



April 2012
AK Position Paper

Proposal for a regulation of rules and procedures of noise-related restrictions at Union airports

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Herbert Tumpel
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community- and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Werner Muhm
Director

Executive Summary

The AK basically does not want to criticise the aim pursued by the Airport Package to increase the capacities of European airports, to reduce delays and to improve the quality of air passenger services. However, this must neither happen at the expense of employees and their working conditions (see opinion on the draft for a Regulation of the European Parliament and the Council on Groundhandling Services at Community airports on the cancellation of Directive 96/67/EC), nor at the expense of residents living close to airports and their living conditions.

Insofar, the Austrian Federal Chamber of Labour welcomes the fact that for the first time it has been clarified (Article 4 and 5 of the Proposal)

- that the Member States shall determine noise reduction targets for each airport in the area of validity and develop a concept for noise monitoring and noise reduction and
- that in doing so airport operators shall co-operate with air traffic control (Forum) and
- that airport operators and air traffic control shall also ensure an appropriate participation of residents affected by aviation noise.

However, on closer consideration, significant doubts emerge with regard to the balance of the entire Proposal and whether it can achieve the necessary balance between the interests of the aviation industry and the regional authorities as well as the residents affected, so that the AK ultimately rejects the Proposal.

It is the intention of the Proposal to review obvious existing operating restrictions under the aspect of "cost efficiency" whilst the demands for protection voiced by residents and a sustainable improvement of the currently existing level of protection are not really a concern. What is particularly disturbing is the fact that the Commission obviously intends to give passive noise protection measures priority over active measures, by proposing to legally enshrine the "balanced approach" advocated by the aviation industry, which is lacking in balance and consistency (Article 4). To achieve this, the Commission plans to give itself far-reaching inspection and decision-making powers, which are obviously not pursuant to the principle of subsidiarity and go far beyond technical issues (Article 10 to 12). This impression is enforced by ambiguous wording, which permits the Commission to even review national protection targets (Article 12). Apart from that, there is nowhere a reason to be found as to why the new rules should come in form of a Regulation.

In the medium-term, the AK requests the development and binding determination of limits, following for example the German Aircraft Noise Protection Act as a standard of protection for the residents living in close vicinity to airports within the scope of a European regulation, as it has already been integrated in Article 1.2 of the Environmental Noise Directive 2002/49/EC following the request of the European Parliament to the Commission.

The AK position in detail

1. Background and motivation of the Commission

From the point of view of the Commission, Europe's airports are faced with a capacity crisis. This is attributed among other to operating restrictions. These shall be reduced based on the following reasons (compare Memo /11/857 dated 1.12.2011):

"There are still many inconsistencies as to how such restrictions are put in place around Europe. In some cases, noise restrictions may not be compatible with the safest operational conditions for the operation of flights into an airport. There may be an excessive impact on the capacity of an airport due to noise restrictions, which can in turn have a knock-on effect at other airports. Noise restrictions can also have other environmental impacts such as additional holding patterns which may be required for incoming aircraft. Noise restrictions may also encourage further residential development near the airport which should be kept clear in order to reduce the noise impact of airport operations. Lastly, from a procedural point of view, there is often a tendency for noise restrictions to become 'cast in stone' without review, meaning that new operational techniques, technological solutions or aircraft technology cannot easily be deployed."

In addition, attempts to change Directive 2002/30/EC must have existed for quite some time as the definition of the group of "marginally compliant aircraft" is far too narrow. This also reflected in the report of the Commission on the application of Operating Restrictions Directive 2002/30/EC (COM(2008)66 final).

2. Which changes will the proposed regulation implement?

First, the Commission will change Article 2.5 of the draft regulation relating to the scope of the group of "marginally compliant aircraft".

Secondly, the Commission will ensure the application of the "Balanced Approach" via Article 4.2 in connection with Annex II of the draft regulation, which will be accompanied by extensive further requirements in respect of testing stages, calculation and evaluation methods in Articles 5 to 9 including Annex I of the draft regulation.

Annex I will lay down for the first time a binding aircraft noise calculation method, namely the method in accordance with the ECAC/CEAC Doc. 29 'Report on Standard Method of Computing Noise Contours around, third edition (~ in accordance with Directive 2002/49/EC only optional).

Last, the Commission, by means of Article 10 to 12 of the draft, intends to grant itself extensive control and intervention options ("suspension of national implemented operating restrictions"), including even the authorisation in respect of delegated legal acts, among other on "changes of noise limits in accordance with Article 4", which might also include the noise reduction targets implemented by the Member States.

From the point of view of the Commission, Europe's airports are faced with a capacity crisis. This is attributed among other to operating restrictions

From the point of view of the AK, the actual problem is the vagueness and ambiguity of the so-called "Balanced Approach"

3. Evaluation, requirements, conclusions

3.1. Legal basis, subsidiarity, proportionality and selecting the instrument "Regulation"

The Proposal does not give any reason for the choice of legal basis, even though large overlaps and significant tensions in respect of the action plans of the Member States in accordance with the Environmental Noise Directive 2002/49/EC exist. Hence, the contents pursued by the Proposal should therefore at least be based on environmental competence (Art 191 Treaty on the Functioning of the European Union) and meet its formulated requirements, in particular relating to the precautionary principle. The current form is already set for unsolvable conflicts (see further below).

The reasons concerning the remaining aspects (page 7 and 8 of the Proposal) are also not convincing and comprehensible.

From the point of view of the AK, the actual problem is the vagueness and ambiguity of the so-called "Balanced Approach", which is advocated by the aviation industry. What is presented as a sophisticated and precise technical evaluation procedure is in reality an instrument, which gives decision-makers an almost indefinite high degree of power and freedom of discretion. When for example, the approach promises to be able to compare "reduction of aircraft noise at source" with "land use planning measures", in order to justify

the selection of the most cost-effective measure one must clearly state that its promise is impossible to keep:

The application of the "Balanced Approach", in particular the application of its decision-making criterion "cost efficiency" does not guarantee balanced solutions per se. The measurements to be taken into account for evaluation are far too diverse and there is no recognized monetary assessment method for many aspects. This is added by a time component: how can one compare measures in monetary terms, which have an immediate effect under the aspect of "cost efficiency" with those which will only have a medium or even long-term effect?

Hence, it is not surprising when evaluation methods based on the "Balanced Approach" arrive at completely different results, as it has been conveyed by the Report of the Commission on the application of the Operating Restrictions Directive 2002/30/EC (COM(2008)66 final). The problem of the Directive 2002/30/EC is not first and foremost the incorrect to arbitrary application in the Member States, but the vagueness and ambiguity of the evaluation method itself. And in particular, this problem is also not being solved by the Proposal of the Commission - now in relation to a Regulation. What presents itself on the surface as a strict harmonisation measure, is in reality only the shifting of decisions with almost "boundless" discretion, now in close proximity to the enforcement area of the European Commission, which wants to be able to

The vagueness and ambiguity of the evaluation procedure will inevitably also result in conflicts with the environmental principle of the Treaties

review or even suspend such decisions in individual cases - again using hardly foreseeable discretion (Article 7 and 10 of the Proposal).

From the point of view of AK, this makes the entire argumentation on the aspects of "Subsidiarity", "Proportionality" and the "Choice of Regulatory Instrument" collapse. How little target-aimed, i.e. proportionate the Proposal is, is also demonstrated on the example of a situation, where the Commission intends to suspend an operational restriction because it thinks that land use planning measures, such as building bans etc. would be more target-aimed and cost-effective. In such a case, one could block the operating restrictions. However, the Commission would have no opportunity to ensure that subsequently these land use planning measures would actually be implemented (which is often a problem in practice). Hence, in cases of conflict flights would take place without noise protection measures! This cannot - by any stretch of the imagination - be an acceptable result in view of the environmental provisions of the Treaties. The example also very clearly shows that the proposed regulative concept has a tendency to reduce the level of protection of residents.

The vagueness and ambiguity of the evaluation procedure will inevitably also result in conflicts with the environmental principle of the Treaties. Hence, Annex I point 1.4.2 informs that "land use planning measures" also include passive noise protection measures such as sound-proof windows. Passive measures - this is a basic rule of noise protection - should always be the ultima ratio, which means "the last

resort". According to the evaluation procedures presented, such measures could easily turn out to be "cost efficient", because cheap measures, even though they very much contradict the polluter-pay and the precautionary principle. This would not be acceptable in this form. Such considerations do not play any role in the current form as the Proposal regards cost efficiency as the only decision-making criterion (Article 4.2 of the Proposal).

3.2 Aim of the Regulation

The AK criticises the one-sided economic orientation of the Proposal, which only focusses on the assumed capacity bottlenecks at European airports, without making the credible claim of wanting to improve the protection of those affected by noise. The Proposal also ignores that noise problems are "indicators" of future or even real limits of airport expansions. In view of the dense population levels in Europe and their frequent close proximity to towns and cities, airports cannot rely on continuous growth (~ resp. at least on the complete exploitation of existing emission ceilings). To further explore and to respect these limits was obviously not the main concern when the draft was prepared. In addition, the second half sentence of Article 4.2.d) should be deleted, which says that operating restrictions should only be a measure of secondary importance, when in fact they often present an indispensable measure with regard to nocturnal aircraft noise problems.

The driving force for the further treatment of the issue is supposed to be implementable solutions for a balance of interests between aviation industry and airport residents. For this purpose, the regulative and conflict-solving approaches, which are practiced at Europe's airports in view of the need for research and clarification as well as under the aspect of "best practice" should be examined, evaluated and made better known to a broader public in order to drive the discussion forward. Hence, the AK requests that the DG Environment will be included in the development. Ideally, the DG Environment should be in charge as currently a very important tool for putting in place Noise Action Plans for airports in accordance with the Environmental Noise Directive 2002/49/EC is in the process of being developed.

The mid-term target should also be the development and binding determination of limits following for example the German Aircraft Noise Protection Act as a standard of protection for residents living in the proximity of airports within the scope of a European regulation, as it has already been integrated in Article 1.2 of the Environmental Noise Directive 2002/49/EC following the request of the European Parliament to the Commission (see also the explanation of the Commission). Airport operators are only too keen to reject national regulations, basing their opinion on the argument of distorted competition in the single market.

3.3 Application of the Balanced Approach?

As already mentioned, the "Balanced Approach" advocated by the aviation industry does not meet the rightful requests for a comprehensive evaluation and conflict solution procedure. It lies in the nature of the "Balanced Approach" that it has a practical preference for passive noise protection measures. This might be understandable as a point of interest adopted by the aviation industry, because passive measures are in general "the cheapest". However, it is not much good as a legislative aim, which should also be implemented by other stakeholders. Hence, a European Regulation should refrain from legally enshrining the point of view of the aviation industry.

On the contrary, a European Regulation should clarify - also in respect of the aviation noise problem - that the generally recognised rule in respect of noise protection, i.e. that active measures take priority over passive measures, should here too be the basis of any decision. This does by no means exclude the development of further measures to be applied in practice. This does also not exclude procedures which distinguish whether an airport is newly built or whether it is to be fitted with noise-protection equipment. However, it prohibits a basic legal treatment that blurs the differences: for example the proposal relating to sound-proof windows (according to Annex I point 1.4.2) is regarded as a land use planning measure in accordance with Article 4.2.b). In any case, the list of measures in Article 4 must also include their

The cost efficiency as a decision-making criterion must be supplemented by additional relevant criteria such as protecting the health of residents, minimizing air pollutant emissions

ranking in the hierarchy of noise prevention measures and their effectiveness in terms of time (immediately effective up to only long-term effective). Consequently the first step must be to delete the second half sentence in Article 4.2.d) (see already above). Furthermore, additional determinations and clarifications are required.

Furthermore, cost efficiency as a decision-making criterion must be supplemented by additional relevant criteria such as protecting the health of residents, minimizing air pollutant emissions, etc. As already pointed out above the criterion of cost efficiency cannot be applied in practice in any case.

3.4 Extension of the group of “marginally compliant aircrafts”

Apparently, the Proposal for the new regulation does already not go far enough. The AK suggests reviewing this point to ensure that a relevant part of the noise aircrafts is indeed included.

3.5 Noise Calculation Method

The AK points out that the synchronisation with the provisions of Environmental Noise Directive should be retained. Apart from that, examples in Austria have shown time and again that any continued application of strict national evaluation methods often has a tangible acceptance-promoting effect on people who are affected by noise. The continued application of these methods should be possible.

3.6 Control, veto, enforcement and regulatory powers of the European Commission

As already mentioned, in view of the ambiguities and the uncertainties of the currently practiced procedure, the suggestion to grant the Commission further powers in accordance with Article 10 to 12 of the Proposal is completely inappropriate and is therefore rejected. Not even the authorization relating to delegated legal acts in accordance with Article 11 point c) (~ changes of the methods and the report pursuant to Annex I) is limited to issues, which could - also in the wider sense - be regarded as enforcement.

3.7 Forum for technical cooperation

The establishment of a technical forum by the national authorities (Article 5.4) is certainly an efficient tool to drive forward the necessary need for research and clarification mentioned above. However, from the point of view of the AK this Committee should not only be made up of airport operators, airlines and air traffic control, but also include representatives of the residents living in close proximity of airports, the regional and local authorities as well as of authorities in charge of environmental noise protection.

Should you have any further questions
please do not hesitate to contact

Werner Hochreiter

T: +43 (0) 1 501 65 2624
werner.hochreiter@akwien.at

as well as

Frank Ey

(in our Brussels Office)
T +32 (0) 2 230 62 54
frank.ey@akeuropa.eu

Bundesarbeitskammer Österreich

Prinz-Eugen-Strasse, 20-22
A-1040 Vienna, Austria
T +43 (0) 1 501 65-0
F +43 (0) 1 501 65-0

AK EUROPA

Permanent Representation of Austria to
the EU
Avenue de Cortenbergh, 30
B-1040 Brussels, Belgium
T +32 (0) 2 230 62 54
F +32 (0) 2 230 29 73