **the Commission's right to scrutiny and final decision making power over national decisions regarding operating restrictions infringes the principle of subsidiarity** (Art. 5 (3) TEC).

Proportionality

The Commission wishes to replace the existing legal act of a Directive, which in the form of national implementing acts allows Member States some scope for action (Art. 288 (3) TFEU), with a directly applicable Regulation (Art. 288 (2) TFEU). Major parts of the subject matter – e.g. the general noise protection rules or the introduction of operating restrictions – require, however, more detailed work from the Member States and therefore a Directive. In its explanation of the form of action of the Regulation, the Commission focuses solely on the proposed noise assessment method and stresses that this can be only fully harmonised through a Regulation. However, the EU-wide, harmonised regulation of partial aspects could also be achieved in a Directive. **The transition from the form of action of a Directive to a Regulation therefore infringes the principle of proportionality** (Art. 5 (4) TEC).

Compatibility with EU Law

The definitions of the terms “aircraft” and “marginally compliant aircraft” (MCA), as well as of the method to assess the noise situation at airports, affect the core provisions of the proposed legal act. As “essential elements”, they **must not be changed by the Commission through delegated acts** (Art. 290 (1) TFEU; cp. general [CEP Analysis](#)).

Compatibility with German Law

Unproblematic.

Conclusion

Applying the ICAO “balanced approach” as a framework for action to combat noise reduces the costs for airlines for complying with the respective legal provisions. The Commission's power to change through delegated acts the definitions of the terms “aircraft” and “MCA”, as well as the methods for noise assessment by delegated acts is unlawful, as these are essential provisions. Moreover, allowing the possibility to change the definitions of “aircraft” and “MCA” reduces the legal certainty of airlines. The Commission's right of scrutiny and final decision making power over national decisions on operating restrictions infringes the principle of subsidiarity. The transition from the form of action of a Directive to a Regulation therefore infringes the principle of proportionality.