

COMMON POSITION (EC) No 17/2002**adopted by the Council on 19 December 2001****with a view to adopting Regulation (EC) No .../2002 of the European Parliament and of the Council of ... on common rules in the field of civil aviation and establishing a European Aviation Safety Agency**

(2002/C 58 E/05)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social
Committee ⁽²⁾,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article
251 of the Treaty ⁽³⁾,

Whereas:

- (1) A high and uniform level of protection of the European citizen should at all times be ensured in civil aviation, by the adoption of common safety rules and by measures ensuring that products, persons and organisations in the Community comply with such rules and those adopted to protect the environment. This will contribute to facilitating the free movement of goods, persons and organisations in the internal market.
- (2) As a consequence, aeronautical products should be subject to certification to verify that they meet essential airworthiness and environmental protection requirements relating to civil aviation. Appropriate essential requirements should be developed within one year after the entry into force of this Regulation to cover operations of aircraft and flight crew licensing and, where justified, application of the Regulation to third country aircraft and, as appropriate thereafter, other areas in the field of civil aviation safety.
- (3) In order to respond to increasing concerns over the health and welfare of passengers during flights, it is necessary to develop aircraft designs which better protect the safety and health of passengers.
- (4) Results of air accident investigations should be acted upon as a matter of urgency, in particular when they relate to defective aircraft design and/or operational matters, in order to ensure consumer confidence in air transport.
- (5) The Convention on International Civil Aviation, signed in Chicago on 7 December 1944 ('Chicago Convention'), to which all Member States are Parties, already provides for minimum standards to ensure the safety of civil aviation and environmental protection relating thereto. Community essential requirements and rules adopted for their implementation should ensure that Member States fulfil the obligations created by the Chicago Convention, including those vis-à-vis third countries.
- (6) Aeronautical products, parts and appliances should be certified once they have been found in compliance with essential airworthiness and environmental protection requirements laid down by the Community in line with standards set by the Chicago Convention. The Commission should be empowered to develop the necessary implementing rules.
- (7) In order to achieve Community objectives as regards the freedom of movement of goods, persons and services, as well as those of the common transport policy, Member States should, without further requirements or evaluation, accept products, parts and appliances, organisations or persons certified in accordance with this Regulation and its implementing rules.
- (8) Enough flexibility should be provided for addressing special circumstances such as urgent safety measures, unforeseen or limited operational needs and provisions should also be made for reaching an equivalent safety level by other means. Member States should be entitled to grant exemptions from the requirements of this Regulation and its implementing rules, provided that they are strictly limited in scope and subject to appropriate Community control.

⁽¹⁾ OJ C 154 E, 29.5.2001, p. 1.

⁽²⁾ OJ C 221, 7.8.2001, p. 38.

⁽³⁾ Opinion of the European Parliament of 5 September 2001 (not yet published in the Official Journal), Council Common Position of 19 December 2001 and Decision of the European Parliament of ... (not yet published in the Official Journal).

- (9) The fulfilment of the objectives of this Regulation may be efficiently achieved through cooperation with third countries. In such a case, the provisions of this Regulation and its implementing rules may be adapted through agreements concluded by the Community with these countries. In the absence of such agreements, Member States should nevertheless be allowed, subject to appropriate Community control, to recognise the approvals granted to foreign products, parts and appliances, organisations and personnel by a third country.
- (10) It is necessary to establish appropriate measures to ensure both the necessary protection of sensitive safety data and to provide the public with adequate information pertaining to the level of civil aviation safety and environmental protection relating thereto, taking into account Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁽¹⁾ and relevant national legislation.
- (11) There is a need for better arrangements in all the fields covered by this Regulation, so that certain tasks currently performed at Community or national level should be carried out by a single specialised expert body. There is, therefore, a need within the Community's existing institutional structure and balance of powers to establish a European Aviation Safety Agency which is independent in relation to technical matters and has legal, administrative and financial autonomy. To that end, it is necessary and appropriate that it should be a Community body having legal personality and exercising the implementing powers which are conferred on it by this Regulation.
- (12) In order to properly assist the Community, the Agency should be allowed to develop its expertise in all aspects of civil aviation safety and environmental protection covered by this Regulation. It should assist the Commission in the preparation of the necessary legislation and assist the Member States and the industry in its implementation. It should be able to issue certification specifications and guidance material and to make technical findings and issue certificates as required and it should assist the Commission in monitoring the application of this Regulation and of its implementing rules and should be given the necessary authority to fulfil its tasks.
- (13) The Commission and the Member States should be represented within a management board in order to control effectively the functions of the Agency. This board should be entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision-making by the Agency and appoint the Executive Director. It is also appropriate that the Agency be allowed to conduct research and to organise appropriate coordination with the Commission and the Member States. It is desirable that the Agency assist the Community and its Member States in the field of international relations, including the harmonisation of rules, recognition of approvals and technical cooperation, and be entitled to establish the appropriate relations with the aeronautical authorities of third countries and international organisations competent in matters covered by this Regulation.
- (14) Public interest requires the Agency to base its safety-related action solely on independent expertise, strictly applying this Regulation and the rules adopted by the Commission for its implementation. To that end, all safety-related Agency decisions should be made by its Executive Director, who should be left with a high degree of flexibility to obtain advice and to organise the internal functioning of the Agency. When, however, the Agency has to develop draft rules of a general nature to be implemented by national authorities, Member States should be involved in the decision-shaping process.
- (15) It is necessary to ensure that parties affected by decisions made by the Agency enjoy the necessary remedies in a manner which is suited to the special character of the field of aviation. An appropriate appeal mechanism should be set up so that decisions of the Executive Director can be subject to appeal to a specialised board of appeal, whose decisions are, in turn, open to action before the Court of Justice.
- (16) In order to guarantee the full autonomy and independence of the Agency, it should be granted an autonomous budget whose revenue comes essentially from a contribution from the Community and from fees paid by the users of the system. The Community budgetary procedure should be applicable as far as the Community contribution and any other subsidies chargeable to the general budget of the European Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors.
- (17) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽²⁾.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

- (18) Since the objectives of the proposed action, namely the establishment and uniform application of common rules in the field of civil aviation safety and environmental protection, cannot be sufficiently achieved by the Member States and can therefore, by reason of the European-wide scope of this Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (19) It has been recognised that the involvement of European countries not members of the European Union should be pursued, so as to ensure a proper pan-European dimension in order to facilitate the improvement of civil aviation safety throughout Europe. European countries that have concluded agreements with the Community to adopt and apply the Community *acquis* in the field covered by this Regulation should be associated with its work according to conditions to be agreed in the framework of these agreements.
- (20) It is a general objective that the transfer of functions and tasks from the Member States, including those resulting from their cooperation through the Joint Aviation Authorities, to the Agency should be effected efficiently, without any reduction in the current high levels of safety, and without any negative impact on certification schedules. Appropriate measures need to be adopted to provide for the necessary transition.
- (21) This Regulation establishes an appropriate and comprehensive framework for the environmental certification of aeronautical products as well as for the definition and implementation of common technical requirements and administrative procedures in the field of civil aviation. Council Directive 80/51/EEC of 20 December 1979 on the limitation of noise emissions from subsonic aircraft ⁽¹⁾ and Annex II to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation ⁽²⁾ should therefore be repealed in due time, without prejudice to the certification of products, persons and organisations already performed in accordance with these legislative acts.
- (22) This Regulation will apply to any other area related to civil aviation safety on the basis of a future proposal in accordance with the Treaty,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

PRINCIPLES

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.
2. This Regulation shall not apply when products, parts, appliances, personnel and organisations referred to in paragraph 1 are engaged in military, customs, police, or similar services. The Member States shall undertake to ensure that such services have due regard as far as practicable to the objectives of this Regulation.

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 implementation of its provisions, and by ensuring that its provisions are duly taken into account in this Regulation and in the rules drawn up for its implementation;

⁽¹⁾ OJ L 18, 24.1.1980, p. 26. Directive as last amended by Directive 83/206/EEC (OJ L 117, 4.5.1983, p. 15).

⁽²⁾ OJ L 373, 31.12.1991, p. 4. Regulation as last amended by Commission Regulation (EC) No 2871/2000 (OJ L 333, 29.12.2000, p. 47).

(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.

Article 3

Definitions

For the purpose of this Regulation:

- (a) 'continuing oversight' means the tasks to be conducted to verify that the conditions under which a certificate has been granted continue to be fulfilled at any time during its period of validity, as well as the taking of any safeguard measure;
- (b) 'Chicago Convention' means 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 or accessory, including communications equipment, that is used or intended to be used in operating or controlling an aircraft in flight and is installed in or attached to the aircraft. It includes parts of an airframe, engine or propeller;
- (e) 'certification' means 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;
- (f) 'qualified entity' means a body which may conduct certification tasks under the control and the responsibility of the Agency;
- (g) 'certificate' means any approval, licence or other document issued as the result of certification.

CHAPTER II

SUBSTANTIVE REQUIREMENTS

Article 4

Basic principles and applicability

1. Aircraft, including any installed product, part and appliance, which are:
- (a) designed or manufactured by an organisation for which the Agency or a Member State ensures safety oversight; or

(b) registered in a Member State; or

(c) registered in a third country and used by an operator for which any Member State ensures oversight of operations;

shall comply with this Regulation unless their regulatory safety oversight has been delegated to a third country and they are not used by a Community operator.

2. Paragraph 1 shall not apply to aircraft referred to in Annex II.

3. This Regulation shall not affect the rights of third countries as specified in international conventions, in particular the Chicago Convention.

Article 5

Airworthiness

1. Aircraft referred to in Article 4(1) shall comply with the essential requirements for airworthiness laid down in Annex I.

2. Compliance of aircraft registered in a Member State, and of products, parts and appliances mounted thereon shall be established in accordance with the following.

- (a) Products shall have a type-certificate. The type-certificate, and certification of changes to that type-certificate, including supplemental type-certificates, shall be issued when the applicant has shown that the product complies with a type-certification basis as specified in Article 15, established to ensure compliance with the essential requirements referred to in paragraph 1, and when it has no feature or characteristic making it unsafe for operation. The type-certificate shall cover the product, including all parts and appliances fitted thereon.
- (b) Parts and appliances may be issued with specific certificates when they are shown to comply with detailed airworthiness specifications established to ensure compliance with the essential requirements referred to in paragraph 1.

(c) Each aircraft shall be issued with an individual certificate of airworthiness when it is shown that it conforms with the type design approved in its type-certificate and that relevant documentation, inspections and tests demonstrate that the aircraft is in condition for safe operation. This certificate of airworthiness shall remain valid as long as it is not suspended, revoked or terminated and as long as the aircraft is maintained in accordance with the essential requirements related to continuing airworthiness set out in point 1.d of Annex I and the implementing rules referred to in paragraph 4.

(d) Organisations responsible for the design, manufacture and maintenance of products, parts and appliances shall demonstrate their capability and means to discharge the responsibilities associated with their privileges. Unless otherwise accepted these capabilities and means shall be recognised through the issuance of an organisation approval. The privileges granted to the approved organisation and the scope of the approval shall be specified in the terms of approval.

In addition:

- (e) personnel responsible for the release of a product, part or appliance after maintenance may be required to hold an appropriate certificate ('personnel certificate');
- (f) the capability of maintenance training organisations to discharge the responsibilities associated with their privileges in relation to the issuance of the certificates referred to in point (e) may be recognised by the issuance of an approval.

3. By way of derogation from paragraphs 1 and 2:

- (a) a permit to fly may be issued when it is shown that the aircraft is capable of performing safely a basic flight. It shall be issued with appropriate limitations, in particular to protect third parties safety;
- (b) a restricted certificate of airworthiness may be issued to aircraft for which a type certificate has not been issued according to paragraph 2(a). In this case, the aircraft shall be shown to comply with specific airworthiness specifications and deviations from the essential requirements referred to in paragraph 1 shall nevertheless ensure adequate safety with regards to the purpose. Aircraft eligible to these restricted certificates, and limitations for use of these aircraft, shall be defined according to the implementing rules referred to in paragraph 4;
- (c) when the number of aircraft of the same type eligible for a restricted certificate of airworthiness so justifies, a restricted type certificate may be issued and an appropriate type certification basis shall be established.

4. The Commission shall adopt, in accordance with the procedure laid down in Article 54(3), the rules for the implementation of this Article, specifying in particular:

- (a) conditions to establish and notify to an applicant the type-certification basis applicable to a product;
- (b) conditions to establish and notify to an applicant the detailed airworthiness specifications applicable to parts and appliances;

(c) conditions to establish and notify to an applicant the specific airworthiness specifications applicable to aircraft eligible for a restricted certificate of airworthiness;

(d) conditions to issue and disseminate mandatory information in order to ensure the continuing airworthiness of products;

(e) conditions to issue, maintain, amend, suspend or revoke type-certificates, restricted type-certificates, approval of changes to type-certificates, individual certificates of airworthiness, restricted certificates of airworthiness, permits to fly and certificates for products, parts or appliances, including:

(i) conditions on the duration of these certificates, and conditions to renew certificates when a limited duration is fixed;

(ii) restrictions applicable to the issue of permits to fly. These restrictions should in particular concern the following:

— purpose of the flight,

— airspace used for the flight,

— qualification of flight crew,

— carriage of persons other than flight crew,

(iii) aircraft eligible to restricted certificates of airworthiness, and associated restrictions;

(f) conditions to issue, maintain, amend, suspend or revoke organisation approvals required in accordance with paragraph 2(d) and (f) and conditions under which such approvals need not be requested;

(g) conditions to issue, maintain, amend, suspend or revoke personnel certificates required in accordance with paragraph 2(e);

(h) responsibilities of the holders of certificates;

(i) how aircraft referred to in paragraph 1 which are not covered by paragraphs 2 or 3 are to show compliance with the essential requirements.

5. When establishing the implementing rules referred to in paragraph 4, the Commission will take specific care that they:

(a) reflect the state of the art and the best practices in the field of airworthiness;

- (b) take into account worldwide aircraft experience in service, and scientific and technical progress;
- (c) allow for immediate reaction to established causes of accidents and serious incidents.

Article 6

Essential requirements for environmental protection

1. Products, parts and appliances shall comply with the environmental protection requirements contained in Annex 16 to the Chicago Convention as issued in November 1999, except for its Appendices.
2. In accordance with the procedure referred to in Article 54(3), paragraph 1 of this Article may be adapted, in order to bring it in line with subsequent amendments to the Chicago Convention and its Annexes, which enter into force after the adoption of this Regulation and which become applicable in all Member States, in so far as such adaptations do not broaden the scope of this Regulation.
3. The Commission shall prescribe the rules for the implementation of paragraph 1, using as necessary the content of the Appendices mentioned in paragraph 1, in accordance with the procedure laid down in Article 54(3).

Article 7

Air operations and flight crew licensing

With regard to the basic principles, applicability and essential requirements for the fields covered by Article 1(1)(b), the Commission shall, where appropriate and as soon as possible, submit proposals thereon to the European Parliament and to the Council.

Article 8

Recognition of certificates

1. Member States shall, without further technical requirements or evaluation, recognise the certificates issued in accordance with this Regulation. When the original recognition is for a particular purpose, or purposes, any subsequent recognition shall cover only the same purpose(s).
2. Pending adoption of the implementing rules referred to in Article 5(4), and without prejudice to Article 57(2), certificates which cannot be issued in accordance with this Regulation may be issued on the basis of the applicable national regulations.

Article 9

Acceptance of third country approval

1. By way of derogation from the provisions of Articles 5, 6 and 15 and the rules adopted for their implementation,

Member States or the Agency may issue certificates on the basis of certificates issued by aeronautical authorities of a third country, as provided for in an agreement between the Community and that third country.

- 2 (a) In the absence of an agreement concluded by the Community, a Member State or the Agency may issue certificates on the basis of certifications issued by the competent authorities of a third country in application of an agreement concluded by that Member State with the third country in question before the entry into force of the related provisions of this Regulation and notified the Commission and the other Member States. The Agency may also issue such certificates on behalf of any Member State in application of an agreement concluded by one of the Member States with the third country in question.

- (b) If the Commission considers that:

- the provision of an agreement between a Member State and a third country would not provide for a level of safety equivalent to that specified by this Regulation and its implementing rules, and/or
- such agreement would give an unfair advantage to a third country, or is contrary to Community policy vis-à-vis that third country,

it may, in accordance with the procedure laid down in Article 54(2) require the Member State concerned to modify the agreement or to suspend its application or to renounce it, in conformity with Article 307 of the Treaty.

- (c) Member States shall take the necessary measures to renounce agreements as soon as possible after the entry into force of an agreement between the Community and the third country in question, for those domains covered by that latter agreement.

Article 10

Flexibility provisions

1. The provisions of this Regulation and of rules adopted for its implementation shall not prevent a Member State from reacting immediately to a safety problem which involves a product, person or organisation subject to the provisions of this Regulation.

If the safety problem is the result of:

- (a) an inadequate level of safety resulting from the application of this Regulation, or
- (b) a shortcoming in this Regulation or its implementing rules,

the Member State shall immediately notify to the Agency, the Commission and to the other Member States the measures taken and the reasons therefor.

2. The Commission shall decide, in accordance with the procedure referred to in Article 54(3), whether an inadequate level of safety or a shortcoming in this Regulation or its implementing rules justifies the continuing application of the measures adopted pursuant to paragraph 1. In that event, it shall also take the necessary steps to amend the related rule. If the Member State's measures are found not to be justified, the Member State shall revoke or amend the measures in question.

3. Member States may grant exemptions from the substantive requirements laid down in this Regulation and its implementing rules in the event of unforeseen urgent operational circumstances or operational needs of a limited duration. The Agency, the Commission and the other Member States shall be notified of any such exemptions as soon as they become repetitive or where they are granted for periods of more than two months.

4. Where the measures decided on by a Member State are less restrictive than the Community provisions applicable, the Commission shall examine whether the exemptions comply with the general safety objective of this Regulation or any other rule of Community law. If the exemptions granted do not comply with the general safety objectives of this Regulation or any other rule of Community law, the Commission shall take a decision in accordance with the procedure referred to in Article 54(4). In such a case, the Member State shall revoke the exemption.

5. Where an equivalent level of protection to that attained by the application of the implementing rules for Articles 5 and 6 can be achieved by other means, Member States may, without discrimination on grounds of nationality and having regard to the need not to distort competition, grant approval derogating from those implementing rules. In such cases, the Member State concerned shall notify the Commission that it intends to grant such approval and shall give reasons demonstrating the need to derogate from the rule concerned, as well as the conditions laid down to ensure that an equivalent level of protection is achieved.

6. Within three months of being notified by a Member State in accordance with paragraph 5, the Commission shall initiate the procedure referred to in Article 54(3), in order to decide whether an approval proposed in accordance with paragraph 5 fulfils the conditions laid down in that paragraph and can be granted. In such a case, it shall notify its decision to all Member States, which shall also be entitled to apply that measure. The provisions of Article 8 shall apply to the measure in question. The relevant implementing rules may also be amended to reflect such measure, using transparent procedures in accordance with Article 43.

Article 11

Information network

1. The Commission, the Agency, and the national aviation authorities shall exchange any information available to them in the context of the application of this Regulation and its implementing rules. Entities entrusted with the investigation of civil aviation accidents and incidents, or with the analysis of occurrences, are entitled to access to that information.

2. Without prejudice to the public's right of access to the Commission's documents as laid down in Regulation (EC) No 1049/2001, the Commission shall adopt, in accordance with the procedure referred to in Article 54(3), measures for the dissemination to interested parties on the Commission's own initiative of the information referred to in paragraph 1 of this Article. These measures, which may be generic or individual, shall be based on the need:

(a) to provide persons and organisations with the information they need to improve aviation safety;

(b) to limit the dissemination of information to what is strictly required for the purpose of its users, in order to ensure appropriate confidentiality of that information.

3. The national aviation authorities shall, according to their national legislation, take necessary measures to ensure appropriate confidentiality of the information received by them in application of paragraph 1.

4. In order to inform the public of the general safety level, a safety review shall be published annually by the Agency.

CHAPTER III

THE EUROPEAN AVIATION SAFETY AGENCY

SECTION I

TASKS

Article 12

Establishment and functions of the Agency

1. For the purpose of the implementation of this Regulation, a European Aviation Safety Agency, hereinafter referred to as 'the 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 and provide it with the necessary technical, scientific and administrative support to exercise its tasks;
- (c) take the necessary measures within the powers conferred on it by this Regulation or other Community 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.

Article 13

Agency measures

The Agency shall, where appropriate:

- (a) issue opinions addressed to the Commission;
- (b) issue certification specifications, including airworthiness codes and acceptable means of compliance, as well as any guidance material for the application of this Regulation and its implementing rules;
- (c) take the appropriate decisions for the application of Articles 15, 45 and 46.

Article 14

Opinions, certification specifications and guidance material

1. In order to assist the Commission in the preparation of proposals for basic principles, applicability and essential requirements to be presented to the European Parliament and to the Council and the adoption of the implementing rules, the Agency shall prepare drafts thereof. These drafts shall be submitted by the Agency as opinions to the Commission.

2. The Agency shall, in accordance with Article 43 and the implementing rules adopted by the Commission, develop:

- (a) certification specifications, including airworthiness codes and acceptable means of compliance; and
- (b) guidance material

to be used in the certification process.

These documents shall reflect the state of the art and the best practices in the fields concerned and be updated taking into

account worldwide aircraft experience in service, and scientific and technical progress.

Article 15

Airworthiness and environmental certification

1. With regard to products, parts and appliances referred to in Article 4(1), the Agency shall, where applicable and as specified in the Chicago Convention or its Annexes, carry out on behalf of Member States the functions and tasks of the State of design, manufacture or registry when related to design approval. To that end, it shall in particular:

- (a) for each product for which a type-certificate or a change to a type-certificate is requested, establish and notify the type-certification basis. That certification basis consists of the applicable airworthiness code, the provisions for which an equivalent level of safety has been accepted and the special detailed technical specifications necessary when the design features of a particular product or the experience in operation render any of the airworthiness code provisions inadequate or inappropriate to ensure conformity with essential requirements;
- (b) for each product for which a restricted certificate of airworthiness is requested, establish and notify the specific airworthiness specifications;
- (c) for each part or appliance for which a certificate is requested, establish and notify the detailed airworthiness specifications;
- (d) for each product for which environmental certification is required in accordance with Article 6, establish and notify the appropriate environmental requirements;
- (e) conduct, itself or through national aviation authorities or qualified entities, technical inspections associated with products, parts and appliances certification;
- (f) issue the appropriate type-certificates or associated changes;
- (g) issue certificates for parts and appliances;
- (h) issue the appropriate environmental certificates;
- (i) amend, suspend or revoke the relevant certificate when the conditions according to which it was issued are no longer fulfilled or if the legal or natural person holding the certificate fails to fulfil the obligations imposed on it by this Regulation or by its implementing rules;

(j) ensure the continuing airworthiness functions associated with the products, parts and appliances it has certified, including reacting without undue delay to a safety problem and issuing and disseminating the applicable mandatory information.

2. With regard to organisations, 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 the certificates of:

(i) design organisations; or

(ii) production organisations located within the territory of the Member States, if requested by the concerned Member State; or

(iii) production and maintenance organisations located outside the territory of the Member States;

(c) amend, suspend or revoke the relevant organisation certificate when the conditions according to which it was issued are no longer fulfilled, or if the organisation concerned fails to fulfil the obligations imposed on it by this Regulation or by its implementing rules.

Article 16

Monitoring the application of rules

1. The Agency shall conduct standardisation inspections in the fields covered by Article 1(1), in order to monitor the application by national aviation authorities of this Regulation and of its implementing rules, and shall report to the Commission.

2. The Agency shall conduct technical investigations to monitor the effectiveness of the application of this Regulation and its implementing rules, having regard to the objectives set out in Article 2.

3. The Agency shall be consulted and give its opinion to the Commission on the application of Article 10.

4. The working methods of the Agency for conducting the tasks referred to in paragraphs 1, 2 and 3 will be subject to requirements to be adopted in accordance with the procedure referred to in Article 54(2), and taking into account the principles laid down in Articles 43 and 44.

Article 17

Research

1. The Agency may develop and finance research in so far as it strictly relates to the improvement of activities in its field of competence, without prejudice to Community law.

2. The Agency shall coordinate its research and development activities with those of the Commission and the

Member States so as to ensure that policies and actions are mutually consistent.

3. The results of research funded by the Agency shall be published, provided it does not classify them as confidential.

Article 18

International relations

1. The Agency shall assist the Community and its Member States in their relations with third countries in accordance with the relevant Community law. It shall, in particular, assist in the harmonising of rules and mutual recognition regarding approvals attesting the satisfactory application of rules.

2. The Agency may cooperate with the aeronautical authorities of third countries and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded with those bodies, in accordance with the relevant provisions of the Treaty.

3. The Agency shall assist Member States to respect their international obligations, in particular those under the Chicago Convention.

SECTION II

INTERNAL STRUCTURE

Article 19

Legal status, location, local offices

1. The Agency shall be a body of the Community. It shall have legal personality.

2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

3. The Agency may establish its own local offices in the Member States subject to their consent.

4. The Agency shall be represented by its Executive Director.

Article 20

Staff

1. The Staff Regulations of officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for purposes of the application of those Staff Regulations and Conditions of employment shall apply to the staff of the Agency, without prejudice to the application of Article 33 of this Regulation to the members of the board of appeal.

2. Without prejudice to Article 30, the powers conferred on the appointing authority by the Staff Regulations, and by the Conditions of employment of other servants, shall be exercised by the Agency in respect of its own staff.

3. The Agency's staff shall consist of a strictly limited number of officials assigned or seconded by the Commission or Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks.

Article 21

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Agency.

Article 22

Liability

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

2. The Court of Justice of the European Communities shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.

3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.

4. The Court of Justice shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.

5. The personal liability of its servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of employment applicable to them.

Article 23

Publication of documents

1. Without prejudice to decisions taken on the basis of Article 290 of the Treaty, the following documents shall be produced in all official languages of the Community:

- (a) the safety review referred to in Article 11(4);
- (b) opinions addressed to the Commission pursuant to Article 14(1);
- (c) the annual general report and programme of work referred to in Article 24(2)(b) and (c) respectively.

2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for bodies of the European Union.

Article 24

Powers of the Management Board

1. The Agency shall have a management board.
2. The Management Board shall:
 - (a) appoint the Executive Director and the Directors in accordance with Article 30;
 - (b) before 31 March each year, adopt the general report of the Agency for the previous year and forward it to the European Parliament, the Council, the Commission and the Member States;
 - (c) before 30 September each year, and after receiving the opinion of the Commission, adopt the Agency's programme of work for the coming year and forward it to the European Parliament, the Council, the Commission and the Member States; this programme of work shall be adopted without prejudice to the annual Community budgetary procedure and the Community legislative programme in relevant areas of aviation safety;
 - (d) adopt guidelines for the allocation of certification tasks to national aviation authorities or qualified entities after approval from the Commission;
 - (e) establish procedures for making decisions by the Executive Director as referred to in Articles 43 and 44;
 - (f) carry out its functions relating to the Agency's budget pursuant to Articles 48, 49 and 52;
 - (g) appoint the members of the board of appeal pursuant to Article 32;
 - (h) exercise disciplinary authority over the officials referred to in Article 30(1) and (3);
 - (i) give its opinion on the fees and charges regulation as referred to in Article 53(1);
 - (j) establish its Rules of Procedure;
 - (k) decide on the linguistic arrangements for the Agency;
 - (l) complement, where appropriate, the list of documents mentioned in Article 23(1);
 - (m) establish the organisational structure of the Agency and adopt the Agency's staffing policy.

3. The management board may advise the Executive Director on any matter strictly related to strategic development of aviation safety, including research as defined in Article 17.

4. The Management Board shall establish an advisory body of interested parties, which it shall consult prior to making decisions in the fields referred in paragraph 2(c), (e), (f) and (i). The Management Board may also decide to consult the advisory body on other issues referred to in paragraphs 2 and 3. The Management Board shall not be bound by the opinion of the advisory body.

Article 25

Composition of the Management Board

1. The Management Board shall be composed of one representative of each Member State and one representative of the Commission. To this effect, each Member State and the Commission shall appoint a member of the Management Board as well as an alternate who will represent the member in his/her absence. The duration of the terms of office shall be five years. This term of office shall be renewable.

2. Where appropriate, the participation of representatives of European third countries and the conditions thereof shall be established in the arrangements referred to in Article 55.

Article 26

Chairmanship of the Management Board

1. The management board shall elect a chairperson and a deputy chairperson from among its members. The deputy chairperson shall *ex officio* replace the chairperson in the event of his/her being prevented from attending to his/her duties.

2. The term of office of the chairperson and deputy chairperson shall expire when their respective membership of the Management Board ceases. Subject to this provision, the duration of the terms of office of the chairperson or deputy chairperson shall be three years. These terms of office shall be renewable.

Article 27

Meetings

1. Meetings of the Management Board shall be convened by its chairperson.

2. The Executive Director of the Agency shall take part in the deliberations.

3. The Management Board shall hold at least two ordinary meetings a year. In addition it shall meet at the instance of the chairperson or at the request of at least one third of its members.

4. The Management Board may invite any person whose opinion can be of interest to attend its meetings as an observer.

5. The members of the Management Board may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.

6. The secretariat for the Management Board shall be provided by the Agency.

Article 28

Voting

1. Without prejudice to Article 30(1), the Management Board shall take its decisions by a two-thirds majority of its members. At the request of a member of the Management Board, the decision referred to in Article 24(2)(k) shall be taken by unanimity.

2. Each member shall have one vote. The Executive Director of the Agency shall not vote. In the absence of a member, his/her alternate shall be entitled to exercise his/her right to vote.

3. The Rules of Procedure shall establish the more detailed voting arrangements, in particular, the conditions for a member to act on behalf of another member as well as any quorum requirements, where appropriate.

Article 29

Functions and powers of the Executive Director

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. Without prejudice to the respective competencies of the Commission and the management board, the Executive Director shall neither seek nor take instructions from any government or from any other body.

2. The European Parliament or the Council may invite the Executive Director of the Agency to report on the carrying out of his/her tasks.

3. The Executive Director shall have the following functions and powers:

(a) to approve the measures of the Agency as defined in Articles 13 and 15 within the limits specified by this Regulation, its implementing rules and any applicable law;

(b) to decide on inspections and investigations as provided for in Articles 45 and 46;

(c) to allocate certification tasks to national aviation authorities or qualified entities according to guidelines set by the management board;

(d) to undertake any international functions and technical cooperation with third countries pursuant to Article 18;

(e) to take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with the provisions of this Regulation;

- (f) to prepare each year a draft general report and submit it to the Management Board;
- (g) to exercise in respect of the staff the powers laid down in Article 20(2);
- (h) to draw up estimates of the revenues and expenditure of the Agency pursuant to Article 48, and implement the budget pursuant to Article 49;
- (i) to delegate his/her powers to other members of the Agency's staff subject to rules to be adopted in accordance with the procedure referred to in Article 54(2);
- (j) with the consent of the Management Board, to take a decision regarding the establishment of local offices in the Member States in accordance with Article 19(3).

Article 30

Appointment of senior officials

1. The Executive Director of the Agency shall be appointed, by the Management Board, on grounds of merit and documented competence and experience relevant for civil aviation. The Management Board shall take its decision by a four-fifths majority of its members, acting on the basis of a list of persons drawn up by the Commission. With the same majority of its members, the Management Board can dismiss the Executive Director.
2. The Executive Director may be assisted by one or more directors. If the Executive Director is absent or indisposed, one of the directors shall take his/her place.
3. The directors of the Agency shall be appointed, on the grounds of professional competence relevant for civil aviation, or dismissed by the Management Board after having consulted the Executive Director.
4. The term of office of the Executive Director and of the directors shall be five years. This term of office shall be renewable.

Article 31

Powers of the boards of appeal

1. Within the Agency, there shall be one or more boards of appeal.
2. The board or boards of appeal shall be responsible for deciding on appeals against the decisions referred to in Article 35.
3. The board or boards of appeal shall be convened as necessary. The number of boards of appeal and the work allocation shall be determined by the Commission according to the procedure referred to in Article 54(3).

Article 32

Composition of the boards of appeal

1. A board of appeal shall consist of a chairperson and two other members.
2. The chairperson and the two members shall have alternates who will represent them in their absence.
3. The chairperson, the other members and their respective alternates shall be appointed by the management board from a list of qualified candidates adopted by the Commission.
4. Where the board of appeal considers that the nature of the appeal so requires, it may call up to two further members from the aforesaid list for that case.
5. The qualifications required for the members of each board of appeal, the powers of individual members in the preparatory phase of the decisions and the voting conditions shall be determined by the Commission according to the procedure referred to in Article 54(3).

Article 33

Members of the boards of appeal

1. The term of office of the members of the boards of appeal, including their chairperson and their respective alternates, shall be five years. This term shall be renewable.
2. The members of the boards of appeal shall be independent. In making their decisions they shall not be bound by any instructions.
3. The members of the boards of appeal may not perform any other duties in the Agency. The function of the members of the boards of appeal may be a part-time function.
4. The members of the boards may not be removed either from office or from the list during their respective terms, unless there are serious grounds for such removal and the Commission, after obtaining the opinion of the Management Board, takes a decision to this effect.

Article 34

Exclusion and objection

1. Members of the boards of appeal may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.
2. If, for one of the reasons mentioned in paragraph 1 or for any other reason, a member of a board of appeal considers that he/she should not take part in any appeal proceedings, he/she shall inform the board of appeal accordingly.

3. Members of the boards of appeal may be objected to by any party to the appeal proceedings on any of the grounds mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has taken a procedural step. No objection may be based on the nationality of members.

4. The boards of appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking this decision, the member concerned shall be replaced on the board of appeal by his/her alternate.

Article 35

Decisions subject to appeal

1. An appeal may be brought against decisions of the Agency which have been taken pursuant to Articles 15, 46 or 53.

2. An appeal lodged pursuant to paragraph 1 above shall not have suspensory effect. The Agency may, however, if it considers that circumstances so permit, suspend the application of the contested decision.

3. An appeal against a decision which does not terminate proceedings as regards one of the parties may only be made in conjunction with an appeal against the final decision, unless the decision provides for separate appeal.

Article 36

Persons entitled to appeal

Any natural or legal person may appeal against a decision addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to the former. The parties to proceedings may be party to the appeal proceedings.

Article 37

Time limit and form

The appeal, together with the statement of grounds thereof, shall be filed in writing at the Agency within two months of the notification of the measure to the person concerned, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Article 38

Interlocutory revision

1. If the Executive Director considers the appeal to be admissible and well founded, he/she shall rectify the decision. This shall not apply where the appellant is opposed to another party to the appeal proceedings.

2. If the decision is not rectified within one month after receipt of the statement of grounds for the appeal, the

Agency shall forthwith decide whether or not to suspend the application of the decision pursuant to the second sentence of Article 35(2), and shall remit the appeal to the board of appeal.

Article 39

Examination of appeals

1. If the appeal is admissible, the board of appeal shall examine whether the appeal is well founded.

2. When examining the appeal, the board of appeal shall act expeditiously. It shall as often as necessary invite the parties to the appeal proceedings to file observations on notifications issued by itself or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make oral presentations.

Article 40

Decisions on appeal

The board of appeal may exercise any power which lies within the competence of the Agency, or it may remit the case to the competent body of the Agency. The latter shall be bound by the decision of the board of appeal.

Article 41

Actions before the Court of Justice

1. An appeal may be brought before the Court of Justice against decisions of the boards of appeal on the terms and conditions laid down in Article 230 of the Treaty.

2. Should the Agency fail to take a decision, proceedings for failure to act may be brought before the Court of Justice on the terms and conditions laid down in Article 232 of the Treaty.

3. The Agency shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

Article 42

Direct appeal

Member States and the Community institutions may lodge a direct appeal before the Court of Justice against decisions of the Agency.

SECTION III

WORKING METHODS

Article 43

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 and guidance material referred to in Article 13(a) and (b).

Those procedures shall:

- (a) draw on expertise available in the aviation regulatory authorities of Member States;
- (b) whenever necessary, involve appropriate experts from relevant interested parties;
- (c) ensure that the Agency publishes documents and consults widely 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 14, develops opinions, certification specifications 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 13(a) and (b) 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.

Article 44

Procedures for taking decisions

1. The Management Board shall establish transparent procedures for taking individual decisions as provided for in Article 13(c).

Those procedures shall:

- (a) ensure the hearing of the natural or legal person to be addressed in the decision and of any other party with a direct and individual concern;
- (b) provide for notification of a decision to a natural or legal person and its publication;
- (c) provide for information to the natural or legal person to whom a decision is addressed, and any other parties to proceedings, of the legal remedies available to that person under this Regulation;
- (d) ensure that the decision contains reasons.

2. The Management Board shall also establish procedures specifying the conditions under which decisions are notified while taking due account of the appeal procedure.

3. 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.

Article 45

Inspections of Member States

1. Without prejudice to the enforcement powers conferred by the Treaty to the Commission, the Agency shall assist the Commission in monitoring the application of this Regulation and its implementing rules, by conducting standardisation inspections of Member States competent authorities as specified in Article 16(1).

2. The officials of the Agency authorised for the purpose of these inspections shall exercise their powers upon production of an authorisation in writing specifying the subject matter, the purpose of the inspection and the date on which it is to begin. In good time before the inspection, the Agency shall inform the Member State concerned of the inspection and of the identity of the authorised officials.

3. The Member State concerned shall submit to such inspections and shall ensure that bodies or persons concerned also submit to inspections.

4. When an inspection under the terms of this Article entails an inspection of an undertaking or an association of undertakings the provisions of Article 46 shall apply. Where an undertaking opposes such inspection, the Member State concerned shall afford the necessary assistance to officials authorised by the Agency to enable them to make their inspection.

5. Reports drawn up in application of this Article shall be made available in the official language(s) of the Member State where the inspection took place.

Article 46

Investigation of undertakings

1. For the application of Article 15, the Agency may itself conduct or allocate to national aviation authorities or qualified entities all necessary investigation of undertakings. Investigations shall be carried out in compliance with the legal provisions of the Member States in which they are to be undertaken. To that end, the persons authorised under this Regulation are empowered:

- (a) to examine the relevant records, data, procedures and any other material relevant to the execution of the tasks of the Agency;
- (b) to take copies of or extracts from such records, data, procedures and other material;
- (c) to ask for an oral explanation on site;
- (d) to enter relevant premises, lands or means of transport of undertakings.

2. The persons authorised for the purpose of these investigations shall exercise their powers upon production of an authorisation in writing specifying the subject matter and purpose of the investigation.

3. In good time before the investigation, the Agency shall inform the Member State concerned in whose territory the investigation is to be made, of the investigation and of the identity of the authorised persons. Officials of the Member State concerned shall, at the request of the Agency, assist the authorised persons in carrying out their duties.

Article 47

Transparency and communication

1. The Agency shall be subject to Regulation (EC) No 1049/2001 when handling applications for access to documents held by it.

2. The Agency may communicate on its own initiative in the fields within its mission. It shall ensure in particular that, in addition to the publication specified in Article 43(3), the public and any interested party are rapidly given objective, reliable and easily understandable information with regard to its work.

3. The management board shall lay down the practical arrangements for the application of paragraphs 1 and 2.

4. Any natural or legal person shall be entitled to address himself/herself in writing to the Agency in any of the languages referred to in Article 314 of the Treaty. He/she has the right to receive an answer in the same language.

SECTION IV

FINANCIAL REQUIREMENTS

Article 48

Budget

1. The revenues of the Agency shall consist of:
 - (a) a contribution from the Community and from any European third country with which the Community has concluded agreements referred to in Article 55;
 - (b) the fees paid by applicants for, and holders of, certificates and approvals issued by the Agency; and
 - (c) charges for publications, training and any other services provided by the Agency.
2. The expenditure of the Agency shall include the staff, administrative, infrastructure and operational expenses.
3. The Executive Director shall draw up an estimate of the revenues and expenditure of the Agency for the following

financial year and shall forward it to the Management Board together with an establishment plan.

4. Revenue and expenditure shall be in balance.

5. The Management Board shall, by 31 March, at the latest, adopt the draft estimates, including the provisional establishment plan accompanied by the preliminary work programme, and forward them to the Commission and to the States with which the Community has concluded the agreements referred to in Article 55.

On the basis of that draft budget, the Commission shall establish the relevant estimates in the preliminary draft general budget of the European Union, which it shall put before the Council pursuant to Article 272 of the Treaty. The scope of the approved budget outlook of the Community for the coming years has to be observed.

After receiving the draft budget, the States referred to in the first subparagraph will establish their own preliminary draft budget.

6. After the adoption of the general budget by the budgetary authority, the management board shall adopt the Agency's final budget and work programme, adjusting them where necessary to the Community contribution. It shall forward them without delay to the Commission and to the budgetary authority.

7. Any modification to the budget, including the establishment plan, shall follow the procedure referred to in paragraph 5.

Article 49

Implementation and control of the budget

1. The Executive Director shall implement the budget of the Agency.
2. Control of commitment and payment of all expenditure and control of the existence and recovery of all revenue of the Agency shall be carried out by the Financial Controller of the Commission.
3. By 31 March each year at the latest, the Executive Director shall submit to the Commission, the Management Board and the Court of Auditors the detailed accounts of all revenue and expenditure from the previous financial year.

The Court of Auditors shall examine those accounts in accordance with Article 248 of the Treaty. It shall publish a report on the Agency's activities every year.

4. The European Parliament, acting on a recommendation from the Council, shall give a discharge to the Executive Director of the Agency in respect of the implementation of the budget.

*Article 50***Combating fraud**

1. In order to combat fraud, corruption and other unlawful activities the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-fraud Office (OLAF) ⁽¹⁾ shall apply without restriction.

2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-fraud Office (OLAF) ⁽²⁾ and shall issue, without delay, the appropriate provisions applicable to all the employees of the Agency.

3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks among the recipients of the Agency's funding and the agents responsible for allocating it.

*Article 51***Evaluation**

1. Within three years from the date of the Agency having taken up its responsibilities, and every five years thereafter, the management board shall commission an independent external evaluation on the implementation of this Regulation.

2. The evaluation shall examine how effectively the Agency fulfils its mission. It shall also assess the impact of this Regulation, the Agency and its working practices in establishing a high level of civil aviation safety. The evaluation shall take into account the views of stakeholders, at both European and national level.

3. The management board shall receive the findings of the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which may forward them, together with its own opinion as well as appropriate propositions, to the European Parliament and to the Council. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

*Article 52***Financial provisions**

The Management Board, having received the agreement of the Commission and the opinion of the Court of Auditors, shall adopt the Agency's Financial Regulation, which shall in particular specify the procedure to be used for drawing up and implementing the Agency's budget, in accordance with Article 142 of the Financial Regulation applicable to the general budget of the European Communities.

⁽¹⁾ OJ L 136, 31.5.1999, p. 1.

⁽²⁾ OJ L 136, 31.5.1999, p. 15.

*Article 53***Fees and charges regulation**

1. The Commission, acting in accordance with the procedure laid down in Article 54(3) and after consulting the Management Board, shall adopt a regulation on fees and charges.

2. The fees and charges regulation shall determine in particular the matters for which fees and charges pursuant to Article 48(1) are due, the amount of the fees and charges and the way in which they are to be paid.

3. Fees and charges shall be levied for:

- (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.

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

4. 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.

The contribution referred to in Article 48(1), may cover, for a transitional period ending on 31 December of the fourth year from the entry into force of this Regulation, the expenditure relating to the initial running phase of the Agency. In accordance with the procedure laid down in Article 54(3), this period may be extended, if necessary, for no more than one year.

CHAPTER IV

FINAL PROVISIONS*Article 54***Committee**

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.

4. Where reference is made to this paragraph, Article 6 of Decision 1999/468/EC shall apply.

Before adopting its decision, the Commission shall consult the committee referred to in paragraph 1 of this Article.

The period provided for in Article 6(b) of Decision 1999/468/EC shall be set at three months.

When a Commission's decision is referred to the Council by a Member State, the Council, acting by a qualified majority, may take a different decision within a period of three months.

5. The Committee shall adopt its Rules of Procedure.

Article 55

Participation of European third countries

The Agency shall be open to the participation of European third countries which are Contracting Parties to the Chicago Convention and which have entered into agreements with the European Community whereby they have adopted and are applying Community law in the field covered by this Regulation and its implementing rules.

Under the relevant provisions of these agreements, arrangements will be developed which shall, *inter alia*, specify the nature and extent of, and the detailed rules for, the participation by these countries in the work of the Agency, including provisions on financial contributions and staff.

Article 56

Commencement of the Agency's operation

1. The Agency shall undertake the certification tasks incumbent upon it pursuant to Article 15 as from (*). Until that date, Member States shall continue to implement applicable legislation and regulations.

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

Done at . . .

For the European Parliament
The President

For the Council
The President

2. During an additional transition period of five years from the date referred to in paragraph 1, Member States may continue to issue certificates and approvals by way of derogation from the provisions of Articles 5, 6, 9 and 15 under the conditions specified by the Commission in the implementing rules adopted for their application. When in that context Member States issue certificates on the basis of certificates issued by third countries, the Commission implementing rules shall give due consideration to the principles laid down in Article 9(2)(b) and (c).

3. By way of derogation from the provisions of Article 43, pending the adoption of essential requirements in accordance with Article 7, the exercise of the corresponding tasks by the Agency may be subject to working procedures agreed upon with the joint aviation authorities.

Article 57

Repeal

1. Directive 80/51/EEC and Annex II to Regulation (EEC) No 3922/91 shall be repealed as from (**).

2. The provisions of Article 8 shall apply to products, parts and appliances, organisations and persons that have been certified in accordance with the provisions referred to in paragraph 1 of this Article.

Article 58

Entry into force

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

Articles 5 and 6 shall apply as from the dates specified in the implementing rules.

(*) Twelve months after the entry into force of this Regulation.

(**) One year after the entry into force of this Regulation.

ANNEX I

ESSENTIAL REQUIREMENTS FOR AIRWORTHINESS REFERRED TO IN ARTICLE 51. *Product integrity*

Product integrity must be assured for all anticipated flight conditions for the operational life of the aircraft. Compliance with all requirements must be shown by assessment or analysis, supported, where necessary, by tests.

1.a. *Structures and material*

The integrity of the structure must be ensured throughout, and sufficiently beyond, the operational envelope for the aircraft, including its propulsion system, and maintained for the operational life of the aircraft.

1.a.1. All parts of the aircraft, the failure of which could reduce the structural integrity, must comply with the following conditions without detrimental deformation or failure. This includes all items of significant mass and their means of restraint.

1.a.1.a. All combinations of load reasonably expected to occur within the weights, centre of gravity range, operational envelope and life of the aircraft must be considered. This includes loads due to gusts, manoeuvres, pressurisation, movable surfaces, control and propulsion systems both in flight and on the ground.

1.a.1.b. Consideration must be given to the loads and likely failures induced by emergency landings either on land or water.

1.a.1.c. Dynamic effects must be covered in the structural response to these loads.

1.a.2. The aircraft must be free from any aeroelastic instability and excessive vibration.

1.a.3. The fabrication, processes and materials used in the construction of the aircraft must result in known and reproducible structural properties. Any changes in performance related to the operational environment must be accounted for.

1.a.4. The effects of cyclic loading, environmental degradation, accidental and discrete source damage and other reasonably probable failures must not reduce the structural integrity below an acceptable residual strength level. All necessary instructions for ensuring continued airworthiness in this regard must be promulgated.

1.b. *Propulsion*

The integrity of the propulsion system (i.e. engine and, where appropriate, propeller) must be demonstrated throughout, and sufficiently beyond, the operational envelope of the propulsion system and must be maintained for the operational life of the propulsion system.

1.b.1. The propulsion system must produce, within its stated limits, the thrust or power demanded of it at all required flight conditions, taking into account environmental effects and conditions.

1.b.2. The fabrication process and materials used in the construction of the propulsion system must result in known and reproducible structural behaviour. Any changes in material performance related to the operational environment must be accounted for.

1.b.3. The effects of cyclic loading, environmental and operational degradation and likely subsequent part failures must not reduce the integrity of the propulsion system below acceptable levels. All necessary instructions for ensuring continued airworthiness in this regard must be promulgated.

1.b.4. All necessary instructions, information and requirements for the safe and correct interface between the propulsion system and the aircraft must be promulgated.

1.c. *Systems and equipment*

1.c.1. The aircraft must not have design features or details that experience has shown to be hazardous or unreliable.

- 1.c.2. The aircraft, including those systems, equipment and appliances required for type certification, or by operating rules, must function as intended under any foreseeable operating conditions, throughout, and sufficiently beyond, the operational envelope of the aircraft, taking due account of the system, equipment or appliance operating environment. Other systems, equipment and appliance not required for type certification, or by operating rules, whether functioning properly or improperly, must not reduce safety and must not adversely affect the proper functioning of any other system, equipment or appliance. Systems, equipment and appliances must be operable without needing exceptional skill or strength.
 - 1.c.3. The aircraft systems, equipment and associated appliances, considered separately and in relation to each other, must be designed such that any catastrophic failure condition does not result from a single failure not shown to be extremely improbable and an inverse relationship must exist between the probability of a failure condition and the severity of its effect on the aircraft and its occupants. With respect to the single failure criterion above, it is accepted that due allowance must be made for the size and broad configuration of the aircraft and that this may prevent this single failure criterion from being met for some parts and some systems on helicopters and small aeroplanes.
 - 1.c.4. Information needed for the safe conduct of the flight and information concerning unsafe conditions must be provided to the crew, or maintenance personnel, as appropriate, in a clear, consistent and unambiguous manner. Systems, equipment and controls, including indications and annunciations must be designed and located to minimise errors which could contribute to the creation of hazards.
 - 1.c.5. Design precautions must be taken to minimise the hazards to the aircraft and occupants from reasonably probable threats, both inside and external to the aircraft, including protecting against the possibility of a significant failure in, or disruption of, any aircraft appliance.
- 1.d. *Continuing airworthiness*
- 1.d.1. Instructions for continued airworthiness must be established to ensure that the aircraft type certification airworthiness standard is maintained throughout the life of the aircraft.
 - 1.d.2. Means must be provided to allow inspection, adjustment, lubrication, removal or replacement of parts and appliances as necessary for continued airworthiness.
 - 1.d.3. The instructions for continued airworthiness must be in the form of a manual, or manuals, as appropriate for the quantity of data to be provided. The manuals must cover maintenance and repair instructions, servicing information, trouble-shooting and inspection procedures, in a format that provides for a practical arrangement.
 - 1.d.4. The instructions for continued airworthiness must contain airworthiness limitations that set forth each mandatory replacement time, inspection interval and related inspection procedure.
2. *Airworthiness aspects of an aircraft or product operation*
- 2.a. The following must be shown to have been addressed to ensure a satisfactory level of safety for those onboard or on the ground during the operation of the product.
 - 2.a.1. The kinds of operation for which the aircraft is approved must be established and limitations and information necessary for safe operation, including environmental limitations and performance, must be established.
 - 2.a.2. The aircraft must be safely controllable and manoeuvrable under all anticipated operating conditions including following the failure of one or, if appropriate, more propulsion systems. Due account must be taken of pilot strength, flight deck environment, pilot workload and human-factor considerations and of the phase of flight and its duration.
 - 2.a.3. It must be possible to make a smooth transition from one flight phase to another without requiring exceptional piloting skill, alertness, strength or workload under any probable operating condition.

- 2.a.4. The aircraft must have such stability as to ensure that the demands made on the pilot are not excessive taking into account the phase of flight and its duration.
 - 2.a.5. Procedures for normal operations, failure and emergency conditions must be established.
 - 2.a.6. Warnings, or other deterrents intended to prevent excess of the normal flight envelope, must be provided, as appropriate to type.
 - 2.a.7. The characteristics of the aircraft and its systems must allow a safe return from extremes of the flight envelope that may be encountered.
 - 2.b. The operating limitations and other information necessary for safe operation must be made available to the crew members by means of manuals, handbooks, markings and placards, as appropriate.
 - 2.c. Product operations must be protected from hazards resulting from adverse external and internal conditions, including environmental conditions.
 - 2.c.1. In particular, no unsafe condition must occur from exposure to phenomena such as, but not limited to, adverse weather, lightning, bird strike, high frequency radiated fields, ozone, etc.
 - 2.c.2. Cabin compartments must provide passengers with suitable transport conditions and adequate protection from any expected hazard arising in flight operations or resulting in emergency situations, including fire, smoke, toxic gases and rapid decompression hazards. Provisions must be made to give occupants every reasonable chance of avoiding serious injury and quickly evacuating the aircraft and to protect them from the effect of the deceleration forces in the event of an emergency landing on land or water. Clear and unambiguous signs or announcements must be provided, as necessary, to instruct occupants in appropriate safe behaviour and the location and correct use of safety equipment. Required safety equipment must be readily accessible.
 - 2.c.3. Crew compartments must be arranged in order to facilitate flight operations, including means providing situational awareness, and management of any expected situation and emergencies. The environment of crew compartments must not jeopardise the crew's ability to perform their tasks and its design must be such as to avoid interference during operation and misuse of the controls.
 3. *Organisations* (including natural persons undertaking design, manufacture or maintenance)
 - 3.a. Organisation approvals must be issued when the following conditions are met.
 - 3.a.1. The organisation must have all the means necessary for the scope of work. These means comprise, but are not limited to, the following: facilities, personnel, equipment, tools and material, documentation of tasks, responsibilities and procedures, access to relevant data and record-keeping.
 - 3.a.2. The organisation must implement and maintain a management system to ensure compliance with these essential requirements for airworthiness, and aim for continuous improvement of this system.
 - 3.a.3. The organisation must establish arrangements with other relevant organisations, as necessary, to ensure continuing compliance with these essential requirements for airworthiness.
 - 3.a.4. The organisation must establish an occurrence reporting and/or handling system, which must be used by the management system under point 3.a.2 and the arrangements under point 3.a.3, in order to contribute to the aim of continuous improvement of the safety of products.
 - 3.b. In the case of maintenance training organisations, the conditions under points 3.a.3 and 3.a.4 do not apply.
-

ANNEX II

AIRCRAFT REFERRED TO IN ARTICLE 4(2)

Aircraft to which Article 4(1) does not apply are aircraft for which a type-certificate or a certificate of airworthiness has not been issued on the basis of this Regulation and its implementing rules, and which fall in one of the following categories:

- (a) aircraft having a clear historical relevance, related to:
 - (i) participation in a noteworthy historic event; or
 - (ii) a major step in the development of aviation; or
 - (iii) a major role played in the armed forces of a Member State;and meeting one or more of the following criteria:
 - (i) its initial design is established as being more than 40 years old;
 - (ii) its production stopped at least 25 years ago;
 - (iii) fewer than 50 aircraft of the same basic design are still registered in the Member States;
 - (b) aircraft specifically designed or modified for research, experimental or scientific purposes, and likely to be produced in very limited numbers;
 - (c) aircraft of which at least 51 % is built by an amateur, or a non-profit association of amateurs, for their own purposes and without any commercial objective;
 - (d) aircraft whose initial design was intended for military purposes only;
 - (e) aeroplanes having no more than two seats, the stall speed or the minimum steady flight speed in landing configuration not exceeding 35 knots calibrated air speed (CAS), and a maximum take-off mass (MTOM) of no more than:
 - (i) 300 kg for a land plane, single seater; or
 - (ii) 450 kg for a land plane, two seater; or
 - (iii) 330 kg for an amphibian or floatplane single seater; or
 - (iv) 495 kg for an amphibian or floatplane two seater, provided that, where operating both as a floatplane and as a land plane, it falls below both MTOM limits, as appropriate.
 - (f) 'gliders' with a structural mass of less than 80 kg when single seater or 100 kg when two seater, including those which are foot launched;
 - (g) unmanned aircraft with an operating mass of less than 150 kg;
 - (h) any other aircraft with a total mass without pilot of less than 70 kg.
-

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 5 December 2000, the Commission submitted to the Council a proposal for a Regulation of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Aviation Safety Agency ⁽¹⁾. This proposal, which is based on Article 80(2) of the EC Treaty, is subject to the codecision procedure laid down in Article 251 of the Treaty.

The Economic and Social Committee issued its opinion on 30 May 2001 ⁽²⁾.

The Committee of the Regions was consulted but decided not to issue an opinion.

The European Parliament delivered its opinion on 5 September 2001 ⁽³⁾.

On 19 December 2001, the Council adopted its Common Position in accordance with Article 251(2) of the Treaty.

II. ANALYSIS OF THE COMMON POSITION

1. Back in the early 1990s, aircraft manufacturers and airlines engaged in the debate on air safety testified to the importance of tough, European-level certification machinery in all sectors affecting the safety of civil aviation; it had become clear that some of the tasks carried out at national level could be performed more efficiently on a European scale.

The initial response was to think in terms of negotiating a pan-European convention, establishing an air safety authority which would take the form of an international organisation.

However, in the course of discussion it emerged that this approach was likely to cause problems both for the Member States and for the Community. The major stumbling blocks were the provisions giving the authority power to adopt rules that would be binding on the parties, and the proposed establishment of a court of justice. What was more, the lengthy ratification procedures involved were not calculated to meet demands from the industry, which wanted European-level certification machinery for aeronautical products to be put in place as soon as possible. Hence, it was subsequently decided to move towards setting up a Community body: the EASA.

After careful consideration, the Council came to the conclusion, at its meeting on 26 June 2000, that given the aims of a rapid decision and efficient, pan-European action, the best option would be to set up a Community agency.

2. As requested by the Council, in 2000 the Commission duly submitted a proposal for a Regulation setting up an agency.

The main aim is to establish and maintain a high uniform level of civil aviation safety in Europe by setting up a European Agency which would be responsible for the certification of aeronautical products, ensuring compliance with essential safety and airworthiness requirements on the basis of common rules and procedures. The agency's remit will also cover ensuring application of the standards laid down for aeronautical equipment for environmental reasons, facilitating free movement and assisting Member States in fulfilling their obligations under the Chicago Convention on the basis of a uniform interpretation. It could also help to promote Community views regarding civil aviation safety standards and rules throughout the world by appropriate forms of cooperation with third countries and international organisations.

⁽¹⁾ OJ C 154 E, 29.5.2001, p. 1.

⁽²⁾ OJ C 221, 7.8.2001, p. 38.

⁽³⁾ OJ C ... (not yet published in the Official Journal).

3. These objectives are to be achieved by the following means:
- essential safety requirements for airworthiness which the legislative authorities want enforced throughout the Union are to be laid down in the Regulation itself,
 - procedural rules to be followed by the Agency in its certification and oversight role will be adopted by the Commission using a committee procedure,
 - the Agency will have the power to issue type-certificates guaranteeing that aircraft types and the products, parts and appliances fitted thereon meet essential requirements, and to approve bodies involved in these tasks. These certificates and approvals — for which a charge will be made — will be valid in all the Member States. The Agency will also be able to carry out inspections in the Member States and conduct investigations of undertakings,
 - national authorities will be able to issue airworthiness certificates for each individual aircraft where the aircraft in question is shown to comply with the approved type.
4. When studying the Commission proposal, the Council made every effort to bear in mind the Economic and Social Committee's opinion and the amendments tabled by the European Parliament at first reading. The Council took on board European Parliament amendments 1, 2, 5, 6, 7, 8, 9, 13, 14, 16, 20, 22, 23, 26, 27, 30, 31, 34, 35, 36 and 68(rev.), 39, 40, 46, 50, 51, 72(rev.), 52, 53, 56, 57, 58, 59 and 61, either in whole or in substance. However, not all Parliament's amendments were adopted. The original text has also been considerably reworked.
5. The Council's main reasons are summarised below.
- On essential airworthiness requirements, the Council thought it best not merely to refer to those of the Chicago Convention (ICAO), but to lay down its own requirements for the purposes of the Regulation. In drafting these requirements, the Council sought sufficient degree of detail to strike a fair balance: it sought to achieve a regulatory framework that was clear, but at the same time sufficiently general to allow the Agency to work efficiently.
 - On scope, the Council felt that the Regulation should apply to the whole process of design, production, maintenance and operation of aeronautical products, parts and appliances as well as to the personnel and organisations involved in these activities. In short, the purpose of the Regulation is confined solely to the certification of aircraft and aeronautical products and the approval of the bodies involved in the process. The possibility of extending the scope of the Regulation to other civil aviation activities is a question which might arise in future.
 - The rules laid down by the Regulation basically cover aircraft manufactured in the Union, aircraft registered in a Member State and aircraft which — although registered in a third country — are used by a Community operator. The Regulation applies to aircraft registered in a third country and operated by a non-Community operator, without prejudice to international conventions, in particular the Chicago Convention.
 - At the same time, it is envisaged that some aircraft will be exempt from the rules, for example, aircraft having a clear historical relevance, or which were built by amateurs, or for experimental purposes, or whose initial design was for military purposes only, plus very small aircraft, gliders and hang-gliders.

- The Agency's staff will consist of a strictly limited number of officials assigned or seconded by the Commission or Member States to carry out management duties, plus staff recruited as necessary by the Agency to carry out its tasks. It will have a Management Board, composed of one representative of each Member State and of the Commission, whose terms of reference are set out in Article 24. Amongst other things, the Management Board will adopt guidelines and procedures to be followed by the Executive Director as regards certification. The Executive Director is also appointed by the Management Board and his functions and powers are listed in Article 29.
 - It is planned to establish Boards of Appeal to hear appeals against decisions by the Agency, along the lines of similar boards at the Office for Harmonization in the Internal Market (Trade marks and designs) in Alicante (Article 31 et seq.). This is a sensitive point of Community law which will need to be reviewed in the light of any future developments in the fundamental rules of Community law.
 - As for the language regime, the Council agreed not to lay down a working language for the Agency in the Regulation. However, under the heading 'Publication of documents', it identified a list of documents which must always be submitted in all the official languages of the Community (Article 23). The Management Board has the power to add to the list where appropriate.
 - A specific provision will enable European non-member States to participate in the Agency in order to make the certification machinery pan-European. The aim is to ensure a high uniform level of civil aviation safety in Europe. It will, of course, be necessary to step up contacts with these countries in order to reach agreement, in due course, on the conditions for associating them with the Agency.
 - The Agency is to take up its certification duties 12 months after entry into force of the Regulation. In addition, in order to ensure a smooth transition, provision has been made for an extra five-year period during which Member States will continue to issue (under conditions specified by the Commission in the implementing rules) a number of certificates and approvals which in principle would be the Agency's responsibility. These will be recognised in all Member States.
-