



ICAO

International Civil Aviation Organization
North American, Central American and Caribbean Office

WORKING PAPER

NACC/DCA/06 — WP/12
29/04/16

**Sixth Meeting of the North American, Central American and Caribbean Directors of Civil Aviation
(NACC/DCA/06)**

Nassau, Bahamas, 10-12 May 2016

Agenda Item 10: Other Business

10.4 Other business

SMARTER REGULATION: UNLOCKING THE PROMISE OF AVIATION IN LATIN AMERICA

(Presented by IATA/ALTA)

EXECUTIVE SUMMARY	
Many governments around the world, including some in Latin America, have embarked on smarter regulation initiatives. However, airlines continue to face increasing regulatory burdens, which act as a deterrent on the aviation sector's ability to serve as a catalyst for economic and social development. IATA and ALTA appeal to governments to apply smarter regulation principles to the air transport sector to remove barriers to its sustainable growth. One issue in particular which poses a risk is prescriptive and uncoordinated policy approaches to consumer protection.	
Action:	A call on authorities to take note of the importance of applying consultative regulatory principles with a focus on transparency and driven toward clear and defined objectives on consumer protection issues.
<i>Strategic Objectives:</i>	<ul style="list-style-type: none">• Consistency and Coherence in the regulatory process• Proportionality of the regulations with respect to the issues that are identified.• Implementation of an effective consultative process
<i>References:</i>	<ul style="list-style-type: none">• IATA's Smart Regulation Methodology (Appendix)

1. Introduction

1.1 Many authorities around the world are adopting collaborative principles on regulations focusing on improving the regulatory practices and in support of formulating a transparent, consultative and objective-driven approach to policymaking.

1.2 Despite the proliferation of smarter regulation programs in various regions including Latin America, there have also been increasing regulatory burdens placed on airlines, thus jeopardizing the sustainable growth of the aviation sector.

1.3 Recognizing both trends and their potential effects, IATA launched its own smarter regulation program in 2014.

1.4 The initiative first undertook a review of different government approaches to smarter regulation, resulting in a methodology which captures the common themes and best practices among various programs worldwide. It includes policy design and development principles, and is available as Appendix. Examples include:

1.4.1 Consistency and coherence – Regulations should be consistent with existing (and planned) rules and practices that are applicable in order to avoid overlaps and contradictions (nationally or internationally).

1.4.2 Proportionality - Regulations should be proportionate to the problem(s) identified, so that the costs of compliance are minimized by pursuing the most cost-effective solution.

1.4.3 Consultation - The drafting of the regulation should involve those who are potentially impacted; the decision making process should be transparent, fair and objective.

2 Analysis:

2.1 The proposal being made to the regulatory aviation authorities, involves the creation of a “Notice of Proposed Rulemaking” (NPRM) process in an effort to achieve a more harmonized civil aviation regulatory policy in Latin America. The foregoing process currently exists in other regions of the world. It allows for the authorities to consult with those stakeholders that are being impacted by the proposed regulation, gain their input and obtain expert commentary.

2.2 In the present environment regulations are being implemented within very short time frames, often without providing sufficient time for industry review or comment before being made final. The airline community urges that regulatory authorities consider the inclusion of the NPRM scheme in their policy making process allowing for the active participation of those ultimately affected by the proposal.

2.3 One particular issue where a smarter regulation approach would be especially beneficial is consumer protection. Today, over 60 jurisdictions around the world have some form of aviation-specific consumer protection regime. These regimes are not necessarily coordinated with each other, creating overlapping and conflicting entitlements which result in confusion for consumers and operational difficulties for airlines. Certain national regimes are also inconsistent with existing treaty instruments, such as the 1999 Montreal Convention.

2.4 Consumer protection regimes can also be disproportionate to the problems they are attempting to solve, and in fact create unintended consequences for airlines and consumers. For example, prohibitive sanctions imposed for delays or cancellation that are beyond an airline's control may not prompt the reduction of such delays or cancellations, but rather could lead to increased fares and reduced connectivity as airlines seek to avoid added liability and costs in a competitive marketplace.

3. Conclusions:

3.1 IATA and ALTA are seeking to partner with governments, aviation authorities and other entities to introduce a smarter regulation approach to the air transport sector, avoiding unnecessary regulatory burdens and enhancing air connectivity.

3.2 Aviation can be a catalyst for economic and social development in the region, generating jobs, GDP growth and improving social cohesion. However, the promise aviation holds can only be fulfilled by policy design and implementation which meets smarter regulation criteria. Heavy-handed regulation risks reducing the value aviation can deliver to Latin American economies and societies.

3.3 In conclusion, a consultative approach with the airlines on regulatory matters that protect consumers will facilitate the development of regulations that balance the need to protect consumers while allowing the sustainable growth of the industry, and also by removing potential barriers to the economic and social benefits aviation can provide to Latin American countries.

4 Suggested Actions:

4.1 The meeting is invited to:

- a. Acknowledge the importance of applying smarter regulation principles to aviation policymaking; and
- b. Acknowledge the importance of applying consultative regulatory principles with a transparent focus that is geared towards defined objectives with respect to consumer protection issues.

— — — — —

APPENDIX

IATA's Smart Regulation Methodology

Definition Statement:

Smart regulation delivers clearly defined, measurable policy objectives in the least burdensome way. It is achieved through a transparent, objective, and consultative process.

Policy Design Principles

- Consistency and coherence – Regulations should be consistent with existing (and planned) rules and practices that are applicable to regulated activities so that there are no overlaps and contradictions (nationally or internationally). They should also be predictable and applied with clear oversight responsibility and without discrimination against those being regulated.
- Proportionality – Regulations should be used only when their necessity is demonstrated and should be proportionate to the problems identified so that the costs of compliance are minimized by pursuing the most cost-effective solution.
- Targeted at risk – Regulations should have specific and well-defined objectives that respond directly to the problems identified. Whenever appropriate, flexibility should be given to those being regulated to meet defined objectives.
- Fair and non-distortive – Regulations should be applied fairly and not create discriminatory burdens on any group/s in particular.
- Clarity and certainty – Audiences subject to regulatory compliance need to clearly know the regulations that will apply, what is expected of them, and have sufficient time to be able to comply with new requirements.

Process Principles

- The objective of the regulation should be identified based on sound evidence and available alternatives must be considered to select the most appropriate solution.
- There should be an assessment of the impacts from the regulation.
- The drafting of the regulation should involve those who are potentially affected; the decision making process should be transparent and objective
- The process of developing the regulation should focus on reducing the compliance burden and allow for regular and systematic review (and subsequent modification, if needed) to ensure that the regulation is still appropriate.
- There should be clear procedures to respond to adjudications and appeals and to revise the regulation if necessary.