



WORKING PAPER

ASSEMBLY — 41ST SESSION

TECHNICAL COMMISSION

Agenda Item 31: Aviation Safety and Air Navigation Standardization

PROMOTING MODERN REGULATORY PRINCIPLES IN THE DEVELOPMENT OF SARPS

(Presented by Brazil with the support of the Latin American Civil Aviation Commission (LACAC) Member States¹)

EXECUTIVE SUMMARY

This working paper outlines general principles of regulatory governance to improve regulatory practices under ICAO bodies when developing Standards and Recommended Practices (SARPs) and other guidance materials.

Action: The Assembly is invited to take note of the information presented and to request the ICAO Council to:

- a) establish a Study Group to conduct a gap analysis on ICAO current regulatory governance;
- b) identify the main points in which ICAO's regulatory practices might differ from global current regulatory best practices; and
- c) establish a long-term roadmap to improve ICAO regulatory governance, particularly as it relates to the development of SARPs and guidance materials.

<i>Strategic Objectives:</i>	This working paper relates to all Strategic Objectives.
<i>Financial implications:</i>	The ICAO activities referred to in this paper are expected to be undertaken within the resources available in the 2023-2025 Regular Budget.
<i>References:</i>	

1. INTRODUCTION

1.1 In the last decades, the debate on regulatory policy changed from the simple dilemma of regulating vs. deregulating to the design and implementation of initiatives that promote better, effective, smarter, and more flexible regulation.

¹ Argentina, Aruba, Belize, Bolivia, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela (Bolivarian Republic of).

1.2 Such initiatives cover a wide range of policies, such as: 1) the adoption of regulatory agendas to ensure predictability to stakeholders; 2) systematic adoption of Regulatory Impact Analysis (RIA) during the design of new standards; 3) implementation of more effective forms of consulting and informing stakeholders, so that they can contribute to the regulatory process; 4) systematic review of the stock of regulation, including administrative simplification initiatives; 5) in-depth ex-post impact analysis on major standards, to evaluate its real-world implementation and achievement of targets and objectives; and 6) coordination of macro regulatory policies, at an international or national level, with the micro regulatory policies, at the sub-national levels.

1.3 Considering ICAO's mandate to support the harmonization of rules and practices for international aviation and considering its capacity to influence national regulations, ICAO's standard-making process (i.e., adoption of SARPs) must be continuously evolving and improving in order to be aligned with the global best practices developed and implemented in several countries in the last decades.

2. DISCUSSION

2.1 A first step to ensure that ICAO standard-making process is in fact aligned with international regulatory best practices should include a robust diagnosis of ICAO's current practices by a designated Study Group. This first step could include an analysis of potential differences between ICAO current practices and global best practices (gap analysis), a roadmap that sets priorities and addresses the main identified gaps, and an effective evaluation program.

2.2 This working paper proposes a series of assessment questions, comprising the six policies referred to in paragraph 1.2., to be answered by a designated Study Group, which could provide the basis for the development of a consistent long-term enhanced regulation roadmap for ICAO.

2.3 Regarding the regulatory governance implemented in most States, the Study Group should be able to provide the following inputs:

- a) Does ICAO establish and publish a list of standards (i.e., SARPs) and guidance materials to be revised and implemented in a given time horizon?
- b) Is there any process that ensures the alignment of the list of priorities with the strategic objectives of ICAO?
- c) Is there any kind of engagement from different stakeholders to develop and set the priorities on the list of standards (i.e., SARPs) and guidance materials to be addressed? and
- d) Is there a systematic monitoring process on how each prioritized standard (i.e., SARPs) and guidance material is evolving and has been implemented by States?

2.4 Considering the systematic adoption of RIA, the following questions should also be answered by the Study Group:

- a) Does ICAO have a high-level policy establishing RIA's objectives, principles, stages, methodologies, and applicability?
- b) Is there a methodology or guidance to identify the regulatory problem that the new or revised SARP has addressed?
- c) Is there any guidance on identifying and creating potential alternative solutions before starting the standard-making process? Do the alternatives consider current trends in regulatory practices, such as responsive and smart regulation, insights from behavioral economics, regulatory sandboxes, and flexible and agile regulation?
- d) Is there a typology of direct and indirect, positive and negative impacts that a SARP might have on stakeholders?
- e) Is there any guidance on how to conduct specific impact assessment methodologies, such as social cost-benefit analysis or multicriteria decision analysis?
- f) Is there any guidance on how to report the analyses, their rationales, and conclusions?
- g) How do the decision-making bodies consider the impact analyses?
- h) Are there any checks to evaluate if the proposed standards are based on reliable evidence? and
- i) Is there adequate training on RIA for those responsible to conduct the standard-making processes?

2.5 Regarding the stakeholder engagement process:

- a) Does ICAO have a high-level policy that states the objectives, principles, formats, and methodologies that should guide the stakeholder engagement process?
- b) Have the key stakeholders been identified, and are they effectively being consulted?
- c) Is there any consideration on the timing of the stakeholder engagement events? and
- d) Is there any systematic feedback to stakeholders that contribute to the standard-making process?

2.6 Considering the systematic review of the regulatory stock:

- a) Are there any processes that identify, assess, and eliminate or replace obsolete and unnecessary standards?
- b) Does ICAO assess the costs imposed by its standards on different stakeholders? and
- c) Are there programs designed to simplify and reduce administrative burdens imposed by regulation?

2.7 Regarding the ex-post evaluation:

- a) Is there any consideration for the heterogeneity of States during the standard-making process so that the standards consider different realities and challenges faced by States? and
- b) Does ICAO follow up on the implementation of its standards and provide support to those States that face additional challenges?

2.8 Considering global best practices, the Study Group should come to one of the followed answers: 1) ICAO already follows some of the abovementioned best regulatory practices; 2) some steps have already been taken but adjustments are needed; or 3) a structured action plan will be needed to guide the next phase of the path towards regulatory excellence.

3. CONCLUSION

3.1 This working paper proposes a first step to aligning ICAO's Standard-making process, particularly the adoption of SARPs, with global best practices, considering a structured, sustainable, and systematic process of improving its regulatory governance.

3.2 Adopting best practices on regulation by ICAO will enhance the benefits intended by the SARPs and guidance materials for the international community and reduce negative impacts in the long term, including regulatory burdens and unnecessary costs. Also, best regulatory practices will help ICAO to play its role in designing adequate regulatory structures for different States, considering the different realities and complexities of their aviation system and the limited resources availability.