SUMMARY REPORT OF THE WORKSHOP ON
THE FUTURE REGULATORY FRAMEWORK FOR SUBORBITAL FLIGHTS IN EUROPE

European Commission, Brussels, 11 October 2012

The EU 7th Framework Project FAST20XX (“Future high-Altitude high-Speed Transport 20XX”, 2009-2012) involves 16 European partners working on enlarging the foundations of suborbital high-speed transportation in Europe in a variety of fields, including the required regulatory framework.

In this context, a questionnaire was circulated in February 2012 to reflect on the regulatory framework for suborbital flight in Europe. A stakeholders’ workshop to analyse the results and determine next steps was organized by the International Institute of Air and Space Law, Leiden University and Orbspace, Austria, and was hosted by the EC DG-RTD on 11 October 2012. It brought together most of the stakeholders in suborbital flight in Europe, including national and European regulators, industry, insurance, operators and academics from different EU member states and Switzerland, and included a representative of the US Federal Aviation Administration (FAA) in Brussels.

The aim of the meeting was to envisage jointly which regulatory framework(s) for suborbital flights would best suit Europe, and which roadmap(s) can be followed. It also served to exchange views and experiences and learn about the plans regarding suborbital flight in Europe. The following companies presented their projects in the field of suborbital flight: BOOSTER Space Industries, Orbspace, Dassault Aviation, Swiss Space Systems, Space Expedition Corporation and Spaceport Sweden. Concrete plans exist in Europe and it is urgent that legislators move forward and provide a suitable legal framework.

The USA adopted a temporary licensing regime for suborbital flights in 2004, recently extended until 2015, based on the understanding that the industry needs flexibility in order to develop. Europe is very soon going to face similar questions to those addressed by the USA. An approach proposed by a number of EASA experts reflecting their personal views in a 2008 study focuses on certification before the first commercial flight. There are considerable differences between certification and licensing in terms of complexity, cost, legal consequences, and the exact ramifications of each in terms of guaranteeing safety. The EASA approach aimed at certification of “unusual design” Sub-orbital Aircraft (SoA) under an adapted and extended CS-23 through restricted type certificates (RTC). In 2011, the European Commission asked EASA whether they could set up an optional lighter regime, much like the US licensing approach. The resulting internal analysis concluded that this is possible, but that it would require modification of EASA’s Basic Regulation, and implementation would be in the hands of the Member States. EASA would be in principle ready to provide its services in the field of suborbital flight, if a mandate to that extent and the corresponding resources are provided.

Suborbital flight is a stepping-stone toward future point-to-point travel via suborbital space, as well as orbital space transportation, and has considerable economic and innovation potential for Europe. As a consequence, a step-by-step approach with a “light-touch” licensing regulation at the beginning seems a sensible solution also for Europe.

Some industries are concerned that such an approach might not provide legal certainty to investors and operators. They prefer the Restricted Type Certification approach and some of them are concretely moving ahead along that line. Others expressed preference for a licensing approach and are in some cases concretely proceeding along that way. Hence there is no clear-
cut conclusion on the preferred approach in Europe, and both paths are being followed at the moment.

Several actors are keen for the EU to take action. It is important that the EU shows the way and develops a policy on which the Member States can act and which will be the first step on the way to a predictable and clear legal framework.

European institutions, national civil aviation authorities, space agencies, as well as industry and insurance actors must act together. If not, Europe will miss out on the innovative technology, jobs and other economic incentives that suborbital flight will bring.

In short, the EU should give a policy push and ‘pioneer states’ where the industry is already emerging should start to work towards a harmonised regulatory framework. EASA is seen by most EU-stakeholders as the end-state regulatory authority, which should ultimately take the lead for aviation-related matters, while national arrangements could handle the lack of regulations in the interim period. Cooperation with the FAA, which has built up considerable expertise in this field, is also essential.

Clear direction is needed in the field of passenger and third party liability. This will also help to provide clarity and predictability for the insurance market so that it can develop suitable insurance options. The status of crew and passengers, registration, jurisdiction, and authorisation, as well as issues like maintenance, operations and others will need to be addressed.

As a concrete next step, a steering group should be set up involving stakeholders and EU/member state authorities in the fields of Transport, Research, Enterprise and Competition. Stakeholders are also encouraged to contact their MEP and national authorities directly. A follow-up meeting should be organised, and the questionnaire that formed the basis for the first workshop should be circulated to all EU civil aviation authorities and national space agencies.

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