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DIRECTORS GENERAL OF CIVIL AVIATION
ASIA AND PACIFIC REGIONS**

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**AGENDA ITEM 6: ECONOMIC DEVELOPMENT OF
AIR TRANSPORT**

**RESULTS FOR THE INDICATORS
ON THE GOVERNANCE OF SECTOR REGULATORS:
ICAO SAM AND NACC CIVIL AVIATION AUTHORITIES**

Presented by the Organisation for Economic Co-operation and Development (OECD)
and the International Civil Aviation Organization (ICAO)

SUMMARY

Good governance is a building block for the performance of regulators, including civil aviation authorities. Recognising the importance of governance to create strong institutions, ICAO SAM and NAM/CAR regions invited the OECD to apply its Indicators on the Governance of Sector Regulators to civil aviation authorities in Latin American and the Caribbean. Results provide a high-level view of the governance of the 29 participating authorities, pointing to opportunities for institutional strengthening to safeguard independence while maintaining accountability to the executive, legislature and public.

RESULTS FOR THE INDICATORS ON THE GOVERNANCE OF SECTOR REGULATORS: ICAO SAM AND NACC CIVIL AVIATION AUTHORITIES

1. INTRODUCTION

1.1 The OECD Best Practice Principles on the Governance of Regulators acknowledges that regulators that are efficient, effective, and supported by high-quality regulatory management tools are better placed to administer and enforce regulations (OECD, 2014[1]). The OECD sees the good governance of regulators as one building block in the foundation of high-quality regulatory environments, which ultimately aim to contribute to positive outcomes for markets and consumers. Furthermore, strong governance supports an authority's legitimacy and integrity. It provides a fundamental condition necessary for regulatory authorities to make technical, evidence-based and objective decisions without conflict of interest, bias or improper influence.

1.2 To understand how regulators around the world reflect good governance principles, the OECD Network of Economic Regulators (NER) developed the Indicators on the Governance of Sector Regulators. These indicators capture high-level information on the independence and accountability of regulatory authorities, as well as their scope of action. ICAO's NAM, CAR and SAM regions asked the OECD to apply the indicators to Civil Aviation Authorities in the Latin America and Caribbean region. This exercise presents participants with the opportunity to assess alignment with good practices and identify areas for institutional reform. Leveraging the knowledge and expertise of the NER and the OECD Secretariat, the indicators enable data-driven assessment of regulators' governance across jurisdictions.

1.3 This discussion paper presents the results for the OECD Indicators on the Governance of Sector Regulators for the NAM, CAR and SAM regions. The paper provides an overview of the scope and methodology of the indicators, followed by key messages based on the data collection and quality check conducted by the OECD Secretariat in co-operation with the participating authorities during April-October 2021.

1.4 Indicators offer an overview of good governance, but governance is context-dependent. Existing conditions, such as market characteristics and policy frameworks, will influence which governance arrangements make sense within the particularities of a jurisdiction. The diverse characteristics of the sample, described further in this document, suggest the presence of very different situations and needs across jurisdictions. For that reason, the reader should interpret results with care and within context.

2. DISCUSSION

2.1 Scope and methodology

2.1.1 The OECD Indicators on the Governance of Sector Regulators are a tool for the comparative assessment of the strength of regulators' governance arrangements. The indicators highlight patterns in the governance arrangements of sector regulators by providing a uniform quantitative scoring system that enables comparisons across sectors and countries. A standard survey collects the information that forms the basis of the indicator scores. The survey questions are anchored to the normative framework provided by the OECD Best Practice Principles on the Governance of Regulators and additional literature on the independence of regulators produced in collaboration with the OECD NER, allowing for benchmarking against good practice.

2.1.2 The questionnaire captures three governance components across participating authorities:

- 2.1.2..1. Scope of action: This component sheds light on the range of activities that the regulator performs, including tariff-setting, issuing standards, enforcement activities and sanctioning powers.
- 2.1.2..2. Independence: This component maps the degree to which a regulator operates independently and with no undue influence from both the political power and the regulated sectors.
- 2.1.2..3. Accountability: This component covers the accountability of the regulator vis-à-vis various stakeholders, including the government, parliament, the regulated industry and the general public. It captures the adherence to regulatory management tools and looks at the collection, use, publication and reporting of performance information.

2.1.3 In line with the usual indicator methodology, the OECD Secretariat worked closely with the civil aviation authorities to collect, validate and finalise questionnaire responses in preparation for the preparation of an aggregated database and the calculation of scores. The OECD Secretariat distributed the questionnaire to focal points at SAM and NAM/CAR authorities, who co-ordinated the completion of the questionnaire. After receiving the completed questionnaires, the OECD Secretariat validated the responses, reviewing the responses received and identifying areas where more evidence was needed. Data validators assessed the respondents' understanding of the questions, adherence to drop-down menu categories for closed-ended questions, accuracy of answers, and completeness of responses. When the team proposed changes or encountered questions, they liaised with the focal points at the relevant authority.

2.1.4 After data validation, the OECD Secretariat calculates indicator scores for each authority based on finalised questionnaire responses. To create the composite indicator, equal weights are assigned to all questions and sub-questions. The methodology uses equal weighting to avoid imposing judgements about the importance of elements within the composite indicators, but this should not be understood as showing that components lack weights entirely. The result is a dataset and set of indicators covering 29 civil aviation authorities within 26 countries or territories and 1 regional authority (the Eastern Caribbean Civil Aviation Authority: encompasses 6 States: Antigua & Barbuda, Dominica, Grenada, St. Lucia, St. Kitts & Nevis and St. Vincent & the Grenadines).

2.2 Key messages

2.3 The data show some of the distinctive features of the sample, as well as opportunities for strengthening practices or arrangements to help participating civil aviation authorities reap the benefits of appropriate independence and accountability. This section summarises key take aways from the data. The appropriateness and applicability of specific governance arrangements can vary greatly between jurisdictions depending on a range of contextual factors which would need to be examined in-depth for the development of tailored recommendations.

2.3.1 ***A diverse group of authorities:*** The dataset shows a group of 29 civil aviation authorities with varied characteristics and functions. The authorities operate within 26 countries or territories as well as one region across North America, Central America, the Caribbean and South America. Functions vary between authorities, with greater variation in the scope of action component than OECD economic regulators of the air sector. Despite this high variability, authorities often share common functions: (1) issuing and revoking licenses and/or denying or revoking authorisations, (2) issuing industry standards, (3) enforcing compliance with industry and consumer standards and regulatory commitments, and (4) issuing sanctions and penalties.

2.4 ***Re-examining de jure independence:*** Certain de jure provisions could help strengthen the independence of the authorities. Bolstering financial and decision making independence can help maintain confidence in the objectivity and impartiality of decisions. Certain aspects of de jure

independence may be more relevant in specific circumstances, for example, when the government is a shareholder in one or more regulated entities.

2.4.1..1. Technical independence/ operational autonomy: The majority of authorities can receive government guidance on day-to-day activities, including individual decisions and appeals. This kind of direct government involvement in the regulator's work can limit authorities' technical independence.

2.4.1..2. Financial autonomy: Many authorities do not have control over their own expenditure. In nearly 2/3 of authorities, a governmental or ministerial body makes decisions over authorities' expenditures instead of the authority itself within appropriate rules.

2.5 **Bolstering measures for leadership:** There is room to improve arrangements affecting leadership to reduce political influence and conflicts of interest.

2.5.1..1. Selection and appointment: Leadership is usually selected and appointed by government alone with few "checks." The use of an independent selection panel (composed of members outside government) during the nomination phase is rare, and the legislature is rarely involved in final appointments.

2.5.1..2. Termination of mandate: Many authorities lack safeguards to prevent arbitrary dismissal. Dismissal of leadership can generally be done by government actors alone, and in nearly half of countries legislation does not establish specific criteria for dismissing authority leadership.

2.5.1..3. Post-employment restrictions: Few authorities have a cooling-off period for leadership after the end of their mandates. Leadership in more than half of authorities are not bound by any post-employment restrictions.

2.6 **Strengthening accountability relationships:** Accountability to other public bodies, stakeholders and the general public is a critical ingredient for a robust regulatory policy. The data show some unique features and opportunities for institutional strengthening in this area.

2.6.1..1. Direct accountability: All civil aviation authorities are directly accountable to government, in contrast to OECD economic regulators of the air sector (one-quarter of which are directly accountable to the legislative branch).

2.6.1..2. Stakeholder consultation: Consultation with stakeholders and the public is an area for attention, with around 1/3 of authorities not publishing their draft decisions for comment from stakeholders and the public.

2.6.1..3. Responding to comments: Of those authorities that do publish decisions for comments, around some do not respond to the comments they receive. It is considered good practice to transparently provide feedback to stakeholders on submitted comments.

2.7 **Advancing performance assessment and reporting:** A broader set of performance indicators and a greater emphasis on publishing performance information can help more authorities capture the benefits of performance reporting.

2.7.1..1. Publishing a performance report: More than 1/3 of authorities do not publish a performance report, missing an important opportunity to demonstrate the effectiveness of the authority and drive improvements.

2.7.1..2. Types of performance information included: Many authorities do not collect or publish certain types of performance information. In particular, more regulators should report on how well their organisations and processes work, collecting and publishing information on the quality of the authority's processes, their compliance with legal obligations, and their organisational governance.

2.7.1..3. Presenting performance information to the legislature: Many authorities do not present a performance report to the legislature, missing an opportunity to demonstrate the value-added of the authority to a broader audience through an important stakeholder.

2.8 **ACTION BY THE CONFERENCE**

2.9 The Conference is invited to:

- a) Review the results of this exercise;
- b) Consider the interest of such exercise for the APAC region.

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