



Speech from Peter Müller at the special meeting of Directors General of ECAC, Tbilisi, 31 August 2012

1. Introduction

When during one of our last Co-ordinating Committees I raised the subject of over-regulation, many of you agreed that it would be worthwhile to further explore the subject. Is over-regulation merely an unsubstantiated complaint of some few? Or is there a real need to tackle the problem of a seemingly ever growing number of regulations, not limited to, however most apparent in the domain of safety?

Allow me to start my presentation with some general remarks.

The safety performance in European aviation is an excellent one. This is not only due to the efforts of the National Authorities and the former Joint Aviation Authorities JAA. It is in great part an achievement of the European Aviation Safety Agency EASA and the EU aviation policy in general which have established a strong regulatory framework that provides a high and uniform level of safety. Europe needs a strong common regulatory system. And Europe has a strong common regulatory system assuring fair competition and therefore a level playing field in the European internal market for the civil aviation sector.

Do not get me wrong, when I will subsequently express some critical remarks in regard to EASA. Even though there might be some regulatory issues, EASA has been a success story ever since its establishment in 2002. It is a great achievement that by creating a common and strong certification body the European aviation industry - Airbus as a prominent example - has become a global player in many respects. Therefore, EASA needs not shy away from comparison with the likes of the US FAA. The wide-ranging work of the Agency, from Certification to its regulatory and oversight activities, has contributed considerably to a high and uniform level of safety in Europe. This of course, does not preclude to constantly assess the regulatory system and to aspire to improvement where it has been recognized as necessary.

On my meetings with Swiss aviation stakeholders – for example with the maintenance industry or General Aviation – many of them repeatedly expressed their concerns over the great number of regulations they have to comply with. Their complaints are often directed to implementing rules that have been adopted within the scope of Regulation Nr. 216/2008 on common safety rules in the field of civil aviation, also known as the EASA Basic Regulation. Therefore, I would like to focus my presentation on the domain of safety. Not because I think that there are no over-regulation issues in other aviation sectors. However, the field of safety offers some salient examples, reason why it may serve as a good starting point for following discussions in an overall perspective.

2. Who is affected by over-regulation?

a) Industry and individuals:

Who is affected by over-regulation and what is the criticism behind it? First of all, there is the aviation industry which regulations are aimed at. In recent years, the EU legislator has adopted an enormous number of new regulations in the field of aviation safety. Industry and individuals alike have criticized that this constant flux of regulation has caused them great inconvenience without always recognizing the benefit for safety. They complain that too much regulation inflicts on them a time-consuming administrative burden linked with additional costs that are sometimes hard to get by, considering the economic constraints in which aviation business currently operates. Furthermore, some regulation is deemed to be too detailed and complex and therefore not user-friendly. It is claimed that over-regulation may even be a threat to air safety in a way that investment in existing safety enhancing measures and action might be degraded.

b) States / National Authorities:

States and their National Authorities might be considered as a source or a driver of over-regulation. But since the rulemaking of most safety rules is no longer in their competence, they are mainly in charge of implementing the adopted EU regulation and therefore are affected by it. Under the aegis of EASA a wide set of new regulations has been adopted at a pace that many Member States to EASA have considered too speedily and extensive. Implementation – as you will certainly agree – is resource-intensive and a time-consuming process. In a time where the difficult economic situation forces governments to reallocate resources, the implementation and

hence the oversight of new regulation can come as a big challenge for the Civil Aviation Authorities.

Furthermore, it is felt that some regulation designed and delivered does not always respect the principles of subsidiarity and proportionality and is not of the highest quality possible with regard to its content. In other words: the regulation might not meet the goal of a "better regulation". In the following, I would like to add the aspect of regulation quality to the aspect of over-regulation.

3. Examples

But where does this criticism of over-regulation or inadequate regulation stem from? It goes without saying that it needs be substantiated. Therefore, allow me to highlight some examples taken from EU regulation covering the field of safety.

1. Let me start with one of the most prominent examples, the General Aviation sector. By General Aviation I am mostly referring to small entities producing, maintaining or operation small aircraft. Many regulations have been constituted in a "one size fits all" manner, in a way that principles for Commercial Air Transport have been applied equally to small scale operators such as flying schools or recreational aviation. For example in the field of maintenance, regulation on Continuous Airworthiness Management Organisation (short: CAMO) may bring a cost and administrative burden to smaller operators. Small operators often have at their disposal only limited resources in order to comply with the regulation (for example for setting up complex maintenance manuals, for contracting of maintenance organisation). In the meantime, numerous efforts – by the Agency, the European Commission and the Member States – have been undertaken to alleviate General Aviation from regulations that are too far reaching, by adjusting current regulation. Further efforts to tackle the problem are underway. A dedicated group set up by the EASA Management Board has already submitted a promising draft report proposing a set of principles and guidelines intended to create a better regulatory environment for General Aviation.
2. EASA is currently introducing requirements for "Safety Management Systems", for Authorities and Organisations including Safety and Compliance Monitoring

which largely duplicate existing ICAO requirements, albeit with a different terminology. Examples can be found in Regulation 290/2012 (Flight standards) and Regulation 1035/2011 (ANS). The EU has the intention to extend these requirements to all other fields of competence. To many, this proceeding is an unnecessary duplication of ICAO Standards. The existing ICAO requirements for State Safety Programs (SSP) and Safety Management Systems (SMS) are wholly adequate for Member States. They soon will be consolidated in a new ICAO Annex 19. Switzerland successfully implemented SMS in 2009, based simply on ICAO SARPs. With the EU introducing an entire new system, which however is largely but not solely based on ICAO, many States will need to review the entire system to be able to show compliance.

3. A similar example of duplication of ICAO requirements is about to happen in the field of common EU regulation for aerodromes. The new Aerodrome Regulation is currently in the consultation process and is due to enter into force in 2013. Instead of clearly referencing to the already well established ICAO Annex 14 and its structure, the requirements will be transposed into a completely new regulatory system – even though the content is the same for the greater part. Creating a completely new structure to aerodrome regulation is likely to cause considerable difficulties of implementation for Member States and industry alike.
4. A good indication of what and how much currently is in the regulatory pipeline is the EASA Work Programme, in specific the Work Programme for the coming four years (2013-2016) as it will be adopted by the Management Board in the second half of this year. The proposed Programme contains over 300 rule-making tasks and therefore reflects the considerable thrust of future regulation that might await the Member States and industry in the years to come. The list has been increasing ever since. Even if the planning might be indicative only and can be subject to alterations, it rises questions on how the setting priorities might be improved.

On the occasion of the last ECAC Triennial meeting Patrick Goudou, Executive Director of EASA, himself recognized a need for action with regard to the existing regu-

lation density. According to him, regardless of the persistent output of new regulation practically no review of the already existing regulation has been undertaken so far.

Before I venture to suggest the possible field of action there is another crucial question to be answered. Who is the driver of over-regulation? And what are the incentive structures of over-regulation? We must not forget that EASA is bound to the scope that is set out in the EASA Basic Regulation. It has to comply with its mandate and tasks which it has to account for to the European Commission, Parliament and Council. It is bound to ambitious deadlines which are prescribed either in the Basic Regulation or by its Work Programme. This - as a consequence – might cause pressure to deliver on time. Pressure on the part of the Commission who requires deliverables within the foreseen deadlines. And we all know by experience: Deadlines - if they are too short and over-ambitious - bear the risk to produce imbalanced regulation.

I believe that over-regulation or improving the quality of regulation is an issue which in the forefront needs to be tackled on a political level. We stand in the beginning of a debate. Therefore, it is key to raise awareness for this subject on all relevant levels including all parties involved in the design and delivery of regulations.

4. Approaches to tackle over-regulation

What can be done? Quite rightly, as easy as it is to criticize, it is equally important to propose opportunities for action.

4.1 Upcoming Article 62 Basic Regulation - Evaluation

Pursuant to Article 62 of the Basic Regulation the EASA Management Board is tasked with commissioning an independent external evaluation on the implementation of the Basic Regulation every 5 years. The evaluation shall examine how effectively the Agency is fulfilling its mission. It shall also assess the impact of this regulation. The preparation to launch the next evaluation has started a short while ago with defining its provisional Terms of Reference.

So far the focus of the evaluation will be put on two major questions:

a) What are the main challenges the EASA system will face in the future?

b) and is the system fit to face these challenges.

To me, the current evaluation is a great opportunity to trigger a debate on over-regulation within the Agency itself. Under the afore mentioned aspect of future challenges of EASA I would recommend to include in the task of reviewing the existing regulation the aspect of over-regulation. Naturally, it is in the hands of the national Management Board representatives to introduce the subject accordingly.

4.2 Revised Rulemaking Process

Another possibility to exert influence on how regulation is designed and delivered is the rulemaking process itself.

Recently EASA has adopted a revised Rulemaking Process with the objective of increasing its efficiency and effectiveness. The Rulemaking Process involves all activities regarding the preparation of future regulation in the context of aviation safety. The new process has been widely welcomed as it creates further opportunities for the consultative bodies to participate in the course of the rulemaking process. The improved participation is likely to produce balanced regulations.

The Member States advisory role will be guaranteed by two bodies, the Thematic Advisory Groups (so called TAGs) and the Rulemaking Advisory Group (RAG), formerly known as AGNA. Both RAG and TAGs are constituted by Members of the National Authorities which will contribute throughout the rulemaking procedure by giving advice to the Agency on strategic issues, overall rulemaking priorities and during the drafting process itself. In this context, it is important that National Authorities exercise effectively their advisory role. Moreover, as the new Rulemaking Process is about to be initiated, they have to monitor its function closely taking into account the aspect of over-regulation / quality of regulation.

This requires of course that the inputs delivered by the Advisory Bodies and key stakeholders are taken into consideration adequately by the Agency.

4.3 Assessing the risks

Most safety regulation is based on a risk assessment, often conducted in the course of a regulatory impact assessment. It is essential how these risks are evaluated.

Analysing the risk exposure correctly requires relevant data. It is understood that no regulation should be drafted before data is not secured and assessed in its integrity. Or in other words: Regulatory action should only be decided when there is a specific evidence-based safety concern. We all agree: A higher degree of regulatory control is justified when it effectively minimises the risks. Nevertheless, if risks that are proven to be minor or even negligible, this needs to have an effect on how or if an issue is regulated at all.

4.4 "One size does not fit all"

This brings me to my next point. As risks in the aviation may differ from the type of operation and environment in which different type of aircraft are operated, it is important to address the regulatory issues in a different manner. Not considering the special environment by which some sectors operate may lead to inadequate or disproportionate regulation, as I have highlighted with the example of General Aviation where many stakeholders have expressed concerns related to the proportionality of regulation affecting them. For such cases a "one size does not fit all" approach needs to be applied.

4.5 "To do nothing" approach

Allow me to go even one step further. The first and foremost question before designing a regulation should be: Is more regulation really necessary? The example of existing ICAO requirements shows that much regulation is already in place while in parallel new regulation is added. In a regulatory environment with several international organisations or administrations, duplication needs to be avoided at all cost. Therefore, careful consideration needs to be given on how the respective regulations refer to each other and how they might be interrelated without causing additional regulatory burden. Where well established regulation is already in place, a "to do nothing" approach can prevent duplication and thus over-regulation. Moreover, under the consideration of the principle of subsidiarity, Member States should retain their competence where locally limited issues can be regulated on a national basis.

At last, adding new regulation to existing may not be the only way to improve safety. We should increasingly promote the self-responsibility of our stakeholders and the industry - wherever it is appropriate to do so and where the safety risks and the level playing field allows it. Voluntary safety initiatives by industry or associations of users

should be encouraged and supported by regulators, for example with Codes of Practices as an alternative to regulation. It goes without saying that this has to be supported by a strong oversight and standardization activity by the National Authorities and the Agency.

5. Conclusion

The thrust of new regulation in field of aviation safety has been considerable in the recent years. If in this forum we come to the conclusion that over-regulation is a subject to be tackled, it is in the responsibility of the Member States and its National Authorities to put the issue on the political agenda. Ultimately, we as National Authorities are part of the regulatory system and therefore we need to raise awareness by actively contributing to the process of rulemaking. The current efforts to make alleviations for the General Aviation are a very good start. However, experience shows that once a regulation is established, spelling back is a burdensome and time-consuming process. Therefore, it's better to avoid over-regulation from the start .

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