

Acceptable Means of Compliance (AMC)
and
Guidance Material (GM)
to Commission Implementing Regulation (EU)
2017/373

Initial Issue
8 March 2017¹

¹ For the date of entry into force of this issue, kindly refer to Decision 2017/001/R in the [Official Publication](#) of the Agency.

Table of contents

AMC/GM TO COMMISSION IMPLEMENTING REGULATION (EU) 2017/373	3
GM1 Article 1 ‘Subject matter’	3
GM1 Article 2 ‘Definitions’	3
GM1 Article 4(5) ‘Competent authority for certification, oversight and enforcement’	3
GM2 Article 4(5) ‘Competent authority for certification, oversight and enforcement’	3
AMC1 Article 4(8) ‘Competent authority for certification, oversight and enforcement’	3
AMC1 Article 5 ‘Powers of the competent authority referred to in Article 4’	4
GM1 Article 6 ‘Service providers’	4
GM1 Article 10 ‘Entry into force’	4

AMC/GM TO COMMISSION IMPLEMENTING REGULATION (EU) 2017/373

GM1 Article 1 ‘Subject matter’

SCOPE

In reference to the ‘scope’, please refer to GM1 ATM/ANS.OR.A.001 ‘Scope’.

GM1 Article 2 ‘Definitions’

GENERAL

- (a) Article 3(q) of Regulation (EC) No 216/2008 defines ATM/ANS as ‘the air traffic management functions as defined in Article 2(10) of Regulation (EC) No 549/2004, air navigation services defined in Article 2(4) of that Regulation, and services consisting in the origination and processing of data and formatting and delivering data to general air traffic for the purpose of safety-critical air navigation’.
- (b) It should, therefore, be noted that ‘ATM/ANS’ includes more services and functions than ‘air traffic management’ and ‘air navigation services’ together.
- (c) It is important to note that ATS is included in ATM and ANS.
- (d) As already defined, ‘ATM network functions’ refers to functions performed by the Network Manager in accordance with Regulation (EU) No 677/2011.

GM1 Article 4(5) ‘Competent authority for certification, oversight and enforcement’

SEPARATION AT THE FUNCTIONAL LEVEL

‘Functional level separation’ means that a competent authority may be engaged in operational activities and the oversight of organisations in the same domain, provided that the different functions are clearly separated and that the organisational governance ensures effective oversight by avoiding conflicts of interest by personnel and preventing their engagement in operational activities of the entities that they are meant to oversee. This could be achieved by applying appropriate management and control mechanisms.

GM2 Article 4(5) ‘Competent authority for certification, oversight and enforcement’

SEPARATION AT THE FUNCTIONAL LEVEL

When achieving independence between the competent authority and the service provider(s) through functional level separation, the Member State should ensure that:

- (a) the responsibility for the service provision and the responsibility for the certification, receipt of declarations and oversight activities are allocated to separate personnel;
- (b) the former should not have any control over the latter; and
- (c) this happens within a just culture environment.

AMC1 Article 4(8) ‘Competent authority for certification, oversight and enforcement’

REGULARITY OF THE ASSESSMENT CARRIED OUT BY THE COMPETENT AUTHORITY

The competent authorities should establish, and update every two years, an assessment of the resources needed to effectively exercise their certification, oversight and enforcement tasks under this Regulation, based on an analysis of the processes and other measures necessary to that end.

AMC1 Article 5 ‘Powers of the competent authority referred to in Article 4’
ASSESSMENTS AND INVESTIGATIONS

Investigations and assessments should include tests and exercises as determined by the competent authority.

GM1 Article 6 ‘Service providers’
PROVISION OF ATFM AND/OR ASM

- (a) In most cases, the provision of ATFM and/or ASM takes place in a bundled service performed by the ATS providers. However, the provision of ATFM and/or ASM as a bundled service is not a legal requirement.
- (b) Initially under the single European sky (SES) I initiative in 2004 with the adoption of Regulation (EC) No 549/2004, functions were not subject to certification; they were only subject to continuous oversight. This difference between functions and services was removed in the 2009 with the SESII initiative and the amendments to Regulation (EC) No 216/2008 (the EASA Basic Regulation), with the effect that the two concepts now have an identical certification and oversight regime.

GM1 Article 10 ‘Entry into force’
DAT PROVIDERS

In respect of DAT providers, Regulation (EU) 2017/373 applies from 1 January 2019.

However, DAT providers are allowed, on a voluntary basis, to apply for, and be granted, the relevant certificates upon the entry into force of this Regulation (before 1 January 2019).

Where a DAT provider makes use of this possibility and is issued a certificate, it is bound by the applicable requirements of this Regulation.

Until 1 January 2019, DAT providers may continue to apply for the issuance of a Letter of Acceptance (LoA) by the Agency, in accordance with the terms and conditions set out in EASA Opinion 1/2005 issued on 21 January 2005.