



European Federation for Transport and Environment

Secretariat Bd De Waterloo 34, 1000 Brussels Tel + 32 / 2 / 502 9909 Fax : + 32 / 2 / 502 9908 e-mail: t+e@arcadis.be

Commission poised to appease the USA

A briefing note to MEPs on Hushkits

September 1999

We would like to urge the European Parliament to use their new powers to persuade the Commission to stick to a credible plan. The Commission is in danger of giving in to US demands and changing the hushkits regulation, despite cross-party support for the regulation from the European Parliament. This would show that the EU can stay in line with its own objectives, stated under the Amsterdam Treaty; and that the European Parliament can use its powers effectively.

Contents: Introduction
The basic issue
Where the EU stands
What could emerge?
Why MEPs need to act
Developments in 1999

INTRODUCTION

A trade dispute between the EU and the US is brewing over the issue of hushkits. Despite concessions from the EU earlier this year, the US is taking a tough stance and is demanding the withdrawal of the Regulation¹. Although there is no support in the EU for this approach, the Commission, backed by some Member States, is on the verge of proposing a further delay in the implementation of the regulation. This is a good first test of the co-decision powers of the new legislature. The European Parliament could make a real difference by ensuring that the EU takes the right decision for its citizens, the environment and its position in the world.

¹ Council Regulation (EC) No. 925/1999 of 29 April 1999, 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).

THE BASIC ISSUE

Under ICAO's Chapter 3 Regulation, no plane with a ratio of greater than 3:1 will be allowed to fly² after 1 April 2002.

The US has introduced a law that will apply the Chapter 3 regulation from 1 January 2000. This means that older aircraft will typically not be allowed to fly. US aerospace industry is therefore trying to sell older planes in the EU.

The US has argued that older aircraft could meet new noise regulations by being fitted with hushkits, and that therefore older aircraft could continue to operate. The EU has disagreed, saying hushkitted planes are too noisy³; and has proposed that no hushkitted planes be allowed into EU-airspace after 1 April 2002 unless they were already operating in the EU before April, 1999.

There are two parts to the Regulation: the non-addition rule and the non-operation rule. The former means that hushkitted planes will not be allowed to be added to EU fleets from 4 May 2000; while the non-operation rule means that operators from outside the EU will not be allowed to operate hushkitted planes after 1 April 2002, unless they were already operative in the EU by April 1999. The delay agreed in April extended the cut-off date to May 2000.

The removal of hushkits will have a fairly small environmental benefit but it will establish the principle of Europe setting regional standards.

WHERE THE EU STANDS

The Commission would like to again delay implementation of the hushkits regulation because of threats the US has made to ban the prestigious Concorde in retaliation if it is not delayed. The UK and France are voicing their concern over this threat.

Negotiations between the EU and the US are ongoing and nothing is certain, but the following seems likely:

- The Commission is due to present a report on hushkits to the Transport Council, where the issue is on the draft agenda for 6 October. It is possible that the Commission would adopt a proposal for a Council and Parliament Regulation, following the Council meeting.
- This Regulation - adopted under co-decision between the Council and EP - would postpone or amend the existing regulation.
- There had been discussions about establishing a committee, consisting of Member State experts, with the authority to postpone or amend the hushkits Regulation. The committee would then have discussed and agreed any amendment or postponement. This would have sped the decision-making process up significantly, as it would have avoided the regulation having to go through the co-decision

² The ratio refers to the amount of air leaving the engine and therefore the amount of noise it makes. Note that Chapter 3 allows for quite a wide range of noise emissions.

³ There are also concerns that the added weight of hushkits cause extra emissions from what are already the oldest and most polluting planes.

process. It is unlikely that Council would support this, however, because such a committee would reduce Council's powers.

- Whatever happens, timing is crucially important: the process would need to be completed before 4 May 2000, when the current regulatory ban enters into force. This means that whatever proposal is put before the Parliament, through the Environment Committee, agreement within the Parliament needs to be reached with all possible speed.

WHAT COULD EMERGE?

It seems possible that there will be a joint declaration to show goodwill, with both sides committing to the phasing out of the noisiest aircraft.

Suspending the hushkits regulation would provide a window of opportunity for US business to sell off planes which they will no longer be able to use in the US.

This would require a compromise from the EU. It seems possible that there could be a compromise in which a deterioration in the present would be exchanged for a promise of tougher standards in the future. These standards would be enacted at ICAO; but, given the poor record of ICAO in setting environmental standards, it seems unlikely that this would be guaranteed.

If the present good of the people of Europe is to be sacrificed and the Regulation delayed once more, then there must be a guaranteed longer-term benefit from this approach. This means that any deal on delay in implementation of the EU Regulation should have a safeguard built in.

This could be done by, for example, allowing a maximum (threshold) number of hushkitted aeroplanes into the EU, above which the Regulation would automatically enter into force.

The hushkits issue would be best resolved by finding common ground with the US, while not caving in to its demands. This would facilitate goodwill and therefore some progress at ICAO. The hushkits dispute is a disguised opportunity for ensuring progress in the future, in that it requires the EU and the US to discuss noise issues.

WHY MEPS NEED TO ACT

1. The alternative to a compromise would be to implement the Regulation as it currently exists: it seems unlikely that the Council would accept a removal of the legislation. This option would destroy goodwill between the EU and the US; and it therefore seems likely that some sort of a compromise will be reached.
2. The new Transport Commissioner, who is also responsible for relations with the EP, needs to act in a responsible manner, and in consultation with the European Parliament. This would ensure a level of democratic accountability otherwise missing from the process.
3. The new Commission is in a difficult position; but needs to ensure that it keeps in mind the environmental integration perspective necessary under the new Treaty.

4. Progress on the environmental integration process is at risk of resting only on weak promises and the abilities of ICAO to adopt strong environmental standards. This is unlikely, given the historical evidence, and is therefore not enough.
5. Parliament has taken a strong stance on this across party lines⁴; another example of the Parliament adopting a strong European position in the face of US pressure.

The hushkits issues is widely seen as a test-case of how aviation issues (and transport more generally) will be dealt with in the future by the new Parliament and Commission.

We would like to urge the European Parliament to use their new powers to persuade the Commission to stick to a credible plan. This would show that the EU can stay in line with its own objectives, stated under the Amsterdam Treaty; and that the European Parliament can use its powers effectively.

DEVELOPMENTS IN 1999

April

The EU averted an EU-US trade dispute on 29 April by postponing implementation of its aircraft noise regulations by a year. The cut-off was extended from April 1999 to May, 2000.

In return for this delay, the US dropped a proposed ban on the Concorde; and agreed to work with the EU in drawing up the next set of ICAO noise regulations, which could be completed by September.

May

Airports Council International, Europe (ACI Europe) welcomed the phasing out of noisy aircraft, but criticised Council for pushing the date back a year; saying that this will be detrimental to citizens living in the area of airports.

ACI Europe pressed ICAO to approve binding international standards to prevent the rapid spread of regional measures.

June

The Aerospace Industries Association - representing American aircraft-makers - asked US Trade Representative, Charlene Barshefsky, to investigate whether the EU's hush kit ban discriminates against US industry under the American "Super 301" trade law.

July

Robert Coleman, Director-General of DG TRANSPORT, gave a presentation to the European Parliament's Transport Committee.

In response to a question on **ICAO and the hushkits issue**, he replied that the EU tried very hard to include ICAO in the issue, and it was "an outrageous lie to suggest

⁴ There was broad support for the Regulation at both first and second readings.

otherwise:" all progress at ICAO was blocked by the US. The same was seen with the NOx issue, which was held up for over 10 years. ICAO works to noise standards made in 1977.

September

The US is pushing the new Commission to "take a fresh look" at the hushkit regulation; and remove it.

US under-secretary for commerce, David Aaron, testified before the US House transportation committee on 9 September 1999. He said that the hushkit regulation closes doors to US aerospace manufacturers; and that this is, "one of the largest - if not the largest - trade issues we face with the EU." He also said that the regulation's technical specifications discriminate against US aircraft, as other aircraft are as noisy as, or noisier than, those prohibited⁵.

Mr Aaron said that removal of the legislation would reduce trade tensions, "avoiding the necessity of the US having to consider initiating action to protect US trade interests, either through measures under the World Trade Organisation, in ICAO or as provided by US legislations."⁶

The following week, David Aaron said in Paris that Congress was likely to take action in October against the EU over hushkits, unless "we are headed in a good direction." Although the hushkit regulation is not yet in force, he said it "casts a terrible shadow" over US aeronautical industry.

Aaron met with officials in Brussels in the course of the week starting 13 September 1999; and briefed journalists after the meeting.

⁵ He is referring to an EU-made Rolls-Royce engine, which was tested and found to be just under the 3:1 ratio; whereas it American counterparts tend to be just over it.

⁶ He is referring to a ban on the Concorde, which is already on the books in the US, and which is being delayed pending the outcome of the hushkits issue.