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## REPORT

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Subject:	<b><i>Preparation of the Council meeting (<u>Transport</u>, <u>Telecommunications and Energy</u>) on 3 December 2014</i></b> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services - SES II+, EASA Regulation - General approach

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## I. INTRODUCTION

On 12 June 2013, the Commission transmitted to the Council and to the European Parliament two legislative proposals to update the regulations on the Single European Sky, and accelerate their implementation. The SES II + package aims at improving the competitiveness of the European air transport system and to further develop the Single European Sky initiative launched in 2004. The overall objective of the SES initiative is to enhance current air traffic safety standards, to contribute to the sustainable development of the air transport system and to improve the overall performance of the European air traffic management system (ATM) and air navigation services (ANS).

In this context, the recast of the existing four SES II Regulations (Recast proposal) and the amendments to the Regulation establishing the European Aviation Safety Agency (EASA proposal) would simplify the legislative framework, remove overlaps in the current rules, improve the system of oversight and revise the existing rules with the objective of improving overall performance in air traffic management. The key problems addressed by the proposals are the insufficient efficiency of the air navigation services and the fragmentation of the Air Traffic Management (ATM) system.

More specifically, the objectives of the amendments in the EASA proposal are the alignment of the current scope of the EASA Regulation to the SES legislative framework, the removal of the mismatches between the two, and the incorporation of the SES interoperability concepts. The proposal also updates the EASA Regulation taking into account recent developments in the SESAR research programme, and harmonises it to the Joint Statement and common approach of the European Parliament, the Council and the European Parliament and the Commission on decentralised agencies (Common approach).

## **II. WORK WITHIN THE COUNCIL**

The Commission presented the SES 2+ package proposals and their impact assessment to the Aviation Working Party on 2 September 2013. In their reactions, most delegations evaluated the proposals as premature, taking into account that the implementation of the previous legislative package has not yet been able to show its full potential. They also emphasised that frequent changes to the current SES structure risk producing counterproductive results as opposed to the overall aim of efficiency. Further to the negative views expressed by Member States, the detailed examination of the SES 2+ package at working party level started only under the Italian Presidency in July 2014, pursuing work on the two legislative proposals in parallel.

In order to make swift progress on the SES 2+ package as a whole, the Presidency followed a limited approach in relation to the EASA Regulation and examined only those articles of the proposal which have a direct link to the SES Recast proposal. Delegations welcomed the Presidency's focussed and result-oriented approach, evaluating also that the Commission is expected to submit a separate proposal on the revision of the EASA Regulation in its entirety in the course of 2015. They considered that some fundamental issues related to the Agency's status and role, such as its name or financing structure should be examined in the broader context of the Agency's responsibilities, and not only the viewpoint of ATM, the main focus of the SES II + package.

The planned revision of the EASA Regulation will provide the opportunity to carry out the in-depth examination of these fundamental and broader concerns. Therefore, the draft general approach in the Annex covers only a selection of articles, and on the rest disregards the Commission proposal.

### **III. GENERAL COMMENTS**

In general, Member States welcomed the Commission's intention to simplify and clarify the existing legal framework of the Single European Sky initiative and supported the alignment of the EASA Regulation to the provisions of SES Recast proposal. A streamlined, uniform set of rules, especially in technical regulations such as interoperability and certification in the area of ATM/ANS provide added value by eliminating overlaps with the SES Regulation. They clearly delineate economic regulation of SES, contained in the Recast proposal, from technical aspects of SES where the Agency has a specific role in ensuring regulation and oversight of ATM/ANS activities.

Further to the intensive work carried out at working party level, the Permanent Representatives' Committee examined and approved the text of the draft general approach at its meeting on 21 November 2014. On this occasion, ES requested clarifications from the Commission on the applicability of the EASA proposal to airports, in particular the Gibraltar airport, and made its position dependent on a Commission statement to that effect. The Commission services confirmed that EASA proposal does not as such cover airports, and committed to submit a relevant statement to the Council minutes.<sup>1</sup>

An overview of the work carried out is set out below, and minor technical corrections to the text appear in bolds and strikethrough.

UK still maintains a parliamentary scrutiny reservation on the proposal.

#### **IV. COMMENTS ON SPECIFIC ISSUES**

##### **a) Military aspects**

The Commission proposed enlarge the scope of the EASA Regulation to ensure that military service providers comply with civilian air traffic rules when providing services to civilian traffic. From the beginning of the discussions, the modified scope met the strong resistance of Member States, which considered that explicitly drawing the military community under SES rules does not respect their regulatory independence. Following an extensive exchange of views with Member States' military experts and the European Defence Agency on 14 October 2014, the Presidency concluded that the scope of the EASA Regulation will remain unchanged, and the existing obligation of the military to ensure a level of safety at least as effective as the essential requirements applicable to civilian service providers will continue to apply.

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<sup>1</sup> A similar statement had already been made at the time of the adoption of the last amendment of the EASA Regulation, Regulation (EC) No 1108/2009 (cf. doc. 12955/09 ADD 1).

## **b) Certifications and declarations for interoperability**

The provision of air navigation services is subject to certification by EASA or national supervisory authorities, and for some services to a self-declaration by the service provider. While these principles are laid down in Article 8 of the SES Recast proposal, the EASA Regulation contains the rules of substance, namely the essential requirements that air navigation service providers have to comply with (Article 8b and Annex Vb). The related empowerment rules for the implementation and further amendment of these rules (Article 8b), and the related responsibilities of EASA (Article 22a) are also set out in the EASA Regulation.

On qualified entities, to which national authorities' oversight functions may be delegated, the SES Recast and the EASA Regulation follow a similar structure. The SES Recast proposal sets out the overall framework for these entities, while Annex V of the EASA proposal contains the criteria they have to fulfil.

While keeping the above basic structure, the affected provisions have been streamlined and clarified at working party level. Thus, a single definition of 'declaration', and a single Annex for qualified entities has been maintained only in the EASA proposal, eliminating the duplication with the SES legislative framework. The responsibilities of the Agency as regards certifications and declarations have also been clarified. In addition, going one step further in specifying the Agency's responsibilities, several delegations noted positively the possibility of establishing at European level the detailed specifications of essential requirements. However, given the wider implications of this new, centralised and harmonised approach on EASA's responsibilities, delegations considered it more appropriate to examine this option in the context of the overall revision of the EASA Regulation in 2015.

c) **Route charges**

In both SES II + proposals the Commission put forward amendments to add route charges as a source of financing for the Agency's increasing ATM related activities. In the SES context, the underlying reason for this change was the migration of Eurocontrol expertise for the fulfilment of tasks which since the adoption of the SES II Regulations have been transferred to EASA. However, given that the Commission could not at this stage provide assurances to delegations on the practical modalities of such a transfer from the Eurocontrol institutional framework, the decision on this additional source of funding has been postponed until the discussions on the overall funding structure of EASA take place under the revision of the EASA Regulation in 2015.

d) **Delegated and implementing acts**

The general approach updates the provisions on delegated and implementing acts only in two instances, namely on essential requirements (Article 8b), and on fees and charges (Article 64). The inclusion of the corresponding standard Articles 65a - 65c reflect these changes, while on the rest of the provisions the intention is to maintain the continued application of old comitology rules as currently set out in Article 65 of Regulation (EC) 216/2008.

**V. WORK WITHIN THE EUROPEAN PARLIAMENT**

The European Parliament appointed David-Maria SASSOLI as rapporteur to the file and adopted its position at first reading on 12 March 2014.

**VI. CONCLUSION**

In the light of the above, at its meeting on 3 December 2014, the Council is invited to:

- examine the text as set out in Annex I to this report and adopt a general approach;
- take note of and to include in the Council minutes the statement to be submitted by the Commission.

**Article 1**

**Scope**

1. This Regulation shall apply to:

- (a) the design, production, maintenance and operation of aeronautical products, parts and appliances, as well as personnel and organisations involved in the design, production and maintenance of such products, parts and appliances;
- (b) personnel and organisations involved in the operation of aircraft;
- (c) the design, maintenance and operation of aerodromes, as well as personnel and organisations involved therein and, without prejudice to Community and national legislation on environment and land-use planning, the safeguarding of surroundings of aerodromes;
- (d) the design, production and maintenance of aerodrome equipment, as well as personnel and organisations involved therein;
- (e) the design, production and maintenance of systems and constituents for air traffic management and air navigation services (ATM/ANS), as well as personnel and organisations involved therein;
- (f) ATM/ANS, as well as personnel and organisations involved therein.

2. This Regulation shall not apply to:

- (a) products, parts, appliances, personnel and organisations referred to in paragraphs 1(a) and 1(b) and while carrying out military, customs, police, search and rescue, firefighting, coastguard or similar activities or services. The Member States shall undertake to ensure that such activities or services have due regard as far as practicable to the objectives of this Regulation;
- (b) aerodromes or part thereof, as well as equipment, personnel and organisations, referred to in paragraph 1(c) and (d), that are controlled and operated by the military;
- (c) ATM/ANS, including systems and constituents, personnel and organisations, referred to in paragraph 1(e) and (f), that are provided or made available by the military. The Member States shall undertake to ensure that aircraft referred to in point (a) of this paragraph are separated, where appropriate, from other aircraft.

3. Without prejudice to Article 8 of the Regulation (EC) No (XXXX/XXX) on the implementation of the Single European Sky (recast), Member States shall, as far as practicable, ensure that any military facilities open to public use referred to in paragraph 2(b) or services provided by military personnel to the public referred to in paragraph 2(c), offer a level of safety that is at least as effective as that required by the essential requirements as defined in Annexes Va and Vb.



## Article 2

### Objectives

1. The principal objective of this Regulation is to establish and maintain a high uniform level of civil aviation safety in Europe.
2. Additional objectives are, in the fields covered by this Regulation, as follows:
  - (a) to ensure a high uniform level of environmental protection;
  - (b) to facilitate the free movement of goods, persons and services;
  - (c) to promote cost-efficiency in the regulatory and certification processes and to avoid duplication at national and European level;
  - (d) to assist Member States in fulfilling their obligations under the Chicago Convention, by providing a basis for a common interpretation and uniform and implementation of its provisions, and by ensuring that its provisions, in particular ICAO standards, are duly and timely taken into account in this Regulation and in the rules drawn up for its implementation;
  - (e) to promote Community views regarding civil aviation safety standards and rules throughout the world by establishing appropriate cooperation with third countries and international organisations;
  - (f) to provide a level playing field for all actors in the internal aviation market.
  - (g) to support the development and implementation of the ATM master plan;
  - (h) to regulate civil aviation safety in a manner proportionate to the nature of each particular activity.

3. The means of achieving the objectives set out in paragraphs 1 and 2 shall be:
- (a) the preparation, adoption and uniform application of all necessary acts;
  - (b) the recognition, without additional requirements, of certificates, licences, approvals or other documents granted to products, personnel and organisations in accordance with this Regulation and its implementing rules;
  - (c) the establishment of an independent European Aviation Safety Agency (hereinafter referred to as the Agency);
  - (d) the uniform implementation of all necessary acts by the national aviation authorities and the Agency within their respective areas of responsibility.

### **Article 3**

#### **Definitions**

For the purposes of this Regulation:

- (a) ‘continuing oversight’ shall mean the tasks to be conducted to verify that the conditions under which a certificate has been granted or which a declaration covers continue to be fulfilled at any time during the period of validity of that certificate or declaration, as well as the taking of any safeguard measure;
- (b) ‘Chicago Convention’ shall mean the Convention on International Civil Aviation and its Annexes, signed in Chicago on 7 December 1944;
- (c) ‘product’ shall mean an aircraft, engine or propeller;

- (d) ‘parts and appliances’ shall mean any instrument, equipment, mechanism, part, apparatus, appurtenance, software or accessory, including communications equipment, that is used or intended to be used in operating or controlling an aircraft in flight; it shall include parts of an airframe, engine or propeller, or equipment used to manoeuvre the aircraft from the ground;
- (da) ‘ATM/ANS constituents’ shall mean any constituent as defined in Article 2(19) of Regulation (EU) XXX/XXX on the implementation of the Single European Sky (recast);
- (e) ‘certification’ shall mean any form of recognition that a product, part or appliance, organisation or person complies with the applicable requirements including the provisions of this Regulation and its implementing rules, as well as the issuance of the relevant certificate attesting such compliance;
- (ea) ‘declaration’ shall mean for the purposes of ATM/ANS, any written statement:
  - i) on the capability and means of discharging the responsibilities of flight information service providers, as referred to in Article 8b(3) of this Regulation;
  - ii) on the capability and means of discharging the responsibilities for organisations engaged in the design, manufacture or maintenance of ATM/ANS systems and constituents, as referred to in Article 8b(4) of this Regulation;
  - iii) on the conformity or suitability for use of systems and constituents issued by an organisation engaged in the design, manufacture or maintenance of ATM/ANS systems and constituents, as referred to in Article 8b(5a) of this Regulation;
  - iv) on the verification of a system to be put into operation issued by a service provider, as referred to in Article 8b(5a) of this Regulation.

- (f) ‘qualified entity’ shall mean a body which may be allocated a specific certification or oversight tasks by, and under the control and the responsibility of, the Agency or a national aviation authority;
- (g) ‘certificate’ shall mean any approval, licence or other document issued as the result of certification;
- (h) ‘operator’ shall mean any legal or natural person, operating or proposing to operate one or more aircraft or one or more aerodromes;
- (i) ‘commercial operation’ shall mean any operation of an aircraft, in return for remuneration or other valuable consideration, which is available to the public or, when not made available to the public, which is performed under a contract between an operator and a customer, where the latter has no control over the operator;
- (j) ‘complex motor-powered aircraft’ shall mean:
- i) an aeroplane:
    - with a maximum certificated take-off mass exceeding 5 700 kg, or
    - certificated for a maximum passenger seating configuration of more than nineteen, or
    - certificated for operation with a minimum crew of at least two pilots, or
    - equipped with (a) turbojet engine(s) or more than one turboprop engine, or
  - ii) a helicopter certificated:
    - for a maximum take-off mass exceeding 3 175 kg, or
    - for a maximum passenger seating configuration of more than nine, or
    - for operation with a minimum crew of at least two pilots, or
  - iii) a tilt rotor aircraft;

- (k) ‘flight simulation training device’ shall mean any type of device in which flight conditions are simulated on the ground; they include flight simulators, flight training devices, flight and navigation procedures trainers and basic instrument training devices;
- (l) ‘rating’ shall mean a statement entered on a licence, setting forth privileges, special conditions or limitations pertaining thereto;
- (m) ‘aerodrome’ shall mean a defined area (including any buildings, installations and equipment) on land or water or on a fixed, fixed offshore or floating structure intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft;
- (n) ‘aerodrome equipment’ shall mean any equipment, apparatus, appurtenance, software or accessory, that is used or intended to be used to contribute to the operation of aircraft at an aerodrome;
- (o) ‘apron’ shall mean a defined area intended to accommodate aircraft for purposes of loading or unloading passengers, mail or cargo, fuelling, parking or maintenance;
- (p) ‘apron management service’ shall mean a service provided to manage the activities and the movement of aircraft and vehicles on an apron;
- (q) ‘ATM/ANS’ shall mean the air traffic management functions or services as defined in Article 2(10) of Regulation (EC) XXX/XXX on the implementation of the Single European Sky (recast), air navigation services defined in Article 2(4) of that Regulation, including the network management functions and services referred to in Article 17 of that Regulation, and services consisting in the origination and processing of data and the formatting and delivering of data to general air traffic for the purpose of safety-critical air navigation;
- (r) ‘ATM/ANS system’ shall mean any combination of equipment and systems as defined in Article 2(33) of Regulation (EC) No [XXX/XXX] on the implementation of the Single European Sky (recast);

- (s) ‘flight information service’ shall mean a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights;
- (t) ‘general air traffic’ shall mean all movements of civil aircraft, as well as all movements of state aircraft, including military, customs and police aircraft, when these movements are carried out in conformity with the procedures of the ICAO;
- (u) ‘ATM Master Plan’ shall mean the plan endorsed by Council Decision 2009/320/EC<sup>2</sup>, in accordance with Article 1(2) of Council Regulation (EC) No 219/2007<sup>3</sup> of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR)<sup>4</sup>.

## **Article 8b**

### **ATM/ANS**

1. Provision of ATM/ANS shall comply with the essential requirements set out in Annex Vb and, as far as practicable, Annex Va.
2. ATM/ANS providers shall be required to hold a certificate. The certificate shall be issued when the provider has demonstrated its capability and means of discharging the responsibilities associated with the provider’s privileges. The privileges granted and the scope of the services provided shall be specified in the certificate.
3. By way of derogation from paragraph 2, Member States may decide that providers of flight information services shall be allowed to declare their capability and means of discharging the responsibilities associated with the services provided.

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<sup>2</sup> OJ L 95, 9.4.2009, p. 41.

<sup>3</sup> OJ L 64, 2.3.2007, p. 1.

<sup>4</sup> OJ L 64, 2.3.2007, p. 1., as amended by Council Regulations (EC) No 1361/2008 and No 721/2014 (OJ L 352, 31.12.2008 and OJ L 192, 1.7.2014).

4. The measures referred to in paragraph 6 may lay down a requirement for certification or declaration in respect of organisations engaged in the design, manufacture or maintenance of ATM/ANS systems and constituents upon which safety or interoperability are critically dependent. The certificate for those organisations shall be issued when they have demonstrated their capability and means of discharging the responsibilities associated with their privileges. The privileges granted shall be specified in the certificate.
5. The measures referred to in paragraph 6 may lay down a requirement for certification in respect of ATM/ANS systems and constituents, upon which safety or interoperability are critically dependent. The certificate for those systems and constituents shall be issued when the applicant has shown that the systems and constituents comply with the detailed specifications established to ensure compliance with the essential requirements referred to in paragraph 1.
- 5a. The measures referred to in paragraph 6 may lay down a requirement for declaration by the ATM/ANS provider referred to in Article 3(ea) (iv) or by the organisation engaged in the design, manufacture or maintenance of ATM/ANS systems and constituents referred to in Article 3(ea) (iii), in respect of ATM/ANS systems and constituents, upon which safety or interoperability are critically dependent.
6. The measures necessary for the implementation of this Article shall be adopted in accordance with the examination procedure referred to in Article 65a(32). Those measures shall specify in particular:
  - (a) the conditions for the provision of ATM/ANS in compliance with the essential requirements set out in Annex Vb and, if applicable, in Annex Va;
  - (b) the conditions for establishing and notifying to an applicant the detailed specifications applicable to ATM/ANS systems and constituents;

- (c) the conditions for issuing, maintaining, amending, suspending or revoking the certificates referred to in paragraphs 2, and where appropriate paragraph 5;
- (d) the responsibilities of the holders of certificates;
- (e) where appropriate, the conditions and procedures for the declaration by, and for the oversight of service providers and organisations engaged in the design, manufacture or maintenance of ATM/ANS systems and constituents referred to in paragraphs 3 to 5a;
- (f) the conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety;
- (g) conditions for issuing and disseminating mandatory information in order to ensure the safety in the provision of ATM/ANS;
- (h) *[deleted]*
- (i) operating rules and ATM/ANS constituents required for the use of airspace.

As regards the provision of ATM/ANS, the Commission shall be empowered, by means of delegated acts in accordance with Article 65b, to amend or supplement Annex Vb, where necessary for reasons of technical, operational or scientific developments or safety evidence related to the ATM/ANS, in order to, and to the extent needed to, achieve the objectives laid down in Article 2.



7. The measures referred to in paragraph 6 shall:
- (a) reflect the state of the art and the best practices in the field of ATM/ANS, and be consistent with the ATM Master Plan, where appropriate;
  - (b) be proportionate to the type and complexity of the services provided;
  - (c) take into account worldwide ATM/ANS experience, and scientific and technical progress;
  - (d) be developed using as far as practicable the relevant provisions of Regulation (EC) No [XXX/XXX] on the implementation of the Single European Sky (recast) and provide for transitional mechanisms to ensure the continuity of certificates already granted under that Regulation; initially they shall include the safety provisions of those Regulations and, where appropriate, in case of future amendments, take into account latest scientific and technical progress;
  - (e) allow for immediate reaction to established causes of accidents and serious incidents.

## **Article 13**

### **Qualified entities**

When allocating a specific certification or oversight task to a qualified entity, the Agency or the national aviation authority concerned shall ensure that such entity comply with the criteria laid down in Annex V.

Qualified entities shall not issue certificates or authorisations, or receive declarations.

**CHAPTER III**  
**THE EUROPEAN AVIATION SAFETY AGENCY**

**SECTION I**  
**Tasks**

**Article 17**

**Establishment and functions of the Agency**

1. For the purpose of the implementation of this Regulation, a European Aviation Safety Agency shall be established.
2. For the purposes of ensuring the proper functioning and development of civil aviation safety, the Agency shall:
  - (a) undertake any task and formulate opinions on all matters covered by Article 1(1);
  - (b) assist the Commission by preparing measures to be taken for the implementation of this Regulation. Where these comprise technical rules and in particular rules relating to construction, design and operational aspects, the Commission may not change their content without prior coordination with the Agency. The Agency shall also provide the Commission with the necessary technical, scientific and administrative support to carry out its tasks;
  - (c) take the necessary measures within the powers conferred on it by this Regulation or other Union legislation;
  - (d) conduct inspections and investigations as necessary to fulfil its tasks;
  - (e) in its fields of competence, carry out, on behalf of Member States, functions and tasks ascribed to them by applicable international conventions, in particular the Chicago Convention.
  - (f) support the Member States' competent authorities in carrying out their tasks by providing a forum for exchanges of information and expertise made available by Member States on a voluntary basis.

## Article 22a

### ATM/ANS

With regard to ATM/ANS referred to in Article 4(3c) the Agency shall:

- (a) conduct, itself or through national aviation authorities or qualified entities, inspections, and audits of the organisations it certifies;
- (b) issue and renew certificates of organisations located outside the territory subject to the provisions of the Treaty, responsible for providing services in the airspace of the territory to which the Treaty applies;
- (c) issue and renew certificates of organisations providing pan-European services;
- (ca) issue and renew certificates of or receive declarations by organisations engaged in the design, manufacture or maintenance of pan-European ATM/ANS systems and constituents;
- (cb) receive declarations by organisations it certifies, as referred to in points (b) and (c) in respect of ATM/ANS systems;
- (d) amend, suspend or revoke the relevant certificate, when the conditions according to which it was issued are no longer fulfilled or if the holder of the certificate fails to fulfil the obligations imposed on it by this Regulation or by its implementing rules.

If requested by the Member States concerned, the Agency shall also perform the tasks specified in points (c) to (d) in respect of other organisations.

## SECTION III

### Working methods

#### Article 52

#### **Procedures for the development of opinions, certification specifications and guidance material**

1. As soon as possible after the entry into force of this Regulation, the Management Board shall establish transparent procedures for issuing opinions, certification specifications, acceptable means of compliance and guidance material referred to in Article 18(a) and(c).

Those procedures shall:

- (a) draw on expertise made available by the civil, and where appropriate, military aviation regulatory authorities of Member States;
  - (b) whenever necessary, involve experts from relevant interested parties, including the military, and draw on expertise from Eurocontrol, the relevant European standardisation bodies, or other specialised bodies;
  - (c) ensure that the Agency publishes documents and consults widely with interested parties, according to a timetable and a procedure which includes an obligation on the Agency to make a written response to the consultation process.
2. When the Agency, pursuant to Article 19, develops opinions, certification specifications, acceptable means of compliance and guidance material to be applied by Member States, it shall establish a procedure for consulting the Member States. To this effect, it may create a working group in which each Member State is entitled to designate an expert.
3. Measures referred to in Article 18(a) and (c) and the procedures established pursuant to paragraph 1 of this Article shall be published in an official publication of the Agency.
4. Special procedures shall be established to address immediate action to be taken by the Agency to react to a safety problem and to inform the relevant interested parties of the action they are to take.

**SECTION IV**  
**Financial requirements**

**Article 59**

**Budget**

1. The revenues of the Agency shall consist of:
  - (a) a contribution from the Union;
  - (b) a contribution from any European third country with which the Union has concluded agreements as referred to in Article 66;
  - (c) the fees paid by applicants for, and holders of, certificates and approvals issued by the Agency;
  - (d) charges for publications, training and any other services provided by the Agency; and
  - (e) any voluntary financial contribution from Member States, third countries or other entities, provided such a contribution does not compromise the independence and impartiality of the Agency;
  - (f) grants from Union bodies for the performance of its tasks pursuant to Article 24 of Regulation (EC) No (XXXX/XXX) on the implementation of the Single European Sky (recast).
  
2. The expenditure of the Agency shall include staff, administrative, infrastructure and operational expenses.

3. Revenue and expenditure shall be in balance.
4. Regulatory budgets and the fees set and collected for certification activities shall be dealt with separately in the Agency's budget.
5. Each year the Management Board, on the basis of a draft statement of estimates of revenue and expenditure, shall produce a statement of estimates of revenue and expenditure of the Agency for the following financial year.
6. The statement of estimates referred to in paragraph 4, which shall include a draft establishment plan together with the provisional work programme, shall by 31 March at the latest be forwarded by the Management Board to the Commission and to the states with which the Community has concluded agreements as referred to in Article 66.
7. The statement of estimates shall be forwarded by the Commission to the budgetary authority together with the preliminary draft general budget of the European Union.
8. On the basis of the statement of estimates, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.
9. The budgetary authority shall authorise appropriations for the subsidy to the Agency. The budgetary authority shall adopt the establishment plan of the Agency.
10. The budget shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

11. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of the budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project.

## **Article 64**

### **Fees and charges**

1. Fees and charges shall be levied for the following activities:
  - (a) the issuing and renewal of certificates, as well as the related continuing oversight functions;
  - (b) the provision of services; they shall reflect the actual cost of each individual provision;
  - (c) the processing of appeals;
  - (d) the registration of declarations as well as the related continuing oversight functions in the field of ATM/ANS.

All fees and charges shall be expressed, and payable, in euro.

2. The amount of the fees and charges shall be fixed at such a level as to ensure that the revenue in respect thereof is in principle sufficient to cover the full cost of the services delivered. All expenditures of the Agency attributed to staff involved in activities referred to in paragraph 3, including the employer's pro-rata contribution to the pension scheme, shall be in particular reflected in this cost. The fees and charges, including those collected in 2007, shall be assigned revenues for the Agency.

3. The measures necessary for the implementation of this Article shall be adopted in accordance with the examination procedure referred to in Article 65a(32). These measures shall specify in particular the activities for which fees and charges pursuant to Article 59(1)(c) (d) and (f) are due, the amount of the fees and charges for each activity and the way in which they are to be paid. The Management Board shall be consulted on the draft implementing measures.

### **Article 65a**

#### **Committee**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.



## Article 65b

### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 8b(6), last subparagraph, for a period of five years from [*the date of the publication of this Regulation*]. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 8b(6) last subparagraph may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. It is of particular importance that the Commission follow its usual practice and carry out consultations with experts, including Member States' experts, before adopting those delegated acts. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 8b(6) last subparagraph shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

## Article 65c

### Urgency procedure

[...]

## Article [x]

### Entry into force and application

**This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.<sup>5</sup>**

**This Regulation shall be binding in its entirety and directly applicable in all Member States.**

**Done at Strasbourg,**

**For the European Parliament**

**For the Council**

**The President**

**The President**

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<sup>5</sup> For the OJ: *'This Regulation shall be published together with the EASA Regulation (EC) [No XXXXX.] This will ensure that both regulations enter into force at the same time.'*

## ANNEX V

### *CRITERIA FOR QUALIFIED ENTITIES REFERRED TO IN ARTICLE 13 ('QUALIFIED ENTITY' OR 'ENTITY')*

1. The entity, its Director and the staff responsible for carrying out the checks, may not become involved, either directly or as authorised representatives, in the design, manufacture, marketing or maintenance of the products, parts, appliances, constituents or systems in their operations, service provision or use. This does not exclude the possibility of an exchange of technical information between the involved organisations and the qualified entity.
2. The entity and the staff responsible for the certification and oversight tasks, inspections and surveys must carry out their duties with the greatest possible professional integrity and the greatest possible technical competence and must be free of any pressure and incentive, in particular of a financial type, which could affect their judgment or the results of their certification and oversight tasks, investigations, inspections and surveys, in particular from persons or groups of persons affected by these results.
3. The entity must employ staff and possess the means required to perform adequately the technical and administrative tasks linked with the certification and oversight process, inspections and surveys; it should also have access to the equipment needed for exceptional checks.
4. The qualified entity and its staff responsible for investigation must have:
  - sound technical and vocational training,
  - satisfactory knowledge of the requirements of the certification tasks, inspections and surveys they carry out and adequate experience of such processes,
  - the ability required to draw up the declarations, records and reports to demonstrate that the investigations, inspections and surveys have been carried out;

- the ability to document extensive experience in assessing public and private entities.
5. The impartiality of the investigation, inspections and survey staff must be guaranteed. Their remuneration must not depend on the number of investigations, inspections and surveys carried out or on their results of.
  6. The entity must take out liability insurance unless its liability is assumed by one Member State in accordance with its national law or the Member State itself is responsible for the inspections.
  7. The staff of the entity must observe professional secrecy with regard to all information acquired in carrying out their tasks under this Regulation.

## ANNEX Vb

### *ESSENTIAL REQUIREMENTS FOR ATM/ANS AND AIR TRAFFIC CONTROLLERS*

#### **1. Use of the airspace**

- (a) All aircraft, excluding those engaged in the activities referred to in Article 1(2)(a), in all phases of flight or on the movement area of an aerodrome, shall be operated in accordance with common general operating rules and any applicable procedure specified for use of that airspace.
- (b) All aircraft, excluding those engaged in the activities referred to in Article 1(2)(a), shall be equipped with the required constituents and operated accordingly. Constituents used in the ATM/ANS system shall also comply with the requirements in point 3.

#### **2. Services**

- (a) *Aeronautical information and data for airspace users for the purpose of air navigation*
  - i) The data used as a source for aeronautical information shall be of sufficient quality, complete, current and provided in a timely manner.
  - ii) Aeronautical information shall be accurate, complete, current, unambiguous and be of adequate integrity in a suitable format for users.
  - iii) The dissemination of such aeronautical information to airspace users shall be timely and use sufficiently reliable and expeditious means of communication protected from interference and corruption.
- (b) *Meteorological information*
  - i) The data used as a source for aeronautical meteorological information shall be of sufficient quality, complete and current.

- ii) To the extent possible, aeronautical meteorological information shall be precise, complete, current, be of adequate integrity and unambiguous in order to meet the needs of airspace users.
- iii) The dissemination of such aeronautical meteorological information to airspace users shall be timely and use sufficiently reliable and expeditious means of communication protected from interference and corruption.

(c) *Air traffic services*

- i) The data used as a source for the provision of air traffic services shall be correct, complete and current.
- ii) Air traffic services shall be sufficiently precise, complete, current, and unambiguous to meet the safety needs of users.
- iii) Automated tools providing information or advice to users shall be properly designed, manufactured and maintained to ensure that they are fit for their intended purpose.
- iv) Air traffic control services and related processes shall provide for adequate separation between aircraft and, on the aerodrome manoeuvring area prevent collisions between aircraft and obstructions and, where appropriate, assist in protection from other airborne hazards and shall ensure prompt and timely coordination with all relevant users and adjacent volumes of airspace.
- v) Communication between air traffic services and aircraft and between relevant air traffic services units shall be timely, clear, correct and unambiguous, protected from interference and commonly understood and, if applicable, acknowledged by all actors involved.

- vi) Means shall be in place to detect possible emergencies and, when appropriate, to initiate effective search and rescue action. Such means shall, as a minimum, comprise appropriate alerting mechanisms, coordination measures and procedures, means and personnel to cover the area of responsibility efficiently.

*(d) Communication services*

Communication services shall achieve and maintain sufficient performance with regard to their availability, integrity, continuity and timeliness. They shall be expeditious and protected from corruption.

*(e) Navigation service*

Navigation services shall achieve and maintain a sufficient level of performance with regard to guidance, positioning and, when provided, timing information. The performance criteria include accuracy, integrity, availability and continuity of the service.

*(f) Surveillance service*

Surveillance services shall determine the respective position of aircraft in the air and of other aircraft and ground vehicles on the aerodrome surface, with sufficient performance with regard to their accuracy, integrity, continuity and probability of detection.

*(g) Air traffic flow management*

The tactical management of air traffic flows at Union level shall use and provide sufficiently precise and current information of the volume and nature of the planned air traffic affecting service provision and shall coordinate and negotiate re-routing or delaying traffic flows in order to reduce the risk of overloading situations occurring in the air or at the aerodromes. Flow management shall be performed with a view to optimising available capacity in the use of airspace and enhancing air traffic flow management processes. It shall be based on safety, transparency and efficiency, ensuring that capacity is provided in a flexible and timely manner, consistent with the European Air Navigation Plan.

The measures referred to in Article 8b(6), concerning flow management shall support operational decisions by air navigation service providers, airport operators and airspace users and shall cover the following areas:

- (a) flight planning;
- (b) use of available airspace capacity during all phases of flight, including en route slot assignment; and
- (c) use of routings by general air traffic, including:
  - the creation of a single publication for route and traffic orientation,
  - options for diversion of general air traffic from congested areas, and
  - priority rules regarding access to airspace for general air traffic, particularly during periods of congestion and crisis,
- (d) the consistency between flight plans and airport slots and the necessary coordination with adjacent regions, as appropriate.

*(h) Airspace management*

The designation of specific volumes of airspace for a certain use shall be monitored, coordinated and promulgated in a timely manner in order to reduce the risk of loss of separation between aircraft in all circumstances. Taking into account the organisation of military activities and related aspects under the responsibility of the Member States, airspace management shall also support the uniform application of the concept of the flexible use of airspace as described by the ICAO and as implemented under Regulation (EC) No (XXXX/XXX) on the implementation of the Single European Sky (recast), in order to facilitate airspace management and air traffic management in the context of the common transport policy.



(i) *Airspace design*

Airspace structures and flight procedures shall be properly designed, surveyed and validated before they can be deployed and used by aircraft.

**3. *Systems and constituents***

(a) *General*

ATM/ANS systems and constituents providing related information to and from the aircraft and on the ground shall be properly designed, manufactured, installed, maintained and operated to ensure that they are fit for their intended purpose.

The systems and procedures shall include in particular those required to support the following functions and services:

1. Airspace management.
2. Air traffic flow management.
3. Air traffic services, in particular flight data processing systems, surveillance data processing systems and human-machine interface systems.
4. Communications including ground-to-ground, air-to-ground and air-to-air communications.
5. Navigation.
6. Surveillance.
7. Aeronautical information services.
8. The use of meteorological information.

*(b) System and constituent integrity, performance and reliability*

The integrity and safety-related performance of systems and constituents whether on aircraft, on the ground or in space, shall be fit for their intended purpose. They shall meet the required level of operational performance for all their foreseeable operating conditions and for their whole operational life.

ATM/ANS systems and their constituents shall be designed, built, maintained and operated using the appropriate and validated procedures, in such a way as to ensure the seamless operation of the European air traffic management network at all times and for all phases of flight. Seamless operation can be expressed, in particular, in terms of information-sharing, including the relevant operational status information, common understanding of information, comparable processing performances and the associated procedures enabling common operational performances agreed for the whole or parts of the European air traffic management network (EATMN).

The EATMN, its systems and their constituents shall support, on a coordinated basis, new agreed and validated concepts of operation that improve the quality, sustainability and effectiveness of air navigation services, in particular in terms of safety and capacity.

The EATMN, its systems and their constituents shall support the progressive implementation of civil/military coordination, to the extent necessary for effective airspace and air traffic flow management, and the safe and efficient use of airspace by all users, through the application of the concept of the flexible use of airspace.

To achieve these objectives, the EATMN, its systems and their constituents shall support the timely sharing of correct and consistent information covering all phases of flight, between civil and military parties, without prejudice to security or defence policy interests, including requirements on confidentiality.

(c) *Design of systems and constituents*

- i) Systems and constituents shall be designed to meet applicable safety requirements.
- ii) Systems and constituents, considered collectively, separately and in relation to each other, shall be designed in such a way that an inverse relationship exists between the probability that any failure can result in a total system failure and the severity of its effect on the safety of services.
- iii) Systems and constituents, considered individually and in combination with each other, shall be designed taking into account limitations related to human capabilities and performance.
- iv) Systems and constituents shall be designed in a manner that protects them from unintended harmful interactions with external elements.
- v) Information needed for manufacturing installation, operation and maintenance of the systems and constituents as well as information concerning unsafe conditions shall be provided to personnel in a clear, consistent and unambiguous manner.

(d) *Continuing level of service*

Safety levels of systems and constituents shall be maintained during service and any modifications to service.

#### **4. *Qualification of air traffic controllers***

(a) *General*

A person undertaking training as an air traffic controller or as a student air traffic controller, shall be sufficiently mature educationally, physically and mentally to acquire, retain and demonstrate the relevant theoretical knowledge and practical skill.

(b) *Theoretical knowledge*

- i) An air traffic controller shall acquire and maintain a level of knowledge appropriate to the functions exercised and proportionate to the risks associated with the type of service.
- ii) Acquisition and retention of theoretical knowledge shall be demonstrated by continuous assessment during training, or by appropriate examinations.
- iii) An appropriate level of theoretical knowledge shall be maintained. Compliance shall be demonstrated by regular assessments or examinations. The frequency of examinations shall be proportionate to the level of risk associated with the type of service.

(c) *Practical skill*

- i) An air traffic controller shall acquire and maintain the practical skills appropriate to exercise his/her functions. Such skills shall be proportionate to the risks associated with the type of service and shall cover at least, if appropriate to the functions exercised, the following items:
  - i. operational procedures;
  - ii. task specific aspects;
  - iii. abnormal and emergency situations; and
  - iv. human factors.
- ii) An air traffic controller shall demonstrate the ability to perform the associated procedures and tasks with a level of competence appropriate to the functions exercised.
- iii) A satisfactory level of competence in practical skill shall be maintained. Compliance shall be verified by regular assessments. The frequency of these assessments shall be proportionate to the complexity and the level of risk associated with the type of service and the tasks performed.

(d) *Language proficiency*

- i) An air traffic controller shall demonstrate proficiency to speak and understand English to the extent he/she is able to communicate effectively in voice-only (telephone/radiotelephone) and in face-to-face situations on concrete and work-related topics, including in emergency situations.
- ii) Whenever necessary in a defined volume of airspace for ATS service provision purposes, an air traffic controller shall also have proficiency to speak and understand the national language(s) to the extent described above.

(e) *Synthetic training devices (STD)*

When an STD is used for practical training on situational awareness and human factors or to demonstrate that skills are acquired or maintained, it shall have a level of performance that allows adequate simulation of the working environment and operational situations appropriate to the training provided.

(f) *Training course*

- i) Training shall be given by a training course, which may comprise theoretical and practical instruction, including training on an STD, if applicable.
- ii) A course shall be defined and approved for each type of training.

(g) *Instructors*

- i) Theoretical instruction shall be given by appropriately qualified instructors. They shall:
  - i. have appropriate knowledge in the field where instruction is to be given; and
  - ii. have demonstrated the ability to use appropriate instructional techniques.

- ii) Instruction on practical skills shall be given by appropriately qualified instructors, who have the following qualifications:
  - i. meet the theoretical knowledge and the experience requirements appropriate to the instruction being given;
  - ii. have demonstrated the ability to instruct and to use appropriate instructional techniques;
  - iii. have practised instructional techniques in those procedures in which it is intended to provide instruction; and
  - iv. receive regular refresher training to ensure that the instructional competences are maintained.
- iii) Instructors on practical skills shall also be or have been entitled to act as an air traffic controller.

*(h) Assessors*

- i) Persons responsible for assessing the skill of air traffic controllers shall:
  - i. have demonstrated the ability to assess the performance of, and conduct tests and checks on air traffic controllers; and
  - ii. receive regular refresher training to ensure that the assessment standards are maintained up to date.
- ii) Assessors on practical skills shall also be or have been entitled to act as an air traffic controller in those areas in which assessment is to be made.

(i) *Medical fitness of an air traffic controller*

i) Medical criteria

- i. All air traffic controllers shall periodically demonstrate medical fitness to satisfactorily execute their functions. Compliance shall be shown by appropriate assessment taking into account the possible mental and physical degradation due to age;
- ii. Demonstration of medical fitness, comprising physical and mental fitness, shall include the demonstrated absence of any disease or disability, which makes the person providing an air traffic control (ATC) service unable:
  - to execute properly the tasks necessary to provide an ATC service,
  - to perform assigned duties at any time, or
  - to perceive correctly his/her environment.

- ii) Where medical fitness cannot be fully demonstrated, mitigation measures that provide equivalent safety may be implemented.

**5. *Service providers and training organisations***

(a) *Service provision shall not be undertaken unless the following conditions are met:*

- i) the service provider shall have directly or indirectly through contracts the means necessary for the scale and scope of the service. These means shall comprise but are not limited to the following: systems, facilities, including power supply, management structure, personnel, equipment and its maintenance, documentation of tasks, responsibilities and procedures, access to relevant data and record-keeping;
- ii) the service provider shall develop and keep up-to-date management and operations manuals relating to the provision of its services and operate in accordance with those manuals. Such manuals shall contain all necessary instructions, information and procedures for the operations, the management system and for operations personnel to perform their duties;

- iii) the service provider shall implement and maintain a risk-based management system to ensure compliance with the essential requirements in this Annex and aim for continuous proactive improvement of this system;
- iv) the service provider shall use only suitably qualified and trained personnel and implement and maintain training and checking programmes for the personnel;
- v) the service provider shall establish formal interfaces with all stakeholders which may influence directly the safety of their services to ensure compliance with these essential requirements;
- vi) the service provider shall establish and implement a contingency plan covering emergency and abnormal situations that may occur in relation to its services;
- vii) the service provider shall establish and maintain an accident and incident prevention and safety programme including an occurrence reporting and analysis programme, which shall be used by the management system in order to contribute to the aim of continuous improvement of safety; and
- viii) the service provider shall make arrangements to verify that the safety and interoperability requirements of any system and constituent they operate are met at any time.

(b) *ATC service provision shall not be undertaken unless the following conditions are met:*

- i) the prevention of fatigue of personnel providing an ATC service shall be managed through a rostering system. Such a rostering system needs to address duty periods, duty time and adapted rest periods. Limitations established within the rostering system shall take into account relevant factors contributing to fatigue such as, in particular, sleep deprivation, disruption of circadian cycles, night hours, cumulative duty time for given periods of time and also the sharing of allocated tasks between personnel;
- ii) the prevention of stress of personnel providing an ATC service shall be managed through education and prevention programmes;



- iii) the ATC service provider shall have in place procedures to verify that the cognitive judgement of personnel providing ATC services is not impaired or their medical fitness insufficient;
  - iv) the ATC service provider shall take into account operational and technical constraints as well as human factor principles in its planning and operations.
- (c) *Communication, navigation and/or surveillance service provision shall not be undertaken unless the following condition is met:*

The service provider shall keep relevant airspace users and ATS units informed on a timely basis of the operational status (and changes thereof) of their services provided for ATS purposes.

(d) *Training organisations*

A training organisation providing training for personnel providing an ATC service shall meet the following requirements:

- i) have all the means necessary for the scope of responsibilities associated with their activity. These means comprise, but are not limited to, the following: facilities, personnel, equipment, methodology, documentation of tasks, responsibilities and procedures, access to relevant data and record-keeping;
- ii) implement and maintain a management system relating to safety and the standard of training, and aim for continuous improvement of this system; and
- iii) establish arrangements with other relevant organisations, as necessary, to ensure continuing compliance with these essential requirements.