

**Joint European Commission and EASA approach
for rulemaking in the context of the extension
of Community competences**

Summary:

The Agency and the Commission jointly prepared this paper on the prioritization and principles guiding the EASA rulemaking activities. It provides a clear way forward in the further processing of the first extension tasks following the extensive debate in reaction to the associated NPAs. Furthermore, it outlines the prioritization for the second extension which will benefit from the clarification reached for the first one.

The prioritization addresses the concerns raised by the stakeholder community. It respects the timelines established by the Basic Regulation by using a phased approach to the work and the output.

Regarding the principles, the following framework is set to ensure a smooth transition:

- The total system approach and the horizontal structure of authority and organisation requirements are maintained. The sub-structure of the technical operational requirements will be separated into dedicated stand-alone Parts for Commercial Air Transport, other operations (i.e. aerial work, training flights and test flights), non-commercial operations and special approvals (e.g. low visibility operations, dangerous goods, etc).
- The proposed Implementing Rules will be as closely aligned as possible to existing ICAO SARPs, EU legislation and adopted JARs, subject to ensuring high safety and regulatory standards.
- They will provide for the necessary balance in terms of safety and level playing field as well as of hard and soft law.
- The Agency's deliverables will include proposals for appropriate transition measures.
- The draft implementing rules and the Agency measures (CS/AMC/GM) are being developed in parallel.

The Agency will apply advanced working methods for the review of the comments to the NPAs in order to concentrate on the necessary amendments of the texts.

Joint Commission and EASA approach for rulemaking in the context of the extension of Community competences

1. While the aviation community is faced with the most severe crisis it has ever met, the adoption of the implementing measures related to the **EASA scope's extension** to pilot licensing, air operations, third country operators, ATM and aerodromes represents a **major challenge**. To reduce the related burden it is necessary to agree on a **coordinated approach to ensure a smooth transition** while not losing sight of the safety objectives and of the goal to create a level playing field in Europe.
2. We are now at a stage where the Agency has published proposed measures covering a large part of the first extension, while at the same time work has been initiated on the implementing measures addressing third country operators, as well as the second extension. Moreover, the adaptation of already established legislation in the field of initial and continuing airworthiness has to be continued, not to forget the area of environmental protection.
3. The discussions in the Management Board on 9 June and in the EASA Committee on 8 July as well as comments submitted to the Agency on the published NPAs of the first extension show that the huge size, scope and ambition of the proposals raise significant concern. A common line on whether all the proposals related to the first extension shall be available at the same time does not exist. Also, the Agency, the Commission and the NAAs are faced with difficulties in processing those proposals within the restricted timeframe imposed by the extending legislations. Nevertheless, the Management Board, the Commission and the EASA Committee stressed the **importance of respecting the legal deadlines through establishing priorities and offering appropriate transitional measures** beyond the dates set by the Basic Regulation where necessary.
4. The Management Board recognized the efforts made by EASA to improve the rulemaking processes and to cope with the current tasks but also noted that for the implementing measures to be good and well-functioning, they need to be comprehensive and clear. It was further agreed that lessons must be learnt from the first extension phase to avoid similar difficulties for the second one. This includes keeping processes as simple as possible and building the work around existing material and expertise.

5. It was therefore concluded by the Management Board and the EASA Committee that the Commission and EASA should develop a prioritization list for the rulemaking activities of the first and second extensions. By doing so, EASA and the Commission took into consideration comments expressed by the Management Board and the EASA Committee as well as the comments submitted to the Agency's published NPAs. The majority of Member States highlighted the priority of the first extension versus the implementing rules to be developed in the field of ATM and aerodromes.
6. The **prioritization** shall provide for the necessary **balance in terms of safety and level playing field** and needs to be based on:
 - safety risks,
 - whether uniform rules are already established at European level,
 - the size and type of the affected stakeholder community,
 - the progress already made by EASA in certain fields regarding the first extension, and
 - the resources available.
7. Following these evaluations, the Commission and EASA agreed on a list of priorities for rulemaking activities stemming from the first and second extensions. This list and strategy was discussed during a high level meeting of Agency, Commission and representatives from the Management Board after the summer break. The Agency therefore adapted its work programme to enable the Commission to process the legislative measures in compliance with the dates of the Basic Regulation. The Agency also further prioritised its rulemaking tasks in the fields of product safety and environmental protection.

First extension

8. As concluded by the EASA Committee, the total system approach and the horizontal **structure** of authority and organisation requirements should be **maintained**. However, concerns were raised about:
 - the sub-structure of the technical provisions for operations,
 - the timeframe set by the Basic Regulation,
 - the need to adhere to ICAO SARPs, Community law and JARs, and
 - the distribution of text between hard and soft law.
9. The Agency envisages adapting the sub-**structure** for Part-OPS including the technical provisions for operations in response to

stakeholder reactions. The technical requirements of Part-OPS will be separated into dedicated stand-alone Parts for Commercial Air Transport, other operations (i.e. aerial work, training flights and test flights), non-commercial operations and special approvals (e.g. low visibility operations, dangerous goods, etc).

10. Regarding the **timeframe**, it was recognized that the Agency's Opinions should be published by mid 2011 so that the Comitology process can be concluded before April 2012. The Commission is also of the opinion that its proposals should be **submitted in a phased way** so that the available resources, as well as the Comitology process, can concentrate on one proposal after the other.
11. On this basis, the Commission and the Agency decided to **prioritize** work packages for the areas covered by the first extension as follows:
 1. Flight Crew Licensing
 2. Commercial Air Transport
 3. Medical requirements for pilots and cabin crew
 4. Other operations such as aerial work, training flights and test flights
 5. Non-commercial operations
 6. Operational Suitability Data and Safety Directives
 7. Safety assessment of aircraft
 8. Third Country Operators

The content of every package and explanation of choices made is contained in Annex 1 to this paper.

These work packages may lead to one or several Agency Opinions; this will be decided at a later stage, when the comments on the NPAs have been analysed in more depth.

12. The Management Board and the EASA Committee expressed the view that **Pilot Licensing and Commercial Air Transport** should be the **top priorities**. Accordingly, the Commission and the Agency offer to concentrate available resources on them. Nevertheless, given the work to be done on the Commercial Air Transport package, attention is drawn to the fact that the related Agency Opinion can only be adopted by April 2011. This should not prevent Opinions on other work packages being adopted beforehand.
13. In order to adopt the packages above on time, it is necessary for EASA to concentrate on these priorities. Consequently, the tasks listed in

Annex 2 to this note, which are linked to these priorities, should only be started once the Agency has submitted its Opinions on the above mentioned work packages to the Commission, unless otherwise indicated.

14. As already explained above, the options on how to proceed with the adoption of the proposals within the required timeframe are limited. It is of utmost importance that the Agency presents **proposals based on existing standards and safety criteria** that can be easily adopted during the Comitology process.
15. Taking into account the comments received and the need to **adhere to ICAO SARPs, Community law and adopted JARs**, the **Agency will revise its proposals**. During this exercise, due consideration will be given to **safety and regulatory principles**, to the distribution of text between hard and soft law and to constraints such as:
 - changes stemming from the Basic Regulation,
 - recent ICAO amendments,
 - alignment with other Community legislation,
 - JAA NPAs which have reached consensus,
 - clarity, legal certainty and enforceability.

Any necessary deviations to the existing provisions resulting from this revision will have an explanation of the rationale and of their positive impact on safety. The Agency intends to present the changes in a tabular form clearly showing the revisions of the text.

The Agency will also take into account:

- the need to add or clarify definitions for terms that are used in the proposed rules, and
- the requirement to establish **proportionate rules** for small/medium enterprises and general aviation to avoid undue burden.

The **draft implementing rules and the Agency measures (CS/AMC/GM)** are being **developed in parallel**, in order to allow a better understanding of the Agency's proposals.

16. The Agency will include an indication of appropriate transition measures identified during the comment review in the comment review packages. The final proposals for appropriate **transition measures** for the different activities are part of its Opinions. The length of those

transition periods will depend on whether Community legislation or common standards are already established and will take into account the effort needed by Member States and industry to implement the legislation.

17. As regards the **comment review**, it is necessary to apply advanced working methods. The Agency will concentrate on the amendment of the text and will provide:
 - a list of all commenters and comments,
 - comment response tables containing:
 - references to ICAO Standards, EU-OPS and adopted JARs,
 - summaries of comments and the Agency responses, and
 - the **resulting changes** to implementing rules and CS, AMC, and guidance material.

The parallel presentation of these elements will ease the assessment of the revised proposals by stakeholders. The standard period to allow for stakeholder reactions to the comment review documents is kept.

This working method satisfies Article 7 of the EASA Rulemaking procedure.

The Agency will regularly inform stakeholders about the progress of the comment review.

Second extension

18. The development of the measures in the field of aerodromes and ATM/ANS will benefit from the experience and principles established for the first extension, as described above, thus ensuring a smooth transition. It is also important for the Agency to have the necessary time and resources to communicate extensively with the stakeholder community during the process. The Roadmap between EUROCONTROL and EASA is almost finalised. In this respect there is close coordination with the Commission.
19. To fulfil the legal requirements of the amended Basic Regulation, the measures to be developed will **build on existing rules and material** and will **take account of the expertise available** (EUROCONTROL, GASR) so as to provide for a smooth transition. As determined by the Basic Regulation, aerodrome implementing measures will transpose the ICAO material. All the preparatory work has been done together with GASR. Similarly, the ATM implementing measures shall be based on ICAO and existing SES rules. In line with the established principles,

the same new rule structure proposed under the first extension will be followed.

20. In line with the NETS recommendations, the Agency has established high level groups for ATM and aerodromes, inviting stakeholders' to provide feedback on concepts regarding those fields. The Agency will organise general stakeholder conferences on these concepts in the first half of 2010.
21. The implementing rules related to **aerodrome** safety shall be adopted by the Commission by December 2013. Consequently, the Agency's Opinions should be issued during 2012. The Agency has already initiated the preparatory work and believes that the deadlines for aerodrome rules are achievable and no additional specific prioritization measures are envisaged at this stage. A phased approach may be applied taking into account the progress of the related task.
22. The adoption of the **ATM** related implementing rules shall take place by the end of 2012. Therefore, the related Agency Opinions should be issued during 2011. Considering the diversity of this field and the new obligations this timeline is regarded to be challenging. The Agency has carefully evaluated the situation in close cooperation with its stakeholders. Based on this evaluation a prioritization between the first and subsequent packages of deliverables has been made and the Agency proposes concentrating the first set of ATM related measures to:
 1. Air Navigation Service Provision
 2. Air Traffic Controller licensing
 3. Competent Authorities in ATM/ANS
23. The ATM deliverables will be issued using a phased approach, thus providing Member States and other stakeholders with the necessary time to reflect on them. Consequently, some areas addressed by the Basic Regulation (i.e. separate approval processes of safety-critical technical systems as well as technical aspects identified by the dedicated rulemaking group) will be taken up later on in the Agency's continuous RM programme. Further prioritization may be required taking into account stakeholder views and the progress of the related rulemaking tasks.
24. Since the rulemaking activity in the area of aerodrome and ATM/ANS is not directly connected to the activities in the area of the first extension and also given a wider timeframe for adoption, the Agency and the

Commission believe that the deadlines of the Basic Regulation can be met.

Annex 1

First extension - Prioritization of rulemaking activities

No. priority	Title	Content
1	Flight Crew Licensing	<p>The work package on flight crew licensing implements Annex III of the Basic Regulation and includes the transposition of JAR-FCL 1 and 2, JAR-STD, the related JIPs and the new licenses (airships, balloons, sailplanes and the Leisure Pilot License - LPL). It includes the general and FCL specific authority and organisation requirements. Since the NPA on FCL closed first, the work has already progressed sufficiently to allow the Agency to publish the results of the consultation earlier than in other fields.</p>
2	Commercial Air Transport	<p>The work package on commercial air transport implements Annex IV of the Basic Regulation and includes the transposition of EU-OPS and JAR-OPS 3, the related JIPs and the newly developed operational requirements for balloons and sailplanes. It addresses the technical requirements of Part-OPS for CAT and the authority and organisation requirements related to CAT operations. Community rules have already been established in the form of EU-OPS and harmonized standards are being implemented at national level in the form of JAR-OPS 3. There is therefore no urgency to fill a gap and its content is already largely agreed.</p> <p>Regarding Flight Time Limitations, dedicated provisions applicable for CAT aeroplane will be included in this work package but the final shape will be decided with the assistance of a separate rulemaking task (OPS.055).</p>
3	Medical	This work package implements the medical

No. priority	Title	Content
	requirements for pilots and cabin crew	related paragraphs of Annex III of the Basic Regulation and includes all requirements for medical certification of pilots (transposition of JAR-FCL 3), for Aero Medical Examiners and General Medical Practitioners, for medical fitness of cabin crew. The NPA on FCL closed first, however the work has not yet progressed sufficiently. The medical fitness of cabin crew, although being part of the OPS NPA, should be progressed at the same time.
4	Other operations such as aerial work, training flights and test flights	This work package includes newly developed requirements for aerial work activities and training flights to implement Annex IV of the Basic Regulation. The issue of test flights is currently being studied and may be part of a later rulemaking task. This package is characterized by the variety and particularity of different types of operations. In the case of training flights the appropriate measures linked to the training of pilots should be in place soon after the adoption of the FCL package. Processing this package at this priority would also allow filling the legislative gap of harmonised rules, allowing for improved freedom of movement.
5	Non-commercial operations	This work package includes requirements based on ICAO Annex 6 Part II for aeroplanes and Part III Section III for helicopters as well as newly developed requirements for balloons and sailplanes based on Annex IV of the Basic Regulation and existing national legislation. Since the EASA proposals in this field are largely constituted by ICAO principles and its size limited, this package could be ready for adoption quite soon. Processing this package at this priority, including also the operation with complex motor-powered aircraft, establishes harmonised rules to improve safety and freedom of movement.
6	Operational Suitability Data and Safety Directives	This work package includes the requirements for manufacturers to produce for each aircraft type data which the operators should

No. priority	Title	Content
		<p>use to develop Minimum Equipment Lists (MEL) and type training courses. It also includes the development of the technical standards for this data. This task has an important safety impact as it contributes to closing the gap between the design process on one hand and the maintenance and operation processes on the other hand. It includes the transposition of the JOEB process. A different approach is used for complex and non-complex aircraft trying to reduce as much as possible the burden for manufacturers of non-complex aircraft. The proposal on operational suitability will be adapted in light of the comments received.</p> <p>It also introduces the general framework allowing the Agency to impose retrofit measures to enhance safety such as those included in JAR-26. Comments received indicate that the proposed tool (safety directives) is not appropriate. Such framework is the key to raise the level of safety for the in-service aircraft and EASA will present a suitable solution.</p>
7	Safety assessment of aircraft	<p>This work package transposes Directive 2004/36/EC and its implementing rules into the context of the Basic Regulation. A well recognized programme is already in place and should complement operational requirements. It should be underlined that a final version of ramp inspections can only be finalised after the operational requirements are agreed upon.</p>
8	Third country operators	<p>The NPA on third country operators has not been published yet as it has been decided to concentrate first on the proposals that were already subject to public consultation. This delay of publication will give the Agency and the Commission the opportunity to take into account the expected amendment of other Community legislation which has a direct impact on the final EASA proposal. Since such rules will have a world-wide impact they deserve a careful examination of all</p>

No. priority	Title	Content
		implications before any EASA proposal is presented.

Annex 2

First extension - Prioritization of rulemaking activities

These tasks are linked to the items in Annex 1 and were identified as urgent during the drafting of the implementing rules requiring further analysis.¹

Task No. ²	Title	Content
21.039	Operational suitability certification specifications	Additional specifications for a given type of aircraft and type of operations <ul style="list-style-type: none">• MMEL for complex and other than complex motor-powered aircraft• Pilot type and class rating training• Maintenance certifying staff type and group ratings• Type specific data for cabin crew• Data for the evaluation of FSTDs
FCL.008	Qualifications for flying in IMC	Review of the transposed JAR-FCL requirements for the instrument rating in line with the wider scope of EASA compared to JARs. Task started in 2008.
FCL.002	Complementing FCL rules	Complementing FCL rules with JAR-FCL material such as the long syllabus and learning objectives for professional licences and the instrument rating and the 'Examiner's Handbook', which could not be included without a general revision and update of the references to both JAR-FCL and JAR-OPS, as well as some guidance material for Part-Medical.
FCL.004	Requirements for cruise relief co-pilots	Review of the Implementing Rules for type ratings to address identified conflicts with the training and checking requirements for cruise relief co-pilots
MDM.030	Operations and Licensing of UAV	Development of implementing rules for the operation of UAV Depends on certification progress
MDM.053	Excursions through the HV diagram	Review the implementing rules for air operations to allow the transfer of Appendix 1 to JAR-OPS 3.005(c) alleviation that is in

¹ Other tasks related to the field of Flight Standards can be found in EASA MB 03/2009 WP 07d Rulemaking Programme together with a justification for every task.

² This list is not in order of priority.

Task No. ²	Title	Content
	for CS-29 helicopter	contradiction with BR Annex IV 4.a
MDM.063	Child restraint devices	Review the implementing rules based on the results on the study on child restraint systems (CRS)
MDM.064	Operations with VLJ	Review of the implementing rules in relation to the operation of Very Light Jets
OPS.016	Operations with airships	Development of implementing rules for the operation of airships
MDM.070	Powered Lift (Tilt rotor) operations and pilot licensing	Development of implementing rules for the operation of tilt-rotor aircraft and licensing of pilots Depends on progress BA609 certification
OPS.064	Commercial Air Transport with certain Annex II aircraft	Development of implementing rules for the commercial air transport operation of Annex II aircraft referred to in Article 8.5(g) of the BR
OPS.067	Code of practices aerial work	Review of the implementing rules to better reflect industry best practices for certain 'aerial work' activities
OPS.069	Tethered balloons	Development of implementing rules for the operation of tethered balloons
OPS.071	FTL for other types of operations and aircraft	Development of FTL rules for other types of operations than CAT aeroplane
OPS.073	Operational requirements for test flights	Development of air operation implementing rules for test flights