



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.9.1999  
COM(1999) 452 final

**COMMUNICATION FROM THE COMMISSION**

**On progress made in the consultations with the United States on the development of a new generation noise standard for civil subsonic jet aeroplanes and phase out measures for the noisiest categories of civil subsonic jet aeroplanes within Chapter 3**

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### 1. Introduction

- 1.1. On 29 April 1999 the Council adopted Regulation (EC) 925/1999<sup>1</sup> on the registration and operation within the Community of certain types of civil subsonic jet aeroplanes which have been modified and recertificated as meeting the standards of Volume I, Part II, Chapter 3 of Annex 16 to the Convention on International Civil Aviation, third edition (July 1993). This decision was taken as a consequence of three main areas of concern :
- The increasing noise levels around airports, the strong reaction against any airport capacity developments and the disruptive effects of diverging local regulations on air transport operations;
  - The unilateral decision taken in 1990 by the United States to introduce national legislation on the phase out of Chapter 2 aircraft, which differs significantly from the decision taken by the International Civil Aviation Organisation (ICAO) on this issue. With a view to ensuring compliance with this legislation the re-certification procedure has been used in order to keep on the registers older aircraft which produce more noise than modern technology aircraft having the same weight and, thus, contribute disproportionately to the noise nuisance around airports.
  - In addition, the lack of progress on a new noise stringency standard within the ambit of the ICAO Committee on Aviation Environmental Protection (CAEP). During the 32<sup>nd</sup> ICAO Assembly last October the European States could not get any support for their working papers, which called upon ICAO to give due consideration in its environmental activities to the genuine noise problems at many of the Community's airports.
- 1.2. In the declaration adopted jointly by the Council and the Commission simultaneously with the adoption of the Regulation, the European Community committed itself to work, in close co-operation with the United States and other partners, on a new ICAO noise standard as a priority. They further stressed that the work within ICAO should include, in addition to a next generation noise standard, the development of phase-out measures for the noisiest categories within Chapter 3.
- 1.3. The United States authorities welcomed this opening towards co-operative process and United States Secretary for Commerce, Mr Daley, stated on 29 April 1999 that *"the United States recognizes that the postponement of the application of the Regulation by one year after its adoption on April 29,*

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<sup>1</sup> OJ L 115 of 4 May 1999, p.1 corrected by OJ L 120 of 9 May 1999, p.46

*1999 is constructive and should be used for reaching a common understanding on the remedies to noise concerns expressed by the European Union." He further stressed that "The United States is prepared to give priority to the consultations that have been opened by this postponement. This co-operative process provides the conditions for positive bilateral and multilateral action that this Administration supports and encourages."*

- 1.4. As Council Regulation(EC) 925/1999 will only apply on the 4<sup>th</sup> May 2000, the Commission undertook to report to Council on the outcome of the consultations with the United States by September 1999.
- 1.5. The United States have, so far, always rejected the option of technical amendments to Council Regulation (EC) 925/1999, which in their opinion would be seen as a de facto acceptance thereof. Therefore, technical amendments to Council Regulation (EC) 925/1999 have not been put on the agenda by the United States during its recent bilateral contacts with the European Commission.
- 1.6. Since the adoption by Council of Regulation (EC) 925/1999, a number of meetings have taken place between the European Commission and the US administration involving sometimes the aviation industry; the EC position has been recalled in correspondence at political level. Efforts have also been made in order to explain the rationale behind the measure to the United States Congress.
- 1.7. The Commission has also proposed to co-operate with the African Civil Aviation (AFCAC) and it is waiting for a reaction from this regional body.
- 1.8. The situation can be analysed as follows:
  - A number of positive developments have taken place. As set out hereafter, the situation within ICAO seems to be moving in the right direction. It should be stressed that the characteristics and internal dynamics of the ICAO/CAEP decision-making process make it impossible to guarantee at this stage a successful outcome of this process. However, the discussions between the United States and the Community on the noise stringency issue including the need for transitional rules could lead to a new situation, which is also relevant in the context of the ICAO process.
  - This co-operation has not contributed to a de-escalation of the reactions of the US industry against the Regulation. These reactions are pushing the United States Congress to consider retaliation measures: the present remedies under consideration are mandating the United States Administration to petition ICAO under the dispute settlement provisions of the Chicago Convention (art. 84) and the repeal of the derogation granted to Concorde.
  - The Commission remains of the opinion that the measure on recertificated aircraft, which aims at preventing the noise situation from getting worse in the short term, has made it possible to reconcile technical feasibility with environmental benefits without imposing an undue economic burden upon air carriers. Furthermore, by opting for the least trade restrictive measure, which

is applicable in a non-discriminatory manner, and in the absence of an appropriate international standard; the Commission considers that the measure is compatible with the provisions of the Chicago Convention and the obligations under the World Trade Organisation (WTO), both of which have been referred to by the United States.

- 1.9. In addition, if the ICAO process is completed by 2001, then the time table for the implementation of the regulation can be considered consistent with the ICAO timetable; the Regulation will impact the operations of aircraft registered in third countries only in April 2002 i.e. after the ICAO Assembly in 2001.

## 2. Developments since the date of adoption of Council Regulation (EC) 925/1999

### Outcome of bilateral discussions with the United States

- 2.1. During the high level contacts with the United States prior to the adoption of Council Regulation (EC) 925/1999, the United States expressed concerns about some of the technical elements in this Regulation. These related mainly to the use of the by-pass ratio as an indicator of the environmental performance of an aircraft and to the issue of transferability between different registers of aircraft with a history of operations in or into the Community. The United States rejected the idea of putting forward any suggestions for technical amendments to the Regulation. The United States were of the opinion that their participating in discussions on amending the proposed Regulation would be interpreted as a de facto acceptance of the Regulation, or at least of the necessity to have this legislation in the Community.
- 2.2. On several occasions, and particularly during the hearing on the European ban on aircraft hushkits organised on 9 September 1999 by the House Subcommittee on Aviation of the United States Congress, the United States administration has made clear its position in favour of a new standard. However, the substance of this position requires further clarification, in particular, as regards the phasing-out of the noisiest Chapter 3 aircraft.
- 2.3. The United States have taken the position that the mere existence of Council Regulation (EC) 925/1999 makes it difficult for them to enter into a firm commitment with the European Commission on the objectives to be jointly pursued within the ICAO ambit. Therefore, the United States is still insisting upon the withdrawal of this Regulation. In addition, the United States Congress is considering a motion in order to push the Administration to take measures against Community Member States for infringement of the Chicago Convention.
- 2.4. Taking into account the characteristics of the decision making process in ICAO, based on a consensus in CAEP and the endorsement of any CAEP recommendation by the ICAO-Council and the full ICAO membership, it is impossible at this stage to assess ICAO's capability to endorse in 2001 a new noise standard and transitional rules.

## Discussions in the ICAO-Council

- 2.5. Following discussions in the ICAO Council on the need to establish a specific mandate for the Committee on Aviation Environmental Protection (CAEP) to deal with noise related operating restrictions at airports, the ICAO Council decided on 5 June 1999 to extend the mandate to CAEP by requesting CAEP *"to explore in a world-wide context the issue of possible operating restrictions on Chapter 3 aircraft and, taking into account Resolution A 32-8 and the special economic factors that affect operation of airlines in the developing world, to develop appropriate technical options for submission to the Council, keeping the Council informed of progress"*. The Commission considers this as a helpful development within ICAO.

## ICAO Conference on Air Transport and the Environment

- 2.6. In June 1999 the ICAO Council decided that a colloquium would be held in April 2001, after the 5<sup>th</sup> plenary meeting of CAEP, with a view to preparing on aviation environmental issues for the ICAO Assembly later in the same year. The ICAO Council further stressed that this event should not divert attention nor interfere with the work of CAEP. The Commission considers this as a positive development.

## Meeting of the steering group of the ICAO Committee on Aviation Environmental Protection (CAEP), Madrid from 29 June to 2 July 1999

- 2.7. The CAEP steering group meeting provided a first genuine opportunity to assess the scope for formal co-operation with the United States within the ICAO ambit. To that effect the Commission services, in close co-operation with Member States at technical level, had prepared two working papers<sup>2</sup> for presentation under the agenda item 'Noise' covering both a new noise stringency standard and rules for transition. Prior to the steering group meeting, co-sponsorship from the United States for these papers was sought. Although the United States presented at the steering group meeting a Working paper<sup>3</sup> on the next generation noise standard, including possible phase out scenarios, which contained similar ideas to the ones put forward by the European CAEP members and the Commission observer in Working paper 27, it appeared impossible for the United States CAEP member to co-sponsor formally the European working paper.

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<sup>2</sup> **Working Paper 24:** Strategies for transition towards new noise certification standards, presented by the observer from the European Commission,

**Working paper 27:** New noise certification standards and rules for transition, presented by the members of France, Germany, Italy, Netherlands, Spain, Sweden, United Kingdom and the observer of the European Commission.

<sup>3</sup> **Working Paper 2:** The next generation noise standard, a proposed methodology

- 2.8. However, in its Working paper the United States offered the steering group a way forward by proposing the establishment of a special task force which will be responsible for drafting of specific phase-out proposals to be assessed in connection with the proposed next noise standard.
- 2.9. The steering group agreed to create such a noise task force composed of the CAEP members from Brazil, Spain, the United Kingdom and the United States. The main criteria for selecting these specific CAEP members were the interest in the subject, the capacity to communicate easily, the need to represent the main regional concerns and the need to include the specific concerns of developing States.
- 2.10. The terms of reference of the task force (called Noise Scenario Group/NSG) cover:
- The development of a clear statement of the problem
  - The definition of the main factors to be taken into account in the analysis
  - The definition of the main options to be assessed
  - The consideration of the interaction between the options for stringency and transitional strategy taking into account the need for flexibility, including the situation in developing countries.
- 2.11. The NSG, which has held 3 meetings so far, has to present the options concerning transitional rules by November 1999. These options will be submitted to the CAEP Forecasting and Economic Support Group (FESG) and to CAEP working group 2 for assessment of the economic and environmental costs and benefits.

### 3. Market developments

- 3.1. On the basis of data provided by the national certification authorities the Commission has sought to assess the impact of the delayed application of Council Regulation (EC) 925/1999. A distinction has been made between the 12 months period prior to 1<sup>st</sup> April 1999, being the initial date of application of the non-addition rule as well as the cut-off date for historic rights, and the period since 1<sup>st</sup> April 1999.

The table in Annex seems to indicate that the immediate environmental impact resulting from the postponement of the application of Council Regulation (EC) 925/1999 is limited. Only 3 Member State have notified additional registrations of a recertificated aircraft in their country since 1 April 1999. The Commission regrets that most Member States have not monitored the evolution of operations by aircraft registered in third countries and are, therefore, unable to provide data on first time use of such aircraft at Community airports or on any increase of such aircraft on existing services.

#### 4. Other aspects

- 4.1. The issue of re-certification has led technical experts to express doubts whether re-certification of aircraft to higher standard offers the same guarantee for the quality of the certification as the certification of a new aircraft initially built to meet the higher environmental standard. Since the ICAO environmental standards are primarily conceived for first-time certification, there is lack of clarity as to the rules applicable in case of re-certification.
- 4.2. At the request of the members of the European Civil Aviation Conference (ECAC) the question of re-certification is currently under examination with the Joint Aviation Authorities. Addressing this issue is important in order to take away the current uncertainty about the application by national certification authorities of the ICAO standard in the case of re-certification.

#### 5. Assessment of the situation

- 5.1. Since the adoption of Council Regulation (EC) 925/1999 some developments have taken place both within ICAO and the United States. The CAEP work-programme includes work on transitional rules for the least noise efficient aircraft as well as on a new noise stringency standard. The ICAO/CAEP time table, which currently provides for the 5<sup>th</sup> plenary meeting of CAEP (CAEP/5) in early 2001 and the 33<sup>rd</sup> ICAO Assembly in the same year, would in principle permit a timely decision on the noise stringency issue within ICAO.
- 5.2. However, there is a potential conflict between this ICAO time-table and the time-table for the follow-up to Council Regulation (EC) 925/1999. This conflict is further exacerbated by the uncertainty about the final outcome of the CAEP activities and the ensuing recommendations to be endorsed by CAEP/5 and the ICAO-Council.

#### 6. Conclusions by the Commission

- 6.1. The Commission is of the opinion that within the ICAO/CAEP process the work is progressing along the right track. However, an enormous amount of work remains to be done, in particular the identification of the options for stringency and for transitional rules as well as the assessment of the economic and environmental costs and benefits of these options. An early unambiguous commitment by the United States to fully co-operate with the Community and other partners on a new ICAO noise standard and on the development of phase-out measures for the noisiest categories within Chapter 3 is a prerequisite towards a solution to this problem.
- 6.2. At administrative level the co-operation between the United States and the Community within the ICAO/CAEP working structure seems to be moving in a positive direction. However, the United States industry continues to push the US congress to initiate as soon as possible retaliatory measures against the Community. This was confirmed at a hearing on the European ban on hushkitted aircraft organised on 9 September 1999 by the House

Aviation subcommittee of the American Congress, although it seems that the attitude of the air carriers is more inflexible than that of manufacturers.

- 6.3. The key problem is the impossibility to ensure at this stage consistency between the time-table of Council Regulation (EC) 925/1999, which becomes applicable on 4 May 2000, and the time required by ICAO to endorse politically the recommendations made by CAEP at its 5<sup>th</sup> plenary meeting in 2001. In addition, the CAEP activities are not sufficiently advanced to make even a very preliminary assessment of their possible outcome.
- 6.4. Giving due consideration to the current uncertainty about the outcome of the ICAO process, the Commission is of the opinion that there is need for an approach which will make it possible to create the necessary conditions for a successful completion of the co-operation between the Community and the United States within the ICAO ambit while preserving the European environmental interest if the ICAO process were to fail in 2001.

A possibility to achieve this dual objective could be to introduce a working method between the 3 institutions allowing rapid reaction to developments in ICAO, particularly the ICAO/CAEP process.

This method would make it possible to assure a link between the application of the Regulation and clear progress in ICAO/CAEP towards establishment of a substantially more ambitious ICAO noise standard, including phase-out rules for the noisiest categories of aircraft within Chapter 3. A monitoring procedure would need to be set up so that the Commission would be able to make sure before any decision to suspend that the operation of new recertificated aircraft at Community airports does not damage the quality of the environment. In this context the objective of Council Regulation (EC) 925/1999 to prevent further deterioration in the overall noise impact in the Community by the noisiest recertificated aircraft constitutes an essential element for assessing future developments and, notably, the trade-off between further non-application of Council Regulation (EC) 925/1999 and environmental improvements resulting from an ICAO-agreement on a new noise standard and phase-out rules for the noisiest categories of the current Chapter 3 aircraft.



## ANNEX

**Monitoring of new registrations of recertificated aircraft and acquisition of additional historic rights since 1 April 1998**

Member State	Number of aircraft newly registered		Number of aircraft, registered in third countries, with new historic rights	
	Between 1-4-98 and 1-4-99	Since 1-4-99	Between 1-4-98 and 1-4-99	Since 1-4-99
Belgium	0	0	No data available	
Denmark	1 (from outside EU)	0	No data available	
Germany	0	0	No data available	
Greece	0	1 (from outside EU)	No data available	
Spain	0	3 (1 from other MS and 2 from outside EU)	decrease of Chapter 2 and small increase of recertificated Chapter 3	Same trend with major increase of recertificated Chapter 3
France	1 (from outside EU)	1 (from other MS)	No data available	
Ireland	1 (from outside EU)	1 (from other MS)	No data available	
Italy	0		No data available	
Luxembourg	1 (from outside EU)	0	No increase	
Netherlands	0	0	no indications of any increase	
Austria	0	0	No data available	
Portugal	0	0	No data available	
Sweden	6	0		No clear tendency
Finland	0	0	No data available	

United Kingdom	0	1 (from other MS)	No statistics available, but no indications of any increase
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ISSN 0254-1475

COM(1999) 452 final

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Catalogue number : CB-CO-99-463-EN-C

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L-2985 Luxembourg