European Union Aviation Safety Agency

Basic Regulation

What does the EASA Basic Regulation apply to? How many extensions of the scope have there been?

Answer

The initial EASA Basic Regulation - Regulation (EC) No 1592/2002 of 15 July 2002 – included airworthiness and environmental protection of products, parts and appliances in the scope of European Union competence. It made the Agency responsible for the airworthiness and environmental certification of all aeronautical products, parts, and appliances designed, manufactured, maintained or used by persons under the regulatory oversight of EU Member States. Furthermore, the Agency was put in charge of the oversight of EU organisations involved in the design of aeronautical products, parts and appliances as well as of non-EU organisations involved in the manufacture or maintenance of such products. In these domains the Agency took over the certification tasks that were under the responsibility of Member States.

Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 extended the scope of Union competence to air operations, flight crew licenses and aircraft used by third country operators into, within or out of the Community. It also gave the Agency additional operational responsibilities. In the field of flight crew licensing, the Agency was made responsible for the approval and oversight of pilot training organisations and aero-medical centers located outside the territory of the Community; the certification of flight simulation training devices used by the training organisations it certifies, or located outside the territory of the Community, or located in the Community territory, if the member State concerned so requests. In the field of operations, the Agency was given the power to determine corrective actions and disseminate information to react without undue delay to a problem affecting the safety of air operations. Regarding third country operators, the Agency is competent for the authorisation and oversight of commercial operators; for the oversight of non-commercial operators, when they need to declare their activities; and for the authorisation of third country aircraft when they or their crews do not comply with ICAO Standards.

The scope of EU law and the Agency' responsibilities were further extended by Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009. The provisions of the Regulation are the basis for precise, uniform and binding rules for aerodrome operations and operators, air traffic management and air navigation service provision. With the

extension to ATM/ANS, the Agency was empowered to take the necessary measures related to certification and oversight of Pan-European and third country ATM/ANS organisations, as well as for the air traffic controllers' training organisations located outside the territory of the Community.

The entry into force of Regulation (EU) 2018/1139 of the European Parliament and of the Council on 11 of September 2018 consolidated the scope of European Union competence to cover the full spectrum of the aviation landscape and reinforce the European aviation system as a whole.

The Basic Regulation now applies to all unmanned aircraft irrespective of their operating mass. The only exception are certain small tethered aircraft in Annex I of the Basic Regulation which will remain under national competence.

The Basic Regulation was also extended to ground handling services.

The Basic Regulation also explicitly includes the design of airspace structures – which is not considered as a service but a specific Member State function.

The Basic Regulation continues not to apply to aircraft while carrying out military, customs, police, search and rescue, firefighting, border control, coastguard or similar activities or services, nor to several aircraft mentioned in Annex I to the Basic Regulation.

However, a novelty of the new Basic Regulation is the introduction of the possibility for chnages in scope due to the operation of several opt-in and opt-out possibilities.

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What is the scope of the Basic Regulation regarding aerodromes foreseen under Article 2(1)(e)?

Answer

The definition of which aerodromes are included is slightly changed in relation to the previous regulation. The requirements for aerodromes to be open to public use and serve commercial air transport remain the same. But the remaining criteria have slightly changed.
The new Basic Regulation applies to the design, maintenance and operations of aerodromes - and the safety related aerodrome equipment used thereon – that:

- are open to public use;

- serve commercial air transport; and:
- have a paved instrument runway of 800 m or more, or exclusively serve helicopters using instrument approach and departure procedures.

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What are Opt-ins and Opt-outs?

Answer

Opt-in and Opt-out are ways to refer to certain provisions in the new Basic Regulation (NBR) that allow for flexibility in its scope. An Opt-in refers to a situation where a product or activity there would normally be excluded becomes subject to the scope of the Regulation; the opposite case is referred to as an opt-out.
The new Basic Regulation provides for 2 Opt-in and 2 Opt-out possibilities.

- Opt-in for state operations/aircraft (article 2(6) NBR).
- This opt-in allows Member States (MS) to decide to apply EASA rules to activities that are normally excluded by article 2(3)(a) NBR – military, customs, police, search and rescue, firefighting, border control, coastguard or similar activities or services.
- Opt-in for Annex II aircraft (article 2(4) NBR).
- This opt-in allows a design organization to choose to have the design, production and maintenance of a new product to be subject to EASA rules, when that product would normally be excluded from the scope of the NBR through article 2(3)(d).
- Opt-out for light aircraft (article 2(8) NBR).
- This opt-out allows MS to decide to exclude certain manned light aircraft from the scope of the EASA system, making them subject to their national rules. The opt-out will not create obligations for other MS.
- Opt-out for ‘small’ aerodromes (article 2(7) NBR).

This opt-out allows MS to decide to exempt the design, maintenance and operations of certain aerodromes from the EASA rules, when that aerodrome handles no more then than 10 000 commercial air transport passengers and 850 cargo operations per year.

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Does the opt-in possibility for Annex I aircraft referred to in Article 2(4) apply also to air operations and air crew licensing?

Answer

The opt-in in Article 2(4) does not cover air operations and air crew, but only design, production and maintenance of the aircraft concerned. So for aircraft to which this opt-in applies, the Basic Regulation will apply to airworthiness (design, production, maintenance), but for the air operations and licensing areas the aircraft will remain excluded from the scope of the Regulation, meaning that national rules will apply. So the situation would be as under the initial Basic Regulation (Regulation (EC) 1592/2002), where the rules were harmonised in the airworthiness field but air operations and air crew licencing remained under the national competence (without mutual recognition).

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What is the opt-in for state operations/ aircraft? What is the opt-in for military aircraft?

Answer

One of novelties introduced by the new Basic Regulation is the possibility for member States to decide to apply the Basic Regulation to aircraft performing State activities (military, police, coast guard, firefighting, search and rescue and other similar operations and services), which would normally be subject to national rules.

The main advantage of the opt-in is that once the aircraft are in the EASA system, they would benefit from mutual recognition of certificates, and therefore move more freely within the EU, enjoy international recognition, and increase their market value.

In relation to this opt-in, the important elements to highlight are its voluntary and modular nature - the decision to apply the BR, and the extent to which it is applied remains in the hands of the Member States. This means that the opt-in does not need to extend to the full EASA system

system (from airworthiness, maintenance and production to OPS and licensing) nor to the full range of State operations under the responsibility of the Member States:

- A Member State may decide to opt-in for police operations, but not for search and rescue;
- Equally, the Member States may decide to opt-in for a certain category/type of aircraft and not for others (eg, opt-in for rotorcraft but not for fixed wing);
- Finally, a Member State may decide to opt-in for one area of the EASA system and not for others (e.g. opt-in for the airworthiness of the aircraft but not for the operations).

It is important to highlight in relation to modular opt-ins (for instance restricted to airworthiness or OPS/licensing) that within each area the opt-in has to be complete – it is not possible to opt-in for initial airworthiness but not for the continued airworthiness/maintenance of the aircraft, for example. Another important element to highlight is that in certain cases there will be the need for specific measures to address risks created by the disconnection from the total system approach – e.g. if a Member State opts-in for the airworthiness/maintenance but not for the operations, appropriate measures need to be put in place to ensure the continued airworthiness of the aircraft.

Due to this modularity, each opt-in case will be different from the next, and requires an individual approach.

The Basic Regulation establishes only one condition for the opt-in, which is that the provisions covered by the opt-in can be effectively applied. The formalities needed to implement the opt-in are simple:

- The Member State needs to issue a decision; from the date of that decision, the opt-in applies immediately;
- The Member State then notifies this decision to the Commission and the Agency, together with relevant information;
- The Commission, after consulting the Agency, establishes whether the condition for the opt-in is fulfilled. If it is not, then the Commission issues a decision. Once notified, the Member State needs to modify or revoke its decision.

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In the context of the exclusion of some operations from the scope of the Basic Regulation - such as military, police, coast guard and search and rescue operations - how to interpret the sentence in Article 2(3)(a) “similar activities or services under the control and responsibility of a Member State,

undertaken in the public interest by or on behalf of a body vested with the powers of a public authority"?

Answer

The purpose of this sentence is to extend the exclusion of the application of the Basic Regulation to other type of operations not specially mentioned in Article 2(6), but that share some of the same characteristics. Looking at the operations that are specifically mentioned (military, coast guard, search and rescue, etc), they have in common the fact that they are performed in the service of public interest – which may sometimes require the operators to assume different levels of risk than those foreseen in the Basic regulation for normal civil operations.
The Basic Regulation clarifies that such activities and services should be carried out **"under the control and responsibility of Member State and undertaken in the public interest by or on behalf of a body vested with public authority powers** (Article 2(3)(a)). The Regulation does not further define the terms "under the control and responsibility of MS and "undertaken in the public interest" – this leaves the responsibility for determining whether a certain activity falls within the scope of the Basic Regulation, in the hands of the Member States, as part of their general duty to implement EU Law. The Agency will monitor the exercise of this responsibility by the Member States as part of its standardisation responsibilities under the Basic Regulation. In our view the different wording only clarifies already existing practice and should not change substantially the approach towards state services/activities.

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What are the differences between an implementing act and a delegated act? Have any delegated acts been adopted?

Answer

The Lisbon Treaty makes a distinction between two sets of Commission implementing rules – implementing acts (IA) and delegated acts (DA). Delegated and implementing acts are subject to different procedures for their adoption. More information on these two types of act can be found in the European Commission's website (https://ec.europa.eu/info/law/law-making-process/adopting-eu-law/implementing-and-delegated-acts_en#documents).

It is also important to highlight that this difference in procedure for the adoption of DA and IA at Commission level does not affect the EASA rulemaking procedure, which will remain the same regardless of the type of act that will in the end be adopted.

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What will happen with the exemptions granted by Member States under Regulation (EC) 216/2008 Article 4(3b)?

Answer

Exemptions granted under Regulations 216/2008 **will remain valid** according to article 2(7) and supported by recital 8.

The Basic Regulation requires Member States to notify the Commission and the Agency the exemptions previously granted under Article 4(3b) of Regulation 216/2008 to ensure transparency and legal certainty – this is merely informative, no additional assessment against the requirements of the new BR is required.

Under Regulation 2019/1139 Member States can continue to exempt certain aerodromes from the scope of the Regulation, however now Member States must follow stricter requirements – in order to grant an exemption, they need to ensure that the exemption does not endanger compliance with the essential requirements.

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Which kind of measures can the Commission apply against the National aviation authorities who do not comply with their obligations deriving from Regulation (EU) No 2018/1139 and of the delegated and implementing acts?

Answer

The implementation of the Basic Regulation and its implementing rules by Member States is subject to the European Union oversight. According to Article 85 of the Basic Regulation -

Monitoring of Member States - the Agency shall assist the Commission in monitoring such implementation by conducting standardisation inspections and monitoring activities. Upon the standardisation inspection the Agency establishes an inspection report where it addresses findings identified during the inspection and which will be sent to the Member State concerned and to the Commission. In cases of non-compliance, the Commission may initiate an infringement procedure.

Additionally, in accordance with Article 67, the Commission, on its own initiative or at the request of a Member State or the Agency, may initiate a comitology procedure to decide whether a certificate issued or declaration made in accordance with the Basic Regulation or of delegated and implementing acts adopted on the basis thereof, effectively complies with them. In case of non-compliance, the Commission shall require, based on a recommendation of EASA, the Member State responsible of the oversight of a certificate to take appropriate corrective action, such as limitation or suspension of that certificate. Moreover, once the Commission issues such a decision, the obligation of mutual recognition of certificates ceases to apply to the other Member States. Once the Commission has sufficient evidence that appropriate corrective action has been taken, it will decide that mutual recognition shall be restored.

The oversight support mechanism in Article 66 is a new mechanism foreseen in the Basic Regulation meant to deal with situations where the Member State has shown a serious and persisting failure in complying with the safety provisions; in other words, it is a tool to react to immediate safety concerns. Article 66 of the Basic Regulation provides that in certain cases and only when the conditions described in the article the Commission can request the Member State concerned and EASA to establish jointly a temporary technical assistance programme, where the Agency would help the Member State to restore the acceptable level of safety. In accordance to Article 66 (2), during the oversight support programme, the Member State and the Agency would work together and the operations in the affected Member State can continue while the deficiencies are corrected, hence no negative impact to the aviation industry in the concerned Member State.

It is also important to note, that differently to Articles 64 and 65 of the new Basic Regulation, the support mechanism does not result in reallocation of responsibilities for the tasks related to certification, oversight and enforcement. This means that even during the oversight support programme, the Member State concerned remains responsible for its tasks, Article 66 (2).

While the Commission has a power to request that the Member State concerned and EASA establish an oversight support programme and the Member State concerned should make all possible efforts to restore its ability to perform its tasks, the article also provides a Member State a possibility to step out from the programme. If the Member State concerned recognises that the programme cannot be successfully implemented as planned, it should inform the

Commission, and either reallocate responsibility for the certification, oversight and enforcement tasks to which the deficiencies pertain to the Agency or another Member State, or take other measures to resolve the deficiencies (Article 66(4).

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What is the 'Basic Regulation'?

Answer

The 'Basic Regulation' is Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91.

Under the EU legal order, the Basic Regulation has general application. It is binding in its entirety and directly applicable in all Member States. The main objective of the Basic Regulation is to “establish and maintain a high uniform level of civil aviation safety in the Union” — Article 1(1).

The Basic Regulation sets the legal basis for the creation of EASA, defines EASA’s competences and establishes the scope of common aviation safety requirements. For that purpose, the Basic Regulation confers on the European Commission the power to adopt implementing and delegated acts which detail how to comply with the essential requirements of the Basic Regulation and regulate the subject matters included in its scope, in particular airworthiness, aircrew licensing, environmental compatibility related to products aircraft operations including third-country operators, ATM/ANS including air traffic controllers licensing, aerodromes and ground handling, and unmanned aircraft.

The Agency assists the Commission in the preparation of proposals for amendments to the Basic Regulation and of detailed delegated and implementing acts (Article 76). The documents that the Agency submits to the Commission for those purposes take the form of opinions, which are published on the EASA website.

Further FAQs on the Basic Regulation

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https://www.easa.europa.eu/en/faq/19107

Under which provisions of the EASA Basic Regulation (Regulation (EU) 2018/1139) is a reallocation of responsibility between a Member State (MS) and EASA possible?

Answer

Two articles allows such reallocation of responsibility:

- Article 64: Reallocation upon request of MS, and
- Article 65: Reallocation upon request of organisations operating in more than one MS.

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https://www.easa.europa.eu/en/faq/136768

Where can I find additional information and explanations on the reallocation of responsibility pursuant to Article 64 or Article 65 of EASA Basic Regulation (Regulation (EU) 2018/1139)?

Answer

Additional information on the applicability of these Articles as well as detailed explanations of the processes to be followed should be requested to the following email: aoc [at] easa.europa.eu

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Link:
https://www.easa.europa.eu/en/faq/136769

Which approvals can benefit from Article 64 and Article 65 of EASA Basic Regulation (Regulation (EU) 2018/1139)?

Answer

Answer

Approvals issued by Member States such as Continuous Airworthiness Maintenance Organisations (CAMO), Air Operator Certificates (AOC) and Approved Training Organisations (ATO) may be subject to such a reallocation of responsibilities.

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Are the Article 64 and Article 65 of EASA Basic Regulation (Regulation (EU) 2018/1139) available for initial issuance or for existing approvals?

Answer

The provisions of Article 64 and Article 65 are available both for initial approvals and for already existing approvals.

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https://www.easa.europa.eu/en/faq/136771