



EUROPEAN COMMISSION

PRESS RELEASE

## COMMENTS BY THOSE WHO HAVE TO FLY UNDER THESE RULES

Brussels, 30 September 2013

Brussels, 03 October 2013

### Aviation Safety: Parliament Committee vote puts at risk key measures to improve aviation safety

Following the Transport Committee's vote this afternoon to reject proposals to improve crew protection against fatigue, Vice-President Kallas said: "This vote puts at risk key measures to improve aviation safety. Safety is the first priority for the EU and the sole objective of this revision. Pilot fatigue is a very serious issue and that's why there are already strong EU rules in place. This proposal goes a step further bringing together the best safety practices from all EU Member States and the latest scientific evidence. With these rules, we want to consolidate Europe's position as the safest place to fly. To do that, we need a debate based on facts, not based on misleading scare stories and false claims. We look forward to a transparent debate with Members of the Parliament before the vote in Plenary."

#### ECA Comment:

Mr Kallas is correct that air crew "fatigue is a very serious issue". He is less correct when stating:

- **"This vote puts at risk key measures to improve aviation safety"**: The EP TRAN Committee vote is an opportunity for the Commission to reconsider and revise its proposal in line with scientific evidence. The Commission should grab it.
- **"Safety is the first priority for the EU and the sole objective of this revision"**:  
Regretfully, the airlines' commercial interests left a strong 'footprint' on the text:
  - o Night flights where the airlines fiercely oppose going down to the scientifically validated 10 hrs, as in some cases it would require to add a 3<sup>rd</sup> pilot on board.
  - o Standby, where they want maximum flexibility - even at the price of having air crew land their airplanes when having been awake for 22 hrs.
  - o Early starts that disrupt sleep patterns, where the Commission gave in to airline lobbying by allowing up to 7 early starts in a row (scientists say: max. 3).

Yes, safety is indeed "the sole objective of this revision". But that does not seem to be the main driver behind the Commission proposal.

Already in Dec. 2010, when the first set of draft rules was published, AEA – the Association of European Airlines – is reported to have written in an internal note that AEA members have secured their positions on the major issues related to this dossier, and that the only remaining issues where they have not (yet) been able to secure 100% of our AEA positions are some aspects of standby at home and some aspects of the 'planned extension' to the maximum flight time. Since then, AEA secured also its position on standby.

- **"that's why there are already strong EU rules in place"**: No, there are not, at EU level. This is why the EP, back in 2006, mandated the Commission to revise these rules and to do so by putting them on a firm scientific and medical basis.

BUT: there *are* strong rules in place in several EU Member States. Why did the Commission not take those as a benchmark for their proposal, and instead chose some of the worst practices to compare with (e.g. standby rules in France or Germany)? In several countries this will result in downward harmonisation of safety standards.

- **"This proposal ... bringing together the best safety practices from all EU Member States ..."**: This is simply not true. Many best safety practices have been ignored. Instead the COM chose to 'broker' a kind of compromise between different national rules, with the result that existing best practices in several Member States will have to be dismantled. The Commission's recent tables comparing a selected group of Member States on a narrow issue of issues is, regretfully, only part of the picture.
- **"... and the latest scientific evidence"**: the converging findings of 5 separate independent scientific reports have all been disregarded by the Commission, despite repeated warnings from the scientific community. Latest scientific evidence is therefore NOT reflected in the proposal, as [scientists have criticised at the EP Hearing on FTL](#), in June 2013. And: EASA/ Commission refused 3 times calls to have the text assessed by independent safety experts.

This resulted finally in the ETSC (European Transport Safety Council) to bring together 6 scientists to assess the new proposal, with [this result](#): "*the proposals do not fully and properly reflect the scientific evidence that should underpin fatigue management. Nor do they fully incorporate the scientific evidence which EASA itself commissioned*" and: "*ETSC would therefore urge the Commission, EU Member States and the Parliament to think carefully before giving the final approval to the current proposals.*"

And why did EASA & Commission hesitate so much to reflect the scientists' recommendation in their proposal? Because this would have cost money to the airlines, as they stressed at numerous occasions.

- **"we want to consolidate Europe's position as the safest place to fly"**: This is a very good aim and exactly what Europe's air passengers expect from their EU decision-makers. But this proposal will not achieve that. [Surveys among over 6.000 pilots](#) from across Europe have shown that 4 out of 5 pilots suffer from fatigue while in the cockpit, while over 50% say they already made mistakes as a direct consequence of being fatigued. The Commission received these survey results in 2012, but refused to take them into account.
- **"we need a debate based on facts, not based on misleading scare stories and false claims"**: We agree. For this, we invite the Commission to measure itself by the same standards it sets for others. – This note is intended to contribute to such an open and transparent communication based on facts.

The purpose of this new legislation to modernise the high European standards on aviation safety is to clarify and improve the current regulations on flight and duty time limitations (known as flight time limitations, or "FTL") — **taking into account the latest scientific and technical evidence.** [Comment](#): into which 'account' have they been locked away? An example: when the 3 scientific reports – commissioned by EASA in 2011 – were finalised in June 2011, EASA refused to publish them at that time. Instead, they chose to publish them in January 2012, as part of a comprehensive "[CRD](#)" [package of documents](#) – hidden away in the Annexes (p. 103-194) without any overview of the reports' findings. Not really a transparent way of proceeding.

The proposal includes more than **30 provisions aimed at improving the crew protection against fatigue**, without deteriorating their working conditions. They include important issues such as in-flight rest for cabin crew, night flights and standby airport duty and reserve. [Comment](#): yes, there indeed are some improvements compared to today's (low-level) rules (for more detailed comments see the annex below). The issue is

that the overall package contains several significant safety loopholes which must be closed before the package can be considered safe. A plane with brand-new engines and new cockpit windows is nice – but as long as there is a crack in the wing, the whole plane remains unsafe. And that’s the problem with the Commission proposal. And that’s why it needed to be changed before it can be adopted.

The rejection of the draft Commission regulation on FTL would have negative effects on safety, since **a series of clear improvements in crew protection against fatigue would not be adopted**. We would in that case revert back to the old rules. Comment: Yes, we would stay with the old rules for a while. But *only* if the Commission does not resubmit quickly a revised new proposal – as the European Parliament Resolution specifically requests. If Commission and the Commissioner were serious about flight safety, they could carry out a number of targeted changes to their proposal and resubmit it by January 2014, to allow the current EP to scrutinize and adopt the new rules before the EP elections in May 2014. But they can do so only if there is a political will to do so. At the moment the Commission prefers to threaten that it will not make changes and/or resubmit it swiftly – surely to ‘encourage’ MEPs to vote for its proposal.

If, however, the proposal is adopted by the EP – including the open safety loopholes – it will take at least 5-7 years before the new rules will be revised. That way, the Commission knowingly takes – avoidable – safety risks. If things go wrong – and given the high [prevalence of fatigue in Europe’s cockpits](#) already today – the ultimate loser will be the air passengers and those living under the flight paths.

Below are **10 key examples of concrete safety improvements** which will be lost if the new regulation on aircrew fatigue cannot be adopted: Comment: attached to this Press Release are detailed comments on the below safety improvements. For more in depth information on the Annexe’s comments, please [contact ECA](#).

- Night flight duty will go back up to 11h45 instead of 11h in the new regulation. Only one EU Member State has set lower limits under national law (11h15); nowhere is the limit below 11h. Moreover, more flights will be considered daytime flights and subject to longer duty periods.
- Standby at home will no longer be limited to 6 hours when combined with maximum flight duty time. The limits set under national law will apply or the airline will decide. Standby can go up to 24 hours – including in Germany, France and Belgium. After those 24 hours pilots are still allowed to fly to the maximum flight duty time.
- The combination of standby at the airport with flight duty will not be capped at 16 hours. It will be 20 hours or 26 hours, or even without limit at all in some Member States.
- Total flight time in 12 consecutive months will not be limited to 1000 hours but to 1300 hours.
- There will be no increase of the weekly rest by 12 hours twice a month.
- Time zone crossing will not be compensated with up to 5 days of rest at the home base; instead it will be 2 days or even less in some Member States.
- Flight and cabin crew will not be entitled by law to horizontal rest during flight in most Member States. Current national rules allow airlines to offer only economy seats for rest.
- No additional rest will be provided for schedules that disrupt crew members’ body clocks (like early starts and night flights).
- Airlines will not need to ensure crewmembers receive initial and on-going fatigue management training, where aircrews would learn, among other things, how to best plan their sleep. Training in fatigue management would help to reduce cases of fatigue.
- National oversight authorities will have less access to information on how specific airlines manage fatigue of their crew members.

FTL safety rules are without prejudice to the applicable EU and national legislation, including rules concerning working time, health and safety at work or existing and future collective labour agreements (CLAs). In addition, the relation between safety and social rules is based on the principle that the most protective rule applies. Comment: indeed,

stricter social legislation and CLAs seem to be protected by the proposal. This is necessary to limit negative social consequences. However, the proposal is insufficient as regards the 'safety-enhancement' principle. Today's EU rules allow Member States to keep or introduce stricter, i.e. more protective safety rules at national level. Today's rules are therefore minimum rules. The new EASA flight time rules will however be maxima, and no Member State will be able to keep / introduce stricter national rules. The (legally non-binding!) recital 5) of the COM proposal is insufficient as it is limited to very specific operational circumstances and needs. If this is not changed, those Member States that have stricter rules today will be obliged to harmonise them downwards to the lower EU level. Safety regression will be the consequence.

In rejecting the draft regulation, the EP Transport Committee did not follow the view of the majority of aviation safety professionals in favour of a comprehensive and well balanced approach which will bring about safety improvements to flight attendants and pilots in the European aviation sector — to the benefit of passengers. Comment: it is incorrect to say the proposal is "well-balanced". Cabin crew and pilot associations have formally and repeatedly stressed (e.g. through formal statements at the end of the EASA rulemaking process) that the proposed rules do not reflect their safety concerns and that the process was biased towards the commercial interests of the airlines. The airlines, however, have repeatedly expressed their satisfaction with the new proposal, be it when the 1<sup>st</sup> EASA proposal came out in Dec. 2012 (see [here](#)), be it at the [EP Hearing](#) in June, or when the Commission proposal had been issued. With close to 100% of the airline's positions being reflected in the proposal, it can hardly be called 'well-balanced'.

The draft Commission regulation received a positive vote in the EASA Committee meeting on 12 July 2013 and was submitted to the EP for a three-month scrutiny. Comment: According to feed-back from Member State representatives at that meeting, on 11 July apparently 9 states raised safety concerns about the proposal (e.g. on night flights and standby). However, after the vote was postponed to the next day – leaving time for discussions over the evening – 7 states had been convinced to better vote for the package. Only the Netherlands and Austria stood to their position and [voted against the proposal](#).

Next steps:

The motion for rejection will be considered by the European Parliament plenary in October. – on 9 Oct. around midday. Debate on 8 Oct. around 21:00-22:00.

For more info: [IP/13/690](#) **AND:**

- **All you need to know on FTL:** <https://www.eurocockpit.be/pages/why-flight-time-limitations>
- **Some further information:** <http://www.dead-tired.eu/>

Follow Vice-President Kallas on [Twitter](#) and **ECA:** [https://twitter.com/EU\\_cockpit](https://twitter.com/EU_cockpit)

**Join the Safety Petition at [www.dead-tired.eu](http://www.dead-tired.eu)! 111.000 citizens did so already !**

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**Annex: Detailed comments on 10 safety improvements (27/09/2013):**

**(see next pages)**

## Annex: Detailed comments on 10 safety improvements (27/09/2013):

**Below are 10 key examples of concrete safety improvements that new Regulation on aircrew fatigue would bring (and would obviously be lost if the text cannot be adopted):**

### GENERAL COMMENT:

- The below list shows only part of the picture by excluding crucial areas where the Commission proposal creates serious safety risks to Europe's travelling public and where it fails to follow unanimous scientific recommendations on where to set safe limits.
- It does not address the fact that many of the substantive provisions have not been shown to the EP, as they were shifted into 'soft-law' over which the EP has no say whatsoever. The EP will be asked to do a 'blind vote' – not knowing what is in the soft law (whereas Member States were consulted by the Commission in the 'EASA Committee' in April & July 2013)
- Despite some improvements compared to today's (low standard) EU rules and the mostly outdated national FTL rules, the COM is silent about the fact that many of its central provisions are contrary to what 5 independent scientific reports advise to make these rules a safe package.
- By disregarding unanimous scientific advice and best regulatory practice from Member States, the Commission takes a number of serious – and avoidable – safety risks, and asks the EP to endorse them. This is irresponsible and must be stopped. The COM must revise its rules.

1. Night flight duty will go be limited to 11h instead of 11h45 under EU-OPS rules. Only one EU Member State has set limits lower than EU-OPS rules under national law (11h15); nowhere is the limit below 11h. Moreover, more flights will be considered night flights and therefore subject to shorter duty periods.

- The Commission proposal allows 11 hrs (up to 12h30) at night. This is a 45 min reduction to today's excessively long 11:45. The Commission does not produce any scientific evidence that proves 11 hrs is safe.
- The Commission's reference to 11 hrs is misleading: the real limit for many 'night flights' is much higher than 11 hrs. It allows crew to fly up to 12:30 hours for late afternoon starts that have the plane land by 04:59 in the morning. – This is 25% more than what scientists consider safe.
- Three independent scientific reports – commissioned by EASA in 2011 – concluded that flying at night should be limited to a flight duty of 10 hours. Anything above would create critical levels of fatigue and hence a potential safety risk. – The ETSC report of May 2013 (based on 6 scientists' advice) reconfirms that 10 hrs at night must not be exceeded.
- For comparison: in the USA, night flights are limited to a flight duty period of 9-10 hours (for flights starting 23:00-04:59) and to an actual 'flight time' (at the controls) of 8 hrs (start: 20:00-04:59).
- Rather than taking the risk, the Commission should stick to what science considers safe: 10 hrs at night.

2. Standby at home will be limited to 6 hours when combined with maximum flight duty time. Today, lower limits are set under national law or the airlines are free to decide: standby can go up to 24 hours including in Germany, France and Belgium. After those 24 hours pilots are still allowed to fly to the maximum flight duty time.

- The Commission's reference to 6 hrs is misleading as it can be easily 8 hrs of standby or more. These 6-8 hrs standby can be followed by a full flight duty of up to 14 hrs. This means 20-22 hrs on duty and awake. Landing an aircraft after having been awake for up to 22 hrs is simply not safe. Do you want to be on board of an aircraft where the air crews have been awake for such long times when landing?
- The COM's reference to 3 countries is selective & misleading: among the 22 European countries surveyed, at least 12 countries have stricter standby rules than the Commission proposal. France, Germany and Belgium have particularly bad standby rules. Why does the COM take them as a benchmark, rather than the best practices from other EU countries? The result will be downward harmonization in many countries.

- The USA limit the combination of such standby + flight duties to max. 16 hrs. This is safe and best practice.
- The Commission must put in place a 'cap' of max. 16-18 hrs for the combination of standby + flight duty, to ensure flight safety at the end of very long duty days. Repeated call for this have been rejected.
- All the substance of these standby rules are NOT subject to EP Scrutiny, because the COM shifted them into 'soft-law' Certification Specifications' which the EP has not received and on which it has no say at all.

3. The combination of standby at the airport with flight duty will be capped at 16 hours. It is today 20 hours or 26 hours, or even without limit at all in some Member States.

- Yes, this is positive. But has very little practical impact because most airlines do not use airport standby at all or only very rarely – because it is expensive. This is also why many countries don't have limits for this type of standby. Hence, the most critical part of the Commission's standby rules relate to home standby, where the Commission deliberately takes substantial safety risks (see previous point).

4. Total flight time in 12 consecutive months will be limited to 1 000 hours instead of 1 300 hours today.

- Yes, this is positive indeed, although it does not mean a reduction in real work time (as a Belgian MEP misunderstood). It will help to prevent abuses, as currently done by certain low cost companies by 'shifting' the 'year'. BUT: the USA set a stricter limit for this – in line with ICAO recommendations – and hence set best practice.

5. There will be an increase of the weekly rest by 12 hours twice a month.

- Yes, this is positive indeed. This requirement to increase the rest period to '2 days' twice every month is welcome to better manage accumulation of fatigue.
- BUT: This requirement is (deliberately) ill-defined. Unless the '2 days' include 3 local nights this provision will provide little extra mitigation against fatigue. Scientists advise to include 3 local nights.

6. Time zone crossing will be compensated with up to 5 days of rest at the home base; today it is only 2 days or even less in some Member States.

- Yes, in SOME Member States. But many other countries have stricter provisions. Why not use best practice?
- When looking at the details of these rules (e.g. the number of local nights included in these rest days), they turn out to be insufficient to recover from such fatiguing flights which heavily disrupt the body clock.
- The positive aspect of the additional rest is significantly reduced by providing 'suitable accommodation' at home base, allowing back-to-back and east-west duties without sufficient protection.
- The Commission fails to mention its inadequate rules concerning body-clock dis-synchronization for "Crew in unknown state of acclimatization". The Commission allows for very long flight duty periods of up to 12 hrs for crews whose 'body-clock' is neither 'acclimatised' to their home time nor to the time at destination. The Commission fails to take a precautionary approach and stick to 11 hrs.

7. Flight and cabin crew will be entitled by law to horizontal rest during flight in all Member States. Current national rules allow airlines to offer only economy seats for rest.

- Yes, good indeed. This is one of the VERY few examples, where The Commission (partially) took the scientists' recommendations into account.
- BUT: The Commission allows airlines to ask for a 'deviation' and get approval from EASA e.g. for a row of 3 economy seats with special cushions (as an NL airline uses today, and others want to imitate) or for a special 'sliding jump-seat' (now under development). This is because the definitions for 'inflight-rest facility' have been moved into 'soft-law' Certification Specifications which are under the sole authority of EASA..

8. Additional rest will be provided for schedules that disrupt crew members' body clocks (like early starts and night flights).

- Yes, good indeed. BUT: The Commission disregards scientific advice from the reports it commissioned in 2011, which state that the extended recovery rest must include 3 local nights. The Commission's 2 local nights are insufficient to overcome fatigue after such particularly fatiguing 'disruptive schedules'.
- The Commission is silent about its inadequate provisions for such 'disruptive schedules' (such as early starts and late finishes). The Commission allows to up to 7 consecutive days of early starts, late finishes or night duties before an extended recovery rest period. This will lead to dangerous levels of fatigue. The UK and USA allow no more than 3 consecutive such schedules. Why not take best practice?
- In addition, the Commission created an 'Opt-out' mechanism for Member States, allowing them to escape part of the disruptive schedule provisions, by declaring themselves as an "early type" or "late type" country. If they opt for the "early type", their airlines use a definition for 'early starts' that sets a window of only 1 hour, i.e. 05:00-05:59. This is contrary to the unanimous advice from 3 scientific reports, which define an 'early start' as being a 2-hour window of 05:00-06:59. As the vast majority of affected aircraft movements are in the early morning, this opt-out will remove a large part of the early morning starts from the fatigue protection requirements for such schedules (which already are more lax than what scientists consider safe).

9. Airlines will need to ensure crewmembers receive initial and on-going fatigue management training, where aircrews would learn, among other things, how to best plan their sleep. Training in fatigue management would help to reduce cases of fatigue.

- Yes, good provision. BUT: The Commission's proposal has moved all the detailed provisions on Fatigue Risk Management (FRM), into the soft part of its 'soft-law', i.e. into "AMCs", which can be changed very easily. This is contrary to ICAO requirements, as the related ICAO provisions are legally binding upon ICAO Member States.

10. National oversight authorities will have more access to information on how specific airlines manage fatigue of their crew members.

- Yes, good provision. But only few national authorities still have the necessary expertise and experience with flight time limitations to enable them to make use of this provision.

### **Commission Restricts EP's Right to Scrutiny**

The Commission **proposal is incomplete**. And it is **not in line with established regulatory practice** on EU air operations rules. Whilst the EASA-OPS Regulation 965/2012 (which went through the same EP Scrutiny procedure) contained almost all substantive provisions, the proposed FTL Regulation (which will be inserted into 965/2012) deviates from this practice. It does so because a **large part of the substantive provisions have been shifted into the 'soft-law' Certification Specifications** which are solely managed by EASA. Neither has the EP received this important part of the FTL package (be it only for information), nor will it have any say over it. This limits the EP's right to scrutiny and imposes upon the EP a 'blind vote'.

**Join the Safety Petition at [www.dead-tired.eu](http://www.dead-tired.eu). 111.000 citizens did so already!**