



Terms of Reference

for a rulemaking task

Requirements for Air Traffic Services (ATS)

RMT.0464 – ISSUE 1 – 9.7.2014

Applicability		Process map	
Affected regulations and decisions:	Commission Implementing Regulation (EU) No 1035/2011 and the amendments proposed thereto by NPA 2013-08 'Requirements for ATM/ANS providers and the safety oversight thereof'	Rulemaking lead:	R5
Affected stakeholders:	Member States; competent authorities; air navigation service providers; air traffic controllers; aircraft operators; professional organisations; trade unions; pilots; passengers	Concept Paper:	No
Driver/origin:	Legal obligation	Rulemaking group:	Yes
Reference:	Article 8b of and Annex Vb 2.(c) to Regulation (EC) No 216/2008	RIA type:	Full
		Technical consultation during NPA drafting:	TBD
		Publication date of the NPA:	2015/Q4
		Duration of NPA consultation:	3 months
		Review group:	Yes
		Focussed consultation:	Yes
		Publication date of the Opinion:	2016/Q4
		Publication date of the Decision:	2017/Q4

1. Issue and reasoning for regulatory change

In aviation, air traffic services are established in order to regulate and assist the safe and efficient air and ground operations of aircraft. Air traffic services consist of flight information service, alerting service, air traffic advisory service, and air traffic control service. At global level, the provision of air traffic services is based upon the requirements set down by ICAO Annex 11 'Air Traffic Services'.

ICAO Annex 11 pertains to the establishment of airspace, units and services necessary to promote a safe, orderly and expeditious flow of air traffic. Its purpose, together with ICAO Annex 2 'Rules of the Air', is to ensure that international air operations are carried out under uniform conditions, with the aim to improve safety and efficiency.

Annexes 11 and 2 govern the application of the Procedures for Air Navigation Services — Air Traffic Management (Doc 4444 'PANS-ATM') and the Regional Supplementary Procedures — Rules of the Air and Air Traffic Services (Doc 7030). In the latter document, subsidiary procedures for regional application can be found. Doc 9426 'Air traffic service planning manual' is also relevant in this context.

Article 38 of the Chicago Convention allows ICAO Member States to file differences to Standards and Recommended Practices (SARPs) included in the Annexes, where this is considered indispensable to the national or local conditions. Over the years, several EU Member States notified ICAO of the introduction of differences to Annex 11, which may contradict the original purpose of harmonisation.

It is recalled that the principal objective of Regulation (EC) No 216/2008 (the 'Basic Regulation') is 'to establish and maintain a high uniform level of civil aviation safety in Europe' (Article 2.1), and an additional objective, among others, is 'to assist Member States in fulfilling their obligations under the Chicago Convention, by providing a basis for a common interpretation and uniform implementation of its provisions, and by ensuring that its provisions are duly taken into account in this Regulation and in the rules drawn up for its implementation' (Article 2.2(d)).

The Essential Requirements establishing safety objectives concerning the provision of air traffic services are contained in paragraph 2(c) of Annex Vb to the Basic Regulation. The provisions set down in Article 6 of Regulation (EC) No 550/2004¹ are also relevant to the provision of air traffic services.

With the entry into force of Commission Implementing Regulations (EU) No 1034/2011² and (EU) No 1035/2011³ an initial regulatory framework has been established with regard to the definition of common requirements for ATM/ANS providers and their safety oversight. However, these two Regulations do not establish the requirements for full compliance with the safety objectives set down by the Basic Regulation in these fields, nor do they fully implement the aforementioned Essential Requirements. Furthermore, the approval of Regulation (EU) No 923/2012⁴ (Standardised Rules of the Air (SERA)) and its further

¹ Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation) (OJ L 96, 31.3.2004, p. 10).

² Commission Implementing Regulation (EU) No 1034/2011 of 17 October 2011 on safety oversight in air traffic management and air navigation services and amending Regulation (EU) No 691/2010 (OJ L 271, 18.10.2011, p. 15).

³ Commission Implementing Regulation (EU) No 1035/2011 of 17 October 2011 laying down common requirements for the provision of air navigation services and amending Regulations (EC) No 482/2008 and (EU) No 691/2010 (OJ L 271, 18.10.2011, p. 23).

⁴ Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010 (OJ L 281, 13.10.2012, p. 1).

development have covered the relevant Parts of Annexes 2 and 11, as well as Doc 4444 and Annex 10 from the perspective of the Rules of the Air. They have, however, not addressed aspects which pertain mainly to the provision of air traffic services and are not of major interest to pilots.

For this purpose, the Agency undertook further rulemaking activities (RMT.0148 & RMT.0149 (ATM.001(a)&(b)) and RMT.0157 & RMT.0158 (ATM.004(a)&(b))) which resulted in the publication of NPA 2013-08⁵ on 10 May 2013, which includes proposed measures for the establishment of a more comprehensive regulatory framework for ATM/ANS providers and their oversight by the competent authority. Providers of air traffic services are included in the scope, and will have to comply with the requirements contained therein. As regards the technical and operational requirements for the provision of air traffic services, Annex II to Commission Implementing Regulation (EU) No 1035/2011, as well as NPA 2013-08 (Subpart B of Annex III to the Cover Regulation 'Technical requirements for the provision of ATS'), make reference to Annex 11 when defining the working methods and operating procedures for air traffic service providers, and to Annex 10, Volume II, when defining the communication procedures. In order to meet the safety objectives set down in the Basic Regulation and to ensure full implementation of its Essential Requirements, it is necessary to replace this referencing with a complete set of measures based on the ICAO provisions relevant to the provision of air traffic services.

2. Objectives

The objective of this rulemaking task is to ensure that air traffic services are provided safely across the EU.

In order to achieve this general safety objective, this rulemaking task shall:

- transpose the relevant ICAO provisions on air traffic services, thus contributing to their harmonised implementation, which will serve as a basis for EU aviation law;
- define a sufficient level of harmonisation throughout the EU, based on mandatory and flexible requirements; and
- define proportionate and cost-efficient rules.

3. Activities

General principles

The main activity of this rulemaking task is to develop draft Implementing Rules (IRs), with the related Acceptable Means of Compliance (AMC) and Guidance Material (GM), to fully implement the Essential Requirements of paragraph 2.(c) of Annex Vb to the Basic Regulation concerning the provision of air traffic services.

These shall be developed in accordance with the EASA Rulemaking Procedure and will have to be consistent with the existing EU legislation in force, or currently under development by the Agency, and in particular with the provisions included in Commission Regulation (EU) No 923/2012 and with the common requirements for the provisions of ATM/ANS and the safety oversight thereof.

The draft IRs, AMC and GM shall be based on existing ICAO documents for which the need for transposition will be identified by the dedicated rulemaking group. Where necessary, this

⁵ <http://easa.europa.eu/document-library/notices-of-proposed-amendments/npa-2013-08>

shall be done with adaptations and improvements taking into account the differences filed by the EU Members States and establishing, where necessary, common European differences.

In addition, the rulemaking group shall provide means of identification of which proposed provision corresponds to which ICAO provision.

Detailed activities

For the achievement of the objectives set out in Section 2, the following activities shall be performed during the development of this rulemaking task:

- (a) Analysis of the relevant ICAO documentation listed under paragraph 8.3 to identify and propose the provisions to be transposed into EU legislation as IRs, or as AMC and/or GM, with the relevant adaptation to make these provisions suitable for the EU legislation;
- (b) Analysis of the differences notified by the EU Members States from the applicable ICAO documentation and identification of commonalities; where appropriate, proposals for common EU differences from the ICAO provisions shall be made;
- (c) Ensuring consistency with the provisions in the existing EU legislation, and in particular with Commission Implementing Regulation (EU) No 923/2012;
- (d) Establishment of an effective correlation between the ICAO provisions and the corresponding IRs, AMC and GM.

4. Deliverables

This rulemaking task shall deliver:

- (a) A Notice of Proposed Amendment (NPA) with the draft IRs concerning the technical and operational requirements for the provision of air traffic services, as well as the related AMC and/or GM, including a Regulatory Impact Assessment (RIA).
- (b) A Comment-Response Document (CRD) to the NPA referred to in (a).
- (c) An Opinion including the EASA proposal for IRs concerning the technical and operational requirements for the provision of air traffic services, amending those in Chapter 4 of Annex II to Commission Implementing Regulation (EU) No 1035/2011 and/or in Subpart B of Annex III to the draft Cover Regulation published with NPA 2013-08.
- (d) A Decision including the AMC and GM to the amending Regulation concerning the technical and operational requirements for the provision of air traffic services.
- (e) A correlation table between the draft IRs, AMC and/or GM and the transposed ICAO provisions, as well as an exhaustive list of established differences between the proposed IRs, AMC and/or GM and the relevant ICAO provisions has to be produced, maintained and published with the NPA, the CRD to NPA, the Opinion, the final adopted Implementing Rule, and the Decision;
- (f) A compliance check list which may be used by Member States to determine differences between the common EU provisions and the transposed ICAO provisions.

5. Interface issues

The draft IRs, AMC and/or GM shall be carefully aligned with the provisions of Commission Implementing Regulation (EU) No 923/2012.

6. Focussed consultation

Focussed consultation activities (events, meetings and/or online consultations) may be organised prior to the publication of the NPA and during the subsequent comment-review phase. The need and the typology of such consultation activities will be determined during the drafting phase and may include:

- (a) ad hoc meetings with stakeholders;
- (b) workshops;
- (c) RAG and/or TAG ATM/ANS consultation (written or meetings); and/or
- (d) SSCC and/or ATM/ANS Sub-SSCC (written or meetings).

7. Profile and contribution of the rulemaking group

The rulemaking group shall include 8 to 10 external experts and shall be composed of representatives of the European Commission, relevant international organisations, national aviation authorities, air traffic service providers, air traffic controller and pilot professional organisations, aircraft operators and/or trade unions.

The members of the rulemaking group shall possess knowledge and experience in the following:

- development of ICAO, EU and/or national ATM/ANS-related regulations, in particular with regard to ATS;
- ATS provision and/or ATS oversight;
- safety assessment of ATS procedures and/or equipment.

The rulemaking group activities shall be conducted in accordance with the EASA Rule of Procedure for Rulemaking Groups (WI.RPRO.00045-002).

8. Annex I: Reference documents

8.1. Affected regulations

Commission Implementing Regulation (EU) No 1035/2011, as it may be amended following the outcome of NPA 2013-08 'Requirements for ATM/ANS providers and the safety oversight thereof'.

8.2. Affected decisions

Not applicable.

8.3. Reference documents

The list of reference documents includes, but is not limited to:

- ICAO Annex 2 'Rules of the Air'
- ICAO Annex 10 'Aeronautical Telecommunications', Volume II 'Communication procedures including those with PANS status'

- ICAO Annex 11 'Air Traffic Services'
- ICAO Annex 19 'Safety Management'
- ICAO Doc 4444 'Air Traffic Management (PANS ATM)'
- ICAO Doc 8168 'Flight Procedures (PANS OPS)'
- ICAO Doc 7030 'European (EUR) Regional Supplementary Procedures'
- ICAO Doc 9426 'Air Traffic Services Planning Manual'
- National Aeronautical Information Publications (AIPs)
- EASA SIB 2014-06 'ATC communications to aircraft flight crew during missed approach'
- Regulation (EC) No 549/2004 of the European Parliament and of the council of 10 March 2004 laying down the framework for the creation of the single European sky (OJ L 96, 31.3.2004, p. 1), as amended by Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 (OJ L 300, 14.11.2009, p. 34)
- Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (OJ L 96, 31.3.2004, p. 10), as amended by Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 (OJ L 300, 14.11.2009, p. 34)
- 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 (OJ L 96, 31.3.2004, p. 20), as amended by Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 (OJ L 300, 14.11.2009, p. 34)
- Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (OJ L 96, 31.3.2004, p. 26), as amended by Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 (OJ L 300, 14.11.2009, p. 34)
- 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, as last amended by Commission Regulation (EU) No 6/2013 of 8 January 2013 (OJ L 4, 9.1.2013, p. 34)
- Commission Implementing Regulation (EC) No 1034/2011 of 17 October 2011 on safety oversight in air traffic management and air navigation services and amending Regulation (EC) No 691/2010 (OJ L 271, 18.10.2011, p. 15)
- Commission Implementing Regulation (EC) No 1035/2011 of 17 October 2011 laying down common requirements for the provision of air navigation services and amending Regulations (EC) No 482/2008 and (EC) No 691/2010 (OJ L 271, 18.10.2011, p. 23)
- Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010 (OJ L 281, 13.10.2012, p. 1)
- Decision 2013/013/R of the Executive Director of the European Aviation Safety Agency of 17 July 2013 adopting the Acceptable Means of Compliance and Guidance Material

to Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010

- Opinion 11-2013 'Licensing and medical certification of air traffic controllers'
- NPA 2013-08 'Requirements for ATM/ANS providers and the safety oversight thereof' and its resulting Opinion (to be published at the time of the issue of these Terms of Reference)
- NPA 2014-05 'Amendment to Commission Implementing Regulation (EU) No 923/2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation (SERA Part C)