European Union Aviation Safety Agency

FAQ n.139829

FAQs:

Scope/Applicability, Air Traffic Management / Air Navigation Services (ATM/ANS) ground equipment, Regulations

Question:

Does a military surveillance station fall under the equipment of Regulation (EU) 2023/1768 if an air navigation service provider (ANSP) chooses to make use of the surveillance data for Air Traffic Management / Air Navigation Services (ATM/ANS) provision?

Answer:

No. However, military services or equipment used for civilian purposes by an ANSP are not fully excluded from the scope of the Regulation.

Article 2 of the Basic Regulation (Regulation (EU) 2018/1139) excludes from its scope ATM/ANS systems and constituents provided or made available by the military. However, in accordance with Article 2(5)(b) of the Basic Regulation, Member States shall ensure that those military ATM/ANS or equipment offer a level of safety and interoperability with civil systems that is as effective as that resulting from the application of the essential requirements that are laid out in the Basic Regulation.

In other words, the military service or equipment provider is not bound by the implementing rules (i.e. Regulations (EU) 2023/1768 and 2023/1769) and is not required to apply the requirements defined in Regulation (EU) 2023/1768. However, Members States are required to demonstrate that military ATM/ANS or equipment provides a level of safety and interoperability that is as effective as civil systems that are developed on the basis of Regulation (EU) 2023/1768. This is in addition to assessments performed by the ATM/ANS provider and any Service Level Agreement (SLA).

For example, this could be achieved by applying (and demonstrating compliance to) the requirements of Regulation (EU) 2023/1768. It could also be achieved by demonstrating that the standards and requirements used to develop the military ATM/ANS or equipment (e.g. military standards) are equivalent to the standards and requirements defined in Regulation (EU) 2023/1768. This demonstration that the equipment provides a level of safety and interoperability as effective as civil systems is to be made available, upon request, to any civil ANSP intending to make use of the military equipment in the provision of their services.

Finally, there is an obligation to EASA, when monitoring Member States' compliance with the Basic Regulation through the standardisation processes, to verify that the process/criteria used by Member States (to determine that military services or equipment are "as effective as" the systems and equipment produced under Regulation (EU) 2023/1768) are coherent and aligned, and achieve that objective.

Please see below for the relevant regulatory references.

Recital 9 of the Basic Regulation states:

"(9) Aerodromes that are controlled and operated by the military, as well as air traffic management and air navigation services ('ATM/ANS') that are provided or made available by the military, should be excluded from the scope of this Regulation. However, Member States should ensure, in accordance with their national law, that such aerodromes, when opened to the public, and such ATM/ANS when serving air traffic to which Regulation (EC) No 549/2004 of the European Parliament and of the Council (1) applies, offer a level of safety and interoperability with civil systems that is as effective as that resulting from the application of the essential requirements for aerodromes and ATM/ANS set out in this Regulation."

Article 2(3) 3 states:

"3. This Regulation shall not apply to … (c) ATM/ANS, including systems and constituents, personnel and organisations, that are provided or made available by the military;"

Article 2(5) states:

"5. Without prejudice to national security and defence requirements, and Article 7(5) of Regulation (EC) No 550/2004 of the European Parliament and of the Council (1), Member States shall ensure that:

(a) the facilities referred to in point (b) of the first subparagraph of paragraph 3 of this Article that are open to public use; and

(b) the ATM/ANS referred to in point (c) of the first subparagraph of paragraph 3 of this Article that are provided to air traffic to which Regulation (EC) No 549/2004 applies,

offer a level of safety and interoperability with civil systems that is as effective as that resulting from the application of the essential requirements set out in Annexes VII and VIII to this Regulation."

Last updated:

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Link: