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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic  
management and air navigation services**

(Text with EEA relevance)

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

The development of the European Aviation Safety Agency (EASA)<sup>1</sup> framework, set out in particular in Regulation EC No 216/2008, is intertwined with the development of the Single European Sky initiative. The Single European Sky (SES) initiative aims to improve the overall efficiency of the way in which European airspace is organised and managed through a reform of the industry providing air navigation services (ANS). Its development has involved two comprehensive legislative packages – SES I and SES II composed of four regulations, i.e. Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004<sup>2</sup>, and also includes a comprehensive project to modernise equipment and systems for air navigation services under the SESAR title<sup>3</sup>.

In 2009, Regulation (EC) No 1108/2009 extended the competences of EASA to include air traffic management and air navigation services (ATM/ANS). Whilst this also implied the incorporation of various ATM/ANS technical regulation elements into the scope of EASA, the corresponding changes to the four SES Regulations were not completed simultaneously. Instead the European Parliament and the Council preferred to leave the corresponding and existing competencies in the four abovementioned SES Regulations intact to ensure that there would be no gaps during the move from the old legal framework to the new one and also to support the idea that the new EASA-based framework should be built on existing SES principles.

The legislators addressed this overlap in the Regulations by inserting a new Article 65a into Regulation (EC) No 216/2008. This article requires the Commission to propose amendments to the four SES Regulations to take into account the requirements of Regulation (EC) No 216/2008.

Secondly, there is a more general mismatch between the approach used for all other sectors of aviation (airworthiness, crew licensing, air operations etc.) in the EASA framework and air traffic management (ATM/ANS). Generally speaking the approach is that all technical regulations are concentrated within the scope of EASA to meet the objectives of Article 2 of Regulation (EC) No 216/2008 and economic regulation is carried out by the Commission. However in ATM/ANS (i.e. SES) the picture is more mixed, with technical regulations stemming from various sources<sup>4</sup>. It would therefore be beneficial to ensure a harmonised approach to this important regulatory area, so that all consultations are conducted with the same thoroughness, all rules fit in the same structure and serve the same objectives, making

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<sup>1</sup> Whereas the Commission Roadmap on implementation of the Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies, of July 2012, requires the standardisation of the names of all EU Agencies to conform to the same format, for reasons of clarity, this explanatory memorandum uses the currently existing name of the European Aviation Safety Agency (EASA) throughout the text. The text of the legislative proposal itself has been adapted in accordance with the new Joint Statement and Roadmap.

<sup>2</sup> The Framework Regulation ((EC) No 549/2004) - laying down the framework for the creation of the Single European Sky; The Service Provision Regulation ((EC) No 550/2004) - on the provision of air navigation services in the Single European Sky; The Airspace Regulation ((EC) No 551/2004) - on the organisation and use of airspace in the Single European Sky; The Interoperability Regulation ((EC) No 552/2004) - on the interoperability of the European Air Traffic Management network

<sup>3</sup> Council Regulation (EC) No 219/2007; SESAR (the Single European Sky ATM Research Programme) is a technical pillar of SES - an ATM improvement programme involving all aviation

<sup>4</sup> Currently technical rules are drafted by not only EASA, but also by Eurocontrol and various standardisation bodies, such as EUROCAE.

life easier for those responsible for applying the rules and finally to ensure that the impending wave of technological innovations stemming from the SESAR initiative can be implemented in a co-ordinated manner in both airborne and ground equipment and procedures.

This regulatory initiative aims to fulfil the requirement of article 65a, by deleting the overlaps between the SES and EASA Regulations and simplifying and clarifying the border line between EASA and SES legal frameworks. In doing so, the amendment also supports the political objective of ensuring clarity of tasks between the Commission, EASA and the Eurocontrol organisation so that , the Commission focuses on economic and technical regulation, with EASA acting as its agent on technical regulation drafting and oversight, while Eurocontrol will focus on operational tasks, in particular built around the Network Manager concept<sup>5</sup>.

As well as deleting SES provisions as part of the SES recast, some minor adaptations are also required to Regulation (EC) No 216/2008, because previously the text of this Regulation relied on the terminology of some SES provisions – in particular in the area of interoperability – and hence the same terminology needs to be introduced in Regulation (EC) No 216/2008, now that it is being repealed from the four SES Regulations..

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

DG MOVE has prepared an impact assessment (IA) to support legislative proposals for improving the efficiency, safety and competitiveness of the Single European Sky. The amendments to Regulation (EC) No 216/2008 in this package however intend to address issues that were left over from a previous amendment through Regulation (EC) No 1108/2009, notably Article 65a, These amendments, were covered by the 2008 impact assessment leading up to the approval of Regulation (EC) No 1108/2009.

Although there has not been any specific consultation on the EASA-related amendments, there was a three-month public consultation was held between September and December 2012 on the DG MOVE website on the DG MOVE website between September and December 2012 concerning the SES changes. In addition, two high-level events – a conference in Limassol and a hearing in Brussels – have been organised and numerous bilateral meetings have taken place with all affected stakeholders. The issue of EASA's role was also raised during these events and stakeholders expressed the need to ensure a more co-ordinated drafting of technical rules.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

### **3.1. Scope (Article 1 of Regulation (EC) No 216/2008)**

While traditionally the Union has had very limited competences in military matters, the dividing line in SES has traditionally been that if a service provider at an airport or at an en-route centre serves primarily (i.e. more than 50%) civilian traffic, that service provider should comply with the same rules that apply to other service providers. Military airspace users on the other hand have had the choice of either flying in accordance with the ICAO and SES rules (defined as General Air Traffic [GAT] rules). They could also opt out of these rules for operational purposes by declaring that the operation in question is performed as operational air traffic (OAT), in which case the SES rules do not apply to these users. Thus the division

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<sup>5</sup> See Article 19 of the SES recast proposal.

ensures the safety of civilian traffic, but retains the possibility of the military to operate per their own mission requirements. The adoption of Regulation (EC) No 1108/2009 resulted in a difference between SES and EASA rules, leading for example to a situation where under SES rules the same provider and its air traffic controllers had to be certified, while under EASA rules certification was not necessary. The current amendment realigns the scopes of the EASA Basic Regulation (EC) No 216/2008 and the SES Regulations (EC) Nos 549-552/2004 to avoid such inconsistencies, restoring the application of the rules to the intended concept, where the service provider falls under EU rules, if more than 50% of the traffic it serves flies under GAT rules.

### **3.2. Objectives (Article 2)**

The development and implementation of the ATM master plan (SESAR<sup>6</sup>) requires regulatory measures in a wide variety of aviation issues. Previously the coordination and alignment of rules (between air traffic management and airworthiness for example) has created problems as there has been no central coordinator ensuring consistency between the drafts prepared by different contributors. This problem does not exist in other fields than ATM/ANS as EASA prepares and co-ordinates the whole range of technical rules, while ATM/ANS has still been split between two frameworks. The amendment to Article 2 underlines that ATM/ANS should be treated in the same way as other sectors. More specifically, in supporting the Commission in the drafting of technical rules, EASA should adopt a balanced approach to regulating different activities based on their specific characteristics, acceptable safety levels and an identified risk hierarchy of users to ensure a comprehensive and coordinated development of aviation.

### **3.3. Declarations (from Article 3 onwards throughout the Regulation)**

Regulation (EC) No 1108/2009 introduced the possibility of self-declaration rather than certification, of certain flight information services. The text of Regulation (EC) No 216/2008 has been adapted throughout to take account of this possibility in the various places where certification is mentioned.

### **3.4. Definitions (Article 3)**

With a view to covering the repeals in the four SES Regulations (Regulations (EC) Nos 549-552/2004) as explained above, align the two frameworks and to clarify the text in Regulation (EC) No 216/2008, the definitions of "qualified entity" and "ATM/ANS" have been modified. Furthermore definitions of "ATM Master Plan" and "general air traffic" have been copied to this Regulation, from the SES Regulations.

### **3.5. ATM/ANS (Article 8b)**

Article 8b has been amended to align the wording with the proposal to repeal Regulation (EC) No 552/2004, thus ensuring that the existing principles and concepts of the interoperability Regulation (EC) No 552/2004 remain.

### **3.6. Essential requirements (Annex Vb)**

An error has been corrected in part (2)(c)(iv) to bring the text back in line with International Civil Aviation Organisation (ICAO) provisions as well as existing EU rules. This was an unintentional mistake in the drafting of Regulation (EC) No 1108/2009. It led to an unfeasible requirement for air traffic controllers to provide aircraft with obstacle clearance even when they were outside the aerodrome manoeuvring area.

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<sup>6</sup> Single European Sky ATM Research programme. See <http://ec.europa.eu/transport/modes/air/sesar/>

Secondly, in parts (2)(g) and (2)(h) as well as part 3 some text has been inserted from Regulation (EC) No 552/2004 to highlight the fact that the approach used to regulate these matters will not be needlessly changed from what it is today. These additions do not change the scope, but further align the SES and EASA frameworks.

### **3.7. Miscellaneous**

A number of small typographical corrections have been made (in Article 7, for example) and some small editorial amendments have been made to rules (in Article 9, 19 and 33) where the text did not reflect the actual situation after previous amendments to the Regulation. Furthermore some small changes have been made throughout (for example in Article 52,59 and Annex Vb) to avoid any unintended changes to the principles agreed in SES since 2004.

The Regulation has also been aligned with the regime established by Articles 290 and 291 TFEU and Regulation (EC) No 182/2011, governing the use of implementing acts and delegated acts. Furthermore the core elements of agreed standard provisions for agencies' founding acts in accordance with the Commission Roadmap on implementation of the Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies, of July 2012, have been included. The latter agreement includes also standardisation of the names of EU Agencies, so that the name of EASA shall be modified to "European Union Agency for Aviation (EAA).

## **4. OPTIONAL ELEMENTS**

Since a separate explanatory memorandum has been drafted to accompany the proposed recast of the four SES Regulations Nos 549-552/2004, this document contains mainly the amendments required in the Regulation 216/2008 to ensure continuity of the current SES approach after the alignment of the four SES Regulations on accordance with Article 65a of Regulation (EC) No 216/2008

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>7</sup>,

Having regard to the opinion of the Committee of Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In order to take into account the changes introduced in Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services and repealing Directive 2006/23/EC<sup>8</sup> and in Regulation (EC) No 1070/2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system<sup>9</sup>, it is necessary to align the content of Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency with Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation)<sup>10</sup>, Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation)<sup>11</sup>, Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation)<sup>12</sup> and Regulation (EC) No 552/2004 of the

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<sup>7</sup> OJ C , , p. .

<sup>8</sup> OJ L 309, 24.11.2009, p. 51.

<sup>9</sup> OJ L *OJ L 300*, 14.11.2009, p. 34.

<sup>10</sup> OJ L 96, 31.3.2004, p.1.

<sup>11</sup> OJ L 96, 31.3.2004, p.10.

<sup>12</sup> OJ L 96, 31.3.2004, p. 20.

European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation)<sup>13</sup>.

- (2) The development and implementation of the ATM master plan requires regulatory actions in a wide variety of aviation subjects. The Agency should, in supporting the Commission for drafting technical rules, adopt a balanced approach to regulating different activities based on their specificities, acceptable levels of safety and an identified risk hierarchy of users to ensure a comprehensive and co-ordinated development of aviation.
- (3) In order to take into account technical, scientific, operational or safety needs, by amending or supplementing the provisions on airworthiness, environmental protection, pilots, air operations, aerodromes, ATM/ANS, air traffic controllers, third-country operators, oversight and enforcement, flexibility provisions, fines and periodic penalty payments and fees and charges, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.
- (4) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.
- (5) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to aerodrome exemptions and decisions not to permit application of flexibility provisions, imperative grounds of urgency so require.
- (6) Certain principles regarding the governance and operation of the Agency should be adapted to the Common Approach on EU decentralised agencies endorsed by the European Parliament, the Council and the Commission in July 2012
- (7) Regulation (EC) No 216/2008 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EC) No 216/2008 is amended as follows:

- (1) Article 1 is amended as follows:
  - (a) paragraph 2 is amended as follows:
    - (i) point (b) is replaced by the following:

"(b) aerodromes or part thereof, as well as equipment, personnel and organisations, referred to in paragraph 1(c) and (d), that are controlled and

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<sup>13</sup> OJ L 96, 31.3.2004, p.26.

operated by the military, where traffic served is primarily other than general air traffic;"

(ii) in point (c), the first sentence is replaced by the following:

"ATM/ANS, including systems and constituents, personnel and organisations, referred to in paragraph 1(e) and (f), that are provided or made available by the military, primarily to aircraft movements other than general air traffic."

(b) paragraph 3 is replaced by the following:

"Without prejudice to paragraph 2, Member States shall ensure that military facilities open to general air traffic and services provided by military personnel to general air traffic, which do not fall within the scope of paragraph 1, offer a level of safety that is at least as effective as that required by the essential requirements as defined in Annexes Va and Vb."

(2) Article 2 is amended as follows:

(a) In paragraph 2, the following points (g) and (h) are added point :

"(g) to support the development and implementation of the ATM master plan;

(h) to regulate civil aviation in a way that best promotes its development, performance, interoperability and safety in a manner proportionate to the nature of each particular activity."

(b) In paragraph 3, point (c) is replaced by the following

"(c) the establishment of an independent European Union Agency for Aviation (hereinafter referred to as the Agency);"

(3) Article 3 is amended as follows:

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

"'continuing oversight' shall mean the tasks to be conducted to verify that the conditions under which a certificate has been granted or which a declaration covers continue to be fulfilled at any time during the period of validity of that certificate or declaration, as well as the taking of any safeguard measure. "

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

"(da) 'ATM/ANS constituents' shall mean any constituent as defined in Article 2(18) of Regulation (EC) No [Pb please insert No of the recast SES Regulation] on the implementation of the Single European Sky ;"

(c) the following point (ea) is inserted:

"(ea) 'declaration' shall mean for the purposes of ATM/ANS, any written statement:

- on the conformity or suitability for use of systems and constituents issued by an organisation engaged in the design, manufacture and maintenance of ATM/ANS systems and constituents;
- on the compliance with applicable requirements of a service or a system to be put into operation issued by a service provider;
- on the capability and means of discharging the responsibilities associated with certain flight information services.



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

"(f) 'qualified entity' shall mean a body which may be allocated specific certification or oversight tasks by, and under the control and the responsibility of the Agency or a national aviation authority;"

(e) point (q) and (r) are replaced by the following:

"(q) 'ATM/ANS' shall mean the air traffic management services as defined in Article 2(10) of Regulation (EC) No [Pb please insert No of the recast SES Regulation], air navigation services defined in Article 2(4) of that Regulation, including the network management services referred to in Article 17 of that Regulation, and services consisting in the origination and processing of data and the formatting and delivering of data to general air traffic for the purpose of safety-critical air navigation;

(r) 'ATM/ANS system' shall mean any combination of equipment and systems as defined in Article 2(33) of Regulation (EC) No [Pb please insert No of the recast SES Regulation];"

(f) the following points (t) and (u) are added:

"(t) 'general air traffic' shall mean all movements of civil aircraft, as well as all movements of state aircraft, including military, customs and police aircraft, when these movements are carried out in conformity with the procedures of the ICAO;

(u) 'ATM Master Plan' shall mean the plan endorsed by Council Decision 2009/320/EC<sup>14</sup>, in accordance with Article 1(2) of Council Regulation (EC) No 219/2007<sup>15</sup>."

(4) Article 4 is amended as follows:

(a) paragraph 3b is replaced by the following:

"By way of derogation from paragraph 3a, Member States may decide to exempt from the provisions of this Regulation an aerodrome which:

- handles no more than 10000 passengers per year, and
- handles no more than 850 movements related to cargo operations per year,

on the condition that the exemption complies with the general safety objectives of this Regulation and any other rule of Union law.

The Commission shall assess whether the condition referred to in the first subparagraph has been complied with and, where it considers that this is not the case, adopt a decision to that effect. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2). On duly justified imperative grounds of urgency relating to safety, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 65(4).

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<sup>14</sup> OJ L 95, 9.4.2009, p. 41.

<sup>15</sup> OJ L 64, 2.3.2007, p. 1.

The Member State concerned shall revoke the exemption upon notification of the decision referred to in the second subparagraph."

(b) in paragraph 3c, the first sentence is replaced by the following:

"3c. ATM/ANS provided in the airspace of the territory to which the Treaty applies, as well as in any other airspace where Member States apply Regulation (EC) No [Pb please insert the No of the recast SES Regulation] in accordance with Article 1(4) of that Regulation, shall comply with this Regulation."

(5) Article 5 is amended as follows:

(a) in paragraph 2, point (d), the first sentence is replaced by the following: "organisations responsible for the maintenance and continuing airworthiness management of products, parts and appliances shall demonstrate their capability and means to discharge the responsibilities associated with their privileges."

(b) paragraph 5 is replaced by the following:

"As regards the airworthiness of aircraft referred to in Article 4(1)(a), (b) and (c), the Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules with regard to:

(a) conditions for establishing and notifying to an applicant the type-certification basis applicable to a product;

(b) conditions for establishing and notifying to an applicant the detailed airworthiness specifications applicable to parts and appliances;

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

(d) conditions for issuing and disseminating mandatory information in order to ensure the continuing airworthiness of products and conditions for approval of alternative means of compliance to this mandatory information;

(e) conditions for issuing, maintaining, amending, suspending or revoking type-certificates, restricted type-certificates, approval of changes to type-certificates, supplemental type certificates, approval of repair designs, individual certificates of airworthiness, restricted certificates of airworthiness, permits to fly and certificates for products, parts or appliances, including:

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

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

- purpose of the flight,
- airspace used for the flight,
- qualification of flight crew,
- carriage of persons other than flight crew;

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

(iv) the operational suitability data, including:

- the minimum syllabus of maintenance certifying staff type rating training to ensure compliance with paragraph (2)(f);
- the minimum syllabus of pilot type rating and the reference data for associated simulators to ensure compliance with Article 7;
- the master minimum equipment list as appropriate;
- aircraft type data relevant to cabin crew;
- and additional airworthiness specifications for a given type of operation to support the continued airworthiness and safety improvements of aircraft;

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

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

(h) responsibilities of the holders of certificates;

(i) the compliance of aircraft referred to in paragraph 1, which are not covered by paragraphs 2 or 4, as well as of aircraft referred to in Article 4(1)(c), with the essential requirements;

(j) conditions for the maintenance and continuing airworthiness management of products, parts and appliances;

As regards the airworthiness of aircraft referred to in Article 4(1)(a), (b) and (c), the Commission shall be empowered, by means of delegated acts in accordance with Article 65b, to amend or supplement Annex I, where necessary for reasons of technical, operational or scientific developments or safety evidence in the field of airworthiness, in order to, and to the extent needed to, achieve the objectives laid down in Article 2."

(6) In Article 6, paragraphs 2 and 3 are replaced by the following:

"2. The Commission shall be empowered to amend, by means of delegated acts in accordance with Article 65b, the requirements referred to paragraph 1 in order to bring them into line with amendments to the Chicago Convention and its Annexes which enter into force after the entry into force of this Regulation and which become applicable in all Member States.

3. Where necessary in order to ensure a high and uniform level of environmental protection, and based on the content of the Appendices to Annex 16 referred to in paragraph 1 where appropriate, the Commission may lay down, by means of delegated acts in accordance with Article 65b, detailed rules supplementing the requirements referred to in paragraph 1."

(7) Article 7 is amended as follows:

(a) paragraph 2, fourth subparagraph, is replaced by:

"Notwithstanding the third subparagraph, in the case of a leisure pilot licence a general medical practitioner who has sufficient detailed knowledge of the applicant's medical background may, if so permitted under national law, act as

an aero-medical examiner. The Commission shall adopt detailed rules for the use of a general medical practitioner, instead of an aero-medical examiner, in particular ensuring that the level of safety is maintained. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(3)."

- (b) in paragraph 2, the sixth subparagraph is replaced by the following:

"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 Article 4(1)(b) or (c) are concerned."

- (c) in paragraph 6, the introductory part is replaced by:

"As regards pilots involved in the operation of aircraft referred to in Article 4(1)(b) and (c), as well as flight simulation training devices, persons and organisations involved in the training, testing, checking or medical assessment of these pilots, the Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules with regard to:

- (d) in paragraph 6, point (d) is replaced by the following:

"(d) the conditions for the conversion of existing national pilots' licences and of national flight engineers' licences into pilots' licences as well as the conditions for the conversion of national medical certificates;"

- (e) in paragraph 6, point (f) is replaced by the following:

"(f) the compliance of pilots of aircraft referred to in points (a)(ii), (d) and (h) of Annex II, when used for commercial air transportation, with the relevant essential requirements of Annex III."

- (f) at the end of paragraph 6, the following new subparagraph is added:

"As regards pilots involved in the operation of aircraft referred to in Article 4(1)(b) and (c), as well as flight simulation training devices, persons and organisations involved in the training, testing, checking or medical assessment of these pilots, the Commission shall be empowered, by means of delegated acts in accordance with Article 65b, to amend or supplement Annex III, where necessary for reasons of technical, operational or scientific developments or safety evidence related to the pilot licencing, in order to, and to the extent needed to, achieve the objectives laid down in Article 2."

- (8) Article 8 is amended as follows:

- (a) in paragraph 5, the introductory part is replaced by:

"As regards the operation of aircraft referred to in Article 4(1)(b) and (c), the Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules with regard to:"

- (b) in paragraph 5, point (g) is replaced by the following:

"(g) the compliance of operations of aircraft referred to in point (a)(ii) and points (d) and (h) of Annex II, when used for commercial air transportation, with the relevant essential requirements set out in Annex IV and, if applicable, Annex Vb."

- (c) in paragraph 5, the following points (h) and (i) are added:

"(h) conditions and procedures under which specialised operations shall be subject to an authorisation;

(i) conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety in accordance with Article 22(1)."

(d) at the end of paragraph 5, the following new subparagraph is added:

"As regards the operation of aircraft referred to in Article 4(1)(b) and (c), the Commission shall be empowered, by means of delegated acts in accordance with Article 65b, to amend or supplement Annex IV and, if applicable, Annex Vb, where necessary for reasons of technical, operational or scientific developments or safety evidence related to air operations, in order to, and to the extent needed to, achieve the objectives laid down in Article 2."

(9) Article 8a is amended as follows:

(a) in paragraph 5, the introductory part is replaced by the following:

"As regards aerodromes and aerodrome equipment, as well as the operation of aerodromes, the Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules with regard to:"

(b) in paragraph 5, the following points are added after (j):

"(k) the conditions for issuing, maintaining, amending, suspending or revoking certificates of apron management service providers;

(l) the conditions for issuing and disseminating mandatory information in order to ensure the safety of aerodrome operations and aerodrome equipment;

(m) the responsibilities of service providers referred to in paragraph 2(e);

(n) the conditions to issue, maintain, amend, suspend or revoke organisation approvals and conditions for the oversight of organisations engaged in the design, manufacture and maintenance of safety critical aerodrome equipment;

(o) the responsibilities of organisations engaged in the design, manufacture and maintenance of safety critical aerodrome equipment."

(c) at the end of paragraph 5, the following new subparagraph is added:

"As regards aerodromes and aerodrome equipment, as well as the operation of aerodromes, the Commission shall be empowered, by means of delegated acts in accordance with Article 65b, to amend or supplement Annex Va and, if applicable, Annex Vb, where necessary for reasons of technical, operational or scientific developments or safety evidence related to the aerodromes, in order to, and to the extent needed to, achieve the objectives laid down in Article 2."

(10) Article 8b is amended as follows:

(a) paragraph 4 and 5 are replaced by the following:

"4. The measures referred to in paragraph 6 may lay down a requirement for certification or declaration in respect of organisations engaged in the design, manufacture and maintenance of ATM/ANS systems and constituents upon which safety or interoperability are dependent.. The certificate for those organisations shall be issued when they have demonstrated their capability and means of discharging the responsibilities associated with their privileges. The privileges granted shall be specified in the certificate.

5. The measures referred to in paragraph 6 may lay down a requirement for certification, or alternatively, validation or declaration by the ATM/ANS provider or the organisation engaged in the design, manufacture and maintenance of ATM/ANS systems and constituents, in respect of ATM/ANS systems and constituents, upon which safety or interoperability are dependent. The certificate or declaration for those systems and constituents shall be issued, or validation shall be given, when the applicant has shown that the systems and constituents comply with the detailed specifications established to ensure compliance with the essential requirements referred to in paragraph 1."

(b) paragraph 6 is amended as follows:

(i) the introductory part is replaced by the following:

"As regards the provision of ATM/ANS, the Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules with regard to:"

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

"the conditions and procedures for the declaration by, and for the oversight of service providers and organisations engaged in the design, manufacture and maintenance of ATM/ANS systems and constituents referred to in paragraphs 3 to 5;"

(iii) the following points (g), (h) and (i) are added:

"(g) conditions for issuing and disseminating mandatory information in order to ensure the safety in the provision of ATM/ANS;

(h) the conditions for the validation and declaration referred to in paragraph 5 and for the oversight of compliance with these conditions;

(i) operating rules and ATM/ANS constituents required for the use of airspace."

(iv) at the end of the paragraph, the following new subparagraph is added:

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

(c) in the paragraph 7, point (a) is replaced by the following:

"(a) reflect the state of the art and the best practices in the field of ATM/ANS in particular in accordance with the ATM Master Plan and in close cooperation with ICAO".

(11) Article 8c is amended as follows:

(a) in paragraph 10, the introductory part is replaced by the following:

"As regards air traffic controllers, as well as persons and organisations involved in the training, testing, checking or medical assessment of air traffic controllers, the Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules with regard to:"

(b) in paragraph 10, the following points (e), (f) and (g) are added:

"(e) without prejudice to the provisions of bilateral agreements concluded in accordance with Article 12, the conditions for the acceptance of licences from third countries;

(f) the conditions under which the provision of on-the-job training shall be prohibited, limited or subject to certain conditions in the interest of safety.

(g) conditions for issuing and disseminating mandatory information in order to ensure the safety in the provision of on-the-job training;"

(c) at the end of paragraph 10, the following new subparagraph is added:

"As regards air traffic controllers, as well as persons and organisations involved in the training, testing, checking or medical assessment of air traffic controllers, the Commission shall be empowered, by means of delegated acts in accordance with Article 65b, to amend or supplement Annex Vb, where necessary for reasons of technical, operational or scientific developments or safety evidence related to the training organisations and air traffic controllers, in order to, and to the extent needed to, achieve the objectives laid down in Article 2."

(12) Article 9 is amended as follows:

(a) in paragraph 4, the introductory part is replaced by the following:

"As regards aircraft referred to in Article 4(1)(d), as well as their crew and their operations, the Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules with regard to:"

(b) in paragraph 4, point (a) is replaced by the following:

"(a) the authorisation of aircraft referred to in Article 4(1)(d), or crew, which do not hold a standard ICAO certificate of airworthiness or licence, to operate into, within or out of the Community;"

(c) in paragraph 4, point (e) is replaced by the following:

"(e) conditions for the declaration by, and for the oversight of, operators referred to in paragraph 3;"

(d) in paragraph 4, the following point (g) is added:

"(g) alternative conditions for cases where compliance with the standards and requirements referred to in paragraph 1 is not possible or involves disproportionate effort, ensuring that the objective of the standards and requirements concerned is met."

(e) in paragraph 5, point (e), the word "safety" is deleted.

(13) Article 10 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. For the purposes of the implementation of paragraph 1, Member States shall, in addition to their oversight of certificates that they have issued, or declarations that they have received, conduct investigations, including ramp inspections, and shall take any measure, including the grounding of aircraft, to prevent the continuation of an infringement."

(b) in paragraph 5, the introductory part is replaced by the following:

"The Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules setting out the conditions for the cooperation referred to in paragraph 1 and in particular: "

(c) in paragraph 5, the following points (d) and (e) are added :

"(d) conditions for the qualifications of inspectors conducting ramp inspections and organisation involved in training of these inspectors

(e) conditions for the administration and application of oversight and enforcement, including safety management systems"

(14) Article 11 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

"1. Member States shall, without further technical requirements or evaluation, recognise certificates issued in accordance with this Regulation and the delegated acts and implementing acts adopted on the basis thereof. When the original recognition is for a particular purpose or purposes, any subsequent recognition shall cover only the same purpose or purposes.

2. The Commission shall, on its own initiative or at the request of a Member State or of the Agency, decide whether a certificate referred to in paragraph 1 complies with this Regulation and the delegated and implementing acts adopted on the basis thereof. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2). On duly justified imperative grounds of urgency relating to safety, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 65(4)"

(15) In Article 12(2) (b), the last subparagraph is replaced by the following:

"it may require the Member State concerned to modify the agreement, to suspend its application or to renounce it, in accordance with Article 351 of the Treaty on the Functioning of the European Union. Those implementing acts shall be adopted in accordance with the procedure laid down in Article 65(2)."

(16) Article 13 is replaced by the following:

"Article 13

Qualified entities

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

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

(17) Article 14 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. The provisions of this Regulation and of the delegated acts and implementing acts adopted on the basis thereof shall not prevent a Member State from reacting immediately to a safety problem which involves a product, system, person or organisation, on the condition that the immediate action is required to ensure safety and that it is not possible to adequately address the



problem in compliance with this Regulation and the delegated acts and implementing acts adopted on the basis thereof."

- (b) paragraph 3 is replaced by the following:

"The Commission shall assess whether conditions referred to in paragraph 1 have been complied with and, where it considers that this is not the case, adopt a decision to that effect. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2). On duly justified imperative grounds of urgency relating to safety, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 65(4).

The Member State concerned shall revoke the measure taken pursuant to paragraph 1 upon notification of the decision referred to in the first subparagraph of this paragraph.

Where necessary as a consequence of the identification of an immediate safety problem referred to in paragraph 1, the Commission shall be empowered to adopt delegated acts in accordance with Article 65c in order to amend or supplement this Regulation."

- (c) paragraph 4 is replaced by the following:

"4. Member States may grant exemptions from the substantive requirements laid down in this Regulation and its delegated and implementing acts in the event of unforeseen urgent operational circumstances or operational needs of a limited duration, provided the level of safety is not adversely affected. 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."

- (d) in paragraph 5, the second subparagraph is replaced by the following:

"The Commission shall assess whether the exemption complies with the conditions set out in paragraph 4 and, where it considers that this is not the case, adopt a decision to that effect. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2). On duly justified imperative grounds of urgency relating to safety, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 65(4).

The Member State concerned shall revoke the exemption upon notification of the decision referred to in the second subparagraph."

- (e) paragraph 6, the first subparagraph is replaced by the following:

"6. Where an equivalent level of protection to that attained by the application of the delegated and implementing acts adopted on the basis of this Regulation can be achieved by other means, Member States may, without discrimination on grounds of nationality, grant an approval derogating from those delegated or implementing acts, in conformity with the procedure laid down in the second subparagraph and paragraph 7"

- (f) in paragraph 7, the following subparagraph is added at the end:

"Where the Commission finds, taking into account the recommendation referred to in the first subparagraph, that the conditions laid down in paragraph

6 are met, it shall grant the derogation without delay by amending accordingly the relevant delegated or implementing acts adopted on the basis of this Regulation."

- (18) In Article 15, paragraph 2, the introductory part is replaced by the following:
- "2. Without prejudice to the public's right of access to the Commission's documents as laid down in Regulation (EC) No 1049/2001, the Commission shall adopt detailed rules on the dissemination to interested parties on its own initiative of the information referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(3). These measures shall take account of the need:"
- (19) The title of Chapter III is replaced by the following:
- "THE EUROPEAN UNION AGENCY FOR AVIATION"
- (20) Article 17 is amended as follows:
- (a) Paragraph 1 is replaced by the following:
- "For the purpose of the implementation of this Regulation, a European Union Agency for Aviation shall be established.
- (b) in paragraph 2, the first sentence is replaced by the following:
- "For the purposes of ensuring the proper functioning and development of civil aviation, the Agency shall:"
- (c) in paragraph 2, the following point (f) is added:
- "(f) support the Member States competent authorities in carrying out their tasks by providing a forum for exchanges of information and experts."
- (21) In Article 19(2), the second subparagraph is replaced by the following:
- "These documents shall reflect the state of the art and the best practices in the fields concerned and be updated taking into account worldwide aviation experience, and scientific and technical progress."
- (22) In Article 21(2)(b), point (i) is replaced by the following:
- "(i) flight simulation training devices operated by training organisations certified by the Agency;"
- (23) Article 22 is amended as follows:
- (a) in paragraph 2, point (c) the words "one month" are replaced by "three months"
- (b) in paragraph 2, point (e) is replaced by the following:
- "(e) should a Member State disagree with the Agency's conclusions concerning an individual scheme, it shall refer the issue to the Commission. The Commission shall decide whether that scheme complies with the safety objectives of this Regulation. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2);"
- (24) In Article 22a; the following point (ca) is inserted:
- "(ca) issue and renew certificates or accept declarations of conformity or suitability for use and of compliance in accordance with Article 8b(4) and (5) of organisations providing pan-European services or systems and where

requested by the Member State concerned, also of other service providers as well as organisations engaged in the design, manufacture and maintenance of ATM/ANS systems and constituents;"

(25) In Article 24, paragraph 5 is replaced by the following:

"5. Taking account of the principles laid down in Articles 52 and 53, the Commission shall adopt detailed rules on the working methods of the Agency for conducting the tasks referred to in paragraphs 1, 3 and 4. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2)."

(26) Article 25 is amended as follows:

(a) in paragraph 3, the introductory part is replaced by the following:

"On the basis of paragraphs 1 and 2, the Commission shall, by means of delegated acts in accordance with Article 65b, lay down:"

(b) in paragraph 3, point (b) is replaced by the following:

"(b) detailed rules for enquiries, associated measures and reporting, as well as decision-making, including provisions on rights of defence, access to file, legal representation, confidentiality and temporal provisions and the quantification and collection of fines and periodic penalty payments."

(27) In article 29, paragraph 2 is deleted.

(28) Article 30 is replaced by the following:

"The Protocol on the Privileges and Immunities of the European Union shall apply to the Agency and its staff."

(29) Article 33 is amended as follows:

(a) in paragraph 2, point (a) is replaced by the following:

"(a) appoint the Executive Director, and the Deputy Executive Directors, in accordance with Articles 39a and 39b;"

(b) in paragraph 2, point (c) is replaced by the following:

"(c) before 30 November each year, and after receiving the opinion of the Commission, adopt the Agency's annual and multi-annual work programme for the coming year(s); these work programmes shall be adopted without prejudice to the annual Community budgetary procedure and the Community legislative programme in relevant areas of aviation safety; the opinion of the Commission shall be attached to the work programmes;"

(c) in paragraph 2, point (h) is replaced by the following:

"(h) exercise disciplinary authority over the Executive Director and over the Deputy Executive Directors in agreement with the Executive Director;"

(d) in paragraph 2, the points (n), (o), (p) and (q) are added:

"(n) in accordance with paragraph 6, exercise, with respect to the staff of the Agency, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the

Authority Empowered to Conclude a Contract of Employment<sup>16</sup> ("the appointing authority powers");

(o) ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office (OLAF);

(p) adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations."

(q) adopt rules for the prevention and management of conflicts of interest in respect of its members, as well as members of Board(s) of Appeal;

(e) the following paragraph 6 is added:

"6. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Management Board may by way of a decision temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director."

(30) Article 34 is amended as follows:

(a) in paragraph 1, the words "one representative of the Commission" are replaced by "two representatives of the Commission, all with voting rights".

(b) in paragraph 1, second subparagraph, the words "its representative and alternate" are replaced by "its representatives and their alternates"

(c) in paragraph 1, second subparagraph, the word "five" is replaced by "four"

(d) in paragraph 1, the following new subparagraph is added at the end:

"Members of the Management Board and their alternates shall be appointed in light of their knowledge in the field of aviation, taking into account relevant managerial, administrative and budgetary skills. All parties represented in the Management Board shall make efforts to limit turnover of their representatives, in order to ensure continuity of the board's work. All parties shall aim to achieve a balanced representation between men and women on the Management Board."

(31) In Article 37, paragraph 1, the following changes are made:

– the words "two-thirds majority" are replaced by "simple majority".

– the following second sentence is inserted:

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<sup>16</sup> Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1)

"However a two-thirds majority of the Management Board members shall be required for decisions relating to adoption of the work programmes, the annual budget, appointment, and the extension of the term of office or removal from office of the Executive Director."

(32) The following Article 37a is added:

"Article 37a

Executive Board

1. The Management Board shall be assisted by an Executive Board.
2. The Executive Board shall:
  - (a) prepare decisions to be adopted by the Management Board.
  - (b) ensure, together with the Management Board, adequate follow-up to the findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office (OLAF);
  - (c) without prejudice to the responsibilities of the Executive Director, as set out in Article 38, assist and advise him/her in the implementation of the decisions of the Management Board, with a view to reinforcing supervision of administrative and budgetary management.
3. When necessary, because of urgency, the Executive Board may take certain provisional decisions on behalf of the Management Board, in particular on administrative management matters, including the suspension of the delegation of the appointing authority powers and budgetary matters
4. The Executive Board shall be composed of the Chairperson of the Management Board, one representative of the Commission to the Management Board and three other members appointed by the Management Board from among its members with the right to vote. The Chairperson of the Management Board shall also be the Chairperson of the Executive Board. The Executive Director shall take part in the meetings of the Executive Board, but shall not have the right to vote.
5. The term of office of members of the Executive Board shall be the same as that of members of the Management Board. The term of office of members of the Executive Board shall end when their membership of the Management Board ends.
6. The Executive Board shall hold at least one ordinary meeting every three months. In addition, it shall meet on the initiative of its Chairperson or at the request of its members.
7. The Management Board shall lay down the rules of procedure of the Executive Board."

(33) Article 38 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. Without prejudice to the competencies of the Commission the Management Board and the

Executive Board, the Executive Director shall neither seek nor take instructions from any government or from any other body."

(b) in paragraph 3, point (g) is deleted.

(c) in paragraph 3, point (i) is replaced by the following:

"(i) to delegate his/her powers to other members of the Agency's staff. The Commission shall define the modalities of such delegations. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2);"

(d) in paragraph 3, point (k) is replaced by the following:

"(k) to prepare the annual and multi-annual work programmes, and submit them to the Management Board after consulting the Commission;"

(e) in paragraph 3, the following points (m), (n), (o) and (p) are added:

"(m) to implement the annual and multi-annual work programmes, and report to the Management Board on their implementation;

(n) to prepare an action plan following up conclusions of internal or external audit reports and evaluations, as well as investigations by the European Anti-Fraud Office (OLAF) and report on progress twice a year to the Commission and regularly to the Executive and Management Boards

(o) to protect the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, to recover amounts wrongly paid and, where appropriate, improve effective, proportionate and dissuasive administrative and financial penalties;

(p) to prepare an anti-fraud strategy for the Agency and present it to the Management Board for approval;

(34) Article 39 is deleted.

(35) The following Articles 39a and 39b are added :

#### "Article 39a

##### Appointment of the Executive Director

1. The Executive Director shall be engaged as a temporary agent of the Agency under Article 2(a) of the Conditions of Employment of Other servants.

2. The Executive Director shall be appointed by the Management Board on grounds of merit and of documented competence and experience relevant for civil aviation, from a list of candidates proposed by the Commission, following an open and transparent selection procedure.

For the purpose of concluding the contract with the Executive Director, the Agency shall be represented by the Chairperson of the Management Board.

Before appointment, the candidate selected by the Management Board may be invited to make a statement before the competent committee of the European Parliament and to answer questions put by its members.

3. The term of office of the Executive Director shall be five years. By the end of that period, the Commission shall undertake an assessment that takes into account an

evaluation of the Executive Director's performance and the Agency's future tasks and challenges.

4. The Management Board, acting on a proposal from the Commission that takes into account the assessment referred to in paragraph 3, may extend the term of office of the Executive Director once, for no more than five years.

5. The Management Board shall inform the European Parliament if it intends to extend the Executive Director's term of office. Within one month before any such extension, the Executive Director may be invited to make a statement before the competent committee of the Parliament and answer questions put by its members.

6. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.

7. The Executive Director may be removed from office only upon a decision of the Management Board acting on a proposal from the Commission.

8. The Management Board shall reach decisions on appointment, extension of the term of office or removal from office of the Executive Director and/or Deputy Executive Directors on the basis of a two-thirds majority of its members with voting rights.

#### Article 39b

##### Appointment of Deputy Executive Directors

1. One or more Deputy Executive Director(s) may assist the Executive Director.

2. The Deputy Executive Director or Deputy Executive Directors shall be appointed, extended in their term of office or removed from office as provided for in Article 39a, after consultation of the Executive Director and, where applicable, the Executive Director elect."

(36) In article 40, paragraph 3 is replaced by the following:

"3. The Board or Boards of Appeal shall be convened as necessary. The Commission shall determine the number of Boards of Appeal and the work allocated to it or them. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2)."

(37) In Article 41, paragraph 5 is replaced by the following:

"5. The Commission shall determine the qualifications required for the members of each Board of Appeal, the powers of individual members in the preparatory phase of decisions and the voting conditions. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(3)."

(38) In Article 52(1), point (b) is replaced by the following:

"(b) whenever necessary, involve experts from relevant interested parties, or draw on expertise from the relevant European standardisation bodies, Eurocontrol or other specialised bodies;"

(39) Article 56 is replaced by the following :

"Annual and multi-annual work programme

1. By 30 November each year, in accordance with Article 33(2)(c), the Management Board shall adopt a programming document containing multi-annual and annual programming, based on a draft put forward by the Executive Director, taking into

account the opinion of the Commission. It shall forward it to the European Parliament, the Council and the Commission.

The programming document shall become definitive after final adoption of the general budget and if necessary shall be adjusted accordingly.

The annual and multi-annual work programmes shall aim to promote the continuous improvement of European aviation safety and comply with the objectives, mandates and tasks of the Agency, as set out in this Regulation.

2. The annual work programme shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be coherent with the multi-annual work programme referred to in paragraph 4. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year.

It shall include the strategy for relations with third countries or international organisations referred to in Article 27(2) and the actions linked to this strategy.

3. The Management Board shall amend the adopted annual work programme when a new task is given to the Agency.

Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial annual work programme. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the Executive Director.

4. The multi-annual work programme shall set out overall strategic programming including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff.

The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 62."

(40) In Article 57, first subparagraph is replaced by the following:

"The annual general report shall describe the way in which the Agency has implemented its annual work programme. It shall clearly indicate which of the mandates and tasks of the Agency have been added, changed or deleted in comparison with the previous year."

(41) In Article 59(1), the following point (f) is added:

"(f) charges paid in accordance with Article 13 of Regulation (EC)<sup>o</sup> No [SES Regulation] for relevant ATM/ANS authority tasks."

(42) Article 62 is amended as follows:

(a) in paragraph 1, the words "Management Board" are replaced by "Commission"

(b) the following paragraph 4 is added:

"4. On the occasion of every second evaluation, there shall also be an assessment of the results achieved by the Agency having regard to its objectives, mandate and tasks. If the Commission considers that the continuation of the Agency is no longer justified with regard to its assigned



objectives, mandate and tasks, it may propose that this Regulation be amended accordingly or repealed."

(43) Article 64 is amended as follows:

- (a) the word "regulation" in the title is deleted.
- (b) paragraph 1 is replaced by "The Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down, on the basis of paragraphs 3, 4 and 5, detailed rules relating to fees and charges.
- (c) paragraph 3 is replaced by the following:

"The rules referred to in paragraph 1 shall determine in particular the matters for which fees and charges pursuant to Article 59(1)(c) and (d) are due, the amount of the fees and charges and the way in which they are to be paid."

- (d) Paragraph 5 is replaced by the following:

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

(44) Article 65 is replaced by the following:

#### "Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 4 thereof, shall apply."

(45) Article 65a is deleted.

(46) The following Articles 65b and 65c are added :

#### "Article 65b

##### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 5(5), Article 6(2), Article 6(3), Article 7(6), Article 8(5), Article 8a(5), Article 8b(6), Article 8c(10), Article 9(4), Article 10(5), Article 14(3), Article 14(7), Article 25(3) and Article 64(1) shall be conferred on the Commission for an indeterminate period of time.
3. The delegation of power referred to in Article 5(5), Article 6(2), Article 6(3), Article 7(6), Article 8(5), Article 8a(5), Article 8b(6), Article 8c(10), Article 9(4), Article 10(5), Article 14(3), Article 14(7), Article 25(3) and Article 64(1) may be

revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 5(5), Article 6(2), Article 6(3), Article 7(6), Article 8(5), Article 8a(5), Article 8b(6), Article 8c(10), Article 9(4), Article 10(5), Article 14(3), Article 14(7), Article 25(3) and Article 64(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

#### Article 65c

##### Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 65b(5). In such a case the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council."

(47) The following Article 66a is added:

#### "Article 66a

##### Headquarters Agreement and operating conditions

1. The necessary arrangements concerning the accommodation to be provided for the Agency in the host Member State and the facilities to be made available by that Member State together with the specific rules applicable in the host Member State to the Executive Director, members of the Management Board, Agency staff and members of their families shall be laid down in a Headquarters Agreement between the Agency and Member State where the seat is located, concluded after obtaining the approval of the Management Board and no later than 2 years after the entry into force of Regulation (EU) No [ ].

2. The Agency's host Member State shall provide the best possible conditions to ensure the functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections."

(48) The following Article 66b is added:

#### "Article 66b

##### Security rules on the protection of classified and sensitive non-classified information

The Agency shall apply the security principles contained in the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, as set out in the annex to Decision 2001/844/EC, ECSC, Euratom. Applying the security principles shall cover, inter alia, provisions for the exchange, processing and storage of such information."

(49) In Annex V, points 2 and 3 are replaced by the following:

"2. The entity and the staff responsible for the certification and oversight 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 or oversight tasks.

3. The entity must employ staff and possess the means required to perform adequately the technical and administrative tasks linked with the certification and oversight process; it should also have access to the equipment needed for exceptional checks."

(50) Annex Vb is amended as follows:

(a) paragraph 2, point (c) (iv) is replaced by the following:

"Air traffic control services and related processes shall provide for adequate separation between aircraft and, on the aerodrome manoeuvring area, prevent collisions between obstacles and aircraft on that area and, where appropriate and feasible, assist in protection from other airborne hazards and shall ensure prompt and timely coordination with all relevant users and adjacent volumes of airspace."

(b) in paragraph 2, point (g), the following words are added at the end of the point:

"Flow management shall be performed with a view to optimising available capacity in the use of airspace and enhancing air traffic flow management processes. It shall be based on transparency and efficiency, ensuring that capacity is provided in a flexible and timely manner, consistent with the recommendations of the ICAO Regional Air Navigation Plan, European Region.

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

(a) flight planning;

(b) use of available airspace capacity during all phases of flight, including slot assignment; and

(c) use of routings by general air traffic, including:

- the creation of a single publication for route and traffic orientation,
- options for diversion of general air traffic from congested areas, and
- priority rules regarding access to airspace for general air traffic, particularly during periods of congestion and crisis,

(d) take into account the consistency between flight plans and airport slots and the necessary coordination with adjacent regions."

- (c) in paragraph 2, point (h), the following words are added at the end of the point:
- "Taking into account the organisation of military aspects under the responsibility of the Member States, airspace management shall also support the uniform application of the concept of the flexible use of airspace as described by the ICAO and as implemented under Regulation (EC) No 551/2004", in order to facilitate airspace management and air traffic management in the context of the common transport policy.

Member States shall report annually to the Agency on the application, in the context of the common transport policy, of the concept of the flexible use of airspace in respect of the airspace under their responsibility."

- (d) in paragraph 3, point (a), the following words are added at the end of the point:
- "The systems shall include in particular:
1. Systems and procedures for airspace management.
  2. Systems and procedures for air traffic flow management.
  3. Systems and procedures for air traffic services, in particular flight data processing systems, surveillance data processing systems and human-machine interface systems.
  4. Communications systems and procedures for ground-to-ground, air-to-ground and air-to-air communications.
  5. Navigation systems and procedures.
  6. Surveillance systems and procedures.
  7. Systems and procedures for aeronautical information services.
  8. Systems and procedures for the use of meteorological information."

- (e) In paragraph 3, point (b), the following words are added at the end of the point:
- "ATM/ANS systems and their constituents shall be designed, built, maintained and operated using the appropriate and validated procedures, in such a way as to ensure the seamless operation of the European air traffic management network at all times and for all phases of flight. Seamless operation can be expressed, in particular, in terms of information-sharing, including the relevant operational status information, common understanding of information, comparable processing performances and the associated procedures enabling common operational performances agreed for the whole or parts of the European air traffic management network (EATMN).

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

The EATMN, its systems and their constituents shall support the progressive implementation of civil/military coordination, to the extent necessary for effective airspace and air traffic flow management, and the safe and efficient

use of airspace by all users, through the application of the concept of the flexible use of airspace.

To achieve these objectives, the EATMN, its systems and their constituents shall support the timely sharing of correct and consistent information covering all phases of flight, between civil and military parties."

*Article 2*

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

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

Done at Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*