

**OPINION No 3/2004**

**OF THE EUROPEAN AVIATION SAFETY AGENCY**

**for amending Regulation (EC) No 1592/2002 of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, to extend its scope to the regulation of pilot licensing, air operations and third country aircraft**

## I. General

1. When adopting the Regulation (EC) No 1592/2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency<sup>1</sup> (“Basic Regulation”) the Community legislator invited the Commission to make appropriate proposals to extend its scope to air operations and flight crew licensing. It also suggested that the opportunity be taken to reconsider the question of the regulation of third country aircraft.
2. To prepare for such extensions, the Basic Regulation (Article 12) defines the Agency’s tasks as including also the regulation of persons and organisations involved in the operation of civil aircraft. It is therefore its role to develop and adopt the opinions on which the Commission shall base its own legislative proposals, in line with Article 14 of the Basic Regulation.
3. The Agency herewith submits to the Commission its Opinion which purports to fulfil the commitments included in the second considering clause and Articles 7 and 12 (2) (b) of the Basic Regulation as far as air operations, flight crew licensing and third country aircraft are concerned. This Opinion is composed of a memorandum, which explains the views of the Agency on the policy underpinning the regulation of these subjects at Community level and of amendments to be made to the Basic Regulation to implement this policy. These include new and changed articles, a revised Annex II (excluded aircraft) and the essential requirements for pilot licensing and air operations.

## II. Consultation

4. This Opinion has been adopted, following the procedure specified by the Agency’s Management Board.<sup>2</sup> A “Consultation Document on the applicability, basic principles and essential requirements for pilot proficiency and air operations and for the regulation of third country aircraft operated by third country operators” was published on the Agency website ([www.easa.eu.int](http://www.easa.eu.int)) on 27 April 2004 (NPA No 2/2004). The Agency explained therein the institutional framework in which the regulation of such activities could be undertaken and the reasons why the structure agreed for the regulation of airworthiness and environmental protection must also be used for that of air operations and flight crew licensing. In this context it presented draft essential requirements for pilot proficiency and air operations that could be used to define the safety objectives imposed by the Community legislator. For the development of these essential requirements, the Agency relied on the voluntary contributions of so called “Core Groups”. These are groups of experts who, relying on their expertise and technical knowledge, facilitated their drafting in the light of existing

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

<sup>2</sup> Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of Opinions, Certifications Specifications and Guidance Material, EASA MB/7/03 of 27.06.2003.

international, JAA<sup>3</sup> and industry practices. The Agency reviewed the drafts presented by these groups, verified their consistency with the ICAO<sup>4</sup> obligations of Member States and adapted them to the necessary level of detail to allow their direct application or the judicial control of acts taken for their implementation, as further explained in paragraph 33. The Agency also presented its views for the regulation of commercial air transport and the licensing of professional pilots, drawing from currently accepted practices transcribed in widely approved Joint Aviation Requirements. It finally asked the opinion of stakeholders on a number of points for which it needed inputs to define a sufficiently consensual policy on which it would build this Opinion.

5. By the closing date of 31 July 2004, the Agency had received 1,695 comments from 93 persons, national authorities, private companies or trade organisations. These comments were reviewed by Agency staff including persons not involved in the drafting of the consultation document so as to ensure fair treatment of all comments received. They have been acknowledged and incorporated into a Comment Response Document (CRD). This CRD contains a list of all persons and/or organisations that have provided comments, the answers of the Agency, suggestions for policy and revised essential requirements. It was published on 24 September on the Agency's website and is easily available to all.
6. From this publication, the Agency waited the minimum two months specified in the above mentioned rulemaking procedure before issuing this Opinion. During this period it received some reactions to its CRD. Two organisations representative of recreational pilots (Europe Air Sports and the European Gliding Union) expressed their satisfaction with the suggested policy, subject to appropriate interpretation and satisfactory implementing rules. They also indicated concerns about the language regime and some terminology that have been taken into account in this Opinion. One organisation representative of business aviation (the International Business Aviation Council) was also satisfied with the result of the work and made some suggestions for amending the essential requirements for air operations that have been taken into account as well. Furthermore, the European Regions Airline Association commented on the issue of mental fitness of flight crew. Finally, another stakeholder complained that his comments had not been addressed in the CRD and considers dedicated Community essential requirements necessary for general aviation and recreational activities.
7. Several organisations representative of cabin crew have expressed a strong dissatisfaction with the conclusion drawn by the Agency about cabin crew licensing. The Agency acknowledges this situation, but must again insist that in view of the comments received it was not possible to suggest a full licensing scheme for this profession. As stated in the CRD, it intends however to draw the attention of the Community legislator on the need to address this issue and give it the political answer it sees fit.

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<sup>3</sup> Joint Aviation Authorities

<sup>4</sup> International Civil Aviation Organisation

8. The National Aviation Authorities (NAA) from several Member States (Austria, Belgium, Denmark, Finland, France, Germany, Sweden and the United Kingdom) have felt necessary to take position as regards the policy envisaged in the CRD and the answers made to their comments. Many address the process followed and question the extent of their involvement in the elaboration of the Agency's Opinion. One even considers that policy should be based primarily on NAA comments, which should be treated separately from those of regulated persons. Accordingly some of them ask for the subject to be put on the agenda of the Advisory Group of National Authorities (AGNA). To this point the Agency acknowledges that the AGNA may examine any point related to rulemaking if a majority of its members so decide. It will therefore co-operate in organising the debates if so requested. It wishes however to point out that this Opinion is addressed to the Commission and will be followed by a full legislative process in which all Member States will be involved. Discussions of policy issues, which ultimately are for the legislator to decide, may therefore lead to a questionable duplication of efforts and could be criticized by the regulated parties as lacking the necessary transparency.
9. Two NAAs consider that their comments have not been fully understood. One thinks that its comments have not been properly answered by the CRD. The Agency accepts that it may have misunderstood some of the comments received despite all the efforts made by all involved to be as fair as possible in their handling. The fact however that such remarks are only made by a small minority of those having reacted to the CRD seem to indicate that the result of this review was of a reasonable quality, taking into account that the Agency cannot answer individually the 93 commenters. Consequently the Agency sees no reason to change the global analysis it conducted or the conclusions reached in this Opinion.
10. Apart from procedural aspects, the NAAs comments restate the positions expressed in the NPA process, as reflected in the CRD. Many of these can only be addressed properly when drafting the implementation means and cannot therefore be discussed here. Those directly related to this Opinion are summarised here below:
  - One suggests extending the scope of Annex II (excluded aircraft), while another suggests the contrary;
  - Many have strong reservations about a recreational private pilot licence (RPPL) below the ICAO Standards, considering that it would not provide for the necessary level of safety;
  - Some, while accepting the establishment of a RPPL, consider that it should be a national decision and that related privileges should be limited to the territory of the issuing Member State;
  - Several are opposed to delegating the issuing of the RPPL to assessment bodies, considering that such task should remain a governmental task;
  - Some object to family practitioners being entitled to carry out the aeromedical assessment for the RPPL;
  - Most disagree that fractional ownership should be treated as a non-commercial activity;
  - Several express concern that the policy introduces a new classification for complex motor-powered aircraft that is not part of the ICAO system;

- A few suggest that all UAVs should be subject to Community competence;
- One considers that third country aircraft permanently based in the territory of a Member State should be required to be registered in that state;
- Some are opposed to giving to the Agency:
  - New certification tasks or
  - Powers to decide on operational directives or
  - Powers to decide on the level of safety of third country aircraft.

As previously mentioned the Agency considers that these policy issues are better discussed at political level and suggests that first consideration be given at this level, as foreseen by the legislative process, before adjustments are made to its Opinion.

11. Several NAAs consider that some thresholds introduced in the definition of complex motor-powered aircraft are too high. The Agency is ready to reconsider these figures after a first exchange of views on the acceptance of the regulatory system it suggests, has taken place. When doing so consideration should also be given to the comments of organisations representative of sport and recreational activities, which contend that they are too low. Any change could however have as a consequence the need to adapt the essential requirements to the revised thresholds.
12. A few NAAs criticised point 7.c. of the proposed essential requirements for air operations that requires the pilot in command of an aircraft to act to ensure the safety of the flight without providing for the necessary authority to fulfil this obligation. The Agency acknowledges the fact but contends that this Basic Regulation may not be a proper instrument to provide for such authority. Firstly, such authority which is of a police nature is likely to be granted only by Member States themselves. Secondly, due to the international dimension of aviation, for this authority to be universally accepted, it probably has to be established through an international convention. Moreover it considers evident that the execution of the obligation created by the essential requirements would not expose pilots in command to legal action provided it is exercised in a proportionate manner.
13. Apart from the points of disagreement summed up here above, the NAA reactions contained various helpful suggestions, in particular as regards the essential requirements that have been taken into account in this Opinion.

### **III. Content of the Opinion of the Agency**

#### **a. The scope of common action**

14. As a matter of principle, the scope of common action shall be specified in the extended Basic Regulation, which shall clearly state which products, services, persons or organisations are affected. As a consequence they will be subject to the requirements established by this Regulation and, as appropriate, to rules taken for its implementation.
15. Conversely, any product, service, person or organisation not covered by Community competence will remain under the full responsibility of Member

States, which shall take appropriate measures to provide for the level of protection expected by their citizens.

(i) Pilot licensing

16. Member States have already accepted within the JAA context, that common requirements (JAR-FCL) apply to nearly all pilots,<sup>5</sup> including instructors and examiners, whether they fly for private or professional purposes. Moreover, private licences are an integral part of the system and can be used as a step towards professional qualifications. As a consequence, there seemed to be no reason to restrict the scope of Community competence to only some categories of pilots. Nevertheless, the Agency was aware of the concerns of those who found JAR-FCL too burdensome and not well adapted to the needs of some activities, particularly sport and recreational flying. The question of the exclusion of such activities had therefore to be addressed. The answer received is very clear: While many see the benefit of a common system to facilitate their free movement in the Community, the pilots of aircraft whose activities are of a local nature prefer to remain subject to local rules.
17. The Agency is therefore of the opinion that all categories of pilots must be included in the scope of Community competence, with the exception of the pilots of aircraft excluded by Annex II to the Basic Regulation. This is reflected in the amended Article 4 (2) and the scope of exclusion is further examined in section (iv) below. In this context the Agency also recognises that the current JAR-FCL PPL may be too demanding for flying only simple aircraft in a simple air traffic environment and considers it appropriate to create an additional level of licence for these types of activities.

(ii) Air operations

18. There is a wide consensus on the need to include the operation of aircraft used for commercial air transport within the scope of Community competence. The Agency considers this point as already agreed. It is also of the opinion that in view of the objective of the Basic Regulation to facilitate the free movement of services, other commercial activities must be subject to Community legislation.
19. As far as non-commercial operations are concerned, several positions can be defended. One could argue that the operation of aircraft not engaged in commercial activities should be excluded from Community legislation and left to national regulation. This however could aggravate the current restrictions to the free movement of certain categories of aircraft. Excluding only non-commercial activities executed with aircraft that would be less affected by such restrictions could therefore be considered as a compromise.
20. On the basis of the clearly expressed stakeholder preference, the Agency is of the opinion that all operations be they commercial or non-commercial must be

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<sup>5</sup> Except glider and balloon pilots.

covered by Community legislation, subject to the exclusion of certain types of aircraft. This is reflected in the amended Article 4(3) and the scope of exclusion is further examined in section (iv) below.

(iii) Third country aircraft

21. Consistent with the wide support expressed by most stakeholders, the Agency is of the opinion that commercial operations in the Community by third country operators must be subject to Community legislation. This is needed to protect European passengers and citizens on the ground. The Community shall therefore supervise such commercial operations while respecting international treaties, in particular the relevant ICAO obligations. By adopting the Directive of the European Parliament and of the Council on the safety of third country aircraft using Community airports (SAFA Directive),<sup>6</sup> the Community has already established its competence to exercise a certain form of supervision of these activities. This does not however provide for the necessary tools to ensure that third country aircraft flying in European airspace respect the applicable operational specifications. The Agency is therefore of the opinion that further action as described in the chapter related to the implementation means, is needed in this field.
22. Concerning non-commercial activities of third country aircraft operated by third country operators, the Agency agreed with many comments received that it would be disproportionate to establish Community competence just to address the issue of foreign aircraft more or less permanently based in the territory of Member States. This indeed can be best addressed by adapting the text of Article 4(1)(c) of the Basic Regulation so as to submit aircraft registered in a third country used in the territory of Member States by a person residing in a Member State to the same requirements as EU registered aircraft. Nevertheless, in doing so the Community does not provide itself with the necessary tools to enforce on third country aircraft the provisions needed to ensure the safety of flights in European airspace when such safety requires specific equipment to be available on board, appropriate qualifications to be held by the crew or specific procedures to be followed. At a time when the Community has established its competence to implement the European Single Sky, it would hardly be understandable if it did not put in place the tools it needs to enforce the related operational specifications.
23. As a consequence the Agency is of the opinion that third country aircraft must be subject to Community oversight. It also considers it necessary to set up the legal basis to impose on third country aircraft operated by third country operators appropriate operational requirements related to the use of the European airspace. It must be clear however that such powers shall be limited only to this objective and shall not aim at regulating at Community level subjects already covered by ICAO Standards. Consequently, a new Article 4(1)(d) extends the scope of community competence to aircraft registered in a third country and used by third country operators. This paragraph shall be read in conjunction with paragraph 21,

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<sup>6</sup> Directive (EC) No 36/2004 of the European Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports (OJ L 143 / 30.4.2004).

which restates that the rights of third countries under the Chicago Convention<sup>7</sup> are not affected.

(iv) Excluded aircraft / activities

24. As indicated previously, there is a need to exclude some activities from the scope of Community competence. When doing so it is the opinion of the Agency that using Annex II of the Basic Regulation is the best option so as to avoid inconsistencies in the handling of airworthiness, operations and crew licensing aspects for the same aircraft. This will also avoid a complex splitting of responsibilities, which ultimately could affect the safety of these excluded activities.
25. In the light of various comments, the Agency has improved the text of Annex II of the Basic Regulation to integrate suggestions made. The rationale for these changes is explained hereunder:
- It is inconsistent to include in the scope of community competence some of the aircraft listed in this Annex only because some Member States have issued them a type-certificate or a certificate of airworthiness before 28 September 2003 while others have not. This also created confusion as this is not always known by all Member States. The related provision has therefore been deleted.
  - The criteria regarding historical aircraft are rather subjective and lead to different interpretations by Member States. The text has been clarified taking into account on one hand the criteria based on simple design and age and on the other hand the criteria based on qualitative statements already specified in this Annex.
  - Concerning aircraft that have been in military forces it has been clarified that these aircraft that have also a civilian type design standard are subject to Community competence.
  - Another point of concern is the definition of micro-light aircraft, as specified in point (e) of Annex II, which is limited, in some linguistic versions, to aeroplanes while in some other languages it includes other types of aircraft. As there is no reason to limit the scope of the exclusion to only aeroplanes, powered parachutes and helicopters have been added. Additionally raised masses for airplane with an airframe mounted total recovery parachute system have been introduced as a safety improvement.
  - Paragraph (f) is added to include gyroplanes, which in some EU countries are treated in a similar way to microlights. The weight is based on research carried out to establish a sensible limit based on gyroplanes currently flying in the EU.
  - Paragraph (h) is added to include replicas for which the structural design is similar to the original aircraft.
  - Modifications have been made to paragraphs (g) and (j) to clarify the weight limits, using more common aviation terms.

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<sup>7</sup> Convention on International Civil Aviation, signed in Chicago on 7 December 1944.

(v) Other regulated activities and professions

26. As already stressed in the introduction of this chapter it is essential that the legislative act establishing Community powers in a given field (Basic Regulation) specify clearly which products, persons or organisations are affected by such powers. Doing so by an implementing rule would probably not be an acceptable way to proceed because such rules would lack the necessary legal basis. Hence, the Agency considers necessary to address some divisive issues such as the status of fractional ownership, unmanned air vehicles, cabin crew, flight dispatchers and flight engineers. These issues are indeed closely linked to operations and licensing and are diversely addressed throughout the European Union.

Fractional ownership

27. Considering the comments received and the growing importance of this activity the Agency is of the opinion that the Community must take position on the status of fractional ownership. While admitting that such activities present many of the characteristics of commercial air transport it has to be recognised that passengers of aircraft used under fractional ownership contracts define themselves the conditions of their transportation and employ their operator through a management contract. The Agency is therefore of the opinion that fractional ownership must be covered by Community legislation. In this context the Agency is also of the opinion that such activities must be treated as non-commercial operations. To do so a definition of commercial operations that excludes fractional ownership has been added in Article 3 (i) of the amended Regulation.

Unmanned Air Vehicles (UAV)

28. Currently UAVs are subject to Community airworthiness and environmental rules when their mass is 150kg or more. In view of the positions expressed by all stakeholders, the Agency is of the opinion that the current situation must be maintained so that only the airworthiness and operations of UAVs above 150kg are subject to Community legislation. As their activity presents the same characteristics as those of other aircraft, it considers that such aircraft must be subject to the same requirements as any other aircraft with the same activity.

Cabin crew

29. The Agency underlines that it is widely admitted that cabin crew must be subject to safety requirements set at Community level so as to ensure the necessary training, appropriate medical fitness and sufficient current practice, as currently provided for in the Commission proposal to establish common requirements for commercial transportation by aeroplanes.<sup>8</sup> This must be maintained and cabin crew must be subject to Community legislation.

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<sup>8</sup> COM (2000) 121 final of 24.03.2000-OJ C 311 E dated 31.10.2000, amended by COM (2004) final of 10.2.2004.

Flight dispatchers

30. In its consultation document the Agency asked the opinion of stakeholders on whether flight dispatchers should be subject to Community legislation. When considering the comments, the Agency reached the conclusion that flight dispatchers must not be regulated as a profession but that the function must be subject to Community legislation, as proposed in the above mentioned Commission proposal.

Flight engineers

31. In view of the progressive vanishing of their function it is questionable whether flight engineers should be regulated at Community level. From the comments received on this question, it is clear that there is strong support to follow ICAO practices in this domain. As however the essential requirements for pilot licensing contained in the new Annex III are not appropriate for this profession, the Agency will undertake the necessary work in due time. This is reflected in Article 7ter of the amended Regulation.

**b. The safety objectives**

32. Currently the safety objectives are set by the standards adopted by the ICAO and the provisions of the basic acts adopted by Member States to establish the regulatory framework applicable to civil aviation. Generally these national basic acts are mainly about the delegation of executive powers to governmental bodies or to independent civil aviation authorities. They include very little about the result expected by the legislator. They thus leave a large discretion for the executive level to implement ICAO Standards and set the safety objectives, subject to political pressure to avoid the occurrence and recurrence of accidents.
33. As the Community is not a contracting party to the Chicago Convention, ICAO Standards are not part of Community law, although they bind its Member States and commit in a certain way the Community. Moreover, according to the jurisprudence of the European Court of Justice, the delegation of executive powers to Community bodies requires that the objectives assigned by the legislator are sufficiently clear and specific to allow judicial control of the acts of such delegated bodies. Last but not least if some form of self policing is to be envisaged for some segments of the civil aviation community as this is already largely the case for large segments of recreational aviation, the safety objectives must be sufficiently detailed to allow their direct implementation by the industry or other affected persons. As a conclusion the extended Basic Regulation shall specify in clear and detailed terms the safety objectives of the Community for the regulation of air operations and flight crew licensing.
34. After consultation, the Agency is of the opinion that the Basic Regulation must contain detailed dedicated essential requirements as was done for the airworthiness of aeronautical products. Such essential requirements for both pilot licensing and air operations are contained in Annex III and Annex IV respectively of the amended Regulation. They have been designed to provide for an

appropriate mitigation of any reasonably probable risk specific to the regulated field. They are drafted in a way, which potentially allows to cover all types of activities (commercial, business and recreational). They have been conceived to provide for a good legal basis for the adoption of JAR-OPS, JAR-FCL and JAR-STD as possible implementation rules so as to avoid disruption and transitional bureaucratic burden.

### **c. The implementation means**

35. The extended Basic Regulation must specify how the essential requirements are to be implemented. This includes specifying whether issuing an official certificate, showing compliance to a third party or self-declaration shall be used to verify compliance. It must also require that details be provided on how such demonstration of compliance is to be made. If such details are too complex or lengthy, executive powers must be given to the Commission, Member States or industry to develop respectively the necessary implementing rules, national implementation measures or industry standards. When appropriate, the bodies in charge of issuing the certificate or to which compliance is to be shown must be identified. They can be the Agency itself, national administrations or appropriately accredited assessment bodies. In the later case criteria for their accreditation need to be specified and accrediting authorities nominated.
36. There is a wide range of possibilities to implement the common safety objectives. The choice among them is a political decision, which depends on the public sensitivity to the subject as well as traditions and culture in the sector concerned. Such a choice must also take into account the level of uniformity that is sought for a certain type of activity, uniformity being likely to be better achieved through common implementing rules adopted by the Commission. The choice must also take into account the international framework so as not to unduly affect the movement of the European citizens and companies in the rest of the world. Last but not least such a choice must be based on the principles of good governance<sup>9</sup> so as to best use the available resources and further develop the sense of responsibility in the regulation of civil aviation safety.

#### (i) Pilot licensing

37. The Agency is of the opinion that no one may fly an aircraft involved in commercial operations without a licence. The amending Regulation therefore includes such an obligation and provides for the legal basis of any associated privileges. The Agency also considers that the training of such pilots must be accomplished by approved organisations and that the flight synthetic training devices used for such training must be certified. As already accepted by Member States under the JAA system, the Agency considers it appropriate to establish common rules for issuing and maintaining such licences, approvals and certificates. Such rules shall be set by the Commission through a comitology

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<sup>9</sup> COM (2001) 428 final of 25.07.2001.

process.<sup>10</sup> Their implementation shall be carried out at national level except for third country organisations and third country flight synthetic training devices, which shall be under the supervision of the Agency. The above described implementation means have been specified in Article 7(1), (2), (3) and (4) and 15bis of the amended Regulation.

38. As far as non-commercial activities are concerned, taking into account the comments received, the Agency is of the opinion that all pilots of corporate or heavy motor-powered aircraft must be required to hold a licence included in the current JAR-FCL system. The Agency considers indeed that the complexity of the aircraft and of its operational environment must be the criteria used to define the type of licence required so as to best tailor the necessary training and medical requirements. This point is further discussed in section (iv) below. As above, the Agency considers that the rules pertaining to such licences must be set by the Commission through a comitology process. Their implementation must be carried out at national level except for third country organisations and third country flight synthetic training devices, which shall be under the supervision of the Agency.
39. Taking into account the preference of stakeholders, the Agency is of the opinion that pilots of recreational or sport aircraft must hold a licence. As stated however in paragraph 16, the existing JAR-FCL PPL is seen as too demanding for flying only simple aircraft in a simple air traffic environment. As a consequence the Agency considers necessary to create a new category of private pilot licence, an RPPL, as an alternative to the existing JAR-FCL PPL. The holders of such a licence will not be authorised to fly complex motor-powered aircraft or to engage in commercial aviation; access to certain high density traffic areas may also be restricted. Credits may be given to holders of an RPPL when applying for a full licence. Such a licence must provide nevertheless for free movement in the territory covered by the Treaty. Bearing in mind the size of the European Community and the association agreements being concluded with the EFTA<sup>11</sup> States, the Agency does not consider that full compliance with ICAO Annex I is a requirement for this new licence. This is reflected in Article 7(2) (a) of the amended Regulation.
40. The Agency is also of the opinion that such an RPPL may be issued by assessment bodies. Indeed the Agency thinks that Member States should not play this role systematically as it is legitimate to implement the principles developed in the Commission's White Paper on European Governance and give a chance to this category of pilots to administer themselves as they seem to wish. The amended Regulation therefore contains the necessary legal basis in its Article 7, which also gives power to the Commission to adopt the necessary implementing rules, including criteria for the accreditation of such assessment bodies. Finally the Agency is of the opinion that the competent authorities for such an accreditation must be the Agency itself as well as Member States' national aviation authorities so that applicants have the choice. The Agency nevertheless recognizes that it may not be possible to find in all Member States appropriately qualified bodies to play this role in the short term. Therefore a transitional

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<sup>10</sup> Decision 1999/468/EC.

<sup>11</sup> European Free Trade Association

mechanism may need to be developed in light of the reactions of the interested communities.

41. Pilot licensing also requires that compliance with medical fitness criteria is demonstrated. The Agency's opinion concurs with the general consensus that, as far as pilots involved in commercial operations or flying complex motor-powered aircraft are concerned, such demonstration must be based on common implementing rules and that medical centres and aero-medical examiners involved in the related assessments must be approved. As far as pilots of light recreational or sport aircraft are concerned, the Agency considers necessary to introduce flexibility through less stringent common rules.
42. The Agency is therefore of the opinion that the Commission must be given powers to adopt implementing rules on medical fitness. Such rules must be based on the current JAR-FCL 3 medical standards and be applicable to all categories of pilots, except holders of an RPPL for whom less stringent rules shall be developed. Further, the Agency is of the opinion that implementing rules for the accreditation of aero-medical examiners and centres must be adopted at Community level. When doing so the Agency considers that family practitioners can be considered as suitable examiners for the RPPL. Verification of compliance shall be made by National Aviation Authorities for persons established in their territory, while the Agency shall do so for foreign organisations, where appropriate. This policy is reflected in Articles 7(2)b and 7(6) and Article 15bis of the amended Regulation.
43. While considering the various comments received and the need to integrate the Joint Operation Executive Board (JOEB) process into the EASA framework, the Agency also realised that safety and uniformity is best promoted by enabling it to adopt, as appropriate, training requirements for issuing individual ratings required for the operation of certain types of aircraft. The necessary powers have been included in Article 15bis of the amended Regulation.

(ii) Air operations

44. At present, there is a consensus on the need to impose a certification process to all commercial air transport operators, as already reflected by the wide implementation of JAR-OPS 1 and 3 at Member State level and the state of negotiations on the above referred Commission proposal to establish common requirements for commercial transportation by aeroplanes. This allows Member States to be in compliance with ICAO recommendations and documentation. For commercial activities other than commercial air transport, the Agency agrees with most stakeholders that there must also be a certification process based on common implementing rules.
45. The Agency is therefore of the opinion that common rules for the issuing of certificates to commercial operators must be established. The certificates themselves are already issued at national level and this shall normally continue as this is the current practice for the implementation of Community law. Nonetheless the Agency shall be entitled to mandate operational directives as

necessary to ensure the safety of operations when uniformity is best achieved by a centralised decision. Considering also the very peculiar nature of flight and rest time regulation, the Agency considers necessary that some flexibility be introduced by mandating it to issue certification specifications, comprising in particular standard flight time limitation schemes as acceptable means of compliance with the essential requirements. As all operations cannot be covered by such standard schemes, the Agency shall also be able to adopt itself individual operators' schemes on a case by case basis, when so required, to provide for uniformity and fair competition in the market. As a consequence, powers must be given respectively to the Commission and the Agency to execute these tasks. Article 7bis (2), (4) and (5) and Article 15ter (3) and (4) of the amended Regulation contain the necessary empowering provisions.

46. For corporate aviation, having considered all comments received, the Agency reaches the opinion that the operation of aircraft for corporate use is not different from the use of the same aircraft for other general aviation activities, and in particular that this status does not in itself increase the related risks. The Agency therefore concludes that there is no need to treat this activity differently than all other non-commercial activities.
47. In the case of general aviation activities, even though stakeholders agree that these activities should be directly subject to the essential requirements, the Agency reached the view that this may not be totally appropriate to regulate all the related activities. Firstly, it is common practice to make use of operational implementing rules to provide for a legal basis for the implementation of rules related to the use of airspace or of requirements related to certain types of activities, such as emergency and radio equipments. It is therefore necessary to envisage the adoption of implementing rules to mandate at least such requirements for all types of operations. Secondly, complex motor-powered aircraft share the same operating environment as aircraft used for commercial air transport thus possibly posing a risk to public air transport. Furthermore, their complexity and size necessitate logistics that are closer to those of commercial air transport. Hence, in order to mitigate the risk and to adapt the operation to the logistics involved, a comparable set of implementing rules need to be adopted. Consequently, the Agency is of the opinion that the operation of general aviation aircraft shall be regulated through implementing rules adapted to the complexity of the aircraft rather than to the type of activity.
48. For non complex aircraft, light implementing rules need to be adopted to mandate operational specifications related to the use of airspace or special operations that have to be harmonised at Community level. This is without prejudice to the possibility for Member States to mandate on their side operational specifications of a purely regional nature, subject to an appropriate Community control. The above mentioned implementing rules must be directly applicable and compliance verified by Member States without the need for neither certification nor declaration.
49. For complex motor-powered aircraft more comprehensive rules are needed as explained here above to adapt the mitigating measures to the risk. Concerning the verification of compliance with such rules, the Agency does not consider it

necessary to impose a certification process and thinks that the declaration envisaged in JAR-OPS 2 is sufficient.

50. The Agency is therefore of the opinion that all non-commercial operations must be regulated, that common rules must be set by the Commission through a comitology process and that these rules must be adapted to the complexity of the aircraft. Their implementation shall be overseen at national level without the need for certification but with a requirement for declaration in the case of complex motor-powered aircraft. Nonetheless, as explained here above in the case of commercial operations, executive powers must be given to the Agency to mandate operational directives as appropriate. This policy is reflected in Articles 7bis (3), (4), and (5) and in Article 15ter (3) of the amended Regulation.
51. While considering the various comments received and the need to integrate the JOEB process into the EASA framework, the Agency also realised that safety and uniformity is best promoted by enabling it to adopt, as appropriate, standard lists of minimum equipment required for the operation of certain types of aircraft in a given environment, the so-called Master Minimum Equipment Lists. The necessary powers have been included in Article 15ter of the amended Regulation.

(iii) Third country aircraft

52. In its consultation document the Agency already recognised that implementation means for the regulation of third country aircraft operated by third country operators shall take into account the existing ICAO framework. It also acknowledged that common rules have already been established by the SAFA Directive, to verify that such aircraft comply with the applicable ICAO Standards. It however indicated that in the light of recent events, more needed to be done to provide for an appropriate protection of European citizens.
53. In view of the feedback received, the Agency is of the opinion that the provisions of the SAFA Directive must be transferred to a Commission implementing rule and that the Commission shall be given the necessary powers to organise the oversight of third country aircraft. In this context the Agency must be able to analyse the data collected and draw conclusions on the safety of third country aircraft; it must also be given the power to verify the airworthiness of non ICAO compliant aircraft and to issue permits to fly as appropriate. The Agency recognises however that such powers must not aim at requiring the Agency to address itself day-to-day issues and that an efficient sharing of work must be organised. This policy is reflected in Article 5(2), (3)j and (5)d, in Article 7quater and in Article 15(1)k and l of the amended Regulation.
54. As far as third country aircraft operations are concerned, the Agency is of the opinion that third country operators must be imposed the same conditions as those required of Community operators to fulfil for the same operations, when they are in the territory covered by the Treaty. This shall include in particular the need for foreign commercial operators to hold a Community certificate. The Commission shall therefore be given the necessary powers to define the conditions for the issuing of such certificates. As already agreed in the context of

the Basic Regulation, such issuing shall be performed by the Agency. Of course, such certification could be facilitated through the conclusion of bilateral agreements with third countries so as to avoid multiple certifications. As far as other third country operators are concerned the same implementing rules as for EU operators shall apply. This policy is reflected in Articles 7bis (2), (4) and (5) and in Article 15ter (2) of the amended Regulation.

#### (iv) Complex motor-powered aircraft

55. The developments in sections (ii) and (iii) above show that there is a need to define a threshold between two categories of aircraft engaged in non-commercial activities that require two different types of implementation means. To define this threshold the Agency has considered the inputs received in the context of the NPA process and existing thresholds such as those envisaged in the draft of JAR-OPS 2. It also thought it essential to avoid imposing requirements to aircraft owners and operators as compared to what is necessary as a consequence of the complexity of their aircraft and of the environment in which they normally operate, so as to mirror as well as possible the current situation. Last but not least it felt important to establish a simple system that can be easily understood and implemented by all.
56. The Agency reaches the conclusion that it is possible to establish such a threshold based only on the complexity of the aircraft without the need to refer to their type of operation. In view of this a definition of complex motor-powered aircraft has been added to Article 3(j) of the amended Regulation. The aircraft in this category will be required to meet all essential requirements for air operations through appropriate implementing rules and be operated by pilots holding a license based on the JAR-FCL system, while light simple aircraft will be subject to a lighter set of essential requirements and operated by pilots holding an RPPL.
57. In view of the hesitation of some stakeholders to creating a new categorisation that is not foreseen in the ICAO system, the Agency wishes to recall that the concept of complex motor-powered aircraft is already part of the Community system as Part-M recognises the higher maintenance requirements needed to reach the same standards for larger and more complex aircraft. It also considers that in the light of the comments received, there is no better means to satisfy in a simple way the majority of stakeholders who ask for a special regime adapted to the non-commercial operation of light and simple aircraft.

#### (v) Other regulated activities and professions

58. As already stated in the introduction of this chapter the Basic Regulation must specify how demonstration of compliance with the essential requirements and their possible implementing rules shall be performed. This covers in particular the need to issue licences to certain regulated persons. It is in this context that the Agency asked the opinion of stakeholders on whether cabin crew and flight dispatchers should be issued a licence.

Cabin Crew

59. As already underlined in paragraph 29 above the Agency is of the opinion that cabin crew must be subject to common requirements specified by a Commission implementing rule. As far as specifying a certification process to ensure compliance with such requirements, the Agency takes into account the majority view. It therefore cannot suggest that cabin crew be subject to a licensing scheme, even though it initially proposed it. However, for the sake of fairness the Agency draws the attention of the legislator to the need to address this issue, which is more of a political nature than one of safety. When doing so consideration should be given to the objective of free movement enshrined in the Basic Regulation and to the fact that most personnel affected to aviation safety or security tasks, such as flight crew, maintenance engineers and airport security screeners are required to hold an official certificate, while cabin crew are not, in a majority of Member States.

Flight dispatchers

60. As already stated in paragraph 30 above the Agency is not of the opinion that flight dispatcher be regulated as a profession. It therefore does not propose that personnel assigned to a flight dispatch function be required to hold an official certificate. Nonetheless the Agency could consider the establishment of a flight dispatcher attestation of professional competence by the operator as an acceptable means of fulfilling the requirements for the flight dispatch function when it so decides. If such an option were supported further work would be necessary when developing the related implementing rules.

Personnel releasing aircraft, parts and appliances after maintenance

61. While considering the various comments received and the need to integrate the JOEB process into the EASA framework, the Agency also realised that safety and uniformity is best promoted by enabling it to adopt, as appropriate, training requirements for issuing of individual ratings required for personnel certificates of persons responsible for the release of products, parts or appliances after maintenance of certain types of aircraft. The necessary powers have been included in Article 15(3) of the amended Regulation.

**d. Miscellaneous changes**(i) Permits to fly

62. When considering the regulation of third country aircraft, the question of issuing permits to fly to aircraft that are not compliant with ICAO Standards had to be addressed. As explained in paragraph 53 a good policy requires a sharing of roles between the Agency and NAAs, the first dealing with permits to fly on a more or less permanent nature while the latter would address one off authorisations on the basis of common rules. This subject is no different in nature to that of issuing permits to fly to EU registered aircraft that was raised in the Committee assisting the Commission when discussing Commission Regulation (EC) No 1702/2003 of

24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations.<sup>12</sup> The Agency is of the opinion that the same principle must apply when developing the missing elements of the above mentioned Regulation and that use shall be made of the opportunity of this amendment of the Basic Regulation to clarify the related sharing of tasks. This is done in Article 7quater and in Article 15(1)k and l of the amended Regulation.

(ii) Certification of products designed and manufactured in the Community

63. Article 5(1) of the Basic Regulation requires all aircraft, including those designed or produced in the Community, to be subject to the essential requirements set out in Annex I. It then explains in Article 5(2) certification processes for aircraft registered in Member States; in Article 5(3) how permits to fly and restricted certificates of airworthiness can be issued; and in Article 5(4) gives powers to the Commission to adopt the necessary implementing rules. Nothing is said however on the certification process to be used for aircraft design or produced in the Community while this could easily be done by referring to most of the provisions included in Article 5(2). The Agency is of the opinion that the opportunity must be taken to correct this omission. To do that however there is a need to slightly re-organise point (d) of Article 5(2) to separate organisations responsible for the design and manufacture of products, parts and appliances from those responsible for their maintenance. The appropriate changes have been made to Article 5 of the amended Regulation by splitting 5(2)d into 5(2)d and e, and by adding a paragraph 5(3) related to the approval of aircraft referred to in Article 4(1)(a) which are those only designed and manufactured by an organisation for which the Agency or the Member States ensure safety oversight.

(iii) Protection of safety information.

64. It is widely agreed that all information concerning aviation safety must be recorded and exchanged in order to be analysed to continuously improve the level of safety. Taking into account the nature of the information involved, it is necessary to ensure that a non-punitive approach is followed, in order to guarantee that all relevant information will be made available to the competent entities. In addition one of the frequently stated objectives of the Agency when proposing a policy for the regulation of air operation is to make use of existing JARs so as to ensure continuity and avoid unnecessary burden on the industry. Such JARs already include provisions to implement this non-punitive reporting system. Last, the SAFA Directive that the Agency considers must be put within the framework of the EASA system also contains provisions on the protection of the reporter of safety information. The Agency is therefore of the opinion that appropriate legal bases shall be introduced in the Basic Regulation to integrate this important aspect of an efficient aviation safety system. Such is the purpose of the new Article 11bis of the amended Regulation.

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<sup>12</sup> OJ L 243, 27.9.2003, p. 6.

(iv) Link between the new or amended Articles and provisions of the regulation dealing with transition and legal remedies for regulated persons

65. The Basic Regulation contains a number of provisions of a general nature such as the transitional mechanisms of Article 8, the remedies for regulated persons, the power of investigation of the Agency,...that need to be adjusted to make reference to the new and amended articles as appropriate. Such changes have been included in the amended Regulation.

#### **IV. Subsidiarity**

66. The Basic Regulation operated a transfer of competences from the Member States to the Community in the field of airworthiness and environmental certification, with the objective of maintaining a high and uniform safety level in European Aviation. At the time it was already understood that an optimal level of safety and uniformity could only be attained with the extension of the scope of competence of the Basic Regulation to air operations and flight crew licensing. It was for that reason that the legislator established in Article 7 of the Basic Regulation that its scope shall be extended to these fields.
67. The idea that a high and uniform level of safety could only be attained through common action at the Community level is not new. There has been a general consensus in Europe to that effect, and the European States started long ago to work cooperatively within the JAA, with the objective of creating common rules in the field of aviation safety.
68. However, the JAA system did not provide for a uniform application of these rules. The first attempt at the Community level to allow for this application was substantiated by Council Regulation (EEC) No 3922/91, of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation,<sup>13</sup> which established an obligation for Member States to comply with airworthiness related JARs. This Regulation applied to all aircraft operated by Community operators, whether registered in a Member State or in a third country.
69. In the field of flight crew licensing, action at Community level was also taken, with the adoption of Council Directive 91/670/EEC of 16 December 1991 on mutual acceptance of personnel licences for the exercise of function in civil aviation.<sup>14</sup> Already at that time, the legislator was conscious of the need to produce common rule for the licensing of flight crews and indicated in a considering clause of this Directive that proposals thereto should be made by the Commission as soon as possible.

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<sup>13</sup> OJ L 373 31/12/1991, p. 4.

<sup>14</sup> OJ L 373 31/12/1991, p. 21.

70. In 2000, the Commission presented a proposal to the European Parliament and to the Council<sup>15</sup> for amending Council Regulation (EEC) No 3922/91, extending its scope to commercial air transportation by aeroplanes. Nevertheless, this proposal only covers commercial air transportation by aeroplanes and it is considered that this limited scope cannot ensure a high and uniform level of safety in civil aviation in Europe, and that harmonised aviation standards must also apply to all operations by all types of aircraft. Moreover the implementation of the European Single Sky requires the adoption of operational specifications at Community level that, as required by ICAO Annex 6, need to be included in the regulations related to air operations.
71. Finally, concerning third country aircraft, Community action was also taken through Directive 2004/36/CE of the European parliament and of the Council, of 21 April 2004, on the safety of third country aircraft using community airports.
72. Consequently, it is clear that the objectives of the proposed action, namely the establishment and uniform application of common rules for the regulation of flight crew licensing, air operation and third country aircraft, cannot be sufficiently achieved by the Member States and can, therefore, only be achieved by the Community. Moreover, this Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what it is necessary for that purpose. Thus, it is considered that the present proposal is in accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty establishing the European Community.

## **V. Regulatory Impact Assessment**

73. As required by its Article 2, changes to the Articles of the Basic Regulation and the development of the essential requirements on pilot licensing and air operations must be based on ICAO Standards and aim at implementing the ICAO obligations of Member States. Furthermore, the Agency has recalled at several occasions that it had no intention to re-invent the wheel and would base its work on the widely accepted and implemented requirements of the JAA. Care has therefore been taken that the essential requirements are written in such a way that they do not impose additional burden and constitute a sufficient basis for the introduction of implementation means based upon JAR-OPS, JAR-FCL, JAR-STD, JAR-26 and JAR-MMEL. As such the envisaged legislative action only constitutes a change of institutional framework aiming at facilitating effective and uniform implementation of already existing rules without imposing any additional burden on regulated persons.
74. At the same time, the introduction of such a new framework for the regulation of non-commercial activities should have a positive impact because existing national rules are at least as stringent and the regulatory burden linked with administrative certification processes higher. The establishment of Community competence will provide an additional positive impact by facilitating the free movement of goods, services and persons. It establishes the principle of automatic recognition without

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<sup>15</sup> COM/2000/129final.

further showing or control of certificates issued in accordance with the Basic Regulation and its upcoming implementation means. It provides for a high uniform level of protection and identical implementation means throughout the Community, ensuring fair and equal opportunities for all to exercise their activities.

75. Regarding the regulation of third country aircraft the envisaged legislative action merely transfers the SAFA Directive into an implementing rule. This of course would have no impact. The strengthening of oversight of third country aircraft has of course a cost, but it is only long overdue that ICAO obligations of all states are enforced. Political pressure will anyhow oblige Member States to intensify their activity in this domain to better protect the European citizens. Collective action in this field shall limit the costs of such developments.
76. Therefore the Agency considers that the extension of the scope of Regulation (EC) No 1592/2002 will only have positive impact on operators and pilots in the Community and does not think therefore necessary to undertake a long and costly regulatory impact assessment.

## **VI. Conclusion**

77. As a summary the Agency is of the opinion that:

- Community Essential Requirements covering pilot licensing and air operation must be introduced as additional Annexes to the Basic Regulation.
- Commercial operations in the Community by third country operators must be subject to Community legislation.
- Third country aircraft, more or less permanently based in the territory of Member States must be subject to the same rules as EU registered aircraft.
- All third country aircraft operated by third country operators must be subject to the same Community operational specifications as EU registered aircraft.
- The SAFA Directive must be transferred into a Commission implementing rule and the Agency must analyse the data collected and draw conclusions on the safety of third country aircraft.
- All types of activities, encompassing commercial, corporate and recreational aviation must be covered by Community legislation, except for the activities of aircraft listed in a slightly amended Annex II of the Basic Regulation.
- Commercial activities shall be subject to implementing rules covering pilot licensing and air operations. Such rules shall be based on JAR-FCL and JAR-OPS 1, 3 and 4. Their implementation shall normally be carried out at national level. The Agency shall however be given some powers to issue approvals to foreign organisations, to issue operational directives and to approve deviations from standard provisions, as appropriate.
- For non-commercial activities involving complex motor-powered aircraft, existing material such as the JAR-FCL and JAR-OPS 2 shall be used as a basis for implementing rules. Their implementation shall normally be carried out at national level, but air operators shall not be subject to a certification process, a simple declaration will suffice.

- For non-commercial activities involving non complex motor-powered aircraft that are mainly general aviation and recreational activities a Recreational PPL shall be introduced as a “lighter” licence and the essential requirements for operations shall be directly applicable. Light implementing rules based on JAR-OPS 0 shall however be developed to mandate operational specifications. Enforcement shall normally be carried out at national level, but the Recreational PPL may be issued by qualified bodies accredited by the Agency or national aviation authorities on the basis of common rules.
78. The Agency is of the opinion that the above described policy is the best means to regulate pilot licensing, air operations and third country aircraft. It reflects the majority of the views expressed by all parties that answered the consultation organised to prepare it. Based on current practices for the regulation of commercial activities, it introduces flexibility for that of non-commercial activities, which not only constitute an essential element of the European air transport system, but are also the soil in which all aviation activities find their roots and the talents they need to contribute to the wealth of modern societies. It organises a balanced sharing of powers consistent with the institutional structures of the Community by limiting the centralisation of tasks to what can be better achieved by the Commission or the Agency. The Agency therefore proposes that the Commission initiates the legislative process based on the attached amending Regulation.

Cologne, 15 December 2004

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