



OPINION No 05/2011

OF THE EUROPEAN AVIATION SAFETY AGENCY

of 14 November 2011

for a Commission Regulation laying down requirements regarding services in air navigation and amending Commission Regulation (EU) No .../... laying down common rules of the air and operational provisions regarding services and procedures in air navigation and amending Regulations (EC) No 2096/2005, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010

**'Standardised European Rules of the Air (SERA) Part B'
'Requirements regarding services in air navigation'**

Executive Summary

This Opinion contains a draft amendment to Article 2 of the SERA Implementing Rule and a draft amendment to the Annex of the SERA Implementing Rule.

The proposed requirements transpose the contents of the provisions of ICAO Annex 11 and Annex 3 which contain 'rules of the air'.

The main objectives of the proposed new European rules are to:

- harmonise the rules of the air within the European airspace;
- facilitate the free movement of airspace users within the European airspace;
- facilitate the implementation of the Functional Airspace Blocks by providing a common set of ATM procedures and operating rules; and
- to support the Member States regarding their obligations in relation to the Chicago Convention by providing for a common implementation of the ICAO Standards and Recommended Practices.

The proposed requirements are the result of the consultation with authorities, air navigation service providers, airspace users, associations, military providers, and aviation experts.

Explanatory Note

I. General

1. The purpose of this opinion is to suggest to the Commission the amendment of Article 2 of the draft Commission Regulation (EU) No .../...¹ laying down common rules of the air and operational provisions regarding services and procedures in air navigation and amending Regulations (EC) No 2096/2005, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010 (hereinafter referred to as the 'SERA Implementing Rule') and its Annex by introducing a new Part B (hereinafter referred to as 'SERA Part B'). The scope of this rulemaking activity is outlined in the Terms of Reference (ToR) ATM.001 (RMT.0148) and is further specified in the European Commission's mandate to EUROCONTROL on Standardised European Rules of the Air² and its amendment to it by the letter MOVE E2/JP/sr sent to EUROCONTROL on 15/10/2010 (hereinafter referred to as the 'SERA mandate').
2. The Opinion has been adopted following the procedure specified by the European Aviation Safety Agency's (hereinafter referred to as the 'Agency') Management Board³, in accordance with the provisions of Article 19 of Regulation (EC) No 216/2008⁴ (hereinafter referred to as the 'Basic Regulation').
3. The proposed rule has taken into account the development of European Union and international law (ICAO), and the harmonisation with the rules of other authorities of the European Union's main partners as set out in the objectives of Article 2 of the Basic Regulation. The proposed rule:
 - a) has been developed taking into account the ongoing work under the single European sky umbrella to implement Article 4 of 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, as amended by Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 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 (hereinafter referred as to the 'airspace regulation') that was accomplished following the SERA mandate and that resulted in the draft SERA Implementing Rule which this Opinion suggests complementing;
 - b) has transposed the relevant provisions from ICAO Annex 11 and Annex 3 with the minimum changes needed to implement ICAO provisions into the European regulatory framework.
4. As requested by the SERA mandate, and as further explained in EUROCONTROL's Initial Plan on the European Commission's mandate for support on the development of

¹ The exact number of this Regulation is not available as it has not been adopted yet by the European Commission through comitology.

² Further information about the European Commission's mandate to EUROCONTROL and the outcome and deliverables of EUROCONTROL for the Phase 1 to the European Commission can be found in the following link: http://www.eurocontrol.int/ses/public/standard_page/sk_sera.html.

³ Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of Opinions, Certifications Specifications and Guidance Material (Rulemaking Procedure). EASA MB 08-2007, 13.6.2007.

⁴ 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, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ L 79, 19.3.2008, p. 1), as last amended by Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009 (OJ L 309, 24.11.2009, p. 51).

Standardised Rules of the Air SES/AS/SERA/IPL2⁵, the content of this Opinion and the draft Regulation have been prepared on the basis of the outcome of a cooperative work carried out by the Agency and EUROCONTROL.

II. Consultation

5. The Notice of Proposed Amendment (NPA) 02-2011⁶ that contained the draft opinion for a Commission Regulation amending the SERA Implementing Rule was published on the Agency's website for public consultation on 8 February 2010.
6. By the closing date of 10 May 2010, the Agency had received 415 comments from 44 commentators, including National Aviation Authorities/National Supervisory Authorities, professional organisations and private companies or individuals.
7. All comments received have been acknowledged and incorporated into a Comment Response Document (CRD), which was published on the Agency's website on 23 August 2011. This CRD contains a list of all persons and/or organisations that have provided comments as well as the answers provided by the Agency.
8. As already highlighted in the Explanatory Note of the CRD 2011-02, most of the comments were made to answer the questions made in the Explanatory Note of NPA 2011-02, and to comment the proposed provisions for the airspace classifications. Most of the concerns expressed were related to the following items:
 - a) airspace Classes A, F and G;
 - b) the concept of competent authority and its use within the draft rule;
 - c) the regulatory structure in general and within the SERA Implementing Rule;
 - d) the issue related to the time checks delivered to the nearest minute only instead of the nearest half minute as required by ICAO;
 - e) 250 kts speed limitation;
 - f) selection of separation minima;
 - g) separation between VFR flights at night and between VFR flights at night and IFR flights;
 - h) IFR clearance with pilots maintaining own separation in VMC (VMC clearance);
 - i) Special VFR (SVFR);
 - j) ATIS;
 - k) scope of FIS; and
 - l) MET reporting.
9. The Agency analysed all the comments with the support of EUROCONTROL and a coordinated answer was given to each and every comment together with a general explanation of the answers and the justifications for them.
10. In addition, during the stakeholders' consultation workshop that took place at EUROCONTROL on the 19th of September 2011, the main items coming out of the public consultation were reviewed together with other questions raised during the workshop. Based on the outcome of these discussions as well as on the reactions received on the CRD, the Agency together with EUROCONTROL have amended the draft of SERA Part B and subsequently prepared the content of this Opinion.

⁵ <http://www.eurocontrol.int/ses/gallery/content/public/docs/pdf/ses/SERA%20INITIAL%20PLAN%20PHASE%20II%20December%202010.pdf>.

⁶ See Rulemaking Archives at http://www.easa.europa.eu/ws_prod/r/r_archives.php.

11. The Agency received 62 reactions to the CRD made by seven organisations: four authority organisations, one military organisation, three ANSP, two associations of regional aerodromes, two general aviation associations and an airline. Most of the reactions refer to the following elements:
- a) airspace Class F and the answers given to the comments related to Class F;
 - b) 250 kts speed limit for certain airspace classes;
 - c) SERA rule structure;
 - d) interception of civil aircraft;
 - e) VFR in Class A airspace;
 - f) special VFR at night and the need to allow it;
 - g) scope of the FIS and measurability/legal certainty of the provisions;
 - h) time checks;
 - i) the development of the AMCs/GMs;
 - j) the measurability and legal certainty of the provisions in general;
 - k) the issue related to the competent authority and the preference of using the term 'acceptance' versus 'approval';
 - l) the answers provided by the Agency were too general; and
 - m) the comments are still valid even after the Agency has addressed their comments in the CRD.
12. As already indicated, the Agency has taken these reactions into account before preparing the content of the Opinion and the explanation below details how they have been addressed.

III. Content of the Opinion of the Agency

a. General

13. The aim of this opinion is to transpose the relevant provisions from ICAO Annex 11 and Annex 3 which are considered to be of a 'rules of the air' nature, following the drafting principles explained in the NPA 2011-02, into SERA Part B, thereby complementing the SERA Implementing Rule and its Annex SERA Part A.
14. As already explained in the NPA 2011-02, there is a dual legal basis for the development of these rules of the air. On one hand, the EASA Basic Regulation requires EASA to prepare Implementing Rules to cover the common general operating rules and any applicable procedures specified for the use of airspace and, on the other hand, the SES airspace Regulation requires the European Commission to adopt Implementing Rules related to the rules of the air and the uniform airspace classification application.
15. Because of the above, the initial mandate from the European Commission to EUROCONTROL indicated already that the work needed to consider the institutional developments related to the extension of the EASA Basic Regulation to ATM/ANS. The European Commission amended the mandate in order to reflect the new competences of EASA after the extension of the Basic Regulation.
16. Therefore, the content of this Opinion has been prepared in coordination with EUROCONTROL as it is aimed to respond to the Agency's obligations in relation to the Basic Regulation and to the European Commission's mandate to EUROCONTROL in relation to the obligations of the airspace Regulation.

b. Main reactions received and Agency's opinion**i. Definitions**

17. Based on the comments received during the public consultation period, the definitions related to SERA Part B proposed in the NPA to be added to those already included in Article 2 of the SERA Implementing Rule have been reviewed, and the definitions of 'cloud of operational significance', 'traffic avoidance' and 'transition level' have been included as the terms are being used in the provisions. These definitions come from known sources (e.g. Annex 11, Annex 3 and PANS-ATM) and the addition is considered to improve the understanding of the regulation.
18. Moreover, the definition of 'aircraft operator' which was proposed in the NPA has been removed because the term 'operator' is defined already in the Basic Regulation and the term does not need to be redefined in the Implementing Rule. However, in order to make sure which operator the rule is addressing, the term 'operator' has been specified as 'aircraft operator' when used.
19. Finally, the Agency would like to point out that the proposed rules for aircraft operators⁷ (for which the EASA Committee has recently given a positive vote) contain a few definitions that are not aligned with the definitions in SERA Part A. They are the definitions of 'night', 'operating site' and 'pilot-in-command'. It is the opinion of the Agency that the Commission together with the Agency should evaluate the best way to address this issue given the importance of using consistent definitions in different rules as well as their scope and aim.

ii. Competent authority

20. Some comments highlighted that by replacing 'appropriate ATS authority' or 'appropriate authority' used in ICAO with the term 'competent authority' or 'ANSPs' could lead to a destabilisation of the current system and could create problems in the existing national framework. As it has been explained in the replies to the comments, the terms 'ATS' or 'MET authority' do not exist in the current European regulatory framework based on the single European sky regulations (which e.g. clarify the responsibilities based on the principle of separation between service provision and supervision). Therefore, the role of the National Supervisory Authority (NSA) or competent authority has been separated from the role of the Air Navigation Service Provider and from the role of the Member States [Regulation (EC) No 550/2004 and Regulation (EC) No 216/2008]. The terminology used in the high level regulations needs to be respected in the lower level regulations. Based on the above, the draft SERA IR also needs to respect these same principles, and therefore each reference in the ICAO Annex 11 and Annex 3 to 'ATS' or 'MET authority' has been reviewed with the purpose to indicate/decide, in line with the single European sky regulations, whether the task/function shall be performed by the supervisory authority or by the service provider (ANSPs or ATS units).
21. It is the Agency's opinion that the definition of 'competent authority' given in the SERA Implementing Rule and its interpretation need to be clarified. The definition: '*competent authority*' means the authority of a Member State competent to ensure compliance with the requirements of this Regulation or any entity to which that competence has been delegated, has been interpreted by some stakeholders as allowing the competent authority to delegate some tasks to the service providers and therefore it could be understood as not respecting the principle of separation between service provision and supervision.

⁷ <http://easa.europa.eu/agency-measures/docs/opinions/2011/04/Opinion%2004-2011.pdf>
[http://easa.europa.eu/agency-measures/docs/opinions/2011/04/draft%20Commission%20Regulation%20OPS%20\(LegisWrite\).pdf](http://easa.europa.eu/agency-measures/docs/opinions/2011/04/draft%20Commission%20Regulation%20OPS%20(LegisWrite).pdf)
<http://easa.europa.eu/agency-measures/docs/opinions/2011/04/Annexes%20to%20Regulation.pdf>

22. It is the opinion of the Agency that this definition may seem contradictory with the concept of the allocation of tasks to qualified entities, existing in both the SES and EASA Basic Regulations. In both regulations, there is a difference between what can be named a 'legal delegation' (an attribution of competences to a certain entity by law), which creates a competent authority, and a second step delegation (or allocation) of tasks from the competent authority to a qualified entity.
23. It is the opinion of the Agency that this definition should be amendment to read: *'competent authority' means the authority designated by the Member State as competent to ensure compliance with the requirements of this Regulation.*
24. If the competence authority decides to delegate some tasks to another entity, while respecting the principles of separation between service provision and supervision, then this does not make that entity a competent authority. Only certain certification and oversight tasks can be delegated to qualified entities as described in the Basic Regulation and in the SES framework regulation. However, in those cases it is clear that these entities are not competent authorities for the purpose of the regulation as they act on behalf of the competent authority with the later being the only one responsible. Thus, some activities, tasks and competences may be delegated, but accountability or responsibility of the competent authority cannot.
25. If the amendment to the definition cannot be addressed by the Commission at this stage, then it is the opinion of the Agency that this issue should be clarified by the Commission in a later stage together with a thorough review of each provision to make sure that the responsibilities and the existing balance and independence between service provision and oversight is maintained.
26. It is also important to highlight that in some cases the task, decision, procedure or action by the air navigation service provider or ATS unit needs to be approved by the competent authority before the action can be undertaken. This does not mean that the approval needs to be carried out before each action, but it can be done generally when related procedures are approved by the competent authority during the certification process or during a change review. This is, for instance, the case of the selection of separation minima.
27. Some comments and some reactions to the comments indicated a preference for the term 'acceptance' by the competent authority instead of 'approval'. It is the opinion of the Agency that the term 'acceptance' is not clear in legal terms as it could be interpreted in various different ways. It could be interpreted for instance as a silent acknowledgement of receipt in which the competent authority would just 'acknowledge' the procedure without informing the ANSP or ATS unit and therefore it is not clear whether the competent authority needs to review the procedure or not. It could also be interpreted as if the competent authority needs to review and assess the procedure or action and inform the ANSP or ATS unit of its decision before the procedure can be applied or the action can be executed. As legal acts and obligations need to be clearly understood and interpreted by all regulated organisations, the term 'approval' has been selected instead of the term 'acceptance'. Where the term 'approval' is used, it is clear that the authority needs to review and assess and provide a formal approval on the document, procedure or action.

iii. Rule structure

28. During the Agency's consultation process on SERA Part B, some stakeholders expressed their concerns that the SERA internal structure was not sufficiently optimised as a 'reader friendly' approach. The current SERA internal structure results from the Commission's mandate to EUROCONTROL requesting a phased approach, starting with Part A which has transposed ICAO Annex 2 almost in its entirety. It is also the result of the intention to proceed with a smooth transition where readers would recognise an internal structure which is familiar to them. However, with SERA Part B and the transposition of only some parts of ICAO Annexes 11 and 3, the logic of this structure seems less obvious and it

appears that some provisions could also be grouped differently based on the subject they address. Some stakeholders believe that the different parts created chronologically could be better organised in a more homogenous regulation, structured in a different logic, more consistent and more easily readable. However, other stakeholders did not raise such views and seemed to be satisfied with the current approach and structure.

29. The Agency considers that the issue related to the SERA structure has valid grounds and needs proper consideration before the final structure is decided, for the sake of better regulation and in order to facilitate the implementation process of the rule.
30. It is the Agency's opinion that whilst adherence to the ICAO structure was useful in the drafting phase to ensure familiarity and ease the comparison, the distribution of the provisions related to one subject in different parts according to a hierarchy organised along generalities (Part A), services (Part B) and procedures (Part C), is not the only option for an optimal final SERA rule. Other options may be more effective and user friendly and this deserves to be properly reviewed. Indeed, the unjustified fragmentation of the provisions related to the same subject in different parts needs to be avoided for the sake of clarity and readability of the rule. However, it was not possible to conduct such a final review during the drafting of SERA Part B because of the time pressure and because the different SERA parts do not yet have the same status with regard to maturity and adoption process (Part A 'frozen', Part B in final drafting, and Part C under development).

However, the Agency considers that a restructuring exercise of SERA Part A and Part B at this stage of the process is neither feasible nor beneficial. The main reason for that is that SERA Part C is currently under development and the level of maturity of this part does not allow a thorough evaluation of the overall SERA structure. Therefore, the SERA rule structure should be considered when the SERA Part C draft is mature enough and in a way consistent with the planned date of implementation.

31. Finally, it should be underlined that any possible restructuring of the SERA rule does not imply that the content of the provisions of SERA Parts A or B (or future Part C) would change. On the contrary, there should not be any changes to the substance in SERA provisions in Part A and Part B (and future Part C) but only their placement in the appropriate chapters and paragraphs in the potential SERA amended structure could be affected.

iv. Time check

32. ICAO Annex 11 requires that time checks be given by ATS units 'to the nearest half minute'. This requirement had been transposed into the initial SERA Part B draft without modification and a significant number of comments were received on this point. The vast majority of the comments indicated that 'half minute' did not correspond to the current practice in Europe, that nowadays aircraft and pilots have much more accurate means to have the correct time from other sources and that time check to the nearest one minute would be sufficient. Additionally, some inconsistencies between ICAO Annex 11 and ICAO Annex 10 Volume 2 were mentioned by stakeholders with regard to the description of time (half minute in Annex 11 against hours and minutes in Annex 10). However, the provision in paragraph 5.2.1.4.1.4 of Annex 10, Volume 2, refers to the transmitting of time in general, whereas Annex 11 describes specifically 'time checks'. The request to provide time checks to the nearest minute instead of half minute was strongly supported by the review group and the public workshop, even though no clear argument justifying the impossibility to provide time checks to the nearest half minute was ever formulated.
33. The case has been seriously considered by the Agency and EUROCONTROL but a change of this nature requires additional studies. The fact is that introducing in Part B a criterion which is less accurate than the original ICAO value may constitute a Category C⁸ type of

⁸ Category C — Less protective or partially implemented /not implemented.

difference from the ICAO standard. Making the decision to commonly agree at European level for the coordinated national notification of such a difference to ICAO would be of significant importance, and no such type of difference was ever considered within SERA before.

34. In any case, such a change would require a robust justification to ensure that all relevant aspects have been properly studied and taken into consideration before the decision is made. The study has been initiated and is currently being conducted in cooperation and coordination between the Agency, EUROCONTROL and the relevant stakeholders, including airspace users. The potential impact of this item on safety requires that the necessary attention, resources and time be given to that work.
35. This is the reason why (although the point is well taken, and the fact that comments indicate that the current practice in Europe is actually different from the description in Annex 11) the draft text attached to the Opinion does not include the requested change but remains aligned with the ICAO requirement until the result of the study is available. All efforts will be done to ensure that the result becomes available before the Commission finalises the comitology procedure on draft SERA Part B.

v. Airspace classification A

36. The ICAO definition of Class A airspace stipulates that it is designed for IFR flights only. Therefore, all pilots expect to meet only IFR flights and will be separated from all traffic in such airspace. Some comments and also reactions to the answers to the comments have requested that a deviation from the ICAO Class A airspace definition be applied allowing VFR flights under specific circumstances. After further analysis and discussions with some of the stakeholders, it is recalled that the current practice in some areas where Class A airspace is used but specific authorisations are given to VFR to operate inside it is raising a number of issues.
37. As a sample of the concerns, one is the awareness of other users which are expecting all traffic to be separated; another is the lack of clarity with regard to the status of VFR flights in an airspace where VFR flights are not supposed to be admitted, including the separation regime which may, or may not, be applied to them. Subsequently, it has been concluded that this solution would require a Category C type of difference with the ICAO standard. It is, therefore, considered necessary to retain the intended usage of Class A airspace to be exclusively for IFR flights. In addition, it is believed that other solutions could be found, within the SERA Implementing Rule, to provide alternative options to the existing needs to accommodate VFR missions whose legitimacy is understood.
38. Examples of solutions for the acceptance of any VFR flights into a certain volume of airspace which can be found in the SERA Implementing Rule comprise e.g., for usual operations, a re-classification of some portions of the airspace, creation of corridors or establishment of a TSA/TRA. For special kind of operations, the application of Article 4 of the draft SERA IR should be considered, and for unexpected circumstances the application of Article 3 of the draft SERA IR (referring to Article 14.1 of the EASA Basic Regulation) may cover the needs. Such endeavour to identify and implement solutions primarily based on an optimal airspace design should constitute the appropriate solution to cover the issues concerned, while maintaining a good understanding of the airspace classification and the services provided by all pilots and remaining compliant with the ICAO requirements which is one of the objectives of the EASA Basic Regulation and the airspace regulation and is reflected in the EC mandate.

vi. Airspace classification F

39. Firstly, it is important to highlight that Class F airspace (as defined by ICAO Annex 11) has been created to allow the temporary provision of advisory service until full ATC service can be provided.

40. The notion that advisory service should be implemented as a temporary measure only was included in the ICAO Annex 11 in 2001 based on the provisions in the PANS-ATM, 9.1.4.1.2: *'Taking into account the considerations detailed in 2.4 of Annex 11, air traffic advisory service should only be implemented where the air traffic services are inadequate for the provision of air traffic control, and the limited advice on collision hazards otherwise provided by flight information service will not meet the requirement. Where air traffic advisory service is implemented, this should be considered normally as a temporary measure only until such time as it can be replaced by air traffic control service.'*
41. It should also be noted that the last sentence: *'Where air traffic advisory service is implemented, this should be considered normally as a temporary measure only until such time as it can be replaced by air traffic control service'* dates back to 1960 when it was included in the 7th edition of Doc 4444, Part VII, paragraph 1.1.2.
42. The issue is also discussed in the ICAO ATS Planning Manual (Doc 9426) published in 1984. In Doc 9426, Part I, Section 2, Chapter 1, Section 1.5 — Progressive development of ATS, paragraph 1.5.9, it is stated that *'It is for this reason that ICAO has recognized the progressive development of ATS in its provisions of air traffic advisory service as a temporary, intermediate stage in the progression from flight information service to area control service in order to permit an orderly transition from a service which is primarily informative in nature to one which requires the assumption of increased responsibilities by controllers for the safety of flight operations.'* Furthermore, in Chapter 2, paragraph 2.7.1, it is stated that: *'As of its inclusion into the relevant ICAO provision, it was intended that air traffic advisory service was to be considered as a temporary intermediary form of ATS in order to allow for an orderly and progressive transition from FIS (en-route or around aerodromes) to the provision of ATC. It should therefore be understood that air traffic advisory service cannot and should not constitute an end in itself but should only be instituted to permit control personnel, during a limited period of time, to acquire the necessary experience in the provision of full ATC by allowing them to act as if they were controlling air traffic without assuming the full range of responsibilities which are inherent in its provision.'*
43. It was considered that the initially proposed IR relating to advisory airspace reflected correctly the ICAO intent. By keeping the temporary nature, the spirit of ICAO was maintained. However, in order to make the IR provisions measurable, a time limit of 3 years was found as a compromise between temporary and long term.
44. The comments addressing the issue of Class F airspace, and reactions to the answers provided to them, expressed mainly the idea that Class F as per ICAO should be permitted without a time limit in order to allow those countries, currently using airspace Class F, to continue using it. These comments were strongly relayed at the public workshop by the representatives of the Member State which has made more use of it in its airspace and also some regional airports of the same country.
45. Subsequently, based on the arguments supporting these comments, it has been decided to remove the 3-year time limit from the Implementing Rule, and the case will be considered further in order to decide whether it would be simply removed or addressed in AMC.
46. Finally, it should be noted that, depending on the development of traffic, it may be a more appropriate solution to replace Class F airspace with Class G. Therefore, the proposed rule has modified the text of the ICAO note to reflect this.

vii. Airspace classification G and radio communication capability requirement for IFR

47. This comment was not made during the public consultation period but was raised during the workshop, and the Agency has considered it important to explain this further in the Opinion. The obligation for an IFR flight to carry radio equipment in uncontrolled airspace

was challenged at the workshop, using the example of gliders flying in uncontrolled airspace below VMC.

48. Moreover, this subject is linked to a clarification provided during the public and informal consultation carried out by EUROCONTROL on the meaning of Appendix 1 to Part B describing the airspace classes. The clarification indicated that radio communication capability was required for IFR flights in uncontrolled airspace, but that this requirement was not to be understood as an obligation to establish continuous two-way radio communication.
49. This issue has been analysed and it has been considered that the current regulatory framework with regard to IFR flights, flights in uncontrolled airspace, aircrew qualification, and aircraft equipage, as well as the practice and safety implications of such activities as described in the example, did not offer the possibility to safely remove this radio communication capability requirement as it was transposed from ICAO Annex 11 into SERA Part B. Instead, it is believed that activities such as gliders flying in uncontrolled airspace below VMC conditions should be protected by a specific airspace status providing segregation from other traffic, and possibly offering operational arrangements where radio communication capability may be optional.

viii. Selection of separation minima

50. During the initial drafting of Part B, it was decided to leave this section with a placeholder referring to the Commission's decision to be taken at a later stage. The reason was the complexity of the issue and the fact that from the very beginning the need for flexibility was recognised, as well as the need to transpose material extracted from PANS into Implementing Rules, Acceptable Means of Compliance, and Guidance Material, or not to be transposed at all depending on the assessment done on a case by case. Therefore, the decision was to postpone the treatment of the details of this item until development work is conducted on complementary parts of SERA, to avoid delaying the Part B process.
51. The inclusion of the vertical separation minima value was not part of the NPA where it was initially stated that *'the Commission shall propose measures with regard to the selection of separation minima'*.
52. In view of the fact that the 1 000 ft and 2 000 ft minima are already implicit through the inclusion of a reference to the table of cruising levels in Appendix 2 to Annex I of SERA, it was considered appropriate to include the text from ICAO PANS ATM, 5.3.2, in clarification of the issue when considering vertical separation. It creates a common and standardised understanding of the vertical separation criteria. As regards horizontal separation, this would not be part of the IR, but will be the subject of AMCs or GM, as indicated at the workshop.
53. This layout raised a number of comments during the consultation, ranging from questions about the future Commission's decision to the lack of understanding of the exact meaning and purpose of the placeholder. After the public consultation it appeared that the section on the selection of separation minima could be drafted with the indication that the general principle would be that the ANSP would submit the proposal for selection of separation minima to be approved by the competent authority. This was considered by the drafting group as a sound and safe approach respecting the principles of separation between service provision and supervision.
54. As it was proposed in the NPA and later on reflected in the CRD, the intention was to place this selection process in the future Part-ATS to be developed after SERA, because it was not obviously fulfilling the agreed 'rules of the air' criterion. However, the discussions at the workshop showed that there was an expectation from the stakeholders to have more concrete material on this item without delay, therefore leading to the text which is now proposed in this Opinion. This approach has also as merit to consolidate the consistency within the whole section 2.3 of the draft IR, as some sub-sections are definitely required to be maintained in SERA.

55. The draft rule attached to this Opinion has taken into account all the comments received. It is considered that the draft rule provides the required flexibility and proportionality, it can be complemented with Acceptable Means of Compliance and Guidance Material, as necessary, and it is also considered to be the most practical approach to reflect in the EU regulatory environment the specificity of the relationship existing between ICAO standards and ICAO procedures.

ix. Special VFR (SVFR) at night

56. Section 2.6.1 of the draft SERA Part B has been elaborated on the basis of tool No 4 of the airspace classification toolbox developed in the past by the EUROCONTROL Airspace and Navigation Team. As it was requested by stakeholders, the provisions have been included into the SERA draft IR and therefore complement the ICAO standards. When this tool was developed, it was widely accepted by the stakeholders that SVFR should be allowed during day only. At that time, the general aviation representatives were strongly opposing SVFR at night for safety reasons. Subsequently, it was decided by the drafting group that SVFR would be authorised 'during day only' and this was included as one of the criteria related to the SVFR clearance for the NPA publication.
57. However, a number of comments were provided which were advocating that SVFR should also be authorised at night. The drafting group had reservations on this issue because there was no significant safety material available to justify a deviation from the toolbox dispositions, which was the basis of the response provided to the related comments. On the other hand, the toolbox itself had never been subject to a formal safety assessment and the safety level of the tools was essentially derived from the fact that they were based on European 'best practices' and developed by well informed aviation experts in charge of safety matters.
58. One of the technical reasons why SVFR at night was not considered appropriate was that SVFR is primarily designed to allow a VFR flight to enter or leave a controlled zone (CTR) when the VFR conditions are not met inside this CTR. However, the transposition of these conditions at night was offering very limited options for flying out of the CTR, due to the SERA Part A NVFR requirements which are very close to the VMC criteria inside a CTR.
59. The discussions at the workshop showed that the comments related to SVFR during night were based on real concerns and there was, in fact, acceptable justification and rationale for such request, essentially that insufficient meteorological conditions may occur due to different criteria. In the case, as it was explained, where only the ceiling was too low for normal VMC but still allowed for operations such as practicing aerodrome circuits to maintain night VFR qualification, there could be some benefits in flying SVFR at night, provided that the local ATS unit would consider it appropriate and deliver the clearance.
60. Therefore, in order to take all these comments into consideration, it has been decided that the day only criterion could be complemented with the possibility for the competent authority to permit SVFR at night, based on the assumption that this would be done following a local safety assessment, including the evaluation of the local NVFR/SVFR culture and conditions. In any case, as it was done for SERA Part A, all provisions taken from the airspace classification toolbox and all the elements of the draft IR which are considered to complement the ICAO material will be the subject of a safety assessment. The subsequent report will be available before the Commission finalises the comitology procedure on draft SERA Part B.

x. Scope of FIS

61. A significant number of comments were expressed about the scope of the requirements described in Part B, 3.2.2, and especially the fact that a strict reading of the requirements as they are worded could lead to impracticable obligations to provide huge amounts of unnecessary or sometimes unavailable information. The concerns have been repeated at the workshop based on the response provided to these comments in the CRD which explained the intention to clarify the issue in the guidance material. The

stakeholders indicated that some worries remained due to the fact that the guidance material cannot legally modify the content of a binding requirement.

62. The Agency and EUROCONTROL agreed at the workshop that attempts would be made to find an optimal wording which would respect the legitimate expectations of the pilots and guarantee a 'safer situation by default', without creating an excessive burden on ATS units, which could be unbalanced with regard to the current and reasonable practice and would also potentially create operational inefficiency by excessive occupation of the frequency.
63. The Agency and EUROCONTROL have carefully reviewed the provisions and the possibility to modify the wording without leading to the need to notify ICAO of a Category C difference. After this analysis, it has been concluded that the modification of the provisions with words such as 'as applicable' or 'as practicable' leads to suboptimal provisions and it could unbalance the existing practices and even lead to a Category C difference as well.
64. Therefore, it has been concluded that the text will not be modified. However, the final form of the draft requirement will also be complemented by guidance material in order to clarify the intention, and to explain the necessity not to keep the frequency busy with information which is not needed, not available or not requested by the pilot in the case of general information. The guidance material will be developed using Note 1 of ICAO Annex 11, 4.2.2, that it must be understood that an ATS unit may not always be aware of all traffic (detection coverage, radio contact etc.) and subsequently may not be able in some cases to provide relevant information on collision hazards.

xi. MET services

65. As already explained in the NPA, chapter 5 of the draft Implementing Rule transposes relevant provisions from ICAO Annex 3 which are considered to be of a rule of the air nature. These elements are essentially related to air reports provided by aircraft.
66. The outcome of the NPA showed that there was a very widespread feeling among the stakeholders that the sections referring to automatic data transmission should not be addressed in SERA. The comments indicated that the automatic data transmission (data link) should be dealt with together with all other aspects when regulating the automatic data transmission and data link.
67. Therefore, chapter 5 of SERA Part B attached to this Opinion only includes provisions related to special air reports and other non-routine aircraft observations by voice.
68. In order to address the concerns already expressed by stakeholders in relation to the separation of these provisions from a common section of ICAO Annex 3, the Agency intends to produce in due time a matrix to make sure that no provision is unintentionally omitted in the general transposition exercise from the ICAO SARPs into the European regulatory framework.

xii. Interception of civil aircraft

69. The section related to the interception of civil aircraft was transposed from ICAO Annex 11 into SERA Part B without any changes from the original ICAO text. No differences were notified to ICAO by any of the European Union Member States on the related sections of ICAO Annex 11. Nevertheless, one comment was produced, reiterated at and after the workshop and was presented as a reaction, which challenged in particular the requirement on the ATS unit to attempt to establish two-way communication with the intercepted aircraft and to inform the pilot of the interception. In addition to the communication and explanations already provided, and in order to avoid any risk of changes which would be detrimental to safety and to the integrity of SERA Part B if these provisions were modified, it is important to underline that the relevant provisions are addressing only the civil ATS unit controlling the civil aircraft potentially

intercepted and that these provisions have only a safety purpose and absolutely no intention nor ability to address the manner the interception is conducted.

70. Moreover, it must be explained that the relevant section starting with words indicating that the ATS unit 'shall take such of the following steps as are appropriate in the circumstances: ...' provides the necessary flexibility and it is believed to leave the freedom to Member States' authorities to establish their national procedures.
71. Finally, paragraph 4.2.2 provides additional clarification in relation to the way in which the air-ground communication shall be established.

xiii. Voice read-back of Controller Pilot Data Link Communications (CPDLC) messages

72. The draft SERA Part B proposed in the NPA indicated that the decision whether voice read-back of CPDLC messages would be required or not belonged to the competent authority. This is an example of the transposition of the concept of 'ATS authority' present in ICAO material which needed to be changed into 'service provider' or 'competent authority' in the European regulatory framework, as it is explained in section i above. A significant number of comments indicated that the decision on such a read-back was clearly of an operational nature. Moreover, it is considered that this operational decision would be subject to a safety assessment which would have to be approved by the competent authority.
73. The validity of the explanations received in the written consultation and at the workshop has been accepted and the draft IR attached to this Opinion reflects the operational nature of this decision by referring to ANSP instead of competent authority.

xiv. Radio Mandatory Zone (RMZ) — Transponder Mandatory Zone (TMZ)

74. The concepts of Radio Mandatory Zone and Transponder Mandatory Zone were derived from the EUROCONTROL airspace classification toolbox. They were created to respond to a widespread concern and with the intention to improve safety in some portions of airspace where the simple implementation of the ICAO airspace classification was not sufficient to provide the expected level of safety with regard to the level of aeronautical activities going on in such airspace.
75. The introduction of RMZ and TMZ in SERA Part B has been generally supported by the comments received and should be considered as a significant improvement on the common implementation in Europe of the means available to enhance safety. Some comments have suggested improvement to the proposed text, which have been accepted and included in the draft rule attached to this Opinion.
76. It must be noted that even if RMZ and TMZ are not originating from ICAO Annex 11 or Annex 3, they do not constitute a difference from ICAO as Annex 11 already contained some provisions which allowed specific requirements for mandatory radio contact or transponder use in designated portions of airspace. The newly introduced concept is the fact that these requirements will be formulated and implemented in the same manner throughout Europe, in a way which is also clearly understandable to all pilots, regardless of their origin or nationality. RMZ and TMZ will nevertheless be included in the package of items being subject to a safety assessment to be provided to the Commission after the Opinion is published.

xv. 250 kts speed limitation

77. On the question of the airspeed limitation associated to airspace classification, the draft SERA Part B does not modify the original ICAO requirements. On this subject, comments of contradictory nature have been received as well as some contradictory reactions to the CRD. Some comments requested the speed limitation to be extended to all classes of airspace below 10 000 ft whereas other comments requested that it should apply to VFR

flights only, or that specific flights should be exempted from the obligation for various reasons.

78. The 'see and avoid' principle which is the origin of the speed limitation applies to VFR and IFR, as well as to situations when separation is not provided. It must be noted that operational speed limitations associated to specific clearances or procedures can still be applied, subject to approval by the competent authority, as long as they do not contradict the ICAO/SERA speed limitation associated to the airspace classification (e.g. specific speed associated to SIDs and STARs).
79. With regard to one comment requesting exemption of the speed limitation for some categories of aircraft which would need to fly at high speeds for operational or technical reasons, it must be repeated that the SERA IR applies only to GAT. Allowing high speeds, in contradiction to ICAO, in an aeronautical environment opened to all categories of airspace users can only be the responsibility of a Member State for its own airspace within the remit of its own national regulations (e.g. OAT), but such a decision would be very difficult to extend and should not be applied to the entire European airspace and to GAT rules applicable to that airspace.
80. Subsequently, it has been decided to keep the 250 kts speed limitation as described in ICAO Annex 11 in the draft rule attached to this Opinion.

xvi. Supplement to SERA Part B

81. The supplement introducing the differences between SERA Part B and the relevant ICAO Annexes which would require common agreement and notification to ICAO by the Member States was drafted according to the content of the draft Part B in the NPA. A number of comments were received which indicated improvements or requested changes to be introduced in line with changes proposed for the draft IR itself.
82. The supplement has been reviewed and modified in accordance with the changes introduced in the draft IR itself after the consultation and is attached to this Opinion.
83. The supplement to SERA Part B now contains nine differences, including those corresponding to ICAO notes elevated to binding status, against 253 notified differences with the entire ICAO Annex 11 and 111 related to the items of ICAO Annex 11 which have been retained for SERA Part B.

IV. Regulatory Impact Assessment

Purpose and intended effect

84. The aim of the RIA is to determine the best option to achieve the objective of the rulemaking activity while minimising potential negative impacts. It consists of a series of five logical steps that structure the analysis: issue identification, objective definition, option development, impact analysis and comparison of options. In this particular case the comparison of options is quite limited due to the reason that SERA draft IR was developed in accordance with the SERA mandate and, as already mentioned in the NPA 2011-02, the possibility for choosing the options on how to proceed with the development of the SERA Part B draft IR was limited. Therefore, only the selected option will be explored.
85. The current RIA does not repeat in full length the RIA presented in the NPA but addresses the main points, adding some new impacts identified during the consultation process.

a. Issues which are addressed in the SERA Part B RIA

86. The transposition of the relevant provisions from the ICAO Annex 11 and Annex 3 into the Standardised European Rules of the Air (SERA).
87. Furthermore, the European Commission requested clearly in the SERA mandate that the work should lead primarily to the creation of a draft European Commission Implementing Rule unless it would be considered that full harmonisation is not required. It was also requested that the rule should prioritise ICAO-compliant solutions.

b. Scale of the issue

88. As mentioned above, even if ICAO Annex 2 is named 'Rules of the Air', it has been recognised that provisions which are of a 'rule of the air' nature may also be found in other ICAO documents. That was the basis for the development of draft SERA Part B by identifying which provisions coming from ICAO Annex 3 and Annex 11 should be transposed into EU legislation as rules of the air.
89. The SERA draft IR does not primarily aim at creating new obligations on the Members States but intends to standardise the way existing ICAO obligations are implemented within the single European sky. Since the transposed ICAO provisions have been in use worldwide for a long time, the scale of the issue is not considered as significant.
90. There are a few cases in which the proposed draft SERA Part B differs (difference Category A) from the ICAO SARPs. The proposed differences are justified. For the proposal related to the time checks to the nearest 1 minute which would probably constitute a Category C difference, a safety assessment will be conducted and provided to the Commission to support the comitology procedure.

c. Brief statement of the objectives of the Opinion

91. The main objective is to continue with the effort already started by the European Commission to establish a harmonised set of rules of the air for the European airspace to increase safety and to minimise the inconvenience and risk of misunderstandings caused by varying national sets of rules and to ensure an efficient and expeditious international air traffic, which requires a common understanding of signs, collision avoidance procedures, air traffic services instructions, phraseology and other similar matters.

Options

92. The selected option is 'Draft SERA Part B, transposing rules of the air provisions from ICAO Annexes other than Annex 2'. The option was selected in accordance with the SERA mandate.

Sectors concerned

93. SERA IR will impact persons (pilots, ATCOs) and entities (Member States, competent authorities, ANSP, aircraft operators and most likely aerodrome operators).

Impacts

a. All identified impacts

94. Persons and entities, operating in Member States that implemented an airspace classification not exactly following the ICAO provision (e.g. allowing certain VFR in Class A or using Class F not as a temporary classification, etc.) may be affected by the implementation of this regulation. Furthermore, the few additions in relation to ICAO SARPs (e.g. such as elevating some notes into provisions as described in SERA Part B Supplement and new provisions based on the airspace classification toolbox) may also affect those identified sectors.
95. In order to prepare a well structured and broken down quantitative assessment, a European-wide survey is needed in order to identify the following:
- Member States in which the SERA airspace classification will impose changes;
 - How the changes introduced are going to affect the related national legislations and how the implementation can be carried out;
 - To which extent the access of some airspace users to certain portions of the airspace will be affected and whether the newly introduced tools in SERA Part B will allow to mitigate the issues through new procedures;
 - What resources, including training, would be needed for the implementation of the new procedures.
96. This kind of survey would presumably require both time and resources, and having in mind the tight timeframe for SERA drafting in general, it is not considered feasible and thus a credible quantitative assessment is hardly possible.

i. Safety

97. To properly evaluate the overall safety impact of Implementing Rules, Acceptable Means of Compliance and Guidance Material, the full set of the legislation package is needed. In addition, it is considered necessary to address also the SERA IR together with the recently adopted Implementing Rules for flight crew licensing, with the rules for air operations already voted positively by the EASA Committee, and with the future provisions related to Part-ATS and Part-MET. In this particular case, SERA Part B introduces into the EU legislation only the transposed provisions from ICAO Annex 3 and Annex 11, which are considered to be of a 'rules of the air' nature. SERA Part B complements SERA Part A which transposes the provisions from ICAO Annex 2. Moreover, further work with regard to the development of the SERA IR is to follow, transposing relevant provisions from ICAO Annex 10, PANS-ATM, PANS-OPS and other documents into the EU legislation. In fact, the full legislative set should be considered complete only when all IRs as described in the section 'Rule structure' are adopted. However, it is important to highlight that once all the relevant measures (Implementing Rules, Acceptable Means of Compliance and Guidance Material) are in place and implemented, the overall safety impact is considered to be positive against today's situation since there will be uniform implementation of ICAO SARPs in the European airspace.
98. As already explained, it cannot be expected that a full set of harmonised European rules can be prepared at the same time. This is also recognised by the European Commission in the SERA mandate to EUROCONTROL which foresees a phased approach in the SERA IR development.

99. However, it is necessary to assess the safety impact of such transposition considering the scope of SERA Part B in order to show that the rule is intrinsically safe. A safety impact assessment has been conducted — Chapter III of the NPA (Summary of Safety assessment of SERA Part B), to address the European transposition of air traffic services requirements which are of a 'rule of the air' nature into the single European sky legislative framework.
100. This safety impact assessment process has been carried out during the different phases of the development of the rule.
101. During the initial phase, six high level SERA safety specifications have been identified to develop properly the SERA Part B provisions in order to show that: *'a complete and correct set of air traffic services requirements, which are of a "rule of the air" nature, have been determined to ensure a safe flow of air traffic within the EU.'*
102. At the end of the development phase, it has been shown that SERA Part B is complete, correct, has sufficient robustness and integrity properties, is potentially implementable/achievable and is consistent with the IR objective. It is worth noting that most of the SERA Part B requirements are considered as safety requirements because their prime objectives are to mitigate pre-existing hazard/risk inherent to aviation (e.g. Mid-Air Collision, Taxiway collision, etc.).
103. Furthermore, as it is required in the SERA Implementing Rule, the transition from the current Member States' situation to the application of SERA Part B provisions shall be supported by a local safety assessment to handle safely this transition phase.
104. Finally, such assessment concluded that no rule exemptions should be permitted and that a 'maintenance' process shall be put in place to consider future safety needs, ICAO Annex 11 and Annex 3 amendments, or any amendment coming from a change within the EU operational environment.
105. To conclude, the application of this structured safety impact assessment process has shown that SERA Part B air traffic services' requirements, which are of a 'rule of the air' nature, ensure a safer air traffic flow within the EU and its application will only be fully safe when the European aviation regulatory system is complete and implemented. Indeed, all safety issues, recommendations and assumptions identified during the safety assessment process have been properly addressed by the SERA IR as attached to this Opinion or an action has been initiated to properly address them (e.g. ongoing development of AMC and GM to SERA Part B and ongoing development of other regulation within the Basic Regulation).
106. Finally, it is important to highlight that the safety impact of some items such as the time check to the nearest minutes instead of half minutes and the new provisions such as the RMZ and TMZ will be analysed and the result of this assessment will be made available to the Commission.

ii. Economic

107. At this stage, the costs include mostly those associated with dissemination of information, training and familiarisation of air navigation service providers, aerodrome operators and airspace users with the rule. However, they are considered to be 'one shot' costs to change the rules and procedures the first time. After that, a reduction of ongoing costs is expected thanks to harmonisation. However, it should also be highlighted that due to the lack of available data from each and every Member State, the evaluation of the economic impact assessment is only qualitative.
108. The effect in the various areas of the European airspace could be:
 - no change, where national rules are already fully in compliance with SERA Part B;

- modification of some national rules so as to comply with SERA Part B (because the SERA Implementing Rule does not transpose the entire ICAO Annex 11 or Annex 3 and the entire transposition will be done at a later stage);
- all the Member States will no longer have to put efforts on transposing amendments of ICAO Annex 11 and Annex 3⁹, since it will be done at European Union level by amending the European Implementing Rule.

109. The scale of the impact will depend upon:

- national costs associated with meeting requirements for undertaking national safety assessments of changes (if any) associated with implementing SERA Part B;
- the number and scope of differences identified between SERA Part B and national rules;
- the extent of changes (if any) to operational procedures necessitated in any Member State; and
- the scale of risk mitigation measures (if any) required by the safety assessment that needs to be carried out locally.

110. The costs of the SERA Part B Implementing Rule may comprise:

- the costs of dissemination of information, training and familiarisation with the SERA Implementing Rule;
- the costs of the changes to operational procedures;
- the costs of risk mitigation measures (if any) required by the safety assessment that needs to be carried out locally.

111. The impact on regulators, air navigation service providers (ANSPs), aerodrome operators and airspace users will clearly depend on the extent to which their national rules diverge from ICAO Annexes 3 and 11 and, consequently, from the SERA Part B. The involvement of ANSPs, aerodrome operators and aircraft operators will comprise the dissemination of information on any rule change to their staff, training their staff as appropriate and implementing any changes to operational procedures that are required. Competent authorities will have to ensure that their staff is aware of any changes to the rules within their own airspace and to ensure compliance of ANSPs, airport operators and airspace users with the amended rules. Establishing an appropriate transition period for the coming into force of the SERA Part B rules could make such an impact minor.

Regulators/competent authority

112. Regulators/competent authorities will initially need to be assured that the required changes to the rules have been implemented, which will involve a cost (e.g. inspectors). Thereafter, the costs of ensuring compliance with any amended rules will not differ from the existing costs of ensuring compliance with the current rules. It is possible that some Member States which are affected by the provisions of SERA Part B will need to amend their national legislation accordingly.

113. In some particular cases, the cost may come from the need to introduce changes in the airspace classification and thus the need to amend all relevant maps and publications. Besides, the introduction of changes in the airspace design such as new ATS routes, restricted or segregated airspace, etc., would be needed in some Member States in order to comply with the airspace classification and to cope with specific airspace users.

⁹ For those ICAO SARPs that have been already transposed into EU legislation

ANSPs and aerodrome operators

114. All ANSPs should already have in place the necessary procedures to ensure that the appropriate information is fully disseminated to all the necessary personnel. Whilst there will be some administrative impact, given the changes required for each ANSP, the use of these existing procedures to implement SERA Part B should not have a significant effect on ANSP costs.
115. With regard to training, whilst there may be some minor costs relating to the update of training materials, the cost of training courses when the new rules are in place shouldn't be different to the present cost to keep the personnel competent. Training costs could be increased only in the Member States where airspace classification needs to be amended and also ATS procedures have to be amended accordingly. In any case, the cost of changes to the operational procedures to support the implementation of SERA Part B can only be estimated locally.
116. In addition, if the Member States would decide to reclassify airspace Class F into controlled airspace, then it is likely to bring additional cost relevant to ATCO training and employment.
117. In cases where the airport operators provide also air navigation services, they will be also affected in the way ANSPs are affected by the implementation of SERA Part B.

Aircraft operators and airspace users

118. Existing routine procedures for pilot briefing required by European or national regulations cover the dissemination of information on the proposed rule. Therefore, this process should be capable of being handled within the current procedures with minimal effect on costs.
119. With regard to training and examinations, as with the ANSPs, whilst there may be some minor costs relating to the update of training materials, the cost of training when the new rules are in place can only be estimated locally.
120. In some particular cases, when the regulator/competent authority of the Member States decides to implement RMZ and/or TMZ in airspace Class G, F and E, a limited population of aircraft used for general aviation may require additional equipment but the cost estimation can only be done locally by those Member States implementing these measures.
 - iii. Environmental
 121. None or minor environmental impact is expected.
 - iv. Social
 122. No social impact is expected.
 - v. Other aviation requirements outside the EASA or SES scope
 123. No other requirements outside the EASA or SES scope. However, it has to be recognised that while military aircraft operations and military service providers providing services mainly to OAT are out of the scope of SES or the EASA Basic Regulation, the implementation of these provisions at European level could potentially have some implications on their activities but cannot be estimated with the available information. Moreover, it is important to highlight that the impact would be mainly on the 'GAT' part of military activities (as regulators, airspace users or ANSPs) and in this regard the impact can be considered similar to the case of the civil entities.

Summary and final assessment

- a. Comparison of the positive and negative impacts for each option evaluated

124. As it is mentioned above, the possibility for choosing the options on how to proceed with the development of SERA Part B was limited. For this reason, this RIA cannot make a comparative analysis for the impact of each option but it is concentrated on the evaluation of the positive and negative impacts of the selected option 'transposing rules of the air provisions from ICAO Annexes, other than Annex 2'.

a.1 Positive impacts:

- Uniform implementation of standardised European rules of the air within the scope of the Basic Regulation and SES regulations.
- Single regulation covering requirements, relevant to the rules of the air from ICAO Annex 2, and transposing rules of the air provisions from ICAO Annexes, other than Annex 2.
- Airspace users will not have to follow each Member State's specific transposition of the ICAO SARPs related to the rules of the air while flying within the European airspace.
- Reduced inconvenience and risks of misunderstanding caused by varying national sets of rules of the air and different application of airspace classification.
- Support to Member States by providing a uniform and compliant implementation of the ICAO SARPs. Member States will no longer have to put efforts on transposing amendments to the relevant provisions in ICAO Annex 11 and Annex 3 in the future, since it will be done in a centralised manner at European level through the relevant rulemaking tasks.
- Harmonises the implementation of the ICAO airspace classification.
- Harmonises the provisions related to special VFR and provides unambiguous conditions for its implementation.
- Provides tools to the Member States to enhance safety in those parts of the airspace where it is felt necessary, by establishing Radio Mandatory Zones (RMZ) and Transponder Mandatory Zones (TMZ). In this way the Member States are enabled to accommodate the ICAO airspace classification in accordance with their specific needs.

a.2 Negative impacts:

- As already mentioned, the principle retained for the impact assessment is to limit the scope to the general issues because it cannot enter into the detailed aspects of implementation or the national specificities of the implementation of SERA Part B. Moreover, due to the tight timescale, a survey on the detailed aspects of implementation or the national specificities of the implementation of SERA Part B has not been conducted.
- Possible negative impact is the cost associated to the implementation of the SERA Part B with regard to the training of personnel and changes in the procedures.

b. Final assessment and recommendation of the chosen option

125. The adoption of uniform rules of the air transposing provisions from ICAO Annexes other than Annex 2 implies costs which will depend on the situation previously existing within the Member States.

126. Where changes are required, there should already be procedures in place, in the relevant safety and change management systems, for the dissemination of information to the appropriate people and the incremental cost of including information of these proposed rules changes in this process should be minimal.

127. In the case of training, whilst there may be some costs involved in the modification of the training material, the costs of training when the new rules are in place can only be estimated locally.
128. Where more significant changes are required, especially connected with the introduction of new airspace classification and/or TMZ and RMZ, the associated cost will increase accordingly, but at the present moment this cannot be evaluated.
129. However, the potential negative impact associated to the potential increase of the cost for some Member States, which have implemented Annex 11 and Annex 3 with some differences, should be compensated by the overall positive safety impact since there will be uniform implementation of the ICAO SARPs in the European airspace, once all the relevant measures (Implementing Rules, Acceptable Means of Compliance and Guidance Material) are adopted and implemented. Moreover, the Member States will not have to put efforts on transposing amendments of ICAO Annex 11 and Annex 3, since it will be done at European level.
130. Moreover, it is also important to highlight the positive impact associated with the implementation of the SERA Part B Implementing Rule which will support the free movement of aircraft across borders in Europe and will support Member States in their efforts to maintain high safety levels, as well as the implementation of Functional Airspace Blocks.

V. Agency's final Opinion

131. The provisions of SERA Part B as attached to this Opinion have been developed following the Agency's rulemaking procedures and following also the specifications made by the Commission in the SERA mandate given to EUROCONTROL.
132. Following the Agency's consultation process, the answers provided to the comments from the stakeholders, and the reactions received together with the explanations and justifications provided in section b), the Agency's final opinion is summarised as follows:
 - a) The provisions of SERA Part B as attached to this Opinion transpose the provisions of the ICAO Annexes 11 and 3 which are considered to be of a 'rules of the air' nature and support the harmonisation and uniformity of the application of the airspace classification and airspace use in Europe.
 - b) The remaining differences between SERA Part B and the relevant ICAO Annexes are, in relation to the current text, more restrictive (Category A).
 - c) The issues related to the clarification of the definition of 'competent authority' and the description of 'time checks' should be addressed before the Commission finalises the comitology procedure.
 - d) A significant number of the issues described above which have been raised by the stakeholders during the development process have been resolved in the proposed draft rule attached to this Opinion;
 - e) There are other issues which will be resolved in the near future after the Agency's safety evaluation on these items as indicated in this Opinion, through development of AMC/GM or with the future work on SERA Part C.

Cologne, 14th November 2011

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