European Union Aviation Safety Agency

FAQ n.70138

FAQs:

Basic Regulation, Regulations

Question:

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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