



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EC) No 1592/2002 of 15 July 2002 on common rules in the field of
civil aviation and establishing a European Aviation Safety Agency**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. BACKGROUND

Since Regulation (EC) No 1592/2002¹ entered into force in September 2002, the Community has had exclusive competence regarding the airworthiness and environmental compatibility of aeronautical products, parts and appliances. These, together with the organisations responsible for their design, manufacture and maintenance, now have to comply with uniform binding rules adopted by the Commission².

The Regulation establishes a European Aviation Safety Agency (EASA) which provides the Commission with all the technical expertise it requires and assists it, *inter alia*, in the exercise of its legislative and regulatory tasks. The Agency is also setting up a system to monitor the application of Community legislation, evaluate its effects and make any useful suggestions. Certificates and approvals attesting that products and organisations conform to the common rules are issued either by the EASA or by the competent national authorities: the EASA carries out the type certification of products and issues certificates for organisations located in third countries; the national authorities issue individual certificates and approvals for most organisations located on their territory, on the basis of common rules and under the Agency's supervision.

The Agency's competences are defined by the scope of Regulation (EC) No 1592/2002. When the text was adopted, it was already understood that the objectives laid down in Article 2, which are, primarily, to guarantee a high, uniform level of safety and provide a level playing field for Community air operators, could not be achieved unless its scope was extended to include air operations and flight crew licensing. The legislator gave the Commission an explicit mandate to submit a proposal to this end, and to reconsider the question of the regulation of third-country aircraft³.

2. CURRENT CHALLENGES

For a long time the Joint Aviation Authorities (JAA)⁴ have been developing rules on the operation of aircraft for the purpose of commercial air transportation⁵, flight crew licensing and crew training⁶, but their application is left to the discretion of the States which sign up to them and which implement them in very different ways, or do not implement them at all. Consequently, there is no uniform level of safety. In addition, national disparities interfere with the smooth functioning of the internal market.

¹ Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (OJ L 240, 7.9.2002, p. 1).

² Commission Regulations (EC) No 1702/2003 of 24 September 2003 (OJ L 243, 27.9.2003, p. 6) and (EC) No 2042/2003 of 20 November 2003 (OJ L 315, 28.11.2003, p. 1), concerning respectively the certification and the maintenance of aeronautical products, parts and appliances.

³ Article 7 and recital 2 of Regulation (EC) No 1592/2002.

⁴ The JAA is a group of 37 European countries which develop common aviation safety rules, the Joint Aviation Requirements (JAR).

⁵ JAR-OPS 1 and 3.

⁶ JAR-FCL and JAR-STD.

The inclusion of the JAR-OPS rules in Community legislation, via the pending amendment of Regulation (EEC) No 3922/91,⁷ will undeniably be a step forward but will not procure a sufficient degree of harmonisation because it will only cover commercial air transport. Other types of aircraft, other commercial operations and non-commercial operations will not be covered by these common rules; nor will the rules cover flight crew licensing or third-country aircraft.

The safety of third-country aircraft operating in the Community needs however to be more effectively ensured. The Annexes to the Chicago Convention lay down minimum standards with which aircraft, air carriers and crews involved in international flights must comply. The State in which an aircraft is registered has primary responsibility for checking that these obligations are fulfilled, but the other contracting States can inspect aircraft which overfly their territory to verify their safety. In the Community, this is done under the "SAFA" Directive⁸, which refers to Annexes 1, 6 and 8 to the Chicago Convention. However, SAFA inspections carried out by the Member States will relate only to these minimum standards, which do not cover all aspects of air safety.

3. OPINION OF THE EUROPEAN AVIATION SAFETY AGENCY AND CONSULTATION OF INTERESTED PARTIES

This is the context in which the Commission has decided to comply with the legislator's request and propose that the common safety rules be extended to air operations, pilot licensing and third-country aircraft.

To do this, the Commission was required, under the terms of Article 14 of Regulation (EC) No 1592/2002, to first obtain the opinion of the EASA. The Agency, for its part, in accordance with its internal rules⁹ and international practice in this area, had to carry out extensive consultation of all the interested parties and take their comments into account before delivering an opinion. On 27 April 2004 it published a consultation document on its internet site¹⁰, on "the applicability, basic principles and essential requirements for pilot proficiency and air operations and for the regulation of third country aircraft operated by third country operators"¹¹. Between 30 April and 31 July 2004, 1 695 comments on the document were submitted by 93 individuals, national authorities, undertakings and organisations. The Agency replied in writing to the comments and the interested parties were able to comment on the reply¹².

On the basis of the comments received during these consultations, the Agency examined the question and on 15 December 2004 it sent the Commission an opinion recommending that the

⁷ 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 (OJ L 373, 31.12.1991, p. 4) and COM(2004) 73, 10.2.2004.

⁸ Directive 2004/36/EC of the European Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports (OJ L 143, 30.4.2004, p. 76).

⁹ Decision MB/7/03 of 27 June 2003 concerning the procedure to be applied by the Agency for the issuing of opinions, certification specifications and guidance material, adopted pursuant to Article 43 of Regulation (EC) No 1592/2002.

¹⁰ www.easa.eu.int.

¹¹ NPA No 2/2004.

¹² A list of the comments and their authors can be found on the EASA's website.

common rules be extended to air operations, pilot licensing and third-country aircraft¹³. The opinion, which is on the Agency's website "reflects the majority of the views expressed during the consultation and contains compromises likely to ensure a high level of consensus".

4. IMPACT STUDY

This proposal for a Regulation was preceded by an impact study carried out by the Commission. Two options in particular were examined:

- extending the scope of Regulation (EC) No 1592/2002, and hence of the European Aviation Safety Agency's remit; this was the option favoured by the legislator;
- transposing into Community law, via Regulation (EEC) No 3922/91, the rules defined through intergovernmental cooperation within the JAA.

The study showed clearly that it would be better for aviation safety, and for the functioning of the internal market, to introduce specific Community measures: the Commission therefore opted to extend the scope of Regulation (EC) No 1592/2002.

5. PROPOSAL FOR A REGULATION

5.1. Instrument and method

Extending the scope of Regulation (EC) No 1592/2002 is the most appropriate legislative instrument for extending the common rules to cover air operations, pilot licensing and third-country aircraft because the EASA, established by that Regulation, will also be given new tasks in these areas, notably in the field of rulemaking and certification.

To spare the parties concerned disruption and unnecessary additional cost, the common rules will be based on those developed thus far by the JAA, i.e. the JAR-OPS, JAR-FCL and JAR-STD. They will thus become mandatory and be applied uniformly throughout the Community. The same method had been chosen, when Regulation (EC) No 1592/2002 was adopted, for the rules on airworthiness.

5.2. Content

5.2.1. Amendments to the Agency's opinion

1. The Commission's proposal is based on the EASA's opinion; on some points however, the Commission wished to differ in order to achieve an even higher level of civil aviation safety in Europe. In accordance with the provisions of Article 12(2)(b) of Regulation (EC) No 1592/2002, these amendments were introduced in coordination with the Agency:
 - Primarily, the Commission wanted to extend the scope of the Regulation to include all aircraft used, for whatever purpose, in the Community, within the limits imposed by the

¹³ Opinion No 3/2004.

Chicago Convention. The scope of paragraphs 1(b) and 1(c) of Article 4 is therefore broader than the EASA's opinion proposed.

- Concerning cabin crew, the Agency proposed subjecting them to common safety requirements but, taking account of the majority view expressed during the consultation, not to a certification process. However, the EASA drew the Commission's attention to the incongruous situation of this category of staff who are now, in most of the Member States, the only ones assigned to aviation safety and security tasks not to be certified, although they play an essential role in ensuring passenger safety, as shown by the fortunate outcome of the accident in Toronto on 2 August 2005. The Commission believes that if this situation persists, it will contravene the objectives set out in Article 2 of Regulation (EC) No 1592/2002. The Commission therefore proposes, following on from the pending amendment of Regulation (EEC) No 3922/91, that cabin crew hold an attestation [Article 6b(4)] showing that they meet the specific essential requirements laid down in the new Annex IV to Regulation (EC) No 1592/2002.
- The Commission considered that ultralight aircraft should perhaps no longer be systematically exempted from common rules, as the performance of some of these aircraft now matches that of light aircraft. It would therefore like work to begin as soon as possible to examine if, and to what extent, certain types of ultralight aircraft should be subject to common rules (recital 4).

5.2.2. *Extension of the scope of the Regulation*

2. With regard to air operations, pilot licensing and third-country aircraft, the EASA options were accepted and the main lines of the proposal can be summarised as follows:

- Air operations:

To improve public safety, notably on the ground, and facilitate the free movement of services within the internal market, the proposed Regulation would extend the common rules to all air operations [Article 4(1b)] and the certification requirement to all commercial operators [Article 6b(2)]. Certificates would be issued by the Member States or, where appropriate, the EASA [Article 15b(1)], which could also, wherever necessary, impose operational directives [Article 15b(2)].

For non-commercial operations, the rules would be tailored to the complexity of the aircraft used and there would be no certification, as is already the case in most Member States. Where such operations are conducted with complex aircraft [Article 3(j)], the operators concerned should however declare that they are able to meet all the essential requirements relating to air operations [Article 6b(3) and Annex IV].

- Pilot licensing:

The proposed Regulation would require most pilots operating in the Community to hold a licence issued on the basis of common requirements regarding their theoretical and practical knowledge and physical aptitude [Article 4(1a)]. Organisations, flight synthetic training devices and persons involved in the training, testing, checking and medical assessment of pilots must also be certified on the basis of common rules [Article 6a(1), (2), (3), (4) and (5)]. The EASA would be responsible for checking that these rules are correctly applied by the

national certification bodies, and would itself certify the organisations and flight synthetic training devices of third countries [Article 15a].

However, not all pilots would be subject to the same rules, which in some cases would be disproportionate. So while commercial transport would be subject to the maximum requirements, other aviation sectors should be governed by rules adapted to the complexity of the aircraft used and that of the airspace in which they fly. In particular, better provision should be made for recreational flying: the specific rules developed by the JAA (JAR-FCL PPL) are often considered excessive. The proposed Regulation would therefore introduce a new category of licence, the "recreational pilot licence", tailored more closely to this category of airspace user. This licence would be issued by assessment bodies approved by the Agency or by the competent national authority, as the applicant chooses [Articles 6a(2) and 15a(1)(b)]. Sports federations could, for example, fulfil this function.

– Third-country aircraft:

To ensure effective protection of public safety, on the ground and on board these aircraft, the proposed Regulation would impose common rules on third-country aircraft operating in the Community, within the limits imposed by the Chicago Convention [Articles 5(1), 5(4)(j), 5(5)(d), 6a(1), 6b(1)]. In addition, for third-country operators engaged in commercial operations in the Community, compliance with the common rules would have to be attested by a certificate [Articles 6b(2) and (6) and 15b(1)].

5.2.3. *Other amendments to the Regulation*

3. As Regulation (EC) No 1592/2002 entered into force in September 2002 and the EASA has been operational since 28 September 2003, the Commission believes that lessons should be drawn from the experience acquired since then to improve the text whenever necessary. Besides extending its scope, some of its provisions should be amended including, primarily:

- Qualified entities conducting certification tasks on behalf of the Agency, or on behalf of national aeronautical authorities where the Agency assigns such tasks to the Member States, should be accredited by the Agency, which would thus ascertain their capability to perform the tasks in question (Article 9a).
- Derogation management should be simplified: as far as possible, the Commission should only have to take decisions on derogation measures adopted by the Member States if the measures are not in conformity with this Regulation and its implementing rules (Article 10).
- The composition of the Management Board should be changed, notably to increase transparency: it should therefore include observers representing the interested parties. The governance of the Agency would also be improved, by having an Executive Board which would adopt strategic guidelines and monitor the implementation of the Management Board's decisions (Articles 25, 28a, 28b and 28c).
- In addition, in accordance with the Agency's opinion, an effective mechanism for checking all aircraft operating in the Community should be established to ensure that all the common safety rules are properly complied with (Article 7).

6. CORRELATION TABLE SHOWING THE NEW AND FORMER NUMBERING OF THE ARTICLES AND INDICATING THE AMENDMENTS MADE TO REGULATION (EC) No 1592/2002

New number	Former number	Changes
1	1	Unchanged
2	2	Establishment of conditions for fair competition is also one of the objectives pursued: addition of point (2)(f)
3	3	Addition of new definitions (h) to (n) and amendment of the definition of qualified entity (f)
4	4	To guarantee public safety, all aircraft used in the Community are governed by common rules: - Amendment of points (1)(b) and (c) - Addition of point (1)(d) - Addition of paragraphs (1a) and (1b) - Redrafting of paragraph (2)
5	5	Addition of provisions concerning the certification of products designed and manufactured in the Community. Demonstration of conformity with essential airworthiness requirements for aircraft registered in third countries: - Redrafting of paragraph (2) - Addition of paragraph (2a) - Amendment of points (4)(e) and (f) - Addition of points (4)(j) and (5)(d)
6	6	Unchanged
6a	New	Pilot licensing
6b	New	Air operations
7	7	Amendment of the article: establishment of a mechanism for checking aircraft safety
8	8	Amendments necessary owing to the insertion of Articles 6a and 6b: - Redrafting of paragraph (2)

		- Addition of paragraph (3)
9	9	Rules governing the recognition of certificated issued by third countries: amendment of paragraph (1)
9a	New	Qualified entities
10	10	The article is amended to simplify the application of derogations
11	11	Amendment of paragraph (4), in the light of the new Article 7
11a	New	Introduction of provisions on protection of sources of information
12	12	Unchanged
13	13	Redrafting of paragraph (c) and addition of paragraph (d), as standardisation inspections are followed up by reports, not decisions
14	14	Redrafting of paragraph (2)(a)
15	15	Issue of permits to fly by the EASA, certification of personnel responsible for the release of products after maintenance and certification of maintenance organisations by the EASA: - Redrafting of points (1)(e) and (i) - Addition of points (1)(k) and (l) - Amendment of point (2)(b)(ii) - Redrafting of point (2)(c)
15a	Nouveau	Certification of personnel
15b	Nouveau	Certification of commercial operators
16	16	Redrafting
17	17	Unchanged
18	18	The EASA's relations with authorities and organisations in third countries must be compatible with the Community's general foreign policy: amendment of paragraph (2)
19	19	Unchanged
20	20	Unchanged
21	21	Unchanged
22	22	Unchanged

23	23	Unchanged
24	24	In the interests of transparency, the Commission's opinion on the EASA's work programme must be accessible to the public [(2)(c)]. Clarification of paragraph (2)(d): the EASA can allocate certification tasks both to national authorities and to qualified entities, as stated elsewhere in the text. The Management Board appoints the members of the Executive Board (5)
25	25	New rules on the composition of the Management Board which include the relevant provisions of the draft interinstitutional agreement on the regulatory agencies ¹⁴ : amendment of paragraph (1) and addition of paragraph (3)
26	26	Amendment of paragraph (2)
27	27	Unchanged
28	28	New rules on Management Board voting rights which include the relevant provisions of the draft interinstitutional agreement on the regulatory agencies: amendment of paragraph (2)
28a	New	Establishment of an Executive Board
28b	New	Composition of the Executive Board
28c	New	Decision-making procedures of the Executive Board
29	29	Functions and powers of the Executive Director: redrafting of paragraph (3)
30	30	Amendment of procedures for selecting and extending the term of office of the Executive Director and of the Directors of the EASA, in accordance with the provisions of the draft interinstitutional agreement on the regulatory agencies: amendment of paragraphs (1) and (4)
31	31	Unchanged
32	32	Unchanged
33	33	Unchanged
34	34	Unchanged
35	35	Redrafting of paragraph (1)
36	36	Unchanged

¹⁴ COM(2005) 59, 25.2.2005.

37	37	Unchanged
38	38	Unchanged
39	39	Unchanged
40	40	Unchanged
41	41	New provision relating to action before the Court of Justice: amendment of paragraphs (1) and (2)
42	42	Unchanged
43	43	Unchanged
44	44	Unchanged
45	45	New, clearer wording of paragraph (1)
46	46	Investigation of qualified entities: redrafting of paragraph (1) and addition of paragraph (1a)
46a	New	Content and form of the annual work programme
46b	New	Content and form of the annual general report
47	47	Application of Regulation (EC) No 1049/2001 and reference to Regulation (EC) No 45/2001: ¹⁵ addition of paragraphs (5) and (6)
48	48	Alignment with the Agency's Financial Regulation: redrafting of paragraph (1)
49	49	Unchanged
50	50	Unchanged
51	51	Unchanged
52	52	Unchanged
53	53	Paragraph (4): the transitional provisions relating to the Community contribution are deleted
54	54	Unchanged
55	55	Unchanged

¹⁵ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

56	56	Deletion of paragraph (3), which is now redundant
57	57	Unchanged (Article 2 of the proposal contains new provisions on repeal)
58	58	Unchanged (Article 3 of the proposal contains new provisions on the entry into force)
Annex I	Annex I	Unchanged
Annex II	Annex II	Amendments
Annex III	New	Essential requirements for pilot licensing
Annex IV	New	Essential requirements for air operations
Annex V	New	Criteria for qualified entities

7. SUBSIDIARITY AND PROPORTIONALITY

European countries have been cooperating for many years within the JAA to develop common aviation safety rules, which by their very nature cannot be purely national. However, as the application of these rules is left to the discretion of the countries which sign up to them, the Member States soon agreed that a high, uniform level of safety could only be attained through action at Community level.

Thus, Regulations (EEC) No 3922/91 and (EC) No 1592/2002 gradually transferred to the Community the competences of the Member States regarding the airworthiness and environmental compatibility of aeronautical products. Directive 91/670/EEC introduced common rules on personnel licences and Directive 2004/36/EC introduced common rules on the safety of third-country aircraft.

In adopting Directive 91/670/EEC, the legislator already gave the Commission a mandate to submit measures for harmonised requirements in respect of licences and training programmes. A year later, Regulation (EEC) No 2407/92¹⁶ on licensing of air carriers referred to a future Council Regulation on air operators' certificates. Likewise, in adopting Regulation (EC) No 1592/2002, the legislator recognised that a high, uniform level of safety could not be achieved unless its scope was extended to include air operations and flight crew licensing; it also wished to see the text applied to third-country aircraft.

The need for Community action to attain this objective, i.e. the establishment and uniform application of common rules on pilot licensing, air operations and third-country aircraft, is therefore clearly recognised. The proposal for a regulation does not go beyond what is necessary to achieve this. It therefore complies with the principles of subsidiarity and proportionality established in Article 5 of the Treaty establishing the European Community.

¹⁶ Council Regulation (EC) No 2407/92 of 23 July 1992 on licensing of air carriers (OJ L 240, 24.8.1992).

8. EVALUATION

The measures introduced by this Regulation and its implementing rules are to be evaluated in accordance with Article 51 of Regulation (EC) No 1592/2002.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 1592/2002 of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency

(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 Commission¹⁷,

Having regard to the Opinion of the European Economic and Social Committee¹⁸,

Having consulted the Committee of the Regions¹⁹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²⁰,

Whereas:

- (1) The recital (2) of Regulation (EC) No 1592/2002 of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency²¹ specifies, inter alia, that appropriate essential requirements should be developed to cover operations of aircraft and flight crew licensing, and application of that Regulation to third country aircraft. Article 7 of that Regulation requires the Commission to submit as soon as possible proposals to the European Parliament and to the Council with regard to the basic principles, applicability and essential requirements regarding personnel and organisation involved in the operation of aircraft.
- (2) The Community should lay down, in line with standards set by the Convention on Civil Aviation, signed in Chicago on 7 December 1944 (“the Chicago Convention”), essential requirements applicable to persons and organisations involved in the operation of aircraft, as well as to persons and product involved for the training and medical examination of pilots. The Commission should be empowered to develop the necessary implementing rules.

¹⁷ OJ C , , p. .

¹⁸ OJ C , , p. .

¹⁹ OJ C , , p. .

²⁰ OJ C , , p. .

²¹ OJ L 240, 7.9.2002, p. 1.

- (3) European citizens should enjoy at all times a high and uniform level of protection. Consequently, third country aircraft operated into, within or out of the territory where the Treaty applies, should be subject to an appropriate oversight at Community level within the limits set by the Chicago Convention.
- (4) It would not be appropriate to subject all aircraft to common rules, in particular aircraft that are of simple design or operate mainly on a local basis, and those that are home-built or particularly rare or only exist in a small number; such aircraft should therefore remain under the regulatory control of Member States. However, proportionate measures should be taken to generally increase the level of safety of recreational aviation.
- (5) Consideration should notably be given to aeroplanes and helicopters with a low maximum take-off mass and whose performance is increasing, can circulate all over the Community and are produced in an industrial manner, which therefore might be better regulated at Community level to provide for the necessary uniform level of safety and environmental protection.
- (6) The scope of Community action should be clearly defined so that persons, organisations and products subject to this Regulation and its implementing rules can be identified without ambiguity. Such scope should be clearly defined by referring to a list of aircraft to which are exempted from the application of this Regulation.
- (7) Aeronautical products, parts and appliances, operators involved in commercial air transport, as well as pilots and persons, products and organisations involved in their training and medical examination, should be certified or licensed once they have been found to comply with essential requirements to be 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.
- (8) Appropriately approved assessment bodies should be entitled to issue licenses to pilots involved in recreational operations.
- (9) The European Aviation Safety Agency (“the Agency”) should be authorised to issue certificates or licences to persons, organisations and products subject to this Regulation when centralised action is more efficient than certification at Member State level. The Agency should, for the same reason, be allowed to take the necessary measures related to the operation of aircraft, the qualification of crew or the safety of third country aircraft when this is the best means to ensure uniformity and facilitate the functioning of the internal market.
- (10) The effective functioning of a Community civil-aviation safety scheme in the fields covered by this Regulation requires strengthened co-operation between the Commission, the Member States and the Agency to detect unsafe conditions and take remedial measures as appropriate.
- (11) The promotion of a safety culture and the proper functioning of a regulatory system in the fields covered by this Regulation require that incidents and occurrences are spontaneously reported by their witnesses. Such reporting would be facilitated by the establishment of a non-punitive environment, and appropriate measures should be

taken by Member States to provide for the protection of such information and of its reporters.

- (12) In the interests of transparency, observers of interested parties should be represented within the Management Board of the Agency. To ensure the proper governance of the Agency, an Executive Board should also be established to adopt strategic guidelines and to monitor the implementation of the decisions of the Management Board.
- (13) This Regulation establishes an appropriate and comprehensive framework for the definition and implementation of common technical requirements and administrative procedures in the field of civil aviation. Annex III 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 aviation²² and Council Directive 91/670/EEC of 16 December 1991 on mutual acceptance of personnel licences for the exercise of functions in civil aviation²³, in its entirety, should therefore be repealed in due course, without prejudice to the certification or licensing of products, persons and organisations already effected in accordance with those legislative acts.
- (14) The measures provided by this Regulation are based on the opinion issued by the European Aviation Safety Agency²⁴ in accordance with point (b) of Article 12(2) of Regulation (EC) No 1592/2002 and with Article 14(1) thereof.
- (15) Regulation (EC) No 1592/2002 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

²² OJ L 373, 31.12.1991, p. 4.

²³ OJ L 373, 31.12.1991, p. 21.

²⁴ Opinion of the European Aviation Safety Agency No 3/2004.

CHAPTER I

AMENDMENTS TO BASIC REGULATION

Article 1

Regulation (EC) No 1592/2002 is amended as follows:

(1) In Article 2(2), the following point is added:

“(f) to provide a level playing field for all actors in the internal aviation market.”

(2) Article 3 is amended as follows:

(a) point (f) is modified as follows:

“(f) ‘qualified entity’ means an accredited body which may conduct certification tasks under the control and the responsibility of the Agency or of a national aviation authority;”

(b) the following points (h) to (n) are added:

“(h) ‘operator’ means any legal or natural person, operating or proposing to operate one or more aircraft;

(i) ‘commercial operation’ means a remunerated aeronautical activity covered by a contract between an operator and a customer, where the customer is not, directly or indirectly, an owner of the aircraft used for the purpose of this contract and the operator is not, directly or indirectly, an employee of the customer;

(j) ‘complex-motor-powered aircraft’ means:

(i) an aeroplane:

- with a maximum certificated take-off mass exceeding 5 700kg or;
- with a maximum approved passenger seating configuration of more than 9 or;
- certificated for operation with a minimum crew of at least 2 pilots or;
- equipped with (a) turbojet engine(s); or

(ii) a helicopter:

- with a maximum certificated take-off mass exceeding 3 175kg or;
- with a maximum approved passenger seating configuration of more than 5 or;
- certificated for operation with a minimum crew of at least 2 pilots;
or

(iii) a tilt rotor aircraft;

(k) ‘recreational operation’ means any non commercial operation with a non complex-motor-powered aircraft;

(l) ‘assessment body’ means an approved body which may assess conformity of legal or natural persons with the rules established to ensure compliance with the essential requirements laid down in this Regulation and issue the related certificate;

(m) ‘flight synthetic training device’ means any type of device in which flight conditions are simulated on the ground; they include flight simulators, flight training devices, flight navigation and procedures trainers and basic instrument training devices;

(n) ‘rating’ means a statement entered on a pilot licence, setting forth special conditions, privileges or limitations pertaining to such licence.”

(3) Article 4 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (b) is replaced by:

“(b) registered in a Member State, unless their regulatory safety oversight has been delegated to a third country and they are not used by a Community operator; or”

(ii) point (c) is replaced by:

“(c) registered in a third country and used by an operator for which a Member State ensures oversight of operations or used into, within or out of the Community by an operator established or residing in the Community; or”

(iii) the following point (d) is added:

“(d) registered in a third country, or registered in a Member State which has delegated their regulatory safety oversight to a third country, and used by a third country operator into, within or out of the Community;”

- (iv) in the last sentence of paragraph 1, the words “unless their regulatory safety oversight has been delegated to a third country and they are not used by a Community operator” are deleted.
- (b) the following paragraph 1a is added:

“(1a) Personnel involved in the operations of aircraft referred to in paragraph 1(b) or (c) shall comply with this Regulation.”
- (c) the following paragraph 1b is added:

“(1b) Operations of aircraft referred to in paragraph 1 (b), (c) or (d) shall comply with this Regulation.”
- (d) paragraph 2 is modified as follows:

“2. Paragraphs 1, 1a and 1b shall not apply to aircraft referred to in Annex II.”
- (4) Article 5 is amended as follows:
 - (a) paragraph 2 is amended as follows:
 - (i) in the introductory part, the words “registered in a Member State” are replaced by “referred to in point (b) of Article 4(1)”;
 - (ii) in the first sentence of point (d), the words “the design, manufacture and maintenance of products” are replaced by the words “the maintenance of products”;
 - (iii) the following point (dd) is inserted:

“(dd) Organisations responsible for the design and manufacture 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.”
 - (b) the following paragraph 2a is added:

“2a. Aircraft referred to in point (a) of Article 4(1) and products, parts and appliances mounted thereon shall comply with points (a) (b) and (dd) of paragraph 2 of this Article.”
 - (c) paragraph 4 is amended as follows:
 - (i) under point (e) the following points (iv), (v) and (vi) are added:

“(iv) the minimum syllabus of maintenance certifying staff type rating training to ensure compliance with paragraph (2)(e);

- (v) the minimum syllabus of pilot type rating to ensure compliance with Article 6a;
- (vi) the master minimum equipment list as appropriate and additional airworthiness specifications for a given type of operation to ensure compliance with Article 6b.”
- (ii) point (f) is replaced by the following:
 - “(f) conditions to issue, maintain, amend, suspend or revoke organisation approvals required in accordance with points (d), (dd) and (f) of paragraph 2 and conditions under which such approvals need not be requested;”
- (iii) the following point (j) is added:
 - “(j) how aircraft referred to in points (c) and (d) of Article 4(1) are to show compliance with the essential requirements.”
- (d) in paragraph 5, the following point (d) is added:
 - “(d) do not impose on aircraft referred to in points (c) and (d) of Article 4(1) requirements which would be incompatible with the ICAO obligations of Member States.”
- (5) The following Articles 6a and 6b are inserted after Article 6:

*“Article 6a
Pilot licensing*

1. Pilots involved in the operation of aircraft referred to in Article 4(1)(b) and (c) and organisations, flight synthetic training devices and persons involved in the training, testing, checking and medical assessment of pilots shall comply with the essential requirements laid down in Annex III.
2. A pilot may only operate an aircraft if he or she holds a licence and a medical certificate appropriate to the operation performed.

A pilot shall be issued a licence when it is shown that he or she complies with the rules established to ensure compliance with the essential requirements related to theoretical knowledge, practical skill and language proficiency. This licence may be issued by an assessment body when the privileges it confers are limited to recreational flying.

A pilot shall be issued a medical certificate when it is shown that he or she complies with the rules established to ensure compliance with the essential requirements governing medical fitness. This medical certificate shall be issued by aero medical examiners or aero medical centres; however, in the case of pilots involved in recreational operations, the certificate may be issued by a general medical practitioner.

The privileges granted to the pilot and the scope of the licence and the medical certificate shall be specified therein.

The requirements of the second and third subparagraphs may be satisfied by the acceptance of licences and medical certificates issued by or on behalf of a third country as far as pilots involved in the operation of aircraft referred to in point (c) of Article 4(1) are concerned.

3. The capability of assessment bodies, pilot training organisations and of organisations responsible for assessing the medical fitness of pilots to discharge the responsibilities associated with their privileges in relation to the issuance of licenses and medical certificates shall be recognised by the issuance of an approval.

Organisation approvals shall be issued when it is shown that the organisation complies with the rules established to ensure compliance with the relevant essential requirements as laid down in Annex III.

The privileges granted by the approvals shall be specified thereon.

4. A flight synthetic training device used for the training of pilots shall be the subject of a certificate. This certificate shall be issued when it is shown that the device complies with the rules established to ensure compliance with the relevant essential requirements as laid down in Annex III.
5. A person responsible for providing training for pilots, or for assessing their competence or medical fitness shall hold an appropriate certificate.

That certificate shall be issued when it is shown that the applicant complies with the rules established to ensure compliance with the relevant essential requirements as laid down in Annex III.

The privileges granted by the certificate shall be specified therein.

6. The Commission shall adopt, in accordance with the procedure laid down in Article 54(3), the rules for the implementation of this Article. In doing so, it shall specify in particular:
 - (a) the different ratings for pilot's licences and the medical certificates adequate for the different types of activities performed;
 - (b) the conditions for issuing, maintaining, amending, limiting, suspending or revoking licences, ratings for licenses, medical certificates, approvals for organisations, assessment bodies and personnel certificates;
 - (c) the privileges and responsibilities of the holders of licenses, ratings for licenses, medical certificates, organisation approvals and personnel certificates.
7. When establishing the implementing rules referred to in paragraph 6, the Commission will take specific care that they reflect the state of the art and the

best practices in the field of pilots training, and that they allow for immediate reaction to established causes of accidents and serious incidents.

Article 6b
Air operations

1. The operation of aircraft referred to in Article 4(1) (b) (c) and (d) shall comply with the essential requirements laid down in Annex IV.
2. Operators engaged in commercial operations shall demonstrate their capability and means to discharge the responsibilities associated with their privileges.

These capabilities and means shall be recognised through the issuance of a certificate.

The privileges granted to the operator and the scope of the operations shall be specified in the certificate.

The requirement of this paragraph may be satisfied by acceptance of certificates issued by or on behalf of a third country as far as operators involved in the operation of aircraft referred to in Article 4(1)(d) are concerned.

3. Operators engaged in the non-commercial operation of complex motor-powered aircraft shall declare their capability and means to discharge the responsibilities associated with the operation of the aircraft.
4. Cabin crew involved in the operation of aircraft referred to in Article 4(1)(b) and (c) shall comply with the essential requirements laid down in Annex IV. They shall hold an attestation and a medical certificate appropriate to the operation performed.
5. The Commission shall adopt, in accordance with the procedure laid down in Article 54(3), the rules for the implementation of this Article. In doing so, it shall specify in particular:
 - (a) the conditions to operate an aircraft in compliance with the essential requirements laid down in Annex IV;
 - (b) the conditions for issuing, maintaining, amending, limiting, suspending or revoking the operator's certificate referred to in paragraph 2;
 - (c) the privileges and responsibilities of the holders of certificates;
 - (d) the conditions and procedures for oversight and inspection of operators referred to in paragraph 3.
 - (e) the conditions for issuing, maintaining, amending, limiting, suspending or revoking the cabin crew attestation referred to in paragraph 4.

(f) the conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety in accordance with Article 15b(2).

6. The implementing rules referred to in paragraph 5 shall reflect the state of the art and the best practices in the field of air operations.

The implementing rules shall also take into account worldwide aircraft experience in service, and scientific and technical progress.

They shall allow for immediate reaction to established causes of accidents and serious incidents.

They shall not impose on aircraft referred to in Article 4(1) (c) and (d) requirements which would be incompatible with the ICAO obligations of Member States.”

- (6) Article 7 is replaced by the following:

*“Article 7
Collective oversight*

1. Member States and the Agency shall co-operate in ensuring through appropriate collection, including ramp inspection, and sharing of information that the provisions of this Regulation and its implementing rules are actually implemented.
2. The Commission shall adopt, in accordance with the procedure laid down in Article 54(3), the rules for the implementation of paragraph 1, specifying in particular the following conditions:
 - (a) conditions for the collection, exchange and dissemination of information;
 - (b) conditions for conducting ramp inspections, including systematic ones;
 - (c) conditions for the grounding of aircraft that do not comply with the requirements of this Regulation or its implementing rules.”

- (7) Article 8 is modified as follows:

- (a) paragraph 2 is replaced by the following:

“2. Pending adoption of the implementing rules referred to in Articles 5(5) and 6a(6), and without prejudice to Article 2(3) of this Regulation, certificates which cannot be issued in accordance with this Regulation may be issued on the basis of the applicable national regulations.”

- (b) the following paragraph 3 is added:

“3. Pending adoption of the implementing rules referred to in Article 6b(5), certificates which cannot be issued in accordance with this Regulation

may be issued on the basis of the applicable national regulations or, when applicable, on the basis of the relevant requirements of Regulation (EEC) No 3922/1991.”

(8) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. By way of derogation from the provisions of this Regulation and the rules adopted for its implementation, the Agency, within its fields of competence, shall issue certificates on the basis of certificates issued by aeronautical authorities of a third country, as provided for in recognition agreements between the Community and that third country.”

(9) The following Article 9a is inserted after Article 9:

*“Article 9a
Qualified entities*

1. Qualified entities conducting specific certification tasks in accordance with the applicable certification procedures on behalf of the Agency, or on behalf of the Member States when those latter carry out certification tasks in application of this Regulation, shall comply with the criteria laid down in Annex V and shall demonstrate possession of the necessary organisation and expertise. These capabilities and means shall be recognised through the issuance of an accreditation by the Agency.
2. With regard to qualified entities, the Agency shall:
 - (a) conduct itself or through national aviation authorities, inspections and audits of the entities it accredits;
 - (b) issue and renew the accreditations;
 - (c) amend, limit, suspend or revoke the relevant entity’s accreditation when the conditions according to which it was issued by the Agency are no longer fulfilled, or if the entity concerned fails to fulfil the obligations imposed on it by this Regulation or by its implementing rules.”

- (10) Article 10 is replaced by the following:

*“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 an unforeseen safety problem which involves a product, person or organisation subject to the provisions of this Regulation.

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

2. Pursuant to Article 16(3), the Agency may determine within one month of being notified in accordance with paragraph 1 of this Article, whether the safety problem can be addressed within the framework of this Regulation and its implementing rules, provided the Commission has not raised objections within the same period. The Agency shall then take the appropriate decision, with copy to the Commission and the other Member States.

If, on the other hand, the Agency determines that the safety problem is the result of a shortcoming in, or an inadequate level of safety resulting from the application of, this Regulation or its implementing rules, it shall then develop and issue an opinion on whether this Regulation or its implementing rules shall be amended and whether the measures shall be revoked or maintained. In accordance with the procedure referred to in Article 54(3), the Commission may make a decision on the basis of this opinion. If the measures are to be continued, they shall be implemented by all Member States and the provisions of Article 8 shall apply to them.

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, provided that the level of safety is not adversely affected thereby. 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. Pursuant to Article 16(3), the Agency shall determine within one month of being notified in accordance with paragraph 3 of this Article, whether the exemptions comply with the general safety objectives of this Regulation or any other rule of Community law. The Agency shall issue an opinion to the Commission.

On the basis of this opinion and in accordance with the procedure referred to in Article 54(4), the Commission may make a decision on the revocation of these exemptions.

5. Where an equivalent level of protection to that attained by the application of the rules implementing this Regulation can be achieved by other means, a

Member State may, without discrimination on grounds of nationality, grant approval derogating from those implementing rules.

In such cases, the Member State shall notify the Agency and 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. Pursuant to Article 16(3), within two months of being notified in accordance with paragraph 5 of this Article, the Agency shall issue an opinion on whether the proposed approval fulfils the conditions laid down in that paragraph.

Within one month of receiving the Agency's opinion, the Commission may initiate the procedure referred to in Article 54(3), in order to decide whether the proposed approval can be granted or must be rejected. If the approval can be granted, the Commission 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."

- (11) In Article 11, the following sentence is added to paragraph 4:

"From the entry into force of the implementing rules referred to in Article 7(2), this safety review shall contain an analysis of all information received in accordance with Article 7. This analysis shall be simple and easy to understand and shall indicate whether there is an increased safety risk to air passengers. In this analysis, the sources of information shall be concealed."

- (12) The following Article 11a is inserted after Article 11:

*"Article 11a
Protection of the source of information*

1. When information referred to in Article 11 has been provided by a natural person on a voluntary basis, the reports shall not reveal the source of such information.
2. Without prejudice to the applicable rules of penal law, Member States shall refrain from instituting proceedings in respect of unpremeditated or inadvertent infringements of the law which come to their attention only because they have been reported in pursuance of this Regulation and its implementing rules.

This rule shall not apply in cases of gross negligence.

3. In accordance with the procedures defined in their national laws and practices, Member States shall ensure that employees who provide information in application of this Regulation and its implementing rules are not subjected to any prejudice by their employer, except in cases of gross negligence.
4. This Article shall apply without prejudice to national rules relating to access to information by judicial authorities."

(13) Article 13 is amended as follows:

(a) point (c) is replaced by the following:

“(c) take the appropriate decisions for the application of Articles 9a, 15, 15a, 15b and 46;”

(b) the following point (d) is added:

“(d) issue the reports following standardisation inspections carried out pursuant to Articles 16(1) and 45.”

(14) In point (a) of Article 14(2), the words “including airworthiness codes” are deleted.

(15) Article 15 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first sentence is replaced by the following:

“With regard to products, parts and appliances referred to in Article 4(1) (a) and (b), 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.”

(ii) point (e) is replaced by the following:

“(e) conduct, itself or through national aviation authorities or qualified entities, technical investigations associated with products, parts and appliances certification;”

(iii) point (i) is replaced by the following:

“(i) amend, suspend or revoke the relevant certificate when the conditions according to which it was issued by the Agency 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;”

(iv) the following points (k) and (l) are added:

“(k) for each aircraft for which a permit to fly is requested for a single flight, establish the appropriate limitations;

(l) issue permits to fly to aircraft when such permits are required for the execution of a series of flights.”

(b) paragraph 2 is amended as follows:

(i) in point (b), subpoint (ii) is replaced by the following:

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

(ii) point (c) is replaced by the following:

“(c) amend, suspend or revoke the relevant organisation certificate when the conditions according to which it was issued by the Agency 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.”

(16) The following Articles 15a and 15b are inserted after Article 15:

*“Article 15a
Personnel certification*

1. With regard to personnel and organisations referred to in Article 6a(1), the Agency shall:

(a) conduct, itself or through national aviation authorities or qualified entities, inspections and audits of the organisations and assessment bodies it certifies;

(b) issue and renew the certificates of:

(i) personnel training organisations and aero-medical centres located within the territory of the Member States, if requested by the Member State concerned; or

(ii) personnel training organisations and aero-medical centres located outside the territory of the Member States; or

(iii) assessment bodies if requested by such bodies;

(c) amend, limit, suspend or revoke the relevant organisation certificate when the conditions according to which it was issued by the Agency 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.

2. With regard to flight synthetic training devices referred to in Article 6a(1), the Agency shall:
 - (a) conduct, itself or through national aviation authorities or qualified entities, technical inspections of the devices it certifies;
 - (b) issue and renew the certificates of:
 - (i) flight synthetic training devices used by training organisations certified by the Agency; or
 - (ii) flight synthetic training devices located within the territory of the Member States, if requested by the Member State concerned; or
 - (iii) flight synthetic training devices located outside the territory of the Member States;
 - (c) amend, limit, suspend or revoke the relevant certificate when the conditions according to which it was issued by the Agency 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.

Article 15b
Air Operator certification

1. With regard to operators engaged in commercial operations, the Agency shall:
 - (a) conduct, itself or through national aviation authorities or qualified entities, inspections and audits of the operators it certifies;
 - (b) issue and renew the certificates of:
 - (i) operators located within the territory of the Member States, if requested by the Member State concerned; or
 - (ii) operators located outside the territory of the Member States, unless a Member State carries out the functions and tasks of the State of operator for these operators;
 - (c) amend, limit, suspend or revoke the relevant operator's certificate when the conditions according to which it was issued by the Agency 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.
2. The Agency may mandate by means of an operational directive that an operation shall be prohibited, limited or subject to certain conditions in the interest of safe operations.

3. With regard to flight time limitation the Agency shall:
 - (a) issue the applicable certification specifications to ensure compliance with the essential requirements and, as appropriate, the related implementing rules. In particular, with regard to commercial transportation by aeroplane, pending adoption of the related implementing rules referred to in Article 6b(5), the Agency shall issue the applicable certification specifications to ensure compliance with Subpart Q of Annex III to Regulation (EEC) No 3922/1991.
 - (b) approve individual flight time specification schemes of operators when such schemes cannot be approved under an applicable certification specification.”
- (17) In Article 16, paragraphs 1 and 2 are replaced by the following:
 - “1. The Agency shall conduct standardisation inspections in the fields covered by Article 1(1), in order to monitor the application by national competent authorities of this Regulation and of its implementing rules, and shall report to the Commission.
 2. The Agency shall conduct technical investigations of undertakings to monitor the application of this Regulation and its implementing rules, having regard to the objectives set out in Article 2.”
- (18) In Article 18(2), the following subparagraph is added:

“Working arrangements shall comply with Community law and shall duly take into account Community foreign policy vis-à-vis third countries. They shall have received the Commission’s prior approval.”
- (19) Article 24 is amended as follows:
 - (a) paragraph (2) is amended as follows:
 - (i) point (b) is replaced by the following:

“(b) adopt the annual general report on the Agency’s activities and forward it by 15 June at the latest to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States; acting on behalf of the Agency, it shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures;”
 - (ii) the following phrase is added to point (c):

“the opinion of the Commission shall be attached to the adopted Agency’s programme of work;”

(iii) point (d) is replaced by the following:

“(d) adopt guidelines for the allocation of certification tasks to national aviation authorities and qualified entities in agreement with the Commission;”

(b) the following paragraph 5 is added:

“5. The Management Board shall appoint the members of the Executive Board pursuant to Article 28b.”

(20) Article 25 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

(b) the following paragraph 3 is added:

“3. In the interests of transparency, four representatives of interested parties shall sit on the Management Board, as observers. They shall be designated by the Commission among a list laid down by the advisory body referred to in Article 24(4), and represent, as broadly as possible, the different parties represented in this advisory body. The duration of their term of office shall be thirty months, renewable once.”

(21) In Article 26(2), the last sentence is replaced by the following:

“These terms of office shall be renewable once.”

(22) Article 28(2) is replaced by the following:

“2. Each member designated by the Council shall have one vote. The representative from the Commission shall have an equal number of votes in total to the number of members designated by the Council. Neither the representatives of interested parties nor the Executive Director of the Agency shall vote. In the absence of a member, his or her alternate shall be entitled to exercise his or her right to vote.”

(23) The following Articles 28a to 28c are inserted after Article 28:

*“Article 28a
Powers of the Executive Board*

1. The Agency shall have an Executive Board.

2. Without prejudice to the powers of the Management Board and to the functions and powers of the Executive Director, the Executive Board shall:
 - (a) establish its Rules of Procedure;
 - (b) adopt strategic guidelines on the tasks of the Agency referred to in Article 12, and on its organization and functioning;
 - (c) prepare, and monitor the implementation of, the decisions of the Management Board;
 - (d) monitor the implementation of the budget adopted by the Management Board.

Article 28b
Composition of the Executive Board

1. The Executive Board shall be composed of:
 - (a) three members designated by the Management Board, among its members appointed by the Council;
 - (b) three members designated by the Commission;
 - (c) two observers designated among, and by, the representatives of interested parties sitting on the Management Board.
2. The terms of office of the members and observers of the Executive Board shall expire when their respective membership of the Management Board ceases. Subject to this provision, the duration of their terms of office shall be thirty months, renewable once.
3. The Executive 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 or her being prevented from attending to his or her duties. The terms of office of the Chairperson and Deputy Chairperson shall expire when their respective membership of the Executive Board ceases.

Article 28c
Meetings of the Executive Board

1. Meetings of the Executive board shall be convened by its Chairperson.
2. The Executive Board shall meet at the instance of the Chairperson or at the request of at least three of its members.
3. The Executive Board may invite any person whose opinion can be of interest to attend its meetings as an observer.

4. The members of the Executive Board may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.
5. Meeting facilities and secretariat for the Executive Board shall be provided by the Agency.
6. The Executive Board shall take its decisions by a majority.
7. Each member of the Executive Board shall have one vote. The representatives of interested parties, referred to in point (c) of Article 28b(1), as well as observers, advisers or experts referred to in paragraphs 3 and 4 of this Article, shall not vote.
8. 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.”

(24) Article 29(3) is amended as follows:

- (a) point (a) is replaced by the following:

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

- (b) point (b) is replaced by the following:

“(b) to organize inspections and investigations as provided for in Articles 45 and 46;”

- (c) the following points (k) and (l) are added:

“(k) to prepare and to implement the annual programme of work;

(l) to respond to requests for assistance from the Commission.”

(25) Article 30 is amended as follows:

(a) The following sentence is added to paragraph 1:

“Before being appointed, the candidate selected by the Management Board may be asked to make a declaration before the competent committee or committees of the European Parliament and answer questions from its, or their, members.”

(b) Paragraph 4 is replaced by the following:

“4. The term of office of the Executive Director and of the Directors shall be five years. On a proposal from the Commission and after an evaluation, their term of office may be extended once, for a period of not more than five years. In the evaluation the Commission shall assess in particular:

- the results achieved in the first term of office and the way in which they have been achieved;
- the Agency’s duties and requirements in the coming years.”

(26) In Article 35, paragraph 1 is replaced by the following:

“1. An appeal may be brought against decisions of the Agency which have been taken pursuant to Articles 9a, 15, 15a, 15b, 46 or 53.”

(27) Article 41 is amended as follows:

(a) Paragraph is replaced by the following:

“1. Actions may be brought before the Court of Justice for the annulment of acts carried out by the Agency which are legally binding on third parties, for failure to act and for damages caused by the Agency in the course of its activities.”

(b) Paragraph 2 is replaced by the following:

“2. Actions for the annulment of decisions of the Agency which have been taken pursuant to Articles 9a, 15, 15a, 15b, 46 or 53 may be brought before the Court of Justice only after all the appeal procedures within the Agency have been exhausted.”

(28) In Article 45, the introductory part of paragraph 1 is replaced by the following:

“1. Without prejudice to the enforcement powers conferred by the Treaty on 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). The officials authorised under this Regulation, in co-ordination with the national authorities, are thus empowered, in compliance with the legal provisions of the Member State concerned:”

(29) Article 46 is amended as follows:

(a) the first sentence of paragraph 1 is replaced by the following:

“For the application of Articles 15, 15a and 15b, the Agency may itself conduct or allocate to national aviation authorities or qualified entities all necessary investigation of undertakings as specified in Article 16(2).”

(b) the following paragraph 1a is inserted:

“1a. For the application of Article 9a, the Agency may itself conduct or allocate to national aviation authorities all necessary investigation of qualified entities as specified in Article 16(2).”

(30) The following Articles 46a and 46b are inserted after Article 46:

*“Article 46a
Annual programme of work*

The annual programme of work shall comply with the objectives, mandates and tasks of the Agency, as defined in this Regulation.

The presentation of the annual programme of work shall be based on the methodology developed by the Commission as part of Activity-Based Management.

*Article 46b
Annual general report*

The annual general report shall describe the way in which the Agency has implemented its annual programme of work.

The report shall outline the activities conducted by the Agency and evaluate the results with respect to the objectives and timetable set, the risks associated with the activities carried out, the use of resources and the general operations of the Agency.”

(31) In Article 47, the following paragraphs 5 and 6 are added:

“5. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or may form the subject of an action before the Court of Justice, under Articles 195 and 230 of the EC Treaty respectively.

6. The information gathered by the Agency in accordance with this Regulation shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council as regards the protection of personal data*.”

*OJ L 8, 12.1.2001, p.1.”

- (32) Article 48(1) is amended as follows:

- (a) Paragraph 1 is replaced by the following:

“1. The revenues of the Agency shall consist of:

- (a) a contribution from the Community;
- (b) a contribution from any European third country with which the Community has concluded agreements referred to in Article 55;
- (c) the fees paid by applicants for, and holders of, certificates and approvals issued by the Agency;
- (d) charges for publications, training and any other services provided by the Agency.

The Agency may also receive financial contribution from Member States, third countries or other entities.”

- (33) In Article 53(4), the second subparagraph is deleted.

- (34) Article 56(3) is deleted.

- (35) Annex II is replaced by the text set out in the Annex to this Regulation.

- (36) Annexes III, IV and V, as shown in the the Annex to this Regulation, are added.

CHAPTER II

FINAL PROVISIONS

Article 2

Repeal

1. Council Directive 91/670/EEC is repealed as from the entry into force of the implementing rules referred to in Article 6a(6).
2. Annex III to Regulation (EEC) No 3922/91 is deleted as from the entry into force of the implementing rules referred to in Article 6b(5).
3. The provisions of Article 8 shall apply to products, parts and appliances, organisations and persons whose certification has been performed, or recognised, in accordance with the provisions of Council Directive 91/670/EEC and Annex III to Regulation (EEC) No 3922/91.

Article 3

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 Union*.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

- (1) Annex II is amended as follows:

“ANNEX II

Aircraft referred to in Article 4(2)

Aircraft to which Article 4(1), (1a) and (1b) do not apply are aircraft that are within one or more of the categories of this annex set out below:

- (a) historic aircraft meeting the criteria below:

- (i) non complex aircraft whose:

- initial design was established before 1.1.1955 and
- production has been stopped before 1.1.1975.

or

- (ii) aircraft having a clear historical relevance, related to:

- a participation in a noteworthy historical event; or
- a major step in the development of aviation; or
- a major role played into the armed forces of a Member State.

- (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 making association of amateurs, for their own purposes and without any commercial objective;

- (d) aircraft that have been in the service of military forces, unless the aircraft is of a type for which a design standard has been adopted by the Agency;

- (e) aeroplanes, helicopters and powered parachutes having no more than two seats, a maximum take-off mass (MTOM), as recorded by the Member States, of no more than:

- (i) 300 kg for a land plane/helicopter, single-seater; or

- (ii) 450 kg for a land plane/helicopter, two-seater; or

- (iii) 330 kg for an amphibian or floatplane/helicopter single-seater; or

- (iv) 495 kg for an amphibian or floatplane/helicopter two-seater, provided that, where operating both as a floatplane/helicopter and as a land plane/helicopter, it falls below both MTOM limits, as appropriate;

- (v) 472.5 kg for a land plane, two-seater equipped with an airframe mounted total recovery parachute system;
 - (vi) 315 kg for a land plane single-seater equipped with an airframe mounted total recovery parachute system;
 - and, for aeroplanes, having the stall speed or the minimum steady flight speed in landing configuration not exceeding 35 knots calibrated air speed (CAS);
 - (f) single and two-seater gyroplanes with a maximum take off mass not exceeding 560 kg;
 - (g) gliders with a maximum empty mass, of less than 80kg when single-seater or 100kg when two-seater, including those which are foot launched;
 - (h) replicas of aircraft meeting the criteria of (a) or (d) above, for which the structural design is similar to the original aircraft;
 - (i) unmanned aircraft with an operating mass of less than 150 kg;
 - (j) any other aircraft which has a maximum empty mass, including fuel, of less than 70 kg.”
- (2) The following Annexes III, IV and V are added:

“ANNEX III

Essential requirements for pilot licensing referred to in Article 6a

- 1. Training
 - 1.a. General
 - 1.a.1. A person undertaking training to fly an aircraft must be sufficiently mature educationally, physically and mentally to acquire, retain and demonstrate the relevant theoretical knowledge and practical skill.
 - 1.b. Theoretical Knowledge
 - 1.b.1. A pilot must acquire and maintain a level of knowledge appropriate to the functions exercised on the aircraft and proportionate to the risks associated to the type of activity. Such knowledge must include at least the following:
 - (i) air law;
 - (ii) aircraft general knowledge;
 - (iii) technical matters related to the category of the aircraft;
 - (iv) flight performance and planning;
 - (v) human performance and limitations;

- (vi) meteorology;
- (vii) navigation;
- (viii) operational procedures, including resource management;
- (ix) principles of flight; and
- (x) communications.

1.c. Demonstration and maintenance of theoretical knowledge

1.c.1. The acquisition and retention of theoretical knowledge must be demonstrated by continuous assessment during training, and where appropriate, by examinations.

1.c.2. An appropriate level of competence in theoretical knowledge must be maintained. Compliance must be demonstrated by regular assessments, examinations, tests or checks. The frequency of examinations, tests or checks must be proportionate to the level of risk associated with the activity.

1.d. Practical skill

1.d.1. A pilot must acquire and maintain the practical skills as appropriate to exercise his/her functions on the aircraft. Such skills must be proportionate to the risks associated to the type of activity and must cover, if appropriate to the functions exercised on the aircraft, the following:

- (i) pre-flight and in-flight activities, including aircraft performance, mass and balance determination, aircraft inspection and servicing, fuel planning, weather appreciation, route planning, airspace restrictions and runway availability;
- (ii) aerodrome and traffic pattern operations;
- (iii) collision avoidance precautions and procedures;
- (iv) control of the aircraft by external visual reference;
- (v) flight manoeuvres, including in critical situations, and associated “upset” manoeuvres, as technically achievable;
- (vi) normal and cross-wind take-offs and landings;
- (vii) flight by reference solely to instruments, as appropriate to the type of activity;
- (viii) operational procedures, including team skills and resource management, as appropriate to the type of operation, whether single or multi-crew;
- (ix) navigation and implementation of rules of the air and related procedures, using as appropriate, visual reference or navigation aids;
- (x) abnormal and emergency operations, including simulated aircraft equipment malfunctions;

- (xi) compliance with air traffic services and communications procedures;
 - (xii) aircraft type or class specific aspects; and
 - (xiii) additional practical skill training that may be required to mitigate risks associated with specific activities.
- 1.e. Demonstration and maintenance of practical skill
- 1.e.1. A pilot must demonstrate the ability to perform the procedures and manoeuvres with a degree of competence appropriate to the functions exercised on the aircraft, by:
- (i) operating the aircraft within its limitations;
 - (ii) completing all manoeuvres with smoothness and accuracy;
 - (iii) exercising good judgement and airmanship;
 - (iv) applying aeronautical knowledge; and
 - (v) maintaining control of the aircraft at all times in a manner such that the successful outcome of a procedure or manoeuvre is assured.
- 1.e.2. An appropriate level of competence in practical skill must be maintained. Compliance must be demonstrated by regular assessments, examinations, tests or checks. The frequency of examinations, tests or checks must be proportionate to the level of risk associated with the activity.
- 1.f. Language Proficiency
- Except where the related safety risk can be mitigated by other means, a pilot must have demonstrated proficiency in English, which must include:
- (i) the ability to understand weather information documents;
 - (ii) the use of aeronautical en-route, departure and approach charts and associated aeronautical information documents; and
 - (iii) the ability to communicate with other flight crew and air navigation services in English during all phases of flight, including flight preparation.
- 1.g. Flight synthetic training devices
- When a flight synthetic training device (FSTD) is used for training, or for demonstration that practical skill is acquired or maintained, this FSTD must be qualified to a given level of performance in those areas, which are relevant to completing the related task. In particular, the replication of configuration, handling qualities, aircraft performance, and systems behaviour must adequately represent the aircraft.
- 1.h. Training Course
- 1.h.1. Training must be executed through a training course.

1.h.2. A training course must meet the following conditions:

- (i) a syllabus must be developed for each type of course; and
- (ii) the training course must comprise a breakdown of theoretical knowledge and practical flight instruction (including synthetic training), if applicable.

1.i. Instructors

1.i.1. Theoretical instruction.

Theoretical instruction must be given by appropriately qualified instructors. They must:

- (i) have appropriate knowledge in the field where instruction is to be given; and
- (ii) be capable of using appropriate instructional techniques.

1.i.2. Flight and synthetic flight instruction.

Flight and synthetic flight instruction must be given by appropriately qualified instructors, who have the following qualifications:

- (i) meet the theoretical knowledge and the experience requirements appropriate for the instruction being given;
- (ii) be capable of using appropriate instructional techniques;
- (iii) have practised instructional techniques in those flight manoeuvres and procedures in which it is intended to provide flight instruction;
- (iv) have demonstrated the ability to instruct in those areas in which flight instruction is to be given, including pre-flight, post-flight and ground instruction; and
- (v) receive regular refresher training to ensure that the instructional standards are maintained up to date.

Flight instructors must also be entitled to act as pilot in command on the aircraft for which instruction is being given, except for training on new aircraft types.

1.j. Examiners

1.j.1. Persons responsible for assessing the competence of pilots must:

- (i) meet or have met the requirements for flight instructors;
- (ii) be capable of assessing pilot performance and conducting flight tests and checks.

2. Training Organisations
 - 2.a. Training Organisation requirements
 - 2.a.1. A training organisation providing pilot training must meet the following requirements:
 - (i) have all the means necessary for the scope of responsibilities associated with their activity. These means comprise, but are not limited to, the following: facilities, personnel, equipment, tools and material, documentation of tasks, responsibilities and procedures, access to relevant data and record-keeping;
 - (ii) implement and maintain a management system relating to safety and the standard of training, and aim for continuous improvement of this system; and
 - (iii) establish arrangements with other relevant organisations, as necessary, to ensure continuing compliance with the above requirements.
3. Medical fitness
 - 3.a. Medical criteria
 - 3.a.1. All pilots must periodically demonstrate medical fitness to satisfactorily execute their functions, taking into account the type of activity. Compliance must be shown by appropriate assessment based on aero-medical best practice, taking into account the type of activity and the possible mental and physical degradation due to age.

Medical fitness, comprising physical and mental fitness, means not suffering from any disease or disability, which makes the pilot unable:

 - (i) to execute the tasks necessary to operate an aircraft; or
 - (ii) to perform assigned duties at any time; or
 - (iii) to perceive correctly his/her environment.
 - 3.a.2. Where medical fitness cannot be fully demonstrated, mitigation measures that provide equivalent flight safety may be implemented.
 - 3.b. Aero-medical examiners
 - 3.b.1. An aero-medical examiner must:
 - (i) be qualified and licensed in the practice of medicine;
 - (ii) have received training in aviation medicine and regular refresher training in aviation medicine to ensure that assessment standards are maintained;
 - (iii) have acquired practical knowledge and experience of the conditions in which pilots carry out their duties.

3.c Aero-medical Centres

3.c.1 Aero-medical centres must meet the following conditions:

- (i) have all the means necessary for the scope of responsibilities associated with their privileges. 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;
- (ii) implement and maintain a management system relating to safety and the standard of medical assessment, and aim for continuous improvement of this system;
- (iii) establish arrangements with other relevant organisations, as necessary, to ensure continuing compliance with these requirements.

ANNEX IV

Essential requirements for air operations referred to in Article 6b

1. General

- 1.a. A flight must not be performed if the crew members and, as appropriate, all other operations personnel involved in its preparation and execution are not familiar with applicable laws, regulations and procedures, pertinent to the performance of their duties, prescribed for the areas to be traversed, the aerodromes planned to be used and the air navigation facilities relating thereto.
- 1.b. A flight must be performed in such a way that the operating procedures specified in the Flight Manual or, where required the Operations Manual, for the preparation and execution of the flight are followed. To facilitate this, a checklist system must be available for use, as applicable, by crew members in all phases of operation of the aircraft under normal, abnormal and emergency conditions and situations. Procedures must be established for any reasonably foreseeable emergency situation.
- 1.c. Before every flight, the roles and duties of each crew member must be defined. The pilot in command must be responsible for the operation and safety of the aircraft and for the safety of all crew members, passengers and cargo on board.
- 1.d. Articles or substances, which are capable of posing a significant risk to health, safety, property or the environment, such as dangerous goods, weapons and ammunition, must not be carried on any aircraft, unless specific safety procedures and instructions are applied to mitigate the related risks.
- 1.e. All necessary data, documents, records and information to record the respect of the conditions specified in point 5.c must be retained for each flight and kept available for a minimum period of time compatible with the type of operation.

2. Flight preparation

- 2.a. A flight must not be commenced unless it has been ascertained by every reasonable means available that all the following conditions are complied with:
 - 2.a.1. Adequate facilities directly required for the flight and for the safe operation of the aircraft, including communication facilities and navigation aids, are available for the execution of the flight, taking into account available AIS documentation.
 - 2.a.2. The crew must be familiar with and passengers informed of the location and use of relevant emergency equipment. Sufficient related information regarding emergency procedures and use of cabin safety equipment must be made available to crew and passengers using specified information.
 - 2.a.3. The pilot in command must be satisfied that:
 - (i) the aircraft is airworthy as specified in point 6;
 - (ii) if required, the aircraft is duly registered and that appropriate certificates with respect thereto are aboard the aircraft;

- (iii) instruments and equipment as specified in point 5 required for the execution of that flight are installed in the aircraft and are operative, unless waived by the applicable MEL or equivalent document;
 - (iv) the mass of the aircraft and centre of gravity location are such that the flight can be conducted within limits prescribed in the airworthiness documentation;
 - (v) all cabin baggage, hold luggage and cargo is properly loaded and secured; and
 - (vi) the aircraft operating limitations as specified in point 4 will not be exceeded at any time during the flight.
- 2.a.4. Information regarding meteorological conditions for departure, destination and, where applicable, alternate aerodromes, as well as en-route conditions, must be available to the flight crew. Special attention must be given to potentially hazardous atmospheric conditions.
- 2.a.5. In case of flight into known or expected icing conditions, the aircraft must be certified, equipped and/or treated to operate safely in such conditions.
- 2.a.6. For a flight based on visual flight rules, meteorological conditions along the route to be flown must be such as to render compliance with these flight rules possible. For a flight based on instrument flight rules a destination and where applicable alternate aerodrome(s) where the aircraft can land must be selected, taking into account in particular the forecasted meteorological conditions, the availability of air navigation equipment, the availability of ground facilities and the instrument flight procedures approved by the State in which the destination and/or alternate aerodrome is located.
- 2.a.7. The amount of fuel and oil on board must be sufficient to ensure that the intended flight can be completed safely, taking into account the meteorological conditions, any element affecting the performance of the aircraft and any delays that are expected in flight. In addition, a fuel reserve must be carried to provide for contingencies. Procedures for in-flight fuel management must be established when relevant.
3. Flight operations
- 3.a. With regard to flight operations, all the following conditions must be complied with:
- 3.a.1. Taking into account the type of aircraft, during take-off and landing, and whenever deemed necessary by the pilot in command in the interest of safety, each crew member must be seated at their crew station and must use the provided restraint systems, taking into account the type of aircraft.
- 3.a.2. All flight crew members required to be on flight deck duty must be and remain at their station, with their seatbelts fastened except en-route for physiological or operational needs.
- 3.a.3. Taking into account the type of aircraft, before take-off and landing, during taxiing and whenever deemed necessary in the interest of safety, the pilot in command must ensure that each passenger occupies a seat or berth with the safety belt properly secured.

- 3.a.4. A flight must be performed in such a way that appropriate separation from other aircraft is maintained and that adequate obstacle clearance is ensured, during all phases of the flight. Such separation must at least be those required by the applicable rules of the air.
- 3.a.5. A flight must not be continued unless known conditions continue to be at least equivalent to those in point 2. Furthermore, for a flight based on instrument flight rules, an approach toward an aerodrome must not be continued below certain specified heights or beyond a certain position, if prescribed visibility criteria are not met.
- 3.a.6. In an emergency, the pilot in command must ensure that all passengers are instructed in such emergency action as may be appropriate to the circumstances.
- 3.a.7. A pilot in command must take all necessary measures so as to minimise the consequences on the flight of disruptive passenger behaviour.
- 3.a.8. An aircraft must not be taxied on the movement area of an aerodrome, or its rotor must not be turned under power, unless the person at the controls is appropriately qualified.
- 3.a.9. The applicable in-flight fuel management procedures must be used, when relevant.
- 4. Aircraft performance and operating limitations
 - 4.a. An aircraft must be operated in accordance with its airworthiness documentation and all related operating procedures and limitations as expressed in its approved flight manual or equivalent documentation, as the case may be. The flight manual or equivalent documentation must be available to the crew and kept up to date for each aircraft.
 - 4.b. The aircraft must be operated in accordance with the applicable environmental documentation.
 - 4.c. A flight must not be commenced or continued unless the aircraft's scheduled performance, considering all factors which significantly affect its performance level, allows all phases of flight to be executed within the applicable distances/areas and obstacle clearances at the planned operating mass. Performance factors which significantly affect take-off, en-route and approach/landing are, particularly:
 - (i) operating procedures;
 - (ii) pressure altitude of the aerodrome;
 - (iii) temperature;
 - (iv) wind;
 - (v) size, slope and condition of the take-off/landing area; and
 - (vi) the condition of the airframe, the power plant or the systems, taking into account possible deterioration.

- 4.c.1. Such factors must be taken into account directly as operational parameters or indirectly by means of allowances or margins, which may be provided in the scheduling of performance data, as appropriate to the type of operation.
- 5. Instruments, data and equipment
 - 5.a. An aircraft must be equipped with all navigation, communication and other equipment necessary for the intended flight, taking account of air traffic regulations and rules of the air applicable during any phase of the flight.
 - 5.b. When relevant, an aircraft must be equipped with all necessary safety, medical, evacuation and survival equipment, taking account of the risks associated to the areas of operation, the routes to be flown, the flight altitude and the duration of the flight.
 - 5.c. All data necessary for the execution of the flight by the crew must be updated and available on board the aircraft taking account of applicable air traffic regulations, rules of the air, flight altitudes and areas of operation.
- 6. Continuing Airworthiness
 - 6.a. The aircraft must not be operated unless:
 - (i) the aircraft is in an airworthy condition;
 - (ii) the operational and emergency equipment necessary for the intended flight is serviceable;
 - (iii) the airworthiness document of the aircraft is valid; and
 - (iv) the maintenance of the aircraft is performed in accordance with its maintenance programme.
 - 6.b. Before each flight, the aircraft must be inspected, through a pre-flight check, to determine whether it is fit for the intended flight.
 - 6.c. The maintenance programme must contain in particular, maintenance tasks and intervals, especially those that have been specified as mandatory in the instructions for continuing airworthiness.
 - 6.d. The aircraft must not be operated unless it is maintained and released to service by persons or organisations qualified for these tasks. The signed release to service must contain in particular, the basic details of the maintenance carried out.
 - 6.e. All records demonstrating the airworthiness of the aircraft must be kept until the information contained has been superseded by new information equivalent in scope and detail but not less than one year in the case of detailed maintenance records. When an aircraft is permanently withdrawn from service, a minimum period of 90 days applies. When the aircraft is leased, all records demonstrating the airworthiness of the aircraft must be kept at least for the length of the lease.

- 6.f. All modifications and repairs must comply with the essential requirements for airworthiness. The substantiating data supporting compliance with the airworthiness requirements must be retained.
- 7. Crew members
 - 7.a. The number and composition of the crew must be determined taking into account:
 - (i) the certification limitations of the aircraft, including if applicable, the relevant emergency evacuation demonstration;
 - (ii) the aircraft configuration; and
 - (iii) the type and duration of operations.
 - 7.b. Cabin crew members must:
 - (i) be trained and checked on a regular basis to attain and maintain an adequate level of competency in order to perform their assigned safety duties; and
 - (ii) be periodically assessed for medical fitness to safely exercise their assigned safety duties. Compliance must be shown by appropriate assessment based on aero medical best practice.
 - 7.c. The pilot in command must have the authority to give all commands and take any appropriate actions for the purpose of securing the operation and the safety of the aircraft and of persons and/or property carried therein.
 - 7.d. In an emergency situation, which endangers the operation or the safety of the aircraft and/or persons on board, the pilot in command must take any action he/she considers necessary in the interest of safety. When such action involves a violation of local regulations or procedures, the pilot in command must be responsible for notifying the appropriate local authority without delay.
 - 7.e. Emergency abnormal situations must not be simulated when passengers or cargo are being carried.
 - 7.f. No crew member must allow their task achievement/decision making to deteriorate to the extent that flight safety is endangered because of the effects of fatigue, fatigue accumulation, sleep deprivation, number of sectors flown, night hours, etc. Rest periods must provide sufficient time to enable crew members to overcome the effects of the previous duties and to be well rested by the start of the following flight duty period.
 - 7.g. A crew member must not perform allocated duties on board an aircraft when under the influence of psychoactive substances or alcohol or when unfit due to injury, fatigue, medication, sickness or other similar causes.
- 8. Additional requirements for operation for commercial purposes and operation of complex motor-powered aircraft.

- 8.a. The operation for commercial purposes and the operation of complex motor-powered aircraft must not be undertaken unless the following conditions are met:
- 8.a.1. the operator must have directly or indirectly through contracts the means necessary for the scale and scope of the operations. These means comprise but are not limited to the following: aircraft, facilities, personnel, equipment, documentation of tasks, responsibilities and procedures, access to relevant data and record keeping.
 - 8.a.2. the operator must use only properly qualified and trained personnel and implement and maintain training and checking programmes for the crew members and other relevant personnel.
 - 8.a.3. the operator must establish a Minimum Equipment List (MEL) or equivalent document, taking account of the following:
 - (i) the document must provide for the operation of the aircraft, under specified conditions, with particular instruments, items of equipment or functions inoperative at the commencement of the flight;
 - (ii) the document must be prepared for each individual aircraft, taking account of the operator's relevant operational and maintenance conditions; and
 - (iii) the MEL must be based on the Master Minimum Equipment List (MMEL), if available, and must not be less restrictive than the MMEL;
 - 8.a.4. the operator must implement and maintain a management system to ensure compliance with these essential requirements for operations and aim for continuous improvement of this system; and
 - 8.a.5. the operator must establish and maintain an accident prevention and safety programme, including an occurrence reporting programme, which must be used by the management system in order to contribute to the aim of continuous improvement of the safety of operations.
- 8.b. The operation for commercial purposes and the operation of complex motor-powered aircraft must only be undertaken in accordance with an operator's Operations Manual. Such manual must contain all necessary instructions, information and procedures for all aircraft operated and for operations personnel to perform their duties. Limitations applicable to flight time, flight duty periods and rest periods for crew members must be specified. The Operations manual and its revisions must be compliant with the approved Flight manual and be amended as necessary.
- 8.c. The operator must establish procedures, as appropriate, so as to minimise the consequences to safe flight operations of disruptive passenger behaviour.
- 8.d. The operator must develop and maintain security programmes adapted to the aircraft and the type of operation including particularly:
- (i) security of the flight crew compartment;
 - (ii) aircraft search procedure checklist;

- (iii) training programmes;
- (iv) protection of electronic and computer systems to prevent intentional system interference and corruption; and
- (v) reporting acts of unlawful interference.

When security measures may adversely affect the safety of operations, the risks must be assessed and appropriate procedures developed to mitigate safety risks, this may necessitate the use of specialist equipment.

- 8.e. The operator must designate one pilot amongst the flight crew as the pilot in command.
- 8.f. The prevention of fatigue must be managed through a rostering system. For a flight, or series of flights, such a rostering system needs to address flight time, flight duty periods, duty and adapted rest periods. Limitations established within the rostering system must take into account all relevant factors contributing to fatigue such as, in particular, number of sectors flown, time zone crossing, sleep deprivation, disruption of circadian cycles, night hours, positioning, cumulative duty time for given periods of time, sharing of allocated tasks between crew members, and also the provision of augmented crews.
- 8.g. The tasks specified in point 6.a and those described in points 6.d. and 6.e. must be controlled by an organisation responsible for the continuing airworthiness management that must meet, in addition to those requirements of Annex I point 3.a, the following conditions:
 - (i) the organisation must be qualified for the maintenance of products parts and appliances under its responsibility or have established a contract with such a qualified organisation for these products, parts and appliances; and
 - (ii) the organisation must establish an organisation manual providing, for use and guidance of personnel concerned, a description of all continuing airworthiness procedures of the organisation including when applicable a description of administrative arrangements between the organisation and the approved maintenance organisation.

ANNEX V

Criteria for qualified entities referred to in Article 9a

1. The entity, its Director and the staff responsible for carrying out the checks, may not become involved, either directly or as authorised representatives, in the design, manufacture, marketing or maintenance of the products, parts, appliances, constituents or systems or in their operations, service provision or use. This does not exclude the possibility of an exchange of technical information between the involved organisations and the qualified entity.
2. The entity and the staff responsible for the certification tasks must carry out their duties with the greatest possible professional integrity and the greatest possible technical competence and must be free of any pressure and incentive, in particular of a financial type, which could affect their judgment or the results of their investigations, in particular from persons or groups of persons affected by the results of the certification tasks.
3. The entity must employ staff and possess the means required to perform adequately the technical and administrative tasks linked with the certification process; it should also have access to the equipment needed for exceptional checks.
4. The staff responsible for investigation must have:
 - sound technical and vocational training;
 - satisfactory knowledge of the requirements of the certification tasks they carry out and adequate experience of such processes;
 - the ability required to draw up the declarations, records and reports to demonstrate that the investigations have been carried out.
5. The impartiality of the investigation staff must be guaranteed. Their remuneration must not depend on the number of investigations carried out or on the results of such investigations .
6. The entity must take out liability insurance unless its liability is assumed by one Member State in accordance with its national law.
7. The staff of the entity must observe professional secrecy with regard to all information acquired in carrying out their tasks under this Regulation.”

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL:

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1592/2002 of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency.

2. ABM / ABB FRAMEWORK

0602 – Inland, air and maritime transport.

3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B.A lines)) including headings :

06 02 01 (European Aviation Safety Agency)

3.2. Duration of the action and of the financial impact:

Unlimited period (annual contribution)

3.3. Budgetary characteristic (*add rows if necessary*):

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
060201	Non-comp	Diff ²⁵	NO	YES ²⁶	NO	No 3

²⁵ Differentiated appropriations.

²⁶ Participation of European third countries associated with the Agency (Switzerland, Norway and Iceland).

4. SUMMARY OF RESOURCES

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section No		Year	n + 1	n + 2	n + 3	n + 4	n+5 and later	Total
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Operational expenditure²⁷

Commitment Appropriations (CA)	8.1	a	2,365	2,412	2,461	2,510	2,560	2,611	14,919
Payment Appropriations (PA)		b	2,365	2,412	2,461	2,510	2,560	2,611	14,919

Administrative expenditure within reference amount²⁸

Technical and administrative assistance (NDA)	8.2.4	c	0,484	0,494	0,504	0,514	0,524	0,534	3,053
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TOTAL REFERENCE AMOUNT²⁹

Commitment Appropriations		a+c	2,849	2,906	2,964	3,023	3,084	3,146	17,972
Payment Appropriations		b+c	2,849	2,906	2,964	3,023	3,084	3,146	17,972

Administrative expenditure not included in reference amount³⁰

²⁷ Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

²⁸ Expenditure within Article xx 01 04 of Title xx.

²⁹ On the basis of the average cost of EASA staff in 2005, all expenditure included (salaries and benefits, missions, equipment and accommodation), i.e. 112 260 euros per agent, indexed by 2% a year and reduced by the contribution of European third countries associated with the EASA (see table on page 3).

³⁰ Expenditure within Chapter xx 01, other than Articles xx 01 04 or xx 01 05.

Human resources and associated expenditure (NDA) ³¹	8.2.5	d	0,108	0,110	0,112	0,114	0,116	0,119	0,679
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA) ³²	8.2.6	e	0,052	0,053	0,054	0,055	0,056	0,057	0,327

Total indicative financial cost of intervention

TOTAL CA including cost of Human Resources		a+c+d+e	3,009	3,069	3,130	3,192	3,256	3,322	18,978
TOTAL PA including cost of Human Resources		b+c+d+e	3,009	3,069	3,130	3,192	3,256	3,322	18,978

Co-financing details

If the proposal involves co-financing by Member States, or other bodies (please specify which), an estimate of the level of this co-financing should be indicated in the table below (additional lines may be added if different bodies are foreseen for the provision of the co-financing):

EUR million (to 3 decimal places)

Cofinancing body		Year n	n + 1	n + 2	n + 3	n + 4	n+5 and later	Total
European third countries ³³	f	0,146	0,149	0,152	0,155	0,158	0,161	0,922
TOTAL CA including cofinancing	a+c+d+e+f	3,155	3,218	3,282	3,347	3,414	3,483	19,899

³¹ See table 8.2.5.

³² See table 8.2.6.

³³ Participation of European third countries associated with the EASA under Article 55 of Regulation (EC) No 1592/2002. This participation is estimated at 7% of the Agency's budget, excluding revenue from fees.

4.1.2. Compatibility with Financial Programming

- ☒ Proposal is compatible with existing financial programming.
- ☐ Proposal will entail reprogramming of the relevant heading in the financial perspective.
- ☐ Proposal may require application of the provisions of the interinstitutional agreement³⁴ (i.e. flexibility instrument or revision of the financial perspective).

4.1.3. Financial impact on revenue

- ☒ Proposal has no financial impact on revenue
- ☐ Proposal has financial impact – the effect on revenue is as follows:

EUR million (to one decimal place)

Budget line	Revenue	Prior to action [Year n-1]	Situation following action					
			[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5] ³⁵
	<i>a) Revenue in absolute terms</i>							
	<i>b) Change in revenue</i>	Δ						

(Please specify each revenue budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line.)

4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

This table shows the requirements of the EASA (20 temporary agents) and the Commission (1 official) created by implementation of the proposed measure.

Annual requirements	Year n	n + 1	n + 2	n + 3	n + 4	n+5 and later
Total number of human resources	20	20	20	20	20	20

³⁴ See points 19 and 24 of the interinstitutional agreement.

³⁵ Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years.

5. CHARACTERISTICS AND OBJECTIVES

Details of the context of the proposal are required in the Explanatory Memorandum. This section of the Legislative Financial Statement should include the following specific complementary information:

5.1. Need to be met in the short or long term

In the internal air transport market there is a need to improve the overall level of safety and further harmonise the conditions of competition between operators.

5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

Uniformly applied, mandatory Community rules will achieve the desired harmonisation.

5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

To harmonise the rules concerning air operations, pilot licensing and the safety of third-country aircraft. Everyone will benefit from the improvement of aviation safety, whether they are travelling by plane or on the ground. Operators will benefit from the harmonisation of the conditions of competition. Lastly, the automatic recognition of flight crew licences will give mobility to this category of personnel, which will be good for them and for their employers.

5.4. Method of implementation (indicative)

Show below the method(s)³⁶ chosen for the implementation of the action.

☒ *Centralised management*

☒ directly by the Commission

☐ indirectly by delegation to:

☐ Executive Agencies,

☒ Bodies set up by the Communities as referred to in Art. 185 of the Financial Regulation,

☐ National public-sector bodies/bodies with public-service mission.

³⁶ If more than one method is indicated please provide additional details in the "Relevant comments" section of this point.

☐ *Shared or decentralised management*

☐ With Member States

☐ With third countries

☐ *Joint management with international organisations (please specify)*

Relevant comments:

The Commission and the European Aviation Safety Agency will be jointly involved in the implementation of the measures introduced by this Regulation.

6. MONITORING AND EVALUATION

6.1. Monitoring system

Each year, the work of the EASA is monitored and evaluated in the annual general report (for the previous year) and the work programme (for the following year). These two documents are adopted by the Agency's Management Board and sent to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States.

6.2. Evaluation

6.2.1. Ex-ante evaluation

In accordance with the provisions of Regulation (EC) No 1592/2002, the Commission asked the EASA for its opinion on extending the scope of this Regulation to cover air operations, flight crew licensing and the safety of third-country aircraft. The Agency, in accordance with its internal rules and international practice in this area, carried out extensive consultation of all the interested parties and took account of the comments it received before delivering its opinion. On 27 April 2004 it published a consultation document on "the applicability, basic principles and essential requirements for pilot proficiency and air operations and for the regulation of third country aircraft operated by third country operators" (NPA No 2/2004) on its website (www.easa.eu.int). Between 30 April and 31 July 2004, 1 695 comments on the document were submitted by 93 individuals, national authorities, undertakings and organisations. An overwhelming majority of the parties consulted were in favour of introducing common rules on air operations, flight crew licensing and the safety of third-country aircraft. On the basis of these comments, the EASA examined the question and sent the Commission its opinion on 15 December 2004 (Opinion No 3/2004).

The Commission assessed the impact of extending the common rules to air operations, pilot licensing and the safety of third-country aircraft, to check whether it was appropriate and see how it could be done. The study supported the views of the legislator, the interested parties and the EASA, who were in favour of extending the scope of Regulation (EC) No 1592/2002 to cover these areas.

6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

6.2.3. Terms and frequency of future evaluation

Every five years, an independent external evaluation is carried out to see how well the EASA has fulfilled its tasks and evaluate the impact of the common rules and the Agency's work on the general level of aviation safety.

7. ANTI-FRAUD MEASURES

The Executive Director implements the Agency's budget. Each year, he presents detailed accounts for the previous year showing revenue and expenditure to the Commission, the Court of Auditors and the Agency's Management Board. In addition, the Commission's internal auditor has the same terms of reference with respect to the EASA as it does with respect to the Commission departments, and the Agency has an internal audit system similar to that of the Commission.

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), and the interinstitutional agreement of 25 May 1999 concerning internal investigations conducted by OLAF apply without restriction to the EASA.

8. DETAILS OF RESOURCES

8.1. Objectives of the proposal in terms of their financial cost

Commitment appropriations in EUR million (to 3 decimal places)

Headings of Objectives, actions and outputs should be provided	Type of output	Av. cost	Year n		Year n+1		Year n+2		Year n+3		Year n+4		Year n+5 and later		TOTAL	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost
OPERATIONAL OBJECTIVE No1 ³⁷ ...	Development of common rules concerning air operations, pilot licensing and the safety of third-country aircraft															
Action 1.....	Rulemaking		1,168		1,191		1,215		1,240		1,264		1,290		7,368	
Action 2.....	Standardisation		1,197		1,221		1,245		1,270		1,295		1,321		7,548	
Action 3.....	Tech. assistance		0,484		0,494		0,504		0,514		0,524		0,534		3,053	
Sub-total Objective 1			2,849		2,906		2,964		3,023		3,084		3,146		17,972	
TOTAL COST			2,849		2,906		2,964		3,023		3,084		3,146		17,972	

³⁷

As described in part 5.3.

8.2. Administrative expenditure

This expenditure is covered by the appropriations allocated annually to the Commission's authorising department.

8.2.1. Number and type of human resources

Types of post		Staff to be assigned to the management of the action using existing and/or additional resources (number of posts/FTEs)					
		Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5
Official ³⁸ (XX 01 01) (new post)	A*/ AD	1	1	1	1	1	1
	B*, C*/ AST						
Staff financed ³⁹ by Art. XX 01 02							
Other staff financed ⁴⁰ by Art. XX 01 04/05							
TOTAL							

8.2.2. Description of tasks deriving from the action

Preparation of technical rules and regulations, and implementation of these regulations, including technical and administrative assistance and standardisation inspections.

8.2.3. Sources of human resources (statutory)

(When more than one source is stated, please indicate the number of posts originating from each of the sources).

- ☐ Posts currently allocated to the management of the programme to be replaced or extended
- ☐ Posts pre-allocated within the APS/PDB exercise for year n
- ☒ X Posts to be requested in the next APS/PDB procedure
- ☐ Posts to be redeployed using existing resources within the managing service (internal redeployment)

³⁸ Cost of which is NOT covered by the reference amount.

³⁹ Cost of which is NOT covered by the reference amount.

⁴⁰ Cost of which is included within the reference amount.

- ☐ Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

8.2.4. Other administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)

EUR million (to 3 decimal places)

Budget line (number and heading)	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
1. Technical and administrative assistance (including related staff costs)	0,484	0,494	0,504	0,514	0,524	0,534	3,053
Executive agencies ⁴¹							
Other technical and administrative assistance							
- <i>intra muros</i>							
- <i>extra muros</i>							
Total technical and administrative assistance							

⁴¹ Reference should be made to the specific legislative financial statement for the Executive Agency/Agencies concerned.

8.2.5. Financial cost of human resources and associated costs not included in the reference amount

EUR million (to 3 decimal places)

Type of human resources	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later
Officials and temporary staff (XX 01 01)	0,108	0,110	0,112	0,114	0,116	0,119
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)						
Total cost of human resources and associated costs (NOT in reference amount)						

Calculation – ***Officials and temporary agents***

Reference should be made to Point 8.2.1, if applicable

One official at the rate of 108 000 euros (2005) indexed by 2% a year

Calculation - ***Staff financed under Art. XX 01 02***

Reference should be made to Point 8.2.1, if applicable

8.2.6. Other administrative expenditure not included in reference amount

EUR million (to 3 decimal places)

	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
XX 01 02 11 01 – Missions							
XX 01 02 11 02 – Meetings and conferences							
XX 01 02 11 03 - Committees ⁴²	0,052	0,053	0,054	0,055	0,056	0,057	0,327
XX 01 02 11 04 – Studies and consultations							
XX 01 02 11 05 – Information systems							
2. Total other management expenditure (XX 01 02 11)							
3. Other expenditure of an administrative nature (specify including reference to budget line)							
Total administrative expenditure, other than human resources and associated costs (NOT included in reference amount)							

Calculation – *Other administrative expenditure not included in reference amount*

Meeting of the Committee set up under Article 54 of Regulation No 1592/2002, on the basis of 2 meetings of 40 experts a year, at the rate of 650 euros per meeting per expert (2005) indexed by 2% a year.

⁴²

Specify the type of committee and the group to which it belongs.