

 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Ratification of the convention on international interests in mobile equipment and the protocol thereto on matters specific to aircraft equipment	
Lead Department/Agency	Department for Business, Innovation and Skills	
Stage	Final	
IA number	BIS0362	
Origin	International, implemented through domestic law	
Expected date of implementation	October 2014 (SNR 8)	
Date submitted to RPC	11 December 2014	
RPC Opinion date and reference	27 January 2015	RPC13-FT-BIS-1976(4)
Departmental Assessment		
One-in, Two-out status	Zero Net Cost	
Estimate of the Equivalent Annual Net Cost to Business (EANCB)	N/A	
RPC Overall Assessment	GREEN	
<p>RPC comments</p> <p>The IA is fit for purpose. The IA is fit for purpose. The Department has addressed the issues raised in the Committee’s opinion of 24 November 2014. Specifically, the Department has now provided sufficient evidence to show that this proposal would be net beneficial to business.</p>		
<p>Background (extracts from IA)</p> <p>What is the problem under consideration? Why is government intervention necessary?</p> <p><i>“UK airlines require large amounts of finance to hire or purchase helicopters, airframes and/or engines (“aircraft objects”). Following the economic downturn, the availability of traditional sources of finance for UK airlines, such as bank debt, has reduced and a number of airlines have looked to diversify their sources of finance. The Convention on international interests in mobile equipment and the Protocol thereto on matters specific to aircraft equipment (“the treaty”) is a private international law instrument which aims to facilitate asset-based, cross-border aircraft finance transactions by providing creditors with greater legal certainty that they can recover their assets in cases of default, which may lead to lower financing costs for purchasers and lessees”.</i></p>		

What are the policy objectives and the intended effects?

“The policy objective is to reduce the cost of raising aircraft finance to UK businesses. The treaty aims to reduce the risk to creditors of lending to airlines and leasing companies by creating a harmonised international legal framework for the creation and registration of international interests (such as mortgages and leases) and to deal with related disputes, including insolvency. A reduction in the risk to financiers in aircraft finance transactions should lead to a reduction in the cost of raising finance for airlines and others looking to purchase and/or lease aircraft and may result in increased sales by UK manufacturers. The policy therefore aims to overcome an information asymmetry issue, where foreign entities may give UK businesses higher risk ratings than they would if the UK adopted a harmonised international legislative system. Ratification of the treaty would enable interests created under the treaty and registered with the International Registry to be enforced through the UK courts”.

Comments on the robustness of the OITO assessment

The IA says that this is a regulatory proposal that is net beneficial to business (an ‘IN’ with ‘Zero Net Cost’) for OITO purposes. The Department has provided sufficient evidence to support this classification. The Committee can, therefore, confirm that this set of proposals is an IN with Zero Net Cost.

The Department has provided further evidence in this resubmission and explains in detail how the elements of the treaty sit within EU and UK law. The IA now contains a more thorough OITO section explaining which elements would fall within the scope of domestic law (pages 7 to 15, and 46 to 54). The IA explains that the treaty is a shared competency treaty with some of the optional provisions falling within the competence of the EU and some within the competence of member states. The IA states that *“there is no EU directive for implementation of the treaty and it was agreed that member states would be free to decide whether or not to ratify the treaty. Nevertheless, those member states that decide to ratify the treaty should follow the EU decision on matters within the EU’s competence. Member states are free to decide how to implement the provisions within their own competence. As a result, the optional provisions within the competence of the EU are outside the scope of One-in, Two-out as the UK will be applying the decision of the EU. Therefore, only the optional provisions within the competence of the UK fall within scope of One-in, Two-out”* (paragraph 8).

The Department confirms that the UK has decided to ratify the Treaty. The expectation is that there will be resulting benefits from a lower cost of financing for affected businesses and potential increases in sales for UK aircraft and engine manufacturers. The Department explains that the majority of the costs and benefits of the proposal will be in scope of domestic law.

Comments on the robustness of the Small & Micro Business Assessment (SaMBA)

The proposal increases the scope of regulation on business, as the treaty introduces a legal framework to govern the creation and registration of international

interests relating to mortgaging and leasing of airframes, helicopters and aircraft engines.

The IA explains that the treaty has only one mandatory declaration, which requires the UK to outline the remedies available to a creditor without the leave of the court. The EU has competency over some matters covered by the treaty. However, the EU has not set out any minimum requirements in these areas. Consequently, the UK must use domestic legislation to implement the treaty. A SaMBA is therefore required.

The Department does not propose to exempt small and micro-businesses from the proposals on the grounds that the proposals are beneficial to business. Small and micro-businesses are not exempt as that would exclude them from the possible reductions in costs of aircraft financing transactions. If these businesses were excluded, the Department expects that they would incur a proportionately higher cost for aircraft finance than would medium and larger businesses (paragraph 111).

The majority of airlines, aircraft manufacturers, financiers and legal firms involved in the aircraft finance industry are medium and large firms. Therefore, the number of small and micro-businesses likely to be affected by the treaty would be small.

Quality of the analysis and evidence presented in the IA

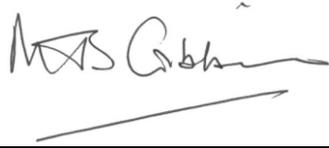
The Department proposes to ratify the treaty, which facilitates the sale and lease of aircraft equipment by reducing the level of risk to creditors of lending to airlines and leasing companies, thereby reducing the cost of raising aircraft finance for airlines and leasing companies. The treaty has one mandatory declaration, which requires the UK to outline the remedies available to a creditor without leave of the court. It also has a number of provisions that are optional.

The Department has addressed the issues raised in the Committee's opinion of 24 November 2014. Specifically, the IA provides details of the level of familiarisation costs to business required in order to meet the mandatory element of the changes. There are approximately 30 airlines within the UK who would need to be familiar with the changes. The IA now classifies these as stage one familiarisation costs. In addition, the Department expects that approximately another 100 legal firms, banks and financial institutions would need to be aware of the changes from the treaty. The Department provides a central estimate of £500,000 as a cost to these businesses (paragraphs 42 to 48). The IA also explains that, under the optional provisions, businesses can sign up to an international registry. It is expected that businesses would do so only if they consider it to be net beneficial and, therefore, any related costs are considered to be voluntary. This appears to be a reasonable assessment and the Committee confirms that this element can be treated as Zero Net Cost, in accordance with the guidance on "permissive measures" in the Better Regulation Framework Manual (paragraphs 1.9.20-21).

The Department maintains that, while it has been unable to quantify the benefits, the proposal should be considered as net beneficial to business and hence classified as zero net cost. The Department now provides more qualitative and

quantitative evidence to demonstrate that it is the benefits will exceed the costs. In particular, the IA explains that “*the possible savings on one aircraft finance transaction through capital market transactions would outweigh the costs to business*” (paragraph 82). This position is supported by consultation evidence from stakeholders. The Committee confirms that where the Department uses qualitative evidence in the absence of quantification this is reasonable, and that the Department has demonstrated that the net benefits of the proposal can be expected to exceed the costs.

Signed

A handwritten signature in black ink, appearing to read "Michael Gibbons", with a long horizontal line underneath it.

Michael Gibbons, Chairman