



Council of the
European Union

Brussels, 14 March 2024
(OR. en)

7770/24

AVIATION 64
DELACT 59

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	12 March 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.:	C(2024) 1490 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 12.3.2024 supplementing Regulation (EU) 2018/1139 of the European Parliament and of the Council by laying down the conditions and procedures for the accreditation by the European Union Aviation Safety Agency of qualified entities

Delegations will find attached document C(2024) 1490 final.

Encl.: C(2024) 1490 final



Brussels, 12.3.2024
C(2024) 1490 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 12.3.2024

supplementing Regulation (EU) 2018/1139 of the European Parliament and of the Council by laying down the conditions and procedures for the accreditation by the European Union Aviation Safety Agency of qualified entities

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 69(1) of Regulation (EU) 2018/1139 provides the possibility for the European Union Aviation Safety Agency (“The Agency”) to allocate its tasks related to certification and oversight to qualified entities that have been accredited in accordance with the delegated acts referred to in point (f) of Article 62(13). Said Article empowers the Commission to adopt delegated acts setting out conditions and procedures for the accreditation of qualified entities by the Agency.

Currently, there are two qualified entities active in the initial airworthiness field which were accredited by the Agency in accordance with the previous Regulation (EU) No 216/2008. The Agency now intends to make use of the direct mechanism of accreditation of qualified entities set out in Article 69 of Regulation (EU) 2018/1139. However, Article 62(13)(f) of the Regulation requires the adoption of a Commission delegated act to empower the Agency to accredit new qualified entities.

The main objective of this initiative is to set out conditions and procedures under which the Agency should accredit qualified entities for the performance of tasks under Regulation (EU) 2018/1139.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with Article 128(4) of Regulation (EU) 2018/1139, before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. The draft delegated act was presented to the Commission Expert group on aviation safety, which includes representatives from the Member States, at its meeting on 18 October 2023.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 62(13)(f) of Regulation (EU) 2018/1139 empowers the Commission to adopt delegated acts laying down detailed rules concerning the conditions and procedures for the accreditation by the Agency of a qualified entity for the purpose of Article 69 of that Regulation.

COMMISSION DELEGATED REGULATION (EU) .../...

of 12.3.2024

supplementing Regulation (EU) 2018/1139 of the European Parliament and of the Council by laying down the conditions and procedures for the accreditation by the European Union Aviation Safety Agency of qualified entities

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 ⁽¹⁾, and in particular Article 62(13), point (f), thereof,

Whereas:

- (1) Article 69 of Regulation (EU) 2018/1139 allows the European Union Aviation Safety Agency ('the Agency') and the national competent authorities to allocate their tasks related to certification and oversight to qualified entities that have been accredited in accordance with the delegated acts referred to in point (f) of Article 62(13) or the implementing acts referred to in point (e) of the first subparagraph of Article 62(14) as being compliant with the criteria set out in Annex VI to that Regulation.
- (2) The Agency should only allocate certification and oversight tasks to qualified entities that are able to execute such tasks. Therefore, the Agency should establish and maintain a comprehensive accreditation system in order to ensure the compliance of qualified entities with the requirements of Annex VI to Regulation (EU) 2018/1139.
- (3) This Regulation should provide for a procedure by which the Agency may accredit qualified entities to ensure that they are able to perform their tasks in a continuous manner. In order to ensure effective cooperation between the Agency and the national competent authorities, the Agency should be entitled to require from the national competent authority the relevant accreditation reports of the qualified entities.
- (4) When conducting certification and oversight tasks on behalf of the Agency, the accredited qualified entities are exercising public authority tasks. These tasks are not services offered by an economic operator under a public contract and therefore they do not fall under Regulation (EU) No 2018/1046². Therefore, to ensure transparent, fair

⁽¹⁾ OJ L 212, 22.8.2018, p. 1.

⁽²⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012. OJ L 193, 30.7.2018, p. 1–222

and non-discriminatory allocation of tasks to qualified entities the Agency should establish allocation criteria as the basis upon which written agreements with such entities shall be concluded.

- (5) In order to avoid a possible disruption in the performance of allocated tasks, this Regulation should also specify the conditions under which an accredited qualified entity may continue to perform its task when a change in its organisation, procedures and personnel likely to affect its accreditation status occurs.
- (6) The Agency should ensure the continued oversight of accredited qualified entities in order to ensure their continuous compliance with Annex VI to Regulation (EU) 2018/1139.

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down:
 - (a) rules and procedures for the accreditation of qualified entities by the Agency;
 - (b) the conditions under which the Agency may allocate certification or oversight tasks to qualified entities.
2. This Regulation covers all domains in which the Agency may accredit qualified entities acting as a competent authority in accordance with Article 62(4), second subparagraph of Regulation (EU) 2018/1139.

Article 2

Accreditation system for qualified entities

1. The Agency shall establish and maintain a system for the accreditation of qualified entities. That accreditation system shall include the procedures regulating all of the following:
 - (a) initial accreditation of qualified entities;
 - (b) continued oversight and assessment of compliance of accredited qualified entities;
 - (c) amendment, suspension, limitation and revocation of the accreditation;
 - (d) a dispute resolution mechanism which shall as a minimum cover Agency's decisions referred to in Article 3(5) and Article 6(3) of this Regulation.

The accreditation system and the results of the initial accreditation and of the continued oversight and assessment of accredited qualified entities shall be documented and held by the Agency.

2. Where a national competent authority has already accredited a qualified entity in accordance with an implementing act adopted on the basis of Article 62(14), point (e) of Regulation (EU) 2018/1139, the Agency may require the national competent authority which issued the accreditation to provide the relevant accreditation reports to the Agency.
3. Where the Agency and one or more national competent authorities intend to jointly accredit an interested entity, they shall conclude an agreement on the respective roles

and responsibilities about the procedures of the accreditation system referred to in point 1 of this Article.

Article 3

Procedure for accreditation of qualified entities

1. Where the Agency intends to have recourse to qualified entities, it shall publish on its website a notice inviting the interested entities to submit applications for accreditation.

That notice shall specify in particular:

- (a) the categories of certification and oversight tasks which the Agency intends to carry out through qualified entities;
 - (b) whether the Agency intends to include in the scope of accreditation the privilege to issue, renew, amend, limit, suspend and revoke certificates or to receive declarations on behalf of the Agency;
 - (c) the documents and information that the applicants should submit and the deadline for the applications.
2. The Agency shall assess the application for accreditation submitted by the applicant having regard to the criteria set out in paragraph 3.
 3. The Agency shall accredit and issue an accreditation certificate to an applicant if, following the assessment referred to in paragraph 2, it concludes that:
 - (a) the applicant complies with the essential requirements laid down in Annex VI of Regulation (EU) 2018/1139;
 - (b) the competence, expertise and procedures of the applicant are at the level required for the scope of accreditation both on the organisation level and regarding the experts for the required technical domain.
 4. The accreditation granted by the Agency shall set out in detail the scope of the tasks, the privileges granted and any related conditions.
 5. Where the applicant does not meet the conditions for accreditation set out in paragraph 3 of this Article, the Agency shall inform that entity accordingly and justify its refusal to grant the accreditation.

Article 4

Allocation of tasks to accredited qualified entities

1. The Agency shall develop fair and transparent criteria for allocating tasks to qualified entities accredited in accordance with Article 3. The Agency shall communicate the criteria for the allocation of tasks to all qualified entities.
2. The following shall be taken into account when developing the allocation criteria referred to in paragraph 1:
 - (a) the scope of the tasks;
 - (b) qualification and experience in the subject field of activity, including the technical, personal, organisational and procedural prerequisites to carry out the tasks to be allocated;

- (c) availability and ability of the qualified entity to perform the tasks in the required time frame and at the required technical, quality and professional level;
 - (d) interface to the natural or legal person subject to Regulation (EU) 2018/1139, in particular, proximity and ability and competence to efficiently communicate with the latter;
 - (e) cost-efficiency;
3. When allocating tasks to the qualified entities, the Agency shall enter into a contract in writing, which shall stipulate as a minimum:
- (a) the tasks to be performed;
 - (b) the declaration, reports, and records to be provided by the qualified entity;
 - (c) the technical conditions to be met by the qualified entity when performing the allocated tasks;
 - (d) the related liability coverage;
 - (e) the protection given to the information acquired by the qualified entity when carrying out the allocated tasks;
 - (f) the remuneration of the qualified entity.

The Agency shall assign the performance of the tasks, including the technical management functions, to the qualified entity in the form of a task order that defines the detailed scope of the task to be performed.

4. When allocating a task to a qualified entity, the Agency shall ensure that the qualified entity complies with all of the essential requirements set out in Annex VI of Regulation (EU) 2018/1139.

Article 5

Changes to the scope of accreditation

1. A qualified entity shall, without undue delay, notify the Agency of any change in its organisation, procedures and personnel likely to affect its scope of accreditation.
2. The Agency shall assess the impact of the notified change on the scope of accreditation and privileges and decide whether an additional assessment of the qualified entity is necessary.
3. The Agency may amend the scope of accreditation according to the significance of the change and, if applicable, the result of the assessment.

Article 6

Oversight of accredited qualified entities

1. The Agency shall verify continued compliance to ensure that the competence, expertise and procedures of a qualified entity comply with Article 3(3).
2. The verification referred to in paragraph 1 shall be based on a risk-based oversight system taking into account the specific nature of the qualified entity, the complexity of its activities, and the results of past oversight activities.
3. If the Agency, at any time, finds that the conditions for accreditation referred to in Article 3(3) are no longer fulfilled or if the accredited qualified entity has breached

the scope of the accreditation, the Agency shall immediately take appropriate enforcement measures, and if appropriate, limit, suspend or revoke the accreditation of the qualified entity depending upon the extent of the non-compliance until successful corrective action has been taken by the organisation.

Article 7

Entry into force

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

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

Done at Brussels, 12.3.2024

For the Commission
The President
Ursula VON DER LEYEN