



International Civil Aviation Organization

## WORKING PAPER

A42-WP/497

EX/223

29/7/25

### ASSEMBLY — 42ND SESSION

#### EXECUTIVE COMMITTEE

#### Agenda Item 14: Audit Programmes – Continuous Monitoring Approach

#### PROTOCOL QUESTIONS RELATED TO TIMELY IMPLEMENTATION OF AMENDMENTS

(Presented by Brazil and Supported by Latin American Civil Aviation Commission (LACAC) Member States<sup>1</sup>)

##### EXECUTIVE SUMMARY

Some Protocol Questions of ICAO Universal Safety Oversight Audit Programme (USOAP) address the importance of States having procedures established to ensure the timely transposition of new Standards and Recommended Practices (SARPs) into their legal and regulatory framework.

Brazil acknowledges the importance of internalizing Annexes' provisions in a timely manner. However, it is understood that, when stated by ICAO, the timeline expected for the effective implementation of SARPs may not be aligned to the States' legal and regulatory framework and procedures and, then, can represent unsolvable delays.

Meeting the ICAO expected timelines does not necessarily represent that the new SARPs will be appropriately inserted into national regulations, which should be the focus of this Protocol Questions.

When assessing the States' capability of implementing ICAO SARPs, ICAO USAOP Continuous Monitoring Approach (CMA) should support an evaluation of the national rulemaking process' integrity and quality, driving to a robust national decision-making process.

**Action:** The Assembly is invited to Approve the development of a study to revise the Protocol Questions related to timely implementation of new SARPs to better assess the integrity and quality of the national rulemaking process, driving to a robust national decision-making process.

|                                |                                                                                           |
|--------------------------------|-------------------------------------------------------------------------------------------|
| <i>Strategic Goals:</i>        | This working paper relates to the Strategic Goal <i>Every Flight is Safe and Secure</i> . |
| <i>Financial implications:</i> | N/A                                                                                       |
| <i>References:</i>             | ICAO USOAP                                                                                |

#### 1. INTRODUCTION

1.1 One of the aspects of the States' civil aviation regulatory system that is assessed by ICAO Universal Safety Oversight Audit Programme (USOAP) is the existence of a structured and functional

<sup>1</sup> Argentina, Belize, Bolivia (Plurinational State of), Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Paraguay, Peru, Uruguay and Venezuela (Bolivarian Republic of).

rulemaking process to assure that the published Standards and Recommended Practices (SARPs) are discussed and a robust regulatory decision-making process is run regarding the internalization of them into the States' regulatory framework.

1.2 When assessing the States' rulemaking process, the USOAP considers, as an efficiency index, the time spent by the State to decide how to transpose the SARPs into its regulatory framework. However, there is no clear relation between a States' rulemaking process efficiency by just measuring if the new SARPs were translated or transposed into national regulations by the date of the new SARPs applicability dates.

1.3 A regulatory process timeline does not seem to reflect the robustness and efficiency level of a rulemaking procedure. By just measuring this index, other relevant variables that requires State's attention and good management, such as national industry capability and capacity consideration, economic impact to stakeholders, prioritization of rulemaking objectives and other several aspects that can be translated into the existence of a consolidated States' Regulatory Impact Assessment (RIA), are not verified by ICAO auditors while applying USOAP protocol.

## 2. DISCUSSION

2.1 The effectiveness of a States' rulemaking process is a relevant aspect that must be assessed by ICAO, under the USOAP methodology, in several domains, such as LEG, AIR, OPS, PEL, AGA and AIG (as examples, can be cited the PQs: 1.007, 3.005, 4.0035.005 and 8.003).

2.2 The relevance of measuring a States' rulemaking process effectiveness is closely related to the fact that each State must properly manage its regulatory framework to support the continued evolvement of its civil aviation system while keeping or improving its safety level. In this sense, Brazil acknowledges and reinforces the importance of ICAO's assessment over a State's regulatory system.

2.3 Nevertheless, considering a performance index related to a States' timeline rulemaking process, regarding the implementation of new SARPs, is not necessarily a good one to drive an ICAO USOAP audit conclusion about the effectiveness of this process. As exemplified in the following paragraphs, the effectiveness of a rulemaking process does not need to be correlated with the time spent by a State to turn new SARPs into national regulation.

2.4 As a possible scenario, a State may decide to, in order to keep a timely implementation, turn new SARPs into national regulation just by directly reference to another States' existing regulations, or even direct reference to ICAO Annexes, without running critical procedures such as RIA. In such Scenario, it is expected that the State will consistently meet the Protocol Questions (PQs) related to the timely nationalization of new SARPs but will not be able to show that it has a robust and effective rulemaking process.

2.5 In other terms, it is not always true that an effective rulemaking process is the one that ensures a timely nationalization of new SARPs. Effort must be developed to really understand if a State's regulatory framework is in line with the best rulemaking practices, such as RIA and data driven decision making. By focusing just on the time spent by a State to implement new SARPs into its national set of regulations, it is not possible to conclude that the new national set of rules, changed based on the new SARPs, are feasible to be implemented and put in practice by its national civil aviation system.

2.6 As an opposite scenario, a State with a robust rulemaking process may take a conscious decision of not having the transposition of new SARPs to its national set of regulation since this timeline would not be adequate for the State to run, properly, its rulemaking framework. So, this decision may be the result of a solid rulemaking process but, under ICAOs' USOAP perspective, the State would be failing in meeting the expectations over its framework.

2.7 Important to highlight that States with complex rulemaking process structures must consider several aspects and Impact Analysis when assessing a potential decision of having requirement into its national set of rules.

2.8 Other indexes or characteristics, such as the existence of a pluriannual regulatory agenda, the necessity of having RIA into any rulemaking process and a multicriteria data driven decision making process supporting the rulemaking process decision must be taken into consideration for having a robust understanding about a State's rulemaking process effectiveness.

2.9 The overall output of a complex rulemaking system may diverge from ICAO expectations in terms of a timely transposition of new SARPs. However, when the decision of not having a timely manner new SARPs nationalization based on a conscious assessment, as stated in a State's rulemaking process, it should not be considered as an indicator of a bad rulemaking process that would represent a degradation of the State's civil aviation system safety level or even a lack of States' compromise to the international standards. Instead, it is an indicator of a well-managed regulatory system that addresses safety scenarios and levels according to the States' reality and particularities.

2.10 In conclusion, Brazil acknowledges the merit and relevance of the intention of the USOAP methodology to perceive or measure the effectiveness of a State's rulemaking process but strongly adverts that just looking to the timeframe of a particular decision regarding the nationalization of a new SARP does not seem to be appropriate to the ICAO major concern related to the effectiveness of a State rulemaking process.

### 3. CONCLUSION

3.1 The USOAP PQs that address the effectiveness of the States' rulemaking process are just related to its timeframe. However, it is clear that, as exemplified in this working paper, there are other technical aspects that must be considered to drive an ICAO's decision about the effectiveness of the States' rulemaking procedures.

— END —