

**Comment Response Document (CRD)
to Notice of Proposed Amendment (NPA) 2007-16**

**Extension of the EASA system to the regulation of Air Traffic Management and Air
Navigation Services (ATM/ANS)**

Explanatory Note

I. General

1. Vice-President Barrot, in his forward to the final report of the High Level Group¹ (HLG) requested that the European Aviation Safety Agency ("the Agency") be able to cover the entire aviation safety chain in a total system perspective, the so-called EASA System. To achieve this, it is necessary to amend 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 a European Aviation Safety Agency (the Basic Regulation²) in order to extend its scope to air traffic management and air navigation services (ATM/ANS).
2. According to the Basic Regulation, such amendment has to be prepared by the Agency, whose proposals are issued in the form of EASA Opinions. The objective of the present rulemaking activity, whose scope is outlined in ToR BR.003³ and is described in more detail below, is to prepare this EASA opinion.

II. Consultation

3. As a first step in the execution of this task, Notice of Proposed Amendment (NPA) 2007-16⁴, dated 30 November 2007 proposed an approach to incorporating air traffic management and air navigation services (ATM/ANS) into the EASA system.
4. A shortened consultation was necessary to help the Commission meet its objective of issuing a package of legislative proposals⁵ mainly addressing air traffic management and air navigation services by June 2008. As the concerned stakeholders were already subject to Community legislation in this field and as the main changes envisaged under this rulemaking process primarily affected service providers, which are well established and organised legal persons, the Agency considered that they would be able to react in due time despite the shortened consultation period. Moreover it noted that the Commission proposals would have to undergo the co-decision procedure, which provides ample opportunities for all stakeholders to make their views known and to defend their interests during the legislature.
5. By 21 January 2008, at the end of the consultation period, the Agency had received 1860 comments from 114 National Aviation Authorities, professional organisations and private companies.

¹ http://ec.europa.eu/transport/air_portal/hlg/doc/2007_07_03_hlg_final_report_en.pdf

² 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 a European Aviation Safety Agency. *OJ L 240, 7.9.2002, p. 1*. Regulation as last amended by Regulation (EC) No 334/2007 (*OJ L 88, 29.3.2007, p. 39*).

³ <http://www.easa.europa.eu/doc/Rulemaking/ToR%20BR.003.pdf>

⁴ <http://www.easa.europa.eu/doc/Rulemaking/NPA/NPA%202007-16.pdf>

⁵ Commission Communication COM(2007) 845 final of 20 December 2007 announced legislative proposals for a second Single Sky package, the extension of the EASA competencies (to airports, air traffic management and air navigation services) and the SESAR Master Plan.

III. Publication of the CRD

6. All comments received were reviewed by the Agency assisted by external experts in order to ensure their fair and efficient treatment. They are acknowledged and incorporated into this Comment Response Document (CRD) with the responses of the Agency.
7. To facilitate understanding, the comments directly answering the 10 specific NPA questions were analysed together. This enabled the Agency to draw the global provisional conclusions, which are developed in the next chapter of this document. Of course, for transparency purposes, an inventory of answers has been made for each question; it contains all answers (by the registered name of the commenter) grouped according to their nature, thus enabling stakeholders to verify that their views have been taken into account. The inventories are attached to this CRD.
8. All the other comments have been analysed individually. A standard terminology has been applied to attest the Agency's position on the comment. This terminology is as follows:
 - **Accepted** – The comment is agreed by the Agency and any proposed amendment is wholly transferred to the revised text.
 - **Partially Accepted** – Either the comment is only agreed in part by the Agency, or the comment is agreed by the Agency but any proposed amendment is partially transferred to the revised text.
 - **Noted** – The comment is acknowledged by the Agency but no change to the existing text is considered necessary.
 - **Not Accepted** - The comment or proposed amendment is not shared by the Agency

The table of comments and answers can be found at the end of this document.

9. This CRD is only one element of the rule shaping process and does not constitute a formal EASA proposal. It will be followed by a formal EASA Opinion, which in turn will contribute to the development of the Commission's legislative proposals.
10. The Agency's Opinion, including revised Essential Requirements (ER's), shall be issued as soon as possible in April 2008 to accommodate the Commission's calendar. Reactions of stakeholders regarding possible misunderstandings of the comments received, as well as envisaged conclusions, can be sent to the Agency no later than 4 April 2008 and should be submitted using the Comment-Response Tool at <http://hub.easa.europa.eu/crt>.
Note: Any reactions to the Appendix 'Inventory of Answers' should be placed under 'General comments' with a clear reference to the paragraph you wish to place your reaction on.

IV. Conclusions drawn from received comments

General

11. A lot of comments have been received by the Agency from almost all the national aviation authorities - NAA - and the major stakeholder groups. Therefore, it is fair to consider that overall this consultation provides a sound basis for the Agency to prepare the subsequent deliverables of its rulemaking process. However, there are some areas where the feedback was not as comprehensive as the Agency would have wished; especially that of small and medium sized actors or those providing services for the major stakeholders. Although the most important ones have replied, the comments received from the industry manufacturing systems and constituents may not be sufficient in quantity and substance to draw definitive conclusions. The rather short consultation period most likely contributed to this situation, unless these actors did not feel directly affected by the content of the NPA.

General views and the way forward

12. Comments on the whole reflect a strong consensus for the total system approach for safety regulation covering all fields of aviation and support the principle of using the EASA system to achieve this.

SES versus EASA framework

13. However, numerous comments from stakeholders reflect their surprise as regards the solution proposed to implement this concept. They consider indeed that the Single European Sky (SES) framework has operated fairly well and recall that NSA's and service providers have invested a lot on the implementation of the existing rules; therefore they do not see the need to transfer safety regulation to another institutional structure. Some seem to suggest that instead of amending the Basic Regulation, the safety regulatory role of the Agency could be embedded in amended SES regulations. The safety regulatory role comprising the preparation of implementing rules and possibly the execution of some other tasks related to standardisation inspections and certification could be addressed in this manner.
14. The Agency recognises that such an approach is theoretically feasible. However, a major drawback in doing so would be to maintain two channels for safety regulation and consequently a questionable distinction between ATM/ANS and other aviation activities. This would not be in line with the total system approach, which was strongly advocated by the HLG⁶ and endorsed several times by the Commission and the aviation community. As explained in the NPA, implementing the total system approach certainly implies the use of the EASA system for ATM/ANS safety regulation. In that context, it was also clarified that the implementing rules of the future extended Basic Regulation would build on the SES Regulations, their implementing rules and EUROCONTROL ESARRs to provide for a seamless transition from the SES to EASA framework, as this has been done in previous transfers from national to EASA rules.
15. Nevertheless, to ensure transparency, both options will be further assessed in the Regulatory Impact Assessment, which will be attached to the upcoming Opinion, so as to support the final Agency proposal.

EASA's role

⁶ Recommendations 1, 3, 7 and 8 in the final report

16. The comments received also show serious misunderstanding as regards the potential "remit of EASA" as suggested by the NPA. First, it is not always understood that in the EASA system the tasks are distributed, by the legislator, between the community and national levels and that there is no intention to give the Agency the roles of the NAA. For most of their enforcement functions, doing so would meet with insuperable institutional obstacles. As a consequence, the role of NSA's, as it is now developing under the SES framework, should not be affected by the extension of the EASA system to ATM/ANS, except for the oversight of a few pan-European service providers if the legislator so decides.
17. Second, it has to be clear that it is not intended to go beyond what is necessary for ensuring the safety of operations. To do so, as explained in the NPA, it is necessary to address some aspects of interoperability as this is being done in the ICAO system itself. This is a fundamental part of the EASA system since its establishment by the European legislator in all other domains of aviation safety regulation. This implies the capability for any air operator, including pilots, to interact between themselves and with any system or persons providing a service on the ground, independently of who they are and where they are. This does not cover the vast majority of SES implementing rules related to the inter-connexion of ground systems, whose objective is to delete technical borders affecting the overall capacity of the pan-European ATM network and are therefore related to performance rather than safety.
18. Last, the Agency does not in any way intend to become an airspace planner, designer or manager. However, it should be recognised that capacity or efficiency driven objectives have implications on safety and that it is legitimate that the EASA system be involved to address ways and means to elaborate and implement the necessary mitigating measures. This does not mean that EASA claims being the decider. The NPA only intended to draw the attention to the need to put in place mechanisms to arbitrate between conflicting objectives, such as for instance the Commission, assisted by the SES Committee, to seek the technical opinion of EASA as regards safety implications when making such decisions.

The military dimension of ATM

19. Many comments query the absence of reference to civil-military coordination in the NPA. The Agency wants to recall that the Basic Regulation only encompasses civil aviation safety and explicitly excludes aircraft engaged in State missions. The interpretation of this has been more or less identical in the EASA system and the SES framework – the decisive criterion is the nature of the operation, not the registry. Civil-military coordination implies arbitration between various, possibly conflicting, objectives. This would be better left to a body with the power to make this kind of political choices. The Agency does not see itself in a position to be directly involved in such a function. Therefore, it assumes that the civil-military interface will continue to be handled in a similar way as the SES framework does. Moreover, the NPA clearly states that ATM/ANS services provided to any civilian airspace users have to be safe and regulated accordingly, independently of who the provider is. This applies of course to military organisations providing services to civilian users and is consistent with the principles already established by the SES framework. This does not exclude ad-hoc adaptations on a case-by-case basis when it can be demonstrated that an equivalent level of safety can be achieved by other means.

Safety objectives

Content of the Essential Requirements

20. The NPA asked if stakeholders considered the proposed draft Essential Requirements ("ER") as a good basis for the regulation of the safety and interoperability of ATM/ANS. The Agency also welcomed suggestions to improve them. As a general comment, most NSA's and service providers express very critical views, simply justified by referring to a hypothetical incompatibility with the SES framework, often without developing the reasons for these concerns. Regarding these comments, the Agency feels that the feedback should be read in conjunction with the general misunderstandings related to the overall purpose of the NPA mentioned in paragraph 13. It is certainly correct that there would be no need for ER if it were decided to renounce to the extension of the EASA system and only extend the scope of EASA's activities to supporting the Single European Sky implementation. However, it could be questioned reciprocally whether the Single European Sky package of legislation establishes a proper basis for the safety regulation of ATM/ANS.
21. Several comments then criticize that the draft ER were already covered in existing SES regulations or that their scope was broader than the scope of those rules, which was thus regarded as unacceptable. The Agency finds it difficult to share such views, since it is understood that SES regulations indeed do not contain any systematic safety objectives, as pointed out for example in the EUROCONTROL PRC reports. Therefore, the objective of this envisaged legislative process is indeed to establish a sound framework for regulating ATM and ANS safety, by establishing common safety objectives in a performance based approach that will provide for a robust basis for safety management by all actors involved.
22. In this context, the Agency wishes to underline that protecting the safety of citizens through ER approved by the highest political institutions is a well established principle⁷ for regulating product safety. This "new approach" has been considered when establishing the SES⁸. The same philosophy has been adopted by the European legislator for all aviation safety critical services covered so far by the EASA system. The same approach has been accepted by stakeholders for the regulation of the safety of aerodrome operations. It therefore seems to be the commonly agreed approach at European level to addressing safety issues for many human activities. Excluding ATM/ANS from this would need serious justification.
23. Some other comments question the need for Essential Requirements considering that ICAO Standards already constitute a sufficient legal basis for action in the field of ATM/ANS. Such views seem to reflect a certain misunderstanding of the Community system. The constant interpretation of the EC Court is that the Community is not bound by the international commitments of its Member States. To be bound, the Community needs to adopt such commitments into its internal order. This is one of the aims of the NPA proposal: to issue dedicated Essential Requirements, which reflect the substance of ICAO Standards, as well as other objectives that the Community legislator thinks appropriate to ensure the safety of air traffic. The EASA Basic Regulation becomes then the Community act adopting ICAO Standards related to the safety of ATM/ANS at once for all its members, as it has been done for all other sectors of civil aviation safety. Such transposition through Essential Requirements constitutes thereafter the basis for detailed implementing rules, which will reflect as appropriate more detailed requirements included in ICAO Standards and recommended practices.

⁷ Council Resolution of 07 May 1985 on a « new approach » to technical harmonisation and standards (OJ C 136, 04/06/1985, pages 01-09)

⁸ Recital (2) of Regulation (EC) No 552/2004 of the European parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (OJ L 96 of 31/03/2004, pages 26 – 42)

24. Some comments finally question the way the draft Essential Requirements reflected the need for regulated organisations to develop and implement a Safety Management System. The Agency agrees that imposing such systems is necessary, but just referring to them is not sufficient. The law must describe what this implies, so that regulated persons know what they need to do to comply. When doing so, the Agency considered not appropriate to specifically call such systems as safety management systems at the level of the basic law, since safety is only one of the management objectives of these organisations. They shall be entitled to decide on the management system best adapted to their activity, as long as they cover the specific needs for safety management. Moreover, the Agency firmly believes that it is not enough to require that the organisations involved in safety critical ATM/ANS service provision have appropriate safety management processes in place, but they must also ensure that their products and services comply with safety objectives imposed on them.
25. Subsequently, it was not possible to amend the proposed Essential Requirements based on identical generic comments that did not provide justification or recommendation on how the ER should be improved. The same applies to the requests to make ER either more general or more detailed in their nature. Since the safety objectives have to be clear enough to allow for necessary political and judicial control but must not impose a disproportionate burden on the small organisations covered by the scope of such legislation, it was not possible to take into account these comments without counter proposals that could be analysed.
26. In many answers stakeholders request further information and state that further work is needed on the draft Essential Requirements. Although the pure quantitative analysis showed a reasonable support to the draft as it stands in the NPA, the perceived lack of information led most of them to consider the proposed text as non mature. The Agency is naturally committed to producing high quality Essential Requirements, even if it is necessary to revise their wording in detail. For this reason the Agency staff assisted by external experts have carefully analysed all the comments, with a specific attention to many informed proposals and justifications. It is already apparent in the responses to comments contained in this CRD, that many improvements will be introduced to the drafting of the Essential Requirements. The Agency is thankful for these comments which allow it to improve its initial draft.

Nature of the concept of operation

27. Using the NPA, the Agency tried to clarify the nature of the concept of operations, since setting essential requirements applicable to it would imply the identification of the legal or natural persons subject to them. Therefore, the Agency asked whether stakeholders regarded deciding on a concept of operations to be a governmental function or to be a service, whose provision could be entrusted to an organisation.
28. The wide diversity of responses indicates a significant degree of uncertainty regarding the definition of the term "concept of operations". A majority of stakeholders expresses the view that deciding on the concept of operations is mainly a governmental function, because it can potentially limit the rights of airspace users; consequently, such decision could not be left to organisations or persons with vested interests in the field. At the same time, many indicate that rules governing a concept of operations are not only related to safety but also contain different objectives related to capacity, efficiency and interoperability; they conclude therefore that arbitration between such potentially conflicting objectives is of a political nature and should be exercised at the appropriate political level. As explained in paragraph 18 above, the Agency agrees with this conclusion. These comments would lead to concluding that most of the Essential Requirements related to the concept of operations contained in italics in the NPA cannot be maintained there as they would not apply to regulated persons. They should instead be transferred into the articles of the Basic Regulation as conditions put by the

legislator for the exercise of the powers it delegates to the appropriate executive bodies (Commission or Member States, as the case may be). Deciding on which bodies are the best placed to exercise these powers extends well beyond the scope of an EASA rulemaking activity.

29. However, quite a few stakeholders considered that this function is a mix of regulatory and service provision tasks. If such is the case, it is necessary to identify in detail what the service provision activities are, in order to tailor the Essential Requirements necessary to mitigate the related risks. Unfortunately, the comments received do not provide the necessary level of detail. Therefore, the Agency needs some more time to further develop its analysis and identify what these service provision tasks are and who should be responsible for their execution. When doing so, it will be necessary to draw a clear distinction between Airspace Management, Airspace Design and Air Traffic Flow Management. There seems to be indeed overlaps that confuse the discussion.
30. As a first step, it might be appropriate to consider that standard practices such as Flexible Use of Airspace or aircraft separation (RVSM or Area Navigation) are part of the concept of operations, while the actual decision related to the design of airspace blocks, including the concept to be used in such blocks, as well as route networks and sector design, would be part of airspace management. In the same vein, deciding on maximum capacity is probably part of the ATFM function, as it is related to the specifics of a given piece of airspace as well as to the decisions made on its management. The conclusions of this analysis will be included in the final EASA opinion, supported by a regulatory impact assessment.

Scope and applicability

Airspace

31. As stated in the NPA, regulating ATM/ANS through the Basic Regulation requires that the volume of airspace in which common rules apply be clearly defined in its scope. The approach of the NPA was to cover both the controlled and uncontrolled airspace, since safety objectives necessarily cover a different scope than capacity management. It is clear to the Agency that safety in uncontrolled airspace is provided for by the rules of the air contained in ICAO Annex 2⁹ that are similar to rules used to ensure the safety of road traffic. It would be surprising if the legal basis for the safety of air traffic did not include such basic principles. Also, some air navigation services; such as aeronautical information, communication and navigation services, are normally available in uncontrolled airspace. Moreover, general aviation is already covered by the Basic Regulation, including, in line with ICAO Annex 6, equipment to be carried and procedures to be followed for airspace use, which is already a step towards regulating ATM/ANS activities. This would bring the benefit of harmonising those rules of the air related to safety, which currently vary from State to State, constituting therefore a real safety threat by lack of interoperability.
32. The answers to the consultation indicate a fairly broad consensus in favour of the suggested scope. However, some stakeholders indicate their general disagreement to cover uncontrolled airspace. The reasons expressed, though, were linked to the misunderstanding on the Agency's role as described here above in paragraph 18. To answer these concerns, the Agency insists that it does not envisage having a role in the management of airspace, such as determining the limits of controlled airspace or

⁹ It is recognised that all elements contained in ICAO Annex 2 are not directly related to air safety and therefore will not be covered by the EASA system.

arrangements for military training. As stated several times in the NPA, the Agency's role will be limited to establishing common rules for safety. In addition, some stakeholders claimed that the wording in the NPA describing the airspace covered suggested broader application than in SES (i.e. to cover also the airspace over the high seas). This was certainly not the intention of the NPA, as in any case it is impossible to extend the territorial scope of the Treaty by a simple regulation. As in the SES framework, common rules will only apply in the territory where the Treaty applies and it will be for Member States to ensure consistency between such rules and those applicable in the areas of airspace where they exercise powers under ICAO. As a conclusion, the Agency intends to maintain the approach already suggested in the NPA.

Airspace users

33. The NPA assumed that regulating ATM/ANS requires that all airspace users are covered in the scope, since they must comply with safety related common rules of the air and will be subject to certain training and equipage requirements depending on the airspace used. This does not imply any changes to the Basic Regulation, whose article on applicability already covers operations into, within or out of the Community with aircraft registered in a Member State or in a third country.
34. The consultation did not bring about any major reservation from stakeholders on this aspect, except for a few general concerns. Many stakeholders raise the issue of military operations and their exclusion from common rules as established in SES. This subject was already addressed in paragraph 19 of this document. Some stakeholders also mentioned the specificities of general aviation and the need for its exemption from some requirements, for instance related to equipment. The Agency is well aware of the need for proportionality and will take it into account when developing requirements within its field of responsibility. However, concerning the example usually given, it draws the attention to the fact that equipage requirements are in most cases related to airspace capacity and performance, issues not regulated by the Agency.

Service providers

35. The NPA proposed that all ATM/ANS services be subject to common safety rules, as already established in the SES regulations. This principle is not contested in the consultation. However, many stakeholders emphasize the need to maintain the well proven ATM/ANS related definitions as established in the SES regulations. The Agency can concur with this remark. However, it believes that the revision of the EASA Basic Regulation and SES Regulations provides a good opportunity to improve these definitions in those cases where experience shows a specific need for it. This should naturally be done in a consistent manner between both legal frameworks.
36. The NPA then raised the issue of air space management (ASM) and air traffic flow management (ATFM) and asked stakeholders their views on the regulatory nature of these services (or functions), which are today covered by the SES regulations, but not subject to common requirements or any obligation to demonstrate compliance with them..
37. As regards ASM, the stakeholder responses are very diverse in their nature, but can be broadly categorised between those who think it is a regulatory activity, those who feel it should be considered as a service provision activity and those who feel it encompasses both, with the Member State authorities leaning towards its regulatory aspects. This result suggests that ASM embraces both regulatory and service provision aspects, by virtue of the presence of strategic, pre-tactical and tactical elements, all of which contain safety related elements.

38. As explained in the NPA and again emphasized in paragraph 28, there is a need to treat differently the various ASM elements. Firstly, the functions to be carried out at governmental level, for which the legislator has to designate and empower the proper executive bodies, and secondly those that can be executed by natural or legal persons, who will have to comply with the applicable essential requirements. As mentioned also in paragraph 28, the absence of consensus requires that further work is done before a dividing line can be proposed. It is the intention of the Agency to do so and to include its views in its final opinion, supported by a regulatory impact assessment. When doing so, it will consider the intentions of the Commission to establish a central network design and management function at the European level, which would centralise certain ASM functions of a European nature, such as the route network design and management. This function would be allocated to a body ('Network manager'), which could potentially be seen as a service provider and would therefore be subject to safety regulation.
39. Answers related to ATFM are similar to those related to ASM, except that the service provision nature of ATFM is more emphasized. For instance, only one Member State representative sees ATFM as being of a pure regulatory nature. As in the cases of ASM and the concept of operations, the Agency believes necessary to conduct further evaluation before it issues its opinion. When doing so, it will also examine the possibility that a natural or legal person be nominated to take over responsibility for the ATFM function, which would therefore be a safety regulated organisation. It will also examine the option that local or sub-regional ATFM functions be considered as service provision, regulated through specific essential requirements. Such a solution would be in line with the recommendations of the Double Regulation Ad-Hoc Group, an argument which was brought forward by several comments.

Systems and constituents

40. When it comes to the systems and constituents contributing to ATM/ANS service provision, the NPA asked whether the definition used in the context of the European Air Traffic Management Network ("EATMN") appropriately specifies those that needed to be regulated for safety purposes. Most stakeholders are against double definitions and support the existing definitions in Regulation No 552/2004. In many cases they also refer to the ongoing process to clarify these definitions through the EUROCONTROL Conformity assessment task force (CATF).
41. These reactions don't really answer the question as they don't bring any input to deciding whether any systems should a priori be excluded, establishing legal certainty. From this, the Agency can only conclude that all systems and constituents of the technical infrastructure of ATM/ANS, as defined by the EATMN, shall be subject to the safety requirements contained in the extended EASA Basic Regulation. As this may lead to over-regulation, it suggests that the need for regulation be identified on a case by case basis when developing the necessary implementing rules and that the principle of proportionality be tested through a regulatory impact assessment when doing so.

Personnel

42. As stated in the NPA, the Community act establishing Community powers in a given field must specify clearly whether some individual rights would be affected by such powers. This would be the case if meeting safety objectives required some persons to demonstrate that they satisfy minimum medical fitness and professional proficiency requirements. In the present system, this is only foreseen in the case of air traffic controllers ("ATCO").
43. A number of comments received indicate the need to regulate staff involved in safety critical ATS engineering professions and propose to include such a legal mandate in the

extended Basic Regulation. The Agency agrees that in the field of ATM/ANS there are indeed several technical tasks, which do contribute to the safe provision of such services. Therefore, as already indicated in the NPA, such personnel must be included in the scope of the Basic Regulation.

Organisations

44. In the NPA, the Agency asked whether organisations involved in the design, manufacture and maintenance of certain safety critical ATM/ANS systems and constituents should be directly regulated in order to relieve the responsibility of their users to verify and attest their compliance, when they do not have themselves proper means to do so. It was also asked whether the same would apply to third party organisations (notified bodies) involved in the conformity assessment of such systems or constituents.
45. The consultation does not bring very clear answers to this question and the views expressed are very diverse. Many stakeholders want to clearly distinguish the responsibilities of the different organisations (service providers, operators, designers, manufacturers and maintenance providers) and consider that such is already the case in the SES framework. It seems therefore obvious that a legal basis must be provided to allow such a distinction when appropriate. This is likely to be the case in a first instance for GNSS systems and complex satellite/ground communication networks, as very clearly indicated by the European Space Agency and the GALILEO Supervisory Authority. The Agency will therefore, as it did in its opinion on aerodrome safety regulation, suggest that provisions are included in the extended Basic Regulation specifying that the organisations involved in the design, manufacture, maintenance and conformity assessment of ATM/ANS systems and constituents may be required to demonstrate their capability for doing so.

Implementation means

46. This chapter deals with the implementation means. It details how compliance with the essential requirements should be demonstrated, discusses whether the Commission should issue implementing rules to clarify what the regulated persons must do to comply and which bodies should be responsible to oversee and certify such compliance.

Airspace users

47. The NPA described how the EASA system will address the regulation of air operators; such system, as required by Annex 6, will include requirements for airspace use. It suggested therefore using the same system to ensure compliance with ATM/ANS Essential Requirements, subject to ensuring consistency with the principle of subsidiarity when related to requirements decided at national level for implementing the concept of operations. It also indicated that such scheme would need to be complemented in order to meet ATM/ANS needs; in this context it mentioned the certification of non-commercial operators willing to engage in RVSM or area navigation operations. This approach is not contested; although some concerns are expressed on the need to take into account the peculiarities of general aviation (see above paragraph 34).
48. The Agency therefore will propose in its opinion that the mandate for the Commission to establish implementing rules on air operators be extended to cover also rules related to the implementation by airspace users of the ATM/ANS Essential Requirements. Such mandate will have to refer to the need for future implementing rules to take into account the powers left at national level for deciding on the concept of operations; it

shall also, as already prescribed in the Basic Regulation, recognise the need for proportionality with the type of operation and the complexity of the concept of operations. As it is already the case for other aspects of the certification of air operators, executive tasks should be for the national authorities, except for the oversight, and possible certification for ATM/ANS needs, of third country aircraft and operators which should be allocated to the Agency.

Service providers

49. The NPA suggested that because of the high level nature of the Essential Requirements, specific implementing rules will have to be prepared by the Agency and adopted by the Commission in order to ensure better legal certainty for the regulated persons. This is not challenged by stakeholders. They nevertheless draw the attention to the need to provide for continuity and coherence with the respective SES regulations. They also stress the need for proportionality of rules with the size and type of activity of the service provider. Many stakeholders also remind the Agency that such implementing rules should be developed fully respecting the principles of the so called "better regulation", building on broad consultation, transparency and impact assessment.
50. The Agency is totally committed to the above described objectives; it has recalled in the NPA that implementing rules must be built on the SES implementing rules and ESARRs so as to avoid unnecessary disruption; it is also already common practice in the EASA system to mandate the Commission to tailor its implementing rules to the nature of the activities they regulate; lastly, the principle of "better regulation" is enshrined in the Basic Regulation and constitutes therefore the basis for EASA rulemaking, as also attested by the present consultation.
51. The NPA further suggested that ATM/ANS service providers should be subject to certification to verify that they comply with the applicable implementing rules but, taking into account that all services provided are not safety critical, the NPA asked whether some activities should be exempted from certification or subject to alternative softer means to demonstrate their providers' capability, such as self-declaration. Stakeholders agree that ATM/ANS service provision must continue to be subject to certification as already established by the SES regulations. However, many stakeholders also indicate that certain low-risk services could be excluded from certification; the main examples given are those of Aeronautical Flight Information Services (AFIS), apron management and services provided by small and medium enterprises. Finally, a few stakeholders suggest that certification should occur only where a contestable market exists.
52. The Agency believes that these answers confirm the approach it has suggested in the NPA. It will therefore propose that ATM/ANS providers be subject to certification to verify compliance with the ATM/ANS Essential Requirements and rules taken for their implementation. However, it envisages proposing that providers of AFIS and apron management services be only subject to a declaration, so that competent authorities can verify compliance without the need to go through a disproportionate certification process; this should allow aerodrome operators, if they so wish, to provide such services in a flexible manner. The special case of SME's should be further considered when developing implementing rules. The Agency fails to understand nevertheless the suggestion that certification should be limited to services provided in a contestable market. It believes, indeed, that in line with the provisions of the Treaty, monopoly situations cannot justify that safety rules would not be applicable and enforced in a non-discriminatory manner. Moreover, Member States may have different views about what a contestable market is – competition for the market or competition in the market – which would lead to uneven treatment.

53. The NPA suggested that a single certificate should be sufficient for organisations to provide several services, so as to reduce the burden of oversight; in such cases, provided all services are subject to a single centralised management system, the number of oversight audits could be significantly reduced. Such single certificate would naturally specify the approved services and would not alter the obligation of the provider to develop and maintain manuals covering all the services it provides. The results of the consultation show that a vast majority of stakeholders support the single certificate concept. Many State authorities seem to consider that such is already the case under the existing SES certification and designation arrangements. These answers establish a clear way forward for the Agency to extend these principles, already part of the Basic Regulation, to cover also ATM/ANS service provision.
54. As numerous examples of cross-border provision of ATM/ANS services already exist in Europe and SESAR developments are likely to lead to building more pan-European services, the NPA suggested that the Agency be empowered to certify them centrally, for reasons of uniformity and efficiency, in particular in domains requiring specific expertise. This is what it already does for the certification of aeronautical products and that of their designers. A clear majority of stakeholders support the proposed role of EASA. Many feel that this should be limited to the services of a true pan-European nature, excluding cross-border ATS provision. A large number of stakeholders also emphasize the need for further clarification of the modalities related to such a certification scheme. Those stakeholders objecting mainly represent regional aerodromes from one Member State. Also only one authority from a single Member State objects to this proposal.
55. Based on this feedback, the Agency will propose in its forthcoming opinion that it should be the competent authority for the certification and oversight of organisations providing ATM/ANS services in the territory of more than three Member (or associated) States. Such a proposal should exclude normal cross-border ATS service provision and most likely also service provision covering the functional airspace blocks, arranged between States. It goes without saying that such certification schemes will be specified in more detail in Commission implementing rules referred to in paragraph 49.
56. As regards certification of service providers, the NPA explained that it is possible to allocate certification tasks to third parties acting under their own responsibility as executive bodies of Community law; such bodies are called "assessment bodies"¹⁰. In this context, it asked whether there would be support for establishing the legal basis allowing the development of such bodies in the field of ATM/ANS regulation, possibly for less safety sensitive services. If so, there would be a need to establish accreditation criteria and to designate the accrediting authorities. Comments received show that a majority of stakeholders is in favour of having assessment bodies for certain certification activities. They also consider that the accreditation of such assessment bodies should be done by the Agency. However, there is also a significant number of stakeholders who disagree with the use of assessment bodies. When it comes to identifying the services subject to this scheme, the answers from stakeholders are even more diverse and do not provide a clear way forward.
57. In that context, and considering the proposal in paragraph 52 that less safety sensitive services, such as AFIS and apron management, be exempted from certification, it might not be necessary to insist on establishing a third party certification scheme and the related accreditation of assessment bodies. This conclusion would be revised if it were ultimately decided that all ATM/ANS service providers must be certified.

¹⁰ Such bodies should not be confused with qualified entities. The assessment body holds its power from the Community and can be assimilated to a competent authority; the qualified entity is acting on behalf of a competent authority and does not hold itself any executive powers.

Systems and constituents

58. As already stated above in paragraph 41 there seems to exist a broad consensus to subject the ATM/ANS systems and constituents, as defined in the SES Regulations, to common safety requirements. Assuming such a conclusion, the NPA suggested that doing so would require issuing dedicated implementing rules and specifying appropriate conformity assessment processes, building on the SES system to avoid disruption. It then drew the attention to the possibility to implement separate certification schemes for certain safety critical systems and constituents, in order to reduce the responsibility of their owners or operators; it consequently asked whether stakeholders would support such a move. The answers to this question do not show a clear way forward. Most of the answers indicate that no separate certification scheme is needed, but at the same time support the total system approach.
59. There is a certain contradiction within such views. Ground and airborne constituents of the ATM/ANS systems are today regulated differently. This situation becomes even more impractical if looked at from the point of view of very complex systems, such as GNSS based services. This is understood by some well informed stakeholders, who provide a very good analysis of the problems raised from a technical and legal standpoint rather than from a political standpoint. The Agency intends to propose nevertheless in its opinion that separate certification schemes could be established, on a case-by-case basis, for certain significant systems, for which the service provider most likely does not have the necessary expertise to support their certification and manage subsequent changes. What systems and constituents should be eligible for such schemes, together with the details of the applicable scheme, would be specified in the future implementing rules, based on the regulatory impact assessment.
60. When doing so, care will have to be taken to avoid double regulation and to provide for consistency between certification processes related to safety and interoperability. In that context, the results of the comparative study on the EASA and SES regulatory frameworks, in which EUROCONTROL and EASA cooperate, will be a useful contribution.

Personnel

61. The approach suggested in the NPA for personnel involved in safety critical tasks in ATM/ANS service provision was broadly accepted by stakeholders. As an exception to this, a number of comments insist that ATS engineering personnel should be subject to a licensing scheme. In this context, the Agency acknowledges that this category of personnel shall be subject to common safety requirements addressing professional training and continued competence. These requirements should be further detailed in the implementing rules, describing how verification of compliance should be done. However, it is uncertain whether safety requires a dedicated licensing scheme for such verification of compliance, or if it can be left to the employer itself, as is the case for all other employees, some of them also involved in safety sensitive activities. The Agency sees, therefore, the debate about licensing as being of a social rather than of a safety nature and would be inclined to leave it to the political debate to decide.
62. Some stakeholders also indicate their preference to use the European ATCO Licensing Directive as the implementing rule, by direct reference. Such views are justified mainly by safety reasons. The Agency sees this issue differently; first, it does not see the safety advantages of using one legislative means instead of the other; it further considers that using directly binding implementing regulations provides for better uniformity in the internal market, by setting "the standard" rather than "a minimum standard". Moreover, amending such regulations has proven to be easier, leading to quicker implementation, which allows answering in a swifter way to any possible safety concern. This being said, the Agency recognises that a final position will only be possible when clarification of the debate raised under paragraph 13 is closed.

Organisations

63. In the NPA, the Agency explained that organisations involved in ATCO training, which are already required to be certified under the SES framework, could be given the privilege to organise examinations and issue attestations of compliance, as it is already the case in the EASA framework for organisations involved in the training of maintenance personnel (Part 147 training organisations). The consultation does not show any objection to such a possible evolution.

Conclusions:

64. Taking into account the intention expressed by the legislator in recital (2) of the Basic Regulation, the Agency will now develop an opinion proposing that the EASA Basic Regulation be extended to the safety of air traffic management and air navigation services. This will build on the consultation document (NPA 2007-16) and the analysis presented in this Comment Response Document. The opinion will detail the proposed essential requirements as well as the proposed scope and the necessary definitions. It will also describe the system that the Agency considers to be the best to implement such essential requirements, but it will leave to the Commission to draft the related amendments of the Basic Regulation when it has decided the policy it wishes to implement. The opinion will also contain a Regulatory Impact Assessment, further detailing the background of the conclusions made by the Agency. Without prejudice to further comments received, the Agency will proceed by forwarding to the Commission the said opinion as soon as possible in April 2008.

IV. CRD table of comments, responses and resulting text

(General Comments) -

comment

33

comment by: MATTA

Attachments [#1](#) [#2](#)

Generally the power supply (PWR) for CNS/ATM should be mentioned in this document. The difference between external power (primary or commercial) and the power supply (secondary or backup) for CNS/ATM should be clarified and established in this document as well as its requirements.

According to ICAO documents there is a clear difference between primary (commercial) power supplies as an external element and the secondary (backup, uninterruptible) power supply as internal element. This difference is not clear in the whole NPA document.

The same or similar difference should be established in this document in the way that ANS/ATM/CNS service providers shall be fully responsible for backup power supply for CNS/ATM and partly for external (commercial) power supplies services.

Explanatory definition and/or meaning of the phrase "Power supply (PWR) for CNS/ATM":

"Power supply (PWR) equipment/system used for uninterruptible and reserve electrical supply of the CNS/ATM (e.g. on-line UPS's, standby power generator sets, batteries/batteries Station, power supply network, etc.) as a secondary power supply, provide required services for CNS/ATM fully in line with the principles of ICAO SARP's in Annexes 10 and 11 and also in line of ICAO Doc 9426-3 and Doc 9157-AN/901 Part 5 - Electrical Systems.

Power supply equipments/systems provide a vital role in the operation of CNS/ATM systems and consequentially to safe and orderly operation of ANS. The electrical power supply sources/equipments/systems quality, availability, capacity and reliability are one of the basic technical prerequisites for high integrity and reliability of CNS/ATM systems.

Proper design, installation and maintenance of an electrical Power Supply system for CNS/ATM systems/equipments are prerequisites for the safety, regularity and efficiency of civil aviation. They are governed by international and national standards.

The Regulators/Designated Authorities, Service providers and ATM Services personnel (ATCO's, ATSEP's) has to understand the impact of the power supply services on the user and on the overall CNS/ATM system.

response

Noted

The Agency fully concurs with the general notions of this comment emphasizing the power supply as an essential element in the ATM/ANS service provision infrastructure. Power supply is not however directly addressed in this NPA, which deals with issues affecting the level of basic law, i.e. the EASA Basic Regulation. This does not in any way mean that power supply in ATM/ANS service provision could not be part of future rulemaking activities of EASA. The corresponding draft ER's in paragraphs related to 'Systems and Constituents' allow implementing rules to be adopted for such purposes.

comment

53

comment by: *ver.di Vereinte Dienstleistungsgewerkschaft*

following your request towards the relevant social partners to comment the EASA NPA 2007-16, we the ATM-Working Group of the German Trade Union ver.di, hereby gratefully forwards this commentary paper to your agency.

The very focus of our comment is reflecting to the relevant paragraphs No 52, 76, 77 and 78 of the NPA 2007-16, which are all dealing with the training, certification and licensing of personnel, acting within the ATM-safety chain.

After the completion of an overall analysis of the NPA 2007 -16 text content we as ver.di really wonder whether the certification and licensing system has to be limited to the ATCO's concerned only as it has been stated in this document. We do not agree with that and are afraid that as a result of this policy one will not be able to keep up these high security standards.

Currently the high security standard of the DFS Deutsche Flugsicherung GmbH is guaranteed by a security chain in air traffic control that is based on "permits" and "licenses". Air traffic control provides the operating and technical services that are mentioned in Art. 27 paragraphs 2 and 3 Luft VG (Air Traffic Act) and thus guarantees air traffic security and warding off danger.

Both air traffic controllers and pilots must be able to rely on the precision and completeness of flight progress data, (in particular of exact radar data), and the reliability, correct provision, permanent and qualified technical supervision and proper maintenance of the technical systems in use since they cannot test these systems themselves anymore and must trust these services absolutely during the process of air traffic control.

As a matter of fact, this high degree of security within the ATM-system in Germany is guaranteed by the fact that the pilots, air traffic controllers, flight data assistants and the technicians and engineers who are responsible for the operational technical systems are subject to our system of permits and licensing.

Therefore ver.di is demanding a further adherence to the currently existing national licensing procedure in Germany for air traffic control personnel as well as for flight data processing personnel and AIS-staff and for operational technical personnel, too.

As a necessary consequence of this we need the EASA to translate our national licensing procedure into EU-standards for improving the safety of air traffic.

Once again: Licensing of personnel (ATCO's, ATSEP's, other jobs within the ATM-safety chain) and high training standards are essential and of high value to us as workers representatives. That is why we also reject any trial of unbundling of ATS-services because these services are clearly involved in the ATM-safety chain and ATC services are very much dependant on them in order to deliver safety and quality.

response

Noted

As the comment quite rightly points out Member States have already accepted through their ICAO commitments and then subsequently under applicable EU law that air traffic controllers must be subject to common requirements on theoretical knowledge, practical skill, language proficiency and medical fitness. An EU directive has been adopted to this effect. This is naturally also the starting point for the Agency to consider these personnel as a regulated profession. The need to meet such requirements limits the freedom of those

individuals to exercise their profession and shall therefore be established on the level of basic law. When developing the draft essential requirements, the Agency has not identified such a need for any other personnel than air traffic controllers. It has however noted that service providers must ensure that other staff assigned to specific safety sensitive functions are properly trained. The Agency will take into account these views expressed when formulating its final opinion, including also this very subject.

comment 121

comment by: DSNA

Extension of EASA competence to safety in ATM/ANS regulation (rule-making, oversight,..) is very complex and taking into account the consultation period available, it was quite difficult to hold the desirable consultations in order to elaborate detailed comments.

It is suggested that further workshops be organised by the Agency with the stakeholders (especially NSAs, ANSPs) involved in the implementation of regulation after the consultation period (in March or beginning of April) before EASA opinion is published, so that they have the opportunity to provide EASA with elaborated proposals. It doesn't seem appropriate to let all the discussions at a political level on subjects that are of a technical nature.

1. First of all, it is recalled that a safety regulation has to answer to the needs of the stakeholders in order to improve the safety (or to provide the required level of safety). The manufacturers and the ANSPs that will have to implement the regulation and the NSA that have to oversee this implementation need a **stable regulatory environment**.

In addition, any evolution of this environment needs **continuity and pragmatism**. Any other approach would have an important impact on costs and implementation delays of ATM systems and possibly a negative impact on safety.

2. Although aspects of this proposal are quite interesting, the general feeling of the stakeholders involved in the implementation of safety regulation is rather negative. This is due to a lack of clear explanations on a number of items. On the mere institutional side, this includes: the lack of a clear vision regarding the limits and interface of the future EASA mechanism and the SES mechanism, the role of the SSC and Eurocontrol.

Also, some new terms and concepts are introduced, without any previous discussion, nor convincing rationale, nor impact study, whilst important features of safety mechanisms present in the SES regulations are simply absent in the ERs.

This lack of vision creates uncertainties that frighten these stakeholders and there is a risk of seeing them freezing any activities in the SES field, waiting for the new changes of concepts happen rather than continuing the large amounts of efforts, with an ensuing risk on safety.

It is also difficult sometimes to discuss about ER when it seems more logical that some of the IRs related to these ER be taken through SES mechanisms (or are considered as already taken) and not through EASA system.

3. It is a fact that **ATM safety regulation at a Community level is already quite extensive if not complete** under SES. That is why it is important to explain clearly **the added-value of the proposal compared to the current situation**. It should have been more emphasised. It is here presented as an "already consensual" fact, but without proper justification. We understand that

two reasons are put forward in favour of the extension of the competence of EASA to ATM.

<!--[if !supportLists]-->- <!--[endif]-->ensuring a global safety approach
 <!--[if !supportLists]-->- <!--[endif]-->dealing with safety separately.

The first reason is supported as a priority of ICAO. However, “consistency with the structure and contents of the 5 other sets of ER provided by EASA”, that means “**dealing with ATM safety regulation in the same way as airworthiness regulation (or pilot licences or aircraft operation)**” is **not proven as efficient nor necessary for achieving a total system approach**, as these domains are completely different even if they need to be tightly coordinated. Other methods such as better coordination between EASA and SES, or safety assessment by EASA of SES ATM regulation could have been studied as (at least in part) alternative ways.

In order to achieve a global safety approach, the rule making process is not the main issue. More emphasis should rather be put on promoting of State Safety Programs required by ICAO or on the sharing of analysis accidents, incidents and safety occurrences at European level d through a global/coordinated safety report analysis (ECCAIRS), ...

The second reason supported by the HLG report is not practicable so easily: EASA considers that “it is impossible to separate safety regulation from others such as interoperability”, (this word taking very different meanings according to the speaker). Even Airspace design regulation is linked to safety. However, in order to achieve this separation of safety rulemaking, **more work has still to be done**. Coordination mechanisms, splitting into different pieces of existing or future regulations could be proposed.

4. As **safety in ATM is based on SMS**, it is surprising to notice that this concept is not mentioned in the NPA, although it is the main topic dealt with by ICAO about safety for annexes 6, 11 and 14, and also because it is so central to the current certification requirements for ANSPs.

5. It seems difficult to deal with ATM safety without mentioning the **interface with the military**. Interfaces between ATSPs and military OAT and military control services are also crucial for safety: they are very little addressed, but implicitly through ASM. Additionally, it should be recalled that the military are not only both ANPS and users but also national regulators.

6. A **careful review of the vocabulary** used should be undertaken. The definitions used in this proposal are not in line with SES definitions approved by the legislator (Council and Parliament): the limit between aerodrome and ATM is different, and ANS doesn't cover the same scope as in SES regulation. This has an impact on the scope of the ERs.

7. The impact assessment of the extension of the competence of EASA to ATM should be undertaken in order to achieve better regulation. The study undertaken mid 2005 by ECORYS cannot be considered as adequate in that respect.

response

Noted

The Agency acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. A workshop has been planned to take place in the timeframe before

the Commission legal proposal to amend the Basic Regulation.

1. The Agency agrees that a stable regulatory environment is needed. EASA system would allow addressing all aviation safety regulation through same channels and using uniform methods. As have been stated repeatedly in the NPA, the implementation of this system has to build on using the valuable results already established within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing the SES regulatory system. Any deviations can only take place through transparent rulemaking processes and shall be based on informed decisions.

2. The Agency also agrees that this NPA addresses mainly the EASA system in its general context aiming to define who the regulated persons are in the field of this extension and how they should demonstrate their compliance with the respective safety objectives. It has to be underlined however that two different sets of EU laws may not overlap and therefore have to be adapted to each other. It has not however been the purpose of the NPA to deal with such a matter, which is seen to be for the Commission to address in its future legislative proposals.

3. The consultation document makes an effort to explain that the Basic Regulation establishes a safety regulatory system consisting of different elements, such as rulemaking, standardisation (inspection), certification, safety analysis, international harmonisation, mutual recognition, etc. This system has been developed through strong effect and consensus by Member States. Your comment presuming that this system would not fit well for ATM due to its complexity is missing clear justification and is therefore difficult to respond to. Suggested options as such are possible ways forward at the level of implementation. A coordination mechanism with SES is definitely needed for arbitration between different regulatory needs and SES rules will be the basis for the future implementation measures.

4. Detailed provisions of fully fledged SMS and risk management will be developed at the level of implementing rules. The Agency believes that the level of basic law should not fix the definition of the SMS and should allow organisations to arrange their different management objectives as they see fit best, subject of course ensuring that all necessary elements to appropriately manage safety are included. This should indeed be compliant with ICAO approach and is the case in all domains of aviation safety.

5. The responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and the Basic Regulation will address the civil-military interface in a similar way as the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

6. It is agreed that all specific terms used by law have to be clearly specified, but not on the level of this NPA. There are some differences between definitions in the SES Framework Regulation and EASA Basic Regulation. Those should be solved by the future Commission Proposals. Definition of ANS in the

NPA does not deliberately differ from SES definition.

7. Impact assessment of the extension of the competence of EASA will be undertaken.

comment 209

comment by: LfV Group, ANS Division, Sweden

General comments

LfV Sweden has the following general comments:

- - LfV Sweden fully supports making EASA the safety regulator for the whole air transport sector in Europe.
- - Other ATM areas such as airspace policy, economic regulation and interoperability should be out the scope of EASA competence. For interoperability SES Regulation n°552/2004 already includes Essential Requirements for safety.
- - In view of avoiding over regulation (or duplicate), EASA should better take into account all existing rules related to ATM in particular in the framework of the SES Regulations and the Eurocontrol ESARRs.
- - Within the existing SES regulations, a successful process for the certification of ANSP and for the verification of systems & procedures has been established. The NPA should reflect the progress made to date by NSAs and ANSPs in this area.
- - LfV Sweden supports that EASA takes over the Eurocontrol safety regulatory activities. The transition for areas that will be transferred to EASA in the area of safety regulation should be clearly defined. It will need to be smooth and effective including adequate resources and funding.

LfV Sweden expects that this induces a significant reduction of resources in EUROCONTROL.

- - Generally, it would be helpful to define the future allocation of responsibilities of the various European and national institutions involved.
- - Consultation of all aviation stakeholders including the military is essential to get appropriate feedback. LfV Sweden recommends adapting the consultation process to allow more time for replying.
- - Considering the fundamental role of the notion of "Essential Requirements" in Community legislation, changes and amendments to "Essential Requirements" require extreme caution and should only be made when absolutely necessary and only after an appropriate impact analysis.

response *Noted*

The Agency takes note of the support to a single aviation safety regulator. It fully concurs with the comment that the proposed extension of competence does not go beyond of what is necessary for safety regulation. As already stated in the NPA, implementation of this regulatory competence, including aspects related to common rules and verifying compliance of regulated persons, will be based on existing regulatory material in the field of ATM, such as SES rules and EUROCONTROL ESARR's.

Possible effects of this extension to EUROCONTROL activities are outside of the remit of the Agency and therefore can not be responded here. The Agency then fully agrees with the general comment requesting for clear roles of European and national institutions - the EASA Basic Regulation indeed establishes a regulatory system consisting of defined roles for the Commission, EASA,

Member States and competent aviation authorities.

All rulemaking activities of EASA shall be based on well structured rulemaking process, providing fully transparent means of consultation. The Agency acknowledges and regrets that the shortened consultation period in this case has caused problems to some stakeholders and is willing to mitigate this effect as far as possible.

The Agency also acknowledges the support for the draft ER's as they currently stand for and can ensure that they will be amended only based on informed decisions and with full transparency.

comment

323

comment by: NATS

The extension of EASA's regulatory authority to include ATM alongside airworthiness, aircraft maintenance, flight operations and airports is a logical progression which provides a significant opportunity for the European aviation industry. By including all aspects of aviation safety regulation under a single authority it should be possible to develop a regulatory regime that is complete, coherent and proportionate to the risks being managed.

This is particularly important for the ATM industry as future concepts in ATM envisage an increasingly interdependent system. Ground equipment and procedures will become linked to, and dependent on, airborne equipment and procedures through new technologies and concepts such as datalink, airborne separation assurance systems, collaborative decision making and 4D trajectory control. It is therefore vital that the essential requirements being developed by EASA are designed to support the safe implementation and operation of ATM services both with current operations and in the future.

This is also an opportunity to build on the strengths of the current aviation safety regulatory arrangements whilst addressing some of the issues that already exist. Work undertaken by SESAR identified a number of limitations to the current arrangements which should be considered. These include:

- Fragmentation and Variability in Application Across States
- Lack of Clarity on Safety Accountability
- Duplication of Regulations
- Complexity of Regulation
- Lack of Transparency
- Variation across Industry Segments
- Lack of Focus on Proportionality and Cost Effectiveness

A Regulatory Impact Assessment (RIA) has not been included with the NPA. The RIA is a key tool in delivering better regulation. This supports the aim of only regulating when necessary and, when it is, to do so in a way that is proportionate to the risk being addressed, and to deregulate and simplify wherever possible as well as considering a Cost Benefit Analysis.

Summary of Detailed Responses:

- EASA should be aware of these basic tenets of better and more effective regulation when drafting the regulation of Air Traffic Management and Air Navigation Services (ATM/ANS):

a) Regulation should protect innovation and development by ANSPs - the

regulation needs to be at a high level and outcome focused in accordance with performance management principles. It should not prevent forward looking ANSPs from progressing and not be forced to dumb down our innovation to a low baseline of capability.

b) Centralised rulemaking with local conformance checking.

c) Regulation should be of a light touch and should not be prescriptive.

d) Regulation should protect national civil/military interoperability of service provision.

e) Better regulation principles for consultation should be adopted. Industry experts must be consulted in a transparent manner.

f) EASA should be focused on safety issues. EC and States have competence in all other areas- limit scope of activity to that which it can gain competence.

- As the proposals affect the basic principles of airspace regulation/management, the scope of the consultation is ill defined and does not address clearly what is a hugely complex issue. The 'Concept of Operations' is not clearly defined and there is ambiguity over its explanation.
- With regard to the inclusion of interoperability the scope of the EASA Regulation proposed in the NPA is unclear and contradictory. Is it Safety and Interoperability, or Safety and the Safety aspects of interoperability? Safety is only one of seven essential requirements included in the interoperability Regulation - what becomes of the remaining essential requirements and who will regulate them?
- Clarity is required with regard to the role and interaction with EASA for the non-safety related regulation.
- The essential requirements for ATM should form the basis for the 'total system approach' advocated by the High Level Group on the future of the European Aviation Regulatory Framework. The essential requirements therefore need to be developed to provide a harmonised framework which can be applied consistently throughout Europe. They need to avoid duplication of existing regulations for ATM (or existing regulations must be removed) and must be consistent with the safety regulation of other elements of the Air transport industry. The new requirements must also avoid being too prescriptive which could constrain innovation and must have clear objectives which are proportionate to the risk being managed. Without sight of the structured risk assessment, completeness and correctness of the proposed essential requirements cannot be assessed.
- Without sight of the structured risk assessment, completeness and correctness of the proposed essential requirements cannot be assessed.
- There is a lack of the contemporary SMS and risk management approach used for SES regulations.
- There are significant issues to be resolved if EASA is to regulate 'uncontrolled' airspace including who is actually responsible for any ATM services (or the lack of service) in these areas. The inclusion of uncontrolled airspace without addressing Military ATM/ANS would not be viable.
- EASA needs to avoid duplicating the already comprehensive set of rules that are applied to users of ATM services both internationally and by States. The introduction of new Implementing Rules without consideration of these rules would introduce confusion and should be avoided.
- Considering the wide-reaching reform that is being proposed, the explanations are not clear and take several readings before a premise is understood - correctly or otherwise.
- Clarity is required on the relationship and interaction between the

various safety and non-safety regulation that will apply to ANSPs as a result of EASAs proposal with regard to essential requirements, implementing rules, regulation and legislation (particularly in the context of the existing SES regulations and the ESARRs as both have significant shortfalls when considering the safety aspects of ATM/ANS).

- As the review time is short, there is a danger that the rest of the process might be fundamentally flawed if EASA's proposals do not follow the established SES path of proper consultation and expert ATM/ANS input.

NATS would welcome the opportunity to work with EASA in developing the appropriate essential requirements and implementing rules for the safety regulation of ATM/ANS.

response *Noted*

The Agency takes note of the support to the aim of a single aviation safety regulator in Europe. It also fully agrees that the emerging developments and future concepts in ATM do not follow existing borders and interfaces between different domains of aviation. Therefore the safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for such developments.

When it comes to the limitations of the existing regulatory framework, the EASA Basic Regulation establishes a system to harmonise and inspect of how common rules have been implemented by Member (or associated) States and their undertakings. It clearly defines the regulated persons and is itself liable of its actions as a legal person. Common rules replace national ones and provide means to common transposition of ICAO SARPS. Such transposition through Essential Requirements constitutes thereafter the basis for the necessary detailed implementing rules. It is a continuous effort by the Agency to strike a right balance between binding rules and promoting best standards by the industry.

Impact assessment of the extension of the EASA competence will be undertaken.

The Agency can also fully agree and support the criteria listed by the comment to provide for better and more efficient regulation.

As regards airspace regulation, this NPA addresses mainly the EASA system in its general context aiming to define who the regulated persons are in the field of this extension and how they should demonstrate their compliance with the respective safety objectives. It has not however been the purpose of the NPA to deal with such a matter, which is seen to be for the Commission to address in its future legislative proposals.

It is not the purpose of the Agency to become an airspace regulator or to address all aspects of interoperability. However, it is assumed that global interoperability cannot be dissociated from safety regulation. This principle is the basis of the ICAO system, whose main objective being interoperability has been obliged therefore to set common minimum safety standards. This is consequently a fundamental part of the EASA system since its establishment by the European legislators in all other domains of aviation safety regulation. This principle should not emerge differently in case of ATM taking into account that most of airspace use requirements are implemented through the safety regulation of air operators and service providers. As explained in the NPA, this aspect of interoperability does not cover many of such standards whose objectives are the harmonisation and integration of ATM components and

relate therefore to performance or economic efficiency.

A harmonised framework consistent with other elements of Air Transport and avoiding duplication indeed are clear objectives of the EASA system. However, safety objectives as such can not remove duplications - that has to take place at the level of implementation rules. Draft ER's have been developed in order not to be too prescriptive, ensuring of which is indeed one of the aims of this consultation.

The Agency does not see any major differences as regards 'contemporary SMS and risk management approach'. Definitions of fully fledged SMS and risk management will be dealt with at the level of implementing rules. The Agency believes that the level of basic law should not fix the definition of the SMS and should allow organisations to arrange their different management objectives as they see fit best, subject of course ensuring that all necessary elements to appropriately manage safety are included.

At this stage it would be premature to conclude on the issue of uncontrolled airspace, except to state that certain safety risks, such as those related to the lack or non-compliance with common rules of the air and the need to accommodate all categories of airspace users, exist and should be mitigated. Also certain ANS services might be provided in the uncontrolled airspace.

As also already stated, implementation of the system will be based to large extent on existing SES Regulations and implementing rules as well as on ESARR's.

This NPA will be followed by a Comments Review Document and an EASA Opinion issued to the Commission and published. Thereafter the Commission is to issue its legal proposal to amend the EASA Basic Regulation.

This activity is not intended to go beyond of what is necessary for safety regulation. And as already stated above, it is assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee.

All rulemaking activities of EASA shall be based on well structured and proven rulemaking process, providing fully transparent means of consultation. The Agency acknowledges and regrets that the shortened consultation period in this case has caused problems to some stakeholders and is willing to mitigate this effect as far as possible.

The Agency is also very pleased to acknowledge the offer to assist in its forthcoming regulatory activities.

comment 373

comment by: CAA SK

1 Regarding **SES regulation we can consider it as almost completed (This year we can expect second package of SES regulation)**. The link with EASA is missing, but when adding this "missing link" we have to avoid an over regulation situation or a "double/triple regulation issue" as we are facing now with "Double regulation EU/ESARR issue".

2 The proposed **scope of the Essential Requirements** introduces a new definition of "ATM/ANS". The definitions described in paragraph 42 as follows:

i ATM as the sum of ATS, ASM, ATFM and

ii ANS as the sum of CNS, MET and AIS, excluding ATM.

This could be a complete different definition of scope which is **not** in line with the SES scope (ANS is the sum of CNS, ATM, MET and AIS). It has to be corrected in a way avoiding confusion.

3 A **clear reference to SES Regulation** (EU549, 550, 551, 552/2004) is missing ;

4 A **clear reference to ICAO Annexes is missing** ;

5 The respective roles of European Commission, EASA, States (CAA and NSA) and Eurocontrol need to be determined

6 The NPA ignores the relationship and supremacy of international law over Community law. In particular, the paper refers to the fact that the member States are bound by their ICAO obligations, but ignores their obligations vis-à-vis EUROCONTROL etc.

7 The **civil-military interface** is missing, that is a major item for the Single European Sky and Functional Airspace Blocks implementation ; a reinforced cooperation/coordination is strongly necessary and is one of the fundamental principles of the SES;

8 The attached Essential Requirements are on some points too detailed and on other points not enough developed;

response *Noted*

1. The paragraph 14 of the NPA deliberately states that the SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". It continues by emphasizing the "proper coordination with SES" and states the necessity of coherence between all the rules in the legal order of the Community. Similar statements in the NPA are many. When it comes to the issue of double regulation, this objective can only be achieved by adapting certain SES Regulations and its implementing rules to provide consistency with the future extended EASA Basic Regulation and its implementing rules.

2. Definition of ANS is supposed to be the same as in SES and suggest in the comment.

3. Interaction between different legal frameworks will be defined in the respective Commission legislative proposals, not at the level of this NPA.

4. EASA Basic Regulation establishes a system for the common transposition of ICAO SARPS. Such transposition constitutes the basis for the necessary detailed implementing rules. It is not the purpose to make them directly legally binding.

5. The Basic Regulation defines the roles of the Commission, EASA, Member States (and associated States) as well as competent authorities in the safety regulatory system.

6. Member States have certain obligations under the Treaty establishing the European Community (for instance in its articles 10, 300 and 307), taking also into account the applicable European Court of Justice jurisprudence that Community law has primacy over national law. In other words Community

rules are considered to be directly applicable. This means in principle that Community law confers rights and imposes obligations directly not only on the Community institutions and the Member States but also on the Community's citizens. If Member States have definitively transferred sovereign rights to the Community, they cannot reverse this process by means of subsequent unilateral measures which are inconsistent with the Community, unless Community law expressly provides otherwise. The Member States may continue to execute international commitments concluded before their accession to the Community unless they are contrary to their Community obligations. In such cases they shall take appropriate measures to eliminate incompatibilities. Where Community competence is established, Member States may no more undertake international commitments affecting such competence; such commitments are to be taken by the Community.

7. The responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

8. Noted and will be acted based on specific proposals to improve the drafting of ER's.

comment

389

comment by: AEA

The AEA strongly supports the general principle to extend EASA's scope to ATM safety regulation in order to ensure that EASA becomes the single safety regulator for all aspect of the aviation value chain, in line with the recommendations of the High Level Group.

An extension of EASA's scope to ATM safety regulation will require a political commitment to increase the public funding to EASA's budget so that EASA is properly resourced for those new tasks. It will also require a clear transition-plan and commitment to wind down the Eurocontrol Safety Regulation Unit (SRU) and Safety Regulation Commission (SRC) when EASA's assumes responsibility. The JAA Transition Office (JAA-T) could be assigned new roles in this field to represent the non-EASA member States of Eurocontrol at EASA (similar to its existing role for the non-EASA JAA member States in other areas within EASA's field of competence such as aircraft certification, airworthiness, flight operations and flight crew licensing).

Although EASA's main role is safety, an ATM system and an Air Navigation Service Provider, must balance safety with capacity and the environment. Taking safety as the only parameter is too simple and may result in too many restrictions. All future EASA implementing rules should therefore be based on a comprehensive Regulatory Impact Assessment which is acceptable to the major stakeholders (such as the airlines) and which takes into account the impact on airspace capacity/delays and the environment along with safety

objectives.

The safety certification of certain ancillary ATM services (AIS provision, CNS provision, ATC training, ATC maintenance & manufacture and Meteo services in particular) should facilitate their unbundling to ensure a competitive market and lower cost for the end users (in line with the High Level Group recommendations).

International Standardization of regulation, through ICAO, is, in particular for ATM, extremely important because airlines and other airspace users operate globally. New regulation specifically for the European airspace going beyond ICAO should be avoided unless it is driven by a positive business case to create more airspace capacity and/or clear safety justifications.

With the above in mind, the AEA stresses that the stakeholder consultation should form part of the rule making process from an early stage on, in order to prevent an unbalance between the requirements in the field of safety, capacity and the increasing demands of environmental protection.

response *Noted*

The Agency is pleased to take note of this support to the aim of a single aviation safety regulator in Europe and agrees that such safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field. It also appreciates the recognised need to ensure appropriate public funding for its activities. The role and activities of EUROCONTROL are outside of the remit of this consultation and can not therefore be responded here.

This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that it is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee. All rulemaking activities of EASA shall be based on well structured and proven rulemaking process, providing fully transparent means of consultation and containing a Regulatory Impact Assessment. Most of these rulemaking activities are based on a fundamental participation by the industry.

Additional objectives of EASA, stated by the Basic Regulation, include: to facilitate the free movement of good, persons and services; to promote cost-efficiency in the regulatory and certification processes; to provide a level playing field for all actors in the internal aviation market.

The Agency also stresses that global interoperability cannot be dissociated from safety regulation. This principle is the basis of the ICAO system, whose main objective being interoperability has been obliged therefore to set common minimum safety standards. This is consequently a fundamental part of the EASA system since its establishment by the European legislators in all other domains of aviation safety regulation. This principle should not emerge differently in case of ATM taking into account that most of airspace use requirements are implemented through the safety regulation of air operators and service providers.

Issue of the rulemaking process is already addressed above.

comment 464

comment by: DGAC-DAST-FR

Extension of EASA competence to safety in ATM/ANS regulation (rule-making, oversight,..) is very complex and taking into account the consultation period available, it was quite difficult to hold the desirable consultations in order to elaborate detailed comments.

It is suggested that further workshops be organised by the Agency with the stakeholders (especially NSAs, ANSPs) involved in the implementation of regulation after the consultation period (in March or beginning of April) before EASA opinion is published, so that they have the opportunity to provide EASA with elaborated proposals. It doesn't seem appropriate to let all the discussions at a political level on subjects that are of a technical nature.

1. First of all, it is recalled that a safety regulation has to answer to the needs of the stakeholders in order to improve the safety (or to provide the required level of safety). The manufacturers and the ANSPs that will have to implement the regulation and the NSA that have to oversee this implementation need a **stable regulatory environment**.

In addition, any evolution of this environment needs **continuity and pragmatism**. Any other approach would have a important impact on costs and implementation delays of ATM systems and possibly a negative impact on safety.

2. Although aspects of this proposal are quite interesting, the general feeling of the stakeholders involved in the implementation of safety regulation is rather negative. This is due to a lack of clear explanations on a number of items. On the mere institutional side, this includes: the lack of a clear vision regarding the limits and interface of the future EASA mechanism and the SES mechanism, the role of the SSC and Eurocontrol.

Also, some new terms and concepts are introduced, without any previous discussion, nor convincing rationale, nor impact study, whilst important features of safety mechanisms present in the SES regulations are simply absent in the ERs.

This lack of vision creates uncertainties that frighten these stakeholders and there is a risk of seeing them freezing any activities in the SES field, waiting for the new changes of concepts happen rather than continuing the large amounts of efforts, with an ensuing risk on safety.

It is also difficult sometimes to discuss about ER when it seems more logical that some of the IRs related to these ER be taken through SES mechanisms (or are considered as already taken) and not through EASA system.

3. It is a fact that **ATM safety regulation at a Community level is already quite extensive if not complete** under SES. That is why it is important to explain clearly **the added-value of the proposal compared to the current situation**. It should have been more emphasised. It is here presented as an "already consensual" fact, but without proper justification. We understand that two reasons are put forward in favour of the extension of the competence of EASA to ATM.

<!--[if !supportLists]-->- <!--[endif]-->ensuring a global safety approach

<!--[if !supportLists]-->- <!--[endif]-->dealing with safety separately.

The first reason is supported as a priority of ICAO. However, "consistency with

the structure and contents of the 5 other sets of ER provided by EASA”, that means **“dealing with ATM safety regulation in the same way as airworthiness regulation (or pilot licences or aircraft operation)” is not proven as efficient nor necessary for achieving a total system approach**, as these domains are completely different even if they need to be tightly coordinated. Other methods such as better coordination between EASA and SES, or safety assessment by EASA of SES ATM regulation could have been studied as (at least in part) alternative ways.

In order to achieve a global safety approach, the rule making process is not the main issue. More emphasis should rather be put on promoting of State Safety Programs required by ICAO or on the sharing of analysis accidents, incidents and safety occurrences at European level through a global/coordinated safety report analysis (ECCAIRS), ...

The second reason supported by the HLG report is not practicable so easily: EASA considers that “it is impossible to separate safety regulation from others such as interoperability”, (this word taking very different meanings according to the speaker). Even Airspace design regulation is linked to safety. However, in order to achieve this separation of safety rulemaking, **more work has still to be done**. Coordination mechanisms, splitting into different pieces of existing or future regulations could be proposed.

4. As **safety in ATM is based on SMS**, it is surprising to notice that this concept is not mentioned in the NPA, although it is the main topic dealt with by ICAO about safety for annexes 6, 11 and 14, and also because it is so central to the current certification requirements for ANSPs.

5. It seems difficult to deal with ATM safety without mentioning the **interface with the military**. Interfaces between ATSPs and military OAT and military control services are also crucial for safety: they are very little addressed, but implicitly through ASM. Additionally, it should be recalled that the military are not only both ANPS and users but also national regulators.

6. A **careful review of the vocabulary** used should be undertaken. The definitions used in this proposal are not in line with SES definitions approved by the legislator (Council and Parliament): the limit between aerodrome and ATM is different, and ANS doesn't cover the same scope as in SES regulation. This has an impact on the scope of the ERs.

7. The impact assessment of the extension of the competence of EASA to ATM should be undertaken in order to achieve better regulation. The study undertaken mid 2005 by ECORYS cannot be considered as adequate in that respect.

response

Noted

The Agency acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. A workshop has been planned to take place in the timeframe before the Commission legal proposal to amend the Basic Regulation.

1. The Agency agrees with that a stable regulatory environment is needed. EASA system would allow addressing all aviation safety regulation through same channels and using uniform methods. And as have been stated repeatedly in the NPA, that the implementation of this system has to build on using the valuable results already established within the SES framework as it would not be acceptable to impose changes on regulated persons and

regulators while they just start implementing the SES regulatory system . Any deviations can only take place through transparent rulemaking processes and shall be based on informed decisions.

2. The Agency also agrees that this NPA addresses mainly the EASA system in its general context aiming to define who the regulated persons are in the field of this extension and how they should demonstrate their compliance with the respective safety objectives. It emphasizes however that two different sets of EU laws as a starting point have to be adapted with each other and may not overlap. It has not however been the purpose to deal with such an interaction at the level of this consultation document, which is seen to be for the Commission to address in its future legislative proposals.

3. The consultation document makes an effort to explain that the Basic Regulation establishes a safety regulatory system consisting of different elements, such as rulemaking, standardisation (inspection), certification, safety analysis, international harmonisation, mutual recognition, etc. This system has been developed through strong effect and consensus by Member States. Comment seeming to suggest that this system would not fit well for ATM due to its complexity is not very clearly justified and is therefore difficult to respond. Suggested options as such are possible ways forward at the level of implementation. A coordination mechanism with SES is definitely needed for arbitration between different regulatory needs and SES rules will be the basis for the implementation level.

4. Detailed provisions of fully fledged SMS and risk management will be dealt with at the level of implementing rules. The Agency believes that the level of basic law should not fix the definition of the SMS and should allow organisations to arrange their different management objectives as they see fit best, subject of course ensuring that all necessary elements to appropriately manage safety are included. This should indeed be compliant with ICAO approach and is the case in all domains of aviation safety.

5. The responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

6. It is agreed that all specific terms used by law have to be clearly specified, but not on the level of this NPA. There are some differences between definitions in the SES Framework Regulation and EASA Basic Regulation. Those should be solved by the future Commission Proposals. Definition of ANS in the NPA does not deliberately differ from SES definition.

7. Impact assessment on the extension of the competence of EASA will be undertaken.

UK Government response - submitted by the Department for Transport

Introduction

The UK Government endorses the principle of an extension of the EASA competence to safety regulation of ATM and ANS. Great efforts must be made to ensure the separation of safety, from non-safety aspects of ATM regulation.

Building on SES success

The EU SES initiative has improved ATM and CNS service provision in Europe with significant advances having been achieved in the harmonisation of standards and adoption of agreed common regulatory practices and principles, including compliance with ICAO SARPs. The approaching second SES package and the SESAR Programme will present further opportunities to build on this success and embed the principle of pan-European cooperation further into the core fabric of the ATM environment.

The establishment of effective rules has secured independent and robust NSAs, and the success of SES has been delivered, in no small part, by significant change and investment from all ATM stakeholders. SES regulations have become the baseline for ATM operations and regulation.

Strategy, project management and transition planning

The UK Government seeks assurance that an overarching strategy is being considered to ensure that the project management and transition planning in relation to developments across SES regulations, EASA regulations (including those on aerodromes), European directives, ESARRs and SESAR is coherent.

There is a need to ensure and maintain a stable and efficient regulatory environment both for NSAs and industry through the entirety of the process.

The UK urges the Commission to provide such strategic direction. The transition planning must be in place prior to the Basic Regulation being amended and any consequent amendment to the SES regulations.

Regulatory stability and coherence

The UK Government supports the EASA view as outlined in paragraphs 14 & 15 of the NPA that no new initiative can be allowed to undermine the effort expended already. The UK Government does not wish to see a situation that creates regulatory instability, unnecessary complexity, inconsistent definitions and duplicate regulation as this would run counter to the principles of good regulation. The scope of the NPA, particularly regarding the relationship between safety and interoperability must be clarified. Arising from this, and to ensure a continued safe ATM/ANS environment within the recently established

SES regulatory framework, the UK Government strongly suggests that the safety-related elements of the SES regulations be incorporated intact into the EASA regulatory structure, taking care to ensure that neither overlap nor gaps develop between the new regulations and remaining SES legislation. In addition, care should be taken to ensure that the scope of Aerodrome and ATM

ERs are aligned.

The EASA regulations should adopt the contemporary SMS and risk management approach of the SES regulations, which firmly embed risk management responsibilities in regulated industry.

ESARRs

In recognition that EU Regulations have transposed ESARR principles, the UK Government supports the rationalisation of ESARRs and European Regulations as put forward by the Commission/Eurocontrol report dealing with double regulation. Non-EU states can be invited to adopt EU regulations in the area of ATM/ANS in a similar way to their adoption of aircraft certification regulations.

Airspace Policy and Management

The UK Government considers airspace policy-making to be a State responsibility. Under the SES Airspace Regulation, airspace policy-making remains a national responsibility, consistent with ICAO provisions, in order to allow States to determine policies to ensure that airspace is classified according to national requirements, accommodating military needs, and allocated for fair, equitable and legitimate use by all airspace users, with the appropriate safety processes put in place. The current SES arrangements have established an appropriate balance in acknowledging the intentions of SES while permitting State arrangements to be made to accommodate military requirements, in terms of access and use of airspace; these should be emphasised and preserved. SES regulations specifically exclude military operations and training but allow for involvement of the military in all areas of regulatory development to ensure State responsibilities, with respect to defence and security are preserved.

Moreover, it is the UK Government's belief that consideration of the integral component of civil/military cooperation and the significant progress that has been achieved under SES, particularly with regard to the Flexible Use of Airspace, should form a vital part of any strategic overview of ATM in Europe. The military dimension, in respect of the States' responsibility for national airspace planning must be taken into account, and any failure to do so undermines the total system approach on which the NPA is based.

Scope

The UK has concerns regarding jurisdiction aspects of the airspace being proposed in the NPA, both in terms of volume and classification. The assertion that the SES regulations have established Community competence in the aggregated volume of airspace in which Member States are responsible for ensuring that air traffic services are provided is questionable. EU law extends only to the territorial limits (in the case of the UK, this is 12 nms from the UK coastline) and therefore does not apply to 'high seas' airspace and, in particular, the North Atlantic Region where non-EU States have shared responsibility for service provision. Additionally, the NPA contention regarding the expansion of Community competence, and EASA rulemaking, to airspace matters beyond service provision, is a fundamental challenge to existing international arrangements, which retain such matters under sovereign

responsibility, and is unacceptable to the UK.

Better Regulation

This NPA proposes significant changes to the EU regulatory framework for ATM/ANS. For this reason, it is important that the reduced consultation period for this NPA does not become the norm where EASA is concerned. Without an adequate consultation period, there is a real risk that the output of the rule-making process will not provide a sound basis for the Commission to bring forward proposals that will command a desirable level of support among the wide variety of stakeholders affected.

Most ATM stakeholders are not yet familiar with EASA's rulemaking process. The Agency will need to consider how to engage these stakeholders in a more transparent manner from early on in the regulatory process. The publication of an impact assessment alongside the NPA would also improve the transparency of EASA's rulemaking process.

UK Government considers that it would be beneficial for EASA to seek specialist ATM & ASM scrutiny (perhaps through a suitably qualified body such as the Eurocontrol SRU/SRC) to validate the results of the consultation in order to provide a successful outcome.

response *Noted*

Introduction:

This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee.

Building on SES success:

The Agency agrees with the views expressed. Paragraph 14 of the NPA deliberately states that SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". Therefore, the implementation of the EASA system has to build on these results already achieved within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing such regulatory system. Any deviations can only take place through transparent rulemaking processes and shall be based on informed decisions. Proper coordination with SES is vital as is the necessity of coherence between all the rules in the legal order of the Community. Most likely SES Regulations and its implementing rules need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules, not by excluding certain safety issues from the scope of the EASA system on the pretext that they are already covered by SES rules.

Strategy, project management and transition planning:

The Agency agrees with this objective. However, it believes that the regulatory

framework will be rather stable and that the changes imposed on regulated persons will not be as significant as this comment seems to suggest.

Regulatory stability and coherence:

The Agency is fully committed to and governed by the principles of the better regulation. This scheme contains such principles as; proportionality, subsidiarity, best allocation of roles and consultation. As stated in the NPA, the forthcoming Commission proposals shall provide that these two legal frameworks are well adapted at the level of basic laws. That would then allow the Basic Regulation to be implemented based on already existing regulatory material.

The Agency accepts the views as regards contemporary SMS and risk management approach. Definitions of fully fledged SMS and risk management will be dealt with at the level of implementing rules. The Agency believes that the level of basic law should not fix the definition of the SMS and should allow organisations to arrange their different management objectives as they see fit best, subject of course ensuring that all necessary elements to appropriately manage safety are included.

ESARR's:

The Agency takes note of the views expressed and aims to build on existing material, such as ESARR's.

Airspace policy and management:

The mandate of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA indeed recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

Scope:

The Agency takes note of the reservations expressed and undertakes to clarify this issue in its forthcoming Opinion. The overriding issue in the foreseen objective to cover also the uncontrolled airspace are the related safety risks and general aviation already being regulated in the EASA system.

Better regulation:

As already indicated the Agency is fully committed to the better regulation agenda. An impact assessment related to the extension of EASA competence will be issued. It has also to be noted that it may take from 2 to 3 years before the Commission proposal to be issued by next June will be adopted by the European legislators. As suggested in the comment, the Agency is using external experts to assist in analysing the comments received.

Question 1:

We suggest that the decision on the concepts of operations should be a governmental function.

Question 2:

In principle YES - but 2b addresses an aspect ("All aircraft must be equipped with all suitable ...") which can not be assured by the ANSP.

Question 3:

We suggest that ASM and ATFM should be of a regulatory nature.

Question 4:

As the definition of systems and components is right now discussed in the EUROCONTROL Conformity Assessment Task Force, no definitive answer can be provided right now.

Question 5:

Yes, it should be required that the organisations involved in the design, manufacture and maintenance of safety critical systems and constituents, as well as those involved in the verification of conformity, should be required to demonstrate their capability.

Question 6:

The provision of all services should be subject to certification, but the certification process and the requirements to be complied with should consider the criticality of the services provided. For less critical services like AFIS, the certification process should be integrated in the aerodrome certificate and not considered as an Air Navigation Service Provider issue.

Question 7:

Yes, we suggest that the ATM/ANS service providers should be entitled to operate several services and/or operating units under a single certificate.

Question 8:

No, we suggest that the responsibility for the certification of pan-European ANS/ATM services providers should remain with the respective NSAs.

Question 9:

We suggest that the certification of some less sensitive services could be performed by assessment bodies. The Agency should also be empowered for the accreditation of such assessment bodies.

Question 10:

No comments

response *Noted*

see: Inventory of answers to the NPA Questions

comment

638

comment by: *CANSO*

• **1 Scope of the EASA competence**

- 1.1 CANSO fully supports making EASA the safety regulator for the whole air transport sector in Europe. The European Commission has to provide this Agency with the adequate resources to endorse this role.
- 1.2 Other ATM areas such as airspace policy, economic regulation and interoperability should be out the scope of EASA competence. For interoperability, Single European Sky Regulation n°552/2004 already includes Essential Requirements for safety.

• **2 CANSO supports the principle of better regulation.**

- 2.1 The principle of better regulation implies to avoid over regulation or duplicate regulation and to make the best use of existing legislation.
- 2.2 EASA should better take into account all existing rules related to ATM in particular in the framework of the SES Regulations and the Eurocontrol ESARRs.

• **3 Allocation of roles and responsibilities for aviation safety in Europe**

- 3.1 CANSO supports that EASA takes over the Eurocontrol safety regulatory activities. The transition from the current situation to the extended scope of EASA competence to items in the area of safety regulation should be clearly defined.

The transition will need to be smooth and effective including adequate resources and funding.

CANSO expects that this induces a significant reduction of resources in Eurocontrol.

- 3.2 It would be helpful to define the future allocation of responsibilities of the various European and national institutions involved.

• **4 Existing developments on certification should be considered.**

- 4.1 A successful process for the certification of ANSP and for the verification of systems & procedures has been established. The Notice of Proposed Amendments should reflect the progress made to date by the National Supervisory Authorities and Air Navigation Services Providers in this area.

• **5 Caution is necessary in dealing with the notion of "Essential Requirements".**

- 5.1 The notion of "Essential Requirements" has a fundamental role in Community legislation. Changes and amendments to "Essential Requirements" as suggested by the EASA NPA require extreme caution and should only be made when absolutely necessary and only after appropriate impact analysis.

• **6 CANSO recommends an appropriate stakeholder consultation process.**

- 6.1 Consultation of all aviation stakeholders including the military is essential to get appropriate feedback.

CANSO recommends adding definitions in order to ensure there is no room for interpretation. Thus in many of the answers, there will be requests for clarification of the exact meaning of the question and for definitions of certain statements.

response

Noted

1. The Agency takes note of the support to the aim of a single aviation safety regulator in Europe and agrees that the safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field. It also appreciates the recognised need to ensure appropriate public funding for its activities. This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that it is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee.

2. The Agency is fully committed to and governed by the principles of the better regulation. This scheme contains such principles as; proportionality, subsidiarity, best allocation of roles and consultation. All rulemaking activities of EASA shall be based on well structured and proven rulemaking process, providing fully transparent means of consultation and containing a Regulatory Impact Assessment. Most of these rulemaking activities are based on fundamental participation by the industry. As stated in the NPA, the forthcoming Commission proposals shall provide that these two legal frameworks are well adapted at the level of basic laws. That would then allow the Basic Regulation to be implemented based on already existing regulatory material. As already stated, implementation of the system will be based on existing SES Regulations and implementation rules as well as on ESARR's.

3. Possible effects of this extension to EUROCONTROL activities are outside of the remit of the Agency and therefore can not be responded here. The Agency fully agrees with the general comment requesting for clear roles of European and national institutions - the EASA Basic Regulation indeed establishes a regulatory system consisting of defined roles for the Commission, EASA, Member States as well as competent aviation authorities.

4. The Agency agrees with these views expressed. The NPA deliberately states that SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". Therefore, the implementation of the EASA system has to build on using the these results already achieved within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing such regulatory system . Any deviations can only take place through transparent rulemaking processes and shall be based on informed decisions. Proper coordination with SES is vital as is the necessity of coherence between all the rules in the legal order of the Community. Most likely SES Regulations and its implementing rules need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules, not by excluding certain safety issues from the scope of the EASA system on the pretext that they are already covered by SES rules.

5. The Agency also acknowledges the support for the draft ER's as they currently stand and can ensure that they will be amended only based on well justified decisions and with full transparency.

6. All rulemaking activities of EASA shall be based on a well structured rulemaking process, providing fully transparent means of consultation with all stakeholders, including military.

It is agreed that all specific terms used by law have to be clearly specified, but not on the level of this NPA. There are some differences between definitions in

the SES Framework Regulation and EASA Basic Regulation. Those should be solved by the future Commission Proposals.

comment

690

comment by: CAA CZ

We can understand as necessary to make the uniform regulatory basis applicable in all the members states. We feel an important role of EASA in developing and defining requirements to regulate area of this NPA in European region and in helping EC bodies to specify requirements on upper regulatory levels.

However all the current requirements applicable in this area should be taken into account when developing of ERs or IRs. As there is a lot of groups of regulations (ICAO Annexes and Docs., SES, EC regulations, ESARRs etc.) we recommend to be attentive during developing of one set of regulations based on the most current requirements applicable in the European region, to facilitate future transition of members states and service providers to new requirements. In addition some of above specified requirements have been drafted as EC regulations and are going to become part of EC (and national) law (ESARR 1, 5, 6).

On the other side we feel important to keep the role of NSAs as competent authorities for providing tasks of certification and supervising of providers and services on the national level.

response

Noted

The Agency is pleased to acknowledge the support to the objective of a single aviation safety regulator in Europe and agrees that the safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field.

The NPA deliberately states that SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". It continues by emphasizing the "proper coordination with SES" and states the necessity of coherence between all the rules in the legal order of the Community. This objective can only be achieved by adapting certain SES Regulations and their implementing rules to provide consistency with the future extended EASA Basic Regulation and its implementing rules.

In the EASA system the competent authorities responsible for oversight and issuing of certificates for service providers should be the national authorities as regards operators residing in their territory, as also suggested in the comment, and the Agency for the foreign organisations providing services in the European airspace.

comment

726

comment by: UK CAA & UK MoD

Attachment [#3](#)

EASA NPA 2007 - 16

UK Civil Aviation Authority (CAA) & Ministry of Defence (MoD) Overarching

Statement

Introduction

The UK CAA fully supports the principle of an extension of the EASA competence to safety regulation of ATM and ANS in the EU context.

Building on SES success

The EU SES initiative represents good progress in ATM and CNS service provision in Europe with significant advances having been achieved in the harmonisation of standards and adoption of agreed common regulatory practices and principles, including compliance with ICAO SARPs. The SES 2 package and the SESAR Programme will present further opportunity to build on this success and embed SES further into the core fabric of the European ATM environment.

The establishment of effective rules has secured independent NSAs and the success of SES has been delivered, in no small part, by very significant change and investment from all ATM stakeholders. SES regulations now set the new baseline for ATM operations and regulation.

Project Management and Transition Planning

The UK CAA seeks assurance that arrangements are being put in place to ensure overall project management and transition planning in relation to developments across SES regulations, EASA regulations (including those on aerodromes), Directives, ESARRs and SES Phase 2. There is a need to ensure and maintain a stable and efficient regulatory environment both for NSAs and industry throughout the process. The UK CAA urges that the Commission and EASA provide such strategic direction, project management and transition planning. The transition planning needs to be in place prior to the Basic Regulation being amended and any consequent amendment to the SES regulations. Amendments to all affected regulations should be implemented in a holistic fashion.

Regulatory Stability through Evolution

The UK CAA supports the EASA view as outlined in paragraphs 14 & 15 of the NPA that no new initiative can be allowed to undermine the effort expended already. The UK CAA does not wish to see a situation that creates regulatory instability, unnecessary complexity and overlapping and inconsistent definitions and regulations as this would run counter to the principles of Better Regulation. The scope of the NPA, particularly regarding the relationship between safety and interoperability needs to be clarified. Arising from this, and to ensure a continued safe ATM/ANS environment within the recently established SES regulatory framework, the UK CAA strongly suggests that the safety related elements of the SES regulations be incorporated intact into the EASA regulatory structure, taking care to ensure that neither overlap nor gaps develop between the new regulations and remaining SES legislation.

Whilst the UK CAA would wish to see that the implementing rules stemming from EASA essential requirements incorporate intact the existing suite of safety related elements contained in SES legislation, it would be preferable to directly reference Directives and other associated regulations such as the European

ATCO Licensing Directive, Occurrence Reporting Directive and ICAO SARPs. This may include a need to analyse the relative structures of EASA and SES essential requirements and implementing rules to create a logical and consistent structure of legislation. In particular, care should be taken to ensure that the scope of Aerodrome and ATM ERs are aligned.

The EASA regulations should adopt the contemporary SMS and risk management approach of the SES regulations, which firmly embed risk management responsibilities in regulated industry.

ESARRs

In recognition that EU Regulations have transposed ESARR principles, the UK CAA supports the rationalisation of ESARRs and EU Regulations as put forward by the Commission/Eurocontrol report dealing with double regulation. Non-EU states can be invited to adopt EU regulations in the area of ATM/ANS in a similar way to their adoption of aircraft certification regulations.

Airspace Policy and Management

The UK CAA considers that airspace policy-making is a State responsibility. Under the SES Airspace Regulation, airspace policy-making remains a national responsibility, consistent with ICAO provisions, in order to allow States to determine policies to ensure that airspace is classified according to national requirements, accommodating military needs, and allocated for fair and legitimate use by all airspace users, with the appropriate safety processes put in place. The current SES arrangements have found an appropriate balance in acknowledging the intentions of SES while permitting State arrangements to be made to accommodate military requirements, in terms of access and use of airspace; these should be emphasised and preserved. SES regulations specifically exclude military operations and training.

Moreover, it is the UK CAA's belief that consideration of the integral component of civil/military cooperation and the significant progress that has been achieved under SES, particularly with regard to FUA, should form a vital part of any strategic overview of ATM in Europe. The military dimension, in respect of the States' responsibility for national airspace planning must be taken into account, and any failure to do so undermines the total system approach on which the NPA claims to rely.

Security and National Defence must remain as national competencies.

The use of the term 'Concept of Operations' generates considerable confusion as the scope of the proposal encompasses both service provision and regulatory functions within one concept. Clear delineation of the responsibilities of the State at the strategic level and ANSP at the tactical level needs to be made. Furthermore, the ambiguity that permeates throughout the explanatory notes leads to overall confusion and a permutation of interpretations.

Airspace Jurisdiction

The UK CAA has concerns regarding jurisdiction aspects of the airspace being proposed in the NPA, both in terms of volume and classification. The assertion that the SES regulations have established Community competence in the

aggregated volume of airspace in which Member States are responsible for ensuring that air traffic services are provided is questioned. EU law extends only to the territorial limits (in the case of the UK, this is 12 nms from the UK coastline) and therefore does not apply to 'high seas' airspace and, in particular, the North Atlantic Region where non-EU States have shared responsibility for service provision. Additionally, the NPA contention regarding the expansion of Community competence, and EASA rulemaking, to airspace matters beyond service provision, is a fundamental challenge to existing international arrangements, which retain such matters under sovereign responsibility, and would be unacceptable to the UK CAA.

Timescales and Consultation

In light of the short timescales given for consultation and the extent, and complexity, of the issues being proposed, the UK CAA considers that there is considerable risk that the output of the rule-making process will not provide a sound basis for the Commission to bring forward proposals that will command a desirable level of support among stakeholders. It is highly desirable that EASA and the Commission seek specialist ATM & ASM scrutiny to validate the results of the consultation in order to provide a successful outcome.

Context

This opening statement sets the overall context for the detailed comments on the NPA that follow.

response

Noted

Introduction:

The Agency is pleased to acknowledge the support to the objective of a single aviation safety regulator in Europe and emphasizes that such safety regulatory system has to be able to cope with a total system approach.

Building on SES success:

The Agency agrees with the views expressed. The NPA deliberately states that SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". Therefore, the implementation of the EASA system has to build on these results already achieved within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing such regulatory system. Any deviations can only take place through transparent rulemaking processes and shall be based on informed decisions. Proper coordination with SES is vital as is the necessity of coherence between all the rules in the legal order of the Community. Most likely SES Regulations and its implementing rules need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules.

Project management and transition planning:

The Agency agrees with the overall aim expressed here. However, it believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be as significant as this comment seems to suggest. Commission proposals to amend these regulations should provide for clear transition without legal gaps or overlapping requirements.

Regulatory stability through evolution:

In addition to what has already been stated above, the Agency confirms that it is fully committed to and governed by the principles of the better regulation. Such scheme contains principles as proportionality, subsidiarity, best allocation of roles and consultation. Moreover and as stated in the NPA, the forthcoming Commission proposals shall provide that these two legal frameworks are well adapted at the level of basic laws. That would then allow the Basic Regulation to be implemented based on already existing regulatory material.

The Agency agrees that a stable regulatory environment is important. EASA system would allow addressing all aviation safety regulation through same channels and using uniform methods. It sees, however, some of the views expressed here as quite problematic to implement, since the comment seems to suggest that the extended Basic Regulation should refer directly to certain EU Directives and ICAO SARPS. A structure, where a directly binding EU regulation would refer to an EU directive as an implementation rule, would be quite a unique solution and would most likely raise questions of its legal interpretation. Secondly, a direct reference to ICAO SARPS would make them binding and would call for a system to update this reference based on amendments of the SARPS in question.

The Agency accepts the views expressed here as regards contemporary SMS and risk management approach. Definitions of fully fledged SMS and risk management will be dealt with at the level of implementing rules. The Agency believes that the level of basic law should not fix the definition of the SMS and should allow organisations to arrange their different management objectives as they see fit best, subject of course ensuring that all necessary elements to appropriately manage safety are included.

The Agency takes note of the views expressed in relation to 'double regulation' and aims to build on existing material, including ESARR's.

As has been explained in the NPA and along the lines of this comment, the Basic Regulation indeed establishes means to associate any non-EU European State to the common regulatory system.

Airspace policy and management:

The Agency agrees that it is not a task of the safety regulator to define and arbitrate on the optimal use of airspace. However, the idea that airspace management should be regulated from a safety perspective is already part of the SES and is elaborated e.g. by the report on double regulation. The NPA document, however, puts the question whether such an activity is a service provision function, which needs then to be regulated, or a regulatory one, which cannot be subject to regulation. It would be premature for the Agency to express its final views on this before first concluding on this NPA Question. The Agency takes note of the views expressed in the comment.

When it comes to the civil-military coordination the mandate of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA indeed recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles

already established by SES.

Issues related to concept of operations have been dealt with under the Question 1.

Airspace jurisdiction:

The Agency takes note of the reservations expressed and undertakes to clarify this issue in its forthcoming Opinion. The purpose in the NPA was to stick to the limits already established in SES. It is not clear for the Agency how the protection of the high-seas airspace indeed has been established in the SES regulations. The overriding issue in the foreseen objective to cover also the uncontrolled airspace are the related safety risks and general aviation already being regulated in the EASA system.

Timescales and Consultation:

The Agency acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. Subsequent steps in the process, i.e. the Comments Review Document and the formal EASA Opinion issued to the Commission, will show whether the risk assumed by the comment becomes significant. It is also to be noted here that it may take from 2 to 3 years before the Commission proposal to be issued by next June will be adopted by the European legislators. Moreover, as suggested in the comment, the Agency is using external experts to assist in analysing the comments received.

comment

886

comment by: *iltt*

ILTT agrees completely and gives fully support to IFATSEA's (International Federation of Air Traffic Safety Association) Comments on EASA Consultation Document NPA 2007-16 about extension of the EASA system to the regulation of Air Traffic Management and Air navigation Services (ATM/ANS).

Particularly ILTT wants to point out that the role of the ATSEPs should be noticed much strongly. Role of the ATSEPs in ATM / ANS field is significant.

It is clear that ATSEP Licensing requirements should be included in European legislation.

It is fact, that the complexity of the technical systems in the air traffic safety field has already rapidly increased and will continue to increase, f.ex. SESAR.

Amount of operative work will reduce while automatization, networking and computerization is spreading. This means, that more and more operative functions and decision making are moving to the computers and will be done by softwares. In fact this is happening at all fields of working life.

At the ATM / ANS field this technical environment is controlled and handled by ATSEPs. This means more responsibility and needs of competence for ATSEPs.

The ATSEP licensing is the only way to ensure the high quality and harmonic work in whole Europe when markets are opening for the services.

On behalf of ILTT (Finland)

President Tapani Piippo

response

Noted

The Agency fully agrees with the fact that there are also other professions, than just air traffic controllers, involved in safety critical tasks closely related to the provision of ATM/ANS services. The role of the ATSEP's is a concrete example of that. NPA already concludes that it is for the service providers to ensure that all personnel assigned to such safety critical functions is properly trained. This certainly will require proper implementing rules. Such rules however will be part of the conditions for the certification of the service provider itself. The Agency has therefore not anticipated dedicated implementing rules for other categories of personnel than air traffic controllers. The Agency however also confirmed that it would be open to such suggestions and it would take these views, as the ones expressed in this comment, duly into account when formulating its final opinion to be issued to the Commission.

comment 916

comment by: *Pedro Vicente Azua from EBAA*

EBAA welcomes and supports the extension of the EASA system to the regulation of air traffic management and air navigation services. Indeed, EBAA has been calling for a European safety authority covering ATM and ANS.

However, EBAA is disappointed at the inadequate amount of time that stakeholders have been given to reflect and respond to this important NPA. Indeed, because of the short time we have had to consult with our members, EBAA is only able to offer a number of general comments and reply to those questions considered most relevant.

EBAA believes that this extension must be part of a total systems approach and be consistent with the ICAO framework. It is important that this is clearly underlined by the regulator.

We are convinced that the most important element of this proposal is to develop a very clear partition of responsibilities and competences between European and national level, as well as a clear distinction between the Single European Sky competences on interoperability and the safety side of interoperability falling under the EASA system. In this respect it is important that EASA learns from its own past experiences and clarifies the foregoing definition of responsibilities to avoid overlapping activities, inefficiencies and increased costs.

In addition, a clear road map or transition plan will be necessary to ensure a smooth transfer of responsibilities from national to European level.

In view of recent EASA developments, a strong political commitment both at European and especially national level will be essential to ensure the necessary resources (finance and human resources) are made available for the additional task. Indeed, given the critical importance and the financial implications of the Single European Sky and SESAR to the Community, the European air transport sector cannot afford a failed or delayed transfer of safety competences to EASA.

Finally, EBAA considers that in order to ensure the most effective certification

process, a transparent and flexible consultation mechanism will need to be set up, including an effective and quick appeal mechanism.

response

Noted

The Agency takes note of the support to the aim of a single aviation safety regulator in Europe and agrees that the safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field. It also appreciates the recognised need to ensure appropriate public funding for its activities.

This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee. All rulemaking activities of EASA shall be based on well structured and proven rulemaking process, providing fully transparent means of consultation and containing a Regulatory Impact Assessment. Most of these rulemaking activities are based on fundamental participation by the industry.

The Agency then fully agrees with the general comment requesting for clear roles of European and national institutions - the EASA Basic Regulation indeed establishes a regulatory system consisting of defined roles for the Commission, EASA, Member States and competent aviation authorities. This of course has to be adapted in ATM/ANS domain as efficiently as possible.

The Agency agrees with the need for a clear road-map in the transition phase. However, it believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be very significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. It is also to be noted here that it may take from 2 to 3 years before the Commission proposal, to be issued by next June, will be adopted by the European legislators.

In addition to what has already been stated above, the Agency confirms that it is fully committed to and governed by the principles of the better regulation. Such scheme contains principles as proportionality, subsidiarity, best allocation of roles and consultation. All rulemaking activities of EASA shall be based on well structured rulemaking process, providing fully transparent means of consultation with all stakeholders, including especially all industry stakeholders.

comment

964

comment by: ATKINS

Thank you for the opportunity to take part in the EASA consultation process. As background to our comments, Atkins (the largest multidisciplinary consultancy in Europe) provides amongst other services, Safety Cases for ATC equipment manufacturers and for ANSPs in the UK and in Europe. In addition, we have experience in creating Concept of Operations (CONOP) at the application and regulation level. The Atkins experience in working with ANSPs, Regulators and the military have highlighted a few aspects where we think

could add value to your on-going discussions. Accordingly, our comments are of a more general nature in the hope that they are of use to you.

Human Factors

Equipment is well specified, manufactured, installed and maintained at very high levels of reliability. On the other hand, statistical evidence exists that indicates that approximately 96% of all ATS related incidents are human factor related. This is an area of increasing importance as the loadings on controllers regularly reach maximum capacity. It is therefore essential to good safety management and regulation that the human factor element of all aspects of ATS provision is well understood and catered for. Several of the human factors topics in the consultation should also extend to the engineering personnel who work on the ATC equipment. The human factor work developed by EUROCONTROL would form a suitable basis for EASA requirements. Finally, the increasingly important ICAO initiative on the use of Level 4 "Aviation English" needs to be implemented and monitored.

Civil Military Co-ordination

A noticeable feature of the consultation document was the absence of any guidance / proposal to work with the military authorities either nationally or internationally through EUROCONTROL bodies such as CIMIC^[1] or NATO. It is acknowledged that in several countries the civil and military ANSPs work very closely together to the extent that in some instances the ATS provided is the same. This close working relationship must be encouraged in all member states to the extent that EASA should consider establishing guidelines for the development of a joint (civil and military) and integrated system in terms of operating standards. In some countries, the military is not subject to the full extent of the civil law in terms of aviation legislation. However, this must not preclude the military ANSPs from establishing levels of safety in accordance with the appropriate civil standards. The logic and benefit seems to have been accepted by the military ANSPs (based on the EUROCONTROL established forums) but this needs to be confirmed throughout the EASA area of responsibility. As a general principle, the military must be included in EASA processes to ensure a cohesive and comprehensive ATS environment as required by SES^[2]. Hence, military traffic operating at Operation Air Traffic (OAT) will be operating amongst civil controlled General Air traffic (GAT) at the same or similar levels of safety. To do other than this, in the crowded skies of Europe, would be unwise and potentially dangerous.

CONCLUSION

We welcome this opportunity to support EASA in the formulation of its future policies and direction. Decisions reached in the next few years will have far reaching consequences for safe aviation activities in the increasingly crowded skies of Europe. The SES has provided the basis for achieving many benefits in terms of ATS provision in the foreseeable future. A key factor in its success will be the EASA approach to providing the lead / direction and guidance in bringing the wide variety of ANSPs and airspace users to a common understanding of viable practical safe operations. We wish you well in this initiative and are happy to discuss further any, or related, matters raised in this letter that you consider may be of help to you.

	<p>[1] Civil Military Interface Standing Committee</p> <p>[2] For example, see Chapter II, Article 11 of Regulation (Ec) No 550/2004 Of The European Parliament And Of The Council of 10th March 2004 on the provision of Air Navigation Services in the Single European Sky (the service provision Regulation).</p>
<p>response</p>	<p><i>Noted</i></p> <p>The Agency takes note of these very interesting comments representing views from this specific branch of industry.</p> <p><u>Human Factors</u></p> <p>The emphasis on human factors in this comment is well accepted and recognised by the Agency. That is already partly demonstrated by the ATCO related draft ER's, which introduce also additional human factor issues to those already covered by the respective EU law. EASA experience in the area of flight crew licensing issues is naturally also a useful source of information and know-how. The vital role of different engineering personnel in the ATM/ANS services provision is also widely recognised. The fact that the NPA does not recognise this personnel as a regulated profession does not prevent of regulating the related human factor issues at the level of implementing rules.</p> <p><u>Civil Military Co-ordination</u></p> <p>The mandate of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.</p>
<p>comment</p>	<p>985 comment by: <i>European Transport Worker's Federation</i></p> <p>Attachment #4</p>
<p>response</p>	<p><i>Noted</i></p> <p>The Agency is pleased to take note of the support and interesting views from the ETF members, addressing in more detail the Questions laid down by the NPA.</p>
<p>comment</p>	<p>1025 comment by: <i>INM</i></p> <p>General comments:</p>

As stakeholder belonging to MET services area (Certified Air Navigation Service Provider) I consider relevant following antecedents:

1. Importance of MET on air navigation safety should be viewed both from the impact of adverse weather conditions on the operations and from the provision of MET services.
2. MET information contributes to safety, regularity and efficiency of air transport.
3. The extension of competences should be considered as a good opportunity in order to clarify and complete the regulation of MET services provision under safety point of view.
4. It seems convenient to adopt a global approach to the safety and interoperability of the air transport system, as ICAO but detailed as be needed.
5. There are some absences and inconsistencies in SES in relation with MET:

<!--[if !supportLists]--> <!--[endif]-->Safety is regarded through the compliance with SARPS contained in ICAO Annexes 3, 11 and 14, but differences notified to ICAO about the implementation of SARPS hampers the creation of a level playing field and, more important, the harmonisation of common concepts of operation.

<!--[if !supportLists]--> <!--[endif]-->MET systems affected by SES Interoperability regulation are not well defined.

<!--[if !supportLists]--> <!--[endif]-->The scope of certification is not clear regarding some organisations providing added value products based on MET information from the MET-ANSP, or data presentations according user preferences.

<!--[if !supportLists]--> <!--[endif]-->Performances of MET provision is not easy to link with safety and delays.

In relation with NPA 2007-16, following general comments should be noted:

1. Some lacks on MET safety regulation persist along the proposal:
 - a. Not all users of meteorological information are considered, with their needing and requirements but only crew, when ATM and aerodromes are users (Annex 3 –ICAO).
 - b. Providers of added value on meteorological information and data are not considered.
 - c. Elimination of notified differences on ICAO SARPS allowing a consistent implementation of a concept of operations focused on performances without boundaries implications.

Regarding issues above pointed more time to review MET aspects of the regulations shall be provided in order to consider peculiarities of MET-SP and to take account the vision of experts.

To tune the content of this initiative with previous as SES regulations shall be also considered.

The comments and answers provided byt Spanish Civil Aviation (DGAC) and Spanish Nat Met Supervisory Authority regarding this NPA are endorsed.

response *Noted*

The Agency takes note of the support and of the very interesting comments representing views from a MET service provider.

The Agency does recognise the important role of the MET services in the whole chain of air transport. This is also reflected in the draft ER's. The Agency also agrees that a common safety regulatory system provides a good opportunity to clarify and complement the existing regulations also in this field. Reflecting briefly some of the more detailed comments expressed, the Agency agrees that the further implementing rules indeed provide an opportunity for a common transposition of ICAO SARPS also in this field. Such transposition through Essential Requirements constitutes thereafter the basis for the necessary detailed implementing rules. Furthermore, the draft ER's on MET and more generally on organisations providing ATM/ANS services should mandate addressing at the level of implementing rules those regulatory gaps referred to in this comment. This includes for instance ensuring that the data used as a source for MET services must be of sufficient quality.

comment

1061

comment by: *Civil Aviation Authority Norway*

We fully support that all Member States are subject to the same regulation and standardisation and that ATM is put under the EASA-umbrella. We agree that the scope of the extension of the EASA regulation should cover interoperability, as this is closely linked to safety.

The complex question of the future coexistence of EASA as a safety regulator and SES should be addressed. Eurocontrol, as the existing leading developer of safety regulatory material, should be invited to be a lot more involved in the EASA rulemaking process, also in its initial stages. Eurocontrol is active in the developing of the future SES regulations and specifications. It is therefore crucial to coordinate now as to avoid overlaps and multiple regulation in the future. It is vital to take into account the existing SES regulations and implementing rules, which are currently being implemented in the European region.

An indication concerning the borderline between these two set of rules / frameworks in the future should be given, so that multiple regulation is avoided, as well as this is necessary for the predictability of different stakeholders.

The need for smooth and efficient transition / continuity measures should be addressed early in the rulemaking process in order to avoid rushed decisions and confusion among stakeholders at a later stage.

The ICAO obligations of the EASA Member States should be taken duly into consideration.

The NPA does not seem sufficiently accurate when it comes to the difference between regulation tasks related to safety, and other tasks that have a much wider scope (for example assure sufficient capacity and performance).

It could be questioned whether the conceptual model chosen by the Agency

(define a concept of operations from gate to gate) is appropriate.

The NPA should reflect that quantitative safety goals in ATM have been recommended by ICAO.

The NPA is contradictory when it comes to the use of definitions. Consistency in the use of definitions should be assured throughout the document. One example is the reference to management system.

It is in our opinion crucial to maintain the cooperation between civil and military aviation in the ATM safety domain, bearing in mind that military form part of the airspace user community and frequently require equal access to airspace with capacity constraints.

The Pan-European approach should be assured throughout this important rulemaking process. Non-EU Member States should be consulted on a regular basis throughout the co-decision procedure.

response *Noted*

The Agency takes note of the support to the aim of a single aviation safety regulator in Europe and agrees that the safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field. This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee.

The Agency agrees that the adaptation of existing legal frameworks is a significant challenge. The NPA deliberately states that SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". Therefore, the implementation of the EASA system has to build on using the these results already achieved within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing such regulatory system . Any deviations can only take place through transparent rulemaking processes and shall be based on informed decisions. Proper coordination with SES is vital as is the necessity of coherence between all the rules in the legal order of the Community. Most likely SES Regulations and its implementing rules need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules, not by excluding certain safety issues from the scope of the EASA system on the pretext that they are already covered by SES rules.

The Agency agrees with the need for a clear road-map in the transition phase. However, it believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be very significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the

situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. It is also to be noted here that it may take from 2 to 3 years before the Commission proposal to be issued by next June will be adopted by the European legislators.

As regards ICAO obligations the EASA Basic Regulation establishes clear commitments for the Agency, which is already the case in all other areas covered by it.

The scope of safety regulatory framework is already reflected above.

A specific Question on the concept of operations was laid down in the NPA especially because of similar doubts by the Agency itself. This concept emerges from the draft ER's, which were drafted with the assistance of an informal group of experts.

Paragraph 31 elaborates on the issue of quantitative targets. Such targets can naturally be used at the level of implementing rules or when specifying acceptable means of compliance.

It is agreed that all specific terms used by law have to be clearly specified, but not on the level of this NPA. There are some differences between definitions in the SES Framework Regulation and EASA Basic Regulation. Those should be solved by the future Commission Proposals.

The responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

As regards pan-European nature, the EASA Basic Regulation already establishes a process for associated States. In relation to the co-decision process the Agency itself can not take other responsibilities than informing its stakeholders.

comment

1073

comment by: *Ministry of Transport and Communications, Norway*

General comments

The NPA was published on the EASA website on 30 November 2007 with a time limit for comments on 11 January 2008. The deadline was later extended to 21 January 2008. In view of the complex subject matter, the consultation period in this case is clearly insufficient. The normal consultation period provided for in EASAs Rulemaking Procedure (Article 6(4)) is 3 months, and the justification put forward in the NPA for a shorter consultation period in the present case is unconvincing. We have noted that the terms of reference document for this task (TOR Nr: BR.003) was finalised on 11 September 2006, and that the timetable foreseen in the TOR was publication of the NPA by April 2007 and of

the EASA Opinion by December 2007. Obviously, this task turned out to be much more complex and demanding than originally anticipated by EASA, and, consequently, the stakeholders should have been provided more time to respond. In contrast, we have noted that in the corresponding NPA on extension of EASA's mandate to aerodromes the period for comment was in the end extended to 5 months!

In our view, the approach taken to analyse the subject matter in this NPA is too narrow in view of the complex subject matter at hand. According to the NPA (para 12) a preliminary impact assessment launched by the Commission concluded that the extension of EASA system was the most favourable option to achieve the objective of a high and uniform level of safety. The said impact assessment was not available as source document for the consultation. Hence, it is difficult to judge the strength of the arguments behind this conclusion. However, the justification put forward in the NPA for the concrete approach proposed, with draft "essential requirements" to be added as yet another Annex to Regulation 1592/2002 is not convincing. It seems that EASA takes it for granted that the only way to approach the matter is to follow mechanically the same pattern as has been taken in previous proposals for extension of the mandate of EASA. It would have been useful to analyse other approaches, such as incorporating the specific competence of EASA for safety matters into Single European Sky legislation through appropriate amendments of that legislation.

The inter-relationship with the safety regulatory tasks of Eurocontrol should be an important element in an analysis on this matter.

Perhaps such alternative approaches fall outside the formal mandate of EASA. In that case, it should have been pursued by another body with the proper competence, as a precursor to the work pursued by EASA on the NPA.

The scope of the NPA seems to go beyond the remit of EASA as a body with competence strictly limited to safety matters. The scope of the NPA is specifically extended to interoperability, with reference to the interoperability objectives contained in ICAO Standards and Recommended Practices. However, there is a need to analyse the interoperability concept in more detail than is the case in the NPA, so as to clarify what aspects of the concept are specifically related to safety and what aspects are related to the efficiency/capacity of the ATM system. The latter aspects would fall outside the remit of EASA. Furthermore, one should take care to distinguish between "interoperability" in the sense of ensuring that the detailed national rules and regulations which are promulgated in the ICAO member states are not incompatible with each other and with the rules developed by ICAO, on the one hand, and interoperability in the sense of promulgating common standards and specifications for equipment and systems in use in the ATM activities in Europe so as to ensure "seamless" connections between the different ATC units and/or ANSPs, on the other hand.

Likewise, the scope of the NPA extends to airspace management, which is closely linked to member states' sovereignty over their airspace and to the civil/military dimension as well as their requirements relating to public order and public security. Furthermore, it is necessary to analyse in more detail what aspects of air space management are so intimately related to safety that they can and should be included in EASA's competence.

The approach in the NPA and the proposed text for the Essential Requirements does not take account of the position of Eurocontrol in the field of ATM, including in safety matters, as well as the legal obligations of the member states of Eurocontrol. It is necessary to clarify the inter-relationship between Eurocontrol and the safety regulations promulgated by Eurocontrol, on the one hand, and EASA and the safety regulations promulgated by the Community, on the other hand. The pros and cons of transferring safety regulatory tasks from Eurocontrol to EASA should be carefully assessed, both from a functional and from a legal and political perspective.

Eurocontrol possesses a fundamentally important knowledge and technical competence in the field of ATM, and it is uniquely positioned to bring together all stakeholders in the process of regulatory development - including the military.

Furthermore, the approach in the NPA and the proposed text of the Essential Requirements does not take into account the body of Community law already adopted in the context of the Single European Sky package. It is crucially important to clarify the inter-relationship between these two sets of legislation as an element in the process of preparing the extension of EASAs mandate to ATM. What is missing in connection with the NPA is, inter alia, a detailed analysis of possible weaknesses or even deficiencies, from a safety perspective, in the SES legislation adopted or under preparation. (I.e.: A "gap" analysis.)

The explanatory note of the NPA includes numerous references to ICAO Standards and Recommended Practices, but the proposed text of the Essential Requirements does not make reference to the ICAO SARPs, and the value of it as a "stand alone" piece of legislation is questionable.

Unless the inter-relationship between "EASA rules", on the one hand, and ICAO, Eurocontrol and SES legislation, on the other hand, is clarified there is a risk that multiple regulation of the safety aspects of ATM will be the outcome of the extension of EASAs mandate. This would be very unfortunate.

An important element in the analysis of possible approaches for the extension of EASA's mandate is the ways and means to ensure a smooth and efficient transition of tasks and competence. This would assist in avoiding rushed decisions and confusion among stakeholders at a later stage of the process. The complications concerning the transition of tasks from JAA to EASA come to mind in this regard. Hence, we strongly suggest that such an analysis is initiated as soon as possible.

In our view, it is crucial to maintain the cooperation between the civil and military stakeholders in the ATM domain, and to properly address the civil / military interface in the legislation applicable to the ATM field. This aspect is specifically mentioned as a task in the terms of reference for this NPA. (Para 4, point 6: "In order to adopt a consistent and coordinated approach in ANS and ATM, military needs will have to be evaluated and taken into account when drafting the EASA opinion.") Nevertheless the subject matter has been largely

disregarded in the analysis put forward in the NPA. Consequently, there is a need for further analysis of this aspect.

The pan-European perspective should be kept in mind throughout this important rulemaking process. Non-EU Member States which are directly concerned by the prospective Community legislation should be involved and consulted on a regular basis during the further rulemaking process. With this in mind, it is important to ensure that the subject matter is thoroughly discussed and analysed before a formal proposal is submitted by the Commission for deliberation and adoption by the European Parliament and Council.

As a general comment on the further consultation process we are convinced that it should not be pursued on the basis of the proposed Essential Requirements put forward by EASA. Instead, one should initiate a more open consultation process in which a number of possible approaches and scenarios for the extension of EASA's mandate to ATM are analysed and assessed in more detail and with an open mind. Such a consultation process should be conducted in a way which ensures full transparency and involvement of all stakeholders, and it should provide ample time for reflection and for contributions from all parties involved. For a number of reasons, it would seem advisable that the consultation be managed by another body than EASA, at least during an interim phase.

response *Noted*

The Agency acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. A workshop has been planned to take place in the timeframe before the Commission legal proposal to amend the Basic Regulation. It agrees with the need for a clear road-map in the transition phase. However, it believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be so significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. In this case the concerned stakeholders are already subject to Community legislation and the main changes envisaged under the current consultation primarily affect stakeholders already subject to common rules. In case of aerodrome consultation the subject matter establishes new Community competences. It would also be fair to say that the reasons for this task having been delayed are not just the ones related to its complexity, as the comment seems to suggest.

The second paragraph of the comment is not regarded fully justified. EASA is a Community regulatory Agency assisting the European Commission in well defined executive tasks as established by its founding Regulation. The way forward in this task has indeed been laid down by the Commission and is based on the said preliminary impact assessment. It is however apologised that the NPA does not provide a direct link to this document.

The Agency agrees that the adaptation of existing legal frameworks is a significant challenge. The NPA deliberately states that SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". Therefore, the

implementation of the EASA system has to build on using the these results already achieved within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing such regulatory system . Any deviations can only take place through transparent rulemaking processes and shall be based on informed decisions. Proper coordination with SES is vital as is the necessity of coherence between all the rules in the legal order of the Community. Most likely SES Regulations and its implementing rules need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules, not by excluding certain safety issues from the scope of the EASA system on the pretext that they are already covered by SES rules.

This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee. ASM has been included in the draft ER's as safety objectives because that was felt necessary by the group of experts assisting EASA in developing these ER's. Because of such doubts expressed also in this comment a specific question was laid down in the NPA.

Essential requirements are safety objectives and therefore can not refer to other regulations or organisations. It is not a task of the Agency to address the role of EUROCONTROL. This task is about extending the existing safety regulatory framework to cover also ATM/ANS. Implementation of this would transfer certain tasks from the SES structure to the EASA structure. Such transfers can only be implemented by amending those related legal instruments of the Community. By definition this does not have to affect the role of EUROCONTROL in supporting the rulemaking activities of the Community.

Essential Requirements are not intended to be of 'stand alone' legislation. They will be attached to the Basic Regulation as a new annex. Regulation would then contain provisions imposing regulated persons to comply with relevant set of those requirements. In order to facilitate their task the Agency will prepare implementing rules to tell how this should be done. Such rules will be based on existing SES rules and ESARR's as appropriate.

EASA's task will not create new layers of legislation. EU law replaces relevant national laws covering the same area. EU laws will be adapted to each other ensuring that no gaps or overlaps exist. The Community system also creates certain obligations in relation to the international obligations, as the ones related to EUROCONTROL. It is of course acknowledged that this is a more complicated issue in relation to non-EU States.

Transition is already addressed above.

The responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself.

When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

The Basic Regulation sets the basis for association of any non-EU European State, which concludes with the Community an agreement whereby it accepts to implement it and to recognise the role and powers of the Agency. On this basis, a number of states are already participating in a truly Pan-European system for regulating aviation safety.

comment

1082

comment by: *BFAL*

Contrary to the statement under A.II.7, we consider the consultation period unacceptably short, especially considering the fact that it fell into the Christmas/ New Year break. The 1 week extension allowed was not sufficient. After all, this is a 44 page document dealing with very important aspects of ATM/ ATS which require a very thorough approach. As well, the method of passing the information about a NPA to stakeholders should ensure that all certified ATS organizations are included in due time, i.e. directly.

response

Noted

The Agency acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. A workshop has been planned to take place in the timeframe before the Commission legal proposal to amend the Basic Regulation. It also believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be so significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. It is also to be noted here that it may take 2 to 3 years before the Commission proposal, to be issued by next June, will be adopted by the European legislators.

comment

1111

comment by: *DIRCAM (French Ministry of Defense)*

The principle of the extension of the EASA competency is generally understood and would not create major concerns, provided it is conducted in a transparent manner, in a step by step and pragmatic approach, with a clear and appropriate transition and with the active participation of all stakeholders involved. It means in particular to recognize the constraints and sensitiveness of the national administrations which are accountable for safety. It means also, for the specific case of the Military, that the future rulemaking process will be described with a sufficient level of details to show how they will keep the capacity, making best use of the available resources, to be actively and efficiently associated, and able to have their constraints taken into account.

The extension of the EASA competence to safety in "ATM/ANS regulation" (rule-making, oversight,..) is a very complex issue, and taking into account the

commenting period available, it was quite difficult to hold the desirable in-house consultations in order to elaborate detailed comments. Moreover, the way some subject items are spread among various paragraphs of the NPA would lead to making only comments with limited scope, rather than comments of wider extent. Therefore, only general comments are provided as it is considered that the general approach should be reviewed before addressing the ERs themselves.

From the Ministry of Defence point of view, it seems difficult to deal with ATM safety without mentioning the **interface with the military**. Interfaces between ATSPs and military OAT and military control services provided to GAT are crucial for safety: they are not addressed, although they were clearly mentioned in the ToRs BR003. Additionally, it should be recalled that the Ministry of Defence not only has specific needs and constraints as air navigation services provider and user of airspace, but is also a national regulator, especially in the field of airspace design. It is understandable that the current EU competency, as well as the scarce available resources in military ATM experts, make it difficult for EASA to envisage the modalities of this civil-military dimension. However, ignoring this question is definitely not an appropriate solution. It was expected that the current mechanisms used for the military representation in the SES together with the utilization of the military expertise of Eurocontrol would be envisaged as a solution, and that the NPA would describe the future links between EASA and this mechanisms which have proved their efficiency.

The intention to also cover the un-controlled airspace and the equipage of all airspace users (not excluding state aircraft) is not a realistic move and could not be supported without describing the links with the current civil-military coordination structures which are dealing with these issues, directly related to states obligations in terms of security and sovereignty.

States obligations and accountabilities stemming from ICAO should be better recognized, more clearly integrated, and kept consistent with the general approach of the NPA. This is particularly important in the area of airspace management, and especially the strategic level which is clearly a part of states responsibility.

Although aspects of this proposal are quite interesting, our general feeling varies from doubtful to concerned. This is due to a lack of clear explanations on a number of items. On the mere institutional side, this includes: the lack of a clear vision regarding the limits and interface of the future EASA mechanism and the SES mechanism, the role of the SSC and of Eurocontrol.

We expect more a single level of rulemaking which is building on the existing and available expertise than the creation of something new without consideration for the past successes and achievements.

Also, some new terms and concepts are introduced, without any previous discussion, nor convincing rationale, nor impact study, whilst important features of safety mechanisms present in the SES regulations are simply absent in the ERs.

This lack of visibility creates uncertainties that worry our organisation. There is a risk of seeing a slow down in the SES field, waiting for the new changes of concepts to happen, rather than continuing the significant efforts engaged, with an ensuing risk on safety.

It is also difficult sometimes to discuss about ERs when it seems more logical that some of the IRs related to these ERs be taken through SES mechanisms (or are considered as already taken) and not through EASA system.

It is a fact that ATM safety regulation at a Community level is already quite extensive (if not complete) under SES. That is why it is important to explain clearly the added-value of the proposal compared to the current situation. It should have been more emphasised. It is here presented as an "already consensual" fact, but without proper justification.

Ensuring a global safety approach is supported as a priority of ICAO. However, dealing with ATM safety regulation in the same way than with airworthiness regulation (or pilot licences or aircraft operation) has not proved to be efficient or necessary to achieve a total system approach, as these domains are completely different even if they need to be tightly coordinated. Other methods such as better coordination between EASA and SES, or safety assessment by EASA of SES ATM regulation could have been studied as alternative options. A better and necessary approach should be to describe how EASA would articulate its ATM regulatory activities with what is done by the SES and by Eurocontrol.

The Essential Requirements as stated are not currently an appropriate basis from which to draw up new rules, partly because SES Regulation is well advanced and there are existing implementing rules, but also to avoid the risk of double regulation or over-regulation. We consider the Essential Requirements should be re-visited by a wider group so that they can be revised to reflect the operational scenario with regard to the current SES Regulations and ANS safety.

As safety in ATM is now based on SMS, it is surprising to notice that this concept is not mentioned in the NPA, although it is the main topic mentioned by ICAO about safety for annexes 6, 11 and 14, and also because it is so central to the current certification requirements for ANSPs under SES.

A careful review of the vocabulary used should be undertaken. Some definitions used in this proposal are not in line with SES definitions approved by the legislator (Council and Parliament): the limit between aerodrome and ATM is different, and ANS doesn't cover the same scope as in SES regulation. This has an impact on the scope of the ERs.

The appropriate impact assessment on the extension of the competence of EASA to ATM should be undertaken in order to achieve better regulation. The study undertaken mid 2005 by ECORYS cannot be considered as adequate in that respect.

It is suggested that further workshops be organised by the Agency with the stakeholders (especially NSAs, ANSPs) involved in the implementation of regulations before the EASA opinion is published, so that they have the opportunity to provide EASA with elaborated proposals and also an opportunity to get the relevant explanations on some areas which remain unclear at that stage.

response *Noted*

The Agency is very pleased to observe the pragmatic and cooperative sense in the views expressed by this comment. The Agency confirms that it is fully committed to and governed by the principles of the better regulation. Such scheme contains principles as transparency, proportionality, subsidiarity, best allocation of roles and consultation. Moreover and as stated in the NPA, the forthcoming Commission proposals shall provide that two Community legal

frameworks are well adapted at the level of basic laws. That would then allow the Basic Regulation to be implemented based on already existing regulatory material.

The Agency acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. A workshop has been planned to take place in the timeframe before the Commission legal proposal to amend the Basic Regulation.

The Agency agrees with that a stable regulatory environment is needed. EASA system would allow addressing all aviation safety regulation through same channels and using similar methods. And as have been stated repeatedly in the NPA, that the implementation of this system has to build on using the valuable results already established within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing the SES regulatory system. Any deviations can only take place through transparent rulemaking processes and shall be based on informed decisions.

The responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES, including military representation and making best use of their available expertise.

The Agency agrees that it is not a task of the safety regulator to define and arbitrate on the optimal use of airspace. However, the idea that airspace management should be regulated from a safety perspective is already part of the SES and is elaborated e.g. by the report on double regulation. The NPA document, however, puts the question whether such an activity is a service provision function, which needs then to be regulated, or a regulatory one, which cannot be subject to regulation. It would be premature for the Agency to express its final views on this before first concluding on this NPA Question. The Agency takes note of the views expressed in the comment.

The Agency also agrees that this NPA addresses mainly the EASA system in its general context aiming to identify the regulated persons in the field of this extension and how they should demonstrate their compliance with the respective safety requirements. It emphasizes however that two different sets of EU laws as a starting point have to be adapted to each other and may not overlap. It has not however been the purpose to deal with such an interaction at the level of this consultation document, which is for the Commission to address in its future legislative proposals.

The NPA makes an effort to explain that the Basic Regulation establishes a safety regulatory system consisting of different elements, such as rulemaking, standardisation (inspection), certification, safety analysis, international harmonisation, mutual recognition, etc. This system has been developed through strong effect and consensus by Member States. Comment seeming to suggest that this system would not fit well for ATM due to its complexity is not

very clearly justified and is therefore difficult to respond. Suggested options as such are possible ways forward at the level of implementation. A coordination mechanism with SES is definitely needed for arbitration between different regulatory needs and SES rules will be the basis for the different implementation measures.

Draft essential requirements were developed by the Agency assisted by a group of external experts. Their contents indeed are part of this consultation and the Agency is open to receive suggestions for their improvement.

Detailed provisions of fully fledged SMS and risk management will be dealt with at the level of implementing rules. The Agency believes that the level of basic law should not fix the definition of the SMS and should allow organisations to arrange their different management objectives as they see fit best, subject of course ensuring that all necessary elements to appropriately manage safety are included. This should indeed be compliant with ICAO approach and is the case in all domains of aviation safety.

It is agreed that all specific terms used by law have to be clearly specified, but not on the level of this NPA. There are some differences between definitions in the SES Framework Regulation and EASA Basic Regulation. Those should be solved by the future Commission Proposals. Definition of ANS in the NPA does not deliberately differ from SES definition.

Impact assessment of the extension of the competence of EASA will be undertaken.

As already stated, a workshop is planned to be arranged in the near future.

comment

1112

comment by: *DIRCAM (French Ministry of Defense)*

The principle of the extension of the EASA competency is generally understood and would not create major concerns, provided it is conducted in a transparent manner, in a step by step and pragmatic approach, with a clear and appropriate transition and with the active participation of all stakeholders involved. It means in particular to recognize the constraints and sensitiveness of the national administrations which are accountable for safety. It means also, for the specific case of the Military, that the future rulemaking process will be described with a sufficient level of details to show how they will keep the capacity, making best use of the available resources, to be actively and efficiently associated, and able to have their constraints taken into account.

The extension of the EASA competence to safety in "ATM/ANS regulation" (rule-making, oversight,..) is a very complex issue, and taking into account the commenting period available, it was quite difficult to hold the desirable in-house consultations in order to elaborate detailed comments. Moreover, the way some subject items are spread among various paragraphs of the NPA would lead to making only comments with limited scope, rather than comments of wider extent. Therefore, only general comments are provided as it is considered that the general approach should be reviewed before addressing the ERs themselves.

From the Ministry of Defence point of view, it seems difficult to deal with ATM safety without mentioning the **interface with the military**. Interfaces between ATSPs and military OAT and military control services provided to GAT are crucial for safety: they are not addressed, although they were clearly mentioned in the ToRs BR003. Additionally, it should be recalled that the Ministry of Defence not only has specific needs and constraints as air

navigation services provider and user of airspace, but is also a national regulator, especially in the field of airspace design. It is understandable that the current EU competency, as well as the scarce available resources in military ATM experts, make it difficult for EASA to envisage the modalities of this civil-military dimension. However, ignoring this question is definitely not an appropriate solution. It was expected that the current mechanisms used for the military representation in the SES together with the utilization of the military expertise of Eurocontrol would be envisaged as a solution, and that the NPA would describe the future links between EASA and this mechanisms which have proved their efficiency.

The intention to also cover the un-controlled airspace and the equipage of all airspace users (not excluding state aircraft) is not a realistic move and could not be supported without describing the links with the current civil-military coordination structures which are dealing with these issues, directly related to states obligations in terms of security and sovereignty.

States obligations and accountabilities stemming from ICAO should be better recognized, more clearly integrated, and kept consistent with the general approach of the NPA. This is particularly important in the area of airspace management, and especially the strategic level which is clearly a part of states responsibility.

Although aspects of this proposal are quite interesting, our general feeling varies from doubtful to concerned. This is due to a lack of clear explanations on a number of items. On the mere institutional side, this includes: the lack of a clear vision regarding the limits and interface of the future EASA mechanism and the SES mechanism, the role of the SSC and of Eurocontrol. We expect more a single level of rulemaking which is building on the existing and available expertise than the creation of something new without consideration for the past successes and achievements.

Also, some new terms and concepts are introduced, without any previous discussion, nor convincing rationale, nor impact study, whilst important features of safety mechanisms present in the SES regulations are simply absent in the ERs.

This lack of visibility creates uncertainties that worry our organisation. There is a risk of seeing a slow down in the SES field, waiting for the new changes of concepts to happen, rather than continuing the significant efforts engaged, with an ensuing risk on safety.

It is also difficult sometimes to discuss about ERs when it seems more logical that some of the IRs related to these ERs be taken through SES mechanisms (or are considered as already taken) and not through EASA system.

It is a fact that ATM safety regulation at a Community level is already quite extensive (if not complete) under SES. That is why it is important to explain clearly the added-value of the proposal compared to the current situation. It should have been more emphasised. It is here presented as an "already consensual" fact, but without proper justification.

Ensuring a global safety approach is supported as a priority of ICAO. However, dealing with ATM safety regulation in the same way than with airworthiness regulation (or pilot licences or aircraft operation) has not proved to be efficient or necessary to achieve a total system approach, as these domains are completely different even if they need to be tightly coordinated. Other methods such as better coordination between EASA and SES, or safety assessment by

EASA of SES ATM regulation could have been studied as alternative options. A better and necessary approach should be to describe how EASA would articulate its ATM regulatory activities with what is done by the SES and by Eurocontrol.

The Essential Requirements as stated are not currently an appropriate basis from which to draw up new rules, partly because SES Regulation is well advanced and there are existing implementing rules, but also to avoid the risk of double regulation or over-regulation. We consider the Essential Requirements should be re-visited by a wider group so that they can be revised to reflect the operational scenario with regard to the current SES Regulations and ANS safety.

As safety in ATM is now based on SMS, it is surprising to notice that this concept is not mentioned in the NPA, although it is the main topic mentioned by ICAO about safety for annexes 6, 11 and 14, and also because it is so central to the current certification requirements for ANSPs under SES.

A careful review of the vocabulary used should be undertaken. Some definitions used in this proposal are not in line with SES definitions approved by the legislator (Council and Parliament): the limit between aerodrome and ATM is different, and ANS doesn't cover the same scope as in SES regulation. This has an impact on the scope of the ERs.

The appropriate impact assessment on the extension of the competence of EASA to ATM should be undertaken in order to achieve better regulation. The study undertaken mid 2005 by ECORYS cannot be considered as adequate in that respect.

It is suggested that further workshops be organised by the Agency with the stakeholders (especially NSAs, ANSPs) involved in the implementation of regulations before the EASA opinion is published, so that they have the opportunity to provide EASA with elaborated proposals and also an opportunity to get the relevant explanations on some areas which remain unclear at that stage.

response

Noted
see response to same comment above

comment

1113 comment by: *DIRCAM (French Ministry of Defense)*

response

Noted
no comment

comment

1114 comment by: *DIRCAM (French Ministry of Defense)*

The principle of the extension of the EASA competency is generally understood and would not create major concerns, provided it is conducted in a transparent manner, in a step by step and pragmatic approach, with a clear and appropriate transition and with the active participation of all stakeholders involved. It means in particular to recognize the constraints and sensitiveness of the national administrations which are accountable for safety. It means also,

for the specific case of the Military, that the future rulemaking process will be described with a sufficient level of details to show how they will keep the capacity, making best use of the available resources, to be actively and efficiently associated, and able to have their constraints taken into account.

The extension of the EASA competence to safety in "ATM/ANS regulation" (rule-making, oversight,..) is a very complex issue, and taking into account the commenting period available, it was quite difficult to hold the desirable in-house consultations in order to elaborate detailed comments. Moreover, the way some subject items are spread among various paragraphs of the NPA would lead to making only comments with limited scope, rather than comments of wider extent. Therefore, only general comments are provided as it is considered that the general approach should be reviewed before addressing the ERs themselves.

From the Ministry of Defence point of view, it seems difficult to deal with ATM safety without mentioning the interface with the military. Interfaces between ATSPs and military OAT and military control services provided to GAT are crucial for safety: they are not addressed, although they were clearly mentioned in the ToRs BR003. Additionally, it should be recalled that the Ministry of Defence not only has specific needs and constraints as air navigation services provider and user of airspace, but is also a national regulator, especially in the field of airspace design. It is understandable that the current EU competency, as well as the scarce available resources in military ATM experts, make it difficult for EASA to envisage the modalities of this civil-military dimension. However, ignoring this question is definitely not an appropriate solution. It was expected that the current mechanisms used for the military representation in the SES together with the utilization of the military expertise of Eurocontrol would be envisaged as a solution, and that the NPA would describe the future links between EASA and this mechanisms which have proved their efficiency.

The intention to also cover the un-controlled airspace and the equipage of all airspace users (not excluding state aircraft) is not a realistic move and could not be supported without describing the links with the current civil-military coordination structures which are dealing with these issues, directly related to states obligations in terms of security and sovereignty.

States obligations and accountabilities stemming from ICAO should be better recognized, more clearly integrated, and kept consistent with the general approach of the NPA. This is particularly important in the area of airspace management, and especially the strategic level which is clearly a part of states responsibility.

Although aspects of this proposal are quite interesting, our general feeling varies from doubtful to concerned. This is due to a lack of clear explanations on a number of items. On the mere institutional side, this includes: the lack of a clear vision regarding the limits and interface of the future EASA mechanism and the SES mechanism, the role of the SSC and of Eurocontrol. We expect more a single level of rulemaking which is building on the existing and available expertise than the creation of something new without consideration for the past successes and achievements.

Also, some new terms and concepts are introduced, without any previous discussion, nor convincing rationale, nor impact study, whilst important features of safety mechanisms present in the SES regulations are simply absent in the ERs.

This lack of visibility creates uncertainties that worry our organisation. There is

a risk of seeing a slow down in the SES field, waiting for the new changes of concepts to happen, rather than continuing the significant efforts engaged, with an ensuing risk on safety.

It is also difficult sometimes to discuss about ERs when it seems more logical that some of the IRs related to these ERs be taken through SES mechanisms (or are considered as already taken) and not through EASA system.

It is a fact that ATM safety regulation at a Community level is already quite extensive (if not complete) under SES. That is why it is important to explain clearly the added-value of the proposal compared to the current situation. It should have been more emphasised. It is here presented as an "already consensual" fact, but without proper justification.

Ensuring a global safety approach is supported as a priority of ICAO. However, dealing with ATM safety regulation in the same way than with airworthiness regulation (or pilot licences or aircraft operation) has not proved to be efficient or necessary to achieve a total system approach, as these domains are completely different even if they need to be tightly coordinated. Other methods such as better coordination between EASA and SES, or safety assessment by EASA of SES ATM regulation could have been studied as alternative options. A better and necessary approach should be to describe how EASA would articulate its ATM regulatory activities with what is done by the SES and by Eurocontrol.

The Essential Requirements as stated are not currently an appropriate basis from which to draw up new rules, partly because SES Regulation is well advanced and there are existing implementing rules, but also to avoid the risk of double regulation or over-regulation. We consider the Essential Requirements should be re-visited by a wider group so that they can be revised to reflect the operational scenario with regard to the current SES Regulations and ANS safety.

As safety in ATM is now based on SMS, it is surprising to notice that this concept is not mentioned in the NPA, although it is the main topic mentioned by ICAO about safety for annexes 6, 11 and 14, and also because it is so central to the current certification requirements for ANSPs under SES.

A careful review of the vocabulary used should be undertaken. Some definitions used in this proposal are not in line with SES definitions approved by the legislator (Council and Parliament): the limit between aerodrome and ATM is different, and ANS doesn't cover the same scope as in SES regulation. This has an impact on the scope of the ERs.

The appropriate impact assessment on the extension of the competence of EASA to ATM should be undertaken in order to achieve better regulation. The study undertaken mid 2005 by ECORYS cannot be considered as adequate in that respect.

It is suggested that further workshops be organised by the Agency with the stakeholders (especially NSAs, ANSPs) involved in the implementation of regulations before the EASA opinion is published, so that they have the opportunity to provide EASA with elaborated proposals and also an opportunity to get the relevant explanations on some areas which remain unclear at that stage.

response *Noted*

see response to same comment above

comment

1121

comment by: *Airport Operators Association*

This response is made by the UK Airport Operators Association (AOA). The AOA is the trade association for British airports and has in its membership all of Britain's major international and regional airports as well as a large number of airports and aerodromes serving business and general aviation.

The consultation period given to industry to respond to the details contained within the NPA document initially barely extended to six weeks. As this period also included the Christmas and New Year holidays, the period given to submit responses (by 11 January 2008) was effectively only four weeks. Even given that a further 10 days grace was extended to respondents i.e. to 21 January 2008, this remains a ludicrously short timescale for such an important matter and does not comply with any of the basic principles associated with Better Regulation nor with EASA's own published criteria for NPAs.

It is noted that paragraph 7 of the NPA document refers to this "shorter consultation period" and justifies it on the basis that it was chosen to suit a particular Commission objective to issue a legislative proposal covering the safety regulation of ATM and ANS before the summer of 2008. This confirms that this NPA process is being driven solely by a pre-determined timeframe and not with the interests of effective consultation with stakeholders.

The AOA does not believe that rushing this consultation through with unacceptable haste is in the interests of either the regulatory institutions or of industry stakeholders and would urge EASA and the Commission to fundamentally review this matter before proceeding further.

response

Noted

The Agency takes note of these very interesting comments representing views from this specific branch of industry.

The Agency acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. A workshop has been planned to take place in the timeframe before the Commission legal proposal to amend the Basic Regulation. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements.

comment

1132

comment by: *DG CAA of the Republic of Bulgaria*Attachment [#5](#)

response

Noted

This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be

dissociated from safety regulation. Moreover, it is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that it is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee.

Definitions used are purposed to be the same as in SES and as suggested. These and the interactions between different legal frameworks will be defined on the respective Commission proposals, not on the level of this NPA.

EASA Basic Regulation establishes a system for the common transposition of ICAO SARPS. Such transposition constitutes the basis for the necessary detailed implementing rules. Basic Regulation defines the roles of the Commission, EASA, Member (and associated) States and competent authorities in the safety regulatory system.

The mandate of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

The Agency agrees that it is not a task of the safety regulator to define and arbitrate on the optimal use of airspace. However, the idea that airspace management should be regulated from a safety perspective is already part of the SES and is elaborated e.g. by the report on double regulation. The NPA document, however, puts the question whether such an activity is a service provision function, which needs then to be regulated, or a regulatory one, which cannot be subject to regulation. It would be premature for the Agency to express its final views on this before first concluding on this NPA Question. The Agency takes note of the views expressed in the comment.

comment 1149

comment by: *MeteoSwiss*

General comment:

while MET Services are part of the Air Navigation Services, it is difficult to separate the MET Services from the other AN Services (e.g. ATFM, ATM). Due to the nature of the MET Service it is very often necessary to make separate regulations or give a good guidance how to handle the regulations in the MET Services.

Regulations concerning MET Services should always be in line with ICAO and WMO regulations (e.g. training standards of MET personal).

The proposed amendments which are specific to MET Services seem to be

	correct.
response	<p><i>Noted</i></p> <p>The Agency takes note of the support and of the interesting comment representing views from a MET service provider.</p> <p>The Agency recognises the important role of the MET services in the whole chain of air transport. This is also reflected in the draft ER's. The Agency sees that a common safety regulatory system provides a good opportunity to clarify and complement the existing regulations also in this field.</p>
comment	<p><i>1168</i> comment by: <i>Air Navigation Coordination. Spanish Civil NSA</i></p> <p>In general, some of the questions are not to much relevant to the issue of EASA extension, and some others could be interesting to be asked.</p>
response	<p><i>Noted</i></p>
comment	<p><i>1169</i> comment by: <i>Air Navigation Coordination. Spanish Civil NSA</i></p> <p>Civil / military issues are not covered by the NPA. It might be understandable in the context of EU and the second pillar, but military dimension, in air navigation is critical. Airspace is a public domain shared between civilians and military, and many technological systems are shared also. Finally, there is also an impact of any air navigation regulation on the military users.</p>
response	<p><i>Noted</i></p> <p>When it comes to the civil-military coordination the responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA indeed recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.</p>
comment	<p><i>1170</i> comment by: <i>Air Navigation Coordination. Spanish Civil NSA</i></p> <p>The notion of Safety Management Systems (SMS) is not given the weight that current EU ATM regulations give to it. It is understandable that, in the airworthiness/operations environment, this concept is rather mixed with quality management, but for ATM, SMS is the key pillar for safety guarantee from the provider.</p>

response

Noted

Detailed provisions of fully fledged SMS and risk management will be dealt with at the level of implementing rules. The Agency believes that the level of basic law should not fix the definition of the SMS and should allow organisations to arrange their different management objectives as they see fit best, subject of course ensuring that all necessary elements to appropriately manage safety are included. This should indeed be compliant with ICAO approach and is the case in all domains of aviation safety.

comment

*1171*comment by: *IDCOOK*

Serco Ltd provides ANSP services to customers around the world and we understand that EASA is committed to ensuring high, uniform safety standards across Europe. We agree that a real single market in air transport services calls for common safety rules and that the development of such rules, covering all aspects of aviation safety are effectively implemented throughout the Community, would help achieve a seamless, efficient and safe system. Serco therefore supports the general objectives of the Essential Requirements as laid out in the NPA No 2007 – 16, but we think that it is not yet clear what this extension to the EASA system can most effectively play and how current work that the industry has put in place to assure a safe and robust working environment can be utilised and built upon versus the implementation of the current proposals.

Serco supports the principles of extending the EASA system, on a step-by-step basis, into areas of aviation safety. We have had some difficulty in interpreting this crucial proposal mainly due to the lack of standard definitions. It is vital that any new regulations are clearly articulate and that its strategy and planning are soundly based.

Prior to the acceptance of these regulations we hope to seek clarification in applying the essential requirement. The lack of a proposed funding vehicle to implement these requirements is concerning as the obligation on us as an ANSP, as interpreted, would lead to questionable safety gains and increased bureaucracy. As an ANSP it is not acceptable to hold the financial burden of the measures proposed as such hope to seek clarification and a detailed picture on costs and benefits.

Finally, our general thoughts on the enforcement and implementation of the requirements will largely reduce the dynamic flexibility of airspace between civil and military traffic under which we are currently operating with in the UK.

response

Noted

The Agency takes note of the support to the aim of a single aviation safety regulator in Europe and agrees that the safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field. It also appreciates the recognised need to ensure appropriate public funding for its activities.

This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be

dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that it is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level. The Agency agrees with that a stable regulatory environment is needed. EASA system would allow addressing all aviation safety regulation through same channels and using similar methods. And as have been stated repeatedly in the NPA, that the implementation of this system has to build on using the valuable results already established within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing the SES regulatory system. Any deviations can only take place through transparent rulemaking processes and shall be based on justified decisions.

Last comment related to the flexibility between civil and military traffic in UK is not shared.

comment

1200

comment by: ATC The Netherlands

LVNL fully supports the transfer of responsibility for ATM safety to EASA in the framework of a total system approach in line with the High Level Group Report.

However, this NPA seems to suggest that EASA will become responsible for much more than ATM safety and that a great part of the SES regulations will be transferred to EASA. At this moment in time, we cannot support this:

- 1. A vision of the European Commission on the future responsibility of the different organisations working in ATM; SSC, ICB, Eurocontrol, EASA and national organisations is needed.
- 2. A roadmap defining the transition of the preparation of ATM rules and regulations to EASA should be defined, including the risks involved and the mitigation thereof together with the conditions attached to such transfer of tasks.
- 3. In the view of LVNL the most important conditions are that EASA sets up a stakeholder consultation process similar to that in Eurocontrol with special regard to civil-military co-ordination. Overregulation or double regulation should be avoided. Also adequate resources and funding need to be in place at EASA.

On the basis of the available information under these three points a decision can be taken to transfer more than ATM safety regulations to EASA.

For the time being only Safety Regulation should be transferred to EASA (the current Eurocontrol safety regulatory activities). Airspace policy, economic regulation and interoperability are out of the scope of EASA competence. EASA should take into account existing safety regulations in the framework of SES.

response

Noted

The Agency takes note of the support to the aim of a single aviation safety regulator in Europe and agrees that the safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field. This activity is not

intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee.

The Agency agrees that the adaptation of existing legal frameworks is a significant challenge. The NPA deliberately states that SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". Therefore, the implementation of the EASA system has to build on using the these results already achieved within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing such regulatory system . Any deviations can only take place through transparent rulemaking processes and shall be based on informed decisions. Proper coordination with SES is vital as is the necessity of coherence between all the rules in the legal order of the Community. Most likely SES Regulations and its implementing rules need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules, not by excluding certain safety issues from the scope of the EASA system on the pretext that they are already covered by SES rules.

The Agency agrees with the need for a clear road-map in the transition phase. However, it believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be very significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements.

comment

1214

comment by: IFATCA

Political commitment is required to ensure that the necessary resources (financial and staff competence) are made available to ensure a smooth transition to the extension of EASA competence.

response

Noted

The Agency takes note of the support to the aim of the single aviation safety regulator in Europe and agrees that the safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field. It also appreciates the recognised need to ensure appropriate public funding for its activities.

comment

1215

comment by: IFATCA

The extension of the EASA system must be part of the total system approach and consistent with the ICAO framework.

Justification:

Guarantee interoperability

response *Noted*
see the response above

comment *1216* comment by: *IFATCA*
A clear roadmap is required to define the transition of responsibility from Eurocontrol to EASA.

response *Noted*
The Agency agrees with the need for a clear road-map in the transition phase. However, it believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be very significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements.

comment *1217* comment by: *IFATCA*
There must be a clear separation of responsibility between EASA (eg rulemaking) and the NSAs (eg enforcement and oversight).

response *Noted*
The EASA system is based on shared roles between the Commission, EASA, Member States and their competent authorities. These roles are clearly defined in the Basic Regulation.

comment *1218* comment by: *IFATCA*
Existing ATM related rules including the SES regulations and eurocontrol ESARRS should be taken in to account to avoid over regulation or indeed duplicate regulation.

response *Noted*
Existing ATM related rules, including SES regulations and EUROCONTROL ESARR's, will be used as a basis for the future implementing rules. EASA system does not create any additional layers of regulations.

comment *1219* comment by: *IFATCA*
The EASA certification process should be integrated with the SES certification process.

response *Noted*
EASA certification process will build on SES certification process.

comment *1220* comment by: *IFATCA*

	Strong stakeholder consultation processes must form part of the rulemaking procedure with an appeals process should be defined.
response	<p><i>Noted</i></p> <p>Every rulemaking activity by EASA has to follow its formal rulemaking process based on extensive stakeholder consultation. The Basic Regulation indeed establishes an appeal mechanism. EASA has a legal personality and is liable of all its actions.</p>
comment	<p><i>1249</i> comment by: <i>DFS Deutsche Flugsicherung GmbH</i></p> <p>DFS supports the proposed expansion of EASA competence to safety regulation in the field of ATM/ANS following the "total system approach".</p> <p>The proposal includes areas which currently are covered by the SES regulation on interoperability and the related essential requirements. DFS supports the system introduced through the SES interoperability regulation, using the competence of the established European Standardisation Organisations (CEN, CENELEC and ETSI in co-operation with EUROCAE) and, in specified areas, Eurocontrol. ANSPs currently are certified in accordance with the SES regulations, in particular the "Common Requirements". We would expect EASA to build upon these existing regulations. The NPA, however, includes various proposals which seem to intent to substitute existing regulations rather than being based on those.</p>
response	<p><i>Noted</i></p> <p>The Agency takes note of the support to the aim of a single aviation safety regulator in Europe and agrees that the safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field.</p> <p>The NPA deliberately states that SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". Therefore, the implementation of the EASA system has to build on using the these results already achieved within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing such regulatory system . Proper coordination with SES is vital as is the necessity of coherence between all the rules in the legal order of the Community. Most likely SES Regulations and its implementing rules need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules. NPA contains specific questions related to the issues covered by the SES interoperability regulation. It would be premature to take a stance on this issue before concluding on those questions. Agency takes note of the view expressed here. Also, the subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements.</p>
comment	<p><i>1280</i> comment by: <i>INAC</i></p> <p>We have had the chance to read the comments sent by EUROCONTROL and, in</p>

	general terms and in substance, agree with them.
response	<i>Noted</i>
comment	<p><i>1291</i> comment by: <i>Ministry of Transport of the Czech Republic</i></p> <p>It is evident, that some issues need to undertake in-depth analysis, some criteria are missing and most of the questions have to be discussed under the leadership of EC before the common agreement on extension of EASA competencies to ATM/ANS takes effect.</p>
response	<p><i>Noted</i></p> <p>This NPA will lead to Comment Response Document and after that to an EASA Opinion issued to the Commission. The Commission will issue its legal proposal to amend the Basic Regulation, which in turn will be adopted in the co-decision procedure by the European Council and Parliament.</p>
comment	<p><i>1292</i> comment by: <i>Ministry of Transport of the Czech Republic</i></p> <p>The NPA does not consider the financial impact related with the transition of the competencies.</p> <p>Costs and benefits analysis is missing.</p>
response	<p><i>Noted</i></p> <p>Impact assessment on the EASA extension will take place,</p>
comment	<p><i>1293</i> comment by: <i>Ministry of Transport of the Czech Republic</i></p> <p>We strongly recommend to borrow the Eurocontrol regulation consultation mechanism without any changes.</p>
response	<p><i>Noted</i></p> <p>The Agency believes that its formal rulemaking process works well, is proven and even more complete. It has been adopted in consensus by <u>all</u> Member States representatives.</p>
comment	<p><i>1314</i> comment by: <i>Ente Nazionale per l'Aviazione Civile</i></p> <p>The comments made by Ente Nazionale per l'Aviazione Civile, ENAC, the Italian Civil Aviation Authority and National Supervisory Authority for Italy, are made on behalf of Italy.</p>
response	<i>Noted</i>
comment	<p><i>1387</i> comment by: <i>FSAI</i></p>

**FSAI (Federación de Sindicatos Aeronáuticos Independientes)
Comments on EASA Consultation Document NPA 2007-16 about the
extension of the EASA system to the regulation of Air Traffic
Management and Air Navigation Services (ATM/ANS)**

All comments about the proposed NPA 2007-16 from EASA, in order to extend regulation of ATM/ATS services, should be interpreted taking in consideration that the different point of view of every association or union stakeholders depends mostly of the great differences in the willingness of the National ANSP to comply with regulations and in the willingness of the National Regulator to enforce those regulations.

Because of our particular ATSEP professional environment with negative experiences about regulations, de-regulations, or total absence of regulations, could maybe influence our comments, and our particular opinion could probably be interpreted as like in a "hard line". Even though our first idea was to made a critical approach to the document, we would like to take a positive approach and help, as much as possible within our capabilities, in the construction of the future regulatory framework.

General Comments:

1.- Is difficult for us to understand, the difference that EASA wants to establish between aerodrome regulation from ATM/ANS regulation. From our particular point of view, this will lead to a differentiation in ATM services, depending if they are performed by an ACC or by an Airport Control Tower. This is also a well known discussion in SES forums... but related mostly to privatisation of some ATM services.

Both environments use ATM/ANS services, and the difference based on the numbers of aircraft handled seems not to be enough.

2.- Before SES initiative, each national ATM services provider (who was in the most of the cases also the Supervising Authority) had its individual regulation, mainly based in ICAO and Eurocontrol recommendations, in our case. With the adoption of the SES "legislative package", finally we had (Or it was supposed to be like that) common regulations for the provision of ATM/ANS services in Europe. Our surprise, when reading the proposal of NPA, is that despite EASA's good intentions, all work done before by EC and Eurocontrol, mainly regarding ATSEP's, seems it will be wasted. Our question is why EASA almost will don't take account of this experience in all related to ATSEP'S and other items?.

3.- Even in paragraph 78 we can read :

"Regarding other personnel involved in provision of ATM/ANS services ...services providers must ensure that staff...properly trained... rules for certification of service provider....The agency sees no reason to foresee dedicated implementing rules for other categories of staff than ATCO's".

If some ANSP's doesn't ensure proper training, and competence assessment of its staff ... "other than ATCO's", what will be the role of EASA in this situations ?. Maybe take a seat and wait to see what happens next?.

Even though everybody in the aviation community knows that is not true, that is the same that recognize that CNS services, have not any safety related or

critical tasks in the ATM/ANS environment.

It is for that that it is impossible for us to understand that later in paragraphs 110 to 112, EASA recognizes hazards associated to CNS services. The same can be applicable from paragraph 115 to 122. It seems that these recommendations are made "to the blowing wind", because there is not also any reference to the personnel who are responsible in many cases of, design, development, installation, integration, preventive and corrective maintenance... and so on !.

We have the same sensations when reading in part II:

"Essential requirements":

4.c.4. Information needed for the safe installation, operation and maintenance of the systems and constituents as well as information concerning unsafe conditions must be provided to operating personnel or maintenance personnel, as appropriate, "in a clear, consistent and unambiguous manner".

Wich one information would be more consistent, unambiguous and clear, that EASA implementing common rules for ATSEP's !!.

4.- Finally, what should be clear and outside of any doubt, is that all personnel carrying out tasks directly related with the Air Safety (among them ATSEP people, like it is recognized by ESSAR 5), should be regulated for and supervised somehow.

And that those norms and supervision cannot be in hands, neither to the free will of the ANSP's neither of the National Regulator since unfortunately we all know when the Regulator relaxes in its supervision, the ANSP neglects Safety in favour of profits.

An unfortunate and practical case that reinforces the theory that certain tasks should be clearly regulated and cannot be left in the ATSEP on duty's better view is the case of the accident of Ueberlinguen, in the one that a heap of circumstances among which were the out of service for maintenance of the communication phone line among German and Swiss ATCO's facilities.

Now and as a possible example that reinforces the necessity for a Common Regulation of our tasks, we can imagine that the previous case takes place in a future time in one of the future FAB's in which an ANSP provides services in part of the air space of a second country, whose ANSP and contrary to that of the first country spends a lot of Euros in the preparation and qualification of its ATSEP's, for example; that the accident is among other reasons by a bad planning, lack of enough and qualified personnel, etc, etc. and that the rests of de midair crash fall into a populated area of the second country causing a lot more of victims on the ground.

Just imaging the reaction of the public opinion we can certainly assure that the policy of a Common Regulation all over Europe and for an European Agency is much more worthwhile than the one of "wait an see what happens next".

As an EPILOGUE, behind our apparent criticism to the EASA's intentions, is our desire of finally achieve a real regulation for our profession within its environment. As we said in the foreword or initial comments, our daily bad experience caused for an almost total absence of regulation, or partially implemented regulations regarding ATSEP's - only for the purpose of achieving the SES certification-, makes that any initiative in order to make more difficult for some Air Navigation Services Providers play with the regulations, is warmly

welcome.

Hoping that our recommendations, as well as other IFATSEA affiliates ones, will put on the table again the need of implementing rules for ATSEP personnel, we will follow this process with interest.

response *Noted*

1. These two different tasks of EASA will become a single proposal to amend the EASA Basic Regulation. Safety regulation should not depend on which organisation provides the service in question.

2. The Agency fully agrees with the fact that there are other professions, than just air traffic controllers, involved in safety critical tasks related to the provision of ATM/ANS services. The role of the ATSEP's is a concrete example of that. NPA already concludes that it is for the service providers to ensure that all personnel assigned to such safety critical functions must be properly trained. This will require proper implementing rules. Such rules will be part of the conditions for the certification of the service provider itself and will be directly binding for each and every organisation providing ATM/ANS services. These rules will build on the existing regulatory material.

3. Purpose of the texts quoted from the NPA is to recognise that in ATM/ANS service provision there is also other staff in safety critical tasks. Their qualifications have to be ensured by the organisation employing them. This is required by a directly binding law. However, these personnel are not regarded as a regulated profession, in the case of which the freedom of those individuals is limited to exercise their profession only if they meet the defined physical/medical fitness and current practise.

4. As stated above, there will be directly binding implementing rules covering this issue.

comment *1409*

comment by: *UweSchindler Gdf-ATSEP-Section*

However in preparing the extension of EASA system to cover ATM and ANS, the Agency shall ensure to include all people involved in safety related and critical domains. The Air Traffic Safety Electronics Personnel (ATSEP) are in this category and therefore should be subject to the regulation. ATSEP duties and responsibilities are outlined in ICAO Doc 7192-AN/857 Part E-2 Training Manual Air Traffic Safety Electronic Personnel.

The requirements for training and competence of the APSEP needs to be included in this NPA as well as the need for an ATSEP licence.

In Germany we have 15 years of good experience with a combined ATCO/ATSEP licencing system. The training and qualification is supervised by the regulatory authority.

response *Noted*

The Agency fully agrees with the fact that there are also other professions, than just air traffic controllers, involved in safety critical tasks closely related to the provision of ATM/ANS services. The role of the ATSEP's is a concrete example of that. The NPA already concludes that it is for the service providers to ensure that all personnel assigned to such safety critical functions is properly trained. This certainly will require proper implementing rules. Such rules however will be part of the conditions for the certification of the service

provider itself. The Agency has therefore not anticipated dedicated implementing rules for categories of personnel other than air traffic controllers. The Agency however also confirmed that it would be open to such suggestions and it would take these views, as the ones expressed in this comment, duly into account when formulating its final opinion to be issued to the Commission.

comment

1410

comment by: DGCA-NL

We fully support the concept of the total system approach, covering all aviation safety components under one European regulatory system. It is clear that the safety aspects relating to Air Navigation Services should be part of such a system. The Netherlands agrees that the Basic Regulation 1592/2002 offers the right framework for the relevant aviation safety rules.

response

Noted

The Agency takes note of the support to the aim of the single aviation safety regulator in Europe and agrees that the safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field. This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation.

comment

1411

comment by: DGCA-NL

Unfortunately the NPA is not in line with a number of elements of the Terms of Reference BR.0003. This concerns in particular:

a. The required consistency with the SES programme (5th bullet of point 4 of TOR BR.003).

- § An overview is needed of what is available under the Chicago Convention within ICAO and of what has been achieved so far as a result of the SES legislative package, as well as of the responsibilities of the Single Sky Committee (with a view, in particular, to the implementing rules on the airspace regulation and the interoperability regulation).
- § According to Article 8.1 of the Framework Regulation, the Commission shall issue mandates to Eurocontrol for the development of implementing rules under the SES-package, including the rules for the safety of the operations. This mandate is not mentioned in the NPA.
- § Interoperability does not only cover safety aspects. However, the NPA should specifically list the interoperability safety aspects to be covered by the Basic Regulation, set against the establishment of interoperability implementing rules to be developed under the interoperability regulatory regime of the SES-package (consistency with the SES programme).
- § The NPA seems to create a considerable overlap with SES regulatory activities. We take note of the statement in para. 15 (page 5) that the only solution to avoid overlap with the SES regulations and implementing rules could imply that some of these regulations and rules would be modified or repealed. This statement however requires to be specific about what of the SES regulations will be taken over in the EASA regulation and essential requirements. The NPA does not provide that specification.

- § A roadmap should be developed, setting out the risks and hazards involved in the transition of the preparation of ATM safety rules and regulations and of the tasks to be carried out by EASA, Eurocontrol and the Member States, together with the conditions attached to such a transfer of tasks.

b. The interface between Operational Air Traffic (OAT) and General Air Traffic (GAT). This interface is one of the cornerstones of the SES legislative package.

Within Air Navigation Services safety regulations relative to airspace management must include the military needs. This has been recognized under the SES initiative and confirmed in the joint statement of the member states on military issues related to the Single European Sky (OJ. 31.3.2004) as well as in Articles 1 and 13 of the framework regulation EC 549/2004. The success of the single European sky depends on effective cooperation between civil and military authorities, without prejudice to the prerogatives and responsibilities of the member States in the field of defence (recital 16 of the airspace regulation). This civil-military coordination is also reflected in the composition of the Single Sky Committee.

response *Noted*

a) The Agency does not concur with this comment suggesting that this task would not be consistent with its Terms of Reference (ToR). As stated in the ToR, it is indeed an objective to seek consistent solution with the SES regulations. This has been stated many times in the NPA. But it is for the subsequent Opinion and the Commission legal proposals to propose such adaptations. This is the very case for instance with the issue of SES mandates, as being mentioned in the comment. Interoperability regulation has also been mentioned. It is the purpose of certain NPA questions to seek advice on this area to allow a solution to be proposed in the Opinion. Same principle goes with all SES implementing rules. But this can not be shown in the safety objectives, which have to stay neutral as of how they are to be complied with.

The Agency agrees with the need for a clear road-map in the transition phase. However, it believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be very significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements.

b) When it comes to the civil-military coordination the responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA indeed recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not

deviate from the principles already established by SES.

comment

1412

comment by: DGCA-NL

The definitions used in the NPA are not in line with the definitions used in ICAO annexes and the SES package. As a result, the scope of the NPA, in particular of the essential requirements goes beyond the preparation of safety regulation and seems to include the rules of the air. Furthermore, it is not clear whether this would mean that existing rules under Annex 2 of the Chicago Convention are being adopted under EU law or whether it is the intention to prepare amended rules, taking into account the risks that haven been mentioned in paras. 26-33.

response

Noted

As a starting point the definitions used are purposed to be the same as in SES. If the text indicates something different, it is not deliberate. Definitions can naturally be improved, but if this is the case, it will be accomplished in an informed and coordinated manner. Definitions and the interactions between different legal frameworks will be defined on the respective Commission proposals, not at the level of this NPA.

This activity is not intended to go beyond of what is necessary for safety regulation. (It is however assumed that global interoperability cannot be dissociated from safety regulation.) Rules of the air are of great safety relevance. Taking into account the scope of the EASA system today in the context of aircraft and air operations, it would be very questionable to exclude rules of the air when addressing this extension related to the safety of air traffic. Commission has already for some time run a project to look at the rules of the air and related differences Member States have filed to ICAO. It is a starting point for every EASA rulemaking activity to build on ICAO SARPS as closely as possible if not deliberately deviated for specific justified reasons.

comment

1413

comment by: DGCA-NL

Air Navigation Services are considered to be of a public nature with all its consequent accountability and liability aspects for the States.

As stated by the High Level Group on the future European regulatory framework, any increased responsibilities for EASA must be preceded 'by a clear plan to scale up its resources as appropriate'.

response

Accepted

The Agency fully agrees with these views of the High Level Group. But before the necessary resources can be given, there has to be a clear plan of its future tasks. These tasks will be defined in the extended Basic Regulation.

comment

1414

comment by: DGCA-NL

The NPA omits to mention the role of Eurocontrol, even after EASA will have taken over Eurocontrol's SRU for developing safety ATM rules and regulations. For ATM expertise and know how within Eurocontrol is fed through experts from States/ANSPs who take part in the Eurocontrol committees, consultation groups and task forces. While efficiency in Eurocontrol leaves to be desired for, the EASA-system needs to take into account that the current basic ATM input

	from the ATM experts of the Member and non Member States will remain essential for the development of ATM rules and regulations.
response	<p><i>Noted</i></p> <p>The purpose of the consultation is to set the scene to extend the Basic Regulation to cover ATM/ANS. It is then for the respective Commission legal proposals to define how this would affect other EU laws and Community arrangements, including SES. Moreover, it would not be appropriate for the Agency to consider in its consultation document such changes, which could be caused by this extension in EUROCONTROL organisation. Secondly, the Agency fully agrees with this principle to base its work on the best available resources. Most of the EASA rulemaking tasks are executed through drafting groups. Such groups consist mainly of the experts from Member States and from the industry. These experts are nominated through the EASA rulemaking consultative committees.</p>
comment	<p><i>1415</i> comment by: <i>DGCA-NL</i></p> <p>Against the background of the timeline given in the presentation on the first report on the implementation of the Single Sky legislation 'achievements and way forward" a link with the second SES package initiatives would be appropriate, in particular, with a view to the respective roles of the SSC and EASA.</p>
response	<p><i>Noted</i></p> <p>SES second phase proposals and EASA extension will be coordinated and consistent.</p>
comment	<p><i>1433</i> comment by: <i>DGCA-NL</i></p> <p>Finally, while thanking the Agency for all the work that has been done and while endorsing the principle of a common safety regulatory regime, we recommend that the NPA and its essential requirements undergo a thorough analysis based on facts before being included in the opinion of the Agency to amend the Basic Regulation 1592/2002.</p>
response	<p><i>Noted</i></p>
comment	<p><i>1434</i> comment by: <i>Swedish Civil Aviation Authority (Luftfartsstyrelsen)</i></p> <p>EASA suffers at present from lack of sufficient competence and resources in certain areas, and we are of the opinion that EASA should not expand their area of competence until they are fully dressed in order to handle more tasks. In the meantime Eurocontrol could act as the expert organisation which drafts rules on behalf of the Commission. Eurocontrol is today an important actor in the development of the SES regulations and the safety regulations ESARR, consequently Eurocontrol holds proficiency in safety matters in relations to ATM/ANS. To make sufficient use of this competence there is a need to analyse how to utilize the competence of Eurocontrol in the future as well. Eurocontrol has established processes for involving the stakeholders and has a unique possibility to involve and commit states that are not EU member</p>

	states.
response	<p><i>Noted</i></p> <p>The extended Basic Regulation most likely will not enter into force before 2010 - 2011 timeframe. That is regarded as a sufficient time to build up the necessary resources. The Agency is pleased to note the support in the comment for its future budgetary processes. Moreover, the Agency fully agrees with the importance of EUROCONTROL expertise in the ATM field. However, it is for the Commission to lead the debate on its role in the European regulatory system.</p>
comment	<p><i>1435</i> comment by: <i>Swedish Civil Aviation Authority (Luftfartsstyrelsen)</i></p> <p>SCAA is in favour of that the Community acts as a legislator to the regulation of Air Traffic Management and Air Navigation Services (ATM/ANS), for ANS, ASM and ATFM, but the oversight tasks involving issuance of approvals and the auditing part of the safety oversight shall remain within the states and their national authorities.</p>
response	<p><i>Noted</i></p> <p>The Agency fully agrees with this view, as is also stated in the NPA.</p>
comment	<p><i>1436</i> comment by: <i>Swedish Civil Aviation Authority (Luftfartsstyrelsen)</i></p> <p>In principal, SCAA understands the need for harmonize the proposed essential requirements with the present Annexes in EC regulation 1592/2002, however it is recommended that the proposed essential requirements are structured in the same way and have the same general content as the present SES regulations. This is paramount in order to preserve all work and effort that has been done by different stakeholders, i.e. states, the Commission, Eurocontrol, providers, industry etc. In this view we must not forget that both SES and EASA regulation are Community regulations, and that we don't need to start with a blank paper. We have fears that SES as a system of regulation that has already been successfully put into work, should be ruined and hazard the safety level that has been obtained.</p>
response	<p><i>Noted</i></p> <p>The Agency agrees with the intent of this comment. It is indeed vital that the future safety regulatory system builds on existing regulations and no unnecessary additional burden should be caused to regulated persons. However, ER's are safety objectives. They can not be structured similarly as existing regulations. It has not been recognised by the Agency that the structure of draft ER's would prevent their implementation through SES regulations.</p>
comment	<p><i>1437</i> comment by: <i>Swedish Civil Aviation Authority (Luftfartsstyrelsen)</i></p> <p>The NPA lacks any consideration on the subject of sovereignty. EASA has no competency in regard to national security and defence matters, as this area remains under individual State sovereignty. All issues that will impact military operations and training and require civil-military coordination should</p>

	remain under the sovereign authority of Member States.
response	<p><i>Noted</i></p> <p>When it comes to the civil-military coordination the responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA indeed recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.</p>
comment	<p>1438 comment by: <i>Swedish Civil Aviation Authority (Luftfartsstyrelsen)</i></p> <p>There is no mention on how to handle civil-military issues as compared to EC regulation 549/2004. Consequently, there is a need to define the interface between GAT and OAT etc</p>
response	<p><i>Noted</i></p> <p>see comment 1437</p>
comment	<p>1439 comment by: <i>Swedish Civil Aviation Authority (Luftfartsstyrelsen)</i></p> <p>We do not think that EASA should accredit assessment bodies, nor that such bodies should have the power to certify service providers.</p> <p>Criteria for accreditation of "assessment bodies" are not regulated in Annex V to regulation 1592/2002, instead it refers to "qualified entities". There is confusion regarding terms in the proposal. Many different terms are used, for example "accreditation authorities". Consequently, there is a need to revise the terms.</p>
response	<p><i>Noted</i></p> <p>NPA makes a specific question on this issue. The Agency agrees that different terminology exists between Basic Regulation and SES regulations. Suggestions to clarify such inconsistencies will be provided in respective legal proposals.</p>
comment	<p>1440 comment by: <i>Swedish Civil Aviation Authority (Luftfartsstyrelsen)</i></p> <p>The content in the proposed essential requirements is remarkably thin and certain requirements seem to have been left out - is it the intention not to regulate such matters or will they be regulated elsewhere? In other parts of the NPA, the level of details is much higher than in the SES regulations. In conclusion, there is no consistence in the proposed regulation.</p> <p>Example: <i>The proposed ER paragraph 5 is remarkably detailed and regulates</i></p>

an area which is already covered by EC-legislation, whereas paragraph 2 appears to regulate the use of airspace generally.

response

Noted

The purpose of this task is to set the scene for a safety regulatory system by defining who the regulated persons are and how they should demonstrate their compliance with the defined safety objectives, i.e. essential requirements. Implementing rules will be developed to facilitate and show to the regulated persons on how to comply with these objectives. Implementing rules will be based on SES rules and ESARR's.

comment

1441 comment by: *Swedish Civil Aviation Authority (Luftfartsstyrelsen)*

In the description of the essential requirements we have **detected some incorrect facts or statements**.

Example: *It is stated that an ATS clearance is "...given to depart at a specific time from a given flight level...". This is incorrect, as such clearances are not given "at a certain time".*

response

Noted

Descriptions are meant to give guidance to the purpose of ER's. The Agency takes note of the comment, which however does not affect the contents of this ER.

comment

1442 comment by: *Swedish Civil Aviation Authority (Luftfartsstyrelsen)*

The proposed requirements **contain requirements on search and rescue services (SAR)**, see paragraph 3.c.6.

response

Noted

comment

1443 comment by: *Swedish Civil Aviation Authority (Luftfartsstyrelsen)*

There are **no essential requirements on certification of providers**. Such requirements are necessary in order to maintain safety and should be an essential requirement.

response

Not accepted

Certification is not a safety objective. It is a means to show compliance with safety objectives. Obligations for regulated persons to show that they comply with safety objectives are dealt in the articles of the Basic Regulation, not in safety objectives themselves.

comment

1444 comment by: *Swedish Civil Aviation Authority (Luftfartsstyrelsen)*

There are also **no requirements concerning the designation of an ATS-provider** within specific airspace blocks and there is no apparent material in the document concerning this issue. Since the designation has a safety aspect,

the reasons for not including it in the essential requirements and the document should be clearly presented and discussed. If EASA believes that the designation in its current form should be totally omitted or remain in the SES-package, the SCAA would like to have some rationale and reasons for such an opinion.

response *Not accepted*

Designation is not a safety objective. Designation responsibility can only be imposed by basic law. Such issues will be part of the Commission proposal and are not dealt with at the level of this NPA.

comment *1445* comment by: *Swedish Civil Aviation Authority (Luftfartsstyrelsen)*

There is no mention of underlying requirements from international organisations in the ER, **it is of vital importance that i e ICAO SARPs and Euroncontrol ESARRs are in compliance as much as possible.**

response *Noted*

Safety objectives can not refer to different pieces of law - they are neutral of how to achieve the objective. EASA Basic Regulation already creates a system for common transposition of ICAO SARPS and that has been done in all other areas of EASA's competence. Such transposition through Essential Requirements constitutes thereafter the basis for the necessary detailed implementing rules. ESARR's will be used as a basis for future implementing rules, but can not be referred to in the ER's.

comment *1446* comment by: *Swedish Civil Aviation Authority (Luftfartsstyrelsen)*

The proposed **essential requirements are not consistent with the other essential requirements contained in EC regulation 1592/2002**, for example there are no requirements on safety management systems for providers.

response *Noted*

The quality and contents of the draft ER's has been dealt with under NPA question 2. Section 6 of the draft ER's deals with organisational requirements and should contain all elements of safety management. EASA does not see it appropriate to define the SMS at the level of Basic Regulation, but definitely at the level of implementing rules, and in proportion to the size or nature of the organisations in question.

comment *1447* comment by: *Swedish Civil Aviation Authority (Luftfartsstyrelsen)*

The scope is defined as safety regulations with an additional mention of interoperability. **SCAA is in no favour of other tasks than safety to the extension of EASA's competences.** We think that the task of EASA should remain only to handle safety matters.

response *Noted*

This activity is not intended to go beyond of what is necessary for safety regulation. (It is however assumed that global interoperability cannot be

dissociated from safety regulation.)

comment 1448 comment by: *Swedish Civil Aviation Authority (Luftfartsstyrelsen)*

The scope for the proposed regulation is partly unclear and there is a need for clarification and also introduction of definitions. **There is also a proposed limitation by excluding FIS/AFIS from the regulation which probably ventures the level of safety of ATS.**

Examples: *The scope of the regulation of services ATM/ANS is not consistent with the scope of the definition of air navigations services according to ICAO SARPs and EC-regulations. SCAA finds that the scope should be air navigations services (ANS) as well as the additional services ASM and ATFM, since they have a safety impact on operation.*

ATS consists of FIS/AFIS (flight information service), ALRS (alerting service) and ATC (air traffic control service). If the regulation is limited to ATC (see paragraph 6.b.), alerting service and flight information service will consequently be excluded from the proposed regulation. The alerting service is needed to initiate search and rescue service. The flight information service is provided both from an ATC unit and from AFIS units and is a safety related service. We do not agree that FIS/AFIS will be excluded from this regulation as we during on-going safety oversight have experienced that the safety ambition still differs between different AFIS locations and there is still a need for a harmonised regulation due to the safety impact of the service.

response *Noted*

Definitions will be part of the Commission legislative proposal to amend the EASA Basic Regulation. FIS/AFIS is not excluded from the intended scope. It has only been mentioned in relation to one NPA question asking whether stakeholders think that certain services due to their nature could be subject to lighter means of showing compliance than a fully fledged certification scheme. They could for instance declare their compliance, which would then be subject to the national competent authority to oversee.

comment 1449 comment by: *Swedish Civil Aviation Authority (Luftfartsstyrelsen)*

The term "concept of operations" is not clear. **SCAA prefers that terms laid down in and established by the SES regulations are to be used** in the proposed essential requirements.

response *Noted*

comment 1450 comment by: *Swedish Civil Aviation Authority (Luftfartsstyrelsen)*

The information provided on further actions and the content in additional regulations is insufficient, for example on the content of the presumed implementation rules, in order to evaluate fully whether the content and structure of the proposed ER are adequate. Furthermore, **no regulation impact assessment (RIA) has been developed to support the proposed**

regulation and help stakeholders in understanding the proposal. SCAA finds this unacceptable. In the NPA, EASA refers to a report made by a consultant as the reason for not developing a RIA. However, it is not available for the stakeholders.

response *Noted*

The interaction between EASA and SES components has not been addressed in the NPA. That will be addressed partly in the forthcoming EASA Opinion and in more detail in the subsequent Commission legal proposals.

RIA will be issued, but attached to the Opinion. The document referred to in the NPA is an impact assessment of the European Commission (who contracted this through an internal external consultant). This impact assessment is available to all through the Commission services but the link: http://ec.europa.eu/transport/air_portal/studies_en.htm was unfortunately not included in the NPA.

comment *1451* comment by: *Swedish Civil Aviation Authority (Luftfartsstyrelsen)*

Paragraph 6.c. in the ER should include all services, that means also AIS, MET, ATFM and ATM.

response *Noted*

Comment will be noted in relation to analysing proposals to improve draft ER's.

comment *1452* comment by: *Swedish Civil Aviation Authority (Luftfartsstyrelsen)*

There has been insufficient time provided in order to respond to the proposed NPA.

response *Noted*

The Agency acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. A workshop has been planned to take place in the timeframe before the Commission legal proposal to amend the Basic Regulation.

comment *1463* comment by: *International Air Transport Association (IATA)*

Introduction

IATA has continuously voiced its support for the establishment and growth of EASA as the European aviation safety regulator. IATA has on previous occasions highlighted the need for Europe to develop a total systems approach to [aviation] safety regulation for the sake of ensuring an increased level of efficiency by having one entity deal with the various aspects of [aviation] safety regulation and the interaction between them. Ultimately such an approach will improve the consistency and coherence in these activities, which the current system is lacking.

The recent extension of EASA's competencies to Air Operations and Personnel Licensing has been a step in that direction. Further extension to the regulation of safety and interoperability of aerodromes, as well as an extension of the EASA system to the regulation of ATM & ANS, are further steps in that

direction, and IATA is supportive of the principle that is being pursued. Nevertheless, such an endorsement should not be taken to mean that activities in this context can be undertaken without due consideration for the needs and views of the industry stakeholders, and it should be absolutely clear that this process must allow for the appropriate stakeholder consultation.

Looking in particular at the current EASA NPA on extension of the EASA system to the regulation of Air Traffic Management and Air Navigation Services, IATA would like to note its concern with the reduced consultation period for this exercise. The context and timeframe of the exercise is understood, but this should not have been allowed to impact on the timing and duration of the associated consultation activity, especially when considering the limited stakeholder involvement in the drafting of the NPA and the associated Essential Requirements. Rulemaking activities should seek to assure stakeholder buy-in from the earliest possible stage, thus avoiding a prolonged transposition process.

With these general comments in mind, IATA would like to make the following observations to the NPA in question.

response

Noted

The Agency is pleased to take note of this support to the aim of a single aviation safety regulator in Europe, emphasizing at the same time that the emerging developments and future concepts in ATM most likely do not follow existing borders and interfaces between different domains of aviation. Therefore the safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for such developments.

comment

*1464*comment by: *International Air Transport Association (IATA)*

The political commitment to extend EASA's scope to the field of safety regulation of ATM and ANS needs to be accompanied by a similar commitment to allocate enough funds to EASA to enable it to carry out these functions in an efficient manner. Considerations in this regard need to carefully consider the transition of associated tasks from Eurocontrol's Safety Regulation Unit (SRU) and Safety Regulation Commission (SRC), and the resources required in this regard. And here there is equally a need to consider how the continued involvement of non-EU/ECAC can be facilitated, possibly through an extension of the JAA Liaison Office's activities.

response

Noted

The Agency also appreciates and fully concurs with the recognised need to ensure appropriate public funding for its activities. Secondly, it would not however be appropriate for the Agency to consider in its consultation document such changes, which could be affected by this extension to the EUROCONTROL organisation. Paragraph 19 of the NPA already touches the issue of the pan-European nature of ATM/ANS. If such arrangements turn out not to be enough, the Agency is naturally open to possible new proposals.

comment

*1465*comment by: *International Air Transport Association (IATA)*

As indicated earlier, stakeholder consultation is a critical part of rulemaking activities. Being mindful of the 'Better Regulation'^[1] agenda, EASA will have the responsibility of ensuring an appropriate level of stakeholder consultation, thus allowing for a balanced approach between safety, capacity and environmental aspects. In this context EASA will also be called upon to produce Regulatory Impact Assessments (RIA) for future rulemaking.

^[1] COM (2006) 690 final of 14 November, 2006.

response

Accepted

The Agency is fully committed to and governed by the principles of the better regulation. All rulemaking activities of EASA shall be based on well structured and proven rulemaking process, providing fully transparent means of consultation and containing a Regulatory Impact Assessment. A RIA will be issued as part of the forthcoming Opinion.

comment

1468

comment by: *International Air Transport Association (IATA)*

Concluding remarks

As has been indicated above, IATA has been and will continue to support of a more engaged role by EASA in the safety regulation of the aviation industry in Europe. IATA has, however, chosen not to provide further detailed comments to the proposed NPA as it feels that the content and associated questions have not been formulated in such a manner as to accurately capture current and future developments in the ATM and ANS field. Furthermore, the limited time available to reflect on and respond to this NPA would not have allowed for an appropriate level of consultation with IATA's member airlines, to whom developments in this field are of paramount importance.

As such IATA would strongly recommend that a 1-day workshop be organized to allow for an interaction with industry stakeholders, thus allowing EASA to supplement its NPA comment collection and review process.

response

Noted

The Agency acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. A workshop has been planned to take place in the timeframe before the Commission legal proposal to amend the Basic Regulation.

comment

1469

comment by: *Hellenic CAA*

The EASA involvement to the regulation of ATM/ANS is welcomed by the HCAA, because it lays down raised margins of safety in the ATM/ANS domain.

In spite of the short time we are called to express our opinion, we ascertain, at first, that a difference exists in the notions of:

- ATM/ANS between the NPA No 2007-16 and SES.
- Roles of the different constituents, EC, EASA, EUROCONTROL etc.

need to be determined and a kind of coordination to be established.

- Some of the requirements are clearly foreseen by different directives of the EC (i.e. 2006/23, "Community Air Traffic Controller License"),

- it is not mentioned a relationship civil-military which is highly important for the SES and consequently for the FAB's implementation.

Moreover, we would like to note that the general impression given is that the proposed essential requirements are not adequately balanced. The SES regulations and the EC Common Requirements recognize that ATSEP are personnel directly involved in aviation safety and therefore they (as individuals), their training (training requirements, competence assessment and training organizations) and their range of activities (as described in ICAO Doc 7192, paragraph 1.2) should be regulated. As regards CNS/ATM equipment certification, the "fit for purpose element" is missing from the proposed essential requirements. We would like to highlight that this task is mentioned clearly in ICAO Doc 7192, paragraph 1.2.

Finally, it is noticed that the SESAR future concept of operations is not reflected within the proposed amendment.

response *Noted*

The Agency takes note of the support to the aim of a single aviation safety regulator in Europe and agrees that the safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field.

It is agreed that all specific terms used by law have to be clearly specified, but not on the level of this NPA. There are some differences between definitions in the SES Framework Regulation and EASA Basic Regulation. Those should be solved by the future Commission Proposals. Definition of ANS in the NPA does not deliberately differ from SES definition.

The Agency believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be very significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. Most likely SES Regulations and its implementing rules (and the Directive 2006/23) need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules.

The mandate of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated

accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

The Agency fully agrees that there are also other professions involved in safety critical tasks closely related to the provision of ATM/ANS services. The role of the ATSEP's is an concrete example of that. NPA already concludes that it is for the service providers to ensure that all personnel assigned to such safety critical functions must be properly trained. This certainly will require proper implementing rules. Such rules however will be part of the conditions for the certification of the service provider itself. The Agency has therefore not anticipated dedicated implementing rules for other categories of personnel than air traffic controllers.

SESAR will be the third element of the package of legal measures the Commission intends to issue by next June. All these instruments, including EASA Basic Regulation, shall be consistent with each other.

comment

1470

comment by: *President of APTTA*

Introduction:

APTTA is the Portuguese ATSEP Association, representing the totality of the ATSEP in Portugal.

These are responsible for all the systems in the Portuguese airports, commissioning, development, maintenance and decommissioning.

APTTA would like to congratulate EASA on it's choice of methodology for the treatment of this safety critical issue.

The stakeholders really have to be heard here, we feel, but on the other hand we think that the original document EASA circulates is outdated in it's appraisal of the context and as such heavily biased and disregarding of advancements that have taken place in the context of SES , ICAO and SESAR.

In particular the impact of the ATSEP in the context of the ESARRs as well as in all the ever more evident safety critical role in the SESAR context plus the clearly evidenced role as practical enabler for SESAR and consequently for SES, has not been objectively portrayed.

We would like to contribute positively to a safer and better defined future.

APTTA feels that EASA has clearly not considered the enormous weight of those safety critical professionals that are the engineering/technical staff (the ATSEP), whose role is key in SESAR strategy and practical implementation.

These professionals are responsible for the whole life span of ground systems, procurement, placing into service, maintenance and decommissioning.

As regards validation and certification of systems prior to operation, we see no other possibility then to use already available ATSEP expertise, to perform such tasks, as referred in ICAO doc 7192 that enumerates explicitly the ATSEP competencies.

response

Noted

The Agency fully agrees with the fact that there are also other

professions, than just air traffic controllers, involved in safety critical tasks closely related to the provision of ATM/ANS services. The role of the ATSEP's is a concrete example of that. NPA already concludes that it is for the service providers to ensure that all personnel assigned to such safety critical functions must be properly trained. This certainly will require proper implementing rules. Such rules however will be part of the conditions for the certification of the service provider itself. The Agency has therefore not anticipated dedicated implementing rules for other categories of personnel than air traffic controllers. The Agency however also confirmed that it would be open to such suggestions and it would take these views, as the ones expressed in this comment, duly into account when formulating its final opinion to be issued to the Commission. As stated in the NPA, the forthcoming Commission proposals shall provide that EASA and SES legal frameworks are well adapted at the level of basic laws. That would then allow the Basic Regulation to be implemented based on already existing regulatory material. As already indicated the implementation of the EASA system would be based on existing SES Regulations and implementation rules as well as on ESARR's as far as appropriate.

The Agency fully agrees with the comment as regards ATSEP expertise.

comment

1479

comment by: *President of APTTA*

The Portuguese Air Traffic Safety Electronics Association is very happy to contribute to what we are confident is a breakthrough in European Air Traffic safety.

EASA, in this context can feel confident of our commitment and future involvement towards the achievement of the high goals defined by SES and SESAR, in which we feel very strongly the ATSEP will play a major role.

response

Noted

The Agency is pleased to take note of this support.

comment

1480

comment by: *INAC*

We have had the chance to read the comments sent by EUROCONTROL and, in general terms and in substance, agree with them.

However, and taking those comments as a base, we would like to add some further considerations on some specific points:

1. It is particularly important to preserve the total systems approach and, using some words taken directly from the text from EUROCONTROL, not to try to "include/squeeze ATM/ANS in a structure designed for airworthiness". The level of performance of ATM reached so far, and the requirements for improvement that can be foreseen, namely as SESAR progresses, are quite demanding to the rulemaking and supervising functions, as has been highlighted in the HLG report. These rulemaking and supervision functions will have to have enough capacity/organization to be recognized as facilitators (towards the increase of safety, of course), avoiding the risk of constituting themselves a factor for the delay of the decision process.

2. The legislation that has been issued under the SES initiative, as well as the

one that will be issued from now until the implementation of the enlargement of scope of the "EASA system" should be considered as an asset of the European aviation system, and preserved accordingly. Considerable care and a great amount of work have been invested in its preparation, and its implementation has been a major action item throughout all States - EU and non-EU - involved in SES.

Re-writing texts should be limited to the minimum, taking into account not only the costs but also the risks of not covering all issues (originating "double or triple regulation") and of misinterpretations of the different texts on the same subject. Re-considering basic concepts and definitions would be a factor of confusion, naturally detrimental to the level of safety.

Safety regulation should build on what has been achieved.

3. The essential requirements should emphasise the risk-management approach used in EURONTROL and SES rules. Reducing this emphasis is an hazard to the current trend of increasing maturity of the systems for safety management, in ANSP or supervision functions (why insist on efforts to stabilise a change in procedures and behaviour when there is ambiguity on whether the requirement for all the SMS process is going to be maintained - at least with the same emphasis - two or three years from now?).

4. Central European certification the safety management system of organisations involved in the design and, eventually, on manufacture of systems and constituents is an idea worth discussing, taking into account the needs of the (relatively) small ANSPs.

As for maintenance, having accredited organisations in the market could, also, be interesting for (very) small service providers, namely in the CNS field (for instance, an organisation responsible for a single VOR). The accreditation process should, however, not be a Central European function, but a function for the NSAs in order to get a system which, being nearer, has a quicker and more efficient response.

Central Europe (safety) certification or design and, eventually, manufacturing organisations, and regulation on safety requirements for maintenance organisations are interesting subjects that deserve further consideration.

5. The civil-military interface, and, in particular, the provision of services to GAT by military providers must be considered. Besides the requirement for these services to guarantee the same level of safety as those provided by certified civil service providers, a functioning interface should be thought of, as the development of safety regulation and the tasks of safety oversight, eventually to be carried out directly by EASA (for instance, concerning pan-european service providers or, eventually, organisations for the design of systems and components) would require the clarification of new aspects in the civil-military interface.

As a concluding remark, we strongly endorse the need for an enlarged discussion. The decisions to be taken require a much greater level of common understanding.

response *Noted*

The Agency takes note of the general comment indicating that INAC follows the views of EUROCONTROL in this matter.

1. The Agency is pleased to take note of the support to ensure appropriate resources for its activities. However, the part of the comment criticising that 'EASA structure is designed for airworthiness' does not seem to contain any justification.

2. The Agency agrees with the views expressed. The NPA deliberately states that SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". Therefore, the implementation of the EASA system has to build on these results already achieved within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing such regulatory system. Any deviations can only take place through transparent rulemaking processes and shall be based on informed decisions. Proper coordination with SES is vital as is the necessity of coherence between all the rules in the legal order of the Community. Most likely SES Regulations and its implementing rules need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules.

3. Detailed provisions of fully fledged SMS and risk management will be dealt with at the level of implementing rules. The Agency believes that the level of basic law should not fix the definition of the SMS and should allow organisations to arrange their different management objectives as they see fit best, subject of course ensuring that all necessary elements to appropriately manage safety are included. This should indeed be compliant with ICAO approach and is the case in all domains of aviation safety.

4. The NPA makes specific questions of the certification of pan-European services and of the use of assessment bodies. Comments of INAC will be taken into account when concluding on these matters.

5. When it comes to the civil-military coordination the mandate of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA indeed recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

The Agency acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. A workshop has been planned to take place in the timeframe before the Commission legal proposal to amend the Basic Regulation.

comment 1481

comment by: *Aeroclub of Switzerland*

Amateur-built aircraft also remain under national surveillance.

response

Noted

The extension of the Basic Regulation to cover ATM/ANS does not as such affect its scope in relation to amateur-built aircraft.

comment

1509

comment by: *Swiss Federal Office of Civil Aviation (FOCA)*

General Support for Intention But to Allow Time for Proper Consultation. The extension of EASA competence to safety (rulemaking) on ATM and ANS is generally supported but as a concept it is very complex and more time should be allowed for NPA consultation, thus permitting full consideration of all issues.

1. **Recognise Progress Made in ATM Safety Regulation in SES.** NPA should recognise the progress made on ATM safety regulation in Single European Sky (SES) where there are now mature SES rules. The existing SES measures must be recognised, built on and taken into account in the extension to EASA competence, in order to avoid the risk of double or even triple regulation, and there should be a transparent plan for the transition from current ATM safety arrangements to the position when EASA assumes safety (rulemaking) responsibility.

2. **NPA Needs Clarity of Scope and Definitions.** The NPA needs to express consistent definitions, especially when introducing a new definition for ANS (sum of CNS, Met and AIS) because ICAO recognises ANS as the sum of CNS, Met, AIS *and* ATM. Therefore NPA should rely on pre-existing scope and definitions used in both ICAO and under SES regulation.

3. **Recognise State Obligations and Accountabilities on Airspace Issues.** NPA should explicitly recognise airspace sovereignty and the accountabilities and airspace policy-making obligations which are currently placed on States, flowing from ICAO provisions; these transcend European Community responsibilities.

4. **Recognise Progress on Civil/Military Cooperation and Its Fundamental Importance to European ANS.** NPA should acknowledge the progress made in Europe on civil/military cooperation on ATM issues, especially on airspace matters, as well as recognising that the military have specific airspace requirements. Civil/military cooperation is fundamental and has a direct bearing on the extension to EASA competence.

5. **Provide Clarity on State Liabilities Stemming From ICAO Obligations.** There should be absolute clarity on the liability and accountability issues that are being proposed within this package of proposed legislation.

6. **Essential Requirements Need to Be Reviewed.** The Essential Requirements as stated are *not* currently an appropriate basis from which to draw up new rules, partly because SES Regulation is almost complete and there are existing implementing rules, but also to avoid the risk of double regulation or over-regulation. We consider the Essential Requirements should

be re-visited by a wider group so that they can be revised to reflect the operational scenario with regard to actual SES Regulations and ANS safety.

7. Understand the Levels of ASM and ATFM. There are three levels of ASM: at the highest level a State responsibility to take account of safety, efficiency, security and national defence; at the level of Civil Aviation Authorities, to set an airspace policy and design framework; and for ANSPs to design routes and operate tactical ASM under NSA supervision. However, ATFM is a function with immediate safety implications. These factors should be recognised in the proposed Essential Requirements.

8. Subject Outcome of NPA to Further Consultation and Review Through SSC Workshops Etc. It would be advisable that EASA and the European Commission organize a workshop consultation under the auspices of the SSC, in order to provide a degree of ANS expertise and to add confidence to the outcome of the process.

9. NPA To Adopt Safety Management and Risk-Based Approach. The EASA increase of competence should be underscored by the safety management and risk-based approach that is used elsewhere in ANS.

10. NPA To Provide Clarity on Relationship Between Safety and Interoperability Issues In ANS. Given that EASA could only be mandated for safety regulation in ANS, clarity is required as to how interoperability is handled in the context of EASA and SES.

response *Noted*

The Agency takes note of the support for a single safety regulator in Europe. It also acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. A workshop has been planned to take place in the timeframe before the Commission legal proposal to amend the Basic Regulation.

1. The Agency fully agrees with that the progress made in ATM safety regulation shall be recognised. As has been stated repeatedly in the NPA, the implementation of the safety regulatory system has to build on using the valuable results already established within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing the SES regulatory system. Any deviations can only take place through transparent rulemaking processes and shall be based on informed decisions.

2. It is agreed that all specific terms used by law have to be clearly specified, but not on the level of this NPA. There are some differences between definitions in the SES Framework Regulation and EASA Basic Regulation. Those should be solved by the future Commission Proposals. Definition of ANS in the NPA does not deliberately differ from SES definition.

3. The Agency agrees that it is not a task of the safety regulator to define and arbitrate on the optimal use of airspace. However, the idea that airspace management should be regulated from a safety perspective is already part of the SES and is elaborated e.g. by the report on double regulation. The NPA document, however, puts the question whether such an activity is a service provision function, which needs then to be regulated, or a regulatory one, which cannot be subject to regulation. It would be premature for the Agency to

express its final views on this before first concluding on this NPA Question. The Agency takes note of the views expressed in the comment.

4. The responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

5. EASA Basic Regulation establishes a system for the common transposition of ICAO SARPS and creates a legal objective for the Agency to support its members in fulfilling their ICAO obligations. Such transposition constitutes the basis for the necessary detailed implementing rules and is the only Community legal act creating a system for their common transposition. This has already been accomplished in all other areas of the Agency's remit.

6. Essential requirements are safety objectives and as such can not create double regulation. The Agency undertakes to review in what areas they deviate of what has already been included in SES regulations.

7. ASM and ATFM have been dealt with under a specific NPA question. Views expressed in the comment are naturally noted.

8. See the response to the first paragraph.

9. Detailed provisions of fully fledged SMS and risk management will be an issue on the level of implementing rules. The Agency believes that the level of basic law should not fix the definition of the SMS and should allow organisations to arrange their different management objectives as they see fit best, subject of course ensuring that all necessary elements to appropriately manage safety are included. This should indeed be compliant with ICAO approach and is the case in all domains of aviation safety.

10. This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee.

comment

1510

comment by: *Air Traffic Department NSA Hungary*

I have the honour to inform you, that the NSA Hungary fully support the comments of EUROCONTROL on the subject above, as follows: In our opinion too, the NPA 2007-16 goes beyond EASA's remit. At the outset the NPA emphasises the setting up of EASA as an independent safety regulator. However, the document extends the scope of the proposals to interoperability and then to other areas (e.g., airspace) without any convincing logic or arguments being offered for this increased scope. A basic difficulty with this NPA is that it seems to start from the assumption that more or less all ATM

	<p>regulation can be considered as safety regulation, which is not the case. Furthermore it does not take into account existing ATM regulation.</p> <p>The same applies regarding the answers to the questions (Q1 - Q10)</p>
<p>response</p>	<p><i>Noted</i></p> <p>The Agency takes note of the general comment indicating that NSA Hungary follows the views of EUROCONTROL in these matters.</p> <p>The paragraph 14 of the NPA deliberately states that SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". It continues by emphasizing the "proper coordination with SES" and states the necessity of coherence between all the rules in the legal order of the Community. Similar statements in the NPA are many. When it comes to the issue of double regulation, this objective can only be achieved by adapting certain SES Regulations and its implementing rules to provide consistency with the future extended EASA Basic Regulation and its implementing rules. Therefore the interaction between different legal frameworks will be defined on the respective Commission proposals, not at the level of this NPA.</p> <p>This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee.</p>

<p>comment</p>	<p><i>1541</i> comment by: <i>Spanish Air Force</i></p> <p>The "Extension of the EASA system to the regulation of ATM and ANS" is a very important and complex issue. The proposed deadline for comment (21 January 2008) is far too short.</p> <p>This paper provides some general comments considering the military dimension with its triple perspective: user, service provider and regulator. There are no specific answers to the ten proposed questions because we consider that, at this moment and with the current level of the definition of the proposal, it is not clear if these questions are the most relevant or if they are the only ones.</p>
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<p>response</p>	<p><i>Noted</i></p> <p>The Agency acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. A workshop has been planned to take place in the timeframe before the Commission legal proposal to amend the Basic Regulation. It also believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be so significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should</p>
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provide for clear transition without legal gaps or overlapping requirements.

When it comes to the civil-military coordination the responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA indeed recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

comment 1542 comment by: *Spanish Air Force*

Recognise progress made in ATM Safety Regulation in SES.

response *Noted*

The Agency fully agrees with that the progress made in ATM safety regulation shall be recognised. As has been stated repeatedly in the NPA, the implementation of the safety regulatory system has to build on using the valuable results already established within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing the SES regulatory system.

comment 1543 comment by: *Spanish Air Force*

NPA needs clarity of scope and definitions.

response *Noted*

It is agreed that all specific terms used by law have to be clearly specified, but not on the level of this NPA. There are some differences between definitions in the SES Framework Regulation and EASA Basic Regulation. Those should be solved by the future Commission Proposals. Definition of ANS in the NPA does not deliberately differ from SES definition.

comment 1544 comment by: *Spanish Air Force*

Recognise state obligations and accountabilities on airspace issues.

response *Noted*

The Agency agrees that it is not a task of the safety regulator to define and arbitrate on the optimal use of airspace. However, the idea that airspace management should be regulated from a safety perspective is already part of the SES and is elaborated e.g. by the report on double regulation. The Agency takes note of the views expressed in the comment.

comment 1545 comment by: *Spanish Air Force*

	Recognise progress on Civil/Military Cooperation and its fundamental importance to European ANS.
response	<i>Noted</i> See the comment 1541.
comment	<i>1546</i> comment by: <i>Spanish Air Force</i> Provide clarity on state liabilities stemming from ICAO obligations.
response	<i>Noted</i> EASA Basic Regulation establishes a system for the common transposition of ICAO SARPS and creates a legal objective for the Agency to support its members in fulfilling their ICAO obligations. Such transposition constitutes the basis for the necessary detailed implementing rules and is the only Community legal act creating a system for their common transposition. This has already been accomplished in all other areas of the Agency's remit.
comment	<i>1547</i> comment by: <i>Spanish Air Force</i> Essential requirements need to be reviewed.
response	<i>Noted</i> It is indeed the purpose of this consultation.
comment	<i>1548</i> comment by: <i>Spanish Air Force</i> Understand the levels of ASM and ATFM.
response	<i>Noted</i>
comment	<i>1549</i> comment by: <i>Spanish Air Force</i> Subject outcome of NPA to further consultation and review through SSC Workshops Etc.
response	<i>Noted</i> There will be further steps in the process, i.e. Comments Response Document, Opinion and Commission legal proposal. A workshop will be arranged.
comment	<i>1550</i> comment by: <i>Spanish Air Force</i> NPA to adopt Safety Management and risk-based approach.
response	<i>Noted</i> Detailed provisions of fully fledged SMS and risk management will be an issue on the level of implementing rules. The Agency believes that the level of basic law should not fix the definition of the SMS and should allow organisations to arrange their different management objectives as they see fit best, subject of

course ensuring that all necessary elements to appropriately manage safety are included. This should indeed be compliant with ICAO approach and is the case in all domains of aviation safety.

comment *1551* comment by: *Spanish Air Force*

NPA to provide clarity on relationship between Safety and Interoperability Issues in ANS.

response *Noted*

This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee.

comment *1552* comment by: *Spanish Air Force*

In particular, regarding comment 1545, we would like to highlight the following comments:

Related to the concept of operations, it is a governmental function, focusing in safety, environment, efficiency and other public interests. Many issues of this concept of operation are highly influenced by the civil-military coordination. Since these matters are directly related to national sovereignty regarding all matters of security and defence, including military operations and training, they can only be addressed between the appropriate civil and military State authorities.

The essential requirements attached to the EASA NPA do not constitute a good basis for the regulation of the safety and interoperability. Among other issues, there is a lack of civil-military requirements that affect all areas described in the document, considering the double or triple perspective: users and service providers and regulators.

Regarding ASM, the strategic phase should be conducted within national regulatory arrangements in the frame of national sovereignty over its airspace. The regulatory function would avoid situation of conflicting interests. Regarding tactical phase, the service providers should be responsible for it.

response *Noted*

See response to comment 1541. Questions on draft ER's and on ASM are addressed in the Appendix; Inventory of Answers.

comment *1594* comment by: *LFV Denmark*

Likewise we have regrettably noted that the NPA does not mention the necessary handling of requirements for civil-military coordination which is

essential for the success of the whole SES initiative. In this connection we would draw your attention to the "Statement by the member states on military issues related to the single European sky" dated 31.3.2004.

response

Noted

When it comes to the civil-military coordination the responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA indeed recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

comment

1605

comment by: *Hellenic Air Traffic Safety Electronic Engineers' Ass.*

The Air Traffic Safety Electronic Engineers' Association of Hellenic Civil Aviation Authority (ATSEEA/HCAA) would like to express its support to the EASA initiative as regards the Extension of the EASA system to the regulation of Air Traffic Management and Air Navigation Services (ATM/ANS). We would also like to congratulate the process of Formal Consultation, which will ensure all stakeholders' participation in order to address all emerging and latent issues. In this context, ATSEEA/HCAA would like to contribute the following.

A general remark that has to do with the content of the proposed Amendment is that there are omissions of major areas of concern as regards the SES Implementing Rules and the implementation of ESARRs; in particular those that refer to the functions - roles of the Air Traffic Safety Electronics Personnel (ATSEP) and their area of responsibility (the CNS/ATM equipment). We strongly believe that this should radically change since it is in clear contradiction with the EASA initial claim that all people involved in safety related and safety critical domains will be included and that "*It would also be unacceptable that investments made in the SES framework so far by the regulated persons, such as air navigation services providers and national supervisory authorities, would not be fully utilised. This same principle naturally embraces the Eurocontrol Safety Regulatory Requirements (ESARRs), which have already been largely transposed into EU law. The ESARRs will naturally continue to be considered as important sources when developing future implementation means for the safety regulation of ATM/ANS.*".

As regards the system (CNS/ATM) and constituents' validation and certification, we would like to highlight that the relevant expertise already exists and is already a task of the Air Traffic Safety Electronics Personnel, as mentioned in the ICAO Doc 7192. It is obvious that this expertise should be fully utilised instead of allocating the respective function to other groups of staff. It is very important that the Agency supports the systems certification

process be performed in a way that the people involved (ATSEP) are competent and that the procedures applied and tools used for this task are explicitly specified. The system certification is an immiscibly technical task (concept similar to JAR66 for avionics).

Finally, we would like to note that the EC has requested EUROCONTROL to modify the EUROCONTROL Guidelines for ATSEP Initial Training into Specifications so that they can be included in the EC regulation. The EASA proposed amendment seems not to take the above into account since it doesn't include provisions regarding the ATSEP training and the respective Training Organizations.

response *Noted*

The Agency fully agrees with the fact that there are also other professions, than just air traffic controllers, involved in safety critical tasks closely related to the provision of ATM/ANS services. The role of the ATSEP's is a concrete example of that. NPA already concludes that it is for the service providers to ensure that all personnel assigned to such safety critical functions is properly trained. This certainly will require proper implementing rules. Such rules however will be part of the conditions for the certification of the service provider itself. The Agency has therefore not anticipated dedicated implementing rules for other categories of personnel than air traffic controllers. The Agency however also confirmed that it would be open to such suggestions and it would take these views, as the ones expressed in this comment, duly into account when formulating its final Opinion to be issued to the Commission.

As stated in the NPA, the forthcoming Commission proposals shall provide that EASA and SES legal frameworks are well adapted at the level of basic laws. That would then allow the Basic Regulation to be implemented based on already existing regulatory material. As already stated, implementation of the system will be based on existing SES Regulations and implementation rules as well as on ESARR's.

The Agency fully agrees with the comment as regards the importance of the ATSEP expertise.

comment *1634*

comment by: *Military Air Traffic Service Office*

The idea to harmonize all safety matters is good. But the questions included in the "Notice for Proposed Amendment" are too wide and unclear. There is not clearly described the future role of EASA and its competence in ATM matters as a regulator or aviation authority. Additionally, the accessing Community to Eurocontrol let suspect that the competences of these agencies and their regulation will be duplicated. The safety matters in ATM are also included in SES Framework Regulations (Regulations No 549, 550, 551, 552). According to these regulations there are some differences in definitions and dividing responsibilities related to ATM.

According to regulations mentioned above states that "Member States have sovereignty over their airspaces and to the requirements of the Member States relating to public order, public security and defense matters". This ensures Member States they are the only regulator in any matters regarding to

military, also including ATM regulation. In NPA there is no mention that this right will be preserved by Members States and will not affect on military everyday activities such as training or exercises.

Military perform as user airspace user, regulator and in some cases as a provider. From the military point of view the amendments proposed by EASA are unclear and can cause quarrel regulations especially in areas of competence of Members States, EASA, Eurocontrol and ICAO. The process of integration of EASA`s competence in ATM requires further consultations for detailing areas of competence and responsibilities. Also military should be included in these consultations.

response

Noted

The Agency is pleased to acknowledge the support to the objective of a single aviation safety regulator in Europe.

The Agency agrees with the view expressed. The NPA deliberately states that SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". Therefore, the implementation of the EASA system has to build on these results already achieved within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing such regulatory system. Any deviations can only take place through transparent rulemaking processes and shall be based on informed decisions. Proper coordination with SES is vital as is the necessity of coherence between all the rules in the legal order of the Community. Most likely SES Regulations and its implementing rules need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules. Commission proposals to amend these regulations should provide for clear transition without legal gaps or overlapping requirements.

The Agency agrees that it is not a task of the safety regulator to define and arbitrate on the optimal use of airspace. However, the idea that airspace management should be regulated from a safety perspective is already part of the SES and is elaborated e.g. by the report on double regulation. The NPA document, however, puts the question whether such an activity is a service provision function, which needs then to be regulated, or a regulatory one, which cannot be subject to regulation. It would be premature for the Agency to express its final views on this before first concluding on this NPA Question. The Agency takes note of the views expressed in the comment.

When it comes to the civil-military coordination the responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA indeed recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles

already established by SES.

comment

1635

comment by: *BMVBS*

The NPA process does not transparently indicate who is an 'interested' party, invited for comment. It is not shown in which way comments may be weighed or balanced depending on the difference of potential authors, ranging from a private individual to a state authority. For that reason and the limited time given, the comments below will be kept on a more general level and efforts for details be concentrated on a later regulatory text.

response

Noted

All the rulemaking activities of the Agency are conducted through its formal rulemaking procedure. This obligation is imposed by the Basic Regulation and this procedure for its implementation has been approved by the Management Board of the Agency. Any person or organisation with an interest in the rule under development may comment on the basis of the NPA. All the comments received shall be reviewed in order to improve the quality of Agency measures and ensuring their fair and appropriate treatment.

comment

1636

comment by: *BMVBS*

The general decision for the „Extension of the EASA system to the regulation of Air Traffic Management and Air Navigation Services (ATM/ANS)" is out of debate. For that reason the submission of the NPA is most welcome. The details to be addressed are of a highly specialised nature and need most careful consideration in order to achieve the expected added value and not just an introduction of changes as a political goal in itself. A better final performance of the resulting new regulatory approach for ATM and ANS compared to today's situation is the only valid target to be met.

response

Noted

The Agency acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. EASA system is established by the European legislators and is intended to contain all elements needed in a safety regulatory system and is to cover all areas of aviation. This system has been briefly outlined in the NPA chapter 'EASA system'. Subsequent steps in the process, i.e. this Comments Review Document and the formal EASA Opinion issued to the Commission, will hopefully clarify the situation more.

comment

1637

comment by: *BMVBS*

The final outcome will not be better than the input elements. Correct assessment of the current situation is a absolute must. Mistaken understanding or interpretation of the specialised areas of ATM and ANS, the status achieved under the SES regulations and the ICAO 'regulatory' provisions for ATM and ANS will jeopardize the final target of an improved regulatory regime. In this respect the NPA part 'IV. Content of the Notice of Proposed Amendment' reveals some severe failings. The first obvious example is a confusion between ATM and ANS.

response

Noted

It is agreed that all specific terms used by law have to be clearly specified, but not on the level of this NPA. There are some differences between definitions in the SES Framework Regulation and EASA Basic Regulation. Those should be solved by the future Commission Proposals. Definition of ANS in the NPA does not deliberately differ from SES definition.

EASA Basic Regulation establishes a system for the common transposition of ICAO SARPS and creates a legal commitment for the Agency to support its members in fulfilling their ICAO obligations. Such transposition constitutes the basis for the necessary detailed implementing rules and is the only Community legal act creating a system for their common transposition. This has already been accomplished in all other areas of the Agency's remit.

comment

*1638*comment by: *BMVBS*

Although providing statements that SES is taken into account, a number of explanatory details fail to verify those statements. Regular references to provisions of existing SES regulations and implementing rules could have served as a validation tool.

response

Noted

The purpose of this task is to set the scene for a safety regulatory system by defining who the regulated persons are and how they should demonstrate their compliance with the defined safety objectives, i.e. essential requirements. Implementing rules will be developed to facilitate and show to regulated persons of how to comply with such objectives. Implementing rules will be based on SES rules and ESARR's.

The Agency believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be very significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. Most likely SES Regulations and its implementing rules (and the Directive 2006/23) need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules.

comment

*1639*comment by: *BMVBS*

The same is valid for the recognition of ICAO provisions.

response

Noted

In detail that can only take place at the level of implementing rules.

comment

*1640*comment by: *BMVBS*

The EUROCONTROL Organisation has played an outstanding role in the development of ATM and ANS in Europe over the past. An outline of the way how a transfer of tasks from EUROCONTROL to EASA should be performed

	without institutional frictions during the transition and after full implementation of the new arrangements would have been most helpful. Such an outline section in the NPA could have been developed commonly by EUROCONTROL Agency and EASA.
response	<p><i>Not accepted</i></p> <p>The Agency does not believe that it would have been appropriate to address in this NPA the possible effects of EASA's extension to EUROCONTROL activities. That issue is for the European Commission to address, not only because of this extension, but also due to the established objectives of the SES 2 proposals. The remit of the Agency is to advice the Commission of how the Basic Regulation should be amended for the said objective.</p>
comment	<p><i>1641</i> comment by: <i>BMVBS</i></p> <p>The incorporation of military ATM and the consideration of implications on military aviation in SES are inevitable, but have been a most difficult issue from the outset due to legal facts and political aspects. The involvement of military in the frame of the EUROCONTROL Convention is working properly. As regards EASA this appears to be a real issue again, however the NPA does not outline any ideas in this respect.</p>
response	<p><i>Noted</i></p> <p>When it comes to the civil-military coordination the responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA indeed recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.</p>
comment	<p><i>1642</i> comment by: <i>BMVBS</i></p> <p>The added value of the attached 'Essential Requirements' does not come across. At some instances they seem to elaborate existing deficiencies of ICAO provisions and current regulatory status of SES. But unfortunately they stop at this stage, where actually the real added value could have started by proposing subsequent provisions.</p>
response	<p><i>Noted</i></p> <p>Essential requirements are high-level safety objectives. They should be detailed enough to allow for judicial and political control, but on the other hand be flexible enough while all regulated persons shall comply with them. These ER's will potentially form the sixth set of such safety objectives attached to the Basic Regulation and therefore should not be seen as a new means of</p>

regulation.

comment *1643* comment by: *BMVBS*

Separation of service provision from regulation is an obligation under SES; separation of regulation from liability for the impact is not! The latter aspect requires a very careful approach to regulations which touch upon issues under states' sovereignty.

response *Noted*

The Agency wishes to emphasize that as a legal person it is liable of all its actions and the Basic Regulation has established a specific independent Board to address appeals against decisions by the Agency. The Agency believes that such a principle should be seen as an important element in the safety regulatory system. In this respect the purpose of the second sentence of the BMVBS comment remains to a certain extent unclear.

comment *1644* comment by: *BMVBS*

The political decision taken to extent EASA's system to the regulation of Air Traffic Management and Air Navigation Services is clearly limited to safety. In continuation the HLG has concluded, that 'safety regulation should be conducted independently from other forms of regulation to avoid conflicts of interest.' The NPA adopts this view as its own (par. 29 refers). However, in very obvious contrast under par. 32 the NPA tries to argue that interoperability regulation should also be moved under the EASA system. That 'rules devised to provide for the necessary level of safety also have to be harmonised regionally or worldwide' is no valid argument to contradict the sensitive principle of par. 29.

response *Not accepted*

This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee. The argument that the SES interoperability regulation would be moved under the EASA system is not shared at all by the Agency.

comment *1645* comment by: *BMVBS*

response *Noted*

?

comment *1646* comment by: *BMVBS*

The approach outlined in the NPA runs a high risk for overregulation!

response	<i>Noted</i> Without more detailed justification can not be responded.
comment	<i>1647</i> comment by: <i>BMVBS</i> A workshop with involvement of ATM and ANS experts and stakeholders under Single Sky Committee auspices is strongly recommended to allow the development of mutual understanding and general confidence in the technical details of the new regulatory approach.
response	<i>Noted</i> There will be further steps in the process, i.e. this Comments Response Document, Opinion and Commission legal proposal. A workshop will be arranged.
comment	<i>1658</i> comment by: <i>NSA Ireland</i> Recognise Progress Made in ATM Safety Regulation in SES. NPA should recognise the progress made on ATM safety regulation in Single European Sky (SES) where there are now mature SES rules. The existing SES measures must be recognised, built on and taken into account in the extension to EASA competence, in order to avoid the risk of double or even triple regulation, and there should be a transparent plan for the transition from current ATM safety arrangements to the position when EASA assumes safety (rulemaking) responsibility.
response	<i>Noted</i> The purpose of this task is to set the scene for a safety regulatory system by defining who the regulated persons are and how they should demonstrate their compliance with the defined safety objectives, i.e. essential requirements. Implementing rules will be developed to facilitate and show to regulated persons of how to comply with such objectives. Implementing rules will be based on SES rules and ESARR's. The Agency believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be very significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. Most likely SES Regulations and its implementing rules (and the Directive 2006/23) need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules.
comment	<i>1659</i> comment by: <i>NSA Ireland</i> NPA Needs Clarity of Scope and Definitions. The NPA needs to express consistent definitions, especially when introducing a new definition for ANS (sum of CNS, Met and AIS) because ICAO recognises ANS as the sum of CNS, Met, AIS <i>and</i> ATM. Therefore NPA should rely on pre-existing scope and definitions used in both ICAO and under SES regulation.

response

Noted

It is agreed that all specific terms used by law have to be clearly specified, but not on the level of this NPA. There are some differences between definitions in the SES Framework Regulation and EASA Basic Regulation. Those should be solved by the future Commission Proposals. Definition of ANS in the NPA does not deliberately differ from SES definition.

comment

*1660*comment by: *NSA Ireland*

Recognise State Obligations and Accountabilities on Airspace Issues. NPA should explicitly recognise airspace sovereignty and the accountabilities and airspace policy-making obligations which are currently placed on States, flowing from ICAO provisions; these transcend European Community responsibilities.

response

Noted

The Agency agrees that it is not a task of the safety regulator to define and arbitrate on the optimal use of airspace. However, the idea that airspace management should be regulated from a safety perspective is already part of the SES and is elaborated e.g. by the report on double regulation. The Agency takes note of the views expressed in the comment.

comment

*1661*comment by: *NSA Ireland*

Recognise Progress on Civil/Military Cooperation and Its Fundamental Importance to European ANS. NPA should acknowledge the progress made in Europe on civil/military cooperation on ATM issues, especially on airspace matters, as well as recognising that the military have specific airspace requirements. Civil/military cooperation is fundamental and has a direct bearing on the extension to EASA competence.

response

Noted

When it comes to the civil-military coordination the responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA indeed recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

comment

*1662*comment by: *NSA Ireland*

Provide Clarity on State Liabilities Stemming From ICAO Obligations. There should be absolute clarity on the liability and accountability issues that are being proposed within this package of proposed legislation.

response

Noted

EASA Basic Regulation establishes a system for the common transposition of ICAO SARPS and creates a legal objective for the Agency to support its members in fulfilling their ICAO obligations. Such transposition constitutes the basis for the necessary detailed implementing rules and is the only Community legal act creating a system for their common transposition. This has already been accomplished in all other areas of the Agency's remit.

comment

1663

comment by: *NSA Ireland*

Essential Requirements Need to Be Reviewed. The Essential Requirements as stated are *not* currently an appropriate basis from which to draw up new rules, partly because SES Regulation is almost complete and there are existing implementing rules, but also to avoid the risk of double regulation or over-regulation. We consider the Essential Requirements should be re-visited by a wider group so that they can be revised to reflect the operational scenario with regard to actual SES Regulations and ANS safety.

response

Noted

It is indeed the purpose of this consultation to review the draft ER's.

The Agency can agree with the assumed intent of this comment. The NPA deliberately states that SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". Therefore, the implementation of the EASA system has to build on these results already achieved within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing such regulatory system. Any deviations can only take place through transparent rulemaking processes and shall be based on informed decisions. Proper coordination with SES is vital as is the necessity of coherence between all the rules in the legal order of the Community. Most likely SES Regulations and its implementing rules need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules. Commission proposals to amend these regulations should provide for clear transition without legal gaps or overlapping requirements.

comment

1664

comment by: *NSA Ireland*

Understand the Levels of ASM and ATFM. There are three levels of ASM: at the highest level a State responsibility to take account of safety, efficiency, security and national defence; at the level of Civil Aviation Authorities, to set an airspace policy and design framework; and for ANSPs to design routes and operate tactical ASM under NSA supervision. However, ATFM is a function with immediate safety implications. These factors should be recognised in the proposed Essential Requirements.

response

Noted

Questions on draft ER's and on ASM - see the Appendix; Inventory of Answers.

comment

1665

comment by: *NSA Ireland*

	<p>Subject Outcome of NPA to Further Consultation and Review Through SSC Workshops Etc. It would be advisable that EASA and the European Commission organize a workshop consultation under the auspices of the SSC, in order to provide a degree of ANS expertise and to add confidence to the outcome of the process.</p>
response	<p><i>Noted</i></p> <p>There will be further steps in the process, i.e. this Comments Response Document, Opinion and Commission legal proposal. A workshop will be arranged.</p>
comment	<p>1666 comment by: <i>NSA Ireland</i></p> <p>NPA To Adopt Safety Management and Risk-Based Approach. The EASA increase of competence should be underscored by the safety management and risk-based approach that is used elsewhere in ANS.</p>
response	<p><i>Noted</i></p> <p>Detailed provisions of fully fledged SMS and risk management will be dealt with at the level of implementing rules. The Agency believes that the level of basic law should not fix the definition of the SMS and should allow organisations to arrange their different management objectives as they see fit best, subject of course ensuring that all necessary elements to appropriately manage safety are included. This should indeed be compliant with ICAO approach and is the case in all domains of aviation safety.</p>
comment	<p>1667 comment by: <i>NSA Ireland</i></p> <p>NPA To Provide Clarity on Relationship Between Safety and Interoperability Issues In ANS. Given that EASA could only be mandated for safety regulation in ANS, clarity is required as to how interoperability is handled in the context of EASA and SES.</p>
response	<p><i>Noted</i></p> <p>This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee.</p>
comment	<p>1668 comment by: <i>Military Aviation Authority Netherlands</i></p> <p>We, together with the civil authorities, fully support the concept of the total system approach, covering all aviation safety components under one European regulatory system. It is clear that the safety aspects relating to Air Navigation Services should be part of such a system. The Netherlands agrees that the Basic Regulation 1592/2002 offers the right framework for the relevant aviation safety rules.</p>
response	<p><i>Noted</i></p>

The Agency takes note of the support to the aim of the single aviation safety regulator in Europe and agrees that the safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field. This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation.

comment *1669* comment by: *Military Aviation Authority Netherlands*

We stipulate that, in order to be able to cover the complete spectrum of the ATM and ANS regulatory regime, full involvement of the military is essential.

response *Noted*

The Agency can agree. Similar arrangements, for instance, as in SES could be established.

comment *1670* comment by: *Military Aviation Authority Netherlands*

The NPA is not in line with a number of elements of the Terms of Reference BR.003. This concerns in particular:

a. The required consistency with the SES programme (5th bullet of point 4 of TOR BR.003).

- § An overview is needed of what is available within ICAO and of what has been achieved so far as a result of the SES legislative package, as well as of the responsibilities of the Single Sky Committee (with a view, in particular, to the implementing rules on the airspace regulation and the interoperability regulation).
- § According to Article 8.1 of the Framework Regulation, the Commission shall issue mandates to Eurocontrol for the development of implementing rules under the SES-package, including the rules for the safety of the operations. This mandate is not mentioned in the NPA.
- § Interoperability does not only cover safety aspects. However, the NPA should specifically list the interoperability safety aspects to be dealt with by EASA, set against the establishment of interoperability implementing rules to be developed under the interoperability regulatory regime of the SES-package (consistency with the SES programme).
- § The NPA seems to create a considerable overlap with SES regulatory activities. The statement in para. 15 (page 5) that the only solution to avoid overlap with the SES regulations and implementing rules could imply that some of these regulations and rules would be modified or repealed should not be included without being specific about its actual extent.
- § A roadmap should be developed, setting out the risks and hazards involved in the transition of the preparation of safety ATM rules and regulations and of the tasks to be carried out by EASA, together with the conditions attached to such a transfer of tasks.

b. The interface between Operational Air Traffic (OAT) and General Air Traffic

(GAT). This interface is one of the cornerstones of the SES legislative package.

- Within Air Navigation Services safety regulations relative to airspace management must include the military needs. This has been recognized under the SES initiative and confirmed in the joint statement of the member states on military issues related to the Single European Sky (OJ. 31.3.2004) as well as in Articles 1 and 13 of the framework regulation 549/2004. The success of the single European sky depends on effective cooperation between civil and military authorities, without prejudice to the prerogatives and responsibilities of the member states in the field of defence(recital 16 of the airspace regulation). This civil-military coordination is also reflected in the composition of the Single Sky Committee.

response

Noted

a) The Agency does not concur with this comment suggesting that this task would not be consistent with its Terms of Reference (ToR). As stated in the ToR, it is indeed an objective to seek consistent solution with the SES regulations. This has been stated many times in the NPA. But it is for the subsequent Opinion and the Commission legal proposals to propose such adaptations. This is the very case for instance with the issue of SES mandates, as being mentioned in the comment. Interoperability regulation has also been mentioned. It is the purpose of certain NPA questions to seek advice on this area to allow a solution to be proposed in the Opinion. Same principle goes with all SES implementing rules. But this can not be shown in the safety objectives, which have to stay neutral as of how they are to be complied with.

The Agency agrees with the need for a clear road-map in the transition phase. However, it believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be very significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements.

b) When it comes to the civil-military coordination the responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA indeed recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

comment

1671

comment by: *Military Aviation Authority Netherlands*

The definitions used in the NPA are not in line with the definitions used in ICAO

annexes and the SES package. As a result, the scope of the NPA, in particular of the essential requirements goes beyond the preparation of safety regulation and seems to include the rules of the air. Furthermore, it is not clear whether this would mean that existing rules under Annex 2 of the Chicago Convention are being adopted under EU law or whether EASA intends to prepare amended rules, taking into account the risks that haven been mentioned in paras. 26-33.

response *Noted*

As a starting point the definitions used are purposed to be the same as in SES. If the text indicates something different, it is not deliberate. Definitions can naturally be improved, but if this is the case, it will be accomplished in an informed and coordinated manner. Definitions and the interactions between different legal frameworks will be defined on the respective Commission proposals, not at the level of this NPA.

This activity is not intended to go beyond of what is necessary for safety regulation. (It is however assumed that global interoperability cannot be dissociated from safety regulation.) Rules of the air are of great safety relevance. Taking into account the scope of the EASA system today in the context of aircraft and air operations, it would be very questionable to exclude rules of the air when addressing this extension related to the safety of air traffic. Commission has already for some time run a project to look at the rules of the air and related differences Member States have filed to ICAO. It is a starting point for every EASA rulemaking activity to build on ICAO SARPS as closely as possible if not deliberately deviated for specific justified reasons.

comment *1672*

comment by: *Military Aviation Authority Netherlands*

Air Navigation Services are considered to be of a public nature with all its consequent accountability and liability aspects for the states.

As stated by the High Level Group on the future European regulatory framework, any increased responsibilities for EASA must be preceded 'by a clear plan to scale up its resources as appropriate'.

response *Accepted*

The Agency fully agrees with these views of the High Level Group. But before the necessary resources can be given, there has to be a clear plan of its future tasks. These tasks will be defined in the extended Basic Regulation.

comment *1673*

comment by: *Military Aviation Authority Netherlands*

The NPA omits to mention the role of Eurocontrol, even after EASA will have taken over Eurocontrols SRU for developing safety ATM rules and regulations. For ATM expertise and know how within Eurocontrol is fed through national experts who take part in the Eurocontrol committees, consultation groups and task forces. The EASA-system needs to take into account that the current basic ATM input from the ATM experts of the member states will remain essential for the development of ATM rules and regulations.

response *Noted*

The purpose of the consultation is to set the scene for extending the Basic Regulation to cover ATM/ANS. It is then for the respective Commission legal proposals to define how this would affect other EU laws and Community

arrangements, including SES. Moreover, it would not be appropriate for the Agency to consider in its consultation document such changes, which could be caused by this extension in EUROCONTROL organisation. Secondly, the Agency fully agrees with this principle to base its work on the best available resources. Most of the EASA rulemaking tasks are executed through drafting groups. Such groups consist mainly of the experts from Member States and from the industry. These experts are nominated through the EASA rulemaking consultative committees.

comment *1674* comment by: *Military Aviation Authority Netherlands*

Against the background of the timeline given in the presentation on the first report on the implementation of the Single Sky legislation: achievements and way forward, a link with the second SES package initiatives would be appropriate, in particular, with a view to the respective roles of the SSC and EASA.

response *Noted*

SES second phase proposals and EASA extension will be coordinated and consistent.

comment *1692* comment by: *Military Aviation Authority Netherlands*

Finally, while thanking the Agency for all the work that has been done and while endorsing the principle of a common safety regulatory regime, we recommend that the NPA and its essential requirements undergo a thorough analysis based on facts before being included in the opinion of the Agency to amend the Basic Regulation 1592/2002.

response *Noted*

comment *1693* comment by: *Federación de Sindicatos Aeronáuticos Independientes*

All comments about the proposed NPA 2007-16 from EASA, in order to extend regulation of ATM/ATS services, should be interpreted taking in consideration that the different point of view of every association or union stakeholders depends mostly of the great differences in the willingness of the National ANSP to comply with regulations and in the willingness of the National Regulator to enforce those regulations.

Because of our particular ATSEP professional environment, with negative experiences about regulations, de-regulations, or total absence of regulations, could maybe influence our comments, and our particular opinion could probably be interpreted as like in a "hard line". Even though our first idea was to made a critical approach to the document, we would like to take a positive approach and help, as much as possible within our capabilities, in the construction of the future regulatory framework.

response *Noted*

The constructive intent is noted and appreciated by the Agency.

comment **1694** comment by: *Federación de Sindicatos Aeronáuticos Independientes*

Is difficult for us to understand, the difference that EASA wants to establish between aerodrome regulation from ATM/ANS regulation. From our particular point of view, this will lead to a differentiation in ATM services, depending if they are performed by an ACC or by an Airport Control Tower. This is also a well known discussion in SES forums... but related mostly to privatisation of some ATM services.

Both environments use ATM/ANS services, and the difference based on the numbers of aircraft handled seems not to be enough.

response *Noted*

These two different tasks of EASA will merge into a single proposal to amend the EASA Basic Regulation. Safety regulation will not depend on the organisation providing the service in question.

comment **1695** comment by: *Federación de Sindicatos Aeronáuticos Independientes*

Before SES initiative, each national ATM services provider (who was in the most of the cases also the Supervising Authority) had its individual regulation, mainly based in ICAO and Eurocontrol recommendations, in our case. With the adoption of the SES "legislative package", finally we had (Or it was supposed to be like that) common regulations for the provision of ATM/ANS services in Europe. Our surprise, when reading the proposal of NPA, is that despite EASA's good intentions, all work done before by EC and Eurocontrol, mainly regarding ATSEP's, seems it will be wasted. Our question is why EASA almost will don't take account of this experience in all related to ATSEP'S and other items?

response *Noted*

The Agency fully agrees with the vital role of the ATSEP's in safety critical tasks related to the provision of ATM/ANS services. The NPA already concluded that it is for the service providers to ensure that all personnel assigned to such safety critical functions is properly trained. This will require proper implementing rules. Such rules will be part of the conditions for the certification of the service provider itself and will be directly binding for each and every organisation providing ATM/ANS services. These rules will build on the existing regulatory material, such as SES and ESARR's.

comment **1696** comment by: *Federación de Sindicatos Aeronáuticos Independientes*

Even in paragraph 78 we can read :

"Regarding other personnel involved in provision of ATM/ANS services ...services providers must ensure that staff....properly trained... rules for certification of service provider....The agency sees no reason to foresee dedicated implementing rules for other categories of staff than ATCO's".

If some ANSP's doesn't ensure proper training, and competence assessment of its staff ... "other than ATCO's", what will be the role of EASA in this situations

?. Maybe take a seat and wait to see what happens next?.

Even though everybody in the aviation community knows that is not true, that is the same that recognize that CNS services, have not any safety related or critical tasks in the ATM/ANS environment.

It is for that that it is impossible for us to understand that later in paragraphs 110 to 112 , EASA recognizes hazards associated to CNS services. The same can be applicable from paragraph 115 to 122. It seems that these recommendations are made "to the blowing wind", because there is not also any reference to the personnel who are responsible in many cases of, design, development, installation, integration, preventive and corrective maintenance... and so on !.

We have the same sensations when reading in part II:

"Essential requirements":

4.c.4. Information needed for the safe installation, operation and maintenance of the systems and constituents as well as information concerning unsafe conditions must be provided to operating personnel or maintenance personnel, as appropriate, "in a clear, consistent and unambiguous manner".

Wich one information would be more consistent, unambiguous and clear, that EASA implementing common rules for ATSEP's !!

response *Noted*

Purpose of the texts quoted from the NPA is to recognise that there is also other staff in safety critical tasks than just air traffic controllers. Their qualifications have to be ensured by the organisation employing them. This is required by a directly binding law. However, these personnel are not regarded as a regulated profession, in the case of which the freedom of those individuals is limited to exercise their profession only if they meet the defined physical/medical fitness and current practise.

comment *1697* comment by: *Federación de Sindicatos Aeronáuticos Independientes*

Finally, what should be clear and outside of any doubt, is that all personnel carrying out tasks directly related with the Air Safety

(among them ATSEP people, like it is recognized by ESSAR 5), should be regulated for and supervised somehow.

And that those norms and supervision cannot be in hands, neither to the free will of the ANSP´s neither of the National Regulator since unfortunately we all know when the Regulator relaxes in its supervision, the ANSP neglects Safety in favour of profits.

An unfortunate and practical case that reinforces the theory that certain tasks should be clearly regulated and cannot be left in the ATSEP on duty´s better view is the case of the accident of Ueberlinguen, in the one that a heap of circumstances among which were the out of service for maintenance of the communication phone line among German and Swiss ATCO´s facilities.

Now and as a possible example that reinforces the necessity for a Common Regulation of our tasks, we can imagine that the previous case takes place in a future time in one of the future FAB´s in which an ANSP provides services in part of the air space of a second country, whose ANSP and contrary to that of the first country spends a lot of Euros in the preparation and qualification of its ATSEP´s, for example; that the accident is among other reasons by a bad planning, lack of enough and qualified personnel, etc, etc. and that the rests of de midair crash fall into a populated area of the second country causing a lot more of victims on the ground.

Just imaging the reaction of the public opinion we can certainly assure that the policy of a Common Regulation all over Europe and for an European Agency is much more worthwhile than the one of "wait an see what happens next".

response

Noted

As stated above, there will be directly binding implementing rules covering this subject. Such rules will form a condition for the certification of the service provider.

comment

1708

comment by: *Federación de Sindicatos Aeronáuticos Independientes*

As an epilogue, behind our apparent criticism to the EASA's intentions, is our desire of finally achieve a real regulation for our profession within its environment. As I told you in the foreword or initial comments, our daily bad experience caused for an almost total absence of regulation, or partially implemented regulations regarding ATSEP's - only for the purpose of achieving the SES certification-, makes that any initiative in order to make more difficult for some Air Navigation Services Providers play with the regulations, is warmly welcome.

Hoping that our recommendations, as well as other IFATSEA affiliates ones, will put on the table again the need of implementing rules for ATSEP personnel, we will follow this process with interest.

response

Noted

comment

1709

comment by: *DGCA-NL*

In our opinion, to make sure that nothing will be left behind (no 'orphans') a roadmap for the transition from the current to the new regulatory framework is required. Such a precise roadmap seems to be missing at the moment.

This roadmap should in any case include:

- the regulations itself (how to transform 'old' into 'new'), and
- the manner in which these regulations are being created (players and their responsibilities).

response

Noted

The Agency agrees with the need for a clear road-map in the transition phase. However, it believes that the regulatory framework will be rather stable and

that the changes imposed on regulated persons will not be very significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. It is also to be noted here that it may take 2 to 3 years before the Commission proposal, to be issued by next June, will be adopted by the European legislators.

comment

1710

comment by: DGCA-NL

In many cases, the draft Essential Rules as they are now remain at a very high level.

Such high level rules are very difficult to apply in practice for the authority and the organisations and persons that will have to comply, as it is never quite clear what they mean.

For example: what is meant in article 3.a.2 with the term "sufficient quality"? This could be open to an endless discussion.

Seen the above, in our opinion it should be investigated in how far:

- the high level articles need to be elaborated in order to make them workable in practice, and
- the remaining high level articles are in need of a sufficient basis for lower level implementing rules.

response

Noted

That is indeed the purpose of the implementation rules, i.e. to define what the regulated persons have to do in order to comply with high-level safety objectives. Safety objectives are based on mitigation of unacceptable risks and are on such level, which is to allow for judicial and political control and at the same time be flexible enough to allow compliance for all those covered in the scope. Implementing rules are adopted in comitology, i.e. allowing close coordination with expert level and being subject to much quicker process than in case of co-decision by the European Council and Parliament.

comment

1738

comment by: Finavia

General comment is that the role of EASA as European Aviation Safety Agency shall not be obscured with activities that are not safety related. It is also important that there are no new overlapping activities that are already covered by SES legislation or by national activities according to the SES legislation (i.e. certification of training and other organisations)

response

Noted

The purpose of this task is to set the scene for a safety regulatory system by defining who are the regulated persons and how they should demonstrate their compliance with the defined safety objectives, i.e. essential requirements. Implementing rules will be developed to facilitate and show to regulated persons of how to comply with such objectives. Implementing rules will be based on SES rules and ESARR's.

The Agency believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be very significant. The

subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. Most likely SES Regulations and its implementing rules (and the Directive 2006/23) need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules.

comment

1793

comment by: *Member State - Hungary*

EASA unofficial translation of letter: 27/V/EU/Adm/08

With regard to your letter ATZ/ivo/R(6)2007(D)54789 on the extension of the scope of the European Aviation Safety Agency, the position of Hungary is as follows.

We support the extension of the scope of EASA to the domain of air traffic management and air navigation services in a form that EASA will have a rulemaking function, while the individual authority functions will remain at the National Aviation Authorities of the Members States or at other designated NSAs (National Safety Authority). Moreover, we do not recommend the transfer of executive, authority functions to EASA, since it would be completely different from the current requirements and the functioning system (NSA), on the other hand ignoring the national circumstances could have a significant and unfavourable impact on aviation safety.

According to our opinion, in the course of the drafting of the proposed amendment to Regulation (EC) 1592/2002 and its implementing rules, all previously issued EC regulations (SES-measures), as well as ESARP requirements and the relevant tasks that have been implemented or initiated should be taken into account.

Some questions, which were raised in the NPA have no relevance in clarifying safety issues. Although the NPA, in its introduction, refers to that, a weakness of the current EC Regulations.

We recommend a clarification, how would the extension of the scope of EASA would impact the existing competence and scope of Eurocontrol; and would it be possible to eliminate parallelism indicated in the paper. In addition the existence of parallelism of scope would result in operational disorder, which would be against the intention of the rulemaker. It should also be ascertained whether a further decrease of the scope of Eurocontrol would result in disorder in the case of residual competences.

The relevant Hungarian bodies will provide you their answers in English through the CRT tool. This letters represents the formal opinion of the Hungarian Government.

Budapest, 23 January 2008

	<p>Ágnes Varga Ambassador</p>
<p>response</p>	<p><i>Noted</i></p> <p>The Agency is pleased to acknowledge the support to the objective of a single aviation safety regulator in Europe. As stated in the comment, the rulemaking responsibility would be for EASA to accomplish and the authority functions would remain by the national competent authority. A possible exception to this could be the certification of large pan-European services, which is subject to the specific NPA question 8.</p> <p>The purpose of this task is to set the scene for a safety regulatory system by defining who the regulated persons are and how they should demonstrate their compliance with the defined safety objectives, i.e. essential requirements. Implementing rules will be developed to facilitate and show to regulated persons of how to comply with such objectives. Implementing rules will be based on SES rules and ESARR's.</p> <p>The Agency believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be very significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. Most likely SES Regulations and its implementing rules (and the Directive 2006/23) need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules.</p> <p>The Agency agrees that the comments as regards the role of EUROCONTROL are well founded and should be answered. However, it would not be appropriate for the Agency to consider in its consultation document such changes, which could be affected by this extension to the EUROCONTROL organisation. That is for the European Commission to address.</p>

<p>A. EXPLANATORY NOTE - I. General</p>	<p>p. 3</p>
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<p>comment</p>	<p>394 comment by: <i>Royal Norwegian Ministry of Defence</i></p> <p><i>Civil/Military co-operation</i></p> <p>The main concern of the MOD is the lack of recognition of the importance of the Civil/Military co-operation. The European fleet of military aircraft is substantial, and military forces have very specific airspace requirements. EASA has limited competence with regard to national security and defence matters, as this area remains under individual state sovereignty. All issues that will impact military operations and training need to be co-ordinated. EASA's Terms of Reference (ToR BR.003) refers to the strong interface between Operational Air Traffic (OAT) and General Air Traffic (GAT) and tasks EASA to evaluate and take into account the military needs in order to adopt a consistent and coordinated approach to ATM and ANS. The MOD cannot see that these issues are addressed, and recognise this as a significant deficiency of the NPA.</p>
<p>response</p>	<p><i>Noted</i></p>

The purpose of the consultation is to set the scene to extend the Basic Regulation to cover ATM/ANS, i.e. to define who are the persons regulated, what the safety objectives are and how the compliance with such objectives should be demonstrated. It is then for the respective Commission legal proposals to define how this all would affect other EU laws and Community arrangements, including SES. Therefore the subject of civil-military coordination has deliberately not been addressed in the NPA document.

The responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

comment

411

comment by: Avinor

Avinor supports the extension of EASAs responsibilities to be able to act as the safety regulator for the entire air transport sector in Europe. However, it is necessary to involve all stakeholders in the consultation process, including the Military, and more time for the consultation process should be allowed. It is important that EASA take into account that there are already rules related to ATM; e.g. SES Regulations and ESARRs. Duplication should be avoided

response

Noted

The Agency is pleased to take note of the support to the objective of this extension. The purpose of this task is to set the scene for a safety regulatory system by defining who are the regulated persons and how they should demonstrate their compliance with the defined safety objectives, i.e. essential requirements. Implementing rules will be developed to facilitate and show to regulated persons of how to comply with such objectives. Implementing rules will be based on SES rules and ESARR's. All these rules will be developed using the formal rulemaking procedure, containing extensive consultation processes and including all interested persons and organisations, including military.

comment

727

comment by: UK CAA & UK MoD

UK CAA & MoD Comments on explanatory material.

Military operations are excluded by the reference to civil aviation and this position is supported. Furthermore the UK CAA considers that the military should be scoped out even when providing services to general air traffic.

response

Noted

The responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA recognises that airspace regulation

contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

comment

888

comment by: EUROCONTROL

Acknowledgement of SES Regulations.

Although SES Regulations are mentioned within the text of the NPA, as is the need to "make adjustments to the SES framework", there is no general acknowledgement of the considerable regulatory developments that already exist under SES.

A significant number of SES rules have been developed with EUROCONTROL support, and action has also been taken to clarify current ANS/ATM safety regulatory requirements, including through a Double Regulation Ad-Hoc Group (DRAHG), jointly chaired by the CEC and EUROCONTROL. The overall proposals would benefit from increased reference to, and reliance on, this existing context.

The Wider ATM Regulatory Context.

In addition, there is little information in the NPA on how the extension of EASA tasks would fit into the global ATM framework and wider existing rules, including ICAO Standards and EUROCONTROL ESARRs. The impression given by the NPA is that ATM/CNS safety regulation within Europe is immature and that regulatory processes need to be established when, in fact, mature processes already exist and are being implemented.

Extent of EASA competence in ATM/ANS.

The HLG recommended that EASA's remit should be extended to cover the safety regulation of ATM/ANS. However, the NPA goes beyond safety. Regulations are included which relate to airspace, interoperability, environment, service provision and other matters. These undoubtedly have safety implications, but are generally driven by capacity or efficiency objectives and, in our view, are not appropriate within the scope of a safety regulatory body such as EASA.

The International Perspective.

We found a number of statements in the NPA misleading. For example, the NPA states that Community Law supersedes national law, but does not take account of the relationship and supremacy of international law over Community law. In particular, the paper ignores Member States' obligations vis-à-vis EUROCONTROL.

Equally, the NPA often refers to the "EASA rule-making system" or "establishes EASA as an independent safety regulator". To avoid misunderstanding, we would propose further clarification that EASA is not a legislator *per se*, having

no rule-making or rule-adoption powers, and that promulgation of most rules remains with the European Commission.

Civil-Military Issues.

Currently, ATM regulations and the ESARR requirements (as well as their transposed SES equivalents) address the civil-military interface. Today the interface between civil and military service providers is a key element in ensuring the provision of safe operations to aircraft including where military providers offer services to civil traffic.

The NPA makes no reference to the civil-military dimension, or to the accepted fact that Member States retain full sovereignty over their airspace, including their requirements relating to public order and public security, as stated in Regulation EC 549/2004. This is a major limitation of the proposals, as failure to appropriately coordinate these issues with the Member States and EUROCONTROL could undermine current civil-military interface arrangements with an adverse impact on the overall European Air Traffic Management Network.

Fitness for Purpose.

The notion of fitness for purpose was introduced for airborne equipment as a pragmatic way of ensuring that all characteristics of this equipment could be addressed through a single certification process. Nevertheless, this notion goes well beyond safety and, in our view, is not justified from a purely safety point of view in the ATM field. A piece of equipment may be safe without necessarily meeting the level of performance required for the delivery of an efficient air navigation service, in which case it would not be 'fit for purpose'. Our recommendation would be that fitness for purpose should therefore not be included as an ATM safety requirement.

Essential Requirements.

As proposed, the Essential Requirements are not a sound basis for the regulation of the safety of ATM/ANS, as their contents do not provide a solid or mature set of safety objectives aimed at improving the current regulatory basis. They could be improved by taking into account the mitigations identified over the years, and which have already been captured in existing regulations and associated best-practices. The ERs also vary greatly in their level of detail - some are very high-level while others are detailed (e.g. ATCO competence).

We would also propose that the regulatory approach taken by EASA should reflect the use of SMS, which has been developed and implemented over many years as a central principle of safety in ANS/ATM

Justification.

The NPA states that its purpose is to amend Regulation N° 1592/2002 to extend its scope to the safety and interoperability of ATM/ANS. There is, however no indication of the exact amendments proposed to the Regulation itself. A clearer indication of exactly what amendments EASA believes are required would make assessment of the proposals easier.

Consultative Process.

For full transparency, there should be consultation on all aspects of the proposed changes to Regulation N° 1592/2002. The NPA mentions that "by definition" the provisions of the body of that Regulation would apply to the extended areas. However, it is unlikely that such extension could be achieved without amending the existing provisions (e.g. Art. 1 and 3, Chapter II, perhaps Chapter III, etc.). Since these amendments are the key basis for the actual extension of EASA competences, it is essential that consultation is also undertaken on these changes when they are prepared. Meaningful comments on ERs would require, as a prerequisite, full clarity on the amendments foreseen.

response *Noted*

Acknowledgement of SES Regulations

The paragraph 14 of the NPA deliberately states that SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". It continues by emphasizing the "proper coordination with SES" and states the necessity of coherence between all the rules in the legal order of the Community. Similar statements in the NPA are many. Also the concerns related to the issue of double regulation are shared by the Agency. However, it is felt that its objectives can only be achieved by adapting the SES Regulations and its implementing rules to provide consistency with the future extended EASA Regulation and its implementing rules, not by excluding certain safety issues from the scope of the EASA system on the pretext that they are already covered by SES rules. It should be accepted, as this happened in the previous cases of establishment of Community competence on the basis of the EASA system, that some other regulations will have to be changed or annulled. This principle is covered in the consultation document and naturally will be stated more clearly at the subsequent steps of this process.

The Wider ATM Regulatory Context

The Agency believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be significant. Subsequent steps in the EASA process, i.e. this Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements.

This comment is also felt to reflect a certain misunderstanding of the Community system. The constant interpretation of the EC Court is that the Community is not bound by the international commitments of its Member States. To be bound, the Community needs to transpose such commitments in its internal order. This is what the Agency has already done in all other sectors as regards ICAO Standards; the EASA Basic Regulation is indeed the only Community legal act creating a system for their common transposition. Such mechanism has not been included in the SES framework. Such transposition through Essential Requirements constitutes thereafter the basis for the necessary detailed implementing rules.

As regards Eurocontrol standards, the Community organised itself for their transposition already in 1995; this is now continued through SES processes. In the future this can be done using EASA processes for existing safety standards that need to become binding and future standards developed by Eurocontrol if

it retains a role in the establishment of such standards. As mentioned above, the shift to a new regulatory system will any how require that consistency is ensured by appropriate re-organisation of the set of applicable rules and standards.

Extent of EASA competence in ATM/ANS

This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency assumes that it is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee in order to ensure that trade-offs will not be done at the detriment of safety. The suggestion that airspace management should be regulated from a safety perspective is already part of the SES and promoted for instance by the report on double regulation, which suggests that the SES should be clearer in this sense and should be aligned on the applicable Eurocontrol standards. Therefore the NPA document lays down a question whether such an activity is a service provision function, which then needs to be regulated, or a regulatory function, which cannot be subject to regulation.

The International Perspective

Member States have certain obligations under the Treaty establishing the European Community (for instance in its articles 10, 300 and 307), taking also into account the applicable European Court of Justice jurisprudence that Community law has primacy over national law. In other words Community rules are considered to be directly applicable. This means in principle that Community law confers rights and imposes obligations directly not only on the Community institutions and the Member States but also on the Community's citizens. If Member States have definitively transferred sovereign rights to the Community, they cannot reverse this process by means of subsequent unilateral measures which are inconsistent with the Community, unless Community law expressly provides otherwise. The Member States may continue to execute international commitments concluded before their accession to the Community unless they are contrary to their Community obligations. In such cases they shall take appropriate measures to eliminate incompatibilities. Where Community competence is established, Member States may no more undertake international commitments affecting such competence; such commitments are to be taken by the Community.

As regards the competence of the Agency, the NPA simply reflects the current functioning of the EASA system, which includes not only the Agency, but also the Commission and National Aviation Authorities. The Basic Regulation confers well defined executive powers on the European Commission and on the Agency, as a Community regulatory Agency. These powers have been exercised so far without legal arbitration and have been well understood by stakeholders. It goes without saying that EASA is not a legislator, but has the right of initiative for rulemaking in the area of its competence. It is for the very first time such language used in EASA texts raises this kind of concerns.

Civil-Military Issues

The responsibility of the Agency under the Basic regulation only encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. As for the SES context it will be for those in charge with adopting the concepts of operations to ensure the compatibility between civil and military operations. The Agency sees that the adoption of such concepts should be a regulatory task implying arbitration between various,

possibly conflicting objectives; this is therefore probably a task for a body with powers to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination and the Agency believes that the Commission proposals to amend the SES regulations and the Basic Regulation will, in all likelihood, address the civil-military interface in a similar way than the SES Framework Regulation does. Moreover, the NPA states fairly clearly that ATM/ANS services provided to any a civilian airspace users have to be safe and regulated accordingly, independently of who provider these services. This does not seem to deviate from the principles already established by SES.

Fitness for Purpose

The comment quite rightly points out the reasons why the term 'fitness for purpose' was adopted by the European legislators when defining safety objectives in the Basic Regulation as regards certain air-borne equipment. As again accurately indicated, the same term has now been used in some of the draft essential requirements concerning ATM/ANS systems. When doing so the Agency did not intend to indicate that the EASA system should define what fit for purpose means, as this is most likely to be linked to airspace use and aim at providing the maximum safe capacity. This does not change the fact that in the same way as safety certification processes are used to check compliance with fitness requirement of on board equipments, they could also be used for other elements of the ATM chain. It is anyhow the purpose of this consultation to seek feedback from the stakeholders on all aspects of the intended regulatory act and the Agency will definitely take into account constructive recommendations on this subject.

Essential Requirements

The draft Essential Requirements are an important element of this consultation and the views expressed by EUROCONTROL will be carefully assessed by the Agency. These safety objectives were prepared with the help of external experts, including also very experienced professionals from Eurocontrol. It is however not fully understood what is meant here by 'they could be improved by taking into account the mitigations identified over the years'. In our understanding the SES regulations, including the associated best practices, indeed do not contain systematic safety objectives covering all areas of intended regulatory action. This is also addressed for instance by the Performance Review Commission in its reviews on the SES performance. Nevertheless, the Agency assumes that this very guidance from EUROCONTROL is contained in its more detailed comments to the NPA. The objective of the envisaged legislative process is indeed to establish sound basis for regulating ATM and ANS safety. Dedicated implementing rules will be developed, making use of existing regulations and associated best practices, as has been done in other domains of aviation safety.

When it comes to SMS, the Agency fails to see the problem. Organisations involved in safety sensitive tasks are required to develop and implement a management system, whose minimum characteristics are defined in the essential requirements, as they stand in the consultation document. The Agency however does not believe appropriate to define and fix such safety management systems at the level of basic law as safety is only one of the management objectives of these organisations, which shall be entitled to decide on the management system best adapted to their activity, as long as they do cover the specific needs for safety management. Such obligations will naturally then be detailed at the level of implementing rules. This approach is based on a quite broad experience of the Agency in regulating organisations of

different natures and sizes.

Justification

The changes envisaged to the Basic Regulation naturally have to be defined. However, as stated earlier in this comment, the Agency is not the legislator and is not mandated to do the work of the Commission. Instead it issues Opinions in order to indicate what should be the scope of collective action; what should be the safety or interoperability objectives to be achieved (using essential requirements); which persons should be responsible for implementing these objectives; how they should be regulated; which bodies should be in charge of enforcement; etc. Except of the safety objectives (essential requirements) which fall clearly under its responsibility, the Agency will not produce a draft amending regulation; this will be done by the Commission in its legislative proposal.

Consultative Process

Building on what has already been explained earlier the Agency confirms that several articles of the Basic Regulation have to be amended. These changes are prepared in the EASA rulemaking process and will be implemented by the Commission proposal. That proposal then goes through the full legislative co-decision process of the European Communities giving then full opportunities to stakeholders to express their views. The Agency tends to believe that EASA system, including the legislature when appropriate, brings more opportunities for consultation than it is the case in many other fields.

comment

1173

comment by: *Aena*

Aena comments to the NPA on the extension of the EASA system to ATM and airports

General comments

Aena supports the progressive extension of EASA competences towards a holistic safety regulator for the European air transport sector.

However, *Aena* considers the NPA is clearly improvable. Most of the questions are of an academic nature and are not directly connected or have relevance to the extension of EASA competences to ATM and airports. Moreover some definitions are missing and other are in contradiction with widely accepted SES definitions (i.e. ANS).

In view of avoiding overregulation, EASA should resolutely take into account the SES regulatory framework and the considerable progresses achieved under that umbrella during the last years (a successful process for ANSP certification and for the conformity assessment of systems and constituents is already in place, the relevant provisions of ESARRs have been adopted by EU law, NSAs have undertook the change to an active supervisory role).

The existing SES measures must be considered and built on in the extension of EASA competences. The NPA lacks of a transition plan from current ATM safety arrangements to the future position once EASA assumes safety rulemaking responsibilities.

Moreover, the boundary between EASA competences and those of third institutions has to be outlined in order to attain a smooth transition for the allocation of responsibilities between EASA, the national institutions and other European organisations -i.e. Eurocontrol-. It is also very important to consider that transition in terms of resources and funding.

The NPA completely passes over the civil-military interface. This is a major item for the main SES aims (also European citizenship aims).

The attached essential requirements are not appropriate, some points are too detailed and some important issues are not dealt with. They should be further elaborated prior to future consultation.

Aena does not share some ideas contained in the NPA approach to safety essential requirements, i.e. regarding quantitative safety targets. Establishing safety targets is a difficult task but this does not mean that it is not a right approach to ATM safety. The risk of not having quantitative targets is that it could be impossible to decide in an objective way on the safety situation of a concrete complex system.

response *Noted*

The Agency is pleased to take note of the support by AENA to the aim of a single aviation safety regulator in Europe and agrees that the safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field.

Unlike the comment suggests, the Agency does not agree that the questions in the NPA would not be of relevance. They aim to seek what should be the scope of this collective action; what should be the safety or interoperability objectives to be achieved (using essential requirements); which persons should be responsible for implementing these objectives; how they should be regulated; which bodies should be in charge of enforcement; etc. Except of the safety objectives (essential requirements) that are its clear responsibility, the Agency will not produce a draft amending regulation; this will be done by the Commission in its legislative proposal. When it comes to the definitions it is agreed that all specific terms used by law have to be clearly specified, but not at the level of this NPA. There are some differences between definitions in the SES Framework Regulation and EASA Basic Regulation. Those should be solved by the future Commission Proposals. Definition of ANS in the NPA does not deliberately differ from SES definition.

Then the NPA deliberately states that SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". Therefore, the implementation of the EASA system has to build on using the these results already achieved within the SES framework as it would not be acceptable to impose changes on regulated persons and regulators while they just start implementing such regulatory system . Any deviations can only take place through transparent rulemaking processes and shall be based on informed decisions. Proper coordination with SES is vital as is the necessity of coherence between all the rules in the legal order of the Community. Most likely SES Regulations and its implementing rules need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its

implementing rules, not by excluding certain safety issues from the scope of the EASA system on the pretext that they are already covered by SES rules.

The Agency agrees with the need for a clear road-map in the transition phase. However, it believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be very significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements.

The Agency agrees with the intent of the comment suggesting that the respective roles of the major stakeholders have to be defined. EASA system indeed is based on shared roles between the Commission, Member States, their national competent authorities and the Agency. This is subject to the Commission legal proposal - not for this NPA. Nevertheless, it is not felt appropriate for the Agency to take a stance on possible effects related to EUROCONTROL structures. That is much more for the Commission to address, taking also into account the established aims of the SES 2 amendments.

The responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

It is indeed the purpose of this consultation to improve the draft essential requirements, as appropriate. They will be attached, as has been the case with 5 earlier sets of essential requirements, to the Basic Regulation and are therefore up to the very thorough co-decision procedure of the European Communities.

Paragraph 31 of the NPA elaborates on the issue of quantitative targets. It states that the Agency does not see it feasible to base the regulation of ATM/ANS domain to a set of fixed legal quantitative targets. Such targets can naturally be used at the level of implementing rules, on a case-by-case basis, or when specifying acceptable means of compliance.

comment

1301

comment by: ECOGAS

ECOGAS is supportive of the expansion of EASA's remit to include ATM and ANS, provided that the resulting rulemaking is a) proportionate to the needs of the various users of the airspace in question; b) applied uniformly and fairly across the European region, c) not in conflict with existing worldwide standards and d) always part of a favorable cost/benefit equation from the users' perspective. Increased funding for EASA's newly expanded role will be needed to ensure that ATM and ANS rulemaking is not subject to the delays experienced currently experienced in the EASA rulemaking process, which are

related to funding and headcount shortfalls.

Proper Program Planning and Management of the transfer of responsibilities from Eurocontrol and National bodies will be absolutely necessary in order to ensure that Europe does not end up with another level of bureaucracy which further complicates operations and slows the legislative and innovation processes. It should be noted that most advances in aircraft safety historically are down to regulation identifying successful voluntary innovation, so it is important not to create an environment in which innovation is impossible. As such, we are of the opinion that regulation should prescribe required fidelity and availability levels for each service under consideration, rather than get into the detail of exactly how those requirements are arrived at.

response *Noted*

The Agency takes note of the support to the aim of a single aviation safety regulator in Europe and emphasizes that the safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field. EASA is bound by its Basic Regulation to act only through proportionate actions and all its rulemaking activities shall be based on well structured and proven rulemaking process, providing fully transparent means of consultation and containing a Regulatory Impact Assessment. Most of these rulemaking activities are based on fundamental participation by the industry. All the rules are directly applicable in all EASA Member states and in the associated EASA States and can be expanded further through specific arrangements. As regards ICAO Standards, the EASA Basic Regulation is indeed the only Community legal act creating a system for their common transposition. Such transposition through Essential Requirements constitutes thereafter the basis for the necessary detailed implementing rules.

The Agency agrees with the need for a clear road-map in the transition phase. However, it believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be very significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. The current functioning of the EASA system includes not only the Agency, but also the Commission and National Aviation Authorities. The Basic Regulation confers well defined executive powers on the European Commission and on the Agency, as a Community regulatory Agency. These powers have been exercised so far without legal arbitration and have been well understood by stakeholders. As the comment suggests, EASA rules are fully based on the concept of better regulation, which lays down binding rules only when necessary and builds on best practices of the industry as recognised means of compliance to comply with the defined safety objectives.

A. EXPLANATORY NOTE - II. Consultation p. 3-4

comment 507

comment by: BAA

The consultation period is considered to be much too short. Despite a small extension it is likely that this NPA will be rushed and therefore possibly lead to

inappropriate ATM regulation. Considering the safety criticality of the pan - European system, the work ongoing in SES and SESAR a considerably longer period of consultation would have been more appropriate. The Aerodrome NPA was for example given several months extension and the ATM should have been afforded the same time period.

response *Noted*

The Agency acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. A workshop has been planned to take place in the timeframe before the Commission legal proposal to amend the Basic Regulation. It also believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be so significant. In the case of safety regulation of aerodromes it is about bringing new areas to the Community competence. But in this case the concerned stakeholders are already subject to Community legislation and the main changes envisaged affect mainly service providers, which are well established and organised legal persons. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify this situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. It is also to be noted here that it may take 2 to 3 years before the Commission proposal, to be issued by next June, will be adopted by the European legislators.

comment 728

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

See General Comment

response *Noted*

comment 946

comment by: *skyguide*

Longer time for consultation of such a far and wide reaching topic as teh EASA extension to ATM should be granted.

response *Noted*

The Agency acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. A workshop has been planned to take place in the timeframe before the Commission legal proposal to amend the Basic Regulation. It also believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be so significant. In the case of safety regulation of aerodromes it is about bringing new areas to the Community competence. But in this case the concerned stakeholders are already subject to Community legislation and the main changes envisaged affect mainly service providers, which are well established and organised legal persons. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify this situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping

requirements. It is also to be noted here that it may take 2 to 3 years before the Commission proposal, to be issued by next June, will be adopted by the European legislators.

comment 1030 comment by: *Ministry of Transport and Communications, Norway*

The NPA was published on the EASA website on 30 November 2007 with a time limit for comments on 11 January 2008. The deadline was later extended to 21 January 2008. In view of the complex subject matter, the consultation period in this case is clearly insufficient. The normal consultation period provided for in EASAs Rulemaking Procedure (Article 6(4)) is 3 months, and the justification put forward in the NPA for a shorter consultation period in the present case is unconvincing. We have noted that the terms of reference document for this task (TOR Nr: BR.003) was finalised on 11 September 2006, and that the timetable foreseen in the TOR was publication of the NPA by April 2007 and of the EASA Opinion by December 2007. Obviously, this task turned out to be much more complex and demanding than originally anticipated by EASA, and, consequently, the stakeholders should have been provided more time to respond. In contrast, we have noted that in the corresponding NPA on extension of EASA's mandate to aerodromes the period for comment was in the end extended to 5 months!

The pan-European perspective should be kept in mind throughout this important rulemaking process. Non-EU Member States which are directly concerned by the prospective Community legislation should be involved and consulted on a regular basis during the further rulemaking process. With this in mind, it is important to ensure that the subject matter is thoroughly discussed and analysed before a formal proposal is submitted by the Commission for deliberation and adoption by the European Parliament and Council.

response *Noted*

See responses to your comment 1073, which contains two similar paragraphs.

comment 1176 comment by: *IDCOOK*

As a corporate body Serco is well accustomed to responding to changes in the market and regulations that effect our operation. The concern of implementing changes no these time lines to a industry without the views of a gap analysis does not support the step by step approach.

response *Noted*

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - General

p. 4

comment 220 comment by: *BCAA*

General comment

The "Extension of the EASA system to the regulation of ATM and ANS" is a very

important and complex issue. **The proposed deadline for comment (21 January 2008) is far too short.** This practice can jeopardize the building of a well-balanced legal framework taking into account the legitimate interest of all concerned parties.

Disregarding the lack of time to make a full study, the Belgian CAA did a quick coordination with Belgian Defence and some other CAAs and rises the following main key points :

1 Today the **main SES regulation is almost completed.** The link with EASA is missing, but when adding this "missing link" we have to avoid an over regulation situation or a "double/triple regulation issue" in addition of the present "Double regulation EU/ESARR issue" which is today under progress;

2 the proposed **scope of the Essential Requirements** introduces a new notion of "ATM/ANS". The definitions described in paragraph 42 seem to define:

i ATM as the sum of ATS, ASM, ATFM and

ii ANS as the sum of CNS, MET and AIS, excluding ATM.

This could be a complete different definition of scope which is **not** in line with the SES scope (ANS is the sum of CNS, ATM, MET and AIS). It has to be corrected in a way avoiding confusion.

3 a **clear reference to SES Regulation** (EU549, 550, 551, 552/2004) is missing ; such a reference is a must to ensure an integrated and efficient ANS regulation

4 a **clear reference to ICAO Annexes is missing** ; such a reference is a must to ensure an integrated and efficient ANS regulation

5 the respective roles of the European Commission, EASA, States (CAA and NSA) and Eurocontrol need to be determined

6 the **civil-military interface** is missing, that is a major item for the Single European Sky and Functional Airspace Blocks implementation ; a reinforced cooperation/coordination is strongly necessary and is one of the fundamental principles of the SES;

7 The attached Essential Requirements are on some points too detailed and on other points not enough developed;

8 **Action** : there is a strong need for EASA and European Commission to organise an **ad hoc workshop under the auspices of the SSC** in order to determine an efficient and proactive process to take into account the above general comments and to be able to build this "EASA missing link" which has to be in full compatibility/complementarities with the SES Regulation.

response *Noted*

The Agency acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. It however believes that the regulatory framework will remain rather stable and that the changes imposed on regulated persons will not be so significant. In the case of safety regulation of aerodromes it is about bringing new areas to the Community competence. But in this case the concerned stakeholders are already subject to Community legislation and the main changes envisaged affect mainly service providers, which are well established and organised legal persons. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the

Commission, will hopefully clarify this situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements.

1. The paragraph 14 of the NPA deliberately states that SES framework "has already established Community competence in this field and has indeed conducted a lot of important and valuable work". It continues by emphasizing the "proper coordination with SES" and states the necessity of coherence between all the rules in the legal order of the Community. Similar statements in the NPA are many. When it comes to the issue of double regulation, this objective can only be achieved by adapting certain SES Regulations and its implementing rules to provide consistency with the future extended EASA Basic Regulation and its implementing rules.

2. Definition of ANS is purposed to be the same as in SES, as suggest in the comment.

3. Interaction between different legal frameworks will be defined on the respective Commission proposals, not on the level of this NPA. Essential requirements are high-level safety objectives and may not therefore refer to other legislation.

4. EASA Basic Regulation establishes a system for the common transposition of ICAO SARPS. Such transposition through Essential Requirements constitutes thereafter the basis for the necessary detailed implementing rules.

5. Basic Regulation defines the roles of the Commission, EASA, Member States (and associated States) and their competent authorities in the safety regulatory system.

6. The responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

8. Comment is noted and indeed A workshop has been planned to take place in the timeframe before the Commission legal proposal to amend the Basic Regulation.

comment

401

comment by: *Royal Norwegian Ministry of Defence*

Regulatory framework

It is the opinion of the MOD that the NPA is too vague on how EASA wish to fit into the already existing regulatory framework and institutionally arrangement regarding ATM/ANS Safety in Europe. Firstly, EASAs need a better understanding of the content of, and definition of, ATM/ANS Safety. Secondly,

EASA should give a better description on how the current legislation will be transposed to the new regime to avoid future double and triple regulation. Finally, EASA should describe the future relationship with EUROCONTROL and EU/Single Sky Committee work and legislation.

response

Noted

The purpose of this task is to set the scene for a safety regulatory system by defining who the regulated persons are and how they should demonstrate their compliance with the defined safety objectives, i.e. essential requirements. Implementing rules will be developed to facilitate and show to regulated persons of how to comply with such objectives. Implementing rules will be based on SES rules and ESARR's.

The Agency believes that the regulatory framework will be rather stable and that the changes imposed on regulated persons will not be very significant. Subsequent steps in the EASA process, i.e. the Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. Most likely SES Regulations and its implementing rules (and the Directive 2006/23) need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules.

The Agency takes note of all views expressed in the comment.

comment

*1074*comment by: *ANS-MET*

As stakeholder belonging to MET services area (National Supervisory Authority for MET) I consider relevant following antecedents:

1. Importance of MET on air navigation safety should be viewed both from the impact of adverse weather conditions on the operations and from the provision of MET services itself.
2. MET information contributes to safety, regularity and efficiency of air transport (ICAO Annex 3).
3. The extension of competences should be considered as a good opportunity in order to clarify and complete the regulation of MET services provision from the safety point of view.
4. It seems as the most convenient to adopt a global approach to the safety and interoperability for the air transport system as whole, as settled by ICAO but detailed as be needed.
5. There are some absences and inconsistencies in SES in relation with MET:
 - Safety is regarded through the compliance with SARPS contained in ICAO Annexes 3, 11 and 14, but differences notified to ICAO about the implementation of SARPS hampers the creation of a level playing field and, more important, the future implementation of common concepts of operation.
 - MET systems affected by SES Interoperability regulation are not well defined.
 - The scope of certification is not clear regarding some organisations providing added value products based on MET information coming from the MET-ANSP, or merely data presentations according user

preferences.

- Performances of MET provision is not easy to link with safety and delays.

In relation with NPA 2007-16, following general comments should be noted:

Some lacks on MET safety regulation persists along the proposal:

- a. Not all users of meteorological information are considered, with their needs and requirements but only crew (airspace user), when ATM and aerodromes are main users (Annex 3 -ICAO).
 - b. Providers of added value on meteorological information and data are not considered.
 - c. Possibility of notified differences on ICAO SARPS impeding a consistent implementation of a concept of operations focused on performances without national boundaries implications.
2. Some ambiguities and imprecisions remain in the wording of essential requirements about MET-SP:
- a. Essential requirements are worded for ANS(s), except for MET requirements that are defined for "meteorological information". For this reason when essential requirement 3.b.3 refers to MET information dissemination, the responsibility could fall in many cases outside from the MET-SP.
 - b. It considers that all service providers shall implement an SMS. Including MET-SP? Current SES regulation does not include SMS between requirements for MET-SP.
 - c. All service providers shall be implemented an analysis system for safety notifications, which practicability is not clear speaking about MET services provision.
 - d. Even though point 93 considers adverse weather as relevant to safety, meteorology is not included in 1.c between other elements to manage the airspace safety.

Regarding issues above pointed more time to review MET aspects of the regulations should be provided in order to consider peculiarities of MET-SP and to take account the vision of experts.

To tune and synchronize the content of this initiative with other previous, as SES regulations. shall be also considered.

The comments and answers that Spanish Civil Aviation (DGAC) is sending to EASA regarding this NPA are endorsed

response

Noted

The Agency takes note of the support and of the very interesting comments representing views from a MET supervisory authority.

The Agency does recognise the important role of the MET services in the whole chain of air transport. This is also reflected in the draft ER's. The Agency also agrees that a common safety regulatory system provides a good opportunity to clarify and complement the existing regulations also in this field. Reflecting briefly some of the more detailed comments expressed, the Agency agrees that the future implementing rules indeed provide an opportunity for a common transposition of ICAO SARPS also in this field. Such transposition through

Essential Requirements constitutes thereafter the basis for the necessary detailed implementing rules. Furthermore, the draft ER's on MET and more generally on organisations providing ATM/ANS services should mandate addressing at the level of implementing rules those regulatory gaps referred to in this comment. This includes for instance ensuring that the data used as a source for MET services must be of sufficient quality. And also MET service providers shall comply with organisational safety objectives, including those related to appropriate management of safety.

comment

1167

comment by: CAA CZ

There is not the interface between military and civil service providers specified by this NPA. The Essential requirements should specify the aspect of safety oversight activities assured by NSA when military provider provides services to the civil aviation area. It should be more detailed in IRs.

response

Noted

NPA already states that ATM/ANS services provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. Oversight provisions will be addressed in the articles of the basic law and will be further defined in the respective implementing rules.

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- General - 9.**

p. 4

comment

54

comment by: KLM

An extension of EASA's scope to ATM safety regulation will require a political commitment to increase the public funding to EASA's budget so that EASA is properly resourced for those new tasks. It will also require a clear transition-plan and commitment to wind down the Eurocontrol Safety Regulation Unit (SRU) and Safety Regulation Commission (SRC) when EASA's assumes responsibility. The JAA Transition Office (JAA-T) could be assigned new roles in this field to represent the non-EASA member States of Eurocontrol at EASA (similar to its existing role for the non-EASA JAA member States in other areas within EASA's field of competence such as aircraft certification, airworthiness, flight operations and flight crew licensing).

Although EASA's main role is safety, an ATM system and an Air Navigation Service Provider, must balance safety with capacity and the environment. Taking safety as the only parameter is too simple and may result in too many restrictions. All future EASA implementing rules should therefore be based on a comprehensive Regulatory Impact Assessment which is acceptable to the major stakeholders (such as the airlines) and which takes into account the impact on airspace capacity/delays and the environment along with safety objectives.

The safety certification of certain ancillary ATM services (AIS provision, CNS provision, ATC training, ATC maintenance & manufacture and Meteo services in particular) should facilitate their unbundling to ensure a competitive market

and lower cost for the end users (in line with the High Level Group recommendations).

International Standardization of regulation, through ICAO, is, in particular for ATM, extremely important because airlines and other airspace users operate globally. New regulation specifically for the European airspace going beyond ICAO should be avoided unless it is driven by a positive business case to create more airspace capacity and/or clear safety justifications.

With the above in mind, the AEA stresses that the stakeholder consultation should form part of the rule making process from an early stage on, in order to prevent an unbalance between the requirements in the field of safety, capacity and the increasing demands of environmental protection.

response *Noted*

The Agency is pleased to take note of this support to the aim of a single aviation safety regulator in Europe and agrees that such safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field. It also appreciates the recognised need to ensure appropriate public funding for its activities. The role and activities of EUROCONTROL are outside of the remit of this consultation and can not therefore be responded here.

This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee. All rulemaking activities of EASA shall be based on well structured and proven rulemaking process, providing fully transparent means of consultation and containing a Regulatory Impact Assessment. Most of these rulemaking activities are based on a fundamental participation by the industry.

Additional objectives of EASA, stated in the Basic Regulation, include: to facilitate the free movement of good, persons and services; to promote cost-efficiency in the regulatory and certification processes; to provide a level playing field for all actors in the internal aviation market.

The Agency also stresses that global interoperability cannot be dissociated from safety regulation. This principle is the basis of the ICAO system, whose main objective being interoperability has been obliged therefore to set common minimum safety standards. This is consequently a fundamental part of the EASA system since its establishment by the European legislators in all other domains of aviation safety regulation. This principle should not emerge differently in case of ATM taking into account that most of airspace use requirements are implemented through the safety regulation of air operators and service providers.

Issue of the rulemaking process is already addressed above.

comment 265

comment by: *IFATSEA*

Attachment [#6](#)

The International Federation of Air Traffic Safety Electronics Associations (IFATSEA) agrees with the sentence of para 9 "that a high and uniform level of safety can be best attained through common action at Community level and therefore high and uniform protection of the citizens will be ensured by the adoption of common safety rules and by ensuring that products, persons and organisations involved in the execution of safety critical functions comply with such rules." However in preparing the extension of EASA system to cover ATM and ANS, the Agency shall ensure to include all people involved in safety related and critical domains. The Air Traffic Safety Electronics Personnel (ATSEP) are in this category and therefore should be subject to the regulation. ATSEP duties and responsibilities are outlined in ICAO Doc 7192-AN/857 Part E-2 Training Manual Air Traffic Safety Electronic Personnel. Further specific comments will be made when addressing para 52 and 78.

response

Noted

The Agency fully agrees with the fact that there are also other professions, than just air traffic controllers, involved in safety critical tasks closely related to the provision of ATM/ANS services. The role of the ATSEP's is a concrete example of that. NPA already concludes that it is for the service providers to ensure that all personnel assigned to such safety critical functions is properly trained. This certainly will require proper implementing rules. Such rules however will be part of the conditions for the certification of the service provider itself. The Agency has therefore not anticipated dedicated implementing rules for other categories of personnel than air traffic controllers. The Agency however also confirmed that it would be open to such suggestions and it would take these views, as the ones expressed in this comment, duly into account when formulating its Opinion to be issued to the Commission.

comment

812

comment by: *Prospect*

Prospect is a scientific and specialist Trade Union which represents the vast majority of Air Traffic Controllers, Scientists, Specialists and Engineers in Air Traffic Control in the UK. We have in membership some 3000 members employed by NATS but also represent members working for the CAA Regulatory Body as well as members employed at non NATS airports.

Whilst Prospect has been broadly supportive of the principles which have underpinned the setting up of EASA and the desire for greater consistency of standard setting across Europe, any fundamental changes in a safety critical environment must be dealt with with caution. From a UK perspective, we have some of the most complex and congested airspace not only in Europe but the world.. Added to this, traffic levels continue to grow rapidly. Against this backdrop, the UK has been recognised as a world leader in terms of aviation safety.

Whilst it is difficult to agree against the principle of establishing "high and uniform" standards- the reality is in practice that such standards do not currently exist. The reasons for this are for a host of historical, political, economic, industrial and other reasons. Against this backdrop, it is absolutely critical that whilst there may be a desire for greater consistency that this does not lead to a dilution of safety standards and levels amongst the better performers in pursuit of greater consistency across the piece

In addition to the above, there are real concerns as to the ability of EASA to take on responsibility for ATM by the suggested date of 2010. Again this is not so much an issue of principle as one of practicality. In particular there are real concerns as to the issue of resourcing and having the appropriate number of competent staff who have the necessary qualifications and expertise in ATM and their ability to legislate and audit changes to the European ATC system.

On a more positive note, we welcome the intention to accept the investment already made in Europe as part of SES by the ANSPs, NSAs and also the acceptance of ESSARRS that have already or are about to be transposed into EU Law.

response

Noted

The Agency takes note of this interesting comment representing views of various groups of ATM/ANS professionals and is also pleased to note the support to the aim of a single aviation safety regulator in Europe. It also agrees that such safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field. The Agency firmly believes that such a risk, as indicated in the comment, of potentially diluting certain safety standards by the establishment of common rules, can not become a reality. EASA system is very much in line with new concepts of good governance, such as higher reliance on regulated persons to ensure compliance with basic safety requirements and the development of a safety culture based on responsibility rather than enforcement. EASA Basic Regulation already in the areas of its existing competences contains different regulatory measures and flexibility provisions supporting such approach.

The Agency also appreciates the recognised need to ensure appropriate public funding for its activities. It is of course noted here that the resources needed are not of such a magnitude as sometimes argued. The EASA rulemaking activity builds heavily on the best expertise available from the industry and national authorities. Oversight and certification of service providers, as a starting point, is assumed to remain under the responsibility of the national competent authorities.

comment

889

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response

Noted

See response to comment 888 (same comment).

comment

1371

comment by: *Walter Gessky*

Attachment [#7](#)

Attached all Austrian comments to the NPA, comments on particular paragraphs and answers to questions will be in addition placed to the paragraphs or questions.

response *Noted*

The Agency is pleased to take note of the very interesting comment and of the support to the aim of a single safety regulatory system in Europe. It also acknowledges that the shortened consultation period has caused problems to some stakeholders and is willing to mitigate this effect as far as possible. A workshop has been planned to take place in the timeframe before the Commission legal proposal to amend the Basic Regulation.

The purpose of this task is to set the scene for a safety regulatory system by defining who the regulated persons are and how they should demonstrate their compliance with the defined safety objectives, i.e. essential requirements. This has been the case with all other areas of aviation safety. Implementing rules will then developed to facilitate and show to regulated persons of how to comply with such objectives. Implementing rules will be based on SES rules and ESARR's. The Agency believes that such a regulatory framework will be rather stable and that the changes imposed on regulated persons will not be very significant.

The comment then suggests that there should be two different options to achieve the goals of this task. The first one is to follow the line taken by the Agency in the consultation document to extend the EASA system. The second one is to suggest that EASA would be empowered to act an executive body within the SES system. Although the Agency is open to all suggestions assisting to achieve the goals of this task, as a first reaction it sees certain difficulties therein; such as potentially diluting the total system approach, complicating its governance and blurring its role as an independent safety regulator. Anyway, the subsequent steps in this rulemaking process, i.e. this Comments Review Document and the formal Opinion issued to the Commission, will clarify the situation more. The Agency undertakes to assess these two options in its RIA attached to the Opinion. Then, it is for the Commission legislative proposals to propose amendments to SES and EASA regulations.

The Agency has assumed that the SES Regulations and its implementing rules (and the Directive 2006/23) need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules. In contrary to the comment, the Agency does not believe that it would have been appropriate to address in this NPA the possible effects of this extension to EUROCONTROL activities. That issue is for the European Commission to address, taking also into account the established objectives for the SES 2 proposals. The remit of the Agency is to advice the Commission of how the Basic Regulation should be amended for its extension.

When it comes to the definitions, it is obvious that certain specific terms used by law have to be clearly specified, but not on the level of this NPA. There are some differences between definitions in the SES Framework Regulation and EASA Basic Regulation. Those should be solved by the future Commission Proposals. Definition of ANS in the NPA does not deliberately differ from SES definition.

EASA Basic Regulation establishes a system for the common transposition of ICAO SARPS and creates a legal objective for the Agency to support its members in fulfilling their ICAO obligations. Such transposition constitutes the basis for the necessary detailed implementing rules and is the only Community legal act creating a system for their common transposition.

The responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA recognises that airspace regulation

contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of who provides these services. This should not deviate from the principles already established by SES.

comment

1769

comment by: *EU Permanent Representation of Romania*

The purpose of this NPA is to propose and to support the opportunity of EASA's competences extension, as an ATM and ANS Safety Regulator. Para 9 emphasises the setting up of EASA as an independent safety regulator. However, throughout this document, it is proposed the extension of the EASA's competences to such items, as the interoperability or airspace, without providing any convincing arguments.

response

Noted

This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - General - 10. p. 4

comment

233

comment by: *ATSEP Belgium*

In paragraphs 9 and 10 EASA claims to ensure uniform protection of the citizens by adopting common safety rules and by ensuring that products, persons and organisations involved in the execution of safety critical functions comply with such rules. EASA also claims to attain a high and uniform level of safety by progressive harmonising the requirements applicable across all domains of aviation safety.

For information, in the framework of ISO9000, the Belgian Air Navigation Service Provider has identified 41 critical systems and 14 very critical systems which are under the supervision of ATSEP.

In order to provide EASA a full knowledge of the situation, ATSEP Belgium formally informs EASA that an essential category of safety critical persons are clearly undervalued in the document, namely ATSEP (Air Traffic Safety Electronics Personnel) which are engineers and technicians responsible for the specification, procurement, training, installation, commissioning and de-

commissioning, corrective and preventive maintenance, System Monitoring & Control, calibration, flight testing, certification and safeguarding of all CNS and data processing systems used in ATC.

This category of personnel is also mentioned in the existing implementation measures of the SES, in particular in ESARR5, which EASA claims not to want to disrupt (see paragraph 33). The NPA is therefore inconsistent with its own claims.

response *Noted*

The Agency fully agrees with the fact that there are also other professions, than just air traffic controllers, involved in safety critical tasks closely related to the provision of ATM/ANS services. The role of the ATSEP's is a concrete example of that. NPA already concludes that it is for the service providers to ensure that all personnel assigned to such safety critical functions is properly trained. This certainly will require proper implementing rules. Such rules however will be part of the conditions for the certification of the service provider itself. The Agency has therefore not anticipated dedicated implementing rules for other categories of personnel than air traffic controllers. The Agency however also confirmed that it would be open to such suggestions and it would take these views, as the ones expressed in this comment, duly into account when formulating its Opinion to be issued to the Commission.

As stated in the NPA, the forthcoming Commission proposals shall provide that EASA and SES legal frameworks are well adapted at the level of basic laws. That would then allow the Basic Regulation to be implemented based on already existing regulatory material. As already stated, implementation of the system will be based on existing SES Regulations and implementation rules as well as on ESARR's, as far as appropriate.

The Agency then fully agrees with the comment as regards the importance of the ATSEP expertise.

comment 267

comment by: *IFATSEA*

In para 10, EASA claims to attain a "high and uniform level of safety by progressively harmonising the requirements applicable across all domains of aviation safety". An essential category of safety critical personnel is clearly undervalued in the document, namely ATSEP (Air Traffic Safety Electronics Personnel) which are engineers and technicians responsible for the specification, procurement, training, installation, commissioning and de-commissioning, corrective and preventive maintenance, System Monitoring & Control, calibration, flight testing, certification and safeguarding of all ANS systems.

The safety relationship between the flying element that includes "*personnel and organisations involved in their design, production and maintenance*" and the ground element for a total system approach is established. Whilst EASA confirms the requirements for licensing Pilots and Aircraft mechanics and avionics, the ATSEP, responsible of the ground CNS signals transmitted to the aircrafts for ensuring safe Navigation, safe Surveillance and safe Communication, do not benefit this confirmation. This is an inconsistency. Viewing the forthcoming concept of integrated Ground and Airborne elements, it is immediately apparent that today's best practices of ATSEP responsibility for the certification of Communication, Nav aids, Surveillance and the 'technical

release' of CNS/ATM systems following exhaustive testing are to evolve in a way toward even greater responsibility and liability to ATSEP.

response

Noted

The Agency fully agrees with the fact that there are also other professions, than just air traffic controllers, involved in safety critical tasks closely related to the provision of ATM/ANS services. The role of the ATSEP's is a concrete example of that. NPA already concludes that it is for the service providers to ensure that all personnel assigned to such safety critical functions is properly trained. This certainly will require proper implementing rules. Such rules however will be part of the conditions for the certification of the service provider itself. The Agency has therefore not anticipated dedicated implementing rules for other categories of personnel than air traffic controllers. The Agency however also confirmed that it would be open to such suggestions and it would take these views, as the ones expressed in this comment, duly into account when formulating its Opinion to be issued to the Commission.

As stated in the NPA, the forthcoming Commission proposals shall provide that EASA and SES legal frameworks are well adapted at the level of basic laws. That would then allow the Basic Regulation to be implemented based on already existing regulatory material. As already stated, implementation of the system will be based on existing SES Regulations and implementation rules as well as on ESARR's, as far as appropriate.

The Agency then fully agrees with the comment as regards the importance of the ATSEP expertise.

comment

729

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

It is important to keep in mind the existing recently introduced Single European Sky legislation.

response

Noted

comment

890

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response

Noted

See response to comment 888 (same comment).

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - General - 11.

p. 4-5

comment

246

comment by: *ATSEP Belgium*

ATSEP Belgium shares the opinion that "failure in navigation services in most cases has immediate consequences on the level of safety of aircraft".

Is it however irrational that of the 4 named basic factors for performance based navigation, being: defined airspace concept (ATC), the airborne equipment (aircraft maintenance), the navigation aid infrastructure (ATSEP) and the aircrew qualifications (flight crew), three are ensured by licensed personnel and one is not.

response *Noted*

Noted and see the response to comment 233.

comment *891*

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- General - 12.**

p. 5

comment *167*

comment by: *FRAPORT AG*

Fraport fully agrees with the German law stating that "the airport operator is responsible for the SAFE OPERATION OF THE AIRPORT". This rule does not only pertain to "Take off and Landing". Therefore the airport is liable in the context of airport operation, and not as ATM/CNS Service Provider. Fraport supports the intention of EASA to develop clear regulations for airport operators and ANSP. However, in accordance with the NPA 06/2006 process, an airport operator will be licensed as such and not be expected to apply for an ANSP-licence even if providing Apron Control Service.

response *Noted*

It is assumed by the Agency that presently those aerodrome operators providing directly air navigation services have to be certified according to the SES regulations (550/2004, 2096/2005). This is additional to national rules based on ICAO Annex 14 requiring specific aerodrome certification. Moreover, Annex 14 allows also number of options to implement apron control services. The extension of the EASA system should clarify the situation more. It is the aim of the Agency to establish a regulatory system, in accordance with the principle of a total system approach, allowing organisations to operate several services (including apron management) and/or operating units under a single set of rules and under a single certificate (or approval).

comment *234*

comment by: *ATSEP Belgium*

The responsibility of the Belgian Air Navigation Service Provider includes safe take off and landings. It is not clear why in paragraph 12 a fundamental difference is observed between the take off and landings and other phases of flight except that one can argue that take off and landing are the most critical phases of flight, especially under low visibility conditions. Reference is also made to paragraph 32 in which the 'gate to gate' concept is mentioned.

response

Noted

This paragraph presents the baseline for two different regulatory tasks and refers to 'prime objectives' of aerodromes and ATM/ANS. (Which two domains are according to existing legal frameworks subject to different certification schemes.) These two regulatory tasks will merge into a single Commission proposal to amend the EASA Basic Regulation. It is not the purpose of safety regulations to specify the tasks of different organisations. It is the aim of the Agency to establish a regulatory system allowing organisations to operate several services (including apron management) and/or operating units under a single certificate in accordance with a total system approach.

comment

268

comment by: *IFATSEA*

The statement in para 12: "*Aerodromes have indeed for their prime objective to provide for the safety of an individual aircraft by ensuring that the appropriate means are provided to allow its safe take off and landing, while ATM/ANS aim at managing its interaction with other aircraft in all phases of flight and on the movement area of an aerodrome*" might be misleading because most Air Navigation Service Providers (ANSP) provide take off and landing services while Airports support aircrafts while on the ground. It is not clear why a fundamental difference is observed between the take off and landings and other phases of flight except that one can argue that take off and landings are the most critical phases of flight, especially under low visibility conditions. Taking into account that take off and landings are under ANS, IFATSEA agrees with different sets of regulation.

response

Noted

This paragraph presents the baseline for two different regulatory tasks and refers to 'prime objectives' of aerodromes and ATM/ANS. (Which two domains are according to existing legal frameworks subject to different certification schemes.) These two regulatory tasks will merge into a single Commission proposal to amend the EASA Basic Regulation. It is not the purpose of safety regulations to specify the tasks of different organisations. It is the aim of the Agency to establish a regulatory system allowing organisations to operate several services (including apron management) and/or operating units under a single certificate in accordance with a total system approach.

comment

423

comment by: *Avinor*

Avinor verifies that "the airport operator is responsible for the SAFE OPERATION OF THE AIRPORT". This rule does not only pertain to "Take off and Landing". Therefore the airport is liable in the context of airport operation, and not as ATM/CNS Service Provider. Avinor supports the intention of EASA to develop clear regulations for airport operators and ANSP. However, in accordance with the NPA 06/2006 process, an airport operator will be licensed as such and not be expected to apply for an ANSP-licence even if providing Apron Control Service.

response

Noted

This paragraph presents the baseline for two different regulatory tasks and refers to 'prime objectives' of aerodromes and ATM/ANS. (Which two domains are according to existing legal frameworks subject to different certification schemes.) These two regulatory tasks will merge into a single Commission

proposal to amend the EASA Basic Regulation. It is not the purpose of safety regulations to specify the tasks of different organisations. It is the aim of the Agency to establish a regulatory system allowing organisations to operate several services (including apron management) and/or operating units under a single certificate in accordance with a total system approach.

comment

542

comment by: *UK Department for Transport*

The UK Government supports the recommendation relating to 'a step-by-step' approach. However, the NPA should reference the impact assessment, on which this recommendation is based.

The UK is particularly interested in clarification of the boundary of infrastructure between aerodromes and ATM/ANS, specifically with airport-based nav aids e.g. MLS/ILS and general navigation aids, including GPS.

response

Noted

The original Commission proposal to set up a safety regulatory system, including the establishment of EASA, contained all domains of aviation. This proposal was amended by the legislators (Member States through the European Council and European parliament) to a phased approach. The paragraph in question presents the baseline for two different regulatory tasks and refers to 'prime objectives' of aerodromes and ATM/ANS. (Which two domains are according to existing legal frameworks subject to different certification schemes.) These two regulatory tasks will merge into a single Commission proposal to amend the EASA Basic Regulation. It is not the purpose of safety regulations to specify the tasks of different organisations. It is the aim of the Agency to establish a regulatory system allowing organisations to operate several services and/or operating units under a single set of rules and under single certificate (or approval) in accordance with a total system approach.

Navigation services, as a subject mentioned in the comment, if provided by an aerodrome operator would today necessitate two certificates for it; one for the aerodrome operator according to ICAO Annex 14 and another one as an ANSP according to the respective SES rules.

comment

730

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

The UK CAA supports the recommendation relating to 'a step-by-step' approach. However, the NPA should reference the preliminary impact assessment, on which this recommendation is based.

The UK CAA is particularly interested in clarification of the boundary of infrastructure between aerodromes and ATM/ANS, specifically with airport-based nav aids e.g. MLS/ILS and general navigation aids, including GPS.

response

Noted

The original Commission proposal to set up a safety regulatory system, including the establishment of EASA, contained all domains of aviation. This proposal was amended by the legislators (Member States through the European Council and European parliament) to a phased approach. The paragraph in question presents the baseline for two different regulatory tasks

and refers to 'prime objectives' of aerodromes and ATM/ANS. (Which two domains are according to existing legal frameworks subject to different certification schemes.) These two regulatory tasks will merge into a single Commission proposal to amend the EASA Basic Regulation. It is not the purpose of safety regulations to specify the tasks of different organisations. It is the aim of the Agency to establish a regulatory system allowing organisations to operate several services and/or operating units under a single set of rules and under single certificate (or approval) in accordance with a total system approach.

Navigation services, as a subject mentioned in the comment, if provided by an aerodrome operator would today necessitate two certificates for it; one for the aerodrome operator according to ICAO Annex 14 and another one as an ANSP according to the respective SES rules.

comment 892 comment by: EUROCONTROL

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

comment 948 comment by: ACI EUROPE

ACI-Europe likes to confirm that "the airport operator is responsible for the SAFE OPERATION OF THE AIRPORT". This rule does not only pertain to "Take off and Landing". Therefore the airport is liable in the context of airport operation, and not as ATM/CNS Service Provider. ACI-Europe supports the intention of EASA to develop clear regulations for airport operators and ANSP. However, in accordance with the NPA 06/2006 process, an airport operator will be licensed as such and not be expected to apply for an ANSP-licence even if providing Apron Control Service.

response *Noted*

This paragraph presents the baseline for two different regulatory tasks and refers to 'prime objectives' of aerodromes and ATM/ANS. (Which two domains are according to existing legal frameworks subject to different certification schemes.) These two regulatory tasks will merge into a single Commission proposal to amend the EASA Basic Regulation. It is not the purpose of safety regulations to specify the tasks of different organisations. It is the aim of the Agency to establish a regulatory system allowing organisations to operate several services (including apron management) and/or operating units under a single set of rules and under single certificate (or approval) in accordance with a total system approach.

comment 1403 comment by: GoranSilovic

There are two confusions (in red) regarding this statement.

The first one is

"the safety and interoperability regulation of aerodromes, air traffic

management and air navigation services." and

"Agency found it appropriate to distinguish aerodrome regulation from that of ATM/ANS. Aerodromes have indeed for their prime objective to provide for the safety of an individual aircraft by ensuring that the appropriate means are provided to allow its safe take off and landing, while ATM/ANS aim at managing its interaction with other aircraft in all phases of flight and on the movement area of an aerodrome. As a consequence, the risks associated to these two types of activity are fundamentally different and the related mitigating measures to be enforced by regulation need to be addressed separately in order to avoid overlap and confusion."

the second one is

"air traffic management and air navigation services."

EXPLANATION AND PROPOSAL

First CONFUSION

Explanation

The statement in this item:

"Aerodromes have indeed for their prime objective to provide for the safety of an individual aircraft by ensuring that the appropriate means are provided to allow its safe take off and landing,"

is particular approach which significantly changed responsibility and role of Aerodrome air traffic control service defined in Annex 11 as follows:

2.2 Objectives of the air traffic services

The objectives of the air traffic services shall be to:

- a) prevent collisions between aircraft;
- b) prevent collisions between aircraft on the manoeuvring area and obstructions on that area;
- c) expedite and maintain an orderly flow of air traffic;
- d) provide advice and information useful for the safe and efficient conduct of flights;
- e) notify appropriate organizations regarding aircraft in need of search and rescue aid, and assist such organizations as required

2.3 Divisions of the air traffic services

The air traffic services shall comprise three services identified as follows.

2.3.1 The *air traffic control service*, to accomplish objectives a), b) and c) of 2.2, this service being divided in three parts as follows:

- a) *Area control service*: the provision of air traffic control service for controlled flights, except for those parts of such flights described in 2.3.1 b) and c), in order to accomplish objectives a) and c) of 2.2;
- b) *Approach control service*: the provision of air traffic control service for those

parts of controlled flights associated with arrival or departure, in order to accomplish objectives a) and c) of 2.2;

c) *Aerodrome control service*: the provision of air traffic control service for aerodrome traffic, except for those parts of flights described in 2.3.1 b), in order to accomplish objectives a), b) and c) of 2.2

3.8 Control of persons and vehicles at aerodromes

3.8.1 The movement of persons or vehicles including towed aircraft on the manoeuvring area of an aerodrome **shall be controlled by the aerodrome control tower** as necessary to avoid hazard to them or to aircraft landing, taxiing or taking off.

Additionally ICAO Global Air Traffic Management Operational Concept (Doc 9854 AN/458) clearly defined the role and responsibility of aerodrome operator as follows

Aerodrome operations

2.1.3 As an integral part of the ATM system, **the aerodrome operator must provide the needed ground infrastructure** including, *inter alia*, lighting, taxiways, runways, including exits, and precise surface guidance to improve safety and maximize aerodrome capacity in all weather conditions. The ATM system will enable

the efficient use of the capacity of the aerodrome airside infrastructure. Key conceptual changes include:

- a) runway occupancy time will be reduced;
- b) the capability will exist to safely manoeuvre in all weather conditions while maintaining capacity;
- c) precise surface guidance to and from a runway will be required in all conditions; and
- d) the position (to an appropriate level of accuracy) and intent of all vehicles and aircraft

operating on the movement area will be known and available to the appropriate ATM

community members.

Additionally **ICAO Global Air Traffic Management Operational Concept (Doc 9854 AN/458)** clearly defined the role and responsibility of aerodrome operator as follows

Aerodrome operations

2.1.3 As an integral part of the ATM system, **the aerodrome operator must provide the needed ground infrastructure** including, *inter alia*, lighting, taxiways, runways, including exits, and precise surface guidance to improve safety and maximize aerodrome capacity in all weather conditions. The ATM system will enable the efficient use of the capacity of the aerodrome airside infrastructure. Key conceptual changes include:

- a) runway occupancy time will be reduced;

- b) the capability will exist to safely manoeuvre in all weather conditions while maintaining capacity;
- c) precise surface guidance to and from a runway will be required in all conditions; and
- d) the position (to an appropriate level of accuracy) and intent of all vehicles and aircraft operating on the movement area will be known and available to the appropriate ATM community members.

Additionally **Eurocontrol Strategy 2000+** prescribed as follows:

4.2 Safety

Objective To improve safety levels by ensuring that the numbers of ATM induced¹³ accidents and serious or risk bearing incidents do not increase and, where possible, decrease.

The main purpose of ATM services is to ensure the safe separation of aircraft, both in the air and on the ground, while maintaining the most

efficient operational and economic conditions. The formulation of the objective implies a reduction of the accident rate per operation or flight hour substantially greater than the rate of increase in traffic. In addition, key risk areas in aviation where ATM can contribute remedial measures should be identified and the subject of action.

5.3.4 Airport Air Traffic Control

Improvements will be brought to the management of arriving and departing aircraft, and of aircraft on the movement area, as well as to runway capacity and utilisation, and airport operations efficiency in all weather conditions within the limits imposed by political/environmental restrictions. They will be accompanied by, and integrated with, better management of the land-side infrastructure as the airport is a key stone in the realisation of a gate-to-gate network. Operational and strategic co-ordination between aircraft operators, airports and ATM, based on CDM applications, will allow to resolve conflicting goals.

Directions for Change

31

The Airport operational environmental protection will address procedures for minimising the impact of aircraft noise and of gaseous emissions, the application of, and compliance with, pan-European harmonised environmental standards and regulations, and the management of noise capacity.

ATM operational initiatives at airports and efficient use of the available movement areas and associated infrastructure will bring capacity, efficiency and environmental gains in terms of reduced airborne delay and ground waiting times, and also enhance the safety of aircraft and other traffic on the airport manoeuvring area.

Changes to procedures will be enabled by runway management tools, arrival/departure management systems, and advanced surface movement guidance and control systems. These measures will allow to optimise the use of available infrastructure, but are not a substitute to the ultimate need for more runways.

My comment

The fact the aerodrome operator must provide the needed ground infrastructure including, *inter alia*, lighting, taxiways, runways, including exits, and precise surface guidance to improve safety and maximize aerodrome capacity in all weather conditions doesn't mean that the aerodrome operator is responsible for separation of aircraft on the ground and in the vicinity of the aerodrome.

It is obviously that the aerodrome airside operations are part of ATM ground based system particularly to ATS/ Airport Air Traffic Control (or Ground movement control if exist)

Proposal regarding first confusion

In this item and throughout of the NPA, **the statement of aerodrome position and responsibility in the context of the above explanation should be deleted**

Second CONFUSION

Explanation

The SES REGULATION (EC) No 549/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down the framework Regulation for the creation of the single European sky, article 2. bullet 10. Definitions

stipulated clearly that ATM is as follows:

10. '**air traffic management**' means **the aggregation of the airborne and ground-based functions** (air traffic services, airspace management and air traffic flow management) required to ensure the safe and efficient movement of aircraft during all phases of operations;

My comment

Basically ATM is a network of function in the sky and on the ground, functionally integrated . My opinion is that ground based function indicate the core function of ANS i.e. **air traffic separation management** which is provided by ATC service as a core service of ATS.

It is obviously that regarding the ground based function of ATM **air traffic separation management** is right management function than ATS which is not function but service which provide the function.

Consequently, in other to carry out ATM as a network of functions, we have to establish a System which will provide the ATM function. That system should be **ATM system, which consists of Airborne based System and Ground based System.**

The definition of EATMN (European ATM Network) given by the Single European Sky framework Regulation makes clear that it includes airborne, ground-based and space-based systems.

But, there is a big problem regarding the definition of Airborne based ATM function which is not exist so far.

My opinion is that Airborne based ATM function is **Aircraft management function** and regarding a system **Aircraft management system.**

Every system consist of human, equipment and procedure (rules). It is obviously that regarding the **Aircraft management system** a human is a **pilot**, equipment is **an aircraft** and the **procedures(rules)** are set of aircraft conducting manually and flight operation manually (navigation, communication, surveillance).

Regulatory provisions related to ATM System should cover the whole life-cycle, which may include design, manufacture, operation and maintenance, as well as competences of system operators. It means, considering the role of EASA , that regulatory safety related provisions has to cover the whole system during whole its life-cycle. So far EASA undertake safety regulation only Airborne based ATM system (pilot, aircraft and airborne procedure/rules) and we can conclude that the NPA of EASA extension envisaged to undertake ground based ATM system

If we accept that ATM system is based on, the provision of integrated services in other to provide ATM function throw Airborne based ATM system and ground based ATM system the future role of EASA as European safety regulator has to cover the whole ATM system.

Finally the extension of EASA responsibility will cover **ground based ATM System**

Proposal regarding second confusion

In this item and throughout of the NPA, **statement or abbreviation ATM/ANS should be superseded with ground based ATM System**

The new item 12.

12. As a following step work had to be done to prepare proposals for the safety and interoperability regulation of aerodromes, **whole** air traffic management **system** and ~~air navigation services~~. The preliminary impact assessment launched by the Commission indeed concluded that the extension of the EASA system was the most favorable option to achieve the objective described above in paragraph 10. According to the Commission, the Agency is to prepare, implement and monitor the application of **ATM** safety rules, and is set to become by 2010 the European authority with extended powers covering all aspects of civil aviation safety. When considering this second extension of the Basic Regulation the Agency found it appropriate to

~~(distinguish aerodrome regulation from that of ATM/ANS. Aerodromes have indeed for their prime objective to provide for the safety of an individual aircraft by ensuring that the appropriate means are provided to allow its safe take off and landing, while ATM/ANS aim at managing its interaction with other aircraft in all phases of flight and on the movement area of an aerodrome. As a consequence, the risks associated to these two types of activity are fundamentally different and the related mitigating measures to be enforced by regulation need to be addressed separately in order to avoid overlap and confusion.)~~

cover ground based ATM system which provide airspace management, air traffic separation management and air traffic flow management function of ATM.

response *Noted*

This paragraph presents the baseline for two different regulatory tasks and refers to 'prime objectives' of aerodromes and ATM/ANS. These two tasks will

merge into a single Commission proposal to amend the EASA Basic Regulation. It is not the purpose of safety regulations to specify the tasks of different organisations. It is the aim of the Agency to establish a regulatory system allowing organisations to operate several services (including apron management) and/or operating units under a single certificate in accordance with a total system approach.

It is a common principle of law that all specific terms used have to be clearly specified. This does not mean that it should take place at the level of this NPA. There are some differences between definitions in the SES Framework Regulation and EASA Basic Regulation. Those should be solved by the future Commission Proposals. Definition of ANS in the NPA does not deliberately differ from SES definition.

The Agency takes note of this comprehensive comment when preparing subsequent phases of this rulemaking process. However, it is not the purpose to issue the NPA again.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - General - 13. p. 5

comment	893 See identical comment 888 by EUROCONTROL.	comment by: <i>EUROCONTROL</i>
response	<i>Noted</i> See response to comment 888 (same comment).	

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - General - 14. p. 5

comment	546 UK Government considers that the new proposals must be coordinated with SES and that coherence of rules across the Community is essential. However, the UK is concerned that the draft essential requirements do not clearly relate to existing EU regulation and recommends that EASA fully adopts the safety related aspects of SES regulations and associated directives as a firm basis for going forward. Furthermore, the UK draws attention to ICAO SARPS and other legislation such as the Radio and Telecommunications Terminal Equipment Directive.	comment by: <i>UK Department for Transport</i>
response	<i>Noted</i> The Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. The Agency naturally agrees that a close coordination is vital in order to achieve this. Most likely SES Regulations and its implementing rules (or associated Directives) need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules. Every amendment naturally has to go through its respective rulemaking process. Essential requirements are safety objectives and as such can not create double	

regulation. The Agency undertakes to review in what areas they deviate of what has already been included in SES regulations.

EASA Basic Regulation establishes a system for the common transposition of ICAO SARPS and creates a legal commitment for the Agency to support its members in fulfilling their ICAO obligations. Such transposition constitutes the basis for the necessary detailed implementing rules and is the only Community legal act creating a system for their common transposition. This has already been accomplished in all other areas of the Agency's remit.

comment

731

comment by: UK CAA & UK MoD

UK CAA & MoD Comments on explanatory material.

We endorse the assertion that the new proposals must be coordinated with SES and that coherence of rules across the Community is essential. However, the UK CAA is concerned that the draft essential requirements do not clearly relate to existing EU regulation and recommends that EASA fully adopts the safety related aspects of SES regulations and associated directives as a firm basis for going forward.

Furthermore, the UK CAA draws attention to ICAO SARPS and other legislation such as the Radio & Telecommunications Terminal Equipment Directive that also covers equipment and systems pertaining to BR002 (see comment on paragraph 12 above) and BR003. This requires consideration for further rationalisation.

response

Noted

The Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. The Agency naturally agrees that a close coordination is vital in order to achieve this. Most likely SES Regulations and its implementing rules (or associated Directives) need to be adapted to some extent in order to provide consistency with the future extended EASA Basic Regulation and its implementing rules. Every amendment naturally has to go through its respective rulemaking process.

Essential requirements are safety objectives and as such can not create double regulation. The Agency undertakes to review in what areas they deviate of what has already been included in SES regulations.

EASA Basic Regulation establishes a system for the common transposition of ICAO SARPS and creates a legal commitment for the Agency to support its members in fulfilling their ICAO obligations. Such transposition constitutes the basis for the necessary detailed implementing rules and is the only Community legal act creating a system for their common transposition. This has already been accomplished in all other areas of the Agency's remit.

comment

894

comment by: EUROCONTROL

See identical comment 888 by EUROCONTROL.

response

Noted

See response to comment 888 (same comment).

comment *1194* comment by: *IDCOOK*

As one of the first ANSP to achieve corporate SES certification in the UK we are encouraged to note that the extension to the EASA system will be coherent with other rules in the legal order of the Community, including SES.

Has the authority considered wider aspects of SES such as Financial and business plans, Security, Health and safety for coherence with the essential requirements?

response *Noted*

The Agency does not intend to go beyond of what is needed for safety regulation. Certification of service providers will naturally build on existing Common Requirements.

comment *1302* comment by: *ECOGAS*

It is important to coordinate effectively with the SES initiative, especially from the viewpoint of the relationship between the EASA safety-driven approach, and the competing needs for greater efficiency and environmental responsibility. A purely safety-driven approach to Air Traffic Management could result in a system which chokes capacity and thereby reduces the demand for responsible and economically-productive air travel. The structure of the new EASA ATM organisation must be organised to complement SES initiatives to reduce the complexity of Airspace demarcation throughout Europe which will be highly emotive at a political level because of the unique sensitivity each State feels towards the airspace above it.

Proper consultation will be needed during all phases of the rulemaking process, but the overriding measure should be capacity and flexibility, with safety to prescribed levels a prerequisite of all options being discussed /consulted/introduced. There are up to 50,000 motor-powered General and Business Aviation aircraft in Europe (including about 2,800 turbine-powered) as compared to about 5,000 aircraft in the European commercial airline fleet. In 2006 about 9% of all aircraft movements registered by Eurocontrol accounted for General and Business aviation. Since 2003 the number of aircraft movements in this segment registered by Eurocontrol has been growing almost twice as quickly as other traffic, and these facts need to be borne in mind when assessing the weights of consultation responses from the stakeholder community.

response *Noted*

The Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements. The Agency naturally agrees that a close coordination is vital in order to achieve this. It is true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee.

Every rule prepared by the Agency will go through the formal rulemaking process, which ensures full transparency and an extensive consultation. Review of the comments and participation by the industry takes naturally into account

different quantitative and qualitative aspects. Industry is strongly represented in all consultative processes of the Agency.

comment

1315

comment by: *Ente Nazionale per l'Aviazione Civile*

While it is basically stated that the future regulation will be coherent with existing SES regulation, no regulatory plan has been attached to the NPA to understand how this target will be reached. In some way it is likely that the modification to the basic EASA regulation (1592/2002) will account for this, but at this moment this cannot be evaluated.

response

Noted

The subsequent steps in the EASA rulemaking process, i.e. this Comments Review Document and the formal Opinion issued to the Commission, will hopefully clarify the situation more. Then, the Commission proposals to amend SES and EASA regulations should provide for clear transition without legal gaps or overlapping requirements.

comment

1770

comment by: *EU Permanent Representation of Romania*

Art. 14, para (1), of the Regulation (EC) No 1592/2002 outlines that EASA shall prepare series of draft proposals, to be submitted as opinions to the European Commission, in order to support the process of drawing up further proposals on basic principles, applicability and essential requirements, that will be submitted to the European Parliament and Council.

In the spirit of recital 23 from the preamble of the Regulation (EC) No 1592/2002, it has been considered that, through provisions of art. 14 para (1), above mentioned, a legal framework, which offers the opportunity for future extension of this Regulation's scope to any other domain related to civil aviation safety, under a proposal, according to the Treaty establishing the European Community (EC Treaty), can be established. As from 27 September 2002, this legal framework allowed the extension of this Regulation's scope as well as of EASA's competences to air navigation services (ANS) safety and to air traffic management related to "civil aviation".

However, on 10 March 2004, the European Parliament and the Council have adopted, starting from the European Commission's proposals, the four basic SES Regulations, well known as "the first package on Single European Sky (SES)"^[1], which are applied to air navigation services provided to general air traffic. The four basic SES Regulations have been adopted under the same legal basis as Regulation (EC) No 1592/2002, respective Art. 80 (2) of the EC Treaty and following the same procedure, respective co-decision procedure laid down in Article 251 of the EC Treaty, instead of amending the Regulation (EC) No 1592/2002, in order to extend its scope and, implicitly, EASA's competences to ANS/ ATM related (only) to "civil aviation".

The "Explanatory Note" from NPA 2007 - 16 offers several arguments for the benefit of future extension of EASA's competences on ANS/ ATM safety - indirectly addressed only to civil aviation, at least under the conditions laid down in Article 1 (2) of Regulation (EC) No 1592/2002.

It's remarkable that both the document NPA 2007 - 16 and the *Report of the High Level Group for the future European Aviation Regulatory Framework, dated 3 July 2007*, which is the basis for the previous document, do not

contain explanations regarding the causes or the events/ evolutions that, for the time being, could lead to the validity' cease of some initial arguments that were the foundation for the establishment - at the Community level - of the four SES Regulations' scope (as being air navigation services provided for general air traffic).

Consequently, we kindly appreciate the provision of additional information and clarifications in this sense, possible before the presentation of some comments and conclusions on this matter, included into a Regulatory Impact Assessment.

[1] The four basic SES Regulations are:

Regulation (EC) No 549/2004 of the European Parliament and of the Council,

Regulation (EC) No 550/2004 of the European Parliament and of the Council,

Regulation (EC) No 551/2004 of the European Parliament and of the Council, and

Regulation (EC) No 552/2004 of the European Parliament and of the Council,

response *Noted*

It is obviously not in the remit of the Agency or its objective to assess such decisions made by the European legislators. However, it could be useful to explain that the main purpose of the SES regulations initially was to address the capacity and delay problems faced in Europe. Although certain safety provisions were emphasized during the legislative process, this package did not contain very clear safety regulatory methods or objectives. That has been noted for instance in the respective report of the EUROCONTROL PRC. This aspect was clearly complemented for instance by the adoption of the Common Requirements.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - General - 15. p. 5

comment *168* comment by: *FRAPORT AG*
 ESARR should not be relevant for an airport operator.

response *Noted*

comment *169* comment by: *FRAPORT AG*
 Airport operators need long term planning stability and will not support any modification of recently implemented SES rules.

response *Noted*

comment *269* comment by: *IFATSEA*

Under para 15, the NPA refers to ESARR that have been transposed in EU law as regulations that shall be kept by EASA. However, leaving out the ATSEP safety role in ATM/ANS equals disabling/ignoring many portions of ESARR (in particular ESARR 5) that are instrumental to safety. This comment also applies to para 33 where many ICAO and EU (Common Requirements) requirements related to ATSEP (training, competency, etc...) are missing in section B of this document. This is not only lowering the safety level existing in the Community today but also lowers the targeted Levels of Safety (TLS).

response *Noted*

See response to comment 265. Also, the Agency takes note of this comment.

comment 324

comment by: *NATS*

The new requirements need to avoid duplicating existing regulations or must ensure that overlapping regulations are removed. There is already a problem with multiple regulation in the industry and this is an opportunity to address this. The potential for amending/repealing some existing regulation offers an opportunity to enhance existing safety regulation.

response *Accepted*

comment 508

comment by: *BAA*

Care needs to be taken to avoid duplication of regulations. There will be a need to reassess the current ESARR system prio to the time of the ER's and IR's being agreed by the Commision. Overlap also needs to be taken care of with aerodromes that are ANSP's to ensure there is no conflict between the ATM and Aerodrome regulations.

response *Accepted*

comment 547

comment by: *UK Department for Transport*

It is premature to say that ESARRS have largely been transposed into EU law as much work remains to be done through the Commission and Eurocontrol's Double Regulation Ad-Hoc Working Group (DRAHG) to consider elements that have not been transposed and areas that may conflict with SES regulations. The outcome of this work must be taken into account in proposals to extend the competence of EASA. The proposal needs to reflect usage of the current SES framework as far as possible and only to change it where real safety benefits can be shown.

response *Noted*

The views expressed are noted. The Agency agrees that establishing a system of common safety rules provides an opportunity to assess again whether the ESARRS transposition could be done more comprehensively.

comment 732

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

It is premature to say that ESARRS have largely been transposed into EU law as much work remains to be done through the Commission and Eurocontrol's Double Regulation Ad-Hoc Working Group to consider elements that have not been transposed and areas that may conflict with SES regulations. The outcome of this work must be taken into account in proposals to extend the competence of EASA. The proposal needs to reflect usage of the current SES framework as far as possible and only to change it where real benefits can be shown. Achievements within the SES initiative have to be safeguarded as regression is not compatible with safe change (i.e. safety maintained or improved).

Furthermore, the UK CAA recommends that SES phase 2, the DRAHG Report recommendations and EASA BR002 and BR003 activities are co-ordinated.

response *Noted*

The views expressed are noted. The Agency agrees that establishing a system of common safety rules provides an opportunity to assess again whether the ESARRS transposition could be done more comprehensively.

Proposals by the Commission to amend SES regulations and EASA Basic Regulation have to be mutually consistent and indeed coordination is vital in order to achieve this. As already stated, the Agency agrees that ESARRS are a valuable source for the future safety regulatory implementing rules.

comment

895

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response

Noted

See response to comment 888 (same comment).

comment

951

comment by: *ACI EUROPE*

ESARR should not be relevant for an airport operator.

response

Noted

comment

954

comment by: *ACI EUROPE*

Airport operators need long term planning stability. ACI-Europe has supported the development and recent implementation of SES rules and will oppose any modification of the content of requirements at this point.

response

Noted

comment

1770 ❖

comment by: *EU Permanent Representation of Romania*

Art. 14, para (1), of the Regulation (EC) No 1592/2002 outlines that EASA shall prepare series of draft proposals, to be submitted as opinions to the European Commission, in order to support the process of drawing up further proposals on basic principles, applicability and essential requirements, that will be submitted to the European Parliament and Council.

In the spirit of recital 23 from the preamble of the Regulation (EC) No 1592/2002, it has been considered that, through provisions of art. 14 para (1), above mentioned, a legal framework, which offers the opportunity for future extension of this Regulation's scope to any other domain related to civil aviation safety, under a proposal, according to the Treaty establishing the European Community (EC Treaty), can be established. As from 27 September 2002, this legal framework allowed the extension of this Regulation's scope as well as of EASA's competences to air navigation services (ANS) safety and to air traffic management related to "civil aviation".

However, on 10 March 2004, the European Parliament and the Council have adopted, starting from the European Commission's proposals, the four basic SES Regulations, well known as "the first package on Single European Sky (SES)"^[1], which are applied to air navigation services provided to general air traffic. The four basic SES Regulations have been adopted under the same legal basis as Regulation (EC) No 1592/2002, respective Art. 80 (2) of the EC Treaty and following the same procedure, respective co-decision procedure laid down in Article 251 of the EC Treaty, instead of amending the Regulation (EC) No 1592/2002, in order to extend its scope and, implicitly, EASA's competences to ANS/ ATM related (only) to "civil aviation".

The "Explanatory Note" from NPA 2007 - 16 offers several arguments for the benefit of future extension of EASA's competences on ANS/ ATM safety - indirectly addressed only to civil aviation, at least under the conditions laid down in Article 1 (2) of Regulation (EC) No 1592/2002.

It's remarkable that both the document NPA 2007 - 16 and the *Report of the High Level Group for the future European Aviation Regulatory Framework, dated 3 July 2007*, which is the basis for the previous document, do not contain explanations regarding the causes or the events/ evolutions that, for the time being, could lead to the validity' cease of some initial arguments that were the foundation for the establishment - at the Community level - of the four SES Regulations' scope (as being air navigation services provided for general air traffic).

Consequently, we kindly appreciate the provision of additional information and clarifications in this sense, possible before the presentation of some comments and conclusions on this matter, included into a Regulatory Impact Assessment.

^[1] The four basic SES Regulations are:

Regulation (EC) No 549/2004 of the European Parliament and of the Council,

Regulation (EC) No 550/2004 of the European Parliament and of the Council,

Regulation (EC) No 551/2004 of the European Parliament and of the Council, and

Regulation (EC) No 552/2004 of the European Parliament and of the Council,

response *Noted*

Same comment as above.

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- General - 16.**

p. 5-6

comment 325 comment by: NATS

NATS support the total systems approach advocated by the HLG. This will be essential to support more integrated ATM systems and ensure that a consistent approach is taken to all segments of the air transport industry.

response *Noted*

comment 510 comment by: BAA

BAA endorses the findings of the HLG and the philosophy of a 'total systems approach' to European aviation. This will be essential to the future of European ATM as for example being pursued by SESAR.

response *Noted*

comment 549 comment by: UK Department for Transport

The UK Government supports the Principles of Good Regulation, including the principles of proportionality, subsidiarity, transparency and consultation. In particular an efficient use of EASA and NAA resources through clearly defined and recognised roles. To this end the UK envisages that EASA will provide a centralised rulemaking function in conjunction with the Member States and the Commission and the NAAs will provide oversight functions, except in very limited circumstances where the Agency might provide oversight (see answer to question 8).

response *Noted*

The Agency agrees with this comment to a very large extent. However, there seems to be one specific issue to be clarified. According to the Basic Regulation the Agency is to assist the Commission in monitoring the application of this regulation. This role is established in two articles of that regulation; Inspections of Member States and Investigations of undertakings. This activity is organised and carried out by EASA Standardisation directorate.

comment 733 comment by: UK CAA & UK MoD

UK CAA & MoD Comments on explanatory material.

The UK CAA supports the principles of Better Regulation, including the principles of proportionality, subsidiarity, best allocation of roles and consultation. In particular an efficient use of EASA and NAA/NSA resources through clearly defined and recognised roles. To this end the UK CAA envisages that EASA will provide a centralised rule making function in conjunction with the Member States and the Commission and the NAAs will provide oversight functions, except in very limited circumstances where the Agency might

	provide oversight (see answer to question 8).
response	<p><i>Noted</i></p> <p>The Agency agrees with this comment to a very large extent. However, there seems to be one specific issue to be clarified. According to the Basic Regulation the Agency is to assist the Commission in monitoring the application of this regulation. This role is established in two articles of that regulation; Inspections of Member States and Investigations of undertakings. This activity is organised and carried out by EASA Standardisation directorate.</p>
comment	<p>897 comment by: <i>EUROCONTROL</i></p> <p>See identical comment 888 by EUROCONTROL.</p>
response	<p><i>Noted</i></p> <p>See response to comment 888 (same comment).</p>
comment	<p>1313 comment by: <i>ECOGAS</i></p> <p>ECOGAS is pleased to note that Commission Communication COM(2007) 869 final, "An Agenda for Sustainable Future in General and Business Aviation" also underlines the importance of Business Aviation in Europe, and further underlines the needs of proportionate legislation with regard to SME's. The report notes that in 2005 there were about 100,000 airport/aerodrome pairs in Europe served by General and Business aviation traffic (as opposed to about 30,000 linked by scheduled airline connections), and it is the flexibility that this sector of transportation offers that provides value to its users. The regulation resulting from this expansion of EASA's responsibilities must improve the access of GA users to airspace and efficient routing, as part of a coordinated effort to increase the efficiency of the Europe-wide ATM network.</p>
response	<p><i>Noted</i></p> <p>Airspace access and efficient airspace design are mainly subject to economic regulation and therefore not in the remit of the Agency responsibilities. However, the objectives for the Agency as laid down by the Basic Regulation contain for instance facilitation of free movement and provision of level playing field for all actors in the internal aviation market. This will indirectly facilitate achieving the aims expressed by the comment.</p>

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- General - 17.**

p. 6

comment	<p>326 comment by: <i>NATS</i></p> <p>Clarity is required with regard to the scope of the inclusion of interoperability as safety is one of seven interoperability essential requirements.</p>
response	<p><i>Noted</i></p> <p>This subject will be addressed in the forthcoming Opinion of the Agency and in the Commission legal proposals to amend SES rules and EASA Basic Regulation.</p>

comment	420	comment by: <i>Royal Norwegian Ministry of Defence</i>
	<p>The Royal Norwegian MOD would like to underline that EASA has limited competence in regard to national security and defence matters, as this remains under individual state sovereignty. Still, military aviation plays an important role in European aviation of today, and EASA need to describe how the transpose of ATM/ANS Safety regulation to EASA will deal with civil/military co-ordination. EASA also needs to better describe its future relationship with EUROCONTROL, EC/Single Sky Committee and non-EU European States.</p>	
response	<p><i>Noted</i></p> <p>See responses to the comments 394 and 401.</p>	
comment	734	comment by: <i>UK CAA & UK MoD</i>
	<p>UK CAA & MoD Comments on explanatory material.</p> <p>See references to interoperability elsewhere.</p>	
response	<p><i>Noted</i></p>	
comment	898	comment by: <i>EUROCONTROL</i>
	<p>See identical comment 888 by EUROCONTROL.</p>	
response	<p><i>Noted</i></p> <p>See response to comment 888 (same comment).</p>	
comment	919	comment by: <i>IACA International Air Carrier Association</i>
	<p>Safety as the only parameter for regulation through the European Aviation Safety Agency may result in too many restrictions. Air traffic management is a concept balancing capacity, efficiency, environment and safety. Hereto, the global ICAO approach shall be adopted. International standardization through ICAO is extremely important; new EU regulation shall not be more stringent, unless driven by a solid business case to increase capacity, or for safety reasons.</p>	
response	<p><i>Noted</i></p> <p>This activity is not intended to go beyond of what is necessary for safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee. All rulemaking activities of EASA shall be based on well structured and proven rulemaking process, providing fully transparent means of consultation and containing a Regulatory Impact Assessment. Most of these rulemaking activities are based on a fundamental participation by the industry.</p> <p>Additional objectives of EASA, stated by the Basic Regulation, include: to</p>	

facilitate the free movement of good, persons and services; to promote cost-efficiency in the regulatory and certification processes; to provide a level playing field for all actors in the internal aviation market.

The Agency also stresses that global interoperability cannot be dissociated from safety regulation. This principle is the basis of the ICAO system, whose main objective being interoperability has been obliged therefore to set common minimum safety standards. This is consequently a fundamental part of the EASA system since its establishment by the European legislators in all other domains of aviation safety regulation. This principle should not emerge differently in case of ATM taking into account that most of airspace use requirements are implemented through the safety regulation of air operators and service providers.

comment

945

comment by: *skyguide*

From a safety point of view, skyguide supports the extension of the EASA system to ATM/ANS, since this measure is the most promising one in order to ensure the safety of aviation in a gate-to-gate approach. This will have a significant impact on the role and the tasks of the NSA's, not so much of the ANSPs.

As an ANSP, skyguide would request that not yet another set of rules will apply to them, but that the existing rules (ICAO, ESARRs, SES regulations) are enforced by EASA. Care must be taken that the new EASA-rules applicable to the ANSPs are identical to the already existing ones (or complementary where necessary).

response

Noted

The Agency is pleased to take note of this support to the aim of a single aviation safety regulator in Europe and agrees that such safety regulatory system has to be able to cope with a total system approach and shall not create obstacles or unnecessary burden for new developments in the field.

This activity is not intended to go beyond of what is necessary for safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee.

The Agency also stresses that global interoperability cannot be dissociated from safety regulation. This principle is the basis of the ICAO system, whose main objective being interoperability has been obliged therefore to set common minimum safety standards. This is consequently a fundamental part of the EASA system since its establishment by the European legislators in all other domains of aviation safety regulation. This principle should not emerge differently in case of ATM taking into account that most of airspace use requirements are implemented through the safety regulation of air operators and service providers.

comment

1031

comment by: *Ministry of Transport and Communications, Norway*

In our view, the approach taken to analyse the subject matter in this NPA is

too narrow in view of the complex subject matter at hand. According to the NPA (para 12) a preliminary impact assessment launched by the Commission concluded that the extension of EASA system was the most favourable option to achieve the objective of a high and uniform level of safety. The said impact assessment was not available as source document for the consultation. Hence, it is difficult to judge the strength of the arguments behind this conclusion. However, the justification put forward in the NPA for the concrete approach proposed, with draft "essential requirements" to be added as yet another Annex to Regulation 1592/2002 is not convincing. It seems that EASA takes it for granted that the only way to approach the matter is to follow mechanically the same pattern as has been taken in previous proposals for extension of the mandate of EASA. It would have been useful to analyse other approaches, such as incorporating the specific competence of EASA for safety matters into Single European Sky legislation through appropriate amendments of that legislation.

The inter-relationship with the safety regulatory tasks of Eurocontrol should be an important element in an analysis on this matter.

Perhaps such alternative approaches fall outside the formal mandate of EASA. In that case, it should have been pursued by another body with the proper competence, as a precursor to the work pursued by EASA on the NPA.

The scope of the NPA seems to go beyond the remit of EASA as a body with competence strictly limited to safety matters. The scope of the NPA is specifically extended to interoperability, with reference to the interoperability objectives contained in ICAO Standards and Recommended Practices. However, there is a need to analyse the interoperability concept in more detail than is the case in the NPA, so as to clarify what aspects of the concept are specifically related to safety and what aspects are related to the efficiency/capacity of the ATM system. The latter aspects would fall outside the remit of EASA. Furthermore, one should take care to distinguish between "interoperability" in the sense of ensuring that the detailed national rules and regulations which are promulgated in the ICAO member states are not incompatible with each other and with the rules developed by ICAO, on the one hand, and interoperability in the sense of promulgating common standards and specifications for equipment and systems in use in the ATM activities in Europe so as to ensure "seamless" connections between the different ATC units and/or ANSPs, on the other hand.

Likewise, the scope of the NPA extends to airspace management, which is closely linked to member states' sovereignty over their airspace and to the civil/military dimension as well as their requirements relating to public order and public security. Furthermore, it is necessary to analyse in more detail what aspects of air space management are so intimately related to safety that they can and should be included in EASA's competence.

The approach in the NPA and the proposed text for the Essential Requirements does not take account of the position of Eurocontrol in the field of ATM, including in safety matters, as well as the legal obligations of the member states of Eurocontrol. It is necessary to clarify the inter-relationship between Eurocontrol and the safety regulations promulgated by Eurocontrol, on the one hand, and EASA and the safety regulations promulgated by the Community, on the other hand. The pros and cons of transferring safety regulatory tasks from Eurocontrol to EASA should be carefully assessed, both from a functional and

from a legal and political perspective.

Eurocontrol possesses a fundamentally important knowledge and technical competence in the field of ATM, and it is uniquely positioned to bring together all stakeholders in the process of regulatory development - including the military.

Furthermore, the approach in the NPA and the proposed text of the Essential Requirements does not take into account the body of Community law already adopted in the context of the Single European Sky package. It is crucially important to clarify the inter-relationship between these two sets of legislation as an element in the process of preparing the extension of EASAs mandate to ATM. What is missing in connection with the NPA is, inter alia, a detailed analysis of possible weaknesses or even deficiencies, from a safety perspective, in the SES legislation adopted or under preparation. (I.e.: A "gap" analysis.)

The explanatory note of the NPA includes numerous references to ICAO Standards and Recommended Practices, but the proposed text of the Essential Requirements does not make reference to the ICAO SARPs, and the value of it as a "stand alone" piece of legislation is questionable.

Unless the inter-relationship between "EASA rules", on the one hand, and ICAO, Eurocontrol and SES legislation, on the other hand, is clarified there is a risk that multiple regulation of the safety aspects of ATM will be the outcome of the extension of EASAs mandate. This would be very unfortunate.

An important element in the analysis of possible approaches for the extension of EASA's mandate is the ways and means to ensure a smooth and efficient transition of tasks and competence. This would assist in avoiding rushed decisions and confusion among stakeholders at a later stage of the process. The complications concerning the transition of tasks from JAA to EASA come to mind in this regard. Hence, we strongly suggest that such an analysis is initiated as soon as possible.

In our view, it is crucial to maintain the cooperation between the civil and military stakeholders in the ATM domain, and to properly address the civil / military interface in the legislation applicable to the ATM field. This aspect is specifically mentioned as a task in the terms of reference for this NPA. (Para 4, point 6: "In order to adopt a consistent and coordinated approach in ANS and ATM, military needs will have to be evaluated and taken into account when drafting the EASA opinion.") Nevertheless the subject matter has been largely disregarded in the analysis put forward in the NPA. Consequently, there is a need for further analysis of this aspect.

The pan-European perspective should be kept in mind throughout this important rulemaking process. Non-EU Member States which are directly concerned by the prospective Community legislation should be involved and consulted on a regular basis during the further rulemaking process. With this in mind, it is important to ensure that the subject matter is thoroughly discussed and analysed before a formal proposal is submitted by the Commission for

	deliberation and adoption by the European Parliament and Council.
response	<i>Noted</i> See responses to your similar comment 1073.

comment	<i>1294</i> comment by: <i>European GNSS Supervisory Authority</i> As a general remark, the GSA is receptive to the opinions expressed by EASA in the NPA. Indeed, the questions raised are very pertinent and similar issues have been faced by the GSA when initiating the certification process for European satellite navigation systems (EGNOS and Galileo).The extension of the EASA mandate, in order to cope with the shortcomings experienced within the current applicable regulatory framework for complex and/or pan-european systems, is therefore seen as a positive step forward.However, GSA wishes to emphasize that, in the frame of satellite navigation, a valuable expertise has been developed by the Community to carry out technical work on the multi-modal certification of EGNOS and Galileo. It is therefore important that a close cooperation is developed between the two agencies, in order to best conduct the necessary work for certification.
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response	<i>Noted</i> The Agency is very pleased to note in this comment the support for a single safety regulator. The Agency agrees that the verification of GNSS systems (or in more detail: the signal in space delivered) shall be carried out in a multimodal perspective. This will be reflected in the forthcoming Opinion of the Agency.
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comment	<i>1317</i> comment by: <i>Ente Nazionale per l'Aviazione Civile</i> This NPA and the included Essential requirements go beyond the scope of EASA regulation. Interoperability is not within EASA scope. EASA may take care of the safety part of interoperability.
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response	<i>Noted</i> This activity is not intended to go beyond of what is necessary for safety regulation. It is however assumed that global interoperability cannot be dissociated from safety regulation. It is also true that safety implications are often driven by capacity or efficiency objectives. The Agency therefore assumes that is vital to ensure that the arbitration between conflicting objectives would take place at the appropriate political level, such as for instance the SES Committee.
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A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Description of the EASA system - 18.	p. 6
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comment	<i>899</i> comment by: <i>EUROCONTROL</i> See identical comment 888 by EUROCONTROL.
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response *Noted*

See response to comment 888 (same comment).

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Description of the EASA system - 19.**

p. 6

comment 551

comment by: *UK Department for Transport*

The UK supports the principle of agreements between EASA, on behalf of the EU, with non-EU states.

response *Noted*

comment 735

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

The UK CAA supports the conclusion and maintenance of agreements between EASA, on behalf of the EU, with non-EU states. In particular, this will further facilitate the eventual rationalisation of ESARRs with EU legislation. This promotes a Europe-wide system based on a single set of regulations.

response *Noted*

comment 901

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

comment 1252

comment by: *DFS Deutsche Flugsicherung GmbH*

Para 19 deals with the involvement of States which are not members of the European Union. What are the rights of the non-EU Member States participating in EASA? How are they involved in the decision-making process?

response *Noted*

Rights of the associated EASA States are basically the same as those of the Member States with the exception that they don't have voting rights in the Management Board of the Agency. They are involved in the rulemaking processes as all the other members.

comment 1316

comment by: *Ente Nazionale per l'Aviazione Civile*

response *Noted*
no comment

comment **1318** comment by: *Ente Nazionale per l'Aviazione Civile*
Since the Essential requirements are presented without the related proposed amendment to the basic regulation it is quite impossible give a definitive comment. For example definitions are not included, and therefore it is assumed that the terms used within the Essential requirements have a common meaning or to be used in accordance with those already included in the SES Regulation.

response *Noted*
Amendments to the Basic Regulation can only be proposed by the Commission. It is the role of the Agency to give technical advice of how this should be done. This will be done through an Agency Opinion. This consultation assists Agency to prepare the Opinion.
It is a common principle of law that certain specific terms used shall be clearly defined. This will take place in the legal proposal of the Commission.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Description of the EASA system - 20. p. 6-7

comment **327** comment by: *NATS*
Without sight of the structured risk assessment, completeness and correctness of the proposed essential requirements cannot be assessed.

response *Noted*

comment **517** comment by: *BAA*
As the basis of the ER's was a risk assessment it would have proved useful to have had sight of this. One has to assume that the individuals and organisations who participated in the risk assessment were competent to do so. The RA and the participants should be available for viewing.

response *Noted*

comment **554** comment by: *UK Department for Transport*
The UK Government seeks confirmation that the risk assessment supporting the ERs is not intended to absolve ANSPs of the responsibility to carry out their own risk assessments. For this reason the draft Essential Requirements should clearly indicate such ANSP responsibilities.

response *Noted*

The assumption in the comment is right. This risk assessment aimed only to develop the draft ER's, i.e. the safety objectives necessary to mitigate unacceptable safety risks in this domain. The draft ER's in chapter 6.a aim to ensure the ANSP risk assessment responsibilities.

comment 736 comment by: UK CAA & UK MoD

UK CAA & MoD Comments on explanatory material.

The UK CAA seeks confirmation that the risk assessment under-pinning the ERs is not intended to absolve ANSPs of their responsibility to carry out risk assessments. For this reason the draft Essential Requirements should be clearly linked to such ANSP responsibilities.

response *Noted*

The assumption in the comment is right. This risk assessment aimed only to develop the draft ER's, i.e. the safety objectives necessary to mitigate unacceptable safety risks in this domain. The draft ER's in chapter 6.a aim to ensure the ANSP risk assessment responsibilities.

comment 902 comment by: EUROCONTROL

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Description of the EASA system - 21.**

p. 7

comment 170 comment by: FRAPORT AG

Fraport strongly recommends to include in the explanatory material the roles and responsibilities of the parties involved as well as the boundaries to other relevant regulations and directives (IOP, R&TTE).

response *Noted*

These will be part of the Commission legal proposal.

comment 328 comment by: NATS

NATS would welcome the opportunity to participate in the preparation of the implementing rules. Clear guidance on which types of regulation are most suited to what type of situation is needed. The current regulations in Europe are often unnecessarily prescriptive (i.e. specifying particular technologies or methods at the level of regulation or legislation).

response *Noted*

The Agency is pleased to take note of the announced willingness to participate by NATS.

comment	424	comment by: <i>Avinor</i>
	Avinor recommends to include in the explanatory material the responsibilities and accountabilities of the parties involved as well as the interfaces with other relevant regulations and directives	
response	<i>Noted</i>	
	These will be part of the Commission legislative proposal.	
comment	521	comment by: <i>BAA</i>
	As the IR's will contain much detail along with AMC's BAA would welcome the opportunity through its ANSP NATS to comment on any IR material that is produced over the next few years.	
response	<i>Noted</i>	
	The Agency is pleased to take note of this announcement.	
comment	737	comment by: <i>UK CAA & UK MoD</i>
	UK CAA & MoD Comments on explanatory material.	
	See General Comments in relation to regulatory stability and building on SES success.	
response	<i>Noted</i>	
comment	903	comment by: <i>EUROCONTROL</i>
	See identical comment 888 by EUROCONTROL.	
response	<i>Noted</i>	
	See response to comment 888 (same comment).	
comment	958	comment by: <i>ACI EUROPE</i>
	ACI-Europe strongly recommends to include in the explanatory material the roles and responsibilities of the parties involved as well as the boundaries to other relevant regulations and directives.	
response	<i>Noted</i>	
	These will be part of the Commission legislative proposal.	

comment	171	comment by: <i>FRAPORT AG</i>
	Fraport strongly supports the intention of EASA to build on the existing national relationship, so that the national authority is the appropriate body for any granting of approvals.	
response	<i>Accepted</i>	
	This is the intention, as has also already been stated by the NPA.	
comment	329	comment by: <i>NATS</i>
	The oversight of national regulators will be essential to ensure consistent application and enforcement.	
response	<i>Accepted</i>	
	This is the intention, as has also already been stated by the NPA.	
comment	562	comment by: <i>UK Department for Transport</i>
	The UK Government supports the assurance that subsidiarity will be respected to the extent that the nominated competent authorities at national level will be responsible for overseeing implementation and for enforcement.	
	The UK would welcome a harmonised approach to auditing of State NAAs permitting integration, as far as possible, with ICAO USOAP audits, Eurocontrol ESIMS audits and peer review.	
response	<i>Accepted</i>	
	This intent has indeed been stated by the NPA, as the comment rightly points out.	
	The Agency takes also notice of the comment concerning standardisation inspections. As further information in this subject the Agency would like to mention the Commission Regulation 736/2006 on working methods of EASA for conducting standardisation inspections.	
comment	738	comment by: <i>UK CAA & UK MoD</i>
	UK CAA & MoD Comments on explanatory material.	
	The UK CAA supports the assurance that subsidiarity will be preserved to the extent that the nominated competent authorities at national level will be responsible for overseeing implementation and for enforcement.	
	The UK CAA would welcome a harmonised approach to auditing of State NAAs permitting integration, as far as possible, with ICAO USOAP audits and Eurocontrol ESIMS audits.	
response	<i>Accepted</i>	
	This intent has indeed been stated by the NPA, as the comment rightly points	

out.
 The Agency takes also notice of the comment concerning standardisation inspections. As further information in this subject the Agency would like to mention the Commission Regulation 736/2006 on working methods of EASA for conducting standardisation inspections.

comment *904* comment by: *EUROCONTROL*
 See identical comment 888 by EUROCONTROL.

response *Noted*
 See response to comment 888 (same comment).

comment *960* comment by: *ACI EUROPE*
 ACI-Europe strongly supports the intention of EASA to build on the existing national relationship, so that the national authority is the appropriate body for any granting of approvals.

response *Accepted*
 This is the intention, as has also already been stated by the NPA.

comment *1221* comment by: *IFATCA*
 Comment: the described reality will lead to a fragmented transposition of a regulatory framework which needs to be common for the whole ICAO EUR/NAT area meeting the global ICAO requirements. Further it will increase the regulatory costs for the users.

Justification:

Regulation need to be smart and need to give a framework which is not currently foreseeable with the extension of the competence to EASA

response *Not accepted*
 The Agency disagrees with this position. The EASA system indeed establishes a method for common transposition of ICAO SARPS. Such transposition through Essential Requirements constitutes thereafter the basis for the necessary detailed implementing rules. This is the only Community act for such a specified purpose.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Description of the EASA system - 23. p. 7

comment *905* comment by: *EUROCONTROL*
 See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Description of the EASA system - 24.**

p. 7

comment	906	comment by: <i>EUROCONTROL</i>
	See identical comment 888 by EUROCONTROL.	
response	<i>Noted</i>	
	See response to comment 888 (same comment).	

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Description of the EASA system - 25.**

p. 7

comment	739	comment by: <i>UK CAA & UK MoD</i>
	UK CAA & MoD Comments on explanatory material.	
	See General Comments in relation to regulatory stability and building on SES success.	
response	<i>Noted</i>	
comment	907	comment by: <i>EUROCONTROL</i>
	See identical comment 888 by EUROCONTROL.	
response	<i>Noted</i>	
	See response to comment 888 (same comment).	

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Safety objectives - 26.**

p. 7-8

comment	172	comment by: <i>FRAPORT AG</i>
	Fraport strongly believes that German law provides appropriate delegation of safety objectives between airport operator and ANSP.	
response	<i>Noted</i>	
comment	330	comment by: <i>NATS</i>
	NATS fully supports increased clarity in safety objectives and clear identification of the safety responsibility of different parties.	

response	<i>Noted</i>
comment	541 comment by: <i>BAA</i> It is vital that ANSP's and the aerodromes that may employ their services fully understand the interaction between regulations from ICAO, SES, ESARR's so as to ensure no duplication or conflict.
response	<i>Noted</i>
comment	566 comment by: <i>UK Department for Transport</i> UK Government supports rationalisation of ESARRs and SES regulations. It is recommended that EASA recognises the Commission/Eurocontrol DRAHG report.
response	<i>Noted</i>
comment	740 comment by: <i>UK CAA & UK MoD</i>
response	<i>Noted</i>
comment	889 ❖ comment by: <i>EUROCONTROL</i> See identical comment 888 by EUROCONTROL.
response	<i>Noted</i> See response to comment 888 (same comment).
comment	965 comment by: <i>ACI EUROPE</i> As has been our reaction to NPA 06/2006, there should be absolute clarity on the liability and accountability issues stemming from ICAO obligations by individual States. ACI-Europe is not aware of a solution to this issue having been accepted by the States and ICAO. Without this being resolved, States remain accountable to ICAO.
response	<i>Noted</i> Comment is noted. Although it is not at all the purpose of this consultation to address the complex issue related to the obligations of Member States in relation to EU and ICAO, the Agency indicates for informative purpose that EASA States have notified to ICAO the areas where their competences are exercised by the Community.

comment	<p data-bbox="351 239 422 280"><i>1223</i></p> <p data-bbox="1141 239 1449 280">comment by: <i>IFATCA</i></p> <p data-bbox="351 302 534 336">Safety per se</p> <p data-bbox="351 392 526 425">Justification:</p> <p data-bbox="351 436 1449 548">The requirement for safety in SESAR are far more complex than hitherto in ATM. Specifically end to end certification of ground and airborne segments in terms of technical and human systems is an essential pre-cursor to success.</p> <p data-bbox="351 560 1449 660">The agency must take the lead on this. And safety leadership is essential to bring altogether. Moreover, there are some unpalatable compromises to be made and the regulator must be active in managing these.</p> <p data-bbox="351 716 1220 750">Human factors certification of the total system is a requirement.</p>
response	<p data-bbox="351 784 438 817"><i>Noted</i></p> <p data-bbox="351 840 1449 974">The Agency takes notice of this interesting comment. The SESAR Master Plan should be endorsed by the EU Council through a legal instrument issued by the Commission. It is assumed that this instrument will be issued at the same time as the proposal to amend the EASA Basic Regulation.</p>
comment	<p data-bbox="351 1030 422 1064"><i>1778</i></p> <p data-bbox="678 1030 1449 1064">comment by: <i>EU Permanent Representation of Romania</i></p> <p data-bbox="351 1086 1449 1321">The safety objectives desirable to be established by regulating ATM and ANS domains by EASA are already set at international level by ICAO, EUROCONTROL or SES. Currently there was created a working group at the level of European Commission and EUROCONTROL that should analyse the duality matters among the present regulations. All these have as basic requirements the existence of safety management systems (SMS) for services provision and for the safety oversight/safety supervision.</p> <p data-bbox="351 1332 1449 1467">These essential requirements proposed in the NPA do not make specific reference to SMS and they are not in accordance with EASA point of view regarding Safety Management on Aerodromes, creating differences among related areas.</p>
response	<p data-bbox="351 1500 438 1534"><i>Noted</i></p> <p data-bbox="351 1556 1449 1691">The statement by the Agency that the SES regulations and ESARRs will be the basis for the future EASA implementing rules naturally covers also those findings achieved by the mentioned double regulation working group, assessing differences between ESARRs and their transpositions to EU law.</p> <p data-bbox="351 1702 1449 1993">The Agency is not aware of what specific safety management related differences are referred to by this comment. In more general, the detailed provisions of fully fledged SMS and risk management will be dealt with at the level of implementing rules. The Agency believes that the level of basic law should not fix the definition of the SMS and should allow organisations to arrange their different management objectives as they fit best, subject of course ensuring that all necessary elements to appropriately manage safety are included. This should indeed be compliant with ICAO approach and is the case in all domains of aviation safety.</p>

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Safety objectives - 27.**

p. 8

comment	55	comment by: <i>KLM</i>
	27. ICAO is said to be minimum requirements but this is a globally valid requirement. The criteria to call this the minimum shall be specified to make this clear and valid as statement. EASA only regards safety which may be contradictory to practical demands, while ICAO considers all aspects.	
response	<i>Noted</i>	
	This paragraph is not prescriptive by its nature, but its aim is mainly to explain why it would be very difficult to impose ICAO SARPS as a directly binding law. SARPS are, by their structure and contents, very different compared to common rules in the Community and would not support such an option. Moreover, the mechanism of differences also indicate their purpose as to establish a basis, i.e. minimum standards, which can then be adapted based on more detailed needs. As an example, article 33 of the Convention on Recognition of certificates and licenses refers directly to 'minimum standards'. Article 12 on Rules of the air speaks about 'uniform regulations to the greatest extent'.	
comment	173	comment by: <i>FRAPORT AG</i>
	As "the level of safety required for European citizens" is not clearly defined, Fraport identifies the ICAO set of rules as an acceptable standard for safe airport operation and sees no need for raising the level.	
response	<i>Noted</i>	
comment	390	comment by: <i>AEA</i>
	ICAO is said to be minimum requirements but this is a globally valid requirement. The criteria to call this the minimum shall be specified to make this clear and valid as statement. EASA only regards safety which may be contradictory to practical demands, while ICAO considers all aspects.	
response	<i>Noted</i>	
	This paragraph is not prescriptive by its nature, but its aim is mainly to explain why it would be very difficult to impose ICAO SARPS as a directly binding law. SARPS are, by their structure and contents, very different compared to common rules in the Community and would not support such an option. Moreover, the mechanism of differences also indicate their purpose as to establish a basis, i.e. minimum standards, which can then be adapted based on more detailed needs. As an example, article 33 of the Convention on Recognition of certificates and licenses refers directly to 'minimum standards'. Article 12 on Rules of the air speaks about 'uniform regulations to the greatest extent'.	

comment	429	comment by: <i>Avinor</i>
	As has been our reaction to NPA 06/2006 there should be absolute clarity on the liability and accountability issues stemming from ICAO obligations by individual States. Avinor is not aware of a solution to this issue have been accepted by the States and ICAO. Without this being resolved, States remain accountable to ICAO, and the introduction of Community Regulation will mean an additional layer of regulation.	
response	<i>Noted</i>	
	Comment is noted. Although it is not at all the purpose of this consultation to address the complex issue related to the obligations of Member States in relation to EU and ICAO, the Agency indicates for informative purpose that EASA States have notified to ICAO the areas where their competences are exercised by the Community.	
comment	576	comment by: <i>UK Department for Transport</i>
	ICAO SARPs represent a coherent global set of aviation standards that have evolved over time.	
	The UK Government supports a consistent structure of documents across SARPs and EC Regulations (see DRAHG report).	
response	<i>Noted</i>	
comment	741	comment by: <i>UK CAA & UK MoD</i>
	UK CAA & MoD Comments on explanatory material.	
	ICAO SARPs represent a coherent global set of aviation standards that have evolved over time. The UK CAA is currently implementing a plan to remove differences with ICAO SARPs where appropriate.	
	The UK CAA supports a more consistent structure of documents across SARPs and EU Regulations (see DRAHG report).	
response	<i>Noted</i>	
comment	889 ❖	comment by: <i>EUROCONTROL</i>
	See identical comment 888 by EUROCONTROL.	
response	<i>Noted</i>	
	See response to comment 888 (same comment).	
comment	966	comment by: <i>ACI EUROPE</i>

	As "the level of safety required for European citizens" is not clearly defined, ACI-Europe identifies the ICAO set of rules as an acceptable standard for safe airport operation and sees no need for raising the level.
response	<i>Noted</i>

comment	<p><i>I222</i> comment by: <i>IFATCA</i></p> <p>Comment: Reword the entire paragraph</p> <p>Justification:</p> <p>This paragraph is weak as the justification to extend the EASA competence to ATM/ANS void. ICAO gives the only insurance for a global standard. Sufficient material is available at ICAO to contradict the statement of this paragraph. It is however a fact that the current SARPS and the ICAO system does not address sufficiently disagreement by states and or provides currently sufficient metric to measure the system - not only in safety but as well in the performance field. ATMRPP is working on this for the future as well as the newly adopted ICAO Strategy.</p> <p>EASA has a strength if given the competence that e.g. filing differences by States can be reduced to a minimum (e.g. Essential requirements as police or military operations, for a government).</p>
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response	<p><i>Noted</i></p> <p>The purpose of this paragraph is not in any way to underestimate the value or purpose of the ICAO SARPS. It is just to indicate that the contents and structure would not allow them to be directly referred as safety objectives imposed on regulated persons by binding law.</p> <p>This NPA serves as explanatory material and will not be re-issued</p>
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comment	<p><i>I223</i> ❖ comment by: <i>IFATCA</i></p> <p>Safety per se</p> <p>Justification:</p> <p>The requirement for safety in SESAR are far more complex than hitherto in ATM. Specifically end to end certification of ground and airborne segments in terms of technical and human systems is an essential pre-cursor to success.</p> <p>The agency must take the lead on this. And safety leadership is essential to bring altogether. Moreover, there are some unpalatable compromises to be made and the regulator must be active in managing these.</p> <p>Human factors certification of the total system is a requirement.</p>
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response	<p><i>Noted</i></p> <p>Identical comment as above per paragraph 26.</p>
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**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Safety objectives - 28.**

p. 8

comment	56	comment by: <i>KLM</i>
	28. ESARRs are not supporting the total system approach since they only deal with safety. A total system approach has to match safety with capacity and efficiency. The Regulatory Impact Assessment for any future implementing rules needs to consider the impact on costs and efficiency and needs to be acceptable to major stakeholders such as the airlines.	
response	<i>Noted</i>	
	The Agency might not agree with this interpretation of the total system approach, depending of what is meant by 'match safety with capacity and efficiency'. Regulatory Impact Assessment is part of all EASA rulemaking processes. (The specific remark in this case was raised because of the fact that impact assessment in any case will be done by the Commission.)	
comment	174	comment by: <i>FRAPORT AG</i>
	The Scope of the IOP Regulation as defined in Article 1 (Clause 3) is not only limited to the technical part. The IOP Regulation considers systems, constituent and procedures. This means also operational procedures. E.g. A-CDM is not a technical solution (IT-Tool), but describes an operational procedure. Further, the IOP Regulation describes in Article 1: the aim of the IOP Regulation is also to provide the support of new concepts of operation, which includes the operational procedure as well. Regarding safety Fraport agrees, that the IOP regulation is not considering the safety objectives in a structured way. This is not the intention of the IOP Regulation.	
response	<i>Noted</i>	
	It is agreed that the NPA wording referring to 'technical part of the EATMN' is limiting and does not take into account operating procedures. This does not however change the explanatory purpose of this paragraph. Operating procedures are now covered in the essential requirements through organisational requirements.	
comment	331	comment by: <i>NATS</i>
	If safety regulation is going to be separate from other types of regulation it needs to be very clear which regulations are related to safety and which are not. Non-safety regulations also need to be considered when developing safety requirements to avoid conflicts between regulatory requirements. Clarity is required with regard to the role and interaction with EASA for the non-safety related regulation.	
response	<i>Noted</i>	
	It is fully agreed that political arbitration between conflicting objectives, including safety, has to be organised at appropriate political level.	

comment	<p>391 comment by: AEA</p>
	<p>ESARRs are not supporting the total system approach since they only deal with safety. A total system approach has to match safety with capacity and efficiency. The Regulatory Impact Assessment for any future implementing rules needs to consider the impact on costs and efficiency and needs to be acceptable to major stakeholders such as the airlines.</p>
response	<p><i>Noted</i></p>
	<p>The Agency might not agree with this interpretation of the total system approach, depending of what is meant by 'match safety with capacity and efficiency'. Regulatory Impact Assessment is part of all EASA rulemaking processes. (The specific remark in this case was raised because of the fact that impact assessment in any case will be done by the Commission.)</p>
comment	<p>580 comment by: UK Department for Transport</p>
	<p>The SES Regulations were designed to generate safely the required additional ATM capacity needed by the Community to support economic growth. Whilst safety is the paramount concern, the associated rules have to provide the flexibility on which ATM System capacity depends. Inflexible regulations will constrain capacity growth.</p>
response	<p><i>Noted</i></p>
comment	<p>742 comment by: UK CAA & UK MoD</p>
	<p>UK CAA & MoD Comments on explanatory material.</p> <p>The SES Regulations were designed to generate safely the required additional ATM capacity needed by the Community to support economic growth. Whilst safety is the paramount concern, the associated rules have to provide the flexibility on which ATM System capacity depends. Inflexible regulations will constrain capacity growth.</p> <p>The SES requirements do deal with safety objectives including risk and mitigation and a risk classification scheme. A Commission mandate to address the risk classification scheme is being pursued by Eurocontrol. Hence the SES Regulations will take account of this activity and the adoption of the Risk Classification Scheme.</p> <p>See General Comments in relation to regulatory stability and building on SES success.</p>
response	<p><i>Noted</i></p>
	<p>This subject is addressed under paragraph 31. It would be fully compatible with the Basic Regulation to use quantitative targets at the level of implementing rules or in defining non-binding acceptable means of compliance.</p>

comment	889 ❖ See identical comment 888 by EUROCONTROL.	comment by: EUROCONTROL
response	<i>Noted</i> See response to comment 888 (same comment).	
comment	1223 ❖ Safety per se Justification: The requirement for safety in SESAR are far more complex than hitherto in ATM. Specifically end to end certification of ground and airborne segments in terms of technical and human systems is an essential pre-cursor to success. The agency must take the lead on this. And safety leadership is essential to bring altogether. Moreover, there are some unpalatable compromises to be made and the regulator must be active in managing these. Human factors certification of the total system is a requirement.	comment by: IFATCA
response	<i>Noted</i> Identical comment as above per paragraph 26.	
comment	1319 <i>It can also be acknowledged that they do not provide for structured and unambiguous safety objectives at the level of basic law.</i> Such a Statement is so true that a specific mandate has been allocated by the Commission to define a Risk Classification Scheme in quantitative terms. The result of this mandate should be available by the end of 2008 in the form of an Implementing Rule, and therefore much before the modification of the basic EASA regulation.	comment by: Ente Nazionale per l'Aviazione Civile
response	<i>Noted</i> This subject is addressed under paragraph 31. It would be fully compatible with the Basic Regulation to use quantitative targets at the level of implementing rules or in defining non-binding acceptable means of compliance.	
comment	1330 As previously noted, ECOGAS believes that the subjects of safety, flexibility and capacity are inextricably linked with regard to airspace legislation. What is needed is a total 'system' approach to the problem as undertaken by SESAR, with a satisfactory safety analysis underlying all aspects of the programme as a barrier to entry.	comment by: ECOGAS
response	<i>Noted</i>	

comment	<p><i>1772</i> comment by: <i>EU Permanent Representation of Romania</i></p> <p>For the time being, the certification processes of the GAT's ANS providers has been completed by the national supervisory authorities under the harmonized regulatory framework for the creation of the single European sky, particularly under the provisions of Regulation (EC) No 550/2004 and Commission Regulation (EC) No. 2096/2005.</p> <p>Common requirements laid down at Community level (in Article 6 of the Regulation (EC) No 550/2004 and detailed in the Commission Regulation (EC) No. 2096/2005), in respect of which the certification processes have been carried out and the on-going oversight processes are carried on, include also matters beyond the EASA competences, and from the NPA 2007 - 16 contents, it appears that these matters will not be under the EASA's scope (e.g. quality of services, financial strength, liability and insurance cover, ownership and organizational structure, including the prevention of any conflict of interests, security).</p> <p>Therefore, specifications and clarifications are necessary, from the very beginning, including these inter-institutional arrangements, appreciated as necessary at the Community level, between the bodies responsible for the safety regulation and other entities which are responsible for other regulatory matters related to aviation.</p>
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response	<p><i>Noted</i></p> <p>The Agency takes note of this comment, but does not fully see its direct connection to the NPA paragraph in question, especially because certification is not a safety objective - it is one means for regulated persons to demonstrate compliance with defined safety objectives. Certification of service providers is addressed in paragraphs 42 - 46. It is naturally recognised that certification scheme established by SES Common requirements indeed contains also such issues, which are not relevant from the safety regulation point of view. It would however be premature and not in the remit of the Agency to try to solve this issue in this CRD. It is also to be noted in more general that similar situations exist in other areas of aviation (for instance; air operations, airports and even ATM into certain extent), which contain different processes for safety certification and economic regulation.</p>
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A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Safety objectives - 29. p. 8

comment	<p><i>57</i> comment by: <i>KLM</i></p> <p>29. When the high level group has stated that safety regulation should be independently from other forms of regulation (which the AEA supports) this does not mean that ATM should not consider the balance between capacity, efficiency and safety.</p>
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response	<p><i>Accepted</i></p>
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comment	332	comment by: <i>NATS</i>
	<p>If safety regulation is going to be separate from other types of regulation it needs to be very clear which regulations are related to safety and which are not. Non-safety regulations also need to be considered when developing safety requirements to avoid conflicts between regulatory requirements. Clarity is required with regard to the role and interaction with EASA for the non-safety related regulation.</p>	
response	<p><i>Noted</i></p> <p>See response to identical comment per paragraph 28.</p>	
comment	392	comment by: <i>AEA</i>
	<p>When the high level group has stated that safety regulation should be independently from other forms of regulation (which the AEA supports) this does not mean that ATM should not consider the balance between capacity, efficiency and safety.</p>	
response	<p><i>Accepted</i></p>	
comment	743	comment by: <i>UK CAA & UK MoD</i>
	<p>UK CAA & MoD Comments on explanatory material.</p> <p>See General Comments in relation to regulatory stability and building on SES success.</p>	
response	<p><i>Noted</i></p>	
comment	889 ❖	comment by: <i>EUROCONTROL</i>
	<p>See identical comment 888 by EUROCONTROL.</p>	
response	<p><i>Noted</i></p> <p>See response to comment 888 (same comment).</p>	
comment	1223 ❖	comment by: <i>IFATCA</i>
	<p>Safety per se</p> <p>Justification:</p> <p>The requirement for safety in SESAR are far more complex than hitherto in ATM. Specifically end to end certification of ground and airborne segments in terms of technical and human systems is an essential pre-cursor to success.</p> <p>The agency must take the lead on this. And safety leadership is essential to bring altogether. Moreover, there are some unpalatable compromises to be</p>	

	made and the regulator must be active in managing these.
	Human factors certification of the total system is a requirement.
response	<i>Noted</i> Identical comment as above per paragraph 26.
comment	<i>1253</i> comment by: <i>DFS Deutsche Flugsicherung GmbH</i> Para 29 – DFS supports the principle that safety regulation should be conducted independently from other forms of regulation to avoid conflicts of interest.
response	<i>Noted</i>
comment	<i>1338</i> comment by: <i>ECOGAS</i> ECOGAS supports the HLG contention that safety regulation should be independent, but of course in reality all safety standards have to be developed in the light of continued optimal utility. ATM safety considerations must balance the need for published safety standards without losing sight of the underlying need to drive up utilisation and flexibility of the airspace being controlled.
response	<i>Accepted</i>
comment	<i>1772</i> ❖ comment by: <i>EU Permanent Representation of Romania</i> For the time being, the certification processes of the GAT's ANS providers has been completed by the national supervisory authorities under the harmonized regulatory framework for the creation of the single European sky, particularly under the provisions of Regulation (EC) No 550/2004 and Commission Regulation (EC) No. 2096/2005. Common requirements laid down at Community level (in Article 6 of the Regulation (EC) No 550/2004 and detailed in the Commission Regulation (EC) No. 2096/2005), in respect of which the certification processes have been carried out and the on-going oversight processes are carried on, include also matters beyond the EASA competences, and from the NPA 2007 - 16 contents, it appears that these matters will not be under the EASA's scope (e.g. quality of services, financial strength, liability and insurance cover, ownership and organizational structure, including the prevention of any conflict of interests, security). Therefore, specifications and clarifications are necessary, from the very beginning, including these inter-institutional arrangements, appreciated as necessary at the Community level, between the bodies responsible for the safety regulation and other entities which are responsible for other regulatory matters related to aviation.
response	<i>Noted</i>

See response to identical comment per paragraph 28.

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Safety objectives - 30.**

p. 8-9

comment 584 comment by: *UK Department for Transport*

The UK Government favours an approach wherein primary legislation is stable, high-level and does not contain unnecessary technical detail that necessitates continual amendment of such legislation. The process for defining sufficient detail and clarity requires a balance between stability and degree of prescription.

response *Noted*

comment 744 comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

The UK CAA favours an approach wherein the primary legislation is stable and does not contain unnecessary technical detail that necessitates continual amendment of such legislation. The process for defining sufficient detail and clarity requires a balance between stability and degree of prescription.

Undue prescription tends to negate responsibilities of industry to ensure an adequately safe environment.

response *Noted*

comment 889 ❖ comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

comment 1223 ❖ comment by: *IFATCA*

Safety per se

Justification:

The requirement for safety in SESAR are far more complex than hitherto in ATM. Specifically end to end certification of ground and airborne segments in terms of technical and human systems is an essential pre-cursor to success.

The agency must take the lead on this. And safety leadership is essential to bring altogether. Moreover, there are some unpalatable compromises to be

	made and the regulator must be active in managing these.
	Human factors certification of the total system is a requirement.
response	<i>Noted</i> Identical comment as above per paragraph 26.

comment	1772 ❖ comment by: <i>EU Permanent Representation of Romania</i>
	<p>For the time being, the certification processes of the GAT's ANS providers has been completed by the national supervisory authorities under the harmonized regulatory framework for the creation of the single European sky, particularly under the provisions of Regulation (EC) No 550/2004 and Commission Regulation (EC) No. 2096/2005.</p> <p>Common requirements laid down at Community level (in Article 6 of the Regulation (EC) No 550/2004 and detailed in the Commission Regulation (EC) No. 2096/2005), in respect of which the certification processes have been carried out and the on-going oversight processes are carried on, include also matters beyond the EASA competences, and from the NPA 2007 - 16 contents, it appears that these matters will not be under the EASA's scope (e.g. quality of services, financial strength, liability and insurance cover, ownership and organizational structure, including the prevention of any conflict of interests, security).</p> <p>Therefore, specifications and clarifications are necessary, from the very beginning, including these inter-institutional arrangements, appreciated as necessary at the Community level, between the bodies responsible for the safety regulation and other entities which are responsible for other regulatory matters related to aviation.</p>
response	<i>Noted</i> See response to identical comment per paragraph 28.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Safety objectives - 31.	p. 9
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comment	333 comment by: <i>NATS</i>
	NATS supports the view that quantitative safety targets should not be included as legal requirements. Any quantitative targets should be guidance only.
response	<i>Noted</i>

comment	555 comment by: <i>BAA</i>
	BAA supports the view that quantitative target levels of safety are not appropriate for inclusion in the legal requirements.
response	<i>Noted</i>

comment	588	comment by: <i>UK Department for Transport</i>
	The UK Government agrees that quantitative safety targets should not be set in law.	
response	<i>Noted</i>	
comment	745	comment by: <i>UK CAA & UK MoD</i>
	UK CAA & MoD Comments on explanatory material.	
	The UK CAA agrees that quantitative safety targets should not be set in law. However, it is presumed EASA are aware of the activity related to defining the SES Risk Classification Scheme, guidance material related to defining quantitative safety targets and their apportionment across for example various types of airspace.	
response	<i>Noted</i>	
	The Agency is aware of the SES RCS mandate. Nothing prevents appropriate quantitative safety objectives of being used at the level of implementing rules or non-binding acceptable means of compliance.	
comment	889 ❖	comment by: <i>EUROCONTROL</i>
	See identical comment 888 by EUROCONTROL.	
response	<i>Noted</i>	
	See response to comment 888 (same comment).	
comment	1223 ❖	comment by: <i>IFATCA</i>
	Safety per se	
	Justification:	
	The requirement for safety in SESAR are far more complex than hitherto in ATM. Specifically end to end certification of ground and airborne segments in terms of technical and human systems is an essential pre-cursor to success.	
	The agency must take the lead on this. And safety leadership is essential to bring altogether. Moreover, there are some unpalatable compromises to be made and the regulator must be active in managing these.	
	Human factors certification of the total system is a requirement.	
response	<i>Noted</i>	
	Identical comment as above per paragraph 26.	

comment	1320	comment by: <i>Ente Nazionale per l'Aviazione Civile</i>
	With reference to the comment on point 28, the regulation 2096/2005 mandates risk assessment and mitigation exercises based on either qualitative or quantitative analysis. Quantitative analysis is considered the best option, once a common Risk Classification Scheme has been defined.	
response	<i>Noted</i>	
	The Agency is aware of the SES RCS mandate. Nothing prevents appropriate quantitative safety objectives of being used at the level of implementing rules or non-binding acceptable means of compliance.	

comment	1772 ❖	comment by: <i>EU Permanent Representation of Romania</i>
	For the time being, the certification processes of the GAT's ANS providers has been completed by the national supervisory authorities under the harmonized regulatory framework for the creation of the single European sky, particularly under the provisions of Regulation (EC) No 550/2004 and Commission Regulation (EC) No. 2096/2005.	
	Common requirements laid down at Community level (in Article 6 of the Regulation (EC) No 550/2004 and detailed in the Commission Regulation (EC) No. 2096/2005), in respect of which the certification processes have been carried out and the on-going oversight processes are carried on, include also matters beyond the EASA competences, and from the NPA 2007 - 16 contents, it appears that these matters will not be under the EASA's scope (e.g. quality of services, financial strength, liability and insurance cover, ownership and organizational structure, including the prevention of any conflict of interests, security).	
	Therefore, specifications and clarifications are necessary, from the very beginning, including these inter-institutional arrangements, appreciated as necessary at the Community level, between the bodies responsible for the safety regulation and other entities which are responsible for other regulatory matters related to aviation.	
response	<i>Noted</i>	
	See response to identical comment per paragraph 28.	

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Safety objectives - 32.**

p. 9

comment	58	comment by: <i>KLM</i>
	32. When risks related to lacks of interoperability are mentioned the global approach from ICAO should be adopted and not set a different set of rules in Europe only since this would be disrupting the level playing field between Europe and the rest of the world and disadvantaging European carriers.	
response	<i>Noted</i>	
	This has indeed been the reason why the Basic Regulation establishes a system for the common transposition of ICAO SARPS and creates a legal objective for	

the Agency to support the Member States in fulfilling their ICAO obligations. Such transposition constitutes the basis for the necessary detailed implementing rules and this is the only Community legal act creating a system for their common transposition. This has already been accomplished in all other areas of the Agency's remit.

comment 270 comment by: IFATSEA

IFATSEA supports the safety concept of gate to gate. As take off and landings and safe manoeuvring on the airport (remember the Milano accident) are safety critical, EASA should ensure proper regulation for personnel (ATSEP) who are responsible for operation and maintenance of these critical aids.

response *Noted*

See response to comment 265, which covers also this comment.

comment 335 comment by: NATS

Interoperability requirements should only be specified when there is a need to regulate across interfaces. It is not clear what aspects of interoperability that pertain to safety should be encompassed within essential requirements. The current practice of including Safety Requirements in Implementing Rules is fundamentally flawed as the operational environment and any assumptions made in their derivation is not declared and thus their validity for any given operation is unknown.

Should also consider the risk arising from collisions between aircraft and other vehicles on the ground

response *Noted*

It is understood and agreed that the issue of global interoperability needs further clarification. This will be addressed in the forthcoming Opinion.

Risks arising from collision between aircraft and other vehicles on the ground have been addressed through another task on the safety regulation of aerodromes. These two tasks will merge into one single proposal to amend the Basic Regulation.

comment 393 comment by: AEA

When risks related to lacks of interoperability are mentioned the global approach from ICAO should be adopted and not set a different set of rules in Europe only since this would be disrupting the level playing field between Europe and the rest of the world and disadvantaging European carriers.

response *Noted*

This has indeed been the reason why the Basic Regulation establishes a system for the common transposition of ICAO SARPS and creates a legal objective for the Agency to support the Member States in fulfilling their ICAO obligations.

Such transposition constitutes the basis for the necessary detailed implementing rules and this is the only Community legal act creating a system for their common transposition. This has already been accomplished in all other areas of the Agency's remit.

comment 573

comment by: BAA

The term gate to gate is used here. If this is the case then great care needs to be taken that in the apron/gate areas the requirements for ATM and aerodrome are complimentary and do not conflict. The case where aerodromes also provide an apron control service (non ATC) needs to be considered.

response *Accepted*

It is agreed that such requirements shall indeed be consistent and comprehensive. Moreover, it is not for the safety regulation to preclude which organisation provides apron control services.

comment 591

comment by: UK Department for Transport

The definition of essential requirements does not absolve industry from performing adequate risk assessment and mitigation. Hence EASA needs to ensure that industry does not regard the essential requirements as a complete set of hazards or risks to be addressed.

The statement on interoperability is noted but again EASA will need to take into account the nature of the existing SES interoperability regulation and the relationship between safety and non-safety interoperability aspects (such as technical performance).

response *Noted*

The assumption in the comment is right. This risk assessment aimed only to develop the draft ER's, i.e. the safety objectives necessary to mitigate unacceptable safety risks in this domain. The draft ER's in chapter 6.a aim to ensure the ANSP risk assessment responsibilities.

comment 746

comment by: UK CAA & UK MoD

UK CAA & MoD Comments on explanatory material.

The reference to gate-to-gate is a very specific concept related to commercial air transportation and is not understood in the context that it is used here. The scope of this paragraph extends beyond the ERs contained within the NPA and suggests strong links to BR002.

It should be borne in mind that the definition of essential requirements does not absolve industry from performing adequate risk assessment and mitigation. Hence EASA needs to ensure that industry does not regard the essential requirements as a complete set of hazards or risks to be addressed. This principle should be clearly enshrined in the regulations.

	<p>The statement on interoperability is noted but again EASA will need to take into account the nature of the existing SES interoperability regulation and the relationship between safety and non-safety interoperability aspects (such as technical performance).</p>
response	<p><i>Noted</i></p> <p>It is agreed and anticipated that there is a strong link between the tasks BR.002 and BR.003. These two tasks will merge into a single proposal to amend the Basic Regulation and such result shall indeed be consistent and comprehensive. Moreover, it is not for the safety regulation to preclude which organisation provides for instance apron control services.</p> <p>The latter assumption in the comment is right. This risk assessment aimed only to develop the draft ER's as the safety objectives necessary to mitigate unacceptable safety risks in this domain. The draft ER's in chapter 6.a aim to ensure the ANSP risk assessment responsibilities.</p>
comment	<p>889 ❖ comment by: <i>EUROCONTROL</i></p> <p>See identical comment 888 by EUROCONTROL.</p>
response	<p><i>Noted</i></p> <p>See response to comment 888 (same comment).</p>
comment	<p>1032 comment by: <i>Ministry of Transport and Communications, Norway</i></p> <p>The scope of the NPA seems to go beyond the remit of EASA as a body with competence strictly limited to safety matters. The scope of the NPA is specifically extended to <u>interoperability</u>, with reference to the interoperability objectives contained in ICAO Standards and Recommended Practices. However, there is a need to analyse the interoperability concept in more detail than is the case in the NPA, so as to clarify what aspects of the concept are specifically related to safety and what aspects are related to the efficiency/capacity of the ATM system. The latter aspects would fall outside the remit of EASA. Furthermore, one should take care to distinguish between "interoperability" in the sense of ensuring that the detailed national rules and regulations which are promulgated in the ICAO member states are not incompatible with each other and with the rules developed by ICAO, on the one hand, and interoperability in the sense of promulgating common standards and specifications for equipment and systems in use in the ATM activities in Europe so as to ensure "seamless" connections between the different ATC units and/or ANSPs, on the other hand.</p>
response	<p><i>Noted</i></p> <p>It is not the purpose of the Agency to address all aspects of interoperability. However, it is assumed that global interoperability cannot be dissociated from safety regulation. This principle is the basis of the ICAO system, whose main objective being interoperability has been obliged therefore to set common minimum safety standards. This is consequently a fundamental part of the EASA system since its establishment by the European legislators in all other domains of aviation safety regulation. This principle should not emerge differently in case of ATM taking into account that most of airspace use requirements are implemented through the safety regulation of air operators</p>

and service providers. As explained in the NPA, this aspect of interoperability does not cover many of such standards whose objectives are the harmonisation and integration of ATM components and relate therefore to performance or economic efficiency. This intent has been the reason why the Basic Regulation establishes a system for the common transposition of ICAO SARPS and creates a legal objective for the Agency to support the Member States in fulfilling their ICAO obligations. Such transposition constitutes the basis for the necessary detailed implementing rules and this is the only Community legal act creating a system for their common transposition. Implementing rules and other implementation material are developed only through the formal rulemaking process, based on broad consultations.

comment

1223 ❖

comment by: IFATCA

Safety per se

Justification:

The requirement for safety in SESAR are far more complex than hitherto in ATM. Specifically end to end certification of ground and airborne segments in terms of technical and human systems is an essential pre-cursor to success.

The agency must take the lead on this. And safety leadership is essential to bring altogether. Moreover, there are some unpalatable compromises to be made and the regulator must be active in managing these.

Human factors certification of the total system is a requirement.

response

Noted

Identical comment as above per paragraph 26.

comment

1254

comment by: DFS Deutsche Flugsicherung GmbH

Para 32 – As mentioned above, it is not clear why to include parts of “interoperability” and how to define the criteria which aspects of “interoperability” are relevant to safety and which are not. Safety is an objective whereas interoperability is a functional requirement in support of various objectives, inter alia safety.

response

Noted

It is not the purpose of the Agency to address all aspects of interoperability. However, it is assumed that global interoperability cannot be dissociated from safety regulation. This principle is the basis of the ICAO system, whose main objective being interoperability has been obliged therefore to set common minimum safety standards. This is consequently a fundamental part of the EASA system since its establishment by the European legislators in all other domains of aviation safety regulation. This principle should not emerge differently in case of ATM taking into account that most of airspace use requirements are implemented through the safety regulation of air operators and service providers. As explained in the NPA, this aspect of interoperability does not cover many of such standards whose objectives are the

harmonisation and integration of ATM components and relate therefore to performance or economic efficiency. This intent has been the reason why the Basic Regulation establishes a system for the common transposition of ICAO SARPS and creates a legal objective for the Agency to support the Member States in fulfilling their ICAO obligations. Such transposition constitutes the basis for the necessary detailed implementing rules and this is the only Community legal act creating a system for their common transposition. Implementing rules and other implementation material are developed only through the formal rulemaking process, based on broad consultations.

comment

1344

comment by: ECOGAS

Interoperability is an issue requiring careful legislation. The broad range of aircraft and equipment levels in the B&GA fleet, dependent on the role of individual aircraft, makes airspace legislation very difficult to apply without compromising one sector or another. Any specific needs for European standards of interoperability would have to be carefully justified and clearly aimed at the industry sectors benefitting from the resulting increases in safety levels. Legislation for its own sake must be avoided at all costs, as must any rules which prevent innovation of stand-alone safety systems on the basis that they are not interoperable.

A significant percentage of General and Business aviation traffic is relying not on instruments but on the "see and avoid" principle. Also air traffic management policy has to recognise that many aircraft types cannot be technically and/or economically fitted with complex equipment. Examples from other regions in the world show that General and Business aviation operations are possible even in dense traffic environments, provided that airspace and procedures have been designed in an efficient manner.

response

Noted

The general intent of this comment is shared by the Agency.

comment

1772 ❖

comment by: EU Permanent Representation of Romania

For the time being, the certification processes of the GAT's ANS providers has been completed by the national supervisory authorities under the harmonized regulatory framework for the creation of the single European sky, particularly under the provisions of Regulation (EC) No 550/2004 and Commission Regulation (EC) No. 2096/2005.

Common requirements laid down at Community level (in Article 6 of the Regulation (EC) No 550/2004 and detailed in the Commission Regulation (EC) No. 2096/2005), in respect of which the certification processes have been carried out and the on-going oversight processes are carried on, include also matters beyond the EASA competences, and from the NPA 2007 - 16 contents, it appears that these matters will not be under the EASA's scope (e.g. quality of services, financial strength, liability and insurance cover, ownership and organizational structure, including the prevention of any conflict of interests, security).

Therefore, specifications and clarifications are necessary, from the very beginning, including these inter-institutional arrangements, appreciated as necessary at the Community level, between the bodies responsible for the safety regulation and other entities which are responsible for other regulatory

	matters related to aviation.
response	<i>Noted</i> See response to identical comment per paragraph 28.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Safety objectives - 33.	p. 9
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comment	271 comment by: <i>IFATSEA</i>
	The ATSEP category of personnel is also mentioned in the existing implementation measures of the SES, in particular in ESARR5, which EASA claims not to want to disrupt. The NPA is therefore inconsistent with its own claim.

response	<i>Noted</i> As stated in the NPA, ESARRs will be an important source of future implementing rules. ESARR5 does not claim that ATSEP should be a regulated profession, which expression has a specific legal meaning in the EU legal order. This has been addressed in more detail within other responses to IFATSEA comments.
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comment	272 comment by: <i>IFATSEA</i>
	IFATSEA supports the safety concept of gate to gate. As take off and landings and safe manoeuvring on the airport (remember the Milano accident) are safety critical, EASA should ensure proper regulation for personnel (ATSEP) who are responsible for operation and maintenance of these critical aids.

response	<i>Noted</i> See response to comment 265, which covers also this comment.
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comment	336 comment by: <i>NATS</i>
	SES and ESARR requirements have been developed specifically for ATM without properly considering the system as a whole. The development of the essential requirements offers an opportunity to review the SES and ESARR requirements in the context of a wider regulatory framework. It is important that this is done to ensure that the advantages of a total systems approach can be realised. ICAO obligations allow for filed differences to address specific local requirements. The essential requirements should not remove this flexibility in seeking to comply with ICAO SARPS.

response	<i>Accepted</i> The Agency fully concurs with this comment.
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comment	612	comment by: BAA
	The drafting of the essential requirements and the following IR's should be done in such a way as to allow the continued flexibility that States currently have in complying with regulations	
response	Accepted	
comment	747	comment by: UK CAA & UK MoD
	UK CAA & MoD Comments on explanatory material.	
	See General Comments in relation to regulatory stability and building on SES success.	
response	Noted	
comment	889 ❖	comment by: EUROCONTROL
	See identical comment 888 by EUROCONTROL.	
response	Noted	
	See response to comment 888 (same comment).	
comment	1033	comment by: Ministry of Transport and Communications, Norway
	<p>The approach in the NPA and the proposed text for the Essential Requirements does not take account of the position of <u>Eurocontrol</u> in the field of ATM, including in safety matters, as well as the legal obligations of the member states of Eurocontrol. It is necessary to clarify the inter-relationship between Eurocontrol and the safety regulations promulgated by Eurocontrol, on the one hand, and EASA and the safety regulations promulgated by the Community, on the other hand. The pros and cons of transferring safety regulatory tasks from Eurocontrol to EASA should be carefully assessed, both from a functional and from a legal and political perspective.</p> <p>Eurocontrol possesses a fundamentally important knowledge and technical competence in the field of ATM, and it is uniquely positioned to bring together all stakeholders in the process of regulatory development - including the military.</p> <p>Furthermore, the approach in the NPA and the proposed text of the Essential Requirements does not take into account the body of <u>Community law</u> already adopted in the context of the Single European Sky package. It is crucially important to clarify the inter-relationship between these two sets of legislation as an element in the process of preparing the extension of EASAs mandate to ATM. What is missing in connection with the NPA is, inter alia, a detailed analysis of possible weaknesses or even deficiencies, from a safety perspective, in the SES legislation adopted or under preparation. (I.e.: A "gap" analysis.)</p>	

The explanatory note of the NPA includes numerous references to ICAO Standards and Recommended Practices, but the proposed text of the Essential Requirements does not make reference to the ICAO SARPs, and the value of it as a "stand alone" piece of legislation is questionable.

Unless the inter-relationship between "EASA rules", on the one hand, and ICAO, Eurocontrol and SES legislation, on the other hand, is clarified there is a risk that multiple regulation of the safety aspects of ATM will be the outcome of the extension of EASAs mandate. This would be very unfortunate.

An important element in the analysis of possible approaches for the extension of EASA's mandate is the ways and means to ensure a smooth and efficient transition of tasks and competence. This would assist in avoiding rushed decisions and confusion among stakeholders at a later stage of the process. The complications concerning the transition of tasks from JAA to EASA come to mind in this regard. Hence, we strongly suggest that such an analysis is initiated as soon as possible.

In our view, it is crucial to maintain the cooperation between the civil and military stakeholders in the ATM domain, and to properly address the civil / military interface in the legislation applicable to the ATM field. This aspect is specifically mentioned as a task in the terms of reference for this NPA. (Para 4, point 6: "In order to adopt a consistent and coordinated approach in ANS and ATM, military needs will have to be evaluated and taken into account when drafting the EASA opinion.") Nevertheless the subject matter has been largely disregarded in the analysis put forward in the NPA. Consequently, there is a need for further analysis of this aspect.

response *Noted*

It is assumed that this comment is a part of the general comment 1073, and the response given to that also answers to this comment.

comment *I223* ❖

comment by: *IFATCA*

Safety per se

Justification:

The requirement for safety in SESAR are far more complex than hitherto in ATM. Specifically end to end certification of ground and airborne segments in terms of technical and human systems is an essential pre-cursor to success.

The agency must take the lead on this. And safety leadership is essential to bring altogether. Moreover, there are some unpalatable compromises to be made and the regulator must be active in managing these.

Human factors certification of the total system is a requirement.

response *Noted*

Identical comment as above per paragraph 26.

comment *1321* comment by: *Ente Nazionale per l'Aviazione Civile*

An ICAO standard mapping has not been given together with this NPA.

The compliance with ICAO standards, effective or intended has not been adequately illustrated.

The feeling is that the only measures adopted for the compliance with ICAO standards are those, rather vague, expressions like "minimising, as much as possible, the risk of collision between aircraft and between aircraft and the ground".

response *Noted*

The future implementing rules, mandated by the essential requirements, will provide for the common transposition of ICAO SARPS. Such transposition through Essential Requirements constitutes thereafter the basis for the necessary detailed implementing rules.

comment *1779* comment by: *EU Permanent Representation of Romania*

According to the provisions of Article 1 (3) of the Regulation (EC) No. 549/2004, the harmonized regulatory framework for the creation of the single European sky is applied without prejudice the rights and duties of EU member states under Chicago Convention. Consequently, in ANS area, even if SES legislation enters into force, EU member states continue to exercise the rights and duties for them, as Contracting Parties to the Chicago Convention.

Under the current circumstances, the possibility to maintain these prerogatives becomes doubtfully, starting from the provisions of Article 12 (e) of Regulation (EC) No 1592/2002, without any other specification regarding this matter within NPA 2007 - 16 document.

Under the circumstances of entering into force of the EUROCONTROL revised Convention, the European Community becoming a Contracting Party to this, it is assumed that EC will have the same rights and duties as the EU member states, under the provisions of this Convention.

In the sense of the same Article 12 (e) of the Regulation (EC) No 1592/2002, without any specification on this matter within NPA 2007 - 16 document, we could ask the question if EASA, for its competence (restricted to civil aviation safety for ANS/ ATM domain), will fulfil exclusively the functions and the tasks on behalf of the European Community under the revised EUROCONTROL Convention, or EASA will act also in a similar manner on behalf of EU member states.

response *Noted*

Without the intention of trying to solve this complex and highly judicial question in this CRD, the Agency concludes the following as its view on the comment; Community law is international law with direct effect in Member States. Member States may continue to execute international commitments concluded before their accession to the Community unless these are contrary

to their Community obligations. In such cases they shall take appropriate measures to eliminate incompatibilities. Where Community competence is established, Member States may not undertake any international commitments affecting such competence; such commitments are to be taken by the Community. Member States shall abstain from taking measures that could affect the fulfilment of the objectives of the European Union.

These principles should be valid irrespective of whether the Community competence is based on SES rules or EASA rules. When it comes to the effect of the revised EUROCONTROL Convention, it is outside of the remit of this process and therefore for the Commission to address. As to the latter question, all powers conferred to a Community regulatory Agency has to be clearly defined in its founding act, i.e. in the Basic Regulation in this case.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Concept of operations - 34. p. 9

comment 40 comment by: Charles-André QUESNEL
 What about multi national concepts of operations? Like the ones in the FABs or the one of SESAR?

response *Noted*
 This is one element of the question.

comment 59 comment by: KLM
 34. Here it is suggested that ATM's primary objective is to reduce risk, while the concept is to manage traffic and the available capacity.

response *Noted*

comment 175 comment by: FRAPORT AG
 Fraport supports this action.

response *Noted*

comment 395 comment by: AEA
 Here it is suggested that ATM's primary objective is to reduce risk, while the concept is to manage traffic and the available capacity.

response *Noted*

comment	597	comment by: <i>UK Department for Transport</i>
	The UK Government considers that this paragraph mixes the governmental and ANSP specific responsibilities of operations and attempts to amalgamate them into a single concept, which is confusing.	
response	<i>Noted</i>	
comment	748	comment by: <i>UK CAA & UK MoD</i>
	UK CAA & MoD Comments on explanatory material.	
	The UK CAA recognises the conceptual difficulties presented to the Agency in deciding on the necessity of determining a concept of operations. However, this paragraph mixes the governmental and ANSP specific responsibilities of operations and attempts to amalgamate them into one concept.	
	With regard to SESAR, the UK CAA questions the need for formal approval of the concept and suggests that approval of a specific operation by a specific provider or providers (be it on European or national basis, or both) is an appropriate methodology.	
response	<i>Noted</i>	
comment	889 ❖	comment by: <i>EUROCONTROL</i>
	See identical comment 888 by EUROCONTROL.	
response	<i>Noted</i>	
	See response to comment 888 (same comment).	
comment	1224	comment by: <i>IFATCA</i>
	Comment: in the spirit of the Global Concept a single concept of operation needs to be agreed and shared by all the stakeholders.	
	The European Commission (after acceptance of the SSC) and Eurocontrol (after acceptance of the Provisional Council) are the purchaser of the SESAR concept and therefore should be used as the responsible persons. The description in 36 is fuzzy and article 34 is not really reflecting the full reality in our view.	
	Justification: IFATCA believes that all the actors will have to comply to the SESAR CONOPS therefore nothing changes with regard to the responsibilities. It is a government act.	
response	<i>Noted</i>	

The Agency takes note of the comment. It would be however premature to give a clear response to it, without knowing well enough the regulatory responsibilities to be established in relation SESAR.

comment	1773	comment by: <i>EU Permanent Representation of Romania</i>
	Regarding the process of defining the concept of operations, it is surprising that in this NPA there is no reference made to this notion, such as it is presented in SESAR D3, as forecasted evolution for the year 2020 and, apart from operations environment, NPA makes an attempt at doing a clear categorization for the process of defining the concept of operations, either in the category of governmental functions or in the category related to air navigation services.	
response	<i>Noted</i>	
	This issue is dealt with Question 1. The Agency takes note of this view.	

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Concept of operations - 35.**

p. 9-10

comment	60	comment by: <i>KLM</i>
	35. Here the whole set of ATM functions is mentioned; contradictory to 34.	
response	<i>Noted</i>	
comment	125	comment by: <i>DSNA</i>
	<p>§ 35 is not clear.</p> <p>Even if the adoption of a concept of operations is an act of the Member States, the legislator (the Council and the European Parliament) can regulate them. As the purpose of the extension of EASA to ATM is to ensure a total system approach, it would be strange to have no safety ER on the concept of operations.</p> <p>It is clear that having safety ER on the concept of operations to be implemented by Member States does not mean that only EASA will have competence in concept of operations. Any any IR needed in this field, the current SES mechanisms should be recognised as a proper way to implement them.</p> <p>In the field of concept of operations, the role of EASA could be to contribute to the safety assessment of concepts of operations (e.g. in the field of SESAR).</p>	
response	<i>Noted</i>	
	This issue is dealt with Question 1. The Agency takes note of this view.	
comment	396	comment by: <i>AEA</i>
	Here the whole set of ATM functions is mentioned; contradictory to 34.	
response	<i>Noted</i>	

comment	465	comment by: <i>DGAC-DAST-FR</i>
	<p>§ 35 is not clear: Even if the adoption of a concept of operations is an act of the Member States, the legislator (the Council and the European Parliament) can regulate them. As the purpose of the extension of EASA to ATM is to ensure a total system approach, it would be strange to have no safety ER on the concept of operations.</p> <p>It is clear that having safety ER on the concept of operations to be implemented by Member States does not mean that only EASA will have competence in concept of operations. Any any IR needed in this field, the current SES mechanisms should be recognised as a proper way to implement them.</p> <p>In the field of concept of operations, the role of EASA could be to contribute to the safety assessment of concepts of operations (e.g. in the field of SESAR).</p>	
response	<p><i>Noted</i></p> <p>This issue is dealt with Question 1. The Agency takes note of this view.</p>	
comment	466	comment by: <i>DGAC-DAST-FR</i>
	<p>Note § 36 : there is a confusion between "separation provision" which is the role of ATC in current concept of operations when separation services is provided and "collision avoidance" which is the role of the pilot.</p>	
response	<p><i>Noted</i></p> <p>This clear distinction may become much more blurred in the future.</p>	
comment	601	comment by: <i>UK Department for Transport</i>
	<p>The UK considers that the government establishes the law, regulations and the rules that have to be met. The ANSPs are regulated to ensure that they meet these regulations and rules. In this context governments do not regulate themselves. This is the principle of separation of service provision from regulation that is already established by the EU (SES Regulations).</p>	
response	<p><i>Noted</i></p> <p>This issue is dealt with Question 1. The Agency takes note of this view. (Although, it ought to be mentioned here, that this area is by and large of a Community competence, which consequently is the main source of rules.)</p>	
comment	749	comment by: <i>UK CAA & UK MoD</i>
	<p>UK CAA & MoD Comments on explanatory material.</p> <p>Whilst the UK CAA agrees with the conclusions of this paragraph, much of the argument used is confusing.</p> <p>The UK CAA, as in the case in the previous paragraph, believes that the government establishes the law, regulations and the rules that have to be met. The ANSPs are regulated to ensure that they meet these regulations and rules.</p>	

	In this context governments do not regulate themselves. This is the principle of separation of service provision from regulation that is already established by the EU (SES Regulations).
response	<p><i>Noted</i></p> <p>This issue is dealt with Question 1. The Agency takes note of this view. (Although, it ought to be mentioned here, that this area is by and large of a Community competence, which consequently is the main source of rules.)</p>
comment	<p>889 ❖ comment by: <i>EUROCONTROL</i></p> <p>See identical comment 888 by EUROCONTROL.</p>
response	<p><i>Noted</i></p> <p>See response to comment 888 (same comment).</p>
comment	<p>1224 ❖ comment by: <i>IFATCA</i></p> <p>Comment: in the spirit of the Global Concept a single concept of operation needs to be agreed and shared by all the stakeholders.</p> <p>The European Commission (after acceptance of the SSC) and Eurocontrol (after acceptance of the Provisional Council) are the purchaser of the SESAR concept and therefore should be used as the responsible persons. The description in 36 is fuzzy and article 34 is not really reflecting the full reality in our view.</p> <p>Justification:</p> <p>IFATCA believes that all the actors will have to comply to the SESAR CONOPS therefore nothing changes with regard to the responsibilities. It is a government act.</p>
response	<p><i>Noted</i></p> <p>This issue is dealt with Question 1. The Agency takes note of this view.</p>
comment	<p>1225 comment by: <i>IFATCA</i></p> <p>A concept is also a philosophy of operation and principles of therein from which the CONOPS is drawn from. This is not included in the essential requirements</p>
response	<p><i>Noted</i></p> <p>This issue is dealt with Question 1. The Agency takes note of this view.</p>
comment	<p>1347 comment by: <i>ECOGAS</i></p> <p>It is estimated that in 2005 approximately 15 million General and Business aviation flights took place in Europe, but less than 1 million of them were operated under the supervision of air traffic control. It is essential to the sector that the safe, flexible use of aircraft is allowed to continue in this</p>

	manner.
response	<i>Noted</i> This issue is dealt with Question 1. The Agency takes note of this view.
comment	1773 ❖ comment by: <i>EU Permanent Representation of Romania</i> Regarding the process of defining the concept of operations, it is surprising that in this NPA there is no reference made to this notion, such as it is presented in SESAR D3, as forecasted evolution for the year 2020 and, apart from operations environment, NPA makes an attempt at doing a clear categorization for the process of defining the concept of operations, either in the category of governmental functions or in the category related to air navigation services.
response	<i>Noted</i> This issue is dealt with Question 1. The Agency takes note of this view.

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Concept of operations - 36.**

p. 10

comment	127 comment by: <i>DSNA</i> There is a confusion between "separation provision" which is the role of ATC in current concept of operations when separation services is provided and "collision avoidance" which is the role of the pilot.
response	<i>Noted</i> This clear distinction may become much more blurred in the future.
comment	432 comment by: <i>Avinor</i> A clear definition of "concept of operation" is needed. As a principle, Avinor believes that Regulator's functions should be fully separated from the Provider's functions.
response	<i>Noted</i> This issue is dealt with Question 1. The Agency takes note of this view.
comment	468 comment by: <i>DGAC-DAST-FR</i> No, these ER don't seem as good basis. There is is a strong need of consistency with the SES regulation. In general terms, the majority of the elements contained in the proposed ER are already taken into account in already existing requirements contained in Reg. 550/04, Reg 552/04, Reg. 2096/05 and Reg.1315/07 or directive 2006/23. ATM Safety regulation is already well advanced at Community level. It is suggested to keep the existing regulation and only to complete it when necessary. Issuing new rules, speaking about the same requirements,

but with different wording and order ("reshuffling"), while changing concepts and requirements, could affect very negatively the ATM community. Not only the thrust for implementing the whole lot of recent regulations would be discouraged, but also different interpretations of "almost similar" rules open the door for non compliance with safety requirements, leaving latent failures within the system.

We also must avoid to go to an over regulation situation. It is therefore suggested to recognise that the present IR adopted by the Commission through SES mechanisms are actually implementing most of these safety ER. Consequently, need of further IR should be clearly limited to what is necessary in ATM safety.

The levels of details of these ER are very different from one item to the other. For instance, the ERs about ATCO are far more detailed. Most of these requirements are matters for the level of an IR and not an ER. They are too much carbon copied on air side. As an example, it can be noted that, as no engineer are required on board an aircraft, nothing specific is required for operational maintenance staff able to act in real time, although these "on board engineer" are still required in ATM. There should be some ERs on these staff, and even more broadly on all staff intervening on systems for their maintenance (see question 5).

The notions used in these ER ATM/ANS are not in line with SES which creates confusion.

The HLG clearly asked for a separation of safety regulation from other regulation (cf §16 and §29). This requirement should be taken into account and interoperability should not be covered by these ERs. Besides, as recognised in the Communication of the Commission, **the interoperability mechanism used in SES** (mandates to Eurocontrol for IR and to the ESO in the frame of the "new approach" for CS with the implication of EUROCAE that allow a leadership of the industry) **is efficient should be preserved for SESAR development and implementation phase.**

Even if regulation 552/04 needs some updating (see question 4), the basic principles should not change.

It looks preferable to keep interoperability rules under regulation 552/04, and not to transfer them into the EASA system. We concur that the Agency should focus on the safety requirements themselves.

An acceptable approach would be to separate the safety requirements currently mixed with interoperability requirements (see Annex II of regulation 552/04) from the pure technical interoperability part, and to entrust them to EASA. However, such ER could and should be expressed in more general words.

Although we recognise that EASA may have currently a sound approach of the airborne appliances, a more global view is needed for the pure technical interoperability of ground systems, and of air and ground systems interacting together for supporting ATS provision. Thus, the pure technical interoperability requirements in regulation 552/04 and associated IRs should keep in that regulatory framework. When describing the mechanism, the link with Eurocontrol should be identified in order to study properly the impact on costs and capacity of any new safety rules.

The civil-military interface (AOT-GAT) should be duly taken into account while it is not mentioned in the NPA. It is clear that is a major item for the Single European Sky; but as it has a strong impact on safety, it should not be ignored

by these safety ER, even if we understand that for legal reasons the AOT cannot be mentioned in the ER
(Which doesn't mean for us that all the implementation rules on this topic will necessarily be taken through the EASA system).

There is no reference to SMS although it is considered as the main pillar of safety in the ATM community and at ICAO level.

Detailed comments on the ER are provided in part B

response *Noted*

This comment seems to be identical to the one given as an answer to Question 2 (comment 469) and therefore will be analysed therein. It also contains many similar elements as the general comment 464, whose response is believed to serve as an adequate response also to this comment.

comment 750

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

It is not clear what is meant by "the monopoly air traffic control service provider". We presume that it means that in any one section of airspace there is only one civil air traffic control provider that an operator must use. Also national airspace arrangements acknowledge there is not a monopoly outside controlled airspace and when one takes into account military ATS provision arrangements.

We support the argument that the service provider cannot regulate its users and, by implication, that the Concept of Ops is a governmental function.

response *Noted*

This issue is dealt with Question 1. The Agency takes note of this view and agrees with the presumption made.

comment 817

comment by: *Prospect*

The Agency is interested to know whether stakeholders consider that deciding on the concepts of operations is a governmental function or that of air traffic control service providers.

There is a difference between the modelling of concepts, defining/specifying objectives for a given concept of operation and authorising the use of a given concept of operation. The question is who does which of these things. The establishment of the concept of operations should rest with the air traffic control service providers since it is they who have the expertise necessary to model and define the operations. The definition of the objectives that should be met by the concept of operations should also rest with the air traffic control service provider since they must manage the requirements/expectations of the various stakeholders who may have conflicting requirements. The authority to proceed with the implementation of a given concept of operation should require governmental agreement since the scope of service provision is greater than the technical solution and the air traffic service provider can only be really

	accountable for the service associated with the technical solution.
response	<i>Noted</i> This issue is dealt with Question 1. The Agency takes note of this view.

comment	889 ❖ comment by: EUROCONTROL See identical comment 888 by EUROCONTROL.
response	<i>Noted</i> See response to comment 888 (same comment).

comment	1085 comment by: BFAL Question 1: We consider the decision on the concept of operations to be a governmental function.
response	<i>Noted</i> This issue is dealt with Question 1. The Agency takes note of this view.

comment	1224 ❖ comment by: IFATCA Comment: in the spirit of the Global Concept a single concept of operation needs to be agreed and shared by all the stakeholders. The European Commission (after acceptance of the SSC) and Eurocontrol (after acceptance of the Provisional Council) are the purchaser of the SESAR concept and therefore should be used as the responsible persons. The description in 36 is fuzzy and article 34 is not really reflecting the full reality in our view. Justification: IFATCA believes that all the actors will have to comply to the SESAR CONOPS therefore nothing changes with regard to the responsibilities. It is a government act.
response	<i>Noted</i> This issue is dealt with Question 1. The Agency takes note of this view.

comment	1226 comment by: IFATCA A concept of operation needs, and must be agreed by all stakeholders. However, each stakeholder must understand that this means adherence to a position. As such, the governmental responsibility is to facilitate and enable the concept that the stakeholders have agreed...
response	<i>Noted</i> This issue is dealt with Question 1. The Agency takes note of this view.

comment	<p>1773 ❖ comment by: <i>EU Permanent Representation of Romania</i></p> <p>Regarding the process of defining the concept of operations, it is surprising that in this NPA there is no reference made to this notion, such as it is presented in SESAR D3, as forecasted evolution for the year 2020 and, apart from operations environment, NPA makes an attempt at doing a clear categorization for the process of defining the concept of operations, either in the category of governmental functions or in the category related to air navigation services.</p>
response	<p><i>Noted</i></p> <p>This issue is dealt with Question 1. The Agency takes note of this view.</p>

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Concept of operations - QUESTION 1	p. 10
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See 'Inventory of Answers' in Appendix.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Concept of operations - 37.	p. 10
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comment	<p>819 comment by: <i>Prospect</i></p> <p>The Agency is interested to know whether stakeholders consider the attached essential requirements as constituting a good basis for the regulation of the safety and interoperability of ATM/ANS. It also welcomes any suggestion to improve these essential requirements.</p> <p>The definition of a complete set of essential requirements will require more time than we have had in this consultation period. However, the essential requirements defined in the document seems to provide a good basis for a regulation of safety. These comments are subject however to the overarching principle that Member States safety standards should not be reduced or diluted in the pursuit of greater commonality.</p>
response	<p><i>Noted</i></p> <p>This issue is dealt with Question 2. The Agency takes note of this view.</p>

comment	<p>889 ❖ comment by: <i>EUROCONTROL</i></p> <p>See identical comment 888 by EUROCONTROL.</p>
response	<p><i>Noted</i></p> <p>See response to comment 888 (same comment).</p>

comment	<p>1089 comment by: <i>BFAL</i></p> <p>Question 2: Generally yes, but 2b addresses an aspect ("All Aircraft must be</p>
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	equipped.") which is not under control of the ANSP.
response	<i>Noted</i> This issue is dealt with Question 2. The Agency takes note of this view.

comment	<i>1090</i> comment by: <i>BFAL</i> Question 2: Generally yes, but 2b addresses an aspect ("All Aircraft must be equipped.") which is not under control of the ANSP.
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response	<i>Noted</i> Identical comment as above.
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comment	<i>1091</i> comment by: <i>BFAL</i> Question 2: Generally yes, but 2b addresses an aspect ("All Aircraft must be equipped.") which is not under control of the ANSP.
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response	<i>Noted</i> Identical comment as above.
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A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Concept of operations - QUESTION 2	p. 10
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See 'Inventory of Answers' in Appendix.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Scope and applicability - General - 38.	p. 10-11
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comment	<i>178</i> comment by: <i>FRAPORT AG</i> States are members of ICAO. Even when Community law supersedes national law, only States are entitled to report deviations to SARPs to ICAO. Due care shall be taken, that obligations resulting from SARPs are monitored and observed within the Community and that the responsible States report deviations to ICAO.
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response	<i>Noted</i> Ensuring that the Member States comply with their international obligations under the Chicago Convention is also one of the Agency tasks as safety regulator, as defined in the Basic Regulation.
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comment	<i>337</i> comment by: <i>NATS</i> Although restricting the freedom of Member States to impose their own standards would help to harmonise the overall system of regulation this might be impossible to achieve in practice. Agreeing on a universal and comprehensive set of requirements that do not result in a detriment to safety
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or unnecessary restrictions would be very difficult. There is currently no comprehensive understanding of all of the regulations across all European States and this work needs to undertaken before agreeing on uniform and restrictive regulations.

response *Noted*

The intent of this comment is not fully understood, since this paragraph is not specifically related to EASA. It is a description of the current situation and of the principles of the European Community. ATM/ANS is already today almost totally of Community competence through SES regulations providing basis for common rules, which are then implemented by Member States.

comment 620

comment by: *UK Department for Transport*

The UK Government supports the principle of subsidiarity making the most efficient use of resources between EASA and State.

Due consideration should be given to the role of the State in defence and security.

response *Noted*

The Agency agrees with this comment. EASA Basic Regulation and the system established by it are based on shared and well defined roles between the Commission, EASA and the Member States.

comment 632

comment by: *BAA*

There is currently no overall common approach to ATM across Europe. Prior to the imposition of binding ER's and IR's a full understanding of the European State differences or variable ways of operating needs to be obtained to ensure no detrimental effects on safety during any transition period.

response *Noted*

The intent of this comment is not fully understood, since this paragraph is not specifically related to EASA. It is a description of the current situation and of the principles of the European Community. ATM/ANS is already today almost totally of Community competence through SES regulations providing basis for common rules, which are then implemented by Member States.

comment 753

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

The UK CAA supports the concept of subsidiarity making the most efficient use of resources between EASA and State resources.

Military ATM/ANS should be excluded from the basic EASA regulation.

response *Noted*

The Agency agrees with this comment. EASA Basic Regulation and the system established by it are based on shared and well defined roles between the

Commission, EASA and the Member States.

The scope of the extended Basic Regulation covers military aircraft under civil mission. In addition, ATM/ANS services provided to any civilian airspace user have to be safe and regulated accordingly, independently of their provider.

comment 889 ❖ comment by: *EUROCONTROL*
See identical comment 888 by EUROCONTROL.

response *Noted*
See response to comment 888 (same comment).

comment 1771 comment by: *EU Permanent Representation of Romania*

SES legal package has produced the transfer of some functions, such as regulatory function in ANS/ ATM field, from the Member States competences to the Community ones.

Therefore, for the time being, the legal Community basis, built on the harmonized regulatory framework for the creation of the single European sky, as defined in Article 3 of the Regulation (EC) No 549/2004, currently in force, covers also:

- - the requirements applicable to several flights operated with State aircraft, following ICAO procedures;
- - the requirements which are directly applicable to State aircraft (such as these laid down for this aircraft class under Article 5 of the Commission Regulation (EC) No 1265/2007, laying down requirements on air-ground voice channel spacing for the single European sky).

In respect of the scope already laid down at Community level, through the harmonized regulatory framework for the creation of the single European sky, concerning the provision of ANS for GAT, the current proposal on the extension of the Regulation (EC) No 1592/2002 scope, such as it is drawn up in NPA 2007 - 16, needs specifications and elucidations, to limit in this field only to the matters related to "civil aviation safety" means, in fact, that an important part of ANS, provided in the same air space to the GAT flights operated with State aircraft, remains uncovered by this proposal.

response *Noted*
The scope of the extended Basic Regulation covers military aircraft under civil mission. In addition, ATM/ANS services provided to any civilian airspace user have to be safe and should be regulated accordingly, independently of their provider. This subject will be addressed in the forthcoming legal proposal of the Commission to amend the Basic Regulation and will be elaborated by the European legislators in co-decision.

comment 1774 comment by: *EU Permanent Representation of Romania*

The NPA's 2007-16 content doesn't explain how the extension of EASA competences will cover the aspects of civil and military co-operation, applicable under SES Regulations, in relation with the safety regulation of the ANS

providers for general air traffic. Today, the interface between civil and military service providers is a key element in ensuring the safe operations of aircraft. Additionally, there are military service providers for the civil air traffic, supervised by the National Supervisory Authorities.

In the context of the proposal concerning the extension of EASA's competences, we appreciate as useful additional information, at least regarding the approach of civil-military co-operation, in order to observe these, also for further development and analysis of Essential Requirements drafts' proposals.

response *Noted*

When it comes to the civil-military coordination the responsibility of the Agency under the Basic Regulation encompasses civil aviation safety and explicitly excludes State aircraft; this means aircraft engaged in State missions. The NPA indeed recognises that airspace regulation contains regulatory tasks implying arbitration between various, possibly conflicting objectives; civil-military coordination is therefore probably a task for a body with the power to make political choices, such as the Commission itself. When doing so, such body should organise for the proper coordination. It is expected that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation already does. Moreover, the NPA states that ATM/ANS provided to any civilian airspace users have to be safe and regulated accordingly, independently of their provider. This should not deviate from the principles already established by SES.

comment *1775*

comment by: *EU Permanent Representation of Romania*

This NPA proposes the extension of the EASA regulatory domain to air navigation services and air traffic management. The Regulation (EC) No 549/2004 defines the air navigation services as air traffic services; communication, navigation and surveillance services; meteorological services for air navigation; and aeronautical information services. ASM and ATFM, that are part of the ATM definition together with air traffic services, are considered as functions by the NPA. However, it is not clearly specified to which of these areas the extension of EASA's role will apply and the use of these terms ATM/ANS (with ATS as a common area) creates confusion for the future essential requirements.

response *Noted*

The purpose is to cover all products, services, personnel and organisations related to ATM/ANS. However, specific questions have been made in the NPA to assist the Agency to conclude in more detail for instance to identify the nature and possible regulated persons in case of ASM and ATFM. Definitions will naturally be part of the legal proposal of the Commission. However, a clear starting point there is to use the same definitions as in SES. Definitions referred to in the NPA do not deliberately differ from the ones in SES.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Scope and applicability - Airspace - 39. p. 11

comment *63*

comment by: *KLM*

39. The airspace to be defined shall not be regulated more stringent than the rest of the world under ICAO regulation. Capacity and cost shall be considered.

response *Noted*

comment 338 comment by: *NATS*

The inclusion of airspace over the high seas means that the requirements will extend beyond the current scope of the SES legislation and include the North Atlantic region. The ATM procedures in this airspace are agreed between six States (UK, Ireland, Portugal, Iceland, USA and Canada), three of which are not covered by EC legislation. This needs to be clarified.

response *Noted*

The Agency takes notice of the comment and undertakes to clarify this issue in its forthcoming Opinion. The intention of the Agency in this subject is to maintain the legal definition provided in SES regulations.

comment 399 comment by: *AEA*

The airspace to be defined shall not be regulated more stringent than the rest of the world under ICAO regulation. Capacity and cost shall be considered.

response *Noted*

comment 402 comment by: *Royal Norwegian Ministry of Defence*

Comment on paragraph A IV 39, 40 and 41

Uncontrolled airspace is of great importance for military training and operations. EASA is trying to expand its regulatory powers to this area as well. An expansion of regulations to uncontrolled airspace may hamper the military operational freedom, and need to be thoroughly co-ordinated with national military authorities.

State aircraft operations are exempted from the Chicago Convention, and the armed forces play several roles in European aviation (e.g aircraft operators, pilot licensing, aerodrome owner, Air Traffic Control, Weapons Control, airspace user and so on). Many of these roles are regulated by military legislation, and it is not correct to refer to "*all airspace users*" as subject to EASA regulations. On the contrary, with the increase in aviation the importance of civil/military co-ordination is even higher.

response *Noted*

The Agency does not intend to become an airspace regulator. Access to airspace is a regulatory task of economic nature implying arbitration between various, possibly conflicting objectives; this is therefore probably a task for a body with the power to make political choices, such as the Commission. When doing so, such body should organise for the proper coordination and the

Agency expects that the Commission proposal to amend the SES regulations and Basic Regulation will address the civil-military interface in a similar way than the SES Framework Regulation does.

The scope of the extended Basic Regulation covers military aircraft under civil mission. In addition, ATM/ANS services provided to any civilian airspace users have to be safe and should be regulated accordingly, independently of their provider.

comment

622

comment by: *UK Department for Transport*

The UK Government disagrees that SES regulations have established Community competence in the aggregated volume of airspace in which Member States are responsible for ensuring that air traffic services are provided. SES only applies where the Community has jurisdiction, which is limited to the national territorial waters of EU States, it does not extend to the high seas. Additionally, there is currently no harmony in the defined upper limit of Upper Information Regions across the EU and, therefore, it would be necessary for an agreed upper limit of EASA competence to be determined. It is therefore questionable whether the scope of the EASA system should be extended to the limits of FIR/UIR boundaries. For practical reasons, it would not be sensible to have two different rules in the airspace for which a State is contracted to ensure ATS is provided. However, any difference could be accommodated through agreement as opposed to legislative action.

Clarification over the wording "at least cover the same airspace" is essential.

response

Noted

The Agency takes notice of the comment and undertakes to clarify this issue in its forthcoming Opinion. The intention of the Agency in this subject is to maintain the legal definition provided in SES regulations.

comment

639

comment by: *BAA*

Interoperability is essential with non-EU States ATM particularly over the North Atlantic region, Russia and North Africa.

response

Noted

comment

754

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

The UK CAA disagrees that SES regulations have established Community competence in the aggregated volume of airspace in which Member States are responsible for ensuring that air traffic services are provided. SES only applies where the Community has jurisdiction, which is limited to the national territorial waters of EU States, it does not extend to the high seas. Additionally, there is currently no harmony in the defined upper limit of UIRs across the EU and, therefore, it would be necessary for an agreed upper limit of EASA competence to be determined. It is therefore questionable whether the scope of the EASA system should be extended to the limits of FIR/UIR boundaries.

	<p>For practical reasons, it would not be sensible to have two different rules in the airspace for which a State is contracted to ensure ATS is provided. However, any difference could be accommodated through agreement as opposed to legislative action.</p> <p>Clarification over the wording "at least cover the same airspace" is essential.</p>
response	<p><i>Noted</i></p> <p>The Agency takes notice of the comment and undertakes to clarify this issue in its forthcoming Opinion. The intention of the Agency in this subject is to maintain the legal definition provided in SES regulations.</p>

comment	<p>889 ❖ comment by: <i>EUROCONTROL</i></p> <p>See identical comment 888 by EUROCONTROL.</p>
response	<p><i>Noted</i></p> <p>See response to comment 888 (same comment).</p>

comment	<p>1227 comment by: <i>IFATCA</i></p> <p>... new types of aircraft or space shuttles.</p> <p>IFATCA does not believe that controlling space shuttles is a sufficient justification for EASA to extend the mandate to ATM in the UIR. Recommendation delete space shuttle.</p> <p>Justification:</p> <p>IFATCA welcomes the need to have a unified definition of a UIR where the scope of EASA's activities is defined. Operations like space shuttles or other related military activities should be ruled via other means (e.g. TSA) this is especially important with regard to UAS and other military flying objects. Otherwise we fear that too much energy is spend on remote and extremely rare events. Though the understanding of this paragraph looks at the possible future inclosing of other than currently known traffic (e.g. Virgin's plan to fly space flights). This has to go in hand with the global interoperability principle with regard to future UAS and spacecraft.</p>
response	<p><i>Not accepted</i></p> <p>Based on the comment the Agency does not see the exclusion of UIR from the scope justified. In contrary of what the comment suggests, UAS (medium/heavy) are already covered by the Basic Regulation.</p>

comment	<p>1325 comment by: <i>Ente Nazionale per l'Aviazione Civile</i></p> <p>The NPA apparently fails to recognise that over those areas no regulation beyond the ICAO standards (even more demanding) can be imposed unless a process of coordination with ICAO itself is done.</p>
response	<p><i>Noted</i></p>

The Agency takes notice of the comment and undertakes to clarify this issue in its forthcoming Opinion. The intention of the Agency in this subject is to maintain the legal definition provided in SES regulations.

comment 1771 ❖ comment by: *EU Permanent Representation of Romania*

SES legal package has produced the transfer of some functions, such as regulatory function in ANS/ ATM field, from the Member States competences to the Community ones.

Therefore, for the time being, the legal Community basis, built on the harmonized regulatory framework for the creation of the single European sky, as defined in Article 3 of the Regulation (EC) No 549/2004, currently in force, covers also:

- - the requirements applicable to several flights operated with State aircraft, following ICAO procedures;
- - the requirements which are directly applicable to State aircraft (such as these laid down for this aircraft class under Article 5 of the Commission Regulation (EC) No 1265/2007, laying down requirements on air-ground voice channel spacing for the single European sky).

In respect of the scope already laid down at Community level, through the harmonized regulatory framework for the creation of the single European sky, concerning the provision of ANS for GAT, the current proposal on the extension of the Regulation (EC) No 1592/2002 scope, such as it is drawn up in NPA 2007 - 16, needs specifications and elucidations, to limit in this field only to the matters related to "civil aviation safety" means, in fact, that an important part of ANS, provided in the same air space to the GAT flights operated with State aircraft, remains uncovered by this proposal.

response *Noted*

See response to identical comment per paragraph 38.

comment 1774 ❖ comment by: *EU Permanent Representation of Romania*

The NPA's 2007-16 content doesn't explain how the extension of EASA competences will cover the aspects of civil and military co-operation, applicable under SES Regulations, in relation with the safety regulation of the ANS providers for general air traffic. Today, the interface between civil and military service providers is a key element in ensuring the safe operations of aircraft. Additionally, there are military service providers for the civil air traffic, supervised by the National Supervisory Authorities.

In the context of the proposal concerning the extension of EASA's competences, we appreciate as useful additional information, at least regarding the approach of civil-military co-operation, in order to observe these, also for further development and analysis of Essential Requirements drafts' proposals.

response *Noted*

See response to identical comment per paragraph 38.

comment 1775 ❖ comment by: *EU Permanent Representation of Romania*

This NPA proposes the extension of the EASA regulatory domain to air navigation services and air traffic management. The Regulation (EC) No 549/2004 defines the air navigation services as air traffic services; communication, navigation and surveillance services; meteorological services for air navigation; and aeronautical information services. ASM and ATFM, that are part of the ATM definition together with air traffic services, are considered as functions by the NPA. However, it is not clearly specified to which of these areas the extension of EASA's role will apply and the use of these terms ATM/ANS (with ATS as a common area) creates confusion for the future essential requirements.

response *Noted*

See response to identical comment per paragraph 38.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Scope and applicability - Airspace - 40.	p. 11
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comment 92

comment by: *BAA*

A commonality of approach to un-controlled airspace is an important goal. However it should be realised that in the fact that it is 'un-controlled' it will be difficult to regulate. The users are many and various with very differing aircraft types and associated performance from small GA aircraft to supersonic military fighters. There is also the issue of integrating and 'controlling' VFR/SVFR flights with IFR flights. There will be a need to define whether the ANSP will provide 'Control', 'Advisory' or 'Information' services. The ATC provider may also be civil or military. Great care needs to be taken when trying to regulate this area. The recent ATSOCCAS (Air Traffic Control Services Outside Controlled Airspace) debate in the UK may usefully inform this issue.

response *Noted*

The Agency takes notice of the comment and can also share these views.

comment 179

comment by: *FRAPORT AG*

Does that also integrate military airspace users?

response *Noted*

The Basic Regulation covers military aircraft under civil mission.

comment 339

comment by: *NATS*

There are significant issues to be resolved if EASA is to regulate 'un-controlled' airspace including who is actually responsible for any ATM services (or the lack of service) in these areas. The inclusion of uncontrolled airspace without addressing Military ATM/ANS would not be viable.

response *Noted*

comment	<p>404 comment by: <i>Royal Norwegian Ministry of Defence</i></p> <p><i>Comment on paragraph A IV 39, 40 and 41</i></p> <p>Uncontrolled airspace is of great importance for military training and operations. EASA is trying to expand its regulatory powers to this area as well. An expansion of regulations to uncontrolled airspace may hamper the military operational freedom, and need to be thoroughly co-ordinated with national military authorities.</p> <p>State aircraft operations are exempted from the Chicago Convention, and the armed forces play several roles in European aviation (e.g aircraft operators, pilot licensing, aerodrome owner, Air Traffic Control, Weapons Control, airspace user and so on). Many of these roles are regulated by military legislation, and it is not correct to refer to "<i>all airspace users</i>" as subject to EASA regulations. On the contrary, with the increase in aviation the importance of civil/military co-ordination is even higher.</p>
response	<p><i>Noted</i></p> <p>See response to identical comment per paragraph 39.</p>
comment	<p>627 comment by: <i>UK Department for Transport</i></p> <p>The reference to uncontrolled airspace and Community competence is unclear. The UK could not support any extension of competence into uncontrolled airspace other than that already implied by the SES regulations.</p> <p>This paragraph appears to introduce the possibility that EASA could make further determinations on the nature of the airspace and the traffic density. This could mean that States would no longer have the right to determine airspace classifications, which is a national responsibility. This implied proposed shift of competence makes no provision for non-civil use of airspace and could challenge the military's right to use airspace under arrangements not dictated by the Community. Any rules adopted by the Community should allow States to continue to determine their own policy on the use of national airspace.</p>
response	<p><i>Noted</i></p> <p>The Agency takes notice of the comment and wishes to clarify some of the concerns expressed therein. The intention of the Agency in this subject is to maintain the legal definition provided in SES regulations. Few comments have however suggested that this is not the case in the NPA as regards airspace over the high sees. The Agency undertakes to clarify this aspect in its Opinion.</p> <p>Secondly, the Agency does not intend to become an airspace regulator and to determine airspace classifications. Questions 1 and 3, for instance, try to seek advice on the possible role of the safety regulator in such areas.</p>
comment	<p>755 comment by: <i>UK CAA & UK MoD</i></p> <p>UK CAA & MoD Comments on explanatory material.</p> <p>The reference to uncontrolled airspace and Community competence is unclear.</p>

The UK CAA could not support any extension of competence into uncontrolled airspace other than that already implied by the SES regulations.

Considerable work has been undertaken in SES and Eurocontrol on joint civil and military operations and it is extremely disappointing to find no reference to this vital cooperation in the NPA.

The meaning of this paragraph is not totally clear because it appears to introduce the *possibility* that EASA could make further determinations on the nature of the airspace and the traffic density. This could mean that States would no longer have the right to determine airspace classifications, which is a national responsibility. This implied proposed shift of competence makes no provision for non-civil use of airspace and could challenge the military's right to use airspace under arrangements not dictated by the Community. Whatever rules are adopted by the Community should allow States to continue to determine their own policy on the use of national airspace.

response *Noted*

The Agency takes notice of the comment and wishes to clarify some of the concerns expressed therein. The intention of the Agency in this subject is to maintain the legal definition provided in SES regulations. Few comments have however suggested that this is not the case in the NPA as regards airspace over the high seas. The Agency undertakes to clarify this aspect in its Opinion.

Secondly, the Agency does not intend to become an airspace regulator and to determine airspace classifications. Questions 1 and 3, for instance, try to seek advice on the possible role of the safety regulator in such areas.

comment 889 ❖

comment by: EUROCONTROL

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

comment 1034

comment by: Ministry of Transport and Communications, Norway

The scope of the NPA seems to go beyond the remit of EASA as a body with competence strictly limited to safety matters. The scope of the NPA is specifically extended to interoperability. (Cf. comment to para 32.)

Likewise, the scope of the NPA extends to airspace management, which is closely linked to member states' sovereignty over their airspace and to the civil/military dimension as well as their requirements relating to public order and public security. Furthermore, it is necessary to analyse in more detail what aspects of air space management are so intimately related to safety that they can and should be included in EASA's competence.

response *Noted*

See response to comment per paragraph 32.

NPA introduces draft essential requirements related to ASM. Essential requirements are safety objectives imposed on identified legal or natural persons. If this function is a regulatory task, it should not be subject to such safety objectives. Therefore the Question 3 seeks for advice from the stakeholders of how ASM should be dealt with by the safety regulator.

comment

1326

comment by: *Ente Nazionale per l'Aviazione Civile*

The meaning of this paragraph should be clarified. In particular the meaning of "Un-controlled airspace". In particular if with un-controlled airspace is intended the Class F and G airspace, where no control service is provided, or the high altitude airspace, where no flight is presently performed. In both cases the above mentioned airspace is under the sovereignty -and therefore the responsibility- of Member States.

response

Noted

The Agency takes notice of the comment indicating that un-controlled airspace should be left out of the scope of safety regulation. As explained in the NPA, in order to mitigate certain known ATM/ANS related safety risks in an un-controlled airspace, safety objectives to that aim has been proposed. Reference to the total system approach is explained by the fact that general aviation (including; aircraft, pilot, operations) are already covered by common safety rules. Moreover, commercial operations in certain phases of flight may use un-controlled airspace. Definition of the scope of the Basic Regulation will be an essential element of the Commission legal proposal and therefore subject to political decision. For these reasons the Agency believes that the inclusion of un-controlled airspace is well justified by safety considerations.

comment

1363

comment by: *ECOGAS*

All legislation needs to be proportional to the risks being addressed. General and Business aviation stakeholders, and in particular airspace users flying without the supervision of air traffic control, express particular concern regarding the proliferation of controlled airspace, future airspace classification and equipage requirements being defined in emerging ATM programmes. Consideration needs to be given to these operations and the real risks being addressed, when making compliance more expensive and / or onerous. Flexible use of uncontrolled airspace relieves controlled airspace, to the benefit of all stakeholders in the network as a whole.

response

Noted

The Agency takes notice of the view expressed, although indicating that it is mainly related to economic regulation and management of scarce resources.

comment

1483

comment by: *Aeroclub of Switzerland*

In principle, the attached essential requirements are acceptable to the Aero-Club of Switzerland. However, we urgently have to address the need for sufficient airspace for what is called General Aviation using mainly the lowest levels, eg from GND up to a certain altitude. Looking at the topographic variations across Europe we do not believe in a standardisation going beyond the actually valid ICAO regulations. Additional regulations imposed on us by

	EASA will have to be considered as an over-regulation.
response	<p><i>Noted</i></p> <p>The Agency takes note of the comment, but points out that access to airspace is related to economic regulation.</p>
comment	<p>1771 ❖ <i>comment by: EU Permanent Representation of Romania</i></p> <p>SES legal package has produced the transfer of some functions, such as regulatory function in ANS/ ATM field, from the Member States competences to the Community ones.</p> <p>Therefore, for the time being, the legal Community basis, built on the harmonized regulatory framework for the creation of the single European sky, as defined in Article 3 of the Regulation (EC) No 549/2004, currently in force, covers also:</p> <ul style="list-style-type: none"> • - the requirements applicable to several flights operated with State aircraft, following ICAO procedures; • - the requirements which are directly applicable to State aircraft (such as these laid down for this aircraft class under Article 5 of the Commission Regulation (EC) No 1265/2007, laying down requirements on air-ground voice channel spacing for the single European sky). <p>In respect of the scope already laid down at Community level, through the harmonized regulatory framework for the creation of the single European sky, concerning the provision of ANS for GAT, the current proposal on the extension of the Regulation (EC) No 1592/2002 scope, such as it is drawn up in NPA 2007 - 16, needs specifications and elucidations, to limit in this field only to the matters related to "civil aviation safety" means, in fact, that an important part of ANS, provided in the same air space to the GAT flights operated with State aircraft, remains uncovered by this proposal.</p>
response	<p><i>Noted</i></p> <p>See response to identical comment per paragraph 38.</p>
comment	<p>1774 ❖ <i>comment by: EU Permanent Representation of Romania</i></p> <p>The NPA's 2007-16 content doesn't explain how the extension of EASA competences will cover the aspects of civil and military co-operation, applicable under SES Regulations, in relation with the safety regulation of the ANS providers for general air traffic. Today, the interface between civil and military service providers is a key element in ensuring the safe operations of aircraft. Additionally, there are military service providers for the civil air traffic, supervised by the National Supervisory Authorities.</p> <p>In the context of the proposal concerning the extension of EASA's competences, we appreciate as useful additional information, at least regarding the approach of civil-military co-operation, in order to observe these, also for further development and analysis of Essential Requirements drafts' proposals.</p>
response	<p><i>Noted</i></p> <p>See response to identical comment per paragraph 38.</p>

comment 1775 ❖ comment by: *EU Permanent Representation of Romania*

This NPA proposes the extension of the EASA regulatory domain to air navigation services and air traffic management. The Regulation (EC) No 549/2004 defines the air navigation services as air traffic services; communication, navigation and surveillance services; meteorological services for air navigation; and aeronautical information services. ASM and ATFM, that are part of the ATM definition together with air traffic services, are considered as functions by the NPA. However, it is not clearly specified to which of these areas the extension of EASA's role will apply and the use of these terms ATM/ANS (with ATS as a common area) creates confusion for the future essential requirements.

response *Noted*

See response to identical comment per paragraph 38.

comment 1776 comment by: *EU Permanent Representation of Romania*

Para 40 from Section A of NPA 2007- 16 draws specially attention regarding certain issues related to the use of airspace. Under the current circumstances, when it is already recognised and agreed at Community level and also by the EUROCONTROL member states, that the airspace is a common resource for all its users, the reference to the extension of scope for the Regulation (EC) No 1592/2002 in the total airspace used for any civil aircraft, without other addition, could lead to conflicting interpretations as far as the application of FUA concept is concerned.

The fact of a general reference regarding the necessity to extend the Community's competences, including the currently uncontrolled airspace that is (however) under the member States' responsibility, putting forward as an argument only the consistency within EASA total system approach, indicates that a detailed analysis is required, before such a proposal is made, even on the level of a conviction. Such an analysis should take into account also the necessity to regulate or to apply the same rules on the case of state aircraft, which operate as GAT, either in the controlled airspace, or in the un-controlled one.

response *Noted*

The Agency takes notice of the comment indicating that un-controlled airspace should be left out of the scope of safety regulation. As explained in the NPA, in order to mitigate certain known ATM/ANS related safety risks in an un-controlled airspace, safety objectives to that aim has been proposed. Reference to the total system approach is explained by the fact that general aviation (including; aircraft, pilot, operations) are already covered by common safety rules. Moreover, commercial operations in certain phases of flight may use un-controlled airspace. Definition of the scope of the Basic Regulation will be an essential element of the Commission legal proposal and therefore subject to political decision. For these reasons the Agency believes that the inclusion of un-controlled airspace is well justified by safety considerations.

comment	180	comment by: <i>FRAPORT AG</i>
	It is not clear what is meant by "critical services". Does that include "complex airports" as well?	
response	<i>Noted</i>	
	No, this paragraph refers only to ATM/ANS.	
comment	340	comment by: <i>NATS</i>
	Requiring airspace users from non-EC States to meet common EASA rules will require ICAO regional agreement. As a major user of such airspace the Military have been excluded from the process.	
response	<i>Noted</i>	
	Based on the amended Basic Regulation the safety regulation of aircraft operated into, within and out of the EU and used by third country operators (including their flight crew and operations) belongs to the competence of the Agency. Applicable standards are indeed those of ICAO, and when not available, Annexes of the Basic Regulation.	
comment	405	comment by: <i>Royal Norwegian Ministry of Defence</i>
	<i>Comment on paragraph A IV 39, 40 and 41</i>	
	Uncontrolled airspace is of great importance for military training and operations. EASA is trying to expand its regulatory powers to this area as well. An expansion of regulations to uncontrolled airspace may hamper the military operational freedom, and need to be thoroughly co-ordinated with national military authorities.	
	State aircraft operations are exempted from the Chicago Convention, and the armed forces play several roles in European aviation (e.g aircraft operators, pilot licensing, aerodrome owner, Air Traffic Control, Weapons Control, airspace user and so on). Many of these roles are regulated by military legislation, and it is not correct to refer to " <i>all airspace users</i> " as subject to EASA regulations. On the contrary, with the increase in aviation the importance of civil/military co-ordination is even higher.	
response	<i>Noted</i>	
	See response to identical comment per paragraph 39.	
comment	629	comment by: <i>UK Department for Transport</i>
	The requirement for the provision of a service is driven by the rules set by ICAO. The UK Government would not wish to see additional requirements placed on a service provider, particularly where it is either not required, or runs contrary to ICAO airspace classification rules. Additionally, where there is a requirement to service non-commercial traffic, the opportunity to accept a lower standard of equipage for operational reasons must be acknowledged.	

response	<i>Noted</i>	
	The Agency takes notice of the comment, which does not however seem to be totally correct. Common requirements for services and harmonisation of airspace classes are assumed to be of Community competence through SES.	
comment	655	comment by: <i>BAA</i>
	Requiring airspace users to comply with possibly new requirements and carriage of equipment will require certainly regional and global ICAO agreement. I	
response	<i>Noted</i>	
	Community competence for aircraft equipment already exists in ATM through SES and to a certain extent in operations through the extended Basic Regulation.	
comment	756	comment by: <i>UK CAA & UK MoD</i>
	UK CAA & MoD Comments on explanatory material.	
	The mandatory provision of various levels of services as implied within this paragraph is an undeveloped concept and the process for deciding on mandating these services needs to be derived.	
	The NPA appears to imply that users of airspace have to use ATM and ANS. This is contrary to the intent and concept of Class F and G airspace and the associated ICAO rules.	
	The reference to obligations on all users of airspace reinforces the previous point about military use of airspace. Moreover, it is not clear in real terms why the proposed, rather complicated arrangements will be any safer than current arrangements.	
response	<i>Noted</i>	
	This paragraph is of an explanatory purpose. It refers to the implementation of the concept of operations with its different elements. How such a concept should be approved and whether that should contain safety regulated aspects is indeed the purpose of the question 1. It is agreed that the text might be seen as contradicting for instance with Class F and G airspace - that is not deliberate. It is not understood what is meant by complicated arrangements.	
comment	889 ❖	comment by: <i>EUROCONTROL</i>
	See identical comment 888 by EUROCONTROL.	
response	<i>Noted</i>	
	See response to comment 888 (same comment).	
comment	1364	comment by: <i>ECOGAS</i>
	It might be advantageous to offer beneficial routing alternatives to those users choosing to adopt new equipment standards as an incentive to equip. This would demonstrate the benefits operators could recoup from their investment (shorter routes, faster transitions etc), while also allowing those operators	

response	<p>unable or unwilling to upgrade a possible (albeit less attractive) routing option.</p> <p><i>Noted</i></p> <p>Comment is related to economic regulation and therefore not responded.</p>
comment	<p><i>1375</i> comment by: <i>Walter Gessky</i></p> <p>ad 41:</p> <p>Criteria have to be established for the definition of the terms "consistency with complexity" and "density" to be able to decide on harmonized provision of service. Furthermore these terms should be subject for considering safety objectives in airspace which again would require a clear definition.</p> <p>UAV (Unmanned Aerial Vehicle) operators should be seen as a part of Airspace Users.</p>
response	<p><i>Noted</i></p> <p>Paragraph 41 is for explanatory purpose. Those terms would be clarified at the level of implementing rules and other implementation means. It is agreed that UAV's (or UAS's) shall be seen as airspace users.</p>
comment	<p><i>1484</i> comment by: <i>Aeroclub of Switzerland</i></p> <p>Please accept the fact that there will always exist airspace users who will be exempt of the regulations hereby promoted, eg within uncontrolled airspace or with permissions granted by national authorities. We therefore cannot accept the proposed wording and ask for a deletion of the part <...all air space users...></p>
response	<p><i>Noted</i></p> <p>Comment is noted, although this text is only for explanatory purpose and the NPA will not be re-issued.</p>
comment	<p><i>1774</i> ❖ comment by: <i>EU Permanent Representation of Romania</i></p> <p>The NPA's 2007-16 content doesn't explain how the extension of EASA competences will cover the aspects of civil and military co-operation, applicable under SES Regulations, in relation with the safety regulation of the ANS providers for general air traffic. Today, the interface between civil and military service providers is a key element in ensuring the safe operations of aircraft. Additionally, there are military service providers for the civil air traffic, supervised by the National Supervisory Authorities.</p> <p>In the context of the proposal concerning the extension of EASA's competences, we appreciate as useful additional information, at least regarding the approach of civil-military co-operation, in order to observe these, also for further development and analysis of Essential Requirements drafts' proposals.</p>
response	<p><i>Noted</i></p> <p>See response to identical comment per paragraph 38.</p>

comment	<p>1775 ❖ comment by: <i>EU Permanent Representation of Romania</i></p> <p>This NPA proposes the extension of the EASA regulatory domain to air navigation services and air traffic management. The Regulation (EC) No 549/2004 defines the air navigation services as air traffic services; communication, navigation and surveillance services; meteorological services for air navigation; and aeronautical information services. ASM and ATFM, that are part of the ATM definition together with air traffic services, are considered as functions by the NPA. However, it is not clearly specified to which of these areas the extension of EASA's role will apply and the use of these terms ATM/ANS (with ATS as a common area) creates confusion for the future essential requirements.</p>
response	<p><i>Noted</i></p> <p>See response to identical comment per paragraph 38.</p>

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment p. 11-12
- Scope and applicability - Service providers - 42.

comment	<p>33 ❖ comment by: <i>MATTA</i></p> <p>Generally the power supply (PWR) for CNS/ATM should be mentioned in this document. The difference between external power (primary or commercial) and the power supply (secondary or backup) for CNS/ATM should be clarified and established in this document as well as its requirements.</p> <p>According to ICAO documents there is a clear difference between primary (commercial) power supplies as an external element and the secondary (backup, uninterruptible) power supply as internal element. This difference is not clear in the whole NPA document.</p> <p>The same or similar difference should be established in this document in the way that ANS/ATM/CNS service providers shall be fully responsible for backup power supply for CNS/ATM and partly for external (commercial) power supplies services.</p> <p>Explanatory definition and/or meaning of the phrase "Power supply (PWR) for CNS/ATM":</p> <p>"Power supply (PWR) equipment/system used for uninterruptible and reserve electrical supply of the CNS/ATM (e.g. on-line UPS's, standby power generator sets, batteries/batteries Station, power supply network, etc.) as a secondary power supply, provide required services for CNS/ATM fully in line with the principles of ICAO SARP's in Annexes 10 and 11 and also in line of ICAO Doc 9426-3 and Doc 9157-AN/901 Part 5 - Electrical Systems.</p> <p>Power supply equipments/systems provide a vital role in the operation of CNS/ATM systems and consequentially to safe and orderly operation of ANS. The electrical power supply sources/equipments/systems quality, availability, capacity and reliability are one of the basic technical prerequisites for high integrity and reliability of CNS/ATM systems.</p> <p>Proper design, installation and maintenance of an electrical Power Supply system for CNS/ATM systems/equipments are prerequisites for the safety,</p>
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regularity and efficiency of civil aviation. They are governed by international and national standards.

The Regulators/Designated Authorities, Service providers and ATM Services personnel (ATCO's, ATSEP's) has to understand the impact of the power supply services on the user and on the overall CNS/ATM system.

response *Noted*

The Agency fully concurs with the general notions of this comment emphasizing the power supply as an essential element in the ATM/ANS service provision infrastructure. Power supply is not however directly addressed in this NPA, which deals with issues affecting the level of basic law, i.e. the EASA Basic Regulation. This does not in any way exclude that power supply in ATM/ANS service provision becomes part of future rulemaking activities of EASA. The corresponding draft ER's related to 'Systems and Constituents' allow implementing rules to be adopted for such purposes.

comment

34

comment by: *MATTA*

The power supply (PWR) services for CNS/ATM should be mentioned in this paragraph.

The proposed text:

" ensure the safe and efficient movement of aircraft during all phases of flight and air navigation services (ANS), which include communication (COM), navigation (NAV), ~~and~~ surveillance (SUR) **and power supply (PWR)** services; meteorological services (MET) for air navigation and aeronautical information services (AIS). Essential requirements have therefore been established to allow verifying that such services are provided in a way that allows implementing the concept of operations."

response *Not accepted*

The vital nature of power supply in ATM/ANS service provision is fully recognised, but it is not regarded as a service subject to certification. The NPA is a consultation document and will not be re-issued.

comment

181

comment by: *FRAPORT AG*

Fraport understands that functions like Apron Management and Apron Control are not part of this basic regulation.

response *Noted*

This is a consultation document and does not contain final conclusions of the Agency issued to the Commission. Nevertheless, it is assumed that apron management is of a safety critical nature and will be covered by the Basic Regulation. This does not prejudice in any way, which organisation is responsible for its provision. Because of its safety criticality, at least the personnel responsible for its provision has to be appropriately trained. Whether the responsible organisation should be certified, remains an issue to be addressed in the forthcoming Agency Opinion.

comment

273

comment by: IFATSEA

Under para 42, IFATSEA agrees that *"the provision of ANS services shall be included in the scope of the extended Basic Regulation as regulated services"*. The EU legislation is defining ATM and ANS as safety critical for ensuring the safe and efficient movement of aircraft during all phases of flight.

In addressing only one specific profession (Air Traffic Controllers: ATCO) in para 50, 51, 52 and related references in section B, compliance with this first sentence cannot be guaranteed.

ESARR5 identifies ATSEP as part of the Aviation Safety Chain. The ATSEP roles have been already identified since the 90's by EUROCONTROL and recently by the E.U Single Sky Legislation and by ICAO.

Failing to address the ATSEP in this regulation will jeopardize dramatically aviation safety. Investigations of accidents such as Uberlingen, Guam, Milano, etc... prove it. The licensing of ATSEP has been a SAFETY remedial/preventive action following the Uberlingen accident. This is indeed a safety lesson to be disseminated by EASA legislation aiming at improving safety levels in the future highly sophisticated and automated environment like SESAR is proposing.

response

Noted

The Agency fully agrees with the fact that there are also other professions, than just air traffic controllers, involved in safety critical tasks closely related to the provision of ATM/ANS services. The role of the ATSEP's is a concrete example of that. The NPA already concludes that it is for the service providers to ensure that all personnel assigned to such safety critical functions are properly trained. This certainly will require proper implementing rules. To comply with these rules will be a prerequisite for the certification of the service provider itself. The Agency has therefore not anticipated dedicated implementing rules for other categories of personnel than air traffic controllers. The Agency however also confirmed that it would be open to such suggestions and it would take these views, as the ones expressed in this comment, duly into account when formulating its final opinion to be issued to the Commission.

comment

630

comment by: UK Department for Transport

EASA should maintain consistency with SES and ICAO definitions and the scope of SES regulations, in particular the scope and definition of ATFM and ASM.

response

Noted

The Agency agrees with this general intent. However, even the definitions referred to are not identical in SES and ICAO contexts.

comment

757

comment by: UK CAA & UK MoD

UK CAA & MoD Comments on explanatory material.

EASA should be mindful to maintain consistency with SES and ICAO definitions and the scope of SES regulations, in particular the scope and definition of ATFM and ASM.

response	<i>Noted</i> The Agency agrees with this general intent. However, even the definitions referred to are not identical in SES and ICAO contexts.
comment	889 ❖ comment by: <i>EUROCONTROL</i> See identical comment 888 by EUROCONTROL.
response	<i>Noted</i> See response to comment 888 (same comment).
comment	1777 comment by: <i>EU Permanent Representation of Romania</i> Although the syntagma "ATM services" is especially used in the EUROCONTROL terminology, within SES legislation, there is indirectly making distinction between air navigation services (ANS) and the air traffic management (ATM), which encompasses air traffic services (ATS - which are under the Annex 11, ICAO regulatory tasks) and the airspace management (ASM) and the air traffic flow management (ATFM) functions. For ASM and ATFM functions, according to Regulations (EC) No 550/2004 and No 2096/2005, there are no common requirements in respect of which it shall be imposed the development of a certification or of an on-going oversight processes. Despite all these, according to the Regulation (EC) No 1315/2007, the exercise by NSA of the supervisory function - which is considered to be a part of the regulatory function- it is extended over the organizations which fulfil the ASM and ATFM functions, nevertheless in respect of requirements established at national level, consistently with the duties assumed by the respective state at international level. However, under certain circumstances, it is possible that the supervision could be carried on also in respect of the essential requirements laid down at Community level under the Regulation (EC) No. 552/2004, in order to ensure the interoperability of the systems, constituents and associated procedures used in order to support ASM and ATFM functions. Consequently the contents of para 42-46 in section A of the document NPA 2007-16 bring no clear explanation to the current situation.
response	<i>Noted</i> The Agency agrees with this interpretation of the existing SES rules. Purpose of the paragraphs 42 - 46, including the following question, is to seek advice from stakeholders whether they think that also ASM and ATFM should be certified as safety regulated services. If so, it has to be identified which organisation should be imposed to demonstrate that it complies with defined safety objectives (= essential requirements).
comment	1780 comment by: <i>EU Permanent Representation of Romania</i> The provisions of the proposed essential requirements, Section 3.c. concerning the air traffic services, are generic and don't offer a comprehensive and clear framework to define several measures preventing potential occurrences which may appear in relation to the interfaces among ATM/ANS services. ICAO requirements are clearly superior to those proposed in the current essential

requirements.

As example, Section 3.c. doesn't make reference to ground to ground communications. Even if Section 3.c.4 makes reference to air-ground communications, the ground to ground communications are ignored, although these could also contribute to the creation of undesirable occurrences. The ICAO standards address these aspects in an effective manner and provide safety objectives more suitable in this regard. Furthermore, Section 3c makes no reference to other types of interfaces and coordination among the ANS/ATM services. Annex 11 ICAO addresses these interfaces by means of numerous SARPs, specifically requiring arrangements among ATC, AIS, MET and CNS units, and also between adjacent ATS units.

response *Noted*

Essential requirements are high-level safety objectives attached to the Basic Regulation. They are based on mitigation of unacceptable safety risks and should be detailed enough to allow judicial and political control of the legislation. On the other hand, they should be flexible enough to enable compliance by all regulated persons without any unnecessary burden. Essential requirements provide a legal mandate for the Commission implementing rules. Such rules specify the tasks of the regulated persons in order to comply with the safety objectives.

As regards ER 3.c, paragraph 65 states as follows: 'the current level of generality of these essential requirements does not allow service providers to exactly know what they have to do to comply. It will therefore be necessary to develop implementing rules adapted to each type of service'. It is agreed that 3.c.5 should be improved not to exclude any form of safety related communications.

It has been decided by the European legislators that a common safety regulatory system should provide a mechanism for common transposition of ICAO standards. Such transposition through Essential Requirements constitutes thereafter the basis for the necessary detailed implementing rules. This is the case in other areas of aviation safety. Nevertheless, the suggestion to exclude ATM/ANS from this scheme is noted.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Scope and applicability - Service providers - 43. p. 12

comment

341

comment by: *NATS*

SES package does cover ASM (flexible use of airspace) and there is already an associated Implementing Rule (IR). The systems are also captured by the system categories defined in the IOP regulation.

response

Noted

comment

631

comment by: *UK Department for Transport*

Due account should be taken of the DRAHG report in relation to ATFM and ASM regulation.

response	<i>Noted</i>
comment	<p>758 comment by: <i>UK CAA & UK MoD</i></p> <p>UK CAA & MoD Comments on explanatory material.</p> <p>Due account should be taken of the DRAHG report in relation to ATFM and ASM regulation. Furthermore, the relative scope of the Common Requirements and transposed ESARRs, such as the draft transposition of ESARR 6, needs to be rationalised and made consistent with EASA regulations, ideally by developing existing SES regulations through the SES 2 process.</p> <p>The ongoing DRAHG process is considering the nature of ATFM and ASM with regard to strategic, tactical, regulatory and service provision functions.</p> <p>This needs to be consistent with the arrangements made under SES, which recognises and allows for the military requirement.</p>
response	<i>Noted</i>
comment	<p>889 ❖ comment by: <i>EUROCONTROL</i></p> <p>See identical comment 888 by EUROCONTROL.</p>
response	<p><i>Noted</i></p> <p>See response to comment 888 (same comment).</p>
comment	<p>1777 ❖ comment by: <i>EU Permanent Representation of Romania</i></p> <p>Although the syntagma "ATM services" is especially used in the EUROCONTROL terminology, within SES legislation, there is indirectly making distinction between air navigation services (ANS) and the air traffic management (ATM), which encompasses air traffic services (ATS - which are under the Annex 11, ICAO regulatory tasks) and the airspace management (ASM) and the air traffic flow management (ATFM) functions.</p> <p>For ASM and ATFM functions, according to Regulations (EC) No 550/2004 and No 2096/2005, there are no common requirements in respect of which it shall be imposed the development of a certification or of an on-going oversight processes. Despite all these, according to the Regulation (EC) No 1315/2007, the exercise by NSA of the supervisory function - which is considered to be a part of the regulatory function- it is extended over the organizations which fulfil the ASM and ATFM functions, nevertheless in respect of requirements established at national level, consistently with the duties assumed by the respective state at international level.</p> <p>However, under certain circumstances, it is possible that the supervision could be carried on also in respect of the essential requirements laid down at Community level under the Regulation (EC) No. 552/2004, in order to ensure the interoperability of the systems, constituents and associated procedures used in order to support ASM and ATFM functions. Consequently the contents of para 42-46 in section A of the document NPA 2007-16 bring no clear</p>

	explanation to the current situation.
response	<i>Noted</i> See response to identical comment per paragraph 42.

comment	1780 ❖ <i>comment by: EU Permanent Representation of Romania</i> The provisions of the proposed essential requirements, Section 3.c. concerning the air traffic services, are generic and don't offer a comprehensive and clear framework to define several measures preventing potential occurrences which may appear in relation to the interfaces among ATM/ANS services. ICAO requirements are clearly superior to those proposed in the current essential requirements. As example, Section 3.c. doesn't make reference to ground to ground communications. Even if Section 3.c.4 makes reference to air-ground communications, the ground to ground communications are ignored, although these could also contribute to the creation of undesirable occurrences. The ICAO standards address these aspects in an effective manner and provide safety objectives more suitable in this regard. Furthermore, Section 3c makes no reference to other types of interfaces and coordination among the ANS/ATM services. Annex 11 ICAO addresses these interfaces by means of numerous SARPs, specifically requiring arrangements among ATC, AIS, MET and CNS units, and also between adjacent ATS units.
response	<i>Noted</i> See response to identical comment per paragraph 42.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Scope and applicability - Service providers - 44.	p. 12
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comment	407 <i>comment by: Royal Norwegian Ministry of Defence</i> <i>Comment on paragraph 44 and Question 3</i> In the " <i>Scope and applicability</i> " of the explanatory material, EASA discusses if Airspace Management is of a regulatory or service provision nature. As correctly stated, Airspace Management is about allocation of scarce resources, and most member states have already well functioning regulatory arrangements for covering these with respect to the national sovereignty over its airspace. Airspace Management, especially at strategic level, need to be dealt with by national civil and military authorities, and not by a service provider or a Pan-European agency like EASA.
response	<i>Noted</i>

comment	636 <i>comment by: UK Department for Transport</i> The UK Government considers that this paragraph confuses the definition of airspace management. Fundamentally, ASM includes the regulatory function of
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strategic allocation of airspace, which cannot be delegated to service providers, but the tactical day-to-day planning and allocation of airspace is a dynamic function discharged by service providers.

The setting and enforcement of airspace policy is the means by which States discharge their ICAO accountabilities.

response

Noted

This issue is addressed by Question 3. Paragraph 44 is explanatory text - not a definition.

comment

759

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

This paragraph blurs the meaning of airspace management. Fundamentally, ASM includes the regulatory function of strategic allocation of airspace, which cannot be delegated to service providers, but the tactical day-to-day planning and allocation of airspace is a dynamic function discharged by service providers.

The setting and enforcement of airspace policy is the means by which States discharge their ICAO accountabilities.

response

Noted

This issue is addressed by Question 3. Paragraph 44 is explanatory text - not a definition.

comment

889 ❖

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response

Noted

See response to comment 888 (same comment).

comment

1365

comment by: *ECOGAS*

ASM must be, as stated in this document, dynamic. This means that it must be able to take into account unscheduled, ad hoc, movement requests and consider their needs on an equal footing with those competing movements which are planned on a scheduled basis. It should be stated that the workload associated with each movement is not proportional to the size of the aircraft or the number of passengers on board.

response

Noted

Airspace access is linked to economic regulation or to the management of scarce resources – it is not for the safety regulator to decide.

comment

1485

comment by: *Aeroclub of Switzerland*

As described in the text of para. 44 above, ASM service providers are never to be regulators. To establish rules for the ASM is a government duty.

Governments have to decide about strategic rules for ASM as well as about airspace structures, consulting all stakeholders. By doing this, a clear differentiation between regulatory duties and operational necessities will be possible.

response *Noted*

comment *1777* ❖ comment by: *EU Permanent Representation of Romania*

Although the syntagma "ATM services" is especially used in the EUROCONTROL terminology, within SES legislation, there is indirectly making distinction between air navigation services (ANS) and the air traffic management (ATM), which encompasses air traffic services (ATS - which are under the Annex 11, ICAO regulatory tasks) and the airspace management (ASM) and the air traffic flow management (ATFM) functions.

For ASM and ATFM functions, according to Regulations (EC) No 550/2004 and No 2096/2005, there are no common requirements in respect of which it shall be imposed the development of a certification or of an on-going oversight processes. Despite all these, according to the Regulation (EC) No 1315/2007, the exercise by NSA of the supervisory function - which is considered to be a part of the regulatory function- it is extended over the organizations which fulfil the ASM and ATFM functions, nevertheless in respect of requirements established at national level, consistently with the duties assumed by the respective state at international level.

However, under certain circumstances, it is possible that the supervision could be carried on also in respect of the essential requirements laid down at Community level under the Regulation (EC) No. 552/2004, in order to ensure the interoperability of the systems, constituents and associated procedures used in order to support ASM and ATFM functions. Consequently the contents of para 42-46 in section A of the document NPA 2007-16 bring no clear explanation to the current situation.

response *Noted*

See response to identical comment per paragraph 42.

comment *1780* ❖ comment by: *EU Permanent Representation of Romania*

The provisions of the proposed essential requirements, Section 3.c. concerning the air traffic services, are generic and don't offer a comprehensive and clear framework to define several measures preventing potential occurrences which may appear in relation to the interfaces among ATM/ANS services. ICAO requirements are clearly superior to those proposed in the current essential requirements.

As example, Section 3.c. doesn't make reference to ground to ground communications. Even if Section 3.c.4 makes reference to air-ground communications, the ground to ground communications are ignored, although these could also contribute to the creation of undesirable occurrences. The ICAO standards address these aspects in an effective manner and provide safety objectives more suitable in this regard. Furthermore, Section 3c makes no reference to other types of interfaces and coordination among the ANS/ATM services. Annex 11 ICAO addresses these interfaces by means of numerous

SARPs, specifically requiring arrangements among ATC, AIS, MET and CNS units, and also between adjacent ATS units.

response *Noted*

See response to identical comment per paragraph 42.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Scope and applicability - Service providers - 45. p. 12

comment *182* comment by: *FRAPORT AG*

Fraport does not agree. ATFM is NOT a safety function, but a resource management function.
 For example A-CDM has an impact on ATFM in the pretactical and tactical phase, A-CDM provides information about the demand at a given airport. The airport will provide a planned an actual operational capacity and provide this information for the EATMN.

response *Noted*

comment *342* comment by: *NATS*

Disagree; the safety function is with the controller and not with flow management.

response *Noted*

comment *641* comment by: *UK Department for Transport*

The UK Government believes that ATFM is a service provision function and therefore can be allocated to regulated persons.

The evolution of SESAR might bring many new ideas, all of which should be properly evaluated for safety, efficiency etc. However, the prospect of anticipating the arrival of new, untested concepts by making regulatory provision for them in advance is ill advised and risky. In addition, any proposals for the regulation of ATFM will need to take into account the development of an SES Implementing Rule on the subject, which has recently been submitted to the Commission by Eurocontrol.

response *Noted*

comment *668* comment by: *Avinor*

Avinor does not agree. ATFM is not a safety function, but a resource management function.
 For example A-CDM has an impact on ATFM in the pretactical and tactical

	phase, A-CDM provides information about the demand at a given airport. The airport will provide a planned an actual operational capacity and provide this information for the EATMN.
response	<i>Noted</i>

comment	<p>760 comment by: UK CAA & UK MoD</p> <p>UK CAA & MoD Comments on explanatory material.</p> <p>The UK CAA believes that ATFM is a service provision function and therefore can be allocated to regulated persons.</p> <p>Increase of capacity is not a function of ATFM or of the CFMU and relates to economic regulation by NAA/NSAs, where they have these powers.</p> <p>The evolution of SESAR might bring many new ideas, all of which should be properly evaluated for safety, efficiency etc. However, the prospect of anticipating the arrival of new, untested concepts by making regulatory provision for them in advance is ill advised and risky. In addition, any proposals for the regulation of ATFM will need to take into account the development of an SES Implementing Rule on the subject, which has recently been submitted to the Commission by Eurocontrol.</p>
response	<i>Noted</i>

comment	<p>889 ❖ comment by: EUROCONTROL</p> <p>See identical comment 888 by EUROCONTROL.</p>
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response	<p><i>Noted</i></p> <p>See response to comment 888 (same comment).</p>
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comment	<p>969 comment by: ACI EUROPE</p> <p>ACI-Europe does not agree. ATFM is NOT a safety function, but a resource management function.</p> <p>For example A-CDM has an impact on ATFM in the pre-tactical and tactical phase, A-CDM provides information about the demand at a given airport. The airport will provide a planned and actual operational capacity and provide this information for the EATMN.</p>
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response	<i>Noted</i>
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comment	<p>1228 comment by: IFATCA</p> <p>This paragraph is not reflecting reality. ATFM functions do not normally forbid take off to users but does actually adapt the capacity with the demand. SESAR does foresee (so does the ICAO ATM concept) that the capacity and demand</p>
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are balanced. This is the same philosophy as currently applied by the CFMU, though in SESAR there might be more stringent rules applied and negotiated between the stakeholders involved. The fact to forbid take off to certain aircraft will be negotiated and this will then become a rule - which it is currently not (based on the first come first served principle).

response *Noted*

comment *1777* ❖ comment by: *EU Permanent Representation of Romania*

Although the syntagma "ATM services" is especially used in the EUROCONTROL terminology, within SES legislation, there is indirectly making distinction between air navigation services (ANS) and the air traffic management (ATM), which encompasses air traffic services (ATS - which are under the Annex 11, ICAO regulatory tasks) and the airspace management (ASM) and the air traffic flow management (ATFM) functions.

For ASM and ATFM functions, according to Regulations (EC) No 550/2004 and No 2096/2005, there are no common requirements in respect of which it shall be imposed the development of a certification or of an on-going oversight processes. Despite all these, according to the Regulation (EC) No 1315/2007, the exercise by NSA of the supervisory function - which is considered to be a part of the regulatory function- it is extended over the organizations which fulfil the ASM and ATFM functions, nevertheless in respect of requirements established at national level, consistently with the duties assumed by the respective state at international level.

However, under certain circumstances, it is possible that the supervision could be carried on also in respect of the essential requirements laid down at Community level under the Regulation (EC) No. 552/2004, in order to ensure the interoperability of the systems, constituents and associated procedures used in order to support ASM and ATFM functions. Consequently the contents of para 42-46 in section A of the document NPA 2007-16 bring no clear explanation to the current situation.

response *Noted*

See response to identical comment per paragraph 42.

comment *1780* ❖ comment by: *EU Permanent Representation of Romania*

The provisions of the proposed essential requirements, Section 3.c. concerning the air traffic services, are generic and don't offer a comprehensive and clear framework to define several measures preventing potential occurrences which may appear in relation to the interfaces among ATM/ANS services. ICAO requirements are clearly superior to those proposed in the current essential requirements.

As example, Section 3.c. doesn't make reference to ground to ground communications. Even if Section 3.c.4 makes reference to air-ground communications, the ground to ground communications are ignored, although these could also contribute to the creation of undesirable occurrences. The ICAO standards address these aspects in an effective manner and provide

safety objectives more suitable in this regard. Furthermore, Section 3c makes no reference to other types of interfaces and coordination among the ANS/ATM services. Annex 11 ICAO addresses these interfaces by means of numerous SARPs, specifically requiring arrangements among ATC, AIS, MET and CNS units, and also between adjacent ATS units.

response *Noted*

See response to identical comment per paragraph 42.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Scope and applicability - Service providers - 46.	p. 12
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comment 438 comment by: *Avinor*

Avinor considers ASM and ATFM as being of service provision nature, which may not include the definition of airspace structures.

response *Noted*

comment 642 comment by: *UK Department for Transport*

The content and context of paragraph 46 is inconsistent with the content and scope of paragraph 42.

response *Noted*

Such inconsistency should be clarified in more detail. Definitions should be consistent with SES, if not, it is not deliberate.

comment 761 comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

The content and context of paragraph 46 is inconsistent with and contradictory to with the content and scope of paragraph 42.

response *Noted*

Such inconsistency should be clarified in more detail. Definitions should be consistent with SES, if not, it is not deliberate.

comment 821 comment by: *Prospect*

The Agency is interested to know whether stakeholders consider that ASM and ATFM are of a regulatory or service provision nature.

ASM and ATFM should be functions actioned by the service provider. These functions can of course provide some safety risk and therefore should be regulated from a safety perspective using data to show that safety is not being compromised.

response	<i>Noted</i>
comment	889 ❖ comment by: <i>EUROCONTROL</i> See identical comment 888 by EUROCONTROL.
response	<i>Noted</i> See response to comment 888 (same comment).
comment	1094 comment by: <i>BFAL</i> We consider ASM and ATFM to be of a regulatory nature.
response	<i>Noted</i>
comment	1095 comment by: <i>BFAL</i> We consider ASM and ATFM to be of a regulatory nature.
response	<i>Noted</i>
comment	1777 ❖ comment by: <i>EU Permanent Representation of Romania</i> Although the syntagma "ATM services" is especially used in the EUROCONTROL terminology, within SES legislation, there is indirectly making distinction between air navigation services (ANS) and the air traffic management (ATM), which encompasses air traffic services (ATS - which are under the Annex 11, ICAO regulatory tasks) and the airspace management (ASM) and the air traffic flow management (ATFM) functions. For ASM and ATFM functions, according to Regulations (EC) No 550/2004 and No 2096/2005, there are no common requirements in respect of which it shall be imposed the development of a certification or of an on-going oversight processes. Despite all these, according to the Regulation (EC) No 1315/2007, the exercise by NSA of the supervisory function - which is considered to be a part of the regulatory function- it is extended over the organizations which fulfil the ASM and ATFM functions, nevertheless in respect of requirements established at national level, consistently with the duties assumed by the respective state at international level. However, under certain circumstances, it is possible that the supervision could be carried on also in respect of the essential requirements laid down at Community level under the Regulation (EC) No. 552/2004, in order to ensure the interoperability of the systems, constituents and associated procedures used in order to support ASM and ATFM functions. Consequently the contents of para 42-46 in section A of the document NPA 2007-16 bring no clear explanation to the current situation.
response	<i>Noted</i>

See response to identical comment per paragraph 42.

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Scope and applicability - Service providers - QUESTION 3**

p. 12

See 'Inventory of Answers' in Appendix.

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Scope and applicability - Systems and constituents - 47.**

p. 13

comment

184

comment by: *FRAPORT AG*

Fraport understands that this context does not cover "procedures". Under EUR 552/2004 systems and procedures are considered. The competence for airport systems should be dealt within the NPA06/2006 process. Fraport will assist in clarifying what systems and constituents will be affected.

According to Article 5 of the IOP Regulation, the manufacturer must provide a EC-declaration of conformity or suitability for the use for a constituents. Article 6 of the IOP Regulation requires, that Systems need a EC declaration of verification of systems by the relevant ANSP before the system is put into service.

response

Noted

The Agency takes note of this comment. It can not be answered in detail yet, since that is closely related to the NPA questions 4, 5 and 10. Answers to question 4 seem to indicate that stakeholders want to keep the definitions as given in SES regulations.

comment

343

comment by: *NATS*

Requirements on systems should be restricted to specifying interface requirements. These should not be specified below the level of the essential requirements or they will curtail innovation and development of new systems.

response

Not accepted

The safety aspect is not only related to interfaces and the necessity of specific implementing rules seems to be evident.

comment

650

comment by: *UK Department for Transport*

The definition of systems and constituents should be consistent with the SES Regulations and in particular the Interoperability Regulation. The DRAHG report refers to a need to ensure rationalised and consistent definitions exist across all related regulations with a preference given to ICAO definitions.

response

Noted

It is agreed that consistent definitions should be developed and used. Answers to the question 4 seem to indicate that stakeholders want to keep the

definitions as given in SES regulations.

comment

763

comment by: UK CAA & UK MoD

UK CAA & MoD Comments on explanatory material.

The definition of systems and constituents should be consistent with the SES Regulations and in particular the Interoperability Regulation. The DRAHG report refers to a need to ensure rationalised and consistent definitions exist across all related regulations with a preference given to ICAO definitions.

response

Noted

It is agreed that consistent definitions should be developed and used. Answers to the question 4 seem to indicate that stakeholders want to keep the definitions as given in SES regulations.

comment

889 ❖

comment by: EUROCONTROL

See identical comment 888 by EUROCONTROL.

response

Noted

See response to comment 888 (same comment).

comment

1058

comment by: ATSEC MALTA

The technical personnel, the ATSEPs (Air Traffic Safety Electronic Personnel), fundamental role of importance for the safe and efficient air traffic system is more pronounced than ever before.

We cannot go on talking about Pan European Single Sky without seriously regulating the ATSEP. In SESAR the need is clearly being mentioned and recognised. Since Air Traffic Management is moving towards more and more automation, the technical aspect must be dealt with, not with suggestions but with binding regulations.

The way forward is to enforce a basic common minimum licence throughout the European ANSPs. Having ATSEPS better trained and aware of their responsibilities is a plus towards safer ground, more so, considering the amount of money and effort being put into safety! Clearly, the ATSEP role must be separately well defined and regulated in this document and not left up to dubious interpretation by the individual ANSPs!

response

Noted

The Agency fully agrees with the fact that the role of the ATSEP's is a safety critical task closely involved in the provision of ATM/ANS services. The NPA already concludes that it is for the service providers to ensure that all personnel assigned to such safety critical functions is properly trained. This certainly will require proper implementing rules. Such rules are directly binding laws and will form part of the conditions for the certification of the service

provider itself. They can not be regarded as 'left up to dubious interpretation' as the comment seems to suggest.

The Agency also confirmed that it would be open to suggestions and it would take these views, as the ones expressed in this comment, duly into account when formulating its final opinion to be issued to the Commission. At the moment the suggestion to make ATSEP a regulated profession subject to dedicated licence is not broadly supported.

comment *1367* comment by: *ECOGAS*

Careful thought must be given to making any proposed wording purely safety-orientated. The required safety statistics and a range of possible technologies for compliance should be all that is needed in order to guarantee safety to the appropriate level, at the same time as encouraging competition an innovation.

response *Noted*

The Agency agrees with this intent. Safety regulation shall not prevent innovation and competition, where not justifiable.

comment *1781* comment by: *EU Permanent Representation of Romania*

As regards the systems and constituents, these should be addressed explicitly together with associated procedures, even under the circumstances of the extension of EASA competences.

response *Noted*

It is acknowledged that in the SES framework operating procedures are also covered by the EATMN and the comment is noted. In the draft essential requirements operating procedures are covered by the objectives imposed on service providers. Common regulatory processes is indeed an important aim here, but can not yet be defined in more detail. Moreover, this issue might have to be treated differently in cases, where certain responsibilities are alleviated to design, production and maintenance organisations.

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Scope and applicability - Systems and constituents - 48.**

p. 13

comment *33 ❖* comment by: *MATTA*

Generally the power supply (PWR) for CNS/ATM should be mentioned in this document. The difference between external power (primary or commercial) and the power supply (secondary or backup) for CNS/ATM should be clarified and established in this document as well as its requirements.

According to ICAO documents there is a clear difference between primary (commercial) power supplies as an external element and the secondary (backup, uninterruptible) power supply as internal element. This difference is not clear in the whole NPA document.

The same or similar difference should be established in this document in the

way that ANS/ATM/CNS service providers shall be fully responsible for backup power supply for CNS/ATM and partly for external (commercial) power supplies services.

Explanatory definition and/or meaning of the phrase "Power supply (PWR) for CNS/ATM":

"Power supply (PWR) equipment/system used for uninterruptible and reserve electrical supply of the CNS/ATM (e.g. on-line UPS's, standby power generator sets, batteries/batteries Station, power supply network, etc.) as a secondary power supply, provide required services for CNS/ATM fully in line with the principles of ICAO SARP's in Annexes 10 and 11 and also in line of ICAO Doc 9426-3 and Doc 9157-AN/901 Part 5 - Electrical Systems.

Power supply equipments/systems provide a vital role in the operation of CNS/ATM systems and consequentially to safe and orderly operation of ANS. The electrical power supply sources/equipments/systems quality, availability, capacity and reliability are one of the basic technical prerequisites for high integrity and reliability of CNS/ATM systems.

Proper design, installation and maintenance of an electrical Power Supply system for CNS/ATM systems/equipments are prerequisites for the safety, regularity and efficiency of civil aviation. They are governed by international and national standards.

The Regulators/Designated Authorities, Service providers and ATM Services personnel (ATCO's, ATSEP's) has to understand the impact of the power supply services on the user and on the overall CNS/ATM system.

response *Noted*

See response to identical comment per paragraph 42.

comment *231*

comment by: *MATTA*

Addition of the "Power supply system and procedures for CNS/ATM" and its function as a critical nature for safety will appropriately extend the existing definition of the system and components used in context of the EATMN.

Power supply (PWR) for CNS/ATM need to be regulated/included in extended Basic Regulation.

response *Noted*

Comment is noted and will be taken into account when preparing the definitions to be used in the extended Basic Regulation.

comment *344*

comment by: *NATS*

It would be beneficial to clarify what systems and constituents need to be regulated in the context of the extended Basic Regulation.

response *Noted*

NPA question 4 seeks advice for that. This will be concluded in the forthcoming Opinion.

comment	<p>656 comment by: <i>UK Department for Transport</i></p> <p>The UK Government agrees that not all systems, constituents and associated procedures comprising the EATMN are safety-critical. The safety criticality of each system or constituent needs to be established by each ANSP in accordance with each particular operation and its environment. The scope of systems and constituents to be regulated can be defined in broad terms such as in the SES Interoperability Regulation.</p>
response	<p><i>Noted</i></p> <p>Comment is noted, but the Agency believes that also implementing rules will be needed to clarify what the regulated persons shall do in order to comply with essential requirements. Safety criticality can not be left just for the service provider to interpret.</p>
comment	<p>764 comment by: <i>UK CAA & UK MoD</i></p> <p>UK CAA & MoD Comments on explanatory material.</p> <p>The UK CAA agrees that not all systems, constituents and associated procedures comprising the EATMN are safety-critical. The safety criticality of each system or constituent needs to be established by each ANSP in accordance with each particular operation and its environment. The scope of systems and constituents to be regulated can be defined in broad terms such as in the SES Interoperability Regulation.</p> <p>All ATM related systems under the ANSP's responsibility should be included in the Basic Regulation and the degree of regulation aligned with the ANSP assessed safety criticality of each system. See answer to Q 4</p>
response	<p><i>Noted</i></p> <p>Comment is noted, but the Agency believes that also implementing rules will be needed to clarify what the regulated persons shall do in order to comply with essential requirements. Safety criticality can not be left just for the service provider to interpret.</p>
comment	<p>889 ❖ comment by: <i>EUROCONTROL</i></p> <p>See identical comment 888 by EUROCONTROL.</p>
response	<p><i>Noted</i></p> <p>See response to comment 888 (same comment).</p>
comment	<p>1368 comment by: <i>ECOGAS</i></p> <p>Each sub-system within EATMN should be assessed based on its criticality to the safety of the overall system, and proportional levels of regulation introduced to suit. Critical systems with no back-up should be assigned greater level of regulation than non-critical systems with secondary back-up in</p>

place. It should be demonstrable at each step that EASA is assigning resources to areas with the greatest genuine need, where the greatest impact to real-world safety is made as a result of the new regulation.

response *Noted*

The Agency agrees with the general intent of the comment. Safety criticality and proportionality of measures imposed are criteria, which shall be taken into account, when developing implementing rules and non-binding standards.

comment *1781* ❖ comment by: *EU Permanent Representation of Romania*

As regards the systems and constituents, these should be addressed explicitly together with associated procedures, even under the circumstances of the extension of EASA competences.

response *Noted*

It is naturally acknowledged that in the SES framework operating procedures are also covered by the EATMN and the comment is noted. In the draft essential requirements operating procedures are covered in the objectives imposed on service providers. Common regulatory processes is indeed an important aim here, but can not yet be defined in more detail. Moreover, this issue might have to be treated differently in the cases, where certain responsibilities are alleviated to design, production and maintenance organisations.

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Scope and applicability - Systems and constituents - 49.**

p. 13

comment *90* comment by: *Airbus*

We support the statement in paragraph 49 of the explanatory note, that "care needs to be taken when developing implementing rules that common regulatory processes are implemented to verify compliance so as to reduce the administrative burden on regulated persons."

We expect that future implementing rules will contain provisions in the spirit of Article 7.2 of Commission Regulation (EC) No 1265/2007 of 26 October 2007 laying down requirements on air-ground voice channel spacing for the single European sky, quoted below:

"2. Certification airworthiness processes complying with Regulation (EC) No 1592/2002 of the European Parliament and of the Council (1), when applied to airborne constituents of the systems referred to in Article 1(2), shall be considered as acceptable procedures for the conformity assessment of these constituents if they include the demonstration of compliance with the interoperability, performance and safety requirements of this Regulation."

In addition, it is necessary that the implementing rules contain the appropriate "grandfather" provisions for maintaining the approval, without additional

showing, of previously approved/installed airborne constituents.

There is also a need to take care of airborne constituents operated by non-European users of European airspace, without imposing an excessive administrative burden.

response

Noted

The Agency can fully agree with the intent of the comment. Regulatory measures must be limited to the intended effect and any unnecessary duplication or overlaps must be avoided.

Any requirement for grandfathering provisions would be addressed at the level of specific implementing rules or through the flexibility provisions of the Basic Regulation.

Issues related to requirements for non-European users operating in European airspace are already covered by the extended EASA Basic Regulation and therefore not specifically addressed by this consultation. However, the Agency fully agrees that the same principles of harmonised and efficient regulatory mechanisms shall be applied.

comment

185

comment by: *FRAPORT AG*

In accordance with what is stated in No. 22 this differentiation between aerodrome equipment and other systems should be regulated by the National Authority. The National Authority is the only entity which can take into account to the various types of Airport Company Structures.

It must be clearly defined, which aerodrome equipment is meant and to which services (Airport or ATM/CNS Service) this equipment is related too.

response

Noted

Implementing rules will be developed on a horizontal basis and must not limit the rights of organisations to provide any services and should ensure that they are approved (certified) through a single process. CNS services could naturally be provided by the aerodrome operator or the ANSP.

comment

658

comment by: *UK Department for Transport*

The UK Government notes the reference to aerodrome equipment and suggests that the boundary between aerodrome and ATM/ANS equipment regulations needs to be clarified.

response

Noted

Essential requirements related to aerodromes and ATM/ANS services will both be annexed to the Basic Regulation. Service providers have to comply with all relevant essential requirements based on the actual services they provide and will be approved to do so through one single approval process.

comment

765

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

The UK CAA notes the reference to aerodrome equipment and the boundary between aerodrome and ATM/ANS equipment regulations needs to be clarified. In essence the UK CAA believes no such boundary should exist, when taking into account holistic regulatory oversight. The physical or geographic location of ground navigation aids should not be a determinant in the application of oversight, but rather their functional use. It is noted that EASA refers to fitness for purpose for avionics. However, the fitness for purpose of ATM equipment is highly dependent on its specific use and its environmental location. This is why type approval for ATM equipment has never been pursued. Any such concept therefore needs careful consideration as regards generic and site dependent approval.

response

Noted

Essential requirements related to aerodromes and ATM/ANS services will both be annexed to the Basic Regulation. Service providers have to comply with all relevant essential requirements based on the actual services they provide and will be approved to do so through one single approval process.

The latter part of the comment is noted and will indeed be taken into account when considering conclusions in relation to questions 4, 5 and 10.

comment

822

comment by: *Prospect*

The Agency is interested to know whether stakeholders consider that the definition of systems and components used in the context of the European Air Traffic Management Network appropriately specifies those, which need to be subject to the extended Basic Regulation?

The definition of systems and components used in the context of the EATMN do seem to provide adequate descriptions of what should be subjected to extend Basic Regulation.

response

Noted

comment

889 ❖

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response

Noted

See response to comment 888 (same comment).

comment

1781 ❖

comment by: *EU Permanent Representation of Romania*

As regards the systems and constituents, these should be addressed explicitly together with associated procedures, even under the circumstances of the extension of EASA competences.

response

Noted

It is naturally acknowledged that in the SES framework operating procedures are also covered by the EATMN and the comment is noted. In the draft

essential requirements operating procedures are covered in the objectives imposed on service providers. Common regulatory processes is indeed an important aim here, but can not yet be defined in more detail. Moreover, this issue might have to be treated differently in the cases, where certain responsibilities are alleviated to design, production and maintenance organisations.

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Scope and applicability - Systems and constituents - QUESTION 4**

p. 13

See 'Inventory of Answers' in Appendix.

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Scope and applicability - Personnel - 50.**

p. 13

comment	235	comment by: <i>ATSEP Belgium</i>
	ATSEP were also recognised by the EC as being subject to common requirements.	
response	<i>Noted</i>	
	This subject is addressed also in SES at the level of implementing rules (Commission Regulation 2096/2005). It does not however provide for common rules. The purpose here is to impose a binding obligation to the service provider (as one condition for their certification) to ensure the appropriate qualification of personnel in safety critical tasks, such as ATSEP. This requirement could also be complemented by common rules and standards.	
comment	274	comment by: <i>IFATSEA</i>
	ATSEP were also recognised by the EC as being subject to common requirements.	
response	<i>Noted</i>	
	This subject is addressed also in SES at the level of implementing rules (Commission Regulation 2096/2005). It does not however provide for common rules. The purpose here is to impose a binding obligation to the service provider (as one condition for their certification) to ensure the appropriate qualification of personnel in safety critical tasks, such as ATSEP. This requirement could also be complemented by common rules and standards.	
comment	889 ❖	comment by: <i>EUROCONTROL</i>
	See identical comment 888 by EUROCONTROL.	
response	<i>Noted</i>	
	See response to comment 888 (same comment).	

comment	<p><i>1143</i> comment by: <i>Silvio ZAPPI</i></p> <p>ATSEP are recognised by EC as being subject to Common Requirements</p>
response	<p><i>Noted</i></p> <p>This subject is addressed also in SES at the level of implementing rules (Commission Regulation 2096/2005). It does not however provide for common rules. The purpose here is to impose a binding obligation to the service provider (as one condition for their certification) to ensure the appropriate qualification of personnel in safety critical tasks, such as ATSEP. This requirement could also be complemented by common rules and standards.</p>
comment	<p><i>1782</i> comment by: <i>EU Permanent Representation of Romania</i></p> <p>These essential requirements provide requirements only for the competence of air traffic controllers. If we make however reference to ANS personnel, there are also other categories of personnel for which ICAO or EUROCONTROL established safety requirements. ESARR 5 makes reference to air traffic controllers, engineers, technical personnel and other categories of ATM personnel having safety relevant tasks. For all these categories of ATM personnel there were established competence requirements. Even for meteorological personnel, ICAO established standards in Annex 3, regarding minimum requirements for the training of this category of personnel.</p> <p>The essential requirements are very detailed concerning the air traffic controllers; the details could be developed within the Implementing Rules. The human factor is very important.</p> <p>Please note that both the Regulation (EC) No 2096/2005 and the ESARR 5, have in their contents provisions regarding the competence of the technical and engineering staff having relevant tasks for ANS/ATM safety. Additionally, the Regulation (EC) No. 1315/2007 also contains provisions that bind the EU member states to establish criteria regarding the competence of the personnel involved in activities related to the exercise of the supervision function for ANS/ATM provision. As far as the supervision function is a component part of the regulatory function, in order to avoid the application of a discriminating treatment, there would be also necessary criteria regarding the competence of the personnel involved in exercising the rule-making function on safety in ANS/ATM area.</p>
response	<p><i>Noted</i></p> <p>Air traffic controller is regarded as a regulated profession, meaning that their rights to exercise this profession have been limited by a licensing scheme. Such limitations of individual rights have to be established at the level of basic law. Other personnel acting in safety critical tasks were assumed to be regulated through obligations on their employer. This does not have to be detailed in the basic law, but will be done at the level of implementing rules and standards. The subject of engineering staff is indeed addressed in SES, but also at the level of implementing rules (Commission Regulation 2096/2005). It does not provide for common rules. The purpose here is to impose a binding obligation to the service provider to ensure the appropriate qualification of personnel in safety critical tasks, such as ATSEP. This is one condition for their certification. This requirement could also be complemented by common rules and standards.</p>

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Scope and applicability - Personnel - 51.	p. 13-14
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comment	<p><i>187</i> comment by: <i>FRAPORT AG</i></p> <p>What is meant by "other personnel involved in ATM/CNS Service provision" is not clearly defined? Fraport does not support the idea that airport staff should be considered as such.</p>
response	<p><i>Noted</i></p> <p>The Agency assumes that all personnel involved in safety critical tasks, whether in ATM/ANS service provision or at aerodromes, shall be properly trained. Such an obligation will be imposed also on aerodrome operators, but is not dealt with in this task (BR.003) of the Agency.</p>
comment	<p><i>889</i> ❖ comment by: <i>EUROCONTROL</i></p> <p>See identical comment 888 by EUROCONTROL.</p>
response	<p><i>Noted</i></p> <p>See response to comment 888 (same comment).</p>
comment	<p><i>1782</i> ❖ comment by: <i>EU Permanent Representation of Romania</i></p> <p>These essential requirements provide requirements only for the competence of air traffic controllers. If we make however reference to ANS personnel, there are also other categories of personnel for which ICAO or EUROCONTROL established safety requirements. ESARR 5 makes reference to air traffic controllers, engineers, technical personnel and other categories of ATM personnel having safety relevant tasks. For all these categories of ATM personnel there were established competence requirements. Even for meteorological personnel, ICAO established standards in Annex 3, regarding minimum requirements for the training of this category of personnel.</p> <p>The essential requirements are very detailed concerning the air traffic controllers; the details could be developed within the Implementing Rules. The human factor is very important.</p> <p>Please note that both the Regulation (EC) No 2096/2005 and the ESARR 5, have in their contents provisions regarding the competence of the technical and engineering staff having relevant tasks for ANS/ATM safety. Additionally, the Regulation (EC) No. 1315/2007 also contains provisions that bind the EU member states to establish criteria regarding the competence of the personnel involved in activities related to the exercise of the supervision function for ANS/ATM provision. As far as the supervision function is a component part of the regulatory function, in order to avoid the application of a discriminating treatment, there would be also necessary criteria regarding the competence of the personnel involved in exercising the rule-making function on safety in ANS/ATM area.</p>
response	<p><i>Noted</i></p> <p>See response to identical comment per paragraph 50.</p>

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Scope and applicability - Personnel - 52.**

p. 14

comment	66	comment by: <i>KLM</i>
	52. Safety requirements for ATC should not be more stringent than ICAO unless they are driven by a business case to create more capacity in European airspace and/or unless there are justified safety reasons (based on a comprehensive RIA) for imposing such requirements. Cost involved have to remain acceptable	
response	<i>Noted</i>	
	All EASA implementing rules are strongly based on ICAO requirements, deviate from them where clearly justified and on the basis of an impact assessment.	
comment	119	comment by: <i>Giulio Martucci</i>
response	<i>Noted</i>	
	no comment	
comment	258	comment by: <i>IFSA</i>
	IFSA is for training requirements for all safety critical tasks in the ATM and ANS fields. This is in line with ICAO Doc. 7192 and with ESARR 5, transposed into EU legislation by Art. 1 of regulation 2096/2005. Ignoring training requirements for technical staff and other ATM professions would then mean a regression from present safety level.	
response	<i>Noted</i>	
	Air traffic controller is regarded as a regulated profession, meaning that their rights to exercise this profession have been limited by a licensing scheme. Such limitations of individual rights have to be established at the level of basic law. Other personnel acting in safety critical tasks were assumed to be regulated through obligations on their employer. This does not have to be detailed in the basic law, but will be done at the level of implementing rules and standards. The subject of engineering staff is indeed addressed in SES, but also at the level of implementing rules (Commission Regulation 2096/2005). It does not provide for common rules. The purpose here is to impose a binding obligation to the service provider (as one condition for their certification) to ensure the appropriate qualification of personnel in safety critical tasks, such as ATSEP. This requirement could also be complemented by common rules and standards.	
comment	275	comment by: <i>IFATSEA</i>
	Para 52 is <u>wrong</u> : ATSEPs are regulated today and they must be in the scope of this regulation. Automation is already providing direct services to airspace users; namely COM, NAV and SUR (ADS-B) signals are directly used by the flight crews. Work done by SESAR confirms that ATSEP contribute to aviation safety and the future delegates them more safety related responsibilities.	

This paragraph implies that only air traffic controllers should comply with essential safety requirements and are therefore subject to a license. Other safety professions are de facto classified as being of a safety sensitive nature, whatever this means. In view of the increasing delegation of ATC responsibilities to modern technical systems, this statement is obsolete and does not correspond any longer to the day-to-day reality of modern air navigation service provision.

IFATSEA also wants to underline that the ICAO Assembly at its 36th session, held in September 2007 in Montreal, endorsed "the concept of establishing licensing requirements for ATSEP".

While debating this issue, all EU Contracting States Representatives who spoke at the meeting were supporting of a license for ATSEP. Therefore, IFATSEA strongly recommends that ATSEP licensing requirements are included in European legislation, thus acknowledging not only the EU consensus but the international consensus reached at ICAO.

As stated in our comment on para 5 of page 40, the essential requirements must be expanded to include ATSEPs.

IFATSEA is in favour of training requirements for all safety critical tasks in the ATM and ANS fields. This is in line with ICAO doc.7192 and with ESARR 5, transposed into EU legislation by Art. 1 of regulation 2096/2005. Ignoring training requirements for technical staff and other ATM professions would mean a regression from present safety level.

response *Noted*

Air traffic controller is regarded as a regulated profession, meaning that their rights to exercise this profession have been limited by a licensing scheme. Such limitations of individual rights have to be established at the level of basic law. Other personnel acting in safety critical tasks were assumed to be regulated through obligations on their employer. This does not have to be detailed in the basic law, but will be done at the level of implementing rules and standards. The subject of engineering staff is indeed addressed in SES, but also at the level of implementing rules (Commission Regulation 2096/2005). It does not provide for common rules. The purpose here is to impose a binding obligation to the service provider (as one condition for their certification) to ensure the appropriate qualification of personnel in safety critical tasks, such as ATSEP. This requirement could also be complemented by common rules and standards.

comment 345

comment by: *NATS*

NATS supports the view of the Agency that only air traffic controllers should be covered by specific requirements.

response *Noted*

comment 406

comment by: *AEA*

Safety requirements for ATC should not be more stringent than ICAO unless they are driven by a business case to create more capacity in European

airspace and/or unless there are justified safety reasons (based on a comprehensive RIA) for imposing such requirements. Cost involved have to remain acceptable.

response

Noted

All EASA implementing rules are strongly based on ICAO requirements, deviate from them where clearly justified and on the basis of an impact assessment.

comment

450

comment by: *MATTA*

The Agency should also indentify the ATSEP (Air Traffic Safety Electronics Personnel) as a persons required to comply with essential requirements.

The ATSEP personnel are already recognized by the number of States basic legislative as well as by ICAO and Eurocontrol.

Existing examples:

a. The following States have already legislative requirements for ATSEP license: Romania, Croatia, Germany, France, Switzerland, Austria, Greece, R.Macedonia (since 1979), Japan...

b. The following two statements can be found in ICAO Doc 7192-AN/857 Part E-2 Training Manual Air Traffic Safety Electronic Personnel:

"The ICAO recognized terminology for personnel involved in maintenance and installation of CNS/ATM system is Air Traffic Safety Electronics Personnel (ATSEP)."

"The requirements with respect to age, knowledge, experience, skill, and attitude for the ATSEP competency should be in accordance with State Regulatory requirements. However, Chapter 4 of ICAO Annex 1 Personnel Licensing contains standards for other personnel. States should use these references in making their requirements."

c. The following statements can be found in Eurocontrol document: Explanatory Material on ESARR 5 Requirements for Engineers and Technical Personnel Undertaking Operational Safety-Related Tasks:"It should be noted that, for engineers and technical personnel undertaking operational safety-related tasks, the provisions of ESARR 5 do not mention a "licence" or a "certificate of competence" as a final product which will justify the competence of such personnel. This has been left to the discretion of States (Designated Authority and Operating Organisations) to decide what documents will describe the competence process for engineers and technical personnel. The final product of the competence process for engineers and technical personnel undertaking safety-related tasks shall not be related to a document, but to a list of phases that indicate such personnel have been found competent. For consistency and continuity of the licensing process, States could decide to introduce a licence or certificate of competence detailing the same level of information as for ATCOs."

response

Noted

The Agency fully agrees with the fact that there are also other

professions, than just air traffic controllers, involved in safety critical tasks closely related to the provision of ATM/ANS services. The role of the ATSEP is an concrete example of that. The NPA already concludes that it is for the service providers to ensure that all personnel assigned to such safety critical functions must be properly trained. This certainly will require proper implementing rules. Such rules however will form part of the conditions for the certification of the service provider itself. The Agency has therefore not anticipated dedicated implementing rules for other categories of personnel than air traffic controllers. The Agency however also confirmed that it would be open to such suggestions and it would take these views, as the ones expressed in this comment, duly into account when formulating its final Opinion to be issued to the Commission.

As stated in the NPA, the forthcoming Commission proposals shall provide that EASA and SES legal frameworks are well adapted at the level of basic laws. That would then allow the Basic Regulation to be implemented based on already existing regulatory material. As already stated, implementation of the system will be based on existing SES Regulations and implementing rules as well as on ESARR's, as far as appropriate.

The Agency fully agrees with the comment as regards the importance of the ATSEP expertise.

comment 666 comment by: UK Department for Transport

Due account needs to be taken of the current extensive legislation and Directives related to personnel licensing and competence. The UK Government questions whether there is a need for further rulemaking requirements in this area.

response *Noted*

The purpose here is to impose a binding obligation to the service provider (as one condition for their certification) to ensure the appropriate qualification of personnel in safety critical tasks. This requirement could also be complemented by common rules and standards.

comment 677 comment by: BAA

BAA agrees that only ATCO's should be covered by the requirements

response *Noted*

comment 767 comment by: UK CAA & UK MoD

Question 4. The Agency is interested to know whether stakeholders consider that the definition of systems and components used in the context of the European Air Traffic Management Network appropriately specifies those, which need to be subject to the extended Basic Regulation?

Answer

All systems that contribute to the provision of air traffic management are in some sense safety related. Whether they should be regulated or not depends on the extent of the safety criticality, as determined by the risk assessment and mitigation process used in a safety management system. Consequently, the safety of all systems used by the service provider is the responsibility of that provider and is established by use of a systematic approach to the management of safety. It is not a property of the system itself.

response *Noted*

The purpose here is to impose a binding obligation to the service provider (as one condition for their certification) to ensure the appropriate qualification of personnel in safety critical tasks. This requirement could also be complemented by common rules and standards.

comment

889 ❖

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response

Noted

See response to comment 888 (same comment).

comment

1059

comment by: *ATSEC MALTA*

Paragraph 52 considers only the ATCOs and completely leaves out the essential requirements for the ATSEPs who are an important link in the Safety chain of ATC. This is in stark contrast to ESARR 5, which is a binding document for all European countries. This paragraph needs to be modified to address this important omission.

response

Noted

Air traffic controller is regarded as a regulated profession, meaning that their rights to exercise this profession have been limited by a licensing scheme. Such limitations of individual rights have to be established at the level of basic law. Other personnel acting in safety critical tasks were assumed to be regulated through obligations on their employer. This does not have to be detailed in the basic law, but will be done at the level of implementing rules and standards. The subject of engineering staff is indeed addressed in SES, but also at the level of implementing rules (Commission Regulation 2096/2005). It does not provide for common rules. The purpose here is to impose a binding obligation to the service provider (as one condition for their certification) to ensure the appropriate qualification of personnel in safety critical tasks, such as ATSEP. This requirement could also be complemented by common rules and standards.

comment

1145

comment by: *Silvio ZAPPI*

ATSEPs are regulated today and they must be in the scope of this regulation. Automation is already providing direct services to airspace users; namely COM, NAV and SUR (ADS-B) signals are directly used by the flight crews. Work done by SESAR confirms that ATSEP contribute to aviation safety and the future

delegates them more safety related responsibilities.

This paragraph implies that only air traffic controllers should comply with essential safety requirements and are therefore subject to a license. Other safety professions are de facto classified as being of a safety sensitive nature, whatever this means. In view of the increasing delegation of ATC responsibilities to modern technical systems, this statement is obsolete and does not correspond any longer to the day-to-day reality of modern air navigation service provision.

I would like to underline that the ICAO Assembly at its 36th session, held in September 2007 in Montreal, endorsed "the concept of establishing licensing requirements for ATSEP".

While debating this issue, all EU Contracting States Representatives who spoke at the meeting were supporting of a license for ATSEP. Therefore, I would strongly recommends that ATSEP licensing requirements are included in European legislation, thus acknowledging not only the EU consensus but the international consensus reached at ICAO.

As stated in our comment on para 5 of page 40, the essential requirements must be expanded to include ATSEPs.

I would be in favour of training requirements for all safety critical tasks in the ATM and ANS fields. This is in line with ICAO doc.7192 and with ESARR 5, transposed into EU legislation by Art. 1 of regulation 2096/2005. Ignoring training requirements for technical staff and other ATM professions would mean a regression from present safety level.

response

Noted

Air traffic controller is regarded as a regulated profession, meaning that their rights to exercise this profession have been limited by a licensing scheme. Such limitations of individual rights have to be established at the level of basic law. Other personnel acting in safety critical tasks were assumed to be regulated through obligations on their employer. This does not have to be detailed in the basic law, but will be done at the level of implementing rules and standards. The subject of engineering staff is indeed addressed in SES, but also at the level of implementing rules (Commission Regulation 2096/2005). It does not provide for common rules. The purpose here is to impose a binding obligation to the service provider (as one condition for their certification) to ensure the appropriate qualification of personnel in safety critical tasks, such as ATSEP. This requirement could also be complemented by common rules and standards.

comment

1229

comment by: IFATCA

When developing its essential requirements, the Agency has not identified (what were the criteria? Further in the document Aircraft

maintenance is considered to fall under essential requirements. If not to the whole function of e.g. ATSEPs and FDA at least the safety critical parts of the functions should be considered) such a need for any other personnel than air traffic controllers. It has however noted that service providers must ensure that other staff assigned to specific safety sensitive functions are properly trained. The Agency is therefore of the view that the extended Basic Regulation should

identify only air traffic controllers as persons required to comply directly with

the relevant essential requirements.

Justification:
 IFATCA suggests that functions which are part of the safety critical chain are considered as well and not only ATCOs.

response

Noted

The purpose here is to impose a binding obligation to the service provider (as one condition for their certification) to ensure the appropriate qualification of personnel (other than ATCOs) in safety critical tasks. This requirement could also be complemented by common rules and standards.

comment

1255 comment by: *DFS Deutsche Flugsicherung GmbH*

Para 52 and para 78 – DFS supports the position taken by the Agency not to foresee dedicated implementing rules for other categories of staff than air traffic controllers.

response

Noted

comment

1329 comment by: *Ente Nazionale per l'Aviazione Civile*

It remains unclear the way ER have been developed, and the identification of ATCOs as the only component of personnel who need appropriate medical fitness and current practice. AFIS operators are in the same position, as well as ATSEPs.

The regulation of this two class of ANS related personnel is taking place at national level, preventing the establishment of an appropriate market and likely resulting in a different conditions across Europe.

response

Noted

AFIS operators are not regarded in the NPA as a regulated profession subject to a dedicated licence. The Agency takes note of this suggestion. For other personnel than ATCOs the purpose was to impose a binding obligation to the service provider (as one condition for their certification) to ensure the appropriate qualification of such personnel in safety critical tasks. This requirement could also be complemented by common rules and standards.

comment

1370 comment by: *ECOGAS*

Any additional training requirements should be set out against the anticipated benefits, and presented to stakeholders in a clear format to allow consideration of the acceptability of the additional costs arising against the anticipated safety improvements.

response

Noted

comment	<p>1378 comment by: <i>Walter Gessky</i></p> <p>ad 52:</p> <p>Technical staff is involved in design and installation and maintenance of safety critical systems which can directly contribute to incidents and accidents (e.g. ground-based NAVEquipments).</p> <p>As mitigation measures and in order to grant a certain minimum harmonization also in the technical area, regulation should be considered. Comparable certification requirements for technical staff exist for the technical staff on the airborne side.</p>
response	<p><i>Noted</i></p> <p>The purpose here is to impose a binding obligation to the service provider (as one condition for their certification) to ensure the appropriate qualification of personnel (other than ATCOs) in safety critical tasks. This requirement could also be complemented by common rules and standards.</p>
comment	<p>1501 comment by: <i>Swiss Federal Office of Civil Aviation (FOCA)</i></p> <p>Air Traffic Control and Air Traffic Controllers are a part of the system called Air Navigation Services; bear in mind that ATS is at the end of a production chain involving several other safety critical tasks and procedures. We do therefore not agree, that only ATCO are to be covered with the essential requirement. All safety relevant staff within ANS with a direct safety responsibility must be part of a regulated ANS Competence management System which is not to be left to states to define. Personal Competence is at one angle of the safety-triangle (technical Systems, Procedures and Human). We believe that with the future ANS System this becomes more and more important.</p>
response	<p><i>Noted</i></p> <p>Air traffic controller is regarded as a regulated profession, meaning that their rights to exercise this profession have been limited by a licensing scheme. Such limitations of individual rights have to be established at the level of basic law. Other personnel acting in safety critical tasks were assumed to be regulated through obligations on their employer. This does not have to be detailed in the basic law, but will be done at the level of implementing rules and standards. The subject of engineering staff is indeed addressed in SES, but also at the level of implementing rules (Commission Regulation 2096/2005). It does not provide for common rules. The purpose here is to impose a binding obligation to the service provider (as one condition for their certification) to ensure the appropriate qualification of personnel in safety critical tasks, such as ATSEP. This requirement could also be complemented by common rules and standards.</p>
comment	<p>1782 ❖ comment by: <i>EU Permanent Representation of Romania</i></p> <p>These essential requirements provide requirements only for the competence of air traffic controllers. If we make however reference to ANS personnel, there are also other categories of personnel for which ICAO or EUROCONTROL established safety requirements. ESARR 5 makes reference to air traffic controllers, engineers, technical personnel and other categories of ATM</p>

personnel having safety relevant tasks. For all these categories of ATM personnel there were established competence requirements. Even for meteorological personnel, ICAO established standards in Annex 3, regarding minimum requirements for the training of this category of personnel.

The essential requirements are very detailed concerning the air traffic controllers; the details could be developed within the Implementing Rules. The human factor is very important.

Please note that both the Regulation (EC) No 2096/2005 and the ESARR 5, have in their contents provisions regarding the competence of the technical and engineering staff having relevant tasks for ANS/ATM safety. Additionally, the Regulation (EC) No. 1315/2007 also contains provisions that bind the EU member states to establish criteria regarding the competence of the personnel involved in activities related to the exercise of the supervision function for ANS/ATM provision. As far as the supervision function is a component part of the regulatory function, in order to avoid the application of a discriminating treatment, there would be also necessary criteria regarding the competence of the personnel involved in exercising the rule-making function on safety in ANS/ATM area.

response *Noted*

See response to identical comment per paragraph 50.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Scope and applicability - Organisations - 53. p. 14

comment

188 comment by: *FRAPORT AG*
 Fraport understands that this does not extend to the functions of the airport operator!

response

Noted
 Aerodrome operators are covered in another Agency rulemaking task - BR.002.

comment

236 comment by: *ATSEP Belgium*
 The paragraphs 52 and 53 imply that only air traffic controllers must comply with essential safety requirements and are therefore subject to a license. Other safety professions are de facto classified as being of a safety sensitive nature, whatever this means. In view of the increasing delegation of ATC responsibilities to sophisticated technical systems, this statement is obsolete and does not correspond any longer to the day-to-day reality of modern air navigation service provision.

response

Noted
 Comment is noted and answered per paragraph 52. Paragraph 53 is to recognise that ATCO training organisations are already subject to EU law.

comment

276 comment by: *IFATSEA*
 IFATSEA agrees that « *The Basic Regulation shall also specify which*

organisations, other than those involved in the provision of air traffic management and air navigation services, must be subject to essential safety requirements".

Therefore, not only ATCO's, but all Personnel in the Safety chain (including ATSEP) should be covered by this regulation and secondly the agency shall include the organizations involved in the training of ATSEP.

response *Noted*

Comment is noted and answered per paragraph 52. Paragraph 53 is to recognise that ATCO training organisations are already subject to EU law.

comment 670

comment by: *UK Department for Transport*

The UK Government agrees that ATCO training should be subject to oversight. Under existing EC regulations, the oversight of ATCO training organisations extends to all ANSPs that train ATCOs and not just to standalone training organisations.

response *Noted*

Helpful clarification noted.

comment 768

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

UK CAA agrees that as few organisations as possible should be regulated. However, UK CAA also agrees that ATCO training should be subject to oversight. It should be remembered that under existing EU regulations that the oversight of ATCO training organisations extends to all ANSPs that train ATCOs and not just to standalone training organisations.

response *Noted*

Helpful clarification noted.

comment 889 ❖

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Scope and applicability - Organisations - 54. p. 14

comment 671

comment by: *UK Department for Transport*

There is a fundamental difference between aircraft and ATM systems, in particular with regard to the role and responsibility of the ANSP in determining the safety adequacy of that equipment for a specific purpose and context.

response	<i>Noted</i> This is noted and is also one of the reasons for questions 5 and 10.
comment	769 comment by: <i>UK CAA & UK MoD</i> UK CAA & MoD Comments on explanatory material. There is a fundamental difference between aircraft and ATM systems, in particular with regard to the role and responsibility of the ANSP in determining the safety adequacy of that equipment for a specific purpose and context.
response	<i>Noted</i> This is noted and is also one of the reasons for questions 5 and 10.
comment	889 ❖ comment by: <i>EUROCONTROL</i> See identical comment 888 by EUROCONTROL.
response	<i>Noted</i> See response to comment 888 (same comment).

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Scope and applicability - Organisations - 55.**

p. 14

comment	237 comment by: <i>ATSEP Belgium</i> The objective of the industry is to build technical systems in order to sell them and make profits. The goal of ATSEP is to guarantee safety and optimal performance of air navigation. As a consequence the goals of these two types of professions are fundamentally different and the related safety requirements to be enforced by regulation need to be addressed separately.
response	<i>Noted</i> The aim here is to ensure that all ATSEP executing safety critical tasks are properly trained for such tasks. This is to be done by imposing a binding obligation for their employer for such purpose. Paragraph 55 addresses the question whether design, manufacture and maintenance organisations of certain safety critical systems and constituents should be imposed an obligation to demonstrate their capability to ensure the safety of their products or work.
comment	277 comment by: <i>IFATSEA</i> The objective of the industry is to build technical systems in order to sell them and make profits. The goal of ATSEP is to guarantee safety and optimal performance of air navigation (ANS/ATM). As a consequence the goals of these two types of professions are fundamentally different and the related safety requirements to be enforced by regulation need to be addressed separately.

response *Noted*

The aim here is to ensure that all ATSEP executing safety critical tasks are properly trained for such tasks. This is to be done by imposing a binding obligation for their employer for such purpose. Paragraph 55 addresses the question whether design, manufacture and maintenance organisations of certain safety critical systems and constituents should be imposed an obligation to demonstrate their capability to ensure the safety of their products or work.

comment 452 comment by: *Avinor*

Avinor agrees.

response *Noted*

comment 675 comment by: *UK Department for Transport*

There is currently a mechanism for equipment declarations of conformity (plus the underlying R&TTED requirements) but these then feed into a provider declaration of verification. The whole point is that the provider, not the manufacturer, can state how his system will work *in situ*.

response *Noted*

The aim of the question 5 is to assess whether that is the most appropriate mechanism in all cases.

comment 776 comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

There is a double concern here - firstly the need for approval of equipment manufacturers. For example in many cases PCs or general-purpose computers form the basis of safety critical ATM systems. It is unlikely that the manufacturers of these computers could easily be regulated for such a specific use. Secondly, the implication is that this proposal might dispense with the problem of providers being responsible for their systems.

There is currently a mechanism for equipment declarations of conformity (plus the underlying R&TTED requirements) but these then feed into a provider declaration of verification. The whole point is that the provider, not the manufacturer, can state how his system will work *in situ*.

response *Noted*

The aim of the question 5 is to assess whether that is the most appropriate mechanism in all cases.

comment 824 comment by: *Prospect*

The Agency is interested to know whether stakeholders consider that regulating organisation involved in the design, manufacture and maintenance

of safety critical systems and constituents, as well as those involved in the verification of conformity, should be required to demonstrate their capability so as to alleviate the responsibility of their operators?

Whilst there is some need for regulatory oversight, safety assurance for the operational systems, including systems to go into operation, should primarily be provided by the operators of those systems. This is because, as discussed in the answer to question one, the expertise for the operation rests with the service provider. The regulation of third party organisations (e.g., those involved in design development and maintenance of safety critical systems and components) may prove to be difficult if not impossible. It may also lead to reducing the number of suppliers significantly. The comparison with aircraft manufacturers' suppliers appears to be an over simplification since the method for the measurement of hard components is substantially different from the types of systems making up the air traffic system. However the service provider will want to gain assurances from the suppliers of the systems components supplied. With the increase of complexity of such systems/components it may be appropriate to establish some scheme that requires suppliers to demonstrate both capability and product assurance. An example of such a scheme, although not necessarily recommended here is the CAS scheme around IEC 61508.

response *Noted*

The aim of the question 5 is to assess whether this indeed is the most appropriate mechanism in all cases, i.e. concerning all service providers and all systems used. The Agency is pleased to take note of the information provided.

comment

889 ❖

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response

Noted

See response to comment 888 (same comment).

<p>A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Scope and applicability - Organisations - QUESTION 5</p>	<p>p. 14</p>
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See 'Inventory of Answers' in Appendix.

<p>A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means – General - 56.</p>	<p>p. 14-15</p>
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comment

190

comment by: *FRAPORT AG*

Fraport supports this model.

response

Noted

comment	<p>680 comment by: <i>UK Department for Transport</i></p> <p>The accreditation of entities to issue certificates needs careful consideration as to the policy for allowing non-public bodies to act as NAAs/NSAs, or as organisations acting on their behalf. SES Regulations include the concept of Notified Bodies and Recognised Organisations. Consequently, the various Regulations will need to be considered for consistency as to what aspects of safety regulation/oversight/certification can be placed in non-public bodies.</p>
response	<p><i>Noted</i></p>

comment	<p>780 comment by: <i>UK CAA & UK MoD</i></p> <p>UK CAA & MoD Comments on explanatory material.</p> <p>The accreditation of entities to issue Certificates needs careful consideration as to the policy for allowing non-public bodies to act as NAAs/NSAs or as organisations acting on their behalf. SES Regulations include the concept of Notified Bodies and Recognised Organisations. Consequently, the various Regulations will need to be considered for consistency as to what aspects of safety regulation/oversight/certification can be placed in non-public bodies.</p>
response	<p><i>Noted</i></p>

comment	<p>889 ❖ comment by: <i>EUROCONTROL</i></p> <p>See identical comment 888 by EUROCONTROL.</p>
response	<p><i>Noted</i></p> <p>See response to comment 888 (same comment).</p>

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - General - 57. p. 15

comment	<p>782 comment by: <i>UK CAA & UK MoD</i></p> <p>UK CAA & MoD Comments on explanatory material.</p> <p>This is connected with paragraph 56 and is indeed a political decision as well as one driven by public sensitivity and expectation for adequate safety regulation.</p>
response	<p><i>Noted</i></p>

comment	<p>889 ❖ comment by: <i>EUROCONTROL</i></p> <p>See identical comment 888 by EUROCONTROL.</p>
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response	<i>Noted</i> See response to comment 888 (same comment).
comment	<i>1380</i> comment by: <i>Walter Gessky</i> ad 57: A certificate by an official body, supplemented by regular internal self review of the ANSP (internal auditing) could reduce relatively high number of ongoing audits. Synergy effects could take effect due to the fact, that internal auditing has its competence in organizing audits in an appropriate and effective way. Regulatory audits could be reduced to an ad-hoc audit to ensure the effective functioning of the audit management of an organization and should be planned taking clear performance indicators into account.
response	<i>Noted</i> The Agency agrees with the general intent of the comment. Such approach is already inherent in the draft implementing rules defining requirements on the national competent authorities and on the management systems of regulated organisations, such as air operators. Based on the current drafts, the competent authority will have to develop a survey programme to monitor operators (in the future it may also be applicable to the ANSP) they are to certify. The survey programme shall be proportionate to the complexity of the operations and to the risks involved.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - General - 58. p. 15

comment	<i>783</i> comment by: <i>UK CAA & UK MoD</i> UK CAA & MoD Comments on explanatory material. The UK CAA agrees with this paragraph.
response	<i>Noted</i>
comment	<i>889</i> ❖ comment by: <i>EUROCONTROL</i> See identical comment 888 by EUROCONTROL.
response	<i>Noted</i> See response to comment 888 (same comment).
comment	<i>1503</i> comment by: <i>Swiss Federal Office of Civil Aviation (FOCA)</i> This is a major point that should be discussed within SESAR, because it will affect greatly exactly those organisations representing SESAR. However, regulation is virtually not a part of SESAR.
response	<i>Noted</i>

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Implementation means - General - 59.**

p. 15

comment	889 ❖ See identical comment 888 by EUROCONTROL.	comment by: <i>EUROCONTROL</i>
response	<i>Noted</i> See response to comment 888 (same comment).	

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Implementation means - Airspace users - 60.**

p. 15

comment	346 EASA needs to avoid duplicating the already comprehensive set of rules that are applied to users of ATM services both internationally and by States. The introduction of new Implementing Rules without consideration of these rules would introduce confusion and should be avoided.	comment by: <i>NATS</i>
response	<i>Accepted</i> This principle is fully agreed.	
comment	685 Many requirements already exist for users of ATM services in terms of carriage of certain air navigation equipment. Care needs to be taken in the IR's not to over burden airspace users while ensuring a thorough understanding of the requirements.	comment by: <i>BAA</i>
response	<i>Accepted</i> This principle is fully agreed.	
comment	686 Consideration of proportionate requirements regarding equipment carriage for certain categories of airspace users is necessary.	comment by: <i>UK Department for Transport</i>
response	<i>Accepted</i> This principle is fully agreed.	
comment	788 UK CAA & MoD Comments on explanatory material. Detailed implementing rules are not required for users of all categories of airspace.	comment by: <i>UK CAA & UK MoD</i>

response *Noted*
 Comment is noted but it would be premature for the Agency to take a stance on it.

comment 889 ❖ comment by: *EUROCONTROL*
 See identical comment 888 by EUROCONTROL.

response *Noted*
 See response to comment 888 (same comment).

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Airspace users - 61. p. 15

comment 789 comment by: *UK CAA & UK MoD*
UK CAA & MoD Comments on explanatory material.
 It should be clarified that the proposal to extend the provisions of the Basic Regulation will apply to all civil air operators.

response *Noted*
 The Basic Regulation, as well as any other law, has to be clear of whom it applies to. The NPA is a consultation document and does not contain such details.

comment 889 ❖ comment by: *EUROCONTROL*
 See identical comment 888 by EUROCONTROL.

response *Noted*
 See response to comment 888 (same comment).

comment 1467 comment by: *International Air Transport Association (IATA)*
 IATA is of the clear opinion that the associated scope extension should under no circumstances lead to the adoption and imposition by the European regulator of requirements that do not align with ICAO requirements. The reference in paragraph 61 (page 15) that "...foreign operators will have to comply with Community requirements when in the airspace of Member States;" cannot be accepted as meaning that future EU/EASA implementing rules will be developed whereby 3rd country airlines/aircraft will have to abide by requirements beyond ICAO standards. The only exception would be if such requirements could be substantiated by a business case giving evidence of clear benefits and advantages as regards safety and/or airspace capacity.

response *Noted*
 This comment does not seem to be directly related to the context of this ATM/ANS extension. The operation of third country aircraft and the licensing of

its crews are addressed in the first extension of scope already adopted by the European Parliament and Council. Amended Basic Regulation states that "... [third country] Aircraft ... as well as their crew and their operations, shall comply with applicable ICAO Standards. To the extent that there are no such standards, these aircraft and their operations shall comply with the requirements laid down in Annexes I, III and IV [essential requirements for airworthiness, pilot licensing and air operations], provided these requirements are not in conflict with the rights of third countries under international conventions."

Moreover, the Agency can confirm that the policy established in the amended Basic Regulation is carefully followed in the preparation of the respective implementing rule, which naturally is subject to full consultation and impact assessment, as specified in the formal EASA rulemaking procedure.

The second extension of the scope relating to provisions for ATM/ANS merely extends the above third country provisions already in place for operations and licensing to the domain of ATM/ANS using the same principles.

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Implementation means - Airspace users - 62.**

p. 15

comment 347 comment by: NATS

The rules need to be subject to rapid amendment in the event of safety concerns. This would require subsidiarity.

response *Noted*

The Basic Regulation already contains a specific article on 'Flexibility provisions'. It contains mechanisms to react on such needs as indicated in the comment.

comment 790 comment by: UK CAA & UK MoD

UK CAA & MoD Comments on explanatory material.

The UK CAA wishes to see the principle of subsidiarity maintained as far as possible.

response *Noted*

comment 889 ❖ comment by: EUROCONTROL

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Implementation means - Airspace users - 63.**

p. 16

comment	<p>691 comment by: <i>UK Department for Transport</i></p> <p>The use of the term 'commercial' confuses the issue and is not relevant in the SES environment.</p> <p>Consideration of proportionate requirements regarding equipment carriage for certain categories of airspace users is necessary</p>
response	<p><i>Noted</i></p> <p>Such a reference in paragraph 63 refers to air operations and is indeed used and defined in the extended Basic Regulation (as it has been adopted and enters into force in the very near future).</p> <p>Such proportionality is indeed a criterion to be considered at the level of implementing rules, but would be premature at this stage.</p>

comment	<p>791 comment by: <i>UK CAA & UK MoD</i></p> <p>UK CAA & MoD Comments on explanatory material.</p> <p>The use of the term 'commercial' confuses the issue and is not relevant in the SES environment.</p> <p>Rules for operation in a specific volume of airspace are generic requirements, which apply to all users and are focussed on the environment and not on the specific user; for example in RVSM airspace compliance of equipment fit is verified through the filed flight plan.</p>
response	<p><i>Noted</i></p> <p>Such a reference in paragraph 63 refers to air operations and is indeed used and defined in the extended Basic Regulation (as it has been adopted and enters into force in the very near future).</p> <p>Such proportionality is indeed a criterion to be considered at the level of implementing rules, but would be premature at this stage.</p>

comment	<p>889 ❖ comment by: <i>EUROCONTROL</i></p> <p>See identical comment 888 by EUROCONTROL.</p>
response	<p><i>Noted</i></p> <p>See response to comment 888 (same comment).</p>

<p>A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Airspace users - 64.</p>	<p>p. 16</p>
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comment	<p>792 comment by: <i>UK CAA & UK MoD</i></p> <p>UK CAA & MoD Comments on explanatory material.</p>
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It is difficult to reconcile an Agency role with national responsibility for airspace in this respect (see previous comments in paragraph 63).

response

Noted

This chapter of the NPA is related to airspace users. The first extension of the Basic Regulation provides that operators of third country aircraft operating into, within or out of the Community shall demonstrate their capability of complying with applicable requirements. This is implemented by mandating the Agency or a national aviation authority to issue an attestation based on the operator's original certificate and respective recognition agreements between Community and that third country.

comment

889 ❖

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response

Noted

See response to comment 888 (same comment).

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Service providers - 65.

p. 16

comment

348

comment by: *NATS*

Implementing Rules for every type of service appears excessive. Serious consideration should be given to whether this is actually necessary or desirable.

response

Accepted

It is agreed by the Agency that the NPA text here, referring to 'each type of service', pre-empts too much and it is indeed premature to try to qualify the amount of necessary implementing rules at this stage.

comment

695

comment by: *UK Department for Transport*

The rules should be outcome-based to allow discretion, as far as possible, for States and NSAs to generate the most appropriate system.

response

Noted

The Agency agrees with the general intent of this comment - rules shall be established just for the intended effect, leaving as much discretion as possible for the regulated person and oversight authority in its implementation.

comment

793

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

The rules should be based on outcomes to allow discretion as far as possible for States and NSAs to work within these rules.

response *Noted*

The Agency agrees with the general intent of this comment - rules shall be established just for the intended effect, leaving as much discretion as possible for the regulated person and oversight authority in its implementation.

comment 889 ❖ comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Service providers - 66. p. 16

comment 349 comment by: *NATS*

Before common standards are imposed a good understanding of the reasons for the differences is required.

response *Noted*

The comment is accepted. Moreover, this subject is to be further elaborated based on the answers to question 1.

comment 700 comment by: *UK Department for Transport*

The UK Government agrees that subsidiarity should be exercised wherever possible with any Community control being of the lightest touch.

response *Noted*

The comment is accepted. Moreover, this subject is to be further elaborated based on the answers to question 1.

comment 705 comment by: *BAA*

Variations and differences have developed historically within ATM systems across Europe. All of these differences will have justified locally as being required on safety grounds. A full assessment is required to ensure that any variations are genuinely needed. Additionally some differences may actually be European 'best practice' and could be adopted in a pan-European manner.

response *Noted*

The comment is accepted. Moreover, this subject is to be further elaborated based on the answers to question 1.

comment 794 comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

	The UK CAA agrees that subsidiarity should be exercised wherever possible with any Community control being of the lightest touch.
response	<i>Noted</i> The comment is accepted. Moreover, this subject is to be further elaborated based on the answers to question 1.
comment	889 ❖ comment by: <i>EUROCONTROL</i> See identical comment 888 by EUROCONTROL.
response	<i>Noted</i> See response to comment 888 (same comment).
comment	1381 comment by: <i>Walter Gessky</i> ad 66: Considering the principle of subsidiarity in developing and applying rules for the concepts of operation it should be considered, that ANSPs provide ATM/ANS services in other states and therefore the application of such local rules should not pose any burden to those ANSPs of other countries.
response	<i>Noted</i> The comment is accepted. Moreover, this subject is to be further elaborated based on the answers to question 1.

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Implementation means - Service providers - 67.**

p. 16

comment	453 comment by: <i>Avinor</i> Avinor believes that no Airport Operations Function shall be regulated in the context of this NPA. This includes for example Apron management and Apron Control.
response	<i>Noted</i> Airport operations are subject to another rulemaking task of the Agency - BR.002. Moreover, safety rules should not define which services are provided by which organisation.
comment	796 comment by: <i>UK CAA & UK MoD</i> UK CAA & MoD Comments on explanatory material. The UK CAA agrees with careful consideration of appropriate and proportionate regulation of smaller Units and lower risk services such as FIS.
response	<i>Noted</i>

Comment is noted. This is the purpose of question 6.

comment

826

comment by: *Prospect*

The Agency is interested to know whether stakeholders consider that the provisions of certain services should not be subject to certification. In such case, what would be these services?

In a safety critical environment the ATC services should be subject to certification. There may be however some systems which need not be subject to certification i.e. systems that have no direct bearing on operational safety e.g. route charges systems, monitoring systems where data is not used operationally, and flight information systems.

response

Noted

Comment is noted. This is the purpose of question 6.

comment

889 ❖

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response

Noted

See response to comment 888 (same comment).

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Service providers - QUESTION 6

p. 16

See 'Inventory of Answers' in Appendix.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Service providers - 68.

p. 17

comment

454

comment by: *Avinor*

Avinor has no objections, if care is taken to avoid additional bureaucracy.

Avinor strongly recommends that the decision process in which service provider will be chosen involves all stakeholders including airport operators.

response

Noted

Comment is noted. One of the objectives is not only to avoid additional but also decrease existing bureaucracy. Choosing a service provider is not a safety regulatory issue - as long as all potential candidates have appropriate safety approvals.

comment

798

comment by: *UK CAA & UK MoD*

	UK CAA & MoD Comments on explanatory material.
	See answer to question 7
response	<i>Noted</i>

comment	827 comment by: <i>Prospect</i>
	The Agency would be interested to know stakeholders views as regards the possibility for ATM/ANS service providers to be entitled to operate several services and/or operating units under a single certificate.
	So long as service providers are able to demonstrate their capability (including competency) for the various types of operations it is provided then technically there appears to be no reason why a single certificate could not be used such a certificate would need to specify the specific operations and scope thereof.
response	<i>Noted</i>
	This is asked by question 7. Nevertheless, the Agency agrees with the comment.

comment	889 ❖ comment by: <i>EUROCONTROL</i>
	See identical comment 888 by EUROCONTROL.
response	<i>Noted</i>
	See response to comment 888 (same comment).

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Service providers - QUESTION 7	p. 17
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See 'Inventory of Answers' in Appendix.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Service providers - 69.	p. 17
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comment	193 comment by: <i>FRAPORT AG</i>
	Fraport supports this model.
response	<i>Noted</i>

comment	707 comment by: <i>UK Department for Transport</i>
	The UK Government does not think the question arises, because as stated previously in the answer to Question 1, deciding on the concept of operations

	is fundamentally a governmental function.
response	<i>Noted</i>

comment	800 comment by: <i>UK CAA & UK MoD</i>
	UK CAA & MoD Comments on explanatory material.
	The UK CAA does not consider that EASA should be involved in the approval of certification of service providers. This is a challenge to subsidiarity and contrary to SES. We do not think the question arises anyway, because as stated previously in the answer to Question 1, deciding on the concept of operations is fundamentally a governmental function and one that is consistent with national policy making stemming from ICAO responsibilities.
response	<i>Noted</i>

comment	889 ❖ comment by: <i>EUROCONTROL</i>
	See identical comment 888 by EUROCONTROL.
response	<i>Noted</i>
	See response to comment 888 (same comment).

comment	981 comment by: <i>ACI EUROPE</i>
	ACI-Europe supports this model.
response	<i>Noted</i>

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Service providers - 70.	p. 17
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comment	45 comment by: <i>Charles-André QUESNEL</i>
	We would like to know which are the services the agency is referring to as services of economic nature justifying the principles of a contestable market.
response	<i>Noted</i>
	This paragraph explains that ATM/ANS services of true pan-European nature are typically un-bundled from ATS and in many cases of an economic nature. This explanation should be consistent with what is defined in SES. Such services could be for instance satellite based navigation services (EGNOS, GALILEO), certain communication services (SITA, ARINC) or certain aeronautical information services (EADS).

comment	194	comment by: FRAPORT AG
	Fraport has no objections. EU 549/2004 and EU 550/2004 are applicable.	
response	Noted	

comment	455	comment by: Avinor
	Avinor has no objections. EU 549/2004 and EU 550/2004 are applicable.	
response	Noted	

comment	708	comment by: UK Department for Transport
	<p>The pan-European certification issue is important, but EASA need to ensure that NSAs are closely involved all the way (as with the SESAR JU), and recognise that NSAs will also have to approve the use of such services in the context of their domestic service provision. Careful consideration needs to be given to the use of the term "pan-European" to avoid confusion with FABs or areas of cross-border service provision.</p> <p>The reference to 'economic nature' needs to be clarified, as presumably EASA would not be responsible for economic regulation.</p>	
response	<p><i>Partially accepted</i></p> <p>The Agency agrees that the modalities for such a mandate for the Agency had to be elaborated in more detail. It is also agreed that such an activity could only be realized in a close cooperation with the Member States. The necessary resources by their nature would call for a strong participation especially by those Member States that have been able to establish such know-how and expertise.</p> <p>It is also agreed that such a mandate should be defined clearly by the law, including the definition of such services subject to the centralised certification scheme. The wording 'economic nature' is used in the explanatory text just to describe the nature of the potential services to be covered by such arrangement but is not related to the regulatory competence of EASA as such.</p>	

comment	801	comment by: UK CAA & UK MoD
	<p>UK CAA & MoD Comments on explanatory material.</p> <p>The reference to 'economic nature' needs to be clarified, as presumably EASA would not be responsible for economic regulation.</p> <p>The pan-European certification issue is important, but EASA need to ensure that NSAs are closely involved all the way (as with the SESAR JU), and</p>	

recognise that NSAs will also have to approve the use of such services in the context of their domestic service provision. Careful consideration needs to be given to the use of the term "pan-European" to avoid confusion with FABs or areas of cross-border service provision.

response *Partially accepted*

The Agency agrees that the modalities for such a mandate for the Agency had to be elaborated in more detail. It is also agreed that such an activity could only be realized in a close cooperation with the Member States. The necessary resources by their nature would call for a strong participation especially by those Member States that have been able to establish such know-how and expertise.

It is also agreed that such a mandate should be defined clearly by the law, including the definition of such services subject to the centralised certification scheme. The wording 'economic nature' is used in the explanatory text just to describe the nature of the potential services to be covered by such arrangement but is not related to the regulatory competence of EASA as such.

comment 829

comment by: *Prospect*

The Agency would be interested to know whether stakeholders consider appropriate to require the Agency to certify pan-European nature of the service providers, In such a case what should be the criteria to define the pan-European nature of the service?

EASA should most definitely certify Pan-European ANS/ATM service providers.

response *Noted*

comment 889 ❖

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Service providers - QUESTION 8

p. 17

See 'Inventory of Answers' in Appendix.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Service providers - 71.

p. 17-18

comment 48

comment by: *Charles-André QUESNEL*

	flight information is definitely safety critical
response	<p><i>Noted</i></p> <p>The explanatory text in this paragraph refers to flight information service as a potential 'less sensitive service', which could also be one candidate for alternative certification by an accredited assessment body. The Agency takes note of this view being against to such an assumption.</p>

comment	<p>717 comment by: <i>UK Department for Transport</i></p> <p>The UK Government does not agree that 'flight information' is non-safety critical and there is some inconsistency about this within the remainder of the document where the provision of information relevant to the safety of flight is recognised.</p> <p>Under SES, NSAs retain their responsibilities regardless of the use of Recognised Organisations.</p>
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response	<p><i>Noted</i></p> <p>The explanatory text in this paragraph refers to flight information service as a potential 'less sensitive service', which could also be one candidate for alternative certification by an accredited assessment body. The Agency takes note of this view being against to such an assumption.</p>
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comment	<p>803 comment by: <i>UK CAA & UK MoD</i></p> <p>UK CAA & MoD Comments on explanatory material.</p> <p>The UK CAA does not consider 'flight information' to be non-safety critical and there is some inconsistency about this within the remainder of the document where the provision of information relevant to the safety of flight is recognised.</p> <p>Under SES, NSAs retain their responsibilities regardless of the use of Recognised Organisations.</p>
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response	<p><i>Noted</i></p> <p>The explanatory text in this paragraph refers to flight information service as a potential 'less sensitive service', which could also be one candidate for alternative certification by an accredited assessment body. The Agency takes note of this view being against to such an assumption.</p>
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comment	<p>831 comment by: <i>Prospect</i></p> <p>The Agency is interested to know whether stakeholders consider that the certification of some service providers involved in less sensitive services could be performed by assessment bodies. In such a case should the Agency also be empowered for the accreditation of such assessment bodies?</p> <p>So long as the Agency has sufficient resources and expertise and there is no reason why there should not be able to provide third party accreditation and</p>
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	NSAs used to perform this task..
response	<i>Noted</i>

comment	889 ❖ comment by: <i>EUROCONTROL</i>
	See identical comment 888 by EUROCONTROL.
response	<i>Noted</i>
	See response to comment 888 (same comment).

comment	1230 comment by: <i>IFATCA</i>
	Examples would ease the reading.
response	<i>Noted</i>
	Flight information service has been given as a possible example.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Service providers - QUESTION 9	p. 18
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See 'Inventory of Answers' in Appendix.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Systems and constituents - 72.	p. 18
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comment	90 ❖ comment by: <i>Airbus</i>
	<p>We support the statement in paragraph 49 of the explanatory note, that "care needs to be taken when developing implementing rules that common regulatory processes are implemented to verify compliance so as to reduce the administrative burden on regulated persons."</p> <p>We expect that future implementing rules will contain provisions in the spirit of Article 7.2 of Commission Regulation (EC) No 1265/2007 of 26 October 2007 laying down requirements on air-ground voice channel spacing for the single European sky, quoted below:</p> <p>"2. Certification airworthiness processes complying with Regulation (EC) No 1592/2002 of the European Parliament and of the Council (1), when applied to airborne constituents of the systems referred to in Article 1(2), shall be considered as acceptable procedures for the conformity assessment of these constituents if they include the demonstration of compliance with the interoperability, performance and safety requirements of this Regulation."</p>

In addition, it is necessary that the implementing rules contain the appropriate "grandfather" provisions for maintaining the approval, without additional showing, of previously approved/installed airborne constituents.

There is also a need to take care of airborne constituents operated by non-European users of European airspace, without imposing an excessive administrative burden.

response *Noted*

The Agency can fully agree with the intent of the comment. Regulatory measures must be limited to the intended effect and any unnecessary duplication or overlaps must be avoided.

Any requirement for grandfathering provisions would be addressed at the level of specific implementing rules or through the flexibility provisions of the Basic Regulation.

Issues related to requirements for non-European users operating in European airspace are already covered by the extended EASA Basic Regulation and therefore not specifically addressed by this consultation. However, the Agency fully agrees that the same principles of harmonised and efficient regulatory mechanisms shall be applied.

comment 805 comment by: UK CAA & UK MoD

UK CAA & MoD Comments on explanatory material.

See comment on paragraph 48 regarding regulation of safety critical systems and constituents. Any development of IRs should avoid over-prescription.

response *Noted*

comment 889 ❖ comment by: EUROCONTROL

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Systems and constituents - 73.	p. 18
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comment 90 ❖ comment by: Airbus

We support the statement in paragraph 49 of the explanatory note, that "care needs to be taken when developing implementing rules that common regulatory processes are implemented to verify compliance so as to reduce the administrative burden on regulated persons."

We expect that future implementing rules will contain provisions in the spirit of Article 7.2 of Commission Regulation (EC) No 1265/2007 of 26 October 2007 laying down requirements on air-ground voice channel spacing for the single European sky, quoted below:

"2. Certification airworthiness processes complying with Regulation (EC) No 1592/2002 of the European Parliament and of the Council (1), when applied to airborne constituents of the systems referred to in Article 1(2), shall be considered as acceptable procedures for the conformity assessment of these constituents if they include the demonstration of compliance with the interoperability, performance and safety requirements of this Regulation."

In addition, it is necessary that the implementing rules contain the appropriate "grandfather" provisions for maintaining the approval, without additional showing, of previously approved/installed airborne constituents.

There is also a need to take care of airborne constituents operated by non-European users of European airspace, without imposing an excessive administrative burden.

response *Noted*

See response to a similar comment per paragraph 72.

comment 889 ❖

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Systems and constituents - 74.

p. 18

comment 90 ❖

comment by: *Airbus*

We support the statement in paragraph 49 of the explanatory note, that "care needs to be taken when developing implementing rules that common regulatory processes are implemented to verify compliance so as to reduce the administrative burden on regulated persons."

We expect that future implementing rules will contain provisions in the spirit of Article 7.2 of Commission Regulation (EC) No 1265/2007 of 26 October 2007 laying down requirements on air-ground voice channel spacing for the single European sky, quoted below:

"2. Certification airworthiness processes complying with Regulation (EC) No

1592/2002 of the European Parliament and of the Council (1), when applied to airborne constituents of the systems referred to in Article 1(2), shall be considered as acceptable procedures for the conformity assessment of these constituents if they include the demonstration of compliance with the interoperability, performance and safety requirements of this Regulation."

In addition, it is necessary that the implementing rules contain the appropriate "grandfather" provisions for maintaining the approval, without additional showing, of previously approved/installed airborne constituents.

There is also a need to take care of airborne constituents operated by non-European users of European airspace, without imposing an excessive administrative burden.

response *Noted*

See response to a similar comment per paragraph 72.

comment 889 ❖

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Implementation means - Systems and constituents - 75.**

p. 18

comment 90 ❖

comment by: *Airbus*

We support the statement in paragraph 49 of the explanatory note, that "care needs to be taken when developing implementing rules that common regulatory processes are implemented to verify compliance so as to reduce the administrative burden on regulated persons."

We expect that future implementing rules will contain provisions in the spirit of Article 7.2 of Commission Regulation (EC) No 1265/2007 of 26 October 2007 laying down requirements on air-ground voice channel spacing for the single European sky, quoted below:

"2. Certification airworthiness processes complying with Regulation (EC) No 1592/2002 of the European Parliament and of the Council (1), when applied to airborne constituents of the systems referred to in Article 1(2), shall be considered as acceptable procedures for the conformity assessment of these constituents if they include the demonstration of compliance with the interoperability, performance and safety requirements of this Regulation."

In addition, it is necessary that the implementing rules contain the appropriate

"grandfather" provisions for maintaining the approval, without additional showing, of previously approved/installed airborne constituents.

There is also a need to take care of airborne constituents operated by non-European users of European airspace, without imposing an excessive administrative burden.

response *Noted*

See response to a similar comment per paragraph 72.

comment 833 comment by: *Prospect*

The Agency would be interested to know whether stakeholders consider appropriate to implement separate certification schemes for certain safety critical systems and constituents. If so what should be these systems and constituents?

Some systems may need separate certification as at present with equipment such as Cat3 ILS installations and MLS set-ups. It is also important to note that since all subsystems and components comprise to form an overall system then the risk of any component or subsystem failure must be seen in the context of the system as a whole and therefore what we are considering is levels of risk.

response *Noted*

Comment is noted and taken into account in assessing answers to question 10.

comment 889 ❖ comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Systems and constituents - QUESTION 10 p. 18

See 'Inventory of Answers' in Appendix.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Personnel - 76. p. 19

comment 807 comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

It would be preferable to directly reference Directives and other associated regulations such as the European ATCO Licensing Directive

response *Not accepted*

Using this Directive as an implementation means would not allow EASA system and the defined sharing of roles to be utilised. Changes to the Directive can only be made through heavy and time consuming co-decision procedure, followed by parallel processes in the 27 + 4 EASA States. While it is acknowledged that this Directive was a step forward for the harmonisation of ATCO licensing at EU level, nevertheless the Agency strongly believes that the best way forward would be in a due time to transfer the Directive into a Commission regulation.

comment 889 ❖ comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

comment 1231 comment by: *IFATCA*

As already stated in the paragraph 50 of this document, it has been agreed by law that air traffic controllers must hold a license and appropriate ratings attesting compliance with safety provisions. A directive has already been adopted to this effect. To be consistent with the EASA system, such a directive should be transferred in the form of a Commission regulation, so that it can be adjusted at executive level to avoid lengthy legislative processes. It is clear therefore that powers need to be given to the Commission to develop appropriate implementing rules in this field. Add (compliant with Annex 1 ICAO)

Justification:

The extension of the EASA system must be part of the total system approach and consistent with the ICAO framework.

response *Accepted*

The Agency shares this view.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Personnel - 77. p. 19

comment 197 comment by: *FRAPORT AG*

Fraport supports this model.

response *Noted*

comment 889 ❖ comment by: *EUROCONTROL*

	See identical comment 888 by EUROCONTROL.
response	<i>Noted</i> See response to comment 888 (same comment).
comment	991 comment by: ACI EUROPE ACI-Europe supports this model.
response	<i>Noted</i>

**A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment
- Implementation means - Personnel - 78.**

p. 19

comment	75 comment by: KLM 78 (Personnel) Other category of staff than ATC controllers should not be licensed but should be covered through proper implementing rules governing the service providers themselves.
response	<i>Noted</i> This has been the basis for the proposals in the NPA. Support for this is noted.
comment	198 comment by: FRAPORT AG As an airport will not be licensed as an ATC/ANS service provider, there is no need to fulfil this requirement for airport operator staff.
response	<i>Noted</i> Airport operator responsibilities have been dealt with by another task of the Agency - BR.002. Under present legal framework, an aerodrome operator providing ANS services will be subject to two different set of rules and two different certification processes. The Agency aims to establish one set of common rules supported with a single certification process.
comment	238 comment by: ATSEP Belgium Delegation of mere implementing rules concerning the training of safety critical personnel like ATSEP is unacceptable. One must be aware that cost savings on the training of personnel or cost savings via outsourcing - which for ATSEP would in fact mean the removal of a safety net (see comments for paragraph 55) - will be very tentative for ANSP under economical pressure. Similar or identical arguments to advocate a license for ATCO, pilots and aircraft maintenance personnel are applicable to ATSEP. However, ATSEP Belgium is pleased to know that EASA is open to suggestions concerning this statement
response	<i>Noted</i>

The issue with implementing rules imposed on service providers is not of delegation, as the comment seems to suggest, but such rules are directly binding law, which will be subject to oversight and enforcement by Authorities. Such rules will include appropriate training of personnel as a condition for the certification of the service provider.

EASA Opinion can only be based on safety arguments. All other related arguments are for the Commission to address in its legal proposal to the European Council and Parliament.

comment

264

comment by: *IFSA*

IFSA is for giving responsibilities to service providers.

Aircraft maintenance engineers are licensed and subject to specific requirements on the basis of EASA part 66.

Technical staff for ATM and ANS also signs release to service of safety critical systems. In addition, ATSEP's carry out other safety critical functions from flight calibration of navigation aids, technical, watch and aeronautical information. Such services directly provided to aviators will become even more important in the SESAR context.

Therefore ATSEP's need to be subject to specific implementing rules and licensing by competent authorities.

response

Noted

The Agency agrees that professional competence of ATSEP's is essential for safety. But it points out that implementing rules imposed on service providers are directly binding law, which will be subject to oversight and enforcement by Authorities. Such rules will include appropriate training of personnel as a condition for the certification of the service provider.

EASA Opinion can only be based on safety arguments. All other related issues are for the Commission to address in its legal proposal to the European Council and Parliament. All the arguments in the comment suggesting for establishing a licensing scheme for ATSEP personnel will be taken into account by the Agency in preparing the forthcoming Opinion.

comment

278

comment by: *IFATSEA*

Delegation of mere implementing rules concerning the training of safety critical personnel like ATSEP is unacceptable. One must be aware that cost savings on the training of personnel or cost savings via outsourcing - which for ATSEP would in fact mean the removal of a safety net (see comments for paragraph 55) - will be very tentative for ANSP under economical pressure. Similar or identical arguments to advocate a license for ATCO, pilots and aircraft maintenance personnel are applicable to ATSEP.

Para 78 is a declaration to be open to suggestions, IFATSEA however would like to underline that delegating too much responsibility to ANSPs, in the face of growing economical constraints may not be sufficiently safe, especially in the presence of outsourced services.

As already mentioned in the comments on para 52, IFATSEA also wants to refer again to the 36th session of ICAO Assembly where the international community endorsed "the concept of establishing licensing requirements for ATSEP".

Aircraft maintenance engineers are licensed and subject to specific requirements on the basis of EASA part 66. Technical staff for ATM and ANS also signs release to service of safety critical Systems. In addition, ATSEP carry out other safety critical functions from flight calibration of navigation aids, technical watch and aeronautical information. Such services, directly provided to aviators, will become even more important in the SESAR context. Therefore ATSEP need to be subject to specific implementing rules and license by competent authorities.

response *Noted*

The Agency agrees that professional competence of ATSEP's is essential for safety. But it points out that implementing rules imposed on service providers are directly binding law, which will be subject to oversight and enforcement by Authorities. Such rules will include appropriate training of personnel as a condition for the certification of the service provider.

EASA Opinion can only be based on safety arguments. All other related issues are for the Commission to address in its legal proposal to the European Council and Parliament.

All the arguments in the comment suggesting for establishing a licensing scheme for ATSEP personnel will be taken into account by the Agency in preparing the forthcoming Opinion.

comment *418*

comment by: *AEA*

The AEA strongly agrees that other category of staff than ATC controllers should not be licensed but should be covered through proper implementing rules governing the service providers themselves.

response *Noted*

This has been the basis for the proposals in the NPA. Support for this is noted.

comment *450 ❖*

comment by: *MATTA*

The Agency should also indentify the ATSEP (Air Traffic Safety Electronics Personnel) as a persons required to comply with essential requirements.

The ATSEP personnel are already recognized by the number of States basic legislative as well as by ICAO and Eurocontrol.

Existing examples:

- a. The following States have already legislative requirements for ATSEP license: Romania, Croatia, Germany, France, Switzerland, Austria, Greece, R.Macedonia (since 1979), Japan...

b. The following two statements can be found in ICAO Doc 7192-AN/857 Part E-2 Training Manual Air Traffic Safety Electronic Personnel:

"The ICAO recognized terminology for personnel involved in maintenance and installation of CNS/ATM system is Air Traffic Safety Electronics Personnel (ATSEP)."

"The requirements with respect to age, knowledge, experience, skill, and attitude for the ATSEP competency should be in accordance with State Regulatory requirements. However, Chapter 4 of ICAO Annex 1 Personnel Licensing contains standards for other personnel. States should use these references in making their requirements."

c. The following statements can be found in Eurocontrol document: Explanatory Material on ESARR 5 Requirements for Engineers and Technical Personnel Undertaking Operational Safety-Related Tasks: "It should be noted that, for engineers and technical personnel undertaking operational safety-related tasks, the provisions of ESARR 5 do not mention a "licence" or a "certificate of competence" as a final product which will justify the competence of such personnel. This has been left to the discretion of States (Designated Authority and Operating Organisations) to decide what documents will describe the competence process for engineers and technical personnel. The final product of the competence process for engineers and technical personnel undertaking safety-related tasks shall not be related to a document, but to a list of phases that indicate such personnel have been found competent. For consistency and continuity of the licensing process, States could decide to introduce a licence or certificate of competence detailing the same level of information as for ATCOs."

response *Noted*

See response to identical comment per paragraph 52.

comment 721

comment by: *UK Department for Transport*

The UK Government agrees that licensing should be strictly limited to air traffic controllers.

response *Noted*

This has been the basis for the proposals in the NPA. Support for this is noted.

comment 808

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

The UK CAA agrees that licensing should be strictly limited.

response *Noted*

This has been the basis for the proposals in the NPA. Support for this is noted.

comment 889 ❖

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response *Noted*
See response to comment 888 (same comment).

comment 930 comment by: *IACA International Air Carrier Association*
Only Air Traffic Controllers ATC shall be licensed under proper implementing rules. Such implementing rules shall be a strict for ATC controllers as they are for pilots. Referring to ER para 5., a review of the existing EU Directive for the Licensing of Air Traffic Controllers shall be made based on a comprehensive regulatory impact assessment.

response *Noted*
This has been the basis for the proposals in the NPA.
All rulemaking activities of the Agency contain an impact assessment, including the one mentioned in the comment.

comment 992 comment by: *ACI EUROPE*
As an airport operator will not be licensed as an ATC/ANS service provider, there is no need to fulfil this requirement for airport operator staff.

response *Noted*
Airport operator responsibilities have been dealt with by another task of the Agency - BR.002. Under present legal framework, an aerodrome operator providing ANS services will be subject to two different set of rules and two different certification processes. The Agency aims to establish one set of common rules supported with a single certification process.

comment 1256 comment by: *DFS Deutsche Flugsicherung GmbH*
Para 52 and para 78 – DFS supports the position taken by the Agency not to foresee dedicated implementing rules for other categories of staff than air traffic controllers.

response *Noted*
This has been the basis for the proposals in the NPA. Support for this is noted.

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Organisations - 79. p. 19

comment 199 comment by: *FRAPORT AG*
Fraport has no objections

response *Noted*

comment 722 comment by: *UK Department for Transport*

The UK Government would not wish to see any dilution of ATCO performance levels through reduced oversight of training by NAAs.

response *Noted*

The Agency agrees that the ideas mentioned in the NPA, if implemented, shall not have such an adverse effect on safety. It is also to be noted that the earlier comment by the same stakeholder suggesting to maintaining the Directive instead of a directly binding regulation, can also be seen as contradictory to this concern.

comment 809 comment by: UK CAA & UK MoD

UK CAA & MoD Comments on explanatory material.

The UK CAA would not wish to see any dilution of ATCO performance levels through reduced oversight of training by NSAs.

response *Noted*

The Agency agrees that the ideas mentioned in the text, if implemented, shall not have such an adverse effect on safety. It is also to be noted that the earlier comment by the same stakeholder suggesting to maintaining the Directive instead of a directly binding regulation, can also be seen as contradictory to this concern.

comment 889 ❖ comment by: EUROCONTROL

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Organisations - 80. p. 19

comment 889 ❖ comment by: EUROCONTROL

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

A. EXPLANATORY NOTE - IV. Content of the Notice of Proposed Amendment - Implementation means - Organisations - 81. p. 19

comment 74 comment by: KLM

81 (Organisations)

The objective of creating a certification scheme and safety framework for

certain organisations providing ancillary ATM services (training, maintenance, manufacture, development, AIS, Meteo and CNS providers in particular) should be to facilitate their unbundling so that they can be organized in competition to ensure lower cost for the end users.

response *Partially accepted*

The Agency agrees that such solution would support also objectives of open market and cost-efficiency, in line with the article 2 of the Basic Regulation.

comment 200

comment by: *FRAPORT AG*

What is defined as a "safety critical system"?

response *Noted*

Such terms are not used in a prescriptive meaning, but indicate that certain systems, due to their safety criticality or other reasons, might be subject to a separate certification scheme.

comment 419

comment by: *AEA*

The objective of creating a certification scheme and safety framework for certain organisations providing ancillary ATM services (training, maintenance, manufacture, development, AIS, Meteo and CNS providers in particular) should be to facilitate their unbundling so that they can be organized in competition to ensure lower cost for the end users.

response *Partially accepted*

The Agency agrees that such solution would support also objectives of open market and cost-efficiency, in line with the article 2 of the Basic Regulation.

comment 889 ❖

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

A. EXPLANATORY NOTE - V. Regulatory Impact Assessment

p. 19

comment 889 ❖

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

A. EXPLANATORY NOTE - V. Regulatory Impact Assessment - 82.

p. 19-20

comment	<p>723 comment by: <i>UK Department for Transport</i></p> <p>The NPA should reference the Impact Assessment to improve the transparency of the regulatory proposal.</p> <p>A full impact assessment should be undertaken and consulted on before each IR is developed.</p>
response	<p><i>Noted</i></p> <p>A regulatory impact assessment will be issued in relation to the Agency Opinion.</p> <p>Implementing rules will be developed in accordance with the Agency's formal rulemaking procedure and will prescribe regulatory impact assessments.</p>
comment	<p>810 comment by: <i>UK CAA & UK MoD</i></p> <p>UK CAA & MoD Comments on explanatory material.</p> <p>The NPA should reference the preliminary impact assessment.</p> <p>A full RIA should be undertaken before each IR is developed.</p>
response	<p><i>Noted</i></p> <p>A regulatory impact assessment will be issued in relation to the Agency Opinion.</p> <p>Implementing rules will be developed in accordance with the Agency's formal rulemaking procedure and will prescribe regulatory impact assessments.</p>
comment	<p>889 ❖ comment by: <i>EUROCONTROL</i></p> <p>See identical comment 888 by EUROCONTROL.</p>
response	<p><i>Noted</i></p> <p>See response to comment 888 (same comment).</p>
comment	<p>1036 comment by: <i>Ministry of Transport and Communications, Norway</i></p> <p>As a general comment on the further consultation process we are convinced that it should <u>not</u> be pursued on the basis of the proposed Essential Requirements put forward by EASA. Instead, one should initiate a more open consultation process in which a number of possible approaches and scenarios for the extension of EASA's mandate to ATM are analysed and assessed in more detail and with an open mind. Such a consultation process should be conducted in a way which ensures full transparency and involvement of all stakeholders, and it should provide ample time for reflection and for contributions from all parties involved. For a number of reasons, it would seem</p>

advisable that the consultation be managed by another body than EASA, at least during an interim phase.

response

Noted

A preliminary impact assessment on this subject has been launched by the Commission and published in 2005. a significant number of key stakeholders were consulted.

A regulatory impact assessment will be issued with the Agency Opinion and the Commission will execute its own impact assessment related to its legal proposal. Furthermore, implementing rules will be developed in accordance with the Agency's formal rulemaking procedure and will contain regulatory impact assessments.

A suggestion that another body, other than the Commission or EASA, would run such a consultation is very peculiar, especially in relation to the large amount of rulemaking processes continuously executed by the Agency. Since such a proposal is outside of the remit of this task, it could be more promptly served through the Agency Advisory Group of National Authorities (AGNA).

comment

1232

comment by: *IFATCA*

To establish an impact assessment of the EASA system or the proposed regulation can only provide meaningful data if the overall

targets to be achieved are clarified and outlined. This is currently not the case.

Further IFATCA would welcome the possibility to have a revert back process established. That means that if after an impact assessment based on agreed goals and targets the institution have the possibility

to correct the regulation - or it's impact by reverting back to the initial starting point

response

Noted

A regulatory impact assessment will be issued with the Agency Opinion, which in turn is the basis for the Commission legal proposal. This mechanism could serve as a revert back process as suggested in the comment.

A. EXPLANATORY NOTE - V. Regulatory Impact Assessment - 84.

p. 20

comment

724

comment by: *UK Department for Transport*

It is essential that EASA and the Commission seek specialist ATM & ASM scrutiny to validate the results of the consultation in order to provide a successful outcome.

The UK Government supports the proposal that EASA / the Commission should develop its impact assessment, informed by the results of the consultation. The impact assessment should be made available to all stakeholders, in accordance with the principles of good regulation.

response *Noted*

External experts have been used to assist in analysing the results of the consultation. A regulatory impact assessment will be issued as a part of the forthcoming Opinion. It will indeed be based on the results from the consultation and will be published together with the Opinion.

comment *811*

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on explanatory material.

It is highly desirable that EASA and the Commission seek specialist ATM & ASM scrutiny to validate the results of the consultation in order to provide a successful outcome.

The UK CAA supports the proposal to hold a further impact assessment to consider the results of the consultation but would wish to see a full regulatory impact assessment with cost benefit analysis, in accordance with better regulation principles, and that it should be made available to all stakeholders.

response *Noted*

External experts have been used to assist in analysing the results of the consultation. A regulatory impact assessment will be issued as a part of the forthcoming Opinion. It will indeed be based on the results from the consultation and will be published together with the Opinion.

comment *889* ❖

comment by: *EUROCONTROL*

See identical comment 888 by EUROCONTROL.

response *Noted*

See response to comment 888 (same comment).

comment *1017*

comment by: *PANSA*

Additionally:

1. The main purpose is to extend the role of EASA as a Safety Regulator (ATM and ANS), but in the text the interoperability and airspace are also covered.

2. EASA proposes new long term approach to the certification process of ANSP's. However it is not clear how current certification activities and issued certificates will be recognized by EASA?

3. ASM and ATFM functions are not covered in appropriate way.

4. Delegation of safety regulation tasks to non-public persons or organisations seems to be in the contrary with the public function and responsibility of the state(s).

5. The future role of National Regulators is not explained in the document.

6. It is not clear how the certification of AFIS providers and small (local) ATM / CNS providers will be covered by EASA?

7. It is not possible to separate certification schemes for safety critical systems

and constituents. In whole European SMS concept we agreed to certify the overall system. There is no room for partial certification implemented to certain elements of the system. Regulation 1315/2007 covered safety oversight in ATM, formal regulatory oversight of changes to ATM systems. It means that ANSP's will be able to operate safety critical components under safety supervision (without specific certification of certain elements).

response

Noted

1. Global interoperability is covered also by ICAO SARPS and it would be extremely difficult to dissociate them. In order to regulate ATM/ANS services one has to define the airspace and the airspace users covered by such common rules. Also, it has to be clarified whether aspects, such as ASM and ATFM, should be subject to safety regulation.

2. Certification does not have to differ from the existing one. This could of course be seen as an opportunity to improve or complete, where need be.

3. NPA asked stakeholders views of how these services (or functions) could be regulated. Conclusions will be drawn initially in this CRD and in more detail by the EASA Opinion.

4. This is not fully agreed. Already today certain aviation related certification tasks are delegated to such third parties. NPA made a question on this subject.

5. It is the legal proposal which shall do that. EASA Basic Regulation is based on shared roles between the Commission, EASA and Member States.

6. This is also subject to a question (number 9) in the NPA. EASA indeed believes that proportionality is an important issue for example in order to avoid imposing disproportionate burden on small organisations.

7. This is again subject to a specific question (number 10) in the NPA. Would it indeed be proportionate to ask every small service provider to verify all complex systems they use in their service provision? Wouldn't a specific scheme be appropriate for example in the case of GNSS services? If in certain cases the producer of the system takes more responsibility of its verification that should not affect the oversight responsibilities of the supervisory authority.

comment

1232 ❖

comment by: IFATCA

To establish an impact assessment of the EASA system or the proposed regulation can only provide meaningful data if the overall

targets to be achieved are clarified and outlined. This is currently not the case.

Further IFATCA would welcome the possibility to have a revert back process established. That means that if after an impact assessment based on agreed goals and targets the institution have the possibility

to correct the regulation - or it's impact by reverting back to the initial starting point

response *Noted*

See the response to an identical comment per paragraph 82.

B. DRAFT ESSENTIAL REQUIREMENTS

p. 21

comment 350 comment by: *NATS*

Without sight of the structured risk assessment, completeness and correctness of the proposed essential requirements cannot be assessed.

response *Noted*

Risk assessment was conducted with the assistance of external experts, but was not purposed to become a formal deliverable.

comment 1144 comment by: *Airport Operators Association*

As previously stated we consider that the concept of essential requirements constitutes a reasonable basis for the regulation and interoperability of ATM / ANS. However, we have some concerns over the essential requirements offered in this NPA which we consider require review to improve the overall clarity and scope.

We have submitted comments on the proposed essential requirements but in the time available have only been able to suggest text changes designed to improve the overall sense and understanding of the initial wording. A more comprehensive and fundamental review of these ERs is required.

response *Noted*

The Agency is very pleased of these proposals to improve the draft essential requirements and will pay due consideration on them. Revised essential requirements will be attached to the EASA Opinion, so any further views on their contents could be attached to the possible feedback related to this CRD document. Draft essential requirements will naturally be part of the legal proposal by the Commission, and therefore subject to further scrutiny throughout the lengthy EU co-decision procedure.

comment 1426 comment by: *DGCA-NL*

As stated in our answer to question 2 the essential requirements deal with subjects that are already covered by other legislative tools and are addressed at various target groups in too general a manner.

response *Noted*

In general, the principle of adopting essential requirements at the highest political level has been adopted by Council Resolution of 07 May 1985 on a "new approach" to technical harmonisation and standards, in order to provide

sufficiently safe products. Regulation 552/2004 on the SES interoperability has been based on the same principle.

Adopting essential requirements also for ATM and ANS will contribute to harmonisation, clarity and consistency of the EU legislation aimed at protecting citizens. The Agency notes that presently there are yet no essential requirements in this field.

Essential requirements have to be complete irrespective of whether some of them had already been implemented through other legal means. Adaptation of different implementing means shall take place at the level of legal proposals.

comment

1685

comment by: *Military Aviation Authority Netherlands*

As stated in our answer to question 2 the essential requirements deals with subjects that are already covered by other legislative tools and are addressed at various target groups in too general a manner.

response

Noted

In general, the principle of adopting essential requirements at the highest political level has been adopted by Council Resolution of 07 May 1985 on a "new approach" to technical harmonisation and standards, in order to provide sufficiently safe products. Regulation 552/2004 on the SES interoperability has been based on the same principle.

Adopting essential requirements also for ATM and ANS will contribute to harmonisation, clarity and consistency of the EU legislation aimed at protecting citizens. The Agency notes that presently there are yet no essential requirements in this field.

Essential requirements have to be complete irrespective of whether some of them had already been implemented through other legal means. Adaptation of different implementing means shall take place at the level of legal proposals.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Introduction - 85.	p. 21
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comment

22

comment by: *Pietro Colucci*

Chap 5 of essential requirements: non only ATCO's title to cover all safety related TM/ANS tasks.

response

Noted

It is agreed by the Agency that many other safety critical tasks exist in the provision of ATM/ANS services. However, only ATCO's have been regarded as a regulated profession subject to a specific license scheme. Appropriate qualification of those other professionals will be ensured through legal obligations on their employer.

comment

681

comment by: *EUROCONTROL*

Paragraph 27 states that ICAO SARPs do not provide for a convenient basis on

which to set clear safety objectives. Paragraph 32 explains that EASA has been working on defining ERs as the set of means to be implemented to mitigate unacceptable risks. However, ICAO SARPs are superior to the proposed ERs in defining measures to address a number of hazards that may occur, or have already occurred, in relation to the interfaces between ATM/ANS services.

By way of illustration, take the case of the lack of reference to ground-ground communication in the proposed ERs, Section 3.c. While rightly giving enough relevance to air-ground communication in Section 3.c.4, we could find no reference to ground-ground communication issues which are important also as it is known they are capable of creating hazardous situations (e.g. the Ueberlingen accident). As a result, the ICAO standards address these aspects in a much more effective manner and provide safer objectives in this regard.

Furthermore, Section 3c of the "Essential requirements for air traffic management and air navigation services" does not cover the need for appropriate interfaces and coordination between the different ATM/ANS services. ICAO Annex 11 addresses these interfaces by means of several SARPs specifically requiring arrangements between ATS, AIS, MET and CNS, and also between adjacent ATS units. It is universally known in ATM safety that an interface between two services/organizations can always be a potential source of safety issues unless clear arrangements are established. In that regard the SARPs provide for mitigation measures that are not included in the ERs. Therefore, the SARPs address these safety-related aspects in a much more effective manner and provide safer objectives.

In regard to the above points, it should be noted that the level of explicitness of an aspect in a text is a clear indicator of the level of relevance or consideration given to that aspect by the drafter. Stating that the above aspects are implicit in the proposed ERs would not be a valid argument. They deserve the explicitness that ICAO SARPs provide. That explicitness is the product of an identification of hazards and mitigation measures that has taken place throughout the years on the basis of experience. Disregarding that could be dangerous.

response *Noted*

The very same paragraph 27 continues and explains the reason for such argument and why any direct reference could not be used; *'ICAO SARPs combine altogether basic principles, essential requirements and implementation means of technical or administrative nature. This structure makes it difficult to differentiate requirements that affect the fundamental freedoms of persons, which should be adopted at legislative level, from implementing rules that are for the executive level to decide, or from requirements of detailed technical nature, which should be covered by acceptable means of compliance or by industry standards.'*

Furthermore, the ICAO SARPS are indeed the natural basis for the more detailed implementing rules. This is the case for instance with the remark related to the chapter 3.c.4, and in the case of which the corresponding draft ER should indeed be complemented. It is however to be noted that the safety objectives have to be comprehensive, but can not define clear interfaces for

instance between different services. In this very case the ground-ground element has been covered in 'Systems and Constituents' and in 'Communication services', but mistakenly not clearly enough in 'ATS'. In more general, the EASA system in fact creates a mechanism for the common transposition of ICAO SARPS by the Member States. Such transposition through Essential Requirements constitutes thereafter the basis for the necessary detailed implementing rules. This has been established in the Basic Regulation based on deliberate and very extensive contribution, especially by the Member States and taking into account their legal obligations as a contracting State.

The comment continues by bringing up a very relevant concern on the interfaces between different services. This point was also debated several times by the group of experts when developing these draft essential requirements. Based on this, it was concluded to mitigate such safety risks through an obligation on the service provider. The draft ER 6.a.5 is as follows; *'The service provider must establish formal interfaces with all the other contributors to the service provision which may affect compliance with the present Essential Requirements.'* It is fully agreed that it is debatable whether this is enough. The Agency is naturally open to any solutions to improve this aspect in the draft ER's. Again, and in more general, the Agency believes that it would have been very complicated and not sufficient to identify and adopt safety objectives directly from ICAO SARPS. Moreover, the same subject has been debated when developing safety objectives in air worthiness, air operations, flight crew licensing, safety of foreign aircraft and aerodromes; all of which are subject to SARPS. All these other domains of aviation have been (or will be) regulated using this mechanism. A specific question then arises - why to do this differently just in the case of ATM/ANS.

comment 688

comment by: EUROCONTROL

As proposed, the Essential Requirements do not demonstrate that they are a sound basis for the regulation of safety of ATM/ANS, as their contents do not appear to provide a solid and mature set of safety objectives aimed at improving the current regulatory basis.

The ERs proposed in the NPA were found to have significant deficiencies. It is unclear whether the ER's development has succeeded in addressing all ATM/ANS hazards (please also see specific comments below). The ERs could be improved by taking into account the mitigations identified through years of experience, and which have been captured in existing regulations and associated best-practices. They also vary greatly in their level of detail - some are very high-level while others are detailed (e.g. ATCO competence).

We would propose that the regulatory approach taken by EASA should reflect the use of SMS, which has been developed and implemented over many years as a central principle of safety in ANS/ATM. Additionally, the NPA contents are confusing as it does not use a consistent and clear taxonomy throughout the document and would propose that this is addressed as further proposals are developed.

In our opinion the Requirements could have been adopted or merged in the SES legislative package, as a regulation or an Implementing Rule (IR). Perhaps

a short provision in the body of the Basic Regulation could have been inserted, limited to extending the competences of EASA to ATM safety regulation, subject to detailed implementation of the Requirements through implementing rules of the European Commission.

response

Noted

In general the principle of adopting essential requirements at the highest political level has been adopted by Council Resolution of 07 May 1985 on a "new approach" to technical harmonisation and standards, in order to provide sufficiently safe products. SES Regulation 552/2004 on the interoperability has been based on the same principle.

Adopting essential requirements also for ATM and ANS will contribute to harmonisation, clarity and consistency of the EU legislation aimed at protecting citizens. The Agency notes that presently there are yet no essential requirements for service providers, attached to SES Regulation 550/2004. And indeed the NPA aims at filling this gap.

The Agency naturally welcomes all constructive proposals to improve the draft essential requirements, especially those coming from EUROCONTROL, as the well recognised centre of experience in ATM/ANS.

Issues related to ATCO competence are very detailed because it is regarded as a regulated profession. EU law specifically requires that when individual rights are affected, such limitations have to be clearly specified at the level of basic law.

Detailed provisions of fully fledged SMS and risk management will be an issue on the level of implementing rules. The Agency believes that the level of basic law should not fix the definition of the SMS and should allow organisations to arrange their different management objectives as they see fit best, subject of course ensuring that all necessary elements to appropriately manage safety are included. This should indeed be compliant with ICAO approach and is the case in all other domains of aviation safety.

Deciding in which set of legal acts (e.g. SES or EASA Basic Regulation) to insert the technical proposals contained in Opinions developed by EASA, is responsibility of the Commission.

comment

694

comment by: *EUROCONTROL*

The structure of the ERs is confusing since the addressees are not clear. Some provisions are addressed to specific groups of addressees e.g. ANSPs, training providers, whilst others concern operational aspects e.g. use of the airspace, concept of operations, but the addressees here are not identified.

response

Noted

In the case of 'Use of the airspace' the addressees are airspace users. In the case of services they are addressed to any entity providing the involved service of function. When it comes to 'Concept of operations', the conceptual difficulty indeed to define the addressee is explained in the NPA, which also poses a specific question on stakeholders to clarify this issue. This term is very widely used in different EUROCONTROL activities; therefore the Agency is indeed looking forward receiving such advice from it in order to define the regulated

persons in such context.

comment

696

comment by: *EUROCONTROL*

The focus of the ERs is on airspace, but in paragraph 42 there is a clear responsibility laid on ground functions. These may be provided by an ANSP, but in some member states the Apron Control function is separated from the ANSP (e.g. Frankfurt airport). It is unclear which kind of rules and regulations applying to ANSPs (e.g. licensing for ATCOs or regulation on interoperability). Ground functions ensure safe and efficient movement of aircraft during all phases of flight. This should also include Apron Control units that are responsible for the ground movements on the surface. As Apron Control Units are established at some airports independently from the local ANSP, a common regulation should apply and a clear and non-interpretible definition of those services should be established. This should not be left under the responsibility of the member States as it is an integral part of the gate to gate concept.

response

Noted

The Agency agrees with the general intent of the comment. It is acknowledged that, as an example, apron control service is in some cases provided by the aerodrome operator and sometimes by the ANSP. However, the requirements for apron control service, like for any other service, will apply to any entity providing that service. It is indeed the purpose of the Agency to develop horizontal implementing rules, without presupposing services provided by different organisations. The essential requirements then focus on the service to be provided, leaving States and stakeholders free to organise such a provision as they best deem. This aims to support gate-to-gate concepts, as the comment also suggests.

comment

701

comment by: *EUROCONTROL*

The NPA claims that "consistency with the structure and contents of the five other sets of essential requirements provided by the Agency in the other fields of aviation safety regulation" is an element to ensure a total system approach. However, the claim does not appear to be supported by any evidence and no rationale is apparent. It is difficult to see how by including/squeezing ATM/ANS in a structure designed for airworthiness and air operations will ensure a total system approach and most importantly that gaps are not left in the safety objectives (in fact gaps were identified and are detailed in the feedback on questions and ERs).

response

Noted

As already stated above, the principle of adopting essential requirements at the highest political level has been adopted by Council Resolution of 07 May 1985 on a "new approach" to technical harmonisation and standards, in order to provide sufficiently safe products. SES Regulation 552/2004 on the interoperability has been based on the same principle.

Essential requirements are safety objectives and can not therefore be assumed to provide prescriptive interfaces between different domains of aviation. But, they establish a regulatory basis, which has to be comprehensive and consistent with those other domains. That allows then developing implementation means, which are limited to the intended effect, avoid duplication and overlap, avoid safety gaps and provide consistent set of

regulatory measures allowing regulated service providers to organise themselves as they see best fit for their purposes.

The Agency welcomes all constructive comments purposed to assist it in filling such gaps.

comment 813

comment by: UK CAA & UK MoD

UK CAA & MoD Comments on Draft Essential Requirements Description.

The relationship between safety regulation and interoperability is not clear because there are two sources of interoperability regulation, ICAO requirements and SES.

One of the objectives should be to enable compliance with SES.

response *Noted*

As explained in the NPA, the Agency believes that global interoperability can not be dissociated from safety. This is quite evident also in the ICAO SARPS. Interoperability related to technical harmonisation will not be regulated in the EASA system.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Introduction - 86.

p. 21

comment 684

comment by: EUROCONTROL

As proposed, the Essential Requirements do not demonstrate that they are a sound basis for the regulation of safety of ATM/ANS, as their contents do not appear to provide a solid and mature set of safety objectives aimed at improving the current regulatory basis.

The ERs proposed in the NPA were found to have significant deficiencies. It is unclear whether the ER's development has succeeded in addressing all ATM/ANS hazards (please also see specific comments below). The ERs could be improved by taking into account the mitigations identified through years of experience, and which have been captured in existing regulations and associated best-practices. They also vary greatly in their level of detail - some are very high-level while others are detailed (e.g. ATCO competence).

We would propose that the regulatory approach taken by EASA should reflect the use of SMS, which has been developed and implemented over many years as a central principle of safety in ANS/ATM. Additionally, the NPA contents are confusing as it does not use a consistent and clear taxonomy throughout the document and would propose that this is addressed as further proposals are developed.

In our opinion the Requirements could have been adopted or merged in the SES legislative package, as a regulation or an Implementing Rule (IR). Perhaps a short provision in the body of the Basic Regulation could have been inserted,

limited to extending the competences of EASA to ATM safety regulation, subject to detailed implementation of the Requirements through implementing rules of the European Commission.

response

Noted

See the response to identical comment 688.

comment

692

comment by: *EUROCONTROL*

The main question concerns the substance and added value of the ERs. They appear to simply state the obvious and do not go beyond expected due diligence. They repeat principles that are explicitly or implicitly addressed in other regulations, and it could be queried whether such requirements are really necessary. It may have been the case for airworthiness, but in the ATM domain some legislative and regulatory framework already exists. This framework already states safety principles and objectives, for instance through certification requirements. Furthermore, the Essential Requirements for ATM/ANS are drafted with such vague and non-accurate terms, that there is considerable room for interpretation by the addressees concerned (e.g. appropriate, necessary, sufficient, adequate, suitable, etc.). The apparent refusal to give more precise definitions or to indicate quantitative safety targets will make it difficult to reach a level-playing field.

response

Noted

The response to the comment 688 already addresses the general remarks made here. In addition to that the Agency would like to make some further remarks. Comment seems to suggest that a certification process should be regarded as a safety objective. This view is not shared. Certification in EASA system is regarded as one means of implementation to verify that the regulated person complies with common safety objectives. There are also other means to verify compliance. It is commonly known and agreed that the choice of such verification means to be used is a political decision, which often depends on public sensitivity to the subject. Therefore such requirements are imposed in the Basic Regulation through specific provisions in its articles, and not in the essential requirements.

Secondly, essential requirements apply to all persons defined in the scope of the regulation. Therefore, the essential requirements can not go into detail in a prescriptive manner, but they aim to recognise those subjects which must be further clarified in the implementing rules. It would be also very burdensome to maintain a regulatory system, where all changes should go through a lengthy co-decision procedure. This approach using essential requirements is analogous with the Community 'new approach', used already for few decades in many areas of industry. It is also a basis for the SES interoperability regulation, whose implementation means are currently developed mainly by EUROCONTROL. This is one of the reasons why the Agency did not expect such misgivings by the same organisation as regards the methodology related to the use of essential requirements.

comment

697

comment by: *EUROCONTROL*

The focus of the ERs is on airspace, but in paragraph 42 there is a clear responsibility laid on ground functions. These may be provided by an ANSP,

but in some member states the Apron Control function is separated from the ANSP (e.g. Frankfurt airport). It is unclear which kind of rules and regulations applying to ANSPs (e.g. licensing for ATCOs or regulation on interoperability). Ground functions ensure safe and efficient movement of aircraft during all phases of flight. This should also include Apron Control units that are responsible for the ground movements on the surface. As Apron Control Units are established at some airports independently from the local ANSP, a common regulation should apply and a clear and non-interpretable definition of those services should be established. This should not be left under the responsibility of the member States as it is an integral part of the gate to gate concept.

response *Noted*

See the response to identical comment 696.

comment 702

comment by: *EUROCONTROL*

The NPA claims that "consistency with the structure and contents of the five other sets of essential requirements provided by the Agency in the other fields of aviation safety regulation" is an element to ensure a total system approach. However, the claim does not appear to be supported by any evidence and no rationale is apparent. It is difficult to see how by including/squeezing ATM/ANS in a structure designed for airworthiness and air operations will ensure a total system approach and most importantly that gaps are not left in the safety objectives (in fact gaps were identified and are detailed in the feedback on questions and ERs).

response *Noted*

See the response to identical comment 701.

comment 814

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on Draft Essential Requirements Description.

It would be beneficial for EASA to make available their hazard identification and risk assessment conducted in order to better inform stakeholders in responding to the consultation.

response *Noted*

That was unfortunately not developed and maintained in a sense of a formal deliverable.

comment 1337

comment by: *Ente Nazionale per l'Aviazione Civile*

No detail has been given about this process. Therefore it is quite impossible to comment on the completeness of the list of hazard individuated

response *Noted*

The process has been carried out with the support by external experts. According to the EASA rulemaking procedure, no specific formal deliverable is necessary and was therefore not foreseen.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Introduction - 87.

p. 21-22

comment 239 comment by: *ATSEP Belgium*

Omitting 'hazards related to the qualification of air traffic safety electronics personnel' as a section of the essential requirements is a major gap if one wants to obtain a certain level of safety within air navigation service provision.

response *Noted*

Essential requirements for ATSEP's are not omitted. Such hazards and risks were addressed, but their mitigation (= essential requirements) was defined to be imposed through organisational requirements. Proposed ER 6.a.4 imposes an obligation on the certified service provider not only for initial training but also for periodic checking. This will be basis for more detailed implementing rules, adopted by the Commission following EASA's opinion. Implementing rules can be modified more frequently than basic legislation and therefore can be adapted more easily to evolving technologies.

comment 279 comment by: *IFATSEA*

Para 87 is omitting 'hazards related to the qualification of air traffic safety electronics personnel (ATSEP) as a section of the essential requirements. This omission is a major gap if one wants to obtain a certain level of safety within air navigation service provision.

response *Noted*

Essential requirements for ATSEP's are not omitted. Such hazards and risks were addressed, but their mitigation (= essential requirements) was defined to be imposed through organisational requirements. Proposed ER 6.a.4 imposes an obligation on the certified service provider not only for initial training but also for periodic checking. This will be basis for more detailed implementing rules, adopted by the Commission following EASA's opinion. Implementing rules can be modified more frequently than basic legislation and therefore can be adapted more easily to evolving technologies.

comment 687 comment by: *EUROCONTROL*

As proposed, the Essential Requirements do not demonstrate that they are a sound basis for the regulation of safety of ATM/ANS, as their contents do not appear to provide a solid and mature set of safety objectives aimed at improving the current regulatory basis.

The ERs proposed in the NPA were found to have significant deficiencies. It is unclear whether the ER's development has succeeded in addressing all ATM/ANS hazards (please also see specific comments below). The ERs could be improved by taking into account the mitigations identified through years of experience, and which have been captured in existing regulations and associated best-practices. They also vary greatly in their level of detail - some are very high-level while others are detailed (e.g. ATCO competence).

We would propose that the regulatory approach taken by EASA should reflect the use of SMS, which has been developed and implemented over many years as a central principle of safety in ANS/ATM. Additionally, the NPA contents are confusing as it does not use a consistent and clear taxonomy throughout the document and would propose that this is addressed as further proposals are developed.

In our opinion the Requirements could have been adopted or merged in the SES legislative package, as a regulation or an Implementing Rule (IR). Perhaps a short provision in the body of the Basic Regulation could have been inserted, limited to extending the competences of EASA to ATM safety regulation, subject to detailed implementation of the Requirements through implementing rules of the European Commission.

response *Noted*

See the response to identical comment 688.

comment 693

comment by: *EUROCONTROL*

The main question concerns the substance and added value of the ERs. They appear to simply state the obvious and do not go beyond expected due diligence. They repeat principles that are explicitly or implicitly addressed in other regulations, and it could be queried whether such requirements are really necessary. It may have been the case for airworthiness, but in the ATM domain some legislative and regulatory framework already exists. This framework already states safety principles and objectives, for instance through certification requirements. Furthermore, the Essential Requirements for ATM/ANS are drafted with such vague and non-accurate terms, that there is considerable room for interpretation by the addressees concerned (e.g. appropriate, necessary, sufficient, adequate, suitable, etc.). The apparent refusal to give more precise definitions or to indicate quantitative safety targets will make it difficult to reach a level-playing field.

response *Noted*

See the response to identical comment 692.

comment 815

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on Draft Essential Requirements Description.

See paragraph 86 comment.

The concepts of regulatory risk and safety risk (which is related to a specific service and hence an ANSP responsibility) need to be delineated. The UK CAA believes that this paragraph appears to indicate that the regulator has identified all hazards and mitigated risk - this cannot be achieved.

response *Noted*

The meaning of 'regulatory risks', as used in this comment, might not have been fully understood. Nevertheless, it is to be noted that the Basic Regulation establishes a system, where the Agency is recognised as a legal person and is

liable of all its actions. This should be seen as an important and complementary element in the regulatory framework. In any case the explanatory material will not become a law and is not prescriptive in that sense. The Agency would be prepared to clarify and to discuss this subject in more detail if needed and if the response is not regarded as satisfactory.

comment

1139

comment by: *Silvio ZAPPI*

As stated on para. 95, adequate and sufficient portion of EM spectrum for aeronautical CNS is a fundamental pre-requisite for providing Aeronautical Services. During last years severe shortage of spectrum resource brought to a reduction of capacity within the system. In fact in the European core area some States faced the impossibility to open new sectors for shortage of VHF A/G frequency and some other could not implement new DMEs. This was due to strong congestion of the bands. In this context the pre-requisite of adequate and sufficient portion of EM spectrum for aeronautical CNS become of primary importance at the same level of other essential requirements. In fact congestion of Aeronautical spectrum could not assure the same or higher level of safety with higher level of capacity (interference and reduction of capacity).

For the above reason my suggestion is to foresees a separate section for the Hazards related to the use of Aeronautical EM Spectrum. Mitigation of the hazards related to the use of Aeronautical EM Spectrum should be more clear and less generic.

Following points should be considered for definition of essential requirements:

<!--[if !supportEmptyParas]--> <!--[endif]-->

<!--[if !supportLists]-->-- <!--[endif]-->removing of congestion of some aeronautical bands adopting new technologies

<!--[if !supportLists]-->-- <!--[endif]-->improve management of frequency

<!--[if !supportLists]-->-- <!--[endif]-->auditing and assessment of spectrum usage

<!--[if !supportLists]-->-- <!--[endif]-->definition of Spectrum and Frequency management structure at national and European level

<!--[if !supportEmptyParas]--> <!--[endif]-->

response

Partially accepted

The Agency is pleased to recognise this very informed comment on the subject of electromagnetic spectrum used in ANS. This will be taken into account in preparing the revised essential requirements, which will be issued in relation to the forthcoming EASA Opinion. The NPA will not be re-issued and therefore the comments suggesting changes to the paragraph 95 will only be noted.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Introduction - 88. p. 22

comment

689

comment by: *EUROCONTROL*

As proposed, the Essential Requirements do not demonstrate that they are a

sound basis for the regulation of safety of ATM/ANS, as their contents do not appear to provide a solid and mature set of safety objectives aimed at improving the current regulatory basis.

The ERs proposed in the NPA were found to have significant deficiencies. It is unclear whether the ER's development has succeeded in addressing all ATM/ANS hazards (please also see specific comments below). The ERs could be improved by taking into account the mitigations identified through years of experience, and which have been captured in existing regulations and associated best-practices. They also vary greatly in their level of detail - some are very high-level while others are detailed (e.g. ATCO competence).

We would propose that the regulatory approach taken by EASA should reflect the use of SMS, which has been developed and implemented over many years as a central principle of safety in ANS/ATM. Additionally, the NPA contents are confusing as it does not use a consistent and clear taxonomy throughout the document and would propose that this is addressed as further proposals are developed.

In our opinion the Requirements could have been adopted or merged in the SES legislative package, as a regulation or an Implementing Rule (IR). Perhaps a short provision in the body of the Basic Regulation could have been inserted, limited to extending the competences of EASA to ATM safety regulation, subject to detailed implementation of the Requirements through implementing rules of the European Commission.

response *Noted*
See the response to identical comment 688.

comment *816* comment by: *UK CAA & UK MoD*
UK CAA & MoD Comments on Draft Essential Requirements Description.
The UK CAA would wish to see existing ICAO and SES Regulations used as far as possible with ICAO SARPS taking a pre-eminent position.

response *Accepted*
The Agency confirms that ICAO SARPs will be transposed through different means of implementation as far as possible. SES implementing rules will remain in force and be updated (or replaced) through comitology, as the need may arise. Any EASA Opinion affecting the above will be subject to full impact assessment and stakeholder consultation.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to the concept of operations - 89.	p. 22
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comment *522* comment by: *EUROCONTROL*
This entire section (para 89) does not cover the operations on an aerodrome

unless this is intended to be included in the term airspace. If so, this might be misleading to aerodrome operators and ANSPs and cause confusion on responsibilities. This could increase safety risks. If it is not included in airspace definition then it is missing altogether, which is not in line with the initial intention of the gate to gate perspective.

A definition of aerodrome capacity is essential here, as it cannot merely be defined as runway capacity, especially under the premises of ASM and ATFM. ATFM has currently no legal powers to adjust aerodrome capacity which is declared by the aerodrome operator as per the European legislation in force for the slot allocation process. Therefore, it is recommended that aerodrome operators should be included and named in the extension of the regulation.

response *Partially accepted*

The Agency agrees with the general intent of this comment.

Although capacity and efficiency are not the focus of safety regulation, the essential requirements attached to Opinion 03/2007 impose on aerodrome operators the obligation to establish formal interfaces with all other stakeholders operating at the aerodrome. An identical essential requirement (ER 6.a.5) is imposed on all ATM/ANS service providers.

Moreover, the text in this paragraph is only for explanatory purpose and is not prescriptive in that sense. Both Agency tasks, this one under scrutiny and the aerodrome extension (BR.002), will merge into one legal proposal by the Commission, giving also a better opportunity to verify that such regulatory responsibilities are consistent.

comment 818

comment by: UK CAA & UK MoD

UK CAA & MoD Comments on Draft Essential Requirements Description.

See earlier references to concept of operations this applies equally applies to the following paragraphs within this section.

The UK CAA would suggest renaming the paragraph to read 'Mitigation of the **risks** ...' instead of referring to hazards since hazards pertaining to this ER cannot be removed by implication e.g. an obstacle is a hazard for which there are collision risks, which in turn can be mitigated either in terms of severity and/or probability.

response *Partially accepted*

Comment is accepted. However, the NPA will not be re-issued and such change does not affect the wording of the draft ER in question.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to the concept of operations - 90. p. 22

comment 523

comment by: EUROCONTROL

This entire section (para 89) does not cover the operations on an aerodrome unless this is intended to be included in the term airspace. If so, this might be misleading to aerodrome operators and ANSPs and cause confusion on responsibilities. This could increase safety risks. If it is not included in airspace definition then it is missing altogether, which is not in line with the initial intention of the gate to gate perspective.

A definition of aerodrome capacity is essential here, as it cannot merely be defined as runway capacity, especially under the premises of ASM and ATFM. ATFM has currently no legal powers to adjust aerodrome capacity which is declared by the aerodrome operator as per the European legislation in force for the slot allocation process. Therefore, it is recommended that aerodrome operators should be included and named in the extension of the regulation.

response *Noted*

See the response to an identical comment per paragraph 89.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to the concept of operations - 91.	p. 22
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comment 524

comment by: *EUROCONTROL*

This entire section (para 89) does not cover the operations on an aerodrome unless this is intended to be included in the term airspace. If so, this might be misleading to aerodrome operators and ANSPs and cause confusion on responsibilities. This could increase safety risks. If it is not included in airspace definition then it is missing altogether, which is not in line with the initial intention of the gate to gate perspective.

A definition of aerodrome capacity is essential here, as it cannot merely be defined as runway capacity, especially under the premises of ASM and ATFM. ATFM has currently no legal powers to adjust aerodrome capacity which is declared by the aerodrome operator as per the European legislation in force for the slot allocation process. Therefore, it is recommended that aerodrome operators should be included and named in the extension of the regulation.

response *Noted*

See the response to an identical comment per paragraph 89.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to the concept of operations - 92.	p. 22
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comment 525

comment by: *EUROCONTROL*

This entire section (para 89) does not cover the operations on an aerodrome unless this is intended to be included in the term airspace. If so, this might be misleading to aerodrome operators and ANSPs and cause confusion on

responsibilities. This could increase safety risks. If it is not included in airspace definition then it is missing altogether, which is not in line with the initial intention of the gate to gate perspective.

A definition of aerodrome capacity is essential here, as it cannot merely be defined as runway capacity, especially under the premises of ASM and ATFM. ATFM has currently no legal powers to adjust aerodrome capacity which is declared by the aerodrome operator as per the European legislation in force for the slot allocation process. Therefore, it is recommended that aerodrome operators should be included and named in the extension of the regulation.

response *Noted*

See the response to an identical comment per paragraph 89.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to the concept of operations - 93.	p. 22
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comment 526

comment by: *EUROCONTROL*

This entire section (para 89) does not cover the operations on an aerodrome unless this is intended to be included in the term airspace. If so, this might be misleading to aerodrome operators and ANSPs and cause confusion on responsibilities. This could increase safety risks. If it is not included in airspace definition then it is missing altogether, which is not in line with the initial intention of the gate to gate perspective.

A definition of aerodrome capacity is essential here, as it cannot merely be defined as runway capacity, especially under the premises of ASM and ATFM. ATFM has currently no legal powers to adjust aerodrome capacity which is declared by the aerodrome operator as per the European legislation in force for the slot allocation process. Therefore, it is recommended that aerodrome operators should be included and named in the extension of the regulation.

response *Noted*

See the response to an identical comment per paragraph 89.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to the concept of operations - 94.	p. 22
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comment 527

comment by: *EUROCONTROL*

This entire section (para 89) does not cover the operations on an aerodrome unless this is intended to be included in the term airspace. If so, this might be misleading to aerodrome operators and ANSPs and cause confusion on responsibilities. This could increase safety risks. If it is not included in airspace definition then it is missing altogether, which is not in line with the initial intention of the gate to gate perspective.

A definition of aerodrome capacity is essential here, as it cannot merely be defined as runway capacity, especially under the premises of ASM and ATFM. ATFM has currently no legal powers to adjust aerodrome capacity which is declared by the aerodrome operator as per the European legislation in force for the slot allocation process. Therefore, it is recommended that aerodrome operators should be included and named in the extension of the regulation.

response *Noted*
See the response to an identical comment per paragraph 89.

comment 820 comment by: UK CAA & UK MoD
UK CAA & MoD Comments on Draft Essential Requirements Description.
Changes are dealt with in the SES Common Requirements by hazard ID, risk assessment and risk mitigation. This is an existing overarching requirement in SES regulations.

See General Comments i.e. the UK CAA strongly suggests that the safety related elements of the SES regulations be incorporated intact into the EASA regulatory structure, taking care to ensure that neither overlap nor gaps develop between the new regulations and remaining SES legislation.

response *Noted*
ER's have to be comprehensive, even if implementing means would already exist. The Agency is aiming to harmonise the requirements for the safety processes across all aviation domains, using the SES provisions as a starting point in ATM/ANS.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to the concept of operations - 95. p. 22-23

comment 240 comment by: ATSEP Belgium
Sufficient and adequate allocation of EM spectrum must also be provided for aeronautical navigation and surveillance.
Safeguarding of aeronautical frequency planning is a typical task in Belgium performed by ATSEP.

response *Accepted*
The wording of this explanatory paragraph is indeed too limited. The corresponding draft ER will be amended accordingly.

comment 280 comment by: IFATSEA
Safeguarding of aeronautical frequency planning is a typical task that is performed by ATSEP.

response *Noted*

comment 528 comment by: *EUROCONTROL*

This entire section (para 89) does not cover the operations on an aerodrome unless this is intended to be included in the term airspace. If so, this might be misleading to aerodrome operators and ANSPs and cause confusion on responsibilities. This could increase safety risks. If it is not included in airspace definition then it is missing altogether, which is not in line with the initial intention of the gate to gate perspective.

A definition of aerodrome capacity is essential here, as it cannot merely be defined as runway capacity, especially under the premises of ASM and ATFM. ATFM has currently no legal powers to adjust aerodrome capacity which is declared by the aerodrome operator as per the European legislation in force for the slot allocation process. Therefore, it is recommended that aerodrome operators should be included and named in the extension of the regulation.

response *Noted*

See the response to an identical comment per paragraph 89.

comment 823 comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on Draft Essential Requirements Description.

Spectrum allocation is done on an international basis; hence it is not clear how EASA views the regulation of such a function within Community competence.

response *Noted*

The aim of this draft ER is to ensure that sufficient and adequate electromagnetic spectrum is allocated for aeronautical purposes and that appropriate protection from unacceptable electromagnetic interferences is provided. These measures are clearly mitigations for specific unacceptable safety risks. It is not intended that this would somehow change the national competencies related to the management of radio frequencies. It is up to the Commission legal proposals to lay down a consistent regulatory solution, naturally within the competences of the Community. Conclusions of the Agency are also dependent on the outcome of the NPA question 1 and will be launched in the Opinion.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to the use of airspace - 96. p. 23

comment 529 comment by: *EUROCONTROL*

Referring to the previous comment on the Concept of Operations, the same applies to this section. Airspace is mentioned only, but appropriate functioning equipment is also a pre-requisite for the movement on ground, e.g. on the aerodrome, until on-block and shut down of engines. This indication is missing e.g. paragraph 97 mentions that collisions with the ground are possible, but

	<p>not on the ground.</p>
<p>response</p>	<p><i>Noted</i></p> <p>This paragraph is an explanatory text for the draft ER 2.a, and is not aiming to prescribe its exact scope. The last sentence of it describes the purpose of this ER and speaks about 'safe interaction between aircraft', thus covering also collisions on the ground.</p>
<p>comment</p>	<p>698 comment by: <i>EUROCONTROL</i></p> <p>The focus of the ERs is on airspace, but in paragraph 42 there is a clear responsibility laid on ground functions. These may be provided by an ANSP, but in some member states the Apron Control function is separated from the ANSP (e.g. Frankfurt airport). It is unclear which kind of rules and regulations applying to ANSPs (e.g. licensing for ATCOs or regulation on interoperability). Ground functions ensure safe and efficient movement of aircraft during all phases of flight. This should also include Apron Control units that are responsible for the ground movements on the surface. As Apron Control Units are established at some airports independently from the local ANSP, a common regulation should apply and a clear and non-interpretable definition of those services should be established. This should not be left under the responsibility of the member States as it is an integral part of the gate to gate concept.</p>
<p>response</p>	<p><i>Noted</i></p> <p>See the response to identical comment 696.</p>
<p>comment</p>	<p>825 comment by: <i>UK CAA & UK MoD</i></p> <p>UK CAA & MoD Comments on Draft Essential Requirements Description.</p> <p>The UK CAA would suggest renaming the paragraph to read 'Mitigation of the risks ...' instead of referring to hazards since it is not possible to mitigate hazards.</p>
<p>response</p>	<p><i>Partially accepted</i></p> <p>Comment is accepted. However, the NPA will not be re-issued and such change does not affect the wording of the draft ER in question.</p>
<p>comment</p>	<p>1233 comment by: <i>IFATCA</i></p> <p>Expand these articles to cover a future different use than what is currently known.</p> <p>Justification:</p> <p>New technology and new operating concepts mean that the airspace can be used in different ways.</p> <p>We do not understand yet the safety implications of this. For example, URET (HST/DST- Skyvisu) and other conflict probes allow the airspace to be managed in very different ways. How is this covered.</p> <p>We currently do not assess the safety of a piece of airspace very well. New</p>

metrics need to be developed - in fact "safety" needs to be reconsidered in this context.
 Procedures have to be "safe" end-to-end!

response *Noted*

The purpose of this paragraph is to explain reasons for the draft ER 2.a imposing an obligation for the airspace users to comply with applicable operating rules and procedures. It should be broad enough to cover future developments.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to the use of airspace - 97. p. 23

comment 530

comment by: *EUROCONTROL*

Referring to the previous comment on the Concept of Operations, the same applies to this section. Airspace is mentioned only, but appropriate functioning equipment is also a pre-requisite for the movement on ground, e.g. on the aerodrome, until on-block and shut down of engines. This indication is missing e.g. paragraph 97 mentions that collisions with the ground are possible, but not **on** the ground.

response *Noted*

See the response to identical comment 529.

comment 699

comment by: *EUROCONTROL*

The focus of the ERs is on airspace, but in paragraph 42 there is a clear responsibility laid on ground functions. These may be provided by an ANSP, but in some member states the Apron Control function is separated from the ANSP (e.g. Frankfurt airport). It is unclear which kind of rules and regulations applying to ANSPs (e.g. licensing for ATCOs or regulation on interoperability). Ground functions ensure safe and efficient movement of aircraft during all phases of flight. This should also include Apron Control units that are responsible for the ground movements on the surface. As Apron Control Units are established at some airports independently from the local ANSP, a common regulation should apply and a clear and non-interpretible definition of those services should be established. This should not be left under the responsibility of the member States as it is an integral part of the gate to gate concept.

response *Noted*

See the response to identical comment 696.

comment 828

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on Draft Essential Requirements Description.

For completeness, there should be a reference to the qualification of the crew to use the on-board equipment.

response *Noted*

The comment as such is accepted, but does not affect the contents of the respective ER. Furthermore, crew qualification is subject to EASA FCL essential requirements already adopted by the European legislators.

comment

1233 ❖

comment by: IFATCA

Expand these articles to cover a future different use than what is currently known.

Justification:

New technology and new operating concepts mean that the airspace can be used in different ways.

We do not understand yet the safety implications of this. For example, URET (HST/DST- Skyvisu) and other conflict probes allow the airspace to be managed in very different ways. How is this covered.

We currently do not assess the safety of a piece of airspace very well. New metrics need to be developed - in fact "safety" needs to be reconsidered in this context.

Procedures have to be "safe" end-to-end!

response

Noted

See the response to an identical comment per paragraph 96.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to ATM/ANS services - Aeronautical information - 98.

p. 23

comment

532

comment by: EUROCONTROL

The scope of AIM goes well beyond the Safety Regulation arena. It is a very broad domain, which should follow the right safety methodology where appropriate whilst understanding and respecting that the (vast) majority of aeronautical information is of a Routine (integrity) nature and should not be subject to the expense that a full safety management system would impose. The ongoing work to facilitate the implementation of Terrain and Obstruction data and the prospect of the implementation of the Aeronautical Data Quality Rule have raised interesting questions as to who is competent to "regulate" the Survey profession a key component in the origination of data. In consequence there needs to be a clear separation between provision of data in the broadest sense and prudent regulation. This is broader than EASA's remit.

Referring to the AIP (para 98), information for the AIP is provided by the aerodrome operators who are using enhanced technological solutions for the distribution of data as well. The accuracy of the data must be secured by the originator. For this aerodromes should be addressed in this section as well. In modern, and certainly future operations (which are to be expected from the outcome of SESAR), the borders between classic ATM Services and airport operators may very well disappear, or at least be seriously redefined. Therefore, new and more detailed definitions are needed on what such services

are and what is included or excluded in their scope.

response

Noted

The purpose of this paragraph is to describe why the draft essential requirement 3.a.1 has been introduced. It is natural that the purpose of such a safety objective is to address only safety related aspects of it. Also, its wording aims to leave enough room for flexibility on the level of implementation, contrary to what the comment seems to suggest.

Secondly, there is another EASA task BR.002, which addresses the safety regulation of aerodromes and which imposes corresponding responsibilities to the aerodrome operator. In fact these both tasks will form a single proposal to amend the EASA Basic Regulation, so their consistency will be ensured. The Agency agrees with the comment that some borders between traditional 'aviation functions' will change or may even disappear, and therefore the regulatory framework shall provide for total system approach and not unintentionally hinder such developments.

The Agency fully accepts that, in front of evolving technologies in AIM, it may well be necessary to go beyond the SARPS contained in present edition of ICAO Annex 15. And indeed, ER's in paragraph 3.a have been worded to cover data origination (by aerodrome operators or anyone else), data processing and distribution, until delivery in digital form to avionics.

comment

830

comment by: UK CAA & UK MoD

UK CAA & MoD Comments on Draft Essential Requirements Description.

The UK CAA would suggest renaming the paragraph to read 'Mitigation of the **risks** ...' instead of referring to hazards since it is not possible to mitigate hazards (see example in response to paragraph 89).

response

Noted

It is agreed that the suggested wording would have been more correct. Comment is noted, because the purpose of this paragraph is just to explain the reason for the respective draft ER and it does not affect the wording of the ER as such.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to ATM/ANS services - Aeronautical information - 99. p. 23-24

comment

533

comment by: EUROCONTROL

The scope of AIM goes well beyond the Safety Regulation arena. It is a very broad domain, which should follow the right safety methodology where appropriate whilst understanding and respecting that the (vast) majority of aeronautical information is of a Routine (integrity) nature and should not be subject to the expense that a full safety management system would impose. The ongoing work to facilitate the implementation of Terrain and Obstruction data and the prospect of the implementation of the Aeronautical Data Quality Rule have raised interesting questions as to who is competent to "regulate" the Survey profession a key component in the origination of data. In consequence there needs to be a clear separation between provision of data in the broadest

sense and prudent regulation. This is broader than EASA's remit.

Referring to the AIP (para 98), information for the AIP is provided by the aerodrome operators who are using enhanced technological solutions for the distribution of data as well. The accuracy of the data must be secured by the originator. For this aerodromes should be addressed in this section as well. In modern, and certainly future operations (which are to be expected from the outcome of SESAR), the borders between classic ATM Services and airport operators may very well disappear, or at least be seriously redefined. Therefore, new and more detailed definitions are needed on what such services are and what is included or excluded in their scope.

response *Noted*

See the response to identical comment 532 per paragraph 98.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to ATM/ANS services - Aeronautical information -100. p. 24

comment 534

comment by: *EUROCONTROL*

The scope of AIM goes well beyond the Safety Regulation arena. It is a very broad domain, which should follow the right safety methodology where appropriate whilst understanding and respecting that the (vast) majority of aeronautical information is of a Routine (integrity) nature and should not be subject to the expense that a full safety management system would impose. The ongoing work to facilitate the implementation of Terrain and Obstruction data and the prospect of the implementation of the Aeronautical Data Quality Rule have raised interesting questions as to who is competent to "regulate" the Survey profession a key component in the origination of data. In consequence there needs to be a clear separation between provision of data in the broadest sense and prudent regulation. This is broader than EASA's remit.

Referring to the AIP (para 98), information for the AIP is provided by the aerodrome operators who are using enhanced technological solutions for the distribution of data as well. The accuracy of the data must be secured by the originator. For this aerodromes should be addressed in this section as well. In modern, and certainly future operations (which are to be expected from the outcome of SESAR), the borders between classic ATM Services and airport operators may very well disappear, or at least be seriously redefined. Therefore, new and more detailed definitions are needed on what such services are and what is included or excluded in their scope.

response *Partially accepted*

See the response to identical comment 532 per paragraph 98.

comment 832

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on Draft Essential Requirements Description.

The subject of Aeronautical Data Integrity (ADQ) is included in the Interoperability Regulation and is addressed by the ADQ Implementing Rule.

See General Comments i.e. the UK CAA strongly suggests that the safety related elements of the SES regulations be incorporated intact into the EASA regulatory structure, taking care to ensure that neither overlap nor gaps develop between the new regulations and remaining SES legislation.

response *Noted*

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to ATM/ANS services - Meteorological information -101. p. 24

comment **76** comment by: *KLM*

101 (Meteorological Information)

A safety framework should be created to facilitate the creation of a real competitive market for Meteo Services in the EU in order to ensure lower cost for the end users while ensuring safety and efficiency.

response *Noted*

The Basic Regulation defines the objectives of the Agency, including facilitation of the open market and promotion of cost-efficiency.

comment **421** comment by: *AEA*

A safety framework should be created to facilitate the creation of a real competitive market for Meteo Services in the EU in order to ensure lower cost for the end users while ensuring safety and efficiency.

response *Noted*

The Basic Regulation defines the objectives of the Agency, including facilitation of the open market and promotion of cost-efficiency.

comment **834** comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on Draft Essential Requirements Description.

The regulation of Meteorology is included in SES, both within the Common Requirements and Interoperability Regulation.

See General Comments i.e. the UK CAA strongly suggests that the safety related elements of the SES regulations be incorporated intact into the EASA regulatory structure, taking care to ensure that neither overlap nor gaps develop between the new regulations and remaining SES legislation.

response *Noted*



B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to ATM/ANS services - Meteorological information -102. p. 24

comment

535

comment by: EUROCONTROL

The scope in this section again appears to be too narrow, as it only encompasses 'in-flight' (para102). Pre-flight preparation includes also preparation on de-/anti-icing which of course needs proper weather forecast. The provision of de-/anti-icing services is either the responsibility of the aerodrome operator and/or the airline itself. This should be covered in this section. However, the requirements for Aviation Meteorology (MET) in terms of safety have yet to be clearly defined (e.g. criteria to be defined for "forecast" (para 102) in the safety sense). Without the development of clearly defined performance metrics it is difficult to envisage how safety can be applied to what is after all an educated best guess. Clearly the processes by which such MET products are derived should be placed in a total safety regime just as they should within a total quality management system. In addition, the nature of MET service provision which is very different from any other domain in ATM imposes interesting issues of competence in regulation that should be recognised. Specifically, MET is in the main provided by the Meteorological Organisation of a State though there are a number of States where MET is provided by the ANSP. In States where MET is provided by the Meteorological Organisation of the State, MET is simply a service derived from the same central data source as storm warnings, road icing alerts etc. In other words, it is an integral element of overall service provision. Just as in AIM, the issue of competence is significant.

response

Noted

The Agency can agree with the general intent of this well informed comment. It does not however seem to affect the drafting of the corresponding ER as such and it is not the purpose of this consultation to re-issue this NPA.

MET related obligations for aerodrome operators have already been dealt with under the Agency task BR.002, aiming to extend the EASA Basic Regulation to cover safety regulation of aerodromes. It is also fully agreed that borders between different aviation domains are to certain extent artificial and will in any case be subject to changes. Therefore EASA is indeed developing horizontal implementing rules without pre-empting which services are provided by which organisations and allow such organisations to be subject to only one approval (certification) process.

It is also agreed that the regulatory task here, at the level implementing rules, would be challenging taking into account the need to regulate both the 'product' and its provider. This however should not affect defining the safety objectives, which must not be dependent of who is the provider of the service.

comment

835

comment by: UK CAA & UK MoD

UK CAA & MoD Comments on Draft Essential Requirements Description.

The regulation of Meteorology is included in SES, both within the Common

	Requirements and Interoperability Regulation.
response	<i>Noted</i>

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to ATM/ANS services - Meteorological information -103. p. 24

comment	836 comment by: UK CAA & UK MoD
	UK CAA & MoD Comments on Draft Essential Requirements Description.
	The regulation of Meteorology is included in SES, both within the Common Requirements and Interoperability Regulation.
response	<i>Noted</i>

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to ATM/ANS services - Air traffic services (ATS) -104. p. 25

comment	202 comment by: FRAPORT AG
	If an airport executes Apron Control Service and performs Surface Movement Guidance and Control functions with its own staff, it must not be considered as an ATC/ANS Provider. Reference: ICAO Annex 11:3.2 (Note) provision of air traffic control service: "The task of providing specified services on the apron, e.g. apron management service, may be assigned to an aerodrome control tower or a separate unit."
response	<i>Noted</i>
	The general aim of the Agency is to develop horizontal implementing rules without pre-empting which services are provided by which organisation. Today ANSP's, if also aerodrome operators are subject to a double set of rules and double oversight processes. The same is true for aerodrome operators providing ATS or navigation services.

comment	241 comment by: ATSEP Belgium
	This paragraph demonstrates the importance of ATSEP for flight safety!
response	<i>Noted</i>
	The Agency agrees that ATSEP's are involved in the provision of safety critical services and that their role might become even more relevant in the future. It is indeed planned to propose implementing rules aiming to ensure their qualification in such tasks.

comment	281 comment by: IFATSEA
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	This para demonstrates the importance of ATSEP for flight safety.
response	<p><i>Noted</i></p> <p>The Agency agrees that ATSEP's are involved in the provision of safety critical services and that their role might become even more relevant in the future. It is indeed planned to propose implementing rules aiming to ensure their qualification in such tasks.</p>

comment	<p>537 comment by: <i>EUROCONTROL</i></p> <p>All requirements described in paras 104 to 109 apply for Apron Control Services and/ or airport operators as well. As in previous sections examples are restricted to in-flight operations that do not cover the gate to gate perspective. Ground movement should be defined accordingly.</p>
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response	<p><i>Noted</i></p> <p>There is another EASA task BR.002, which addresses the safety regulation of aerodromes and which imposes corresponding responsibilities to the aerodrome operator. In fact these both tasks will form a single proposal to amend the EASA Basic Regulation, so their consistency will be ensured and ground functions will be covered similarly, irrespective of whether they are provided by an organisation being primarily an ANSP or an aerodrome operator. The Agency agrees that some borders between traditional 'aviation functions' will change or may even disappear, and therefore the regulatory framework shall provide for total system approach and not unintentionally hinder such developments. Of course, in the case of an aerodrome operator providing only apron control in the ATM domain, the applicable implementing rules should be proportionate to the scope.</p>
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comment	<p>837 comment by: <i>UK CAA & UK MoD</i></p> <p>UK CAA & MoD Comments on Draft Essential Requirements Description.</p> <p>The Interoperability Regulation and Common Requirements cover all the subject matter of paragraphs 104 to 109.</p> <p>See General Comments i.e. the UK CAA strongly suggests that the safety related elements of the SES regulations be incorporated intact into the EASA regulatory structure, taking care to ensure that neither overlap nor gaps develop between the new regulations and remaining SES legislation.</p>
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response	<p><i>Noted</i></p>
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<p>B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to ATM/ANS services - Air traffic services (ATS) -105.</p>	<p>p. 25</p>
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comment	<p>538 comment by: <i>EUROCONTROL</i></p>
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All requirements described in paras 104 to 109 apply for Apron Control Services and/ or airport operators as well. As in previous sections examples are restricted to in-flight operations that do not cover the gate to gate perspective. Ground movement should be defined accordingly.

response

Noted

See the response to identical comment 537.

comment

1235

comment by: IFATCA

Human errors in today's complex systems do not exist anymore. It is in IFATCA's view essential that EASA understands this, as the deployment of new technology and system of systems approach we will see much more reliance on technology, automation support and automation of ATM functions. If the wrong belief of human errors prevails then this is a false start for the future. Human mistakes are a consequence of the systems and not a cause (misbelief which is prevailing since the 1960s and has not helped to make the system progress adequately)

response

Noted

Comment seems to establish a very interesting concept, which most likely is not shared by vast majority of experts (as the comment indeed indicates). At this stage the Agency can only take note of it and state that further effort would be needed for its elaboration.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to ATM/ANS services - Air traffic services (ATS) -106. p. 25

comment

242

comment by: ATSEP Belgium

This paragraph demonstrates the importance of ATSEP for flight safety!

response

Noted

The Agency agrees that ATSEP's are involved in the provision of safety critical services and that their role might become even more relevant in the future. It is indeed planned to propose implementing rules aiming to ensure their qualification in such tasks.

comment

282

comment by: IFATSEA

This para demonstrates the importance of ATSEP for flight safety.

response

Noted

The Agency agrees that ATSEP's are involved in the provision of safety critical services and that their role might become even more relevant in the future. It is indeed planned to propose implementing rules aiming to ensure their qualification in such tasks.

comment	539	comment by: EUROCONTROL
	All requirements described in paras 104 to 109 apply for Apron Control Services and/ or airport operators as well. As in previous sections examples are restricted to in-flight operations that do not cover the gate to gate perspective. Ground movement should be defined accordingly.	
response	Noted See the response to identical comment 537.	

comment	1234	comment by: IFATCA
	there is a reference here to a certain provision from Annex 14. This annex is called "Aerodromes", which has the potential for confusion - why refer to an Aerodrome Annex when discussing ATC? Note also that nearly all other references to Annexes are to 2, 10 and 11, which are more ATS related. And indeed, this particular reference is about emergency power etc. for airport systems such as lighting, which admittedly are used for navigation purposes but that is not the same as saying it is for Air Navigation Systems. This particular reference is ill chosen and should be removed. There probably are better suited provisions to be found in Doc 4444 and/or the ICAO ATS Planning Manual.	
response	Noted This is explanatory text and aims to present reasons behind the draft ER 3.c.3. It is fully agreed that the example chosen to the text is not a very good one, since it touches so closely another Agency task on aerodrome regulation.	

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to ATM/ANS services - Air traffic services (ATS) -107.	p. 25
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comment	543	comment by: EUROCONTROL
	All requirements described in paras 104 to 109 apply for Apron Control Services and/ or airport operators as well. As in previous sections examples are restricted to in-flight operations that do not cover the gate to gate perspective. Ground movement should be defined accordingly.	
response	Noted See the response to identical comment 537.	

comment	838	comment by: UK CAA & UK MoD
	UK CAA & MoD Comments on Draft Essential Requirements Description. It would be preferable for consistency if the document used existing, agreed definitions to avoid confusion.	
response	Noted	

For ATM/ANS the present reference definitions are those contained in Article 2 of Regulation 549/2004. Legal proposals naturally have to contain definitions for all specific terms used therein.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to ATM/ANS services - Air traffic services (ATS) -108. p. 26

comment	544	comment by: <i>EUROCONTROL</i>
	All requirements described in paras 104 to 109 apply for Apron Control Services and/ or airport operators as well. As in previous sections examples are restricted to in-flight operations that do not cover the gate to gate perspective. Ground movement should be defined accordingly.	
response	<i>Noted</i> See the response to identical comment 537.	

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to ATM/ANS services - Air traffic services (ATS) -109. p. 26

comment	545	comment by: <i>EUROCONTROL</i>
	All requirements described in paras 104 to 109 apply for Apron Control Services and/ or airport operators as well. As in previous sections examples are restricted to in-flight operations that do not cover the gate to gate perspective. Ground movement should be defined accordingly.	
response	<i>Noted</i> See the response to identical comment 537.	

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to ATM/ANS services - Communications -110. p. 26

comment	203	comment by: <i>FRAPORT AG</i>
	Fraport supports this model	
response	<i>Noted</i>	
comment	243	comment by: <i>ATSEP Belgium</i>
	This paragraph demonstrates again the importance of ATSEP for flight safety!	
response	<i>Noted</i>	

See response to an identical comment 242.

comment 283 comment by: IFATSEA

This para demonstrates the importance of ATSEP for flight safety.

response *Noted*

See response to an identical comment 282.

comment 548 comment by: EUROCONTROL

In Communication requirements (para 110) there is a lack of reference to ground-ground communication. Also these requirements apply to aerodrome operators as well where they provide Apron Control Services, which are responsible for aircraft guidance on the ground. Communication channels as described must be established to ATS services and aircraft. The same applies where de-/anti-icing services are established.

response *Noted*

It is believed that ground-ground communication is covered by the text, but maybe not comprehensively enough. This is however explanatory text and the comment do not seem to affect the contents of the respective draft ER.

Obligations on aerodrome operators are covered in another Agency task - BR.002. These tasks will however merge into a single legal proposal by the Commission, ensuring also the consistency between these two tasks.

comment 839 comment by: UK CAA & UK MoD

UK CAA & MoD Comments on Draft Essential Requirements Description.

The safety aspects of communication systems are covered by the Common Requirements with all other aspects including ground-to-ground by the Interoperability Regulations.

See General Comments i.e. the UK CAA strongly suggests that the safety related elements of the SES regulations be incorporated intact into the EASA regulatory structure, taking care to ensure that neither overlap nor gaps develop between the new regulations and remaining SES legislation.

Radio carriage is linked to the classification of the airspace.

response *Noted*

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to ATM/ANS services - Navigation service -111. p. 26-27

comment	244	comment by: <i>ATSEP Belgium</i>
	This paragraph demonstrates again the importance of ATSEP for flight safety!	
response	<i>Noted</i>	

comment	284	comment by: <i>IFATSEA</i>
	<p>IFATSEA shares the opinion that "<i>failure in navigation services in most cases has immediate consequences on the level of safety of aircraft</i>". It is however irrational that of the 4 named basic factors for performance based navigation, being: defined airspace concept (ATC), the airborne equipment (aircraft maintenance), the navigation aid infrastructure (ATSEP) and the aircrew qualifications (flight crew), three are ensured by licensed personnel and one is not.</p>	
response	<p><i>Noted</i></p> <p>Comment is noted and already responded.</p>	

comment	550	comment by: <i>EUROCONTROL</i>
	<p>In regard to ongoing implementation of A-SMGCS (para 111) at various aerodromes the scope should include aerodrome operations explicitly. This should include the aims of the ICAO manual on A-SMGCS Doc 9830, to use the very advanced stages for guidance on the ground in adverse weather conditions and to separate aircraft from other vehicle traffic or to prevent accidents between mixed traffic.</p>	
response	<p><i>Noted</i></p> <p>Aerodrome regulation is covered under another task of the Agency - BR.002.</p>	

comment	840	comment by: <i>UK CAA & UK MoD</i>
	<p>UK CAA & MoD Comments on Draft Essential Requirements Description.</p> <p>The safety aspects of navigation systems are covered by the Common Requirements with all other aspects covered by the Interoperability Regulations.</p> <p>See General Comments i.e. the UK CAA strongly suggests that the safety related elements of the SES regulations be incorporated intact into the EASA regulatory structure, taking care to ensure that neither overlap nor gaps develop between the new regulations and remaining SES legislation.</p>	
response	<i>Noted</i>	

Surveillance service -112.

comment

33 ❖

comment by: MATTA

Generally the power supply (PWR) for CNS/ATM should be mentioned in this document. The difference between external power (primary or commercial) and the power supply (secondary or backup) for CNS/ATM should be clarified and established in this document as well as its requirements.

According to ICAO documents there is a clear difference between primary (commercial) power supplies as an external element and the secondary (backup, uninterruptible) power supply as internal element. This difference is not clear in the whole NPA document.

The same or similar difference should be established in this document in the way that ANS/ATM/CNS service providers shall be fully responsible for backup power supply for CNS/ATM and partly for external (commercial) power supplies services.

Explanatory definition and/or meaning of the phrase "Power supply (PWR) for CNS/ATM":

"Power supply (PWR) equipment/system used for uninterruptible and reserve electrical supply of the CNS/ATM (e.g. on-line UPS's, standby power generator sets, batteries/batteries Station, power supply network, etc.) as a secondary power supply, provide required services for CNS/ATM fully in line with the principles of ICAO SARP's in Annexes 10 and 11 and also in line of ICAO Doc 9426-3 and Doc 9157-AN/901 Part 5 - Electrical Systems.

Power supply equipments/systems provide a vital role in the operation of CNS/ATM systems and consequentially to safe and orderly operation of ANS. The electrical power supply sources/equipments/systems quality, availability, capacity and reliability are one of the basic technical prerequisites for high integrity and reliability of CNS/ATM systems.

Proper design, installation and maintenance of an electrical Power Supply system for CNS/ATM systems/equipments are prerequisites for the safety, regularity and efficiency of civil aviation. They are governed by international and national standards.

The Regulators/Designated Authorities, Service providers and ATM Services personnel (ATCO's, ATSEP's) has to understand the impact of the power supply services on the user and on the overall CNS/ATM system.

response

Noted

See response to identical comment per paragraph 42.

When it comes to the latter part of the comment, this subject will be dealt with at the level of implementing rules. NPA, including the descriptions of draft essential requirements, will not be amended or re-issued.

comment

35

comment by: MATTA

After this segment (112. *Surveillance service*) the new segment sub-title "*Power supply for CNS/ATM*" should be added as an essential requirement part

of the "Mitigation of the hazards related to ATM/ANS services".

The proposed text:

"Power supply for CNS/ATM

11x. The power supply equipments/systems services provide a vital role in the operation of CNS/ATM systems and consequentially to safe and orderly operation of ANS. The electrical power supply sources/equipments/systems quality, availability, capacity and reliability are one of the basic technical prerequisites for high integrity and reliability of CNS/ATM system services. The loss of power in ATCC (ACC/APP/TWR) or failure in backup power supply for CNS/ATM flight operative loads, in most cases have immediate consequences on the level of safety of aircraft. The inability to provide part or most of the ANS/ATM/CNS services due to the power loss becomes even more critical when such a situation occurs at the highest point of the air traffic control work load. Paragraph 3.i therefore mitigates hazards related to the performance of power supply services. This is fully in line with the principles and requirements provided by ICAO in the Annex 10 Volume 1, Annex 14, Doc 9426-3 and Doc 9157-AN901 Part 5 - Electrical Systems."

response *Not accepted*

The vital nature of power supply in ATM/ANS service provision is fully recognised, but it is not regarded as a service subject to certification. NPA is a consultation document and will not be re-issued and the purpose of this paragraph is just to explain the reasons behind the draft ER.

Furthermore, implementing rules or detailed specifications for the power supply, could be established on the basis of ER's 3.d, 3.e and 3.f, since indeed quality and continuity of the power supply affects integrity, continuity and quality of many critical services.

comment 204

comment by: *FRAPORT AG*

It is a vital interest of the airport operator as well, to have the same situational awareness, because as mentioned under No. 12 the airport is responsible for the "safe operation of the airport"

response *Noted*

comment 245

comment by: *ATSEP Belgium*

This paragraph demonstrates again the importance of ATSEP for flight safety!

response *Noted*

See response to an identical comment 242.

comment 285

comment by: *IFATSEA*

After the para -112 Surveillance service-, a new para to be inserted with the

sub-title: "Power supply for CNS/ATM" as an essential requirement part of the "Mitigation of the hazards related to ATM/ANS services".

The proposed text:
"Power supply for CNS/ATM

11x. The power supply equipments/systems services provide a vital role in the operation of CNS/ATM systems and consequentially to safe and orderly operation of ANS. The electrical power supply sources/equipments/systems quality, availability, capacity and reliability are one of the basic technical prerequisites for high integrity and reliability of CNS/ATM system services. The loss of power in ATCC (ACC/APP/TWR) or failure in backup power supply for CNS/ATM flight operative loads, in most cases have immediate consequences on the level of safety of aircraft. The inability to provide part or most of the ANS/ATM/CNS services due to the power loss becomes even more critical when such a situation occurs at the highest point of the air traffic control work load. Paragraph 3.i therefore mitigates hazards related to the performance of power supply services. This is fully in line with the principles and requirements provided by ICAO in the Annex10 Volume 1, Annex 14, Doc 9426-3 and Doc 9157-AN901 Part 5 - Electrical Systems."

response *Not accepted*

See response to an identical comment 35.

comment

841

comment by: UK CAA & UK MoD

UK CAA & MoD Comments on Draft Essential Requirements Description.

The safety aspects of surveillance systems are covered by the Common Requirements with all other aspects covered by the Interoperability Regulations.

See General Comments i.e. the UK CAA strongly suggests that the safety related elements of the SES regulations be incorporated intact into the EASA regulatory structure, taking care to ensure that neither overlap nor gaps develop between the new regulations and remaining SES legislation.

response *Noted*

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to ATM/ANS services - Airspace management -114. p. 27

comment

414

comment by: Royal Norwegian Ministry of Defence

In the "*Scope and applicability*" of the explanatory material, EASA discusses if Airspace Management is of a regulatory or service provision nature. As correctly stated, Airspace Management is about allocation of scarce resources, and most member states have already well functioning regulatory arrangements for covering these with respect to the national sovereignty over its airspace. Airspace Management, especially at strategic level, need to be dealt with by national civil and military authorities, and not by a service

	provider or a Pan-European agency like EASA.
response	<i>Noted</i> Comment is noted. This subject is addressed by question 3 in the NPA.
comment	842 comment by: UK CAA & UK MoD UK CAA & MoD Comments on Draft Essential Requirements Description. ASM is not just related to temporary airspace structures and consists of additional functions, some of which are service provision activities.
response	<i>Noted</i> Comment is noted. This subject is addressed by question 3 in the NPA.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to systems and constituents - General - 115.

p. 28

comment	843 comment by: UK CAA & UK MoD UK CAA & MoD Comments on Draft Essential Requirements Description. The UK CAA would suggest renaming the paragraph to read 'Mitigation of the risks ...' instead of referring to hazards since it is not possible to mitigate hazards. Paragraphs 115 to 122 are covered by the Common Requirements. See General Comments i.e. the UK CAA strongly suggests that the safety related elements of the SES regulations be incorporated intact into the EASA regulatory structure, taking care to ensure that neither overlap nor gaps develop between the new regulations and remaining SES legislation.
response	<i>Partially accepted</i> The first part of the comment is accepted. However, the NPA will not be re-issued and such change does not affect the wording of the draft ER in question.
comment	1236 comment by: IFATCA The safe functioning of the system is dependent on the product of the human performance within and using the system(s). Thus any risk assessment, and the designs of concepts and systems need to be based on accurate assessments and of what the human performance constraints actually are. We currently do not do this. Justification: Improve the paragraphs including knowledge and R&D material from the

	Human Factor cases of Eurocontrol and/or others
response	<p><i>Partially accepted</i></p> <p>The Agency agrees with the commenter but this has been covered in ER 'system and constituents'</p>

<p>B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to systems and constituents - Design of systems and constituents - 117.</p>	p. 28
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comment	287	comment by: <i>IFATSEA</i>
	<p>The para 117, 118, 120 and 121 state some of the essential safety tasks performed by ATSEP. ATSEP possess the operational expertise to allow manufacturers to improve their system design. In some cases this has led to the refusal by ATSEP of some air traffic safety equipment manufactured by commercial enterprises.</p>	
response	<p><i>Partially accepted</i></p> <p>As stated repeatedly, the Agency agrees with the safety critical nature of ATSEP tasks. This has already been covered in ER's. As a detail, the responsibility of the designer or manufacturer is different from that of the ATSEP signing the release to service, after initial acceptance testing or after maintenance.</p>	

<p>B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to systems and constituents - Design of systems and constituents - 118.</p>	p. 28
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comment	288	comment by: <i>IFATSEA</i>
	<p>The para 117, 118, 120 and 121 state some of the essential safety tasks performed by ATSEP. ATSEP possess the operational expertise to allow manufacturers to improve their system design. In some cases this has led to the refusal by ATSEP of some air traffic safety equipment manufactured by commercial enterprises.</p>	
response	<p><i>Partially accepted</i></p> <p>See response to an identical comment 287.</p>	

<p>B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to systems and constituents - Design of systems and constituents - 119.</p>	p. 28
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comment	33 ❖	comment by: <i>MATTA</i>
	<p>Generally the power supply (PWR) for CNS/ATM should be mentioned in this document. The difference between external power (primary or commercial)</p>	

and the power supply (secondary or backup) for CNS/ATM should be clarified and established in this document as well as its requirements.

According to ICAO documents there is a clear difference between primary (commercial) power supplies as an external element and the secondary (backup, uninterruptible) power supply as internal element. This difference is not clear in the whole NPA document.

The same or similar difference should be established in this document in the way that ANS/ATM/CNS service providers shall be fully responsible for backup power supply for CNS/ATM and partly for external (commercial) power supplies services.

Explanatory definition and/or meaning of the phrase "Power supply (PWR) for CNS/ATM":

"Power supply (PWR) equipment/system used for uninterruptible and reserve electrical supply of the CNS/ATM (e.g. on-line UPS's, standby power generator sets, batteries/batteries Station, power supply network, etc.) as a secondary power supply, provide required services for CNS/ATM fully in line with the principles of ICAO SARP's in Annexes 10 and 11 and also in line of ICAO Doc 9426-3 and Doc 9157-AN/901 Part 5 - Electrical Systems.

Power supply equipments/systems provide a vital role in the operation of CNS/ATM systems and consequentially to safe and orderly operation of ANS. The electrical power supply sources/equipments/systems quality, availability, capacity and reliability are one of the basic technical prerequisites for high integrity and reliability of CNS/ATM systems.

Proper design, installation and maintenance of an electrical Power Supply system for CNS/ATM systems/equipments are prerequisites for the safety, regularity and efficiency of civil aviation. They are governed by international and national standards.

The Regulators/Designated Authorities, Service providers and ATM Services personnel (ATCO's, ATSEP's) has to understand the impact of the power supply services on the user and on the overall CNS/ATM system.

response *Noted*

See response to identical comment per paragraph 42.

comment 39

comment by: *MATTA*

In this segment the mitigation of hazards as requirement is mentioned for the external element such as source of energy.

According to ICAO documents there is a clear difference between primary (commercial) power supplies as an external element and the secondary (backup, uninterruptible) power supply as internal element. This difference is not clear in this segment as well as in whole document.

The same or similar difference should be established in this document in the way that ANS/ATM/CNS service providers shall be fully responsible for backup

power supply for CNS/ATM and partly for external (commercial) power supplies services.

response *Partially accepted*

The Agency agrees with the general intent of the comment but this has already been covered in ER's on 'Systems and constituents'.

Where needed, specific implementation means for power supply may be established.

comment 286 comment by: IFATSEA

In this para, the mitigation of hazards, as requirement, is mentioned for the external element such as source of energy. According to ICAO documents there is a clear difference between primary (commercial) power supplies as an external element and the secondary (backup, uninterruptible) power supply as internal element. This difference is not clear in this para as well as in whole document.

The same or similar difference should be established in this document in the way that ANS/ATM/CNS service providers shall be fully responsible for backup power supply for CNS/ATM and partly for external (commercial) power supplies services.

response *Partially accepted*

The Agency agrees with the general intent of the comment but this has already been covered in ER's on 'Systems and constituents'.

Where needed, specific implementation means for power supply may be established.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to systems and constituents - Design of systems and constituents - 120. p. 28

comment 289 comment by: IFATSEA

The para 117, 118, 120 and 121 state some of the essential safety tasks performed by ATSEP. ATSEP possess the operational expertise to allow manufacturers to improve their system design. In some cases this has led to the refusal by ATSEP of some air traffic safety equipment manufactured by commercial enterprises.

response *Partially accepted*

See response to an identical comment 287.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to systems and constituents - Continuing level of service - 121. p. 29

comment	247	comment by: <i>ATSEP Belgium</i>
<p>Paragraphs 117, 118, 119, 120 and 121 states some of the essential safety tasks performed by ATSEP. ATSEP possess the operational expertise to allow manufacturers to improve their system design. In some cases this has led to the refusal by ATSEP of some air traffic safety equipment manufactured by commercial enterprises.</p>		
response	<p><i>Partially accepted</i></p> <p>As stated repeatedly, the Agency agrees with the safety critical nature of ATSEP tasks. This has already been covered in ER's. As a detail, the responsibility of the designer or manufacturer is different from that of the ATSEP signing the release to service, after initial acceptance testing or after maintenance.</p>	

comment	290	comment by: <i>IFATSEA</i>
<p>The para 117, 118, 120 and 121 state some of the essential safety tasks performed by ATSEP. ATSEP possess the operational expertise to allow manufacturers to improve their system design. In some cases this has led to the refusal by ATSEP of some air traffic safety equipment manufactured by commercial enterprises.</p>		
response	<p><i>Partially accepted</i></p> <p>See response to an identical comment 287.</p>	

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to systems and constituents - Modification of systems and constituents - 122. p. 29

comment	1237	comment by: <i>IFATCA</i>
<p>IFATCA misses the airborne approach the future SESAR Conops is proposing. As we move to a more airborne integrated ATM system we will need to address this in a different manner than what is currently proposed in the text.</p>		
response	<p><i>Noted</i></p> <p>The Agency takes note of the comment. However, this is at least partly subject to the Question 1 in the NPA.</p>	

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - General - 123. p. 29

comment	552	comment by: <i>EUROCONTROL</i>
<p>The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be</p>		

considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response

Noted

The need for requirements on the qualifications and training of other staff besides ATCOs is recognised by the Agency, and stated in the NPA, e.g. in paragraphs 52 and 78 therein.

When developing the ER's, the Agency considered the international and European requirements on qualification of staff involved in ATM/ANS and came to the conclusion that the only profession in which a licence would be required would be ATCOs; in the case of ATCOs safety reasons determine that the access to the profession is restricted to individuals complying with a certain level of competence and medical fitness. In other cases, such as ATSEP's and apron controllers, the Agency found that the safety concerns would be covered by requiring a certain level of competence to be ensured by the service providers.

Since in the case of ATCOs there will be a limitation of the right of access to a profession, for reasons of legal certainty it is necessary to develop more detailed essential requirements, to ensure judicial and political control over the implementing rules. In the case of other staff, such level of detail is not required, and therefore the essential requirements are limited to a general objective that the service provider will ensure that all its staff is adequately qualified and trained for the function exercised (see paragraph 6.a.4), and later on implementing rules (based on existing ESARRs) will further detail the scope and content of this training.

comment

844

comment by: UK CAA & UK MoD

UK CAA & MoD Comments on Draft Essential Requirements Description.

The UK CAA would suggest renaming the paragraph to read 'Mitigation of the **risks** ...' instead of referring to hazards since it is not possible to mitigate hazards.

Paragraphs 123 to 142 are all covered by EU legislation and Directives related to ATCO licensing. The ATCO Licensing Directive is currently being transposed into UK CAA law.

In the context of the NPA, there appears to be an imbalance between the detail pertaining to ATCOs and the rest of the system.

See General Comments i.e. it would be preferable to directly reference Directives and other associated regulations such as the European ATCO Licensing Directive, Occurrence Reporting Directive and ICAO SARPs. This may

	include a need to analyse the relative structures of EASA and SES essential requirements and implementing rules to create a logical and consistent structure of legislation.
response	<p><i>Noted</i></p> <p>The editorial comment is accepted and will be taken into account for future reference.</p> <p>Regarding the third paragraph, ATCOs are referred with more detail since they are subject to a European licensing scheme.</p> <p>Even though it is true that there should be a functional description of other safety sensitive tasks, as explained in paragraphs 52 and 78 of the NPA, this training is covered in the essential requirements related to the management of service providers and other organisations.</p> <p>Regarding the last paragraph, the existing EC legislation on this issue, as well as the ESARRs, will serve as a basis for the development of the implementing rules to the essential requirements. Therefore, a more detailed analysis and comparison of the EASA and SES systems in this regard will be done when developing the implementing rules.</p>

<p>B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Theoretical knowledge - 124.</p>	<p>p. 29</p>
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comment	<p>553 comment by: <i>EUROCONTROL</i></p> <p>The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.</p> <p>This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.</p>
response	<p><i>Noted</i></p> <p>See response to an identical comment 552.</p>
comment	<p>1238 comment by: <i>IFATCA</i></p> <p>The way these two paragraphs are worded gives the impression that non-dense traffic working positions require less theoretical knowledge which is not the case, sometimes even the opposite is true. This should be catered for not to leave any ambiguity</p>
response	<p><i>Noted</i></p>

The text of the NPA specifies that the training needs to be proportionate to the safety objective, and therefore depends on the complexity of the functions exercised and the type of service. Traffic density is just one of the aspects to be taken into account when doing this analysis.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Theoretical knowledge - 125. p. 30

comment 556 comment by: EUROCONTROL

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

comment 1238 ❖ comment by: IFATCA

The way these two paragraphs are worded gives the impression that non-dense traffic working positions require less theoretical knowledge which is not the case, sometimes even the opposite is true. This should be catered for not to leave any ambiguity

response *Noted*

The text of the NPA specifies that the training needs to be proportionate to the safety objective, and therefore depends on the complexity of the functions exercised and the type of service. Traffic density is just one of the aspects to be taken into account when doing this analysis.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Theoretical knowledge - 126. p. 30

comment 557 comment by: EUROCONTROL

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be

considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Practical skill - 127. p. 30

comment 558

comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Practical skill - 128. p. 30

comment 559

comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services

are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Practical skill - 129.	p. 30
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comment 560

comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Language proficiency - 130.	p. 30
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comment 561

comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Language proficiency - 131.	p. 30
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comment 77 comment by: KLM

131 (Use of Local Language)

For safety reasons it is essential to phase out the use of local language within local EU airspace. The use of local language has already resulted in a number of serious accidents due to the loss of 'party-line' for foreign pilots operating in that airspace. In the interest of public safety it is therefore essential that the EU takes the lead to mandate the use of aviation English for all operations in EU airspace.

response *Noted*

The system proposed in the draft essential requirements is in compliance with ICAO SARPs and Directive 2006/23/EC. It is related to the essential requirements for pilot licensing, which departed from the initial proposal of the Agency to have English as the common language taking into account the comments received and the discussions on the legislative level.

comment 422 comment by: AEA

For safety reasons it is essential to phase out the use of local language within local EU airspace. The use of local language has already resulted in a number of serious accidents due to the loss of 'party-line' for foreign pilots operating in that airspace. In the interest of public safety it is therefore essential that the EU takes the lead to mandate the use of aviation English for all operations in EU airspace.

response *Noted*

The system proposed in the draft essential requirements is in compliance with ICAO SARPs and Directive 2006/23/EC. It is related to the essential requirements for pilot licensing, which departed from the initial proposal of the Agency to have English as the common language taking into account the comments received and the discussions on the legislative level.

comment 563 comment by: EUROCONTROL

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community

air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

comment **931** comment by: *IACA International Air Carrier Association*

In the interest of public safety, the EU shall terminate the use of local language and mandate the use of Aviation English for all operations in EU airspace.

response *Noted*

The system proposed in the draft essential requirements is in compliance with ICAO SARPs and Directive 2006/23/EC. It is related to the essential requirements for pilot licensing, which departed from the initial proposal of the Agency to have English as the common language taking into account the comments received and the discussions on the legislative level.

<p>B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Synthetic Training Devices - 132.</p>	<p>p. 31</p>
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comment **564** comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

<p>B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Training Course - 133.</p>	<p>p. 31</p>
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comment **565** comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Training Course - 134.	p. 31
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comment 567

comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Instructors - 135.	p. 31
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comment 568

comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Instructors - 136. p. 31

comment 570

comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Instructors - 137. p. 31

comment 571

comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Assessors - 139.

p. 31-32

comment 572

comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

comment 575

comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Medical fitness of a person providing an ATC service - 140.

p. 32

comment 574

comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly

licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

comment 1239

comment by: IFATCA

It is evident that air traffic controllers providing an air traffic control service must be physically and medically fit, taking into account the safety critical nature and specific requirements typical for such functions. This is the basic principle laid down as the medical criteria for air traffic controller in paragraph 5.i.1.

Justification:

Who else than Air Traffic Controllers provide ATC?

Reformulate this paragraph.

response *Noted*

Editorial comment noted for future reference.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Medical fitness of a person providing an ATC service - 141. p. 32

comment 577

comment by: EUROCONTROL

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to qualification of air traffic controllers - Medical fitness of a person providing an ATC service - 142.	p. 32
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comment 578

comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to service providers and training organisations - General - 143.	p. 32
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comment 579

comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

comment 845

comment by: *UK CAA & UK MoD*

UK CAA & MoD Comments on Draft Essential Requirements Description.
The UK CAA would suggest renaming the paragraph to read 'Mitigation of the

risks ...' instead of referring to hazards since it is not possible to mitigate hazards.

Existing EU legislation and/or Directives cover paragraphs 143 to 158.

See General Comments i.e.

- The UK CAA strongly suggests that the safety related elements of the SES regulations be incorporated intact into the EASA regulatory structure, taking care to ensure that neither overlap nor gaps develop between the new regulations and remaining SES legislation.
- It would be preferable to directly reference Directives and other associated regulations such as the European ATCO Licensing Directive, Occurrence Reporting Directive and ICAO SARPs. This may include a need to analyse the relative structures of EASA and SES essential requirements and implementing rules to create a logical and consistent structure of legislation.

response *Noted*

The editorial comment will be taken into account for future reference.

Regarding the last paragraph, the existing EC legislation on this issue, as well as the ESARRs, will serve as a basis for the development of the implementing rules to the essential requirements. Therefore, a more detailed analysis and comparison of the EASA and SES systems in this subject will be done when developing the implementing rules. Moreover, the suggestion to refer directly to the Directive as a means of implementation has already been responded.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to service providers and training organisations - General - 144. p. 32-33

comment 581

comment by: *EUROCONTROL*

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to service providers and training organisations - General - 145. p. 33

comment

582

comment by: EUROCONTROL

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response

Noted

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to service providers and training organisations - General - 146.

p. 33

comment

583

comment by: EUROCONTROL

The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response

Noted

See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to service providers and training organisations - General - 147.

p. 33

comment

248

comment by: ATSEP Belgium

The safety criticality of ATSEP was demonstrated by accidents like the midair collision at Uberlingen. Therefore it should be obvious that the competence of an ATSEP is essential to flight safety and - like ATCO - need a formal qualification procedure.

response *Noted*
Comment has already been responded.

comment 291 comment by: *IFATSEA*
The safety criticality of ATSEP tasks was demonstrated by accidents like the midair collision at Uberlingen. Therefore it should be obvious that the competence of an ATSEP is essential to flight safety and - like ATCO - need a formal qualification procedure.
It is remarkable that most of the hazards identified in the NPA document are (directly or indirectly) more related to ATSEP than to ATCO.

response *Noted*
Comment has already been responded.

comment 585 comment by: *EUROCONTROL*
The scheme for competency training, competency assessment and possibly licensing of safety critical personnel needs to be looked at beyond just ATCOs. Maintenance engineers and other safety critical staff may have to be considered, as is already the case in the Common Requirements for ANS.

This section (para 123), nor Directive 2006/ 23, which aims to harmonise the requirements governing training and the issuance of licences for Community air traffic controllers, covers Apron Control Services. Even though such services are performing control function e.g. taxi control from parking stands to the runway and vice versa. No harmonized standards exist on this although safety critical are performed by such services. Such matters could be covered here.

response *Noted*
See response to an identical comment 552.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to service providers and training organisations - General - 148.	p. 33-34
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comment 249 comment by: *ATSEP Belgium*
It is remarkable that of the hazards identified in the NPA document relating to ANS/ATM service providers, most have (directly or indirectly) more to do with ATSEP than with ATCO.

response *Noted*
Comment has already been responded.

comment 586 comment by: *EUROCONTROL*

The explanation of "safe execution of ANS/ATM services" (paras 148 and 152 to 156) seems insufficient as it covers areas of different responsibilities that may, or may not be the responsibility of the ANSP. For aerodromes on which different services are implemented (e.g. Apron Control as part of the aerodrome operator) those services should be kept under this regulation or respective Implementing Rules.

response *Noted*

The ATM/ANS essential requirements are only one of the parts of the total system approach for aviation safety and of the EASA system. In order to have a complete and clear picture of the safety chain it is necessary to also consider the essential requirements (and related implementing rules) for aerodromes, operations, etc. Another EASA task BR.002 addresses the safety regulation of aerodromes and imposes corresponding responsibilities to the aerodrome operator. In fact these both tasks will form a single proposal by the Commission to amend the EASA Basic Regulation, so their consistency will be ensured. The Agency believes that some borders between traditional 'aviation functions' will change or may even disappear, and therefore the regulatory framework shall provide for total system approach and not unintentionally hinder such developments. The requirement for the safe provision of services will remain identical, irrespective of the company offering them.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to service providers and training organisations - General - 149. p. 33

comment 587

comment by: *EUROCONTROL*

The explanation of "safe execution of ANS/ATM services" (paras 148 and 152 to 156) seems insufficient as it covers areas of different responsibilities that may, or may not be the responsibility of the ANSP. For aerodromes on which different services are implemented (e.g. Apron Control as part of the aerodrome operator) those services should be kept under this regulation or respective Implementing Rules.

response *Noted*

See response to an identical comment 586.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to service providers and training organisations - General - 151. p. 34

comment 590

comment by: *EUROCONTROL*

The explanation of "safe execution of ANS/ATM services" (paras 148 and 152 to 156) seems insufficient as it covers areas of different responsibilities that may, or may not be the responsibility of the ANSP. For aerodromes on which different services are implemented (e.g. Apron Control as part of the aerodrome operator) those services should be kept under this regulation or respective Implementing Rules.

response *Noted*

See response to an identical comment 586.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to service providers and training organisations - ATC service provision - 152.	p. 34
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comment 592

comment by: *EUROCONTROL*

The explanation of "safe execution of ANS/ATM services" (paras 148 and 152 to 156) seems insufficient as it covers areas of different responsibilities that may, or may not be the responsibility of the ANSP. For aerodromes on which different services are implemented (e.g. Apron Control as part of the aerodrome operator) those services should be kept under this regulation or respective Implementing Rules.

response *Noted*

See response to an identical comment 586.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to service providers and training organisations - ATC service provision - 153.	p. 34
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comment 205

comment by: *FRAPORT AG*

Fraport strongly recommends, that this modell should to be endorsed by airport operators for their staff.

response *Noted*

Aerodrome operations are dealt with under another task of the Agency. These two tasks will however merge into one single legal proposal by the Commission ensuring such consistency.

comment 593

comment by: *EUROCONTROL*

The explanation of "safe execution of ANS/ATM services" (paras 148 and 152 to 156) seems insufficient as it covers areas of different responsibilities that may, or may not be the responsibility of the ANSP. For aerodromes on which different services are implemented (e.g. Apron Control as part of the aerodrome operator) those services should be kept under this regulation or respective Implementing Rules.

response *Noted*

See response to an identical comment 586.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to service providers and training organisations - ATC service provision - 154.	p. 34
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comment	594	comment by: EUROCONTROL
	The explanation of "safe execution of ANS/ATM services" (paras 148 and 152 to 156) seems insufficient as it covers areas of different responsibilities that may, or may not be the responsibility of the ANSP. For aerodromes on which different services are implemented (e.g. Apron Control as part of the aerodrome operator) those services should be kept under this regulation or respective Implementing Rules.	
response	<i>Noted</i>	
	See response to an identical comment 586.	

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to service providers and training organisations - ATC service provision - 155.	p. 34
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comment	595	comment by: EUROCONTROL
	The explanation of "safe execution of ANS/ATM services" (paras 148 and 152 to 156) seems insufficient as it covers areas of different responsibilities that may, or may not be the responsibility of the ANSP. For aerodromes on which different services are implemented (e.g. Apron Control as part of the aerodrome operator) those services should be kept under this regulation or respective Implementing Rules.	
response	<i>Noted</i>	
	See response to an identical comment 586.	

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to service providers and training organisations - ATC service provision - 156.	p. 35
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comment	596	comment by: EUROCONTROL
	The explanation of "safe execution of ANS/ATM services" (paras 148 and 152 to 156) seems insufficient as it covers areas of different responsibilities that may, or may not be the responsibility of the ANSP. For aerodromes on which different services are implemented (e.g. Apron Control as part of the aerodrome operator) those services should be kept under this regulation or respective Implementing Rules.	
response	<i>Noted</i>	
	See response to an identical comment 586.	

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to service providers and training organisations - Communication, navigation and surveillance service provision - 157.	p. 35
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comment

33 ❖

comment by: MATTA

Generally the power supply (PWR) for CNS/ATM should be mentioned in this document. The difference between external power (primary or commercial) and the power supply (secondary or backup) for CNS/ATM should be clarified and established in this document as well as its requirements.

According to ICAO documents there is a clear difference between primary (commercial) power supplies as an external element and the secondary (backup, uninterruptible) power supply as internal element. This difference is not clear in the whole NPA document.

The same or similar difference should be established in this document in the way that ANS/ATM/CNS service providers shall be fully responsible for backup power supply for CNS/ATM and partly for external (commercial) power supplies services.

Explanatory definition and/or meaning of the phrase "Power supply (PWR) for CNS/ATM":

"Power supply (PWR) equipment/system used for uninterruptible and reserve electrical supply of the CNS/ATM (e.g. on-line UPS's, standby power generator sets, batteries/batteries Station, power supply network, etc.) as a secondary power supply, provide required services for CNS/ATM fully in line with the principles of ICAO SARP's in Annexes 10 and 11 and also in line of ICAO Doc 9426-3 and Doc 9157-AN/901 Part 5 - Electrical Systems.

Power supply equipments/systems provide a vital role in the operation of CNS/ATM systems and consequentially to safe and orderly operation of ANS. The electrical power supply sources/equipments/systems quality, availability, capacity and reliability are one of the basic technical prerequisites for high integrity and reliability of CNS/ATM systems.

Proper design, installation and maintenance of an electrical Power Supply system for CNS/ATM systems/equipments are prerequisites for the safety, regularity and efficiency of civil aviation. They are governed by international and national standards.

The Regulators/Designated Authorities, Service providers and ATM Services personnel (ATCO's, ATSEP's) has to understand the impact of the power supply services on the user and on the overall CNS/ATM system.

response

Noted

See response to an identical comment per paragraph 42.

comment

36

comment by: MATTA

The power supply should be mentioned and included in this paragraph.

The proposed text:

"157. Provision of air traffic services is highly dependent on communication, navigation and surveillance services providing appropriate means for exchanging information between ATS services and air traffic, providing

accurate positioning data for aircraft and giving precise data for the ATC units on the position of air traffic. For example, a loss of communication capability of an ATC unit would cause a total loss of an essential service related to safety of air traffic. It is therefore necessary to establish an organisational requirement for the communication, navigation, ~~and surveillance~~ and power supply service providers to keep relevant parties informed on a timely basis of the operational status of their services. This is imposed in paragraph 6.c.1, which is fully in line with the principles of ICAO SARP's in Annexes 10 and 11, and ICAO Doc 9426-3 and Doc 9157-AN/901 Part 5 - Electrical Systems.

response *Not accepted*

The vital nature of power supply in ATM/ANS service provision is fully recognised, but it is not regarded as a service subject to certification. NPA is a consultation document and will not be re-issued and the purpose of this paragraph is just to explain the reasons behind the draft ER.

B. DRAFT ESSENTIAL REQUIREMENTS - Description of the Essential Requirements - Mitigation of the hazards related to service providers and training organisations - Training organisations - 158. p. 35

comment

250

comment by: *ATSEP Belgium*

This paragraph is incomplete. It must include the ATSEP training which is crucial for the safety of aviation.

response

Noted

Comment has already been responded. Moreover, the training of ATSEP's is the responsibility of the service provider (see paragraph 6.a.4).

comment

293

comment by: *IFATSEA*

This para 158 is incomplete. It must include the ATSEP training which is crucial for the safety of aviation.

response

Noted

Comment has already been responded. Moreover, the training of ATSEP's is the responsibility of the service provider (see paragraph 6.a.4).

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services p. 36

comment

294

comment by: *IFATSEA*

The omission of qualification of personnel other than air traffic controllers in the essential requirements for air traffic management and air navigation services is a major safety gap in this NPA document. IFATSEA urges EASA to include ATSEP in these requirements.

response *Noted*

The qualification of other personnel is the responsibility of the service provider. Paragraph 6.a.4 in the essential requirements provides the basis for further detailed implementing rules that will be developed, based on the existing EC legislation and ESARRs.

The essential requirements for ATCOs have to be more detailed than for other professions, because this is a regulated profession, subject to a licensing scheme, which limits the right of access to this profession. Therefore, legal certainty demands that more detailed essential requirements are developed to allow for judicial and political control.

The legislator must specify whether other personnel involved in ATM/ANS service provision should be required to comply with essential safety requirements. The need to meet such requirements, which limit the freedom of those individuals to exercise this profession, should be established by the basic law rather than secondary executive acts or industry practices.

comment 351

comment by: NATS

The essential requirements need to be developed to provide a harmonised framework which can be applied consistently throughout Europe. They need to avoid duplication of existing regulations for ATM (or existing regulations must be removed) and must be consistent with the safety regulation of other elements of the Air transport industry. The new requirements must also avoid being too prescriptive which could constrain innovation and must have clear objectives which are proportionate to the risk being managed.

There is a lack of the contemporary SMS and risk management approach used for SES regulations.

Generic shortcomings with the proposed essential requirements include:

- The use of terms that are illustrative (e.g. "such as" - 1.c.) have no place in an essential requirement.
- The use of terminology for mandatory requirements (should not all essential requirements be mandatory?) needs to be consistent (sometimes "must" is used sometimes "shall" is used).
- The scope of the essential requirements should accord with the scope of those being regulated by such requirements (e.g. "electromagnetic spectrum" - 1.g. and "all aircraft must be equipped with all suitable appliances" - 2.b. - are out with the scope of the ANSP).
- Terminology used should be defined in a Glossary of Terms (e.g. scope of "all aircraft"; "appliances"; "incorruptible" etc).
- It is not necessary (and potentially confusing) to have an overarching "must" followed by each subsequent requirement also containing a "must" (e.g. 3. Services and subsequent sub-paragraphs).
- Clarity is required whereby some essential requirements are qualified (e.g. "sufficient" as in 3.a.1) or not (as in 3.a.2 where there is no "sufficient"). Similarly, it is not clear if the qualifier refers to the first requirement or all subsequent requirements (e.g. "aeronautical information must be of sufficient quality, complete, current and provided in a timely matter" - 3.a.1).
- It is not clear why a total approach has not been taken when considering "information" instead a piecemeal approach with differing attributes assigned to each part of the "thread" (e.g. 3.a which is assigned differing attributes depending upon whether it is the source,

resulting information or dissemination; the requirements for the first two (3.a.1 and 3.a.2) should be derived (by design) from the third (3.a.3).

- Essential requirement should be expressed in a way so it is possible to derive a means of compliance (e.g. it is not possible to demonstrate that information is "incorruptible" (e.g. 3.a.3)).
- Whilst the use of qualitative rather than quantitative likelihoods for failure modes is to be welcomed the inclusion in an essential requirement (e.g. 4.c.2) is not helpful as its determination should arise from some form of hazard analysis (i.e. likelihood proportionate to the risk) and be defined.

response *Noted*

The Agency agrees with most of the general views expressed in this comment.

A harmonised framework consistent with other elements of Air Transport and avoiding duplication indeed are clear objectives of the EASA system. However, safety objectives as such can not remove duplications - that is to take place at the level of implementation rules. Draft ER's have been developed in order not to be too prescriptive, ensuring of which is indeed one of the aims of this consultation.

The Agency does not see any major differences as regards 'contemporary SMS and risk management approach'. Definitions of fully fledged SMS and risk management will be an issue on the level of implementing rules. The Agency believes that the level of basic law should not fix the definition of the SMS and should allow organisations to arrange their different management objectives as they see fit best, subject of course ensuring that all necessary elements to appropriately manage safety are included.

Illustrative elements are needed in the ER's in order to strike an appropriate balance between on one hand the clarity needed to ensure political and judicial and on the other hand leaving enough flexibility to the implementation level.

The Agency agrees that the terms 'must' and 'shall' have not been used consistently in the document.

As regards the scope of the ER's it is to be noted that ANSP's are not the only regulated organisations covered by this task.

All specific terms used in the EASA Basic Regulation naturally have to be defined, but not at the level of this NPA. The Agency also agrees that there are still needs to improve the drafting of ER's in what comes to the use of the mentioned 'qualifiers'.

It is not clear how it is suggested to change the drafting in 3.a.1, 3.a.2 and 3.a.3. Moreover, it is believed that the draft ER's would allow for appropriate implementation also in what comes to paragraph 3.a.3.

As explained in the paragraph 31 of the NPA, the Agency does not believe that it would be appropriate to mandate quantified safety objectives at the level of basic law. This may however be the right way in implementing some of the ER's. ER's have been drafted in a way of not excluding such opportunity where appropriate.

comment 846

comment by: UK CAA & UK MoD

UK CAA & MoD Comments on Draft Essential Requirements Description.

The UK CAA would wish to see that the implementing rules stemming from EASA essential requirements incorporate intact the existing suite of safety related elements contained in SES legislation, it would be preferable to directly reference Directives and other associated regulations such as the European ATCO Licensing Directive, Occurrence Reporting Directive and ICAO SARPs. This may include a need to analyse the relative structures of EASA and SES essential requirements and implementing rules to create a logical and consistent structure of legislation. In particular, care should be taken to ensure that the scope of Aerodrome and ATM ERs are aligned.

The EASA regulations should adopt the contemporary SMS and risk management approach of the SES regulations, which firmly embed risk management responsibilities in regulated industry.

New requirements should avoid over prescription.

It is highly desirable that EASA and the Commission seek specialist ATM & ASM to assist in developing Essential Requirements. The UK CAA NSA stands ready to assist in this development.

response *Noted*

The Agency agrees with the general notions of this comment. It is indeed the level of implementing rules, which shall ensure the optimal incorporation and convergence of already existing rules, such as those mentioned in the comment. This however can not be addressed in the ER's. It is agreed also that ATM/ANS and aerodrome ER's should not create unintended gaps or overlaps.

Detailed provisions of fully fledged SMS and risk management will be an issue on the level of implementing rules. The Agency believes that the level of basic law should not fix the definition of the SMS and should allow organisations to arrange their different management objectives as they see fit best, subject of course ensuring that all necessary elements to appropriately manage safety are included.

EASA indeed has used an ATM/ANS expert from UK CAA to assist in developing these draft ER's.

comment *1300*

comment by: *Bayer*

response *Noted*

no comment

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 1. Concept of Operations - 1.a. p. 36

comment *135*

comment by: *DSNA*

The notion of "concept of operations" referred to hereby covers in fact :

- a) ground systems and equipment and/or
- b) airborne equipment and/or
- c) rules of the air to be applied by airspace users and/or
- d) the substance of air traffic services and/or
- e) procedures to be applied by ATS providers and/or
- f) qualifications of operators' staff(ATCOs, pilots).

The existing "SES" regulations give competence to the Community for setting requirements on some of these elements, but not all of them like c) and e), as regulation 552/04 on interoperability allows harmonising procedures only linked with the use of specific systems and/or equipments.

We stress that the words "functional architecture" are quite unclear in this context.

We agree that the Community should receive competence to harmonise "concepts of operations" in line with those of upper level defined by ICAO. This Community competence should be exercised by **determining EU requirements remaining at a relatively high level** and leaving some room for flexibility in implementation by the States (as regards the national regulatory measures, including local implementation decisions) and by the ANSPs.

Thus we suggest changing this paragraph as follows:

- the first sentence to read: **"Management of any specified volume of airspace must be governed by a concept of operation that is in line with those accepted at ICAO level."**

- add the following sentence:

"A concept of operation may cover:

- a) the use of ground systems and equipment and/or**
- b) the use of airborne equipment and/or**
- c) rules of the air to be applied by airspace users and/or**
- d) the substance of air traffic services and/or**
- e) procedures to be applied by ATS providers**
- f) qualifications of operators' staff(ATCOs, pilots) "**

response *Noted*

The Agency takes note of the comment, which in general addresses the Question 1 in the NPA, but also suggests useful considerations to improve the wording of the draft ER's related to concept of operations. Nevertheless, the Agency can not take its final stance on these suggestions before first concluding on the NPA Question 1.

comment	<p data-bbox="351 203 406 235">164</p> <p data-bbox="1157 203 1449 235">comment by: <i>DSNA</i></p> <p data-bbox="351 257 1449 392">Generally speaking, it should be considered, after reviewing the following remarks, whether it is worth to maintain a part devoted to the “concept of operations”, or if the appropriate requirements could not be more adequately distributed into the other parts of the ERs.</p> <p data-bbox="351 403 1449 504">In addition, concepts of operations should be coordinated at ICAO level in order to ensure a worldwide acceptance and implementation by users, and their consistency with other regions in the world.</p>
response	<p data-bbox="351 537 438 571"><i>Noted</i></p> <p data-bbox="351 593 1449 694">The Agency takes note of the comment, which in general addresses the Question 1 in the NPA. The Agency also agrees that global interoperability is indeed an important criteria related to this subject.</p>
comment	<p data-bbox="351 750 406 784">477</p> <p data-bbox="1021 750 1449 784">comment by: <i>DGAC-DAST-FR</i></p> <p data-bbox="351 806 1449 940">Generally speaking, it should be considered, after reviewing the following remarks, whether it is worth to maintain a part devoted to the “concept of operations”, or if the appropriate requirements could not be more adequately distributed into the other parts of the ERs.</p> <p data-bbox="351 952 1449 1052">In addition, concepts of operations should be coordinated at ICAO level in order to ensure a worldwide acceptance and implementation by users, and their consistency with other regions in the world.</p> <p data-bbox="351 1064 630 1097">As a general remark</p> <p data-bbox="351 1164 1396 1198">1.a. The notion of “concept of operations” referred to hereby covers in fact :</p> <ul style="list-style-type: none"> <li data-bbox="351 1209 933 1243">a) ground systems and equipment and/or <li data-bbox="351 1254 758 1288">b) airborne equipment and/or <li data-bbox="351 1299 1125 1332">c) rules of the air to be applied by airspace users and/or <li data-bbox="351 1344 965 1377">d) the substance of air traffic services and/or <li data-bbox="351 1388 1069 1422">e) procedures to be applied by ATS providers and/or <li data-bbox="351 1433 1029 1467">f) qualifications of operators’ staff(ATCOs, pilots). <p data-bbox="351 1545 1449 1680">The existing “SES” regulations give competence to the Community for setting requirements on some of these elements, but not all of them like c) and e), as regulation 552/04 on interoperability allows harmonising procedures only linked with the use of specific systems and/or equipments.</p> <p data-bbox="351 1736 1449 1803">We stress that the words “functional architecture” are quite unclear in this context.</p> <p data-bbox="351 1870 1449 2004">We agree that the Community should receive competence to harmonise “concepts of operations” in line with those of upper level defined by ICAO. This Community competence should be exercised by determining EU requirements remaining at a relatively high level and leaving some room</p>

for flexibility in implementation by the States (as regards the national regulatory measures, including local implementation decisions) and by the ANSPs.

Thus we suggest changing this paragraph as follows:

- the first sentence to read: **“Management of any specified volume of airspace must be governed by a concept of operation that is in line with those accepted at ICAO level.”**

- add the following sentence:

“A concept of operation may cover:

a) the use of ground systems and equipment and/or

b) the use of airborne equipment and/or

c) rules of the air to be applied by airspace users and/or

d) the substance of air traffic services and/or

e) procedures to be applied by ATS providers”

f) qualifications of operators’ staff(ATCOs, pilots)

response *Noted*

The Agency takes note of the comment, which in general addresses the Question 1 in the NPA, but also suggests useful considerations to improve the wording of the draft ER's related to concept of operations. Nevertheless, the Agency can not take its final stance on these suggestions before first concluding on the NPA Question 1.

comment 598

comment by: *EUROCONTROL*

Clarification on '[volume of] airspace' is needed: it is unclear whether this encompasses (or not) the runway throughput. It is evident that the runway is at best an artificial portion of the airspace; nevertheless its throughput can certainly be assimilated to e.g. sector throughput.

response *Noted*

The Agency agrees with the comment that this specific aspect should be clarified if used in the regulatory scheme. It would however be premature to decide on the final form of these specific draft ER's at this stage before reflecting the outcome of the NPA Question 1 in total. In any case, this task and the one on aerodrome safety regulation will merge into one single legal proposal by the Commission, ensuring also the consistency between the tasks.

comment 599

comment by: *EUROCONTROL*

The notion of "essential service" is brought here for the first time and needs further clarification/definition meaning.

response *Noted*

The Agency agrees with the comment that the use of the words 'essential services' has not been appropriately clarified in this document. It would however be premature to decide on the final form of these specific draft ER's at

this stage before reflecting the outcome of the NPA Question 1 in total. If it will be used in the legal proposal, it naturally has to be defined.

comment

613

comment by: EUROCONTROL

The approach proposed in this section goes far beyond safety regulatory aspects. A concept of operations is mainly driven by capacity and efficiency objectives, whilst fully acknowledging that it has to be proven to be safe. High level principles should be defined as appropriate (e.g. FUA, ATFM, airspace design, etc.) by the regulator in the SES framework.

The essential requirements should be limited to higher level safety related statements, as follows:

ER 1a, 1b and 1c should be combined to provide a high level statement that, from a safety regulatory perspective, identifies a need for concepts of operations to be established, including the essential contents necessary for safety. There is no need, in particular, to include details such as the list 1.c.1. to 1.c.8. The 'safety' requirements concerning aircraft separation, collision and loss of service should be included except that they should not refer to 'partial loss of service' as this is too broad and such an event does not necessarily impact safety if risks are properly mitigated.

response

Noted

The Agency takes note of the comment, which in general addresses the Question 1 in the NPA. It also suggests useful considerations to improve the wording of the draft ER's related to concept of operations. 1.d and 1.e could be merged to become one specific ER. Nevertheless, the Agency can not take its final stance on these suggestions before first concluding on that NPA Question.

Comment related to draft ER 1.g is not dealt with here.

Comments related to the role of the NSA, or EASA, do not address this draft ER, but are related to the NPA Question 1.

comment

614

comment by: EUROCONTROL

The CONOPS should include allowance for degraded operations & emergencies

response

Noted

The Agency agrees with the objectives expressed in the comment, but believes that such situations as degraded operations or emergencies would be best dealt with at the level of implementing rules, not in the safety objectives.

comment

847

comment by: UK CAA & UK MoD

UK CAA & MoD Comments on Draft Essential Requirements.

The use of the term 'Concept of Operations' generates considerable confusion as the scope of the proposal encompasses both service provision and regulatory functions within one concept. Clear delineation of the responsibilities of the State at the strategic level and ANSP at the tactical level

needs to be made. Until this is done we do not consider that ER 1 is fit for purpose.

The requirement for airspace policy-making is a State responsibility and is essential to enable the State to discharge its ICAO obligations.

response

Noted

The Agency agrees that it would be premature to fix these safety objectives before first concluding on the NPA Question 1. The Agency takes note on the views expressed in the comment.

comment

1339

comment by: *Ente Nazionale per l'Aviazione Civile*

In general terms the establishment of which concept of operations has to be adopted is outside the scope of EASA regulation.

The present ERs are therefore acceptable only if directed to define a safety framework for the concept of operations rather than establish which concept of operations shall be adopted for the intended aerospace. Such a task is reserved to the Member States responsible for the aerospace or will derive from the SESAR project.

To be noted that in terms of Annex 11 the same concept is regarded at as establishment of appropriate Air Traffic Services, and includes the classification of airspace.

response

Noted

The Agency agrees that it would be premature to fix these safety objectives before first concluding on the NPA Question 1 and it fully concurs that there is no intention to go beyond of what is needed to mitigate safety risks. The Agency takes note on the views expressed in the comment.

comment

1427

comment by: *DGCA-NL*

With regard to the concept of operations it is believed that it goes beyond the scope of the preparation of ATM safety regulations. The concept seems to be more a management tool instead of a framework for actual safety regulation.

response

Noted

The Agency agrees that it would be premature to fix these safety objectives before first concluding on the NPA Question 1 and it fully concurs that there is no intention to go beyond of what is needed to mitigate safety risks. The Agency takes note on the views expressed in the comment.

comment

1686

comment by: *Military Aviation Authority Netherlands*

With regard to the concept of operations it is believed that it goes beyond the scope of the preparation of ATM safety regulations through the EASA system. The concept seems to be more a management tool instead of a framework for

actual safety regulation.

response *Noted*

The Agency agrees that it would be premature to fix these safety objectives before first concluding on the NPA Question 1 and it fully concurs that there is no intention to go beyond of what is needed to mitigate safety risks. The Agency takes note on the views expressed in the comment.

comment *1711* comment by: *DGCA-NL*

It shall minimise the risk of insufficient aircraft separation should read It shall minimise the probability of insufficient aircraft separation.

Rational insufficient aircraft separation bears in itself a risk of an accident or incident.

response *Noted*

The Agency agrees that it would be premature to fix these safety objectives before first concluding on the NPA Question 1 and the comment will be taken into account for future reference.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 1. Concept of Operations - 1.b. p. 36

comment *478* comment by: *DGAC-DAST-FR*

1.b. No remark, subject to comments made on 1c.

response *Noted*

comment *610* comment by: *EUROCONTROL*

The approach proposed in this section goes far beyond safety regulatory aspects. A concept of operations is mainly driven by capacity and efficiency objectives, whilst fully acknowledging that it has to be proven to be safe. High level principles should be defined as appropriate (e.g. FUA, ATFM, airspace design, etc.) by the regulator in the SES framework.

The essential requirements should be limited to higher level safety related statements, as follows:

ER 1a, 1b and 1c should be combined to provide a high level statement that, from a safety regulatory perspective, identifies a need for concepts of operations to be established, including the essential contents necessary for safety. There is no need, in particular, to include details such as the list 1.c.1.

to 1.c.8. The 'safety' requirements concerning aircraft separation, collision and loss of service should be included except that they should not refer to 'partial loss of service' as this is too broad and such an event does not necessarily impact safety if risks are properly mitigated.

response

Noted

See response to an identical comment 613.

comment

615

comment by: *EUROCONTROL*

The CONOPS should include allowance for degraded operations & emergencies

response

Noted

The Agency agrees with the objectives expressed in the comment, but believes that such situations as degraded operations or emergencies would be best dealt with at the level of implementing rules, not in the safety objectives.

comment

848

comment by: *UK CAA & UK MoD*

The use of the term 'Concept of Operations' generates considerable confusion as the scope of the proposal encompasses both service provision and regulatory functions within one concept. Clear delineation of the responsibilities of the State at the strategic level and ANSP at the tactical level needs to be made. Until this is done we do not consider that ER 1 is fit for purpose.

The requirement for airspace policy-making is a State responsibility and is essential to enable the State to discharge its ICAO obligations.

response

Noted

The Agency agrees that it would be premature to fix these safety objectives before first concluding on the NPA Question 1. The Agency takes note on the views expressed in the comment.

comment

1712

comment by: *DGCA-NL*

The last sentence should be amended with:

The concept of operations must address the complexity of the airspace and expected traffic characteristics (such as density and nature), level of service to be delivered and any other relevant operational considerations *in relation to the safety management*.

Reason:

The complexity of the airspace and expected traffic characteristics are of a high influence to the safety objectives to be derived in safety cases, which are part of the safety management.

response *Noted*

In general the Agency can not take its final stance on the suggestion to amend this ER before first concluding on the NPA Question 1. Nevertheless, its initial view on this suggestion would be negative. It is not enough to impose that the regulated organisation has appropriate safety management processes without imposing that the service or product in question complies with common safety requirements.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 1. Concept of Operations - 1.c.

p. 36

comment *136*

comment by: *DSNA*

Whilst the various "concepts of operations" should be defined in a harmonised way at EU level in consistency with accepted ICAO concepts, States and ATS providers – for their respective parts – should choose the application of these approved concepts to the various airspace parts in the manner they deem most suitable for the considered place, or even for a specific procedure within this airspace, such as a terminal procedure serving an airport.

The *choice* of a concept of operations by an ATS provider should be considered as "rule of the art". Thus, there should be no specific requirement for the ATS provider to *demonstrate* that the choice made is "optimal", or addresses specific needs, but only to fulfil the safety requirements as currently under regulation 2096/05 (Annex II, 3.2) before implementing the proposed change. The fact that the selected "concept of operations" is already recognised at ICAO and EU levels provides the baseline for the demonstration.

Indeed, fulfilling the specific needs must be considered as an integrated thrust for the ATS provider, induced by the need to fulfil the performance forecasts in its business plan, both for the short and medium term.

Thus, **1.c should be deleted** from the "Essential requirements".

(In any case, such level of detail should only be considered later under Implementing Rules if and when needed).

Note: the various possible combinations of traffic kinds, levels and patterns at an aerodrome make it even hardly possible to determine any general threshold above which an ATC service should always be created, or under which it should always be deleted.

response *Noted*

The Agency takes note of the views expressed here, which in general address the Question 1 in the NPA. It can neither take its final stance on the more detailed proposal before first concluding on this Question. The Agency also fully concurs that when (if) implementing this safety objective, there is no intention to go beyond of what is needed to mitigate related safety risks.

comment	<p>206 comment by: FRAPORT AG</p> <p>Under all these Items the airport opearator must be involved!</p>
response	<p><i>Noted</i></p> <p>The Agency takes note of the comment. One of the objectives of the NPA Question 1 indeed is to define those (legal or natural) persons responsible for concepts of operations.</p>

comment	<p>479 comment by: DGAC-DAST-FR</p> <p>1.c. Whilst the various “concepts of operations” should be defined in a harmonised way at EU level in consistency with accepted ICAO concepts, States and ATS providers – for their respective parts – should choose the application of these approved concepts to the various airspace parts in the manner they deem most suitable for the considered place, or even for a specific procedure within this airspace, such as a terminal procedure serving an airport.</p> <p>The <i>choice</i> of a concept of operations by an ATS provider should be considered as “rule of the art”. Thus, there should be no specific requirement for the ATS provider to <i>demonstrate</i> that the choice made is “optimal”, or addresses specific needs, but only to fulfil the safety requirements as currently under regulation 2096/05 (Annex II, 3.2) before implementing the proposed change. The fact that the selected “concept of operations” is already recognised at ICAO and EU levels provides the baseline for the demonstration.</p> <p>Indeed, fulfilling the specific needs must be considered as an integrated thrust for the ATS provider, induced by the need to fulfil the performance forecasts in its business plan, both for the short and medium term.</p> <p>Thus, 1.c should be deleted from the “Essential requirements”.</p> <p>(In any case, such level of detail should only be considered later under Implementing Rules if and when needed).</p> <p><u>Note</u>: the various possible combinations of traffic kinds, levels and patterns at an aerodrome make it even hardly possible to determine any general threshold above which an ATC service should always be created, or under which it should always be deleted.</p>
response	<p><i>Noted</i></p> <p>The Agency takes note of the views expressed here, which in general address the Question 1 in the NPA. It can neither take its final stance on the more detailed proposal before first concluding on this Question. The Agency also fully concurs that when (if) implementing this safety objective, there is no intention to go beyond of what is needed to mitigate related safety risks.</p>

comment	<p>602 comment by: EUROCONTROL</p> <p>Although the list is not intended to be exhaustive, it seems to be based on</p>
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ICAO Doc 9854, chapter 2. However, no rationale is provided to explain why certain components do not appear per se, e.g. "airspace users operation". The latter is in particular important since it addresses relevant airspace users' operational information to be made available to the ATM system.

Clarification about the scope of the ERs is needed on whether EASA aims at encompassing only take-off and landing, or as well surface operations? If so, Apron Control Services and their obligations must be clearly defined and taken into account.

response

Noted

The Agency agrees that, if ER's on concepts of operations were to be included in the Basic Regulation, further work will most likely be needed in order to cross-check them against relevant ICAO and EUROCONTROL material. Same goes with the proposed addition, which may also be seen as an operational requirement.

This task aims at managing all interaction between air traffic in all phases of flight and on the movement area of an aerodrome, including apron operations. Another Agency task, safety regulation of aerodromes, has as a prime objective to provide for the safety of an individual aircraft by ensuring that the appropriate means are provided to allow its safe take off and landing, including safe separation from any object or person on the movement area. These two tasks naturally have to establish safety regulations without any unnecessary gaps or overlaps and will merge into one single legal proposal by the Commission.

comment

611

comment by: *EUROCONTROL*

The approach proposed in this section goes far beyond safety regulatory aspects. A concept of operations is mainly driven by capacity and efficiency objectives, whilst fully acknowledging that it has to be proven to be safe. High level principles should be defined as appropriate (e.g. FUA, ATFM, airspace design, etc.) by the regulator in the SES framework.

The essential requirements should be limited to higher level safety related statements, as follows:

ER 1a, 1b and 1c should be combined to provide a high level statement that, from a safety regulatory perspective, identifies a need for concepts of operations to be established, including the essential contents necessary for safety. There is no need, in particular, to include details such as the list 1.c.1. to 1.c.8. The 'safety' requirements concerning aircraft separation, collision and loss of service should be included except that they should not refer to 'partial loss of service' as this is too broad and such an event does not necessarily impact safety if risks are properly mitigated.

response

Noted

See response to an identical comment 613.

comment	<p>849 comment by: UK CAA & UK MoD</p> <p>The use of the term 'Concept of Operations' generates considerable confusion as the scope of the proposal encompasses both service provision and regulatory functions within one concept. Clear delineation of the responsibilities of the State at the strategic level and ANSP at the tactical level needs to be made. Until this is done we do not consider that ER 1 is fit for purpose.</p> <p>The requirement for airspace policy-making is a State responsibility and is essential to enable the State to discharge its ICAO obligations.</p>
response	<p><i>Noted</i></p> <p>The Agency agrees that it would be premature to fix these safety objectives before first concluding on the NPA Question 1. The Agency takes note on the views expressed in the comment.</p>
comment	<p>1028 comment by: INM</p> <p>1. a. Point 93 of the document considers adverse weather as relevant to safety, meteorology is not included in 1.c between other elements to manage the airspace safety.</p>
response	<p><i>Noted</i></p> <p>The Agency believes that the notion of 'any other relevant operational considerations' in 1.b already covers sufficiently this matter indicated in the comment. In addition requirements for MET services are covered in 3.b.</p>
comment	<p>1080 comment by: ANS-MET</p> <p>1. a. Even though point 93 considers adverse weather as relevant to safety, meteorology is not included in 1.c between other elements to manage the airspace safety.</p>
response	<p><i>Noted</i></p> <p>The Agency believes that the notion of 'any other relevant operational considerations' in 1.b already covers sufficiently this matter indicated in the comment. In addition requirements for MET services are covered in 3.b.</p>
comment	<p>1105 comment by: AOPA Germany</p> <p>Seamless operations based on minimum equipage (TBD) has to be ensured.</p>
response	<p><i>Noted</i></p> <p>This is covered in the ER 2.b.</p>
comment	<p>1346 comment by: ECOGAS</p> <p>1.c.3 "Demand and Capacity balancing" will be difficult to assess, especially</p>

where non-scheduled traffic is competing for airspace with scheduled movements. Where such a conflict exists in congested airspace, the fact that a GA movement does not operate on a scheduled basis must not count against that movement's rights over those of a scheduled movement. Similarly, all such calculations must be on a per movement basis, and not take into account the potential or actual capacity of the aircraft.

response

Noted

This comment addresses aspects of economic regulation, which are clearly beyond the competences of the Agency.

comment

1495

comment by: *Aeroclub of Switzerland*

The proposed list clearly shows that the scope of the concept of operations is too large to be covered by a service provider only.

response

Noted

This comment addresses the NPA Question 1. The Agency takes note of the view expressed.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 1. Concept of Operations - 1.d. p. 36

comment

78

comment by: *KLM*

1.d Delete the word ' authorised' as this suggests that only operations with a strict authorization can be accepted in certain airspace. Any type of operation shall be accommodated but may require additional measures to be taken, but that should be possible with the required flexibility.

response

Partially accepted

The Agency initially agrees with the notion of this proposal to delete the word 'authorised' as potentially limiting this objective unnecessarily. However, it can not determine on the exact form of this draft ER before concluding on the NPA Question 1.

comment

137

comment by: *DSNA*

It is not appropriate to try and define a "maximum airspace capacity". Indeed, capacity can be *measured* through the traffic accepted in a given part of controlled airspace (typically, a sector or a Controller Working Position). A controller will stop accepting more traffic in order to avoid "overflow", that is hazardous conditions, depending on circumstances, by requesting from CFMU a flow management measure by limiting the entrance rate to a **level declared in advance**, the "declared flow management capacity". The latter is generally *well below the operational standard level of traffic managed under normal circumstances*.

In addition, the type of operations **authorised** – that would be, by nature, a police decision enacted by the State – is directly linked to the local airspace classification, and thus is covered by the concept of operation, subject to possible additional restrictions for specific activities in time and place.

(More over, capacity should be addressed only through measures related to airspace, and is currently covered by regulation 551/04 and its implementing rules).

Thus, **1d should be deleted.**

response *Noted*

The purpose of this draft ER is to lay down an overall safety objective to mandate the service provider to define in a given airspace such air traffic characteristics requiring specific mitigating measures being taken in order to maintain the level of safe operations. It is obvious that it would mandate establishment of further implementing rules, which then had to provide, with much more detail, for instance such methods referred to in this comment.

The Agency also agrees that using the word 'authorised' may potentially limit this safety objective unnecessarily. However, it can not determine on the exact form or the need of this draft ER before concluding on the NPA Question 1.

comment 207

comment by: *FRAPORT AG*

The airport operator responsible for the "airport capacity" figures must be involved in the determination process!

response *Noted*

This is an issue related to economic regulation - not to the competences of the safety regulator.

comment 425

comment by: *AEA*

Delete the word ' authorised' as this suggests that only operations with a strict authorization can be accepted in certain airspace. Any type of operation shall be accommodated but may require additional measures to be taken, but that should be possible with the required flexibility.

response *Partially accepted*

The Agency initially agrees with the notion of this proposal to delete the word 'authorised' as potentially limiting this objective unnecessarily. However, it can not determine on the exact form of this draft ER before concluding on the NPA Question 1.

comment 480

comment by: *DGAC-DAST-FR*

1.d. It is not appropriate to try and define a "maximum airspace capacity". Indeed, capacity can be *measured* through the traffic accepted in a given part of controlled airspace (typically, a sector or a Controller Working Position). A controller will stop accepting more traffic in order to avoid "overflow", that is hazardous conditions, depending on circumstances, by requesting from CFMU a

flow management measure by limiting the entrance rate to a **level declared in advance**, the “declared flow management capacity”. The latter is generally *well below the operational standard level of traffic managed under normal circumstances*.

In addition, the type of operations **authorised** – that would be, by nature, a police decision enacted by the State – is directly linked to the local airspace classification, and thus is covered by the concept of operation, subject to possible additional restrictions for specific activities in time and place.

(More over, capacity should be addressed only through measures related to airspace, and is currently covered by regulation 551/04 and its implementing rules).

Thus, **1d should be deleted**.

response

Noted

The purpose of this draft ER is to lay down an overall safety objective to mandate the service provider to define in a given airspace such air traffic characteristics requiring specific mitigating measures being taken in order to maintain the level of safe operations. It is obvious that it would mandate establishment of further implementing rules, which then had to provide, with much more detail, for instance such methods referred to in this comment.

The Agency also agrees that using the word 'authorised' may potentially limit this safety objective unnecessarily. However, it can not determine on the exact form or the need of this draft ER before concluding on the NPA Question 1.

comment

603

comment by: *EUROCONTROL*

The glossary of definitions should include explanations for the “(maximum) Airspace capacity”.

response

Noted

The Agency agrees that all specific terms used in the Basic Regulation indeed have to be clearly defined, but not in the NPA.

comment

607

comment by: *EUROCONTROL*

The approach proposed in this section goes far beyond safety regulatory aspects. A concept of operations is mainly driven by capacity and efficiency objectives, whilst fully acknowledging that it has to be proven to be safe. High level principles should be defined as appropriate (e.g. FUA, ATFM, airspace design, etc.) by the regulator in the SES framework.

The essential requirements should be limited to higher level safety related statements, as follows:

ER 1.d and 1.e should be merged into a single requirement, addressing the prevention of overloads. Spectrum issues are not seen as relevant in this context and should be addressed through other essential requirements dealing

with system aspects.

The regulatory approval of detailed concepts of operations to be implemented by ANSPs can only be done under the supervision of NSAs on the basis of appropriate safety cases. No role should be given to EASA concerning such approval. It is therefore not justified to include specific provisions such as those proposed in section 1 of the essential requirements.

response *Noted*

See response to an identical comment 613.

comment 850

comment by: *UK CAA & UK MoD*

The use of the term 'Concept of Operations' generates considerable confusion as the scope of the proposal encompasses both service provision and regulatory functions within one concept. Clear delineation of the responsibilities of the State at the strategic level and ANSP at the tactical level needs to be made. Until this is done we do not consider that ER 1 is fit for purpose.

The requirement for airspace policy-making is a State responsibility and is essential to enable the State to discharge its ICAO obligations.

response *Noted*

The Agency agrees that it would be premature to fix these safety objectives before first concluding on the NPA Question 1. The Agency takes note on the views expressed in the comment.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 1. Concept of Operations - 1.e. p. 36

comment 79

comment by: *KLM*

1.e A mechanism that air traffic volumes do not exceed the maximum airspace capacity is much too strict to define in ERs. Safeguarding the maximum capacity shall be taken care of by the service provider but not defined as a mechanism coming from the regulator.

response *Noted*

Purpose of this draft ER is just to ensure that means are established by the regulated organisation (service provider) to ensure that air traffic volumes do not exceed the level of safe operations, as the comment also seems to suggest.

comment 138

comment by: *DSNA*

This sentence seems to reflect the idea of the CFMU mechanism. As explained

for 1.d, the drafting is **inappropriate**, and in addition, a requirement for flow management measure should not be mixed with the “concept of operation”.

We suggest to:

- find another location for this requirement;
- redraft it as follows: **“A mechanism must be established to ensure that traffic volumes can be reduced to manageable levels if circumstances so require”** – or any drafting more directly inspired by article 9 of regulation 551/04 – unless it is merged with 3.g.1.

response

Noted

Purpose of this draft ER is just to ensure that means are established by the regulated organisation (service provider) to ensure that air traffic volumes do not exceed the level of safe operations. It is not its purpose to address ATFM functions.

It would be premature to determine of the exact form of this draft ER before concluding on the NPA Question 1. The Agency can however initially agree with the comment that this obligation could also be imposed through ER's related to ATC provision.

comment

426

comment by: *AEA*

A mechanism that air traffic volumes do not exceed the maximum airspace capacity is much too strict to define in ERs. Safeguarding the maximum capacity shall be taken care of by the service provider but not defined as a mechanism coming from the regulator.

response

Noted

Purpose of this draft ER is just to ensure that means are established by the regulated organisation (service provider) to ensure that air traffic volumes do not exceed the level of safe operations, as the comment also seems to suggest.

comment

481

comment by: *DGAC-DAST-FR*

1.e. This sentence seems to reflect the idea of the CFMU mechanism. As explained for 1.d, the drafting is **inappropriate**, and in addition, a requirement for flow management measure should not be mixed with the “concept of operation”. **We suggest to:**

- find another location for this requirement;
- redraft it as follows: **“A mechanism must be established to ensure that traffic volumes can be reduced to manageable levels if circumstances so require”** – or any drafting more directly inspired by article 9 of regulation 551/04 – unless it is merged with 3.g.1.

response

Noted

Purpose of this draft ER is just to ensure that means are established by the regulated organisation (service provider) to ensure that air traffic volumes do

not exceed the level of safe operations. It is not its purpose to address ATFM functions.

It would be premature to determine of the exact form of this draft ER before concluding on the NPA Question 1. The Agency can however initially agree with the comment that this obligation could also be imposed through ER's related to ATC provision.

comment

606

comment by: EUROCONTROL

The approach proposed in this section goes far beyond safety regulatory aspects. A concept of operations is mainly driven by capacity and efficiency objectives, whilst fully acknowledging that it has to be proven to be safe. High level principles should be defined as appropriate (e.g. FUA, ATFM, airspace design, etc.) by the regulator in the SES framework.

The essential requirements should be limited to higher level safety related statements, as follows:

ER 1.d and 1.e should be merged into a single requirement, addressing the prevention of overloads. Spectrum issues are not seen as relevant in this context and should be addressed through other essential requirements dealing with system aspects.

The regulatory approval of detailed concepts of operations to be implemented by ANSPs can only be done under the supervision of NSAs on the basis of appropriate safety cases. No role should be given to EASA concerning such approval. It is therefore not justified to include specific provisions such as those proposed in section 1 of the essential requirements.

response

Noted

See response to an identical comment 613.

comment

851

comment by: UK CAA & UK MoD

The use of the term 'Concept of Operations' generates considerable confusion as the scope of the proposal encompasses both service provision and regulatory functions within one concept. Clear delineation of the responsibilities of the State at the strategic level and ANSP at the tactical level needs to be made. Until this is done we do not consider that ER 1 is fit for purpose.

The requirement for airspace policy-making is a State responsibility and is essential to enable the State to discharge its ICAO obligations.

response

Noted

The Agency agrees that it would be premature to fix these safety objectives before first concluding on the NPA Question 1. The Agency takes note on the views expressed in the comment.

comment	1348	comment by: ECOGAS
	Air Traffic volumes must be based on a 'movement' basis rather than using aircraft size, capacity or grandfather rights. The economic value-added of the proposed conflicting movements could also be considered in order to decide which has more merit.	
response	Noted	
	This comment is related to economic regulation, which is not in the competence of the safety regulator.	

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 1. Concept of Operations - 1.f.	p. 36
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comment	139	comment by: DSNA
	For the reasons explained above, we believe that imposing a specific administrative requirement for implementing locally a concept of operations that has been approved at European level, other than the safety requirements already contained in regulation 2096/05 would be inappropriate.	
	Thus, 1.f should be deleted.	
response	Noted	
	The Agency takes note of the views expressed in this comment, but indicates that this matter is addressed in the NPA Question 1. The Agency can however emphasize that the purpose of this safety objective is not to go beyond of what is needed to mitigate related safety risks. It is difficult to see how the proposal to delete draft ER 1.f is linked to the overall question.	
comment	482	comment by: DGAC-DAST-FR
	1.f. For the reasons explained above, we believe that imposing a specific administrative requirement for implementing locally a concept of operations that has been approved at European level, other than the safety requirements already contained in regulation 2096/05 would be inappropriate.	
	Thus, 1.f should be deleted.	
response	Noted	
	The Agency takes note of the views expressed in this comment, but indicates that this matter is addressed in the NPA Question 1. The Agency can however emphasize that the purpose of this safety objective is not to go beyond of what is needed to mitigate related safety risks. It is difficult to see how the proposal to delete draft ER 1.f is linked to the overall question.	
comment	852	comment by: UK CAA & UK MoD
	The use of the term 'Concept of Operations' generates considerable confusion as the scope of the proposal encompasses both service provision and regulatory functions within one concept. Clear delineation of the	

responsibilities of the State at the strategic level and ANSP at the tactical level needs to be made. Until this is done we do not consider that ER 1 is fit for purpose.

The requirement for airspace policy-making is a State responsibility and is essential to enable the State to discharge its ICAO obligations.

response *Noted*

The Agency agrees that it would be premature to fix these safety objectives before first concluding on the NPA Question 1. The Agency takes note on the views expressed in the comment.

comment *1713*

comment by: *DGCA-NL*

It is unspecified what is meant with *must be validated*.

It is assumed that here the assessment of safety cases is meant. If so, please amend the ER accordingly.

response *Not accepted*

There might also exist in certain cases other means of validation. Therefore, it would be better to include the methods of safety assessment at the level of implementing rules.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 1. Concept of Operations - 1.g. p. 36

comment *9*

comment by: *VITROCISSET*

this requirement should apply to ALL the Frequency spectrum, regardless of its final use (e.g. radiocommunication, navigation, surveillance). As a consequence: "... *assignement of frequency Spectrum to aeronautical purposes shall prevent electromagnetic interferences.*"

response *Partially accepted*

The Agency agrees that a reference in the draft ER to 'aeronautical communications' limits unnecessarily its scope and therefore it will be extended to cover also aeronautical navigation and surveillance.

comment *140*

comment by: *DSNA*

The sentence seems to suggest creating a mechanism at European level for assigning radio-communication frequencies, that is neither described nor substantiated. Although the added value of international coordination is obvious, it should be noted that the frequencies are already managed at regional level through ICAO office for Europe / North Atlantic. More over, the regulatory competence on the use of radiofrequencies in States is generally entrusted to a national Agency in charge of radiospectrum frequencies. This

includes the assignment of frequencies in the "aeronautical spectrum". . Thus, it does not relate specifically to the transport policy. In addition, the frequency spectrum is considered by law as a national property within the French territory.

Finally, **there could be a role of the EU in that domain but it should be limited to:**

- **ensuring electromagnetic compatibility between equipments on board aircraft or between adjacent aircraft, or with ground equipment,**
- **more specifically, setting rules for coordination between the Member States for the assignment of frequencies** in the aeronautical bands that are published in the Radio-communications Regulation by ITU, based upon the ICAO frequency management technical criteria.

response *Noted*

The aim of this draft ER is to ensure that sufficient and adequate electromagnetic spectrum is allocated for aeronautical purposes and that appropriate protection from unacceptable electromagnetic interferences is provided. These measures are clearly mitigations for specific unacceptable safety risks. It is not intended that this would somehow change the national competencies related to the management of radio frequencies. Limitation, as the comment seem to suggest, to ensuring electromagnetic compatibility between aeronautical equipment would however limit the purpose of the ER too much. Availability of the defined electromagnetic spectrum is indeed a safety related criteria in defining a given concept of operations.

comment 252

comment by: *ATSEP Belgium*

This paragraph should read: "Sufficient and adequate electromagnetic spectrum for aeronautical communications, navigation and surveillance has to be ensured as a basis for the concept of operations. Assignment of frequency channels to aeronautical communications, navigation and surveillance shall prevent electromagnetic interferences."

response *Accepted*

Comment is accepted by the Agency and the draft ER will be reworded accordingly.

comment 295

comment by: *IFATSEA*

IFATSEA considers that in this paragraph also navigation and surveillance must be included. Therefore, this paragraph should be changed as follows: "*Sufficient and adequate electromagnetic spectrum for aeronautical communications, navigation and surveillance has to be ensured as a basis for the concept of operations. Assignment of frequency channels to aeronautical communications, navigation and surveillance shall prevent electromagnetic interferences*".

response *Accepted*

Comment is accepted by the Agency and the draft ER will be reworded accordingly.

comment	<p>386 comment by: <i>IFSA</i></p> <p>IFSA consider that assignment of frequency channels should be ensured even for navigation and surveillance signals.</p>
response	<p><i>Accepted</i></p> <p>Comment is accepted by the Agency and the draft ER will be reworded accordingly.</p>
comment	<p>483 comment by: <i>DGAC-DAST-FR</i></p> <p>1.g. The sentence seems to suggest creating a mechanism at European level for assigning radio-communication frequencies, that is neither described nor substantiated. Although the added value of international coordination is obvious, it should be noted that the frequencies are already managed at regional level through ICAO office for Europe / North Atlantic. More over, the regulatory competence on the use of radiofrequencies in States is generally entrusted to a national Agency in charge of radiospectrum frequencies. This includes the assignment of frequencies in the "aeronautical spectrum". . Thus, it does not relate specifically to the transport policy. In addition, the frequency spectrum is considered by law as a national property within the French territory.</p> <p>Finally, there could be a role of the EU in that domain but it should be limited to:</p> <ul style="list-style-type: none"> - ensuring electromagnetic compatibility between equipments on board aircraft or between adjacent aircraft, or with ground equipment, - more specifically, setting rules for coordination between the Member States for the assignment of frequencies in the aeronautical bands that are published in the Radio-communications Regulation by ITU, based upon the ICAO frequency management technical criteria.
response	<p><i>Noted</i></p> <p>The aim of this draft ER is to ensure that sufficient and adequate electromagnetic spectrum is allocated for aeronautical purposes and that appropriate protection from unacceptable electromagnetic interferences is provided. These measures are clearly mitigations for specific unacceptable safety risks. It is not intended that this would somehow change the national competencies related to the management of radio frequencies. Limitation, as the comment seem to suggest, to ensuring electromagnetic compatibility between aeronautical equipment would however limit the purpose of the ER too much. Availability of the defined electromagnetic spectrum is indeed a safety related criteria in defining a given concept of operations.</p>
comment	<p>604 comment by: <i>EUROCONTROL</i></p> <p>This is not just about Communications it has to include the electromagnetic spectrum for radio - navigation services and surveillance. This might affect the SESAR concept of operation which will not work.</p>

response

Accepted

Comment is accepted by the Agency and the draft ER will be reworded accordingly.

comment

853

comment by: *UK CAA & UK MoD*

The use of the term 'Concept of Operations' generates considerable confusion as the scope of the proposal encompasses both service provision and regulatory functions within one concept. Clear delineation of the responsibilities of the State at the strategic level and ANSP at the tactical level needs to be made. Until this is done we do not consider that ER 1 is fit for purpose.

The requirement for airspace policy-making is a State responsibility and is essential to enable the State to discharge its ICAO obligations.

This should cover all CNS, not just communications; there is a need for navigation and surveillance spectrum and its protection too. Additionally, whilst the desire to protect all spectrum from electromagnetic interference is the goal, there needs to be a degree of realism.

The 'assignment of frequency channels' cannot prevent interference. The ANSP must take reasonable steps to prevent interference to the information being communicated.

response

Partially accepted

The Agency agrees that it would be premature to fix these safety objectives before first concluding on the NPA Question 1. The Agency takes note on the views expressed in the comment.

The Agency does not assume any role for it in airspace policy making.

Then, the Agency agrees that a reference in the draft ER to 'aeronautical communications' limits unnecessarily its scope and therefore it will be extended to cover also aeronautical navigation and surveillance. Some editorial changes might also be needed.

The Agency can not fully concur with the comment related to prevention of interference. Purpose of the ER is to impose on the regulated organisation that it takes the appropriate measures aiming at such protection. It is however true that the 'assignment of the frequency channels' is not the only means as such. The Agency will amend the draft ER accordingly, if still needed after having first concluded on the relevant NPA Question.

comment

1022

comment by: *European Space Agency*

The European Space Agency fully supports this key requirement.

response

Noted

The Agency takes note of this support.

comment	<p><i>1129</i> comment by: <i>Silvio ZAPPI</i></p> <p>Navigation and Surveillance should be included.</p>
response	<p><i>Accepted</i></p> <p>Comment is accepted by the Agency and the draft ER will be reworded accordingly.</p>
comment	<p><i>1349</i> comment by: <i>ECOGAS</i></p> <p>The electromagnetic spectrum assigned to aviation in Europe must be in line with those standards aid down for operation elsewhere.</p>
response	<p><i>Noted</i></p> <p>The Agency takes note of the comment.</p>
comment	<p><i>1714</i> comment by: <i>DGCA-NL</i></p> <p>Assignment of frequency channels to aeronautical communications in itself cannot prevent electromagnetic interference. Think here about unintentional interference, deliberated interference and hostile interference. Also sufficient and adequate electromagnetic spectrum for aeronautical communications can only be assigned by the ITU not by EASA neither ICAO.</p> <p>In order to reflect this situation the ER should be amended as follows</p> <p>It is considered that in this paragraph also navigation and surveillance must be included. Therefore, this paragraph should be changed as follows:</p> <p>"Sufficient and adequate electromagnetic spectrum for aeronautical communications, navigation and surveillance has to be ensured as a basis for the concept of operations. Adequate frequency planning for aeronautical communications, navigation and surveillance shall prevent electromagnetic interference between services in the aeronautical spectrum and the services in the adjacent non-aeronautical spectrum."</p>
response	<p><i>Partially accepted</i></p> <p>The Agency accepts that the draft ER related to prevention of electromagnetic interference might have to be improved. Purpose of the ER is to impose on the regulated organisation that it takes the appropriate measures aiming at such protection. It is true that the 'assignment of the frequency channels' is not the only means as such. The Agency will amend the draft ER accordingly, if still needed after having first concluded on the relevant NPA Question.</p> <p>These measures are clearly mitigations for specific unacceptable safety risks. It is not intended that this would somehow change the competencies of ITU in this regard.</p> <p>When it comes to the too limiting drafting of the ER (only aeronautical communications), the comment is accepted by the Agency and the draft ER will be reworded accordingly.</p>

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 2. Use of the Airspace - 2.a.

p. 37

comment

141

comment by: *DSNA*

We concur that it would be appropriate to empower the Community to harmonise the **rules of the air**, imposed on aircraft in all phases of flight, as this would in particular solve concerns with discontinuities in rules applied within a FAB.

However, the question arises whether this competence should be created by within the EASA system, or by extending the current SES system. The advantage of the latter solution is to rely on working groups gathering all States with Eurocontrol, including military authorities, not restricted working groups under EASA working arrangements, as this matter relates to typical States police powers.

response

Noted

The Agency acknowledges that the comment agrees with the need to harmonise the rules of the air at the Community level. The Agency however, recognises also that the rules of the air are mainly related to aspects of safety regulation. Therefore the Agency has anticipated this area to be included in the remit of the EASA system. Working groups gathering all States with EUROCONTROL, including military authorities, can be established similarly in the EASA system. Comment as such does not affect the specific contents of this Essential Requirement, but is related to the political decision making of the European legislator on the best way to incorporate the future role of the EASA system into the legal acts.

comment

484

comment by: *DGAC-DAST-FR*

2.a. We concur that it would be appropriate to empower the Community to harmonise the **rules of the air**, imposed on aircraft in all phases of flight, as this would in particular solve concerns with discontinuities in rules applied within a FAB.

However, the question arises whether this competence should be created by within the EASA system, or by extending the current SES system. The advantage of the latter solution is to rely on working groups gathering all States with Eurocontrol, including military authorities, not restricted working groups under EASA working arrangements, as this matter relates to typical States police powers.

response

Noted

The Agency acknowledges that the comment agrees with the need to harmonise the rules of the air at the Community level. The Agency however, recognises also that the rules of the air are mainly related to aspects of safety regulation. Therefore the Agency has anticipated this area to be included in the remit of the EASA system. Working groups gathering all States with EUROCONTROL, including military authorities, can be established similarly in the EASA system. Comment as such does not affect the specific contents of this Essential Requirement, but is related to the political decision making of the European legislator on the best way to incorporate the future role of the EASA

system into the legal acts.

comment

616

comment by: *EUROCONTROL*

The wording of section 2.a rests on the assumption that the said "operating rules" will be developed as a refinement of the essential requirement. This does not seem justifiable or acceptable. As already stated, these rules (which go well beyond the "rules of the air" as defined in ICAO Annex 2) are mainly driven by capacity and efficiency. They should therefore be developed under the SES framework. The safety related ERs should be limited to ensuring that the operating rules are compatible with the achievement of agreed levels of safety. Regarding section 2.b., it is considered that its scope goes far beyond safety. Regulatory requirements applicable to the carriage of appropriate ATM equipment fall under the SES framework, except when related to the safety of individual aircraft (such as GPWS). It is not justified to establish the carriage of equipment dictated by capacity / efficiency objectives as a safety requirement. Section 2.b is therefore not acceptable as such.

response

Noted

The purpose of this ER is to impose that both, common rules of the air and those specific to a given airspace for safety reasons, are complied with by all airspace users. It is not the intention of the Agency to propose that the scope of its rules would go beyond safety regulation.

As a further clarification, the Essential Requirements will be implemented through Commission Regulations under the legal framework of the European Community with a participation of the Member States (comitology).

comment

618

comment by: *EUROCONTROL*

The movement area of an aerodrome should be defined.

response

Partially accepted

Specific terms used in the Basic Regulation indeed have to be defined, but not at the level of this NPA. Movement and manoeuvring areas are defined in ICAO Annex 14. These definitions are widely accepted by the aviation community.

comment

725

comment by: *BAA*

The use of the term 'movement area' is used here which includes apron/stand areas as well as runways and taxiways. In the UK the use of 'apron control/management' is not to be found whilst in many European aerodromes the the Airport Operator does provide such a service that feeds aircraft to ATC at agreed locations. Care is needed here to ensure there is no confliction between the ATM and Aerodrome requirements.

response

Partially accepted

Specific terms used in the Basic Regulation indeed have to be defined and the Agency fully agrees that no conflicts between ATM and aerodrome requirements shall exist. Definitions, however, will be part of the legal proposal by the Commission - not at the level of this NPA. Movement and manoeuvring areas are defined in ICAO Annex 14. These definitions are widely accepted by

the aviation community.

comment

854

comment by: *UK CAA & UK MoD*

The scope of this ER overlaps with the scope of BR002 by reference to the movement area of an aerodrome.

The reference to 'common general operating rules' would need to be fully understood and referenced.

This appears to imply that all airspace users would need to operate to the same set of rules, which is not appropriate.

response

Noted

The Agency tasks BR.002 and BR.003 both indeed use the term 'movement area', the first one to ensure the safety of a single aircraft and the latter one the safety between air traffic. Therefore the scope of the ER should not overlap. Moreover, care will be taken that consistent definitions will be used in all legal material prepared by the Agency. These two tasks will merge into one single legal proposal by the Commission.

The purpose of the Agency is not to propose that the scope of its rules going beyond safety regulation. Specific terms used in the Basic Regulation indeed have to be defined, but not at the level of this NPA.

Any requirement for flexibility in implementation would be addressed at the level of specific implementing rules or through the flexibility provisions of the Basic Regulation, but not in the safety objectives as such.

comment

1146

comment by: *Airport Operators Association*

2.a Insert a reference to environmental considerations e.g. in line 2 after "rules" insert ", including procedures to mitigate environmental impact,".

response

Not accepted

Without prejudice to the correctness of this comment, the Agency can not accept it, since environmental considerations are not part of this rulemaking task. They will be dealt with in another task by the Agency.

comment

1340

comment by: *Ente Nazionale per l'Aviazione Civile*

The entire paragraph should be re-written in terms of Rule of the Air.

In the ICAO environment the same concepts are expressed as "Rules of the Air", therefore it is not easily understandable why the ERs refer to "general operating rules". Each Member State must introduce in its airspace a set of Rules of the Air which supports the local concept of operations.

	All aircraft entering the airspace of a member State must comply with the local Rules of the Air.
response	<p><i>Not accepted</i></p> <p>The Agency believes that referring just to 'rules of the air' in the ER would unnecessarily narrow its scope to exclude other safety related rules in the applicable concept of operations, including those of local nature. Moreover, this term, as all specific terms used in the EASA Basic Regulation, indeed has to be defined therein, but not at the level of this NPA.</p>
comment	<p>1428 comment by: DGCA-NL</p> <p>It is noted that ICAO regulations and procedures are being transposed into EU safety regulations. However, additional rulemaking in this field should be well founded on a fact finding analysis setting all current risks and hazards.</p>
response	<p><i>Noted</i></p> <p>It is not clear to the Agency how the foreseen scope of this task should be limited based on this comment. This ER indeed is based on mitigating unacceptable safety risks in this domain and all rules proposed by the Agency have to be subject to regulatory impact assessment.</p>
comment	<p>1687 comment by: Military Aviation Authority Netherlands</p> <p>It is noted that ICAO regulations and procedures are being transposed into EU safety regulations. However additional rulemaking in this field should be well founded on a fact finding analysis setting all current risks and hazards.</p>
response	<p><i>Noted</i></p> <p>One of the objectives of the EASA system indeed is to aim to common transposition of ICAO SARPS. Such transposition through Essential Requirements constitutes thereafter the basis for the necessary detailed implementing rules. This is already the case in other areas of aviation and will be now proposed as regards aerodromes and ATM/ANS. It is however not clear to the Agency what has been meant in this comment by 'additional rulemaking' or if it proposes to limit the foreseen scope of the Agency in a certain way. This ER in question indeed is based on mitigating unacceptable safety risks in this domain and all rules proposed by the Agency have to be subject to regulatory impact assessment.</p>
comment	<p>1715 comment by: DGCA-NL</p> <p>It is unclear what "common general operating rules" means. The ICAO Rules of the Air are such rules. Please reference to which common general operating rules 2.a. applies.</p>
response	<p><i>Noted</i></p> <p>Common operating rules referred in this ER stand for common rules of the air and those rules and procedures specific to a given airspace to ensure the safety of all air traffic using it. The purpose of this safety objective is to impose</p>

that such rules are complied with by all airspace users. The Agency believes that referring just to 'rules of the air' in the ER would unnecessarily narrow its scope to exclude other safety related rules in the applicable concept of operations, including those of local nature. Moreover, this term, as all the other specific terms used in the EASA Basic Regulation, indeed has to be defined therein, but not at the level of this NPA.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 2. Use of the Airspace - 2.b. p. 37

comment 80 comment by: KLM

2.b Some flexibility is required when changes to the concept or when older type of aircraft are operated a transition period may be required and should be possible.

response *Noted*

The purpose of this Essential Requirement is to impose that that all aircraft are equipped and operated in a given airspace in accordance with safety rules related to appropriate on-board equipment. Any requirement for flexibility in implementation and associated transition periods would be addressed at the level of specific implementing rules or through the flexibility provisions of the Basic Regulation, but not in the safety objectives as such.

comment 90 ❖ comment by: Airbus

We support the statement in paragraph 49 of the explanatory note, that "care needs to be taken when developing implementing rules that common regulatory processes are implemented to verify compliance so as to reduce the administrative burden on regulated persons."

We expect that future implementing rules will contain provisions in the spirit of Article 7.2 of Commission Regulation (EC) No 1265/2007 of 26 October 2007 laying down requirements on air-ground voice channel spacing for the single European sky, quoted below:

"2. Certification airworthiness processes complying with Regulation (EC) No 1592/2002 of the European Parliament and of the Council (1), when applied to airborne constituents of the systems referred to in Article 1(2), shall be considered as acceptable procedures for the conformity assessment of these constituents if they include the demonstration of compliance with the interoperability, performance and safety requirements of this Regulation."

In addition, it is necessary that the implementing rules contain the appropriate "grandfather" provisions for maintaining the approval, without additional showing, of previously approved/installed airborne constituents.

There is also a need to take care of airborne constituents operated by non-

European users of European airspace, without imposing an excessive administrative burden.

response

Noted

The purpose of this Essential Requirement is to impose that that all aircraft are equipped and operated in a given airspace in accordance with safety rules related to appropriate on-board equipment. The Agency agrees that any unnecessary duplication or overlaps in the implementation of such rules shall be avoided.

Any requirement for grandfathering provisions would be addressed at the level of specific implementing rules or through the flexibility provisions of the Basic Regulation.

Issues related to requirements for non-European users operating in European airspace are already part of the EASA Basic Regulation and therefore not specifically addressed by this consultation. However, the Agency fully agrees that same principles of harmonised and efficient regulatory mechanisms without any duplications shall be applied.

comment

142

comment by: *DSNA*

We concur that it would be appropriate to empower the Community to harmonise the requirements for the carriage of appliances on board aircraft. The text suggests a link with the concept of operations.

However, the very interoperability rules for these on-board appliances could and should be kept in the regulation 552/04, that allows having in a single regulation the whole set of requirements for all stakeholders, notwithstanding ending remarks on paragraph 1 above on electromagnetic compatibility.

response

Noted

The purpose of this Essential Requirement is to impose that that all aircraft are equipped and operated in a given airspace in accordance with safety rules related to appropriate on-board equipment. The rulemaking responsibilities related to such aircraft equipment will be subject to decisions on respective legal instruments, i.e. EASA Basic Regulation and Single European Sky regulations. The Agency has also elaborated on this matter through the specific NPA questions and naturally takes note of the views provided here.

comment

427

comment by: *AEA*

Some flexibility is required when changes to the concept or when older type of aircraft are operated a transition period may be required and should be possible.

response

Noted

The purpose of this Essential Requirement is to impose that that all aircraft are equipped and operated in a given airspace in accordance with safety rules related to appropriate on-board equipment. Any requirement for flexibility in implementation and associated transition periods for such equipage requirements would be addressed at the level of specific implementing rules or

through the flexibility provisions of the Basic Regulation.

comment

485

comment by: *DGAC-DAST-FR*

2.b. We concur that it would be appropriate to empower the Community to harmonise the requirements for the carriage of appliances on board aircraft. The text suggests a link with the concept of operations.

However, the very interoperability rules for these on-board appliances could and should be kept in the regulation 552/04, that allows having in a single regulation the whole set of requirements for all stakeholders, notwithstanding ending remarks on paragraph 1 above on electromagnetic compatibility

response

Noted

The purpose of this Essential Requirement is to impose that that all aircraft are equipped and operated in a given airspace in accordance with safety rules related to appropriate on-board equipment. The rulemaking responsibilities related to such aircraft equipment will be subject to decisions on respective legal instruments, i.e. EASA Basic Regulation and Single European Sky regulations. The Agency has also elaborated on this matter through the specific NPA questions and naturally takes note of the views provided here.

comment

617

comment by: *EUROCONTROL*

The wording of section 2.a rests on the assumption that the said "operating rules" will be developed as a refinement of the essential requirement. This does not seem justifiable or acceptable. As already stated, these rules (which go well beyond the "rules of the air" as defined in ICAO Annex 2) are mainly driven by capacity and efficiency. They should therefore be developed under the SES framework. The safety related ERs should be limited to ensuring that the operating rules are compatible with the achievement of agreed levels of safety. Regarding section 2.b., it is considered that its scope goes far beyond safety. Regulatory requirements applicable to the carriage of appropriate ATM equipment fall under the SES framework, except when related to the safety of individual aircraft (such as GPWS). It is not justified to establish the carriage of equipment dictated by capacity / efficiency objectives as a safety requirement. Section 2.b is therefore not acceptable as such.

response

Noted

The purpose of this Essential Requirement is to impose that that all aircraft are equipped and operated in a given airspace in accordance with safety rules related to appropriate on-board equipment. The purpose of this draft Essential Requirement is confined to safety in conformance with the overall scope of the regulatory system to be defined in the applicable articles of the Basic Regulation - not in the safety objectives. Moreover, the rulemaking responsibilities related to such aircraft equipment will be subject to decisions on respective legal instruments, i.e. EASA Basic Regulation and Single European Sky regulations. The Agency has also elaborated on this matter through the specific NPA questions and naturally takes note on the views provided here.

comment	<p>855 comment by: UK CAA & UK MoD</p> <p>The reference to appliances and constituents is an example of inconsistent use of definitions.</p> <p>Whilst the ER refers to the actual equipment, it makes no reference to the pilot training and competencies, and the operational procedures. Consequently, it would not ensure that such subsystems are fit for purpose.</p> <p>The related ERs that this refers to need to be identified.</p>
response	<p><i>Partially accepted</i></p> <p>The Agency fully concurs that certain terminologies have been used inconsistently in the rules in different aviation domains. Such an example is evident in this case, where the Basic Regulation refers to parts and appliances and SES rules to constituents. The Agency agrees that any regulations and other implementation material have to be clear and non-ambiguous.</p> <p>The intent of this draft ER is to encompass the equipment and the way it is operated, i.e. by trained personnel in accordance with procedures. This is expressed in the draft ER by the words 'and operated accordingly'. Pilot training and competences are already covered in the EASA system and will be adapted accordingly.</p> <p>Those related ER's are defined in the paragraph 4 of Section B II of this NPA; Systems and Constituents. Therefore, this ER will be amended to read '... and shall also comply with the Essential Requirements defined in paragraph 4; Systems and Constituents'.</p>
comment	<p>932 comment by: IACA International Air Carrier Association</p> <p>The essential requirements shall provide flexibility for transition to changes in the concept of operation, and phase-out of older aircraft.</p>
response	<p><i>Noted</i></p> <p>The purpose of this Essential Requirement is to impose that that all aircraft are equipped and operated in a given airspace in accordance with safety rules related to appropriate on-board equipment. Any requirement for flexibility in implementation and associated transition periods would be addressed at the level of specific implementing rules or through the flexibility provisions of the Basic Regulation, but not in the safety objective as such.</p>
comment	<p>1110 comment by: AOPA Germany</p> <p>Remove "all", i.e.: ... must be equipped with suitable appliances...</p>
response	<p><i>Accepted</i></p> <p>Comment is accepted on grammatical grounds and the second occurrence of the word 'all' will be removed from this ER.</p>

comment	1350	comment by: ECOGAS
	<p>Airspace may be used by aircraft of differing equipment types and levels, based on the type of operation being undertaken. There may be more than one way of equipping an aircraft in such a way that it complies with the performance levels required by the safety regulator.</p>	
response	<p><i>Noted</i></p> <p>The draft ER in question indeed refers to 'all suitable appliances'. The notion of flexibility addressed in this comment will be taken into account at the level of implementing rules.</p>	
comment	1716	comment by: DGCA-NL
	<p>It is unclear why appliances, for their use in the ATM/ANS system are considered as constituents. These appliances should be considered as a subsystem of the concept of operation.</p>	
response	<p><i>Partially accepted</i></p> <p>Definitions will indeed form a part of the amended Basic Regulation. The Agency fully concurs that certain terminologies have been used inconsistently in the rules of different aviation domains, such is the case with 'appliances' and 'constituents' both having a similar meaning as regulated objects.</p>	

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 3. Services

p. 37

comment	33 ❖	comment by: MATTA
	<p>Generally the power supply (PWR) for CNS/ATM should be mentioned in this document. The difference between external power (primary or commercial) and the power supply (secondary or backup) for CNS/ATM should be clarified and established in this document as well as its requirements.</p> <p>According to ICAO documents there is a clear difference between primary (commercial) power supplies as an external element and the secondary (backup, uninterruptible) power supply as internal element. This difference is not clear in the whole NPA document.</p> <p>The same or similar difference should be established in this document in the way that ANS/ATM/CNS service providers shall be fully responsible for backup power supply for CNS/ATM and partly for external (commercial) power supplies services.</p> <p>Explanatory definition and/or meaning of the phrase "Power supply (PWR) for CNS/ATM":</p> <p>"Power supply (PWR) equipment/system used for uninterruptible and reserve electrical supply of the CNS/ATM (e.g. on-line UPS's, standby power generator sets, batteries/batteries Station, power supply network, etc.) as a secondary power supply, provide required services for CNS/ATM fully in line with the principles of ICAO SARP's in Annexes 10 and 11 and also in line of</p>	

ICAO Doc 9426-3 and Doc 9157-AN/901 Part 5 - Electrical Systems.

Power supply equipments/systems provide a vital role in the operation of CNS/ATM systems and consequentially to safe and orderly operation of ANS. The electrical power supply sources/equipments/systems quality, availability, capacity and reliability are one of the basic technical prerequisites for high integrity and reliability of CNS/ATM systems.

Proper design, installation and maintenance of an electrical Power Supply system for CNS/ATM systems/equipments are prerequisites for the safety, regularity and efficiency of civil aviation. They are governed by international and national standards.

The Regulators/Designated Authorities, Service providers and ATM Services personnel (ATCO's, ATSEP's) has to understand the impact of the power supply services on the user and on the overall CNS/ATM system.

response *Noted*

See response to identical comment per paragraph 42.

comment 37

comment by: *MATTA*

Under this title segment 3. Services, the new requirements should be added for power supply services e.g. on page 39. to add new sub-title "3.i Power supply services for ATM/ANS"

The proposed text (to be added on page 39):

"3.i. Power supply services for ATM/ANS

3.i.1. Power supply service for ATM/ANS/CNS must achieve and maintain sufficient performance capability, including criteria for availability, integrity, continuity and timeliness of the service. They must be secure, incorruptible and expeditious."

response *Not accepted*

As stated already earlier, the Agency does not agree that power supply should be regarded as an ATM/ANS service. Furthermore the proposed ER's already allow verifying that adequate power supply is available. Should it be necessary, the ER's also allow establishing proper rules or specifications for the power supply.

comment 296

comment by: *IFATSEA*

Under the section 3. Services, a new requirement should be added for power supply services on page 39. and add new sub-title as follow: "3.i Power supply services for ATM/ANS"

The proposed text (to be added on page 39):

"3.i. Power supply services for ATM/ANS

3.i.1. Power supply service for ATM/ANS/CNS must achieve and maintain sufficient performance capability, including criteria for availability, integrity, continuity and timeliness of the service. They must be secure, incorruptible

	and expeditious."	
response	<i>Not accepted</i>	
	The Agency considers that the draft ER's already provide the necessary legal basis to develop detailed implementing rules or voluntary standards covering this as well as other issues (see also 6.a.1, 6.a.3, 6.a.5 and 6.a.6).	
comment	856	comment by: <i>UK CAA & UK MoD</i>
	Without an appropriate system description or model, the validity of these Essential Requirements cannot be established. For such a description or model to exist, definitions of all terms/entities used and a definition of the relationship between all entities needs to be provided. This has not been done.	
	The use of the word 'must' in several paragraphs addressing the same requirement is potentially ambiguous and is unnecessary. The use of qualifier adjectives such as 'sufficient' at the beginning is ambiguous, as it could equally apply to only the first or apply to all elements.	
	There is an issue with the use of word 'incorruptible' as it implies perfection, which cannot be achieved or regulated.	
response	<i>Noted</i>	
	ER's are of a legal nature and not the appropriate vehicle to mandate highly technical definitions. In the absence of such definitions, the common meaning generally attributed to the expressions should be used. Definitions will be provided in the legal proposal by the Commission. The Agency also takes into account these suggestions to improve the drafting of ER's.	
comment	1429	comment by: <i>DGCA-NL</i>
	The requirements under this heading leave (too) much to be filled in through the implementing rules. Safety regulation for services is at present covered by the common requirements implementing rules under Cion Regulation 2096/2005. Any amendment of this implementing rule should be based on a fact-finding analysis.	
response	<i>Noted</i>	
	The ER's establish high level safety objectives that are designed to provide political and judicial control and the legal basis for further detailed implementing rules. These implementing rules will build on existing EC Regulations and ESARRs.	
comment	1688	comment by: <i>Military Aviation Authority Netherlands</i>
	The requirements under this heading leave (too) much to be filled in through the implementing rules. Safety regulation for services is at present covered by the common requirements implementing rules under Cion Regulation	

2096/2005. Any amendment of this implementing rule should be based on a fact-finding analysis.

response

Noted

The ER's establish high level safety objectives that are designed to provide political and judicial control and the legal basis for further detailed implementing rules. These implementing rules will build on existing EC Regulations and ESARRs.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 3. Services - 3.a.

p. 37

comment

143

comment by: *DSNA*

As far as interoperability rules are affected, it looks preferable to keep interoperability rules under regulation 552/04, and not to transfer them into the EASA system. We concur that the Agency should focus on the safety requirements themselves.

An acceptable approach would be to separate the safety requirements currently mixed with interoperability requirements (see Annex II of regulation 552/04) from the pure technical interoperability part, and to entrust them to EASA. However, such requirements could and should be expressed in more general words.

Although we recognise that AESA may have currently a sound approach of the airborne appliances, a more global view is needed for the pure technical interoperability of ground systems, and of air and ground systems interacting together for supporting ATS provision. Thus, the pure technical interoperability requirements in regulation 552/04 and associated IRs should keep in that regulatory framework.

Thus, 3.a.1, 3.b.1 and 3.c.1 should be melted together and rephrased in a general manner, while 3.a.2, 3.a.3, 3.b.2, 3.b.3, 3.c.2 and 3.c.3 should be deleted.

response

Not accepted

The Agency agrees with the general intent in the comment and confirms that technical interoperability should not be regulated through the EASA system. The interaction between these two legal frameworks will be addressed by the legislative proposals of the Commission.

The Agency agrees that 3.a.1, 3.b.1 and 3.c.1 could perhaps be merged. However, keeping them separate was a decision based on clarity of the text and also the need to have a clear legal basis in case of different services.

3.a.2 and 3.a.3 both do have a clear safety relevance. It can not be envisaged to disseminate inaccurate, incomplete, outdated, ambiguous or unusable data without lowering the level safety.

The same reasoning applies to 3.b.2, 3.b.3, 3.c.2 and 3.c.3.

comment	<p>428 comment by: <i>AEA</i></p> <p>incorruptible communication services are not realistic and can never be guaranteed; different wording is required. We suggest rather that communication services should meet the maximum tolerable levels of interference/corruption.</p>
response	<p><i>Partially accepted</i></p> <p>Text changed to '... protected from interference and corruption...'</p>
comment	<p>486 comment by: <i>DGAC-DAST-FR</i></p> <p>3.a.1 to 3.a.3. As far as interoperability rules are affected, it looks preferable to keep interoperability rules under regulation 552/04, and not to transfer them into the EASA system. We concur that the Agency should focus on the safety requirements themselves.</p> <p>An acceptable approach would be to separate the safety requirements currently mixed with interoperability requirements (see Annex II of regulation 552/04) from the pure technical interoperability part, and to entrust them to EASA. However, such requirements could and should be expressed in more general words.</p> <p>Although we recognise that AESA may have currently a sound approach of the airborne appliances, a more global view is needed for the pure technical interoperability of ground systems, and of air and ground systems interacting together for supporting ATS provision. Thus, the pure technical interoperability requirements in regulation 552/04 and associated IRs should keep in that regulatory framework.</p> <p>Thus, 3.a.1, 3.b.1 and 3.c.1 should be melted together and rephrased in a general manner, while 3.a.2, 3.a.3, 3.b.2, 3.b.3, 3.c.2 and 3.c.3 should be deleted.</p>
response	<p><i>Not accepted</i></p> <p>The Agency agrees with the general intent in the comment and confirms that technical interoperability should not be regulated through the EASA system. The interaction between these two legal frameworks will be addressed by the legislative proposals of the Commission.</p> <p>The Agency agrees that 3.a.1, 3.b.1 and 3.c.1 could perhaps be merged. However, keeping them separate was a decision based on clarity of the text and also the need to have a clear legal basis in case of different services.</p> <p>3.a.2 and 3.a.3 both do have a clear safety relevance. It can not be envisaged to disseminate inaccurate, incomplete, outdated, ambiguous or unusable data without lowering the level safety.</p> <p>The same reasoning applies to 3.b.2, 3.b.3, 3.c.2 and 3.c.3.</p>
comment	<p>619 comment by: <i>EUROCONTROL</i></p> <p>Whilst safety is a key goal within the aeronautical information process (like for</p>

all other operations), there are many elements and items of the aeronautical information operation that support routine operational (IFR and VFR) needs and where safety impact is either negligible or non-existent. The scope of the proposed essential requirements, therefore, goes far beyond safety regulatory aspects and does not make clear how safety and other regulation within this domain could be effectively separated. The aeronautical information domain is of wide scope, covering operations from data origination to end-use, and including an enormous number of diverse skills, entities (private and state), applications, technologies and processes. A confused regulatory framework is, therefore, likely to cause serious impact on a wide scope of entities, systems and procedures.

To clarify the safety regulatory elements and to ensure an appropriate separation of safety and other regulation, we would propose the following:

- - That the essential requirements should be re-focused to address the need to ensure that the safety methodology for defining aeronautical data quality performance requirements is specified.
- - Linked to the first bullet point, that the Essential requirements should be careful to avoid over-regulation by ensuring that only data which could have a significant impact on safety (e.g. ICAO defined 'Essential and Critical' data) is included.

The ERs should ensure that relevant aeronautical information processes are subject to proper safety assessment. Due to the enormous number of data points in Europe, checking data quality performance can only be achieved by ensuring that required data processes are being employed.

Definition of "sufficiently" is needed.

response *Noted*

The ER's establish high level safety objectives. They are not the proper vehicle to define the border between safety and interoperability. This will be addressed in the Basic Regulation itself, in SES regulations or in an overriding policy that will be defined by the Community.

The draft ER's on services were drafted to achieve a certain outcome. The processes used by service providers to achieve these outcomes are included in section 6 of the ER's.

The fact that the information concerned in the ER's is safety relevant information is stated in the explanatory memorandum of the ER's. Further details will be given in the Basic Regulation and implementing rules.

The ER's will be further developed in implementing rules and non-binding standards of the EASA regulatory framework, which will provide further details on what is required from the regulated persons and how they should achieve it.

comment 857

comment by: UK CAA & UK MoD

This requires that the "dissemination of such aeronautical information to airspace users must be timely, of adequate integrity and using sufficiently

secure, incorruptible and expeditious methods of communication." There is an issue with the word 'incorruptible', which is, of course, the ultimate goal, but in reality is virtually impossible to guarantee. The rule can be written more simply and with the same force as follows: "The dissemination of such aeronautical information to airspace users must be expeditious, timely and of adequate integrity."

response *Partially accepted*

Text changed to '... protected from interference and corruption...'

comment

1351

comment by: *ECOGAS*

3.a.3 "sufficiently...incorruptible" is an example of over-eager 'safety' regulation. It would be impossible to define or implement such a judgement call, as every form of data transmission is corruptible.

response *Partially accepted*

Text changed to '... protected from interference and corruption...'

comment

1717

comment by: *DGCA-NL*

3.a.1. (Aeronautical information)

It is unclear what sufficient means and to whom this will be delivered. Please specify.

response *Noted*

The ER's will be further developed in implementing rules and non-binding standards of the EASA regulatory framework, which will provide further details on what is required from the regulated persons and how they should achieve it.

comment

1718

comment by: *DGCA-NL*

3.a.2.

It seems inappropriate to state here that data must have a suitable format for users, as this would put a burden on the provider to accommodate any format that users may propose. Please specify the suitable format as for instance the prescribed formats contained in Annex 15.

response *Not accepted*

The expression 'suitable for users' is there to ensure that when developing the format for data, human factors and human performance limitations are taken into account. It does not mean that the users will determine the format that is used.

All this will be further specified in implementing rules and other elements of the EASA regulatory framework. If necessary, such rules could go beyond the minimum standards established by Annex 15.

comment

1719

comment by: *DGCA-NL*

3.a.3.

The use of incorruptible in this context is misplaced all data communications suffers from corruption, due to noise, interference etc. In data communications acceptable bit error rates are more commonly used to specify this quality.

response *Partially accepted*

Text changed to '... protected from interference and corruption...'

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 3. Services - 3.b.

p. 37

comment

81

comment by: *KLM*

3.a.3 and 3.b.3 incorruptible communication services are not realistic and can never be guaranteed; different wording is required. We suggest rather that communication services should meet the maximum tolerable levels of interference/corruption.

response

Partially accepted

Text changed to '... protected from interference and corruption...'

comment

144

comment by: *DSNA*

Same position as for 3.a.

response

Noted

comment

428 ❖

comment by: *AEA*

incorruptible communication services are not realistic and can never be guaranteed; different wording is required. We suggest rather that communication services should meet the maximum tolerable levels of interference/corruption.

response

Partially accepted

Text changed to '... protected from interference and corruption...'

comment

487

comment by: *DGAC-DAST-FR*

Same position as for 3.a.

response

Noted

comment

621

comment by: *EUROCONTROL*

ER 3b: Similar to the comments made in 3a above, meteorological information cannot be said to be just safety-related. Meteorological information conditions all aspects of ATM operations, including efficiency and capacity to a significant extent, e.g. by variations in head and tail-wind components. The proposed essential requirements therefore go well beyond purely safety regulation and do not indicate how safety and other regulation would be effectively separated.

Though ICAO sets the operational requirements, the technical provisions to meet those requirements are the responsibility of the World Meteorological Organisation (WMO). Moreover, meteorological information provisions may often be part of a wider portfolio of weather services provided by States or the military or other private organisations. This demands cooperation and harmonisation between all the stakeholders of meteorological information in ATM within Europe to deliver the necessary provisions. This cooperation would address all aspects of meteorological information and not just those related to safety. The possible role of EASA, based on the proposed essential requirements, is not clear in this respect and would cause significant confusion, and notably as the separation of safety and other regulatory responsibilities are not properly identified.

Our view is that the EASA ERs should address only safety regulatory aspects; in that they concentrate on ensuring that safety targets are clearly defined for the provision of meteorological information. They should then ensure that safety performance is properly audited.

ER 3.b.2: The consistency of terminology must be improved and definitions of terminology (such as "unambiguous") provided.

ER 3b3: It is not possible to assure incorruptible data, it is only possible to put in place mechanisms to detect corruption. The ER should be amended accordingly.

response

Partially accepted

The similar general concerns related to the role of the Agency have already been addressed by the earlier responses to other comments by the same organisation.

When it comes to draft ER's, they are safety objectives to be met by regulated persons. The roles of EASA, Member States and other bodies will be specified in the articles of the Basic Regulation, not at the level of this NPA. The purpose is only to address the safety related aspects of MET service provision.

3.b.2 - Noted. Moreover, ER's are of a legal nature and not the appropriate vehicle to mandate highly technical definitions. In the absence of such definitions, the common meaning generally attributed to the expressions should be used.

3.b.3 - Partially accepted. Text changed to '... protected from interference and corruption...'

comment

858

comment by: UK CAA & UK MoD

This requires that the "dissemination of such aeronautical meteorological information to airspace users must be timely, of adequate integrity and using

sufficiently secure, incorruptible and expeditious methods of communication." There is an issue with the word 'incorruptible', which is, of course, the ultimate goal, but in reality is virtually impossible to guarantee. The rule can be written more simply and with the same force as follows: "The dissemination of such aeronautical meteorological information to airspace users must be expeditious, timely and of adequate integrity."

response *Partially accepted*

Text changed to '... protected from interference and corruption...'

comment

1026

comment by: *INM*

1. Some ambiguities and inconcreties remain in the wording of essential requirements about MET-SP:
 - a. Essential requirements are worded for ANS(s), except for MET requirements that are defined for "meteorological information". For this reason when essential requirement 3.b.3 refers to MET information dissemination, the responsibility could fall in many cases outside from the MET-SP.

Regarding issues above pointed more time to review MET aspects of the regulations shall be provided in order to consider peculiarities of MET-SP and to take account the vision of experts.

To tune the content of this initiative with previous as SES regulations shall be also considered.

response

Noted

The ER's on service providers apply also to MET service providers. It is agreed that the references used as regards 'services' and 'information provision' should be made more consistent. Some inconsistencies are caused by the aim to cover all safety related aspects, which are not necessarily always covered by the traditional service based definitions.

Any particular aspects of MET service providers will be further detailed in the implementing rules.

Concerning the dissemination of data, the draft ER's only state that a system needs to be in place - not who is responsible for it. Safety objectives should not pre-empt which organisation provides for certain services.

comment

1078

comment by: *ANS-MET*

1. Some lacks on MET safety regulation persists along the proposal:
 - a. Not all users of meteorological information are considered, with their needs and requirements but only crew (airspace user), when ATM and aerodromes are main users (Annex 3 -ICAO).
 - b. Providers of added value on meteorological information and data are not considered.
 - c. Possibility of notified differences on ICAO SARPS impeding a consistent implementation of a concept of operations focused on

performances without national boundaries implications.

Essential requirements are worded for ANS(s), except for MET requirements that are defined for "meteorological information". For this reason when essential requirement 3.b.3 refers to MET information dissemination, the responsibility could fall in many cases outside from the MET-SP.

response *Partially accepted*

Text changed in 3.a.3, 3.b.2 and 3.b.3 from 'airspace users' to 'users'.

Providers of added value are considered, if such organisations are involved in safety critical ATM/ANS service provision. In such cases they are covered by chapter 6 of the ER's.

Concerning the dissemination of data, the draft ER's only state that a system needs to be in place - not who is responsible for it. Safety objectives should not pre-empt which organisation provides for certain services.

comment *1352* comment by: *ECOGAS*

3.b.3 "sufficiently...incorruptible" is an example of over-eager 'safety' regulation. It would be impossible to define or implement such a judgement call, as every form of data transmission is corruptible.

response *Partially accepted*

Text changed to '... protected from interference and corruption...'

comment *1720* comment by: *DGCA-NL*

Meteorological information also has a need for timely delivery. Please insert the need for timely delivery.

Again the use of the term incorruptible. See comment to 3.a.3.

response *Partially accepted*

The demand for timely dissemination is already included in 3.b.3.

Text changed to '... protected from interference and corruption...'

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 3. Services - 3.c. p. 37-38

comment *145* comment by: *DSNA*

This paragraph puts together issues of quite different natures.

3.c.1. – The rationale for a requirement on the source of data to be used for the air traffic services is quite unclear, as these data mostly derive from AIS and CNS, or from systems like Flight Plan processing. All these are, or will be

subject to interoperability requirements.

An acceptable approach would be to split the safety requirements currently mixed with interoperability requirements (see Annex II of regulation 552/04) from the pure technical interoperability part, and to entrust them to EASA. However, such requirements could and should be expressed in more general words.

Although we recognise that EASA may have currently a sound approach of the airborne appliances, a more global view is needed for the pure technical interoperability of ground systems, and of air and ground systems interacting together for supporting ATS provision.

Thus, the pure technical interoperability requirements in regulation 552/04 and associated IRs should keep in that regulatory framework.

In this respect, changing requirements of Annexes I and II of regulation 552/04 can be done through comitology procedures and does not require legislation.

Thus, 3.c.1 should be melted together with 3.a.1, 3.b.1 and rephrased in a general manner, while 3.c.3 should be deleted.

In addition, advisory services are not ICAO-defined and do not seem to exist in most member States. This reference should be deleted.

3.c.2. This paragraph should be deleted in view of the foregoing remarks, and because in addition, ATS would already get harmonised requirements under "concepts of operations", including common procedures, and are subject to the licensing requirements on staff.

3.c.3. This paragraph should be deleted in view of the previous remarks.
 <!--[if !supportLineBreakNewLine]-->
 <!--[endif]-->

3.c.4. This very basic and general requirement seems sufficiently covered by the combination of other requirements on ATC, including those accepted above and those in regulation 2096/05. This paragraph only adds confusion and should be deleted.

3.c.5. The words "**free from intrusion**" are excessive and should be deleted as this objective is impossible to achieve, at least for VHF voice link. More generally, the best would be to delete this paragraph as it seems to aim at too many detailed requirements on the implementation of every communication systems / components, and given the already existing interoperability rules provided by regulation 552/04.

However, if a specific action for harmonising phraseology in radiotelephony which would not be adequately covered by existing ICAO provisions, is considered necessary, we could support it. However, the appropriate means would be to attach radiotelephony requirements to an IR on interoperability of

	<p>communications.</p> <p>3.c.6. The organisation of search and rescue addresses the security of people and is not of EU competence, even under the Lisbon Treaty. It remains of exclusive competence of States. Thus, this paragraph should be deleted.</p>
response	<p><i>Partially accepted</i></p> <p>ER's establish high level safety objectives and are not the proper vehicle to define the interfaces with interoperability.</p> <p>The Agency agrees that 3.a.1, 3.b.1 and 3.c.1 could perhaps be merged into one single ER.</p> <p>3.c.2, 3.c.3 and 3.c.4 establish clear safety objectives and therefore the Agency cannot agree with their deletion. Safety objectives have to be comprehensive, irrespective of whether already implemented by specific rules. See also response to comment 143. It is agreed however that there exists some overlap between 3.c.3 and 3.c.4. The first one could also be associated with the chapter 4 (Systems and constituents) ER's. The Agency undertakes to elaborate this proposal in more detail.</p> <p>The definition of ATS in ICAO Annex 11 includes advisory services. When it is not provided at all, the safety objective in question does not have implications.</p> <p>3.c.5; Partially accepted. Text changed to 'protected from intrusion'.</p> <p>3.c.6; ER aims to refer to alerting services, as specified in ICAO Annex 11.</p>

comment	<p>298 comment by: <i>IFATSEA</i></p> <p>3.c.3. IFATSEA would change "...advice to users.." with "... advice to air space users and ATCO's ..".</p> <p>3.c.5. IFATSEA would change "... air traffic control .." with "... ATM/ANS ..".</p>
response	<p><i>Partially accepted</i></p> <p>3.c.3; ATCOs are also users of the information.</p> <p>3.c.5; Partially accepted. Text changed to 'communication between air traffic control and aircraft, and between relevant air traffic control units...'</p>

comment	<p>387 comment by: <i>IFSA</i></p> <p>3.c.3 - IFSA would change "...advice to users.." with "...advice to air space users and ATCO's..".</p> <p>3.c.5 - IFSA would change "... air traffic control.." with "...ATM/ANS..".</p>
response	<p><i>Partially accepted</i></p> <p>3.c.3; ATCOs are also users of the information.</p> <p>3.c.5; Partially accepted. Text changed to 'communication between air traffic control and aircraft, and between relevant air traffic control units...'</p>

comment	<p>488 comment by: <i>DGAC-DAST-FR</i></p> <p>This paragraph puts together issues of quite different natures.</p>
response	<p><i>Noted</i></p>

comment	<p>489 comment by: <i>DGAC-DAST-FR</i></p> <p>3.c.1. – The rationale for a requirement on the source of data to be used for the air traffic services is quite unclear, as these data mostly derive from AIS and CNS, or from systems like Flight Plan processing. All these are, or will be subject to interoperability requirements.</p> <p>An acceptable approach would be to split the safety requirements currently mixed with interoperability requirements (see Annex II of regulation 552/04) from the pure technical interoperability part, and to entrust them to EASA. However, such requirements could and should be expressed in more general words.</p> <p>Although we recognise that EASA may have currently a sound approach of the airborne appliances, a more global view is needed for the pure technical interoperability of ground systems, and of air and ground systems interacting together for supporting ATS provision.</p> <p>Thus, the pure technical interoperability requirements in regulation 552/04 and associated IRs should keep in that regulatory framework.</p> <p>In this respect, changing requirements of Annexes I and II of regulation 552/04 can be done through comitology procedures and does not require legislation.</p> <p>Thus, 3.c.1 should be melted together with 3.a.1, 3.b.1 and rephrased in a general manner, while 3.c.3 should be deleted.</p> <p>In addition, advisory services are not ICAO-defined and do not seem to exist in most member States. This reference should be deleted.</p>
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response	<p><i>Not accepted</i></p> <p>The similar general concerns related to the role of the Agency have already been addressed by the earlier responses to other comments by the same organisation.</p> <p>When it comes to draft ER's, they are safety objectives to be met by regulated persons. The roles of EASA, Member States and other bodies will be specified in the articles of the Basic Regulation, not at the level of this NPA. ER's establish high level safety objectives and are not the proper vehicle to define the interfaces with interoperability. It is not the purpose of the Agency to become a regulator of technical interoperability. Also, safety objectives have to be comprehensive, irrespective of whether already implemented by specific rules.</p>
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The Agency agrees that 3.a.1, 3.b.1 and 3.c.1 could perhaps be merged into one single ER.

3.c.2 establish clear safety objectives and therefore the Agency cannot agree with its deletion.

The definition of ATS in ICAO Annex 11 includes advisory services. When it is not provided at all, the safety objective in question does not have implications.

comment

490

comment by: DGAC-DAST-FR

3.c.2. This paragraph should be deleted in view of the foregoing remarks, and because in addition, ATS would already get harmonised requirements under "concepts of operations", including common procedures, and are subject to the licensing requirements on staff.

3.c.3. This paragraph should be deleted in view of the previous remarks.
 <!--[if !supportLineBreakNewLine]-->
 <!--[endif]-->

3.c.4. This very basic and general requirement seems sufficiently covered by the combination of other requirements on ATC, including those accepted above and those in regulation 2096/05. This paragraph only adds confusion and should be deleted.

3.c.5. The words "**free from intrusion**" are excessive and should be deleted as this objective is impossible to achieve, at least for VHF voice link. More generally, the best would be to delete this paragraph as it seems to aim at too many detailed requirements on the implementation of every communication systems / components, and given the already existing interoperability rules provided by regulation 552/04.

However, if a specific action for harmonising phraseology in radiotelephony which would not be adequately covered by existing ICAO provisions, is considered necessary, we could support it. However, the appropriate means would be to attach radiotelephony requirements to an IR on interoperability of communications.

3.c.6. The organisation of search and rescue addresses the security of people and is not of EU competence, even under the Lisbon Treaty. It remains of exclusive competence of States. Thus, this paragraph should be deleted.

response

Not accepted

3.c.2, 3.c.3 and 3.c.4 establish clear safety objectives and therefore the Agency cannot agree with their deletion. See also response to comment 143. It is however agreed that there exists some overlap between 3.c.3 and 3.c.4. The first one could also be associated with the chapter 4 (Systems and constituents) ER's. The Agency undertakes to elaborate this proposal in more detail.

3.c.5; Partially accepted. Text changed to 'protected from intrusion'.

3.c.6 refers to alerting services, as specified in ICAO Annex 11. Its wording

might have to be revised for that purpose.

comment

682

comment by: EUROCONTROL

Paragraph 27 states that ICAO SARPs do not provide for a convenient basis on which to set clear safety objectives. Paragraph 32 explains that EASA has been working on defining ERs as the set of means to be implemented to mitigate unacceptable risks. However, ICAO SARPs are superior to the proposed ERs in defining measures to address a number of hazards that may occur, or have already occurred, in relation to the interfaces between ATM/ANS services.

By way of illustration, take the case of the lack of reference to ground-ground communication in the proposed ERs, Section 3.c. While rightly giving enough relevance to air-ground communication in Section 3.c.4, we could find no reference to ground-ground communication issues which are important also as it is known they are capable of creating hazardous situations (e.g. the Ueberlingen accident). As a result, the ICAO standards address these aspects in a much more effective manner and provide safer objectives in this regard.

Furthermore, Section 3c of the "Essential requirements for air traffic management and air navigation services" does not cover the need for appropriate interfaces and coordination between the different ATM/ANS services. ICAO Annex 11 addresses these interfaces by means of several SARPs specifically requiring arrangements between ATS, AIS, MET and CNS, and also between adjacent ATS units. It is universally known in ATM safety that an interface between two services/organizations can always be a potential source of safety issues unless clear arrangements are established. In that regard the SARPs provide for mitigation measures that are not included in the ERs. Therefore, the SARPs address these safety-related aspects in a much more effective manner and provide safer objectives.

response

Partially accepted

The Agency believes that the response to EUROCONTROL comment 688 already covers most of the general misgivings repeated by this comment.

It is then believed that ground-ground communication is covered by the draft ER's, but maybe not comprehensively enough. This has been taken into account when answering more detailed comments on the respective draft ER's.

Regarding the last paragraph, interfaces between different service providers or between different units are covered in the draft ER 6.a.5.

comment

859

comment by: UK CAA & UK MoD

3.c.1 is not a necessary requirement as it is covered by 3.c.2. The source of the information, while of relevance, need not be regulated if the services themselves are regulated (3.c.2).

The requirement for 'correct', 'complete' and 'current' is impossible to achieve (see comment against ER 3 re 'incorruptible').

3.c.3 is not a necessary requirement as it is covered by 3.c.4. The tools used in providing a service, while of relevance need not be regulated directly since their use in the provision of services is regulated via 3.c.4. In addition the users need to be defined.

3.c.4 Suggested rewording: "An air traffic control service must provide for sufficient separation between aircraft, obstacles and other airborne hazards for all air traffic under its control and ensure a timely coordination with all adjacent volumes of airspace." This allows for a more accurate description of the ATC function and removes tautology.

3.c.5 It is suggested that this paragraph is related to air traffic services not just to air traffic control. The requirement 'free from intrusion' is impossible to achieve (see comment against ER 3 re 'incorruptible').

3.c.6. The 'implementation' of effective search and rescue is a State function, it is not part of the air traffic service. The Alerting Service is an ATS function (as per the Framework regulation). In addition the removal of the word 'possible' in the first sentence is recommended and the paragraph needs to be re-worded to be more accurate in delineating Alerting Services and associated functions.

response *Partially accepted*

3.c.1 is about the source of the data and 3.c.2 about the final output to the user. Therefore, they are covering different safety objectives. Moreover, the Agency believes that a clear reference to source data is indeed necessary to provide for a legal certainty.

It is agreed that there exists some overlap between 3.c.3 and 3.c.4. The first one could also be associated with the chapter 4 (Systems and constituents) ER's. The Agency undertakes to elaborate this proposal in more detail.

3.c.4 is partially accepted. Text changed to '...aircraft, with obstacles on the ground and with other airborne hazards...'

3.c.5 is partially accepted. Text changed to 'protected from' and it is accepted that the ER covers the whole ATS.

3.c.6 ER refers to alerting services, as specified in ICAO Annex 11. Its wording might have to be revised for that purpose.

comment *1147*

comment by: *Airport Operators Association*

3.c.4 line 2 Delete "and" after "aircraft", insert a comma, delete "of" after "ground" and insert "and".

3.c.6 line 2 Delete "and implement" after "initiate" as we do not see how an ANS provider can implement "an effective search and rescue action".

response *Partially accepted*

	<p>3.c.4</p> <p>Partially accepted. Text changed to '...aircraft, with obstacles on the ground and with other airborne hazards...'</p> <p>3.c.6</p> <p>Not accepted. 3 ER refers to alerting services, as specified in ICAO Annex 11. However, its wording might have to be revised for that purpose.</p>
comment	<p><i>1148</i> comment by: <i>Airport Operators Association</i></p> <p>3.c.4 line 2 Delete "and" after "aircraft", insert a comma, delete "of" after "ground" and insert "and".</p> <p>3.c.6 line 2 Delete "and implement" after "initiate" as we do not see how an ANS provider can implement "an effective search and rescue action".</p>
response	<p><i>Partially accepted</i></p> <p>3.c.4</p> <p>Partially accepted. Text changed to '...aircraft, with obstacles on the ground and with other airborne hazards...'</p> <p>3.c.6</p> <p>Not accepted. 3 ER refers to alerting services, as specified in ICAO Annex 11. However, its wording might have to be revised for that purpose.</p>
comment	<p><i>1165</i> comment by: <i>AOPA Germany</i></p> <p>3.c.5: See our note on 3.d: Distinguish between voice and data comms.</p>
response	<p><i>Noted</i></p> <p>3.c.5 relates to communications between ATC and the aircraft (i.e. flight crew or avionics). In this interpretation it already encompasses data communications.</p>
comment	<p><i>1353</i> comment by: <i>ECOGAS</i></p> <p>3.c.4 Needs to include reference to the anticipated ability of aircraft to provide autonomous separation</p> <p>3.c.5 Should make it clear that all air/ground communication is in English, and make reference to the provision of written communication between the aircraft and ATC. Since misunderstandings of aural communication are a common cause of accidents and incidents, reference should be made to the minimum common level of language proficiency required.</p>
response	<p><i>Not accepted</i></p> <p>3.c.4. Not accepted.</p> <p>Paragraph 3 starts with the expression 'when provided'. In the case described in the comment, ATC is not provided, or limited responsibility to maintain separation is explicitly delegated by ground ATC..</p>

3.c.5. As this addresses communication in general and not only voice, it would not be appropriate to limit it to only one language. The obligation to use only English might not be appropriate in the case of general aviation as proficiency in English is not a requirement for pilots. Finally the use of the term unambiguous allows the development of implementing rules that will mandate the use of English or any other language as necessary.

comment *1496* comment by: *Aeroclub of Switzerland*

para 3.c.4: There will always be exemptions to the proposed rule. ATC cannot be held responsible for every separation, e.g. during a visual approach conducted during a flight according to IFR which remains a controlled flight.

response *Not accepted*

Paragraph 3 starts with the expression 'when provided'.

comment *1721* comment by: *DGCA-NL*

Data used as source for the provision of flight information also has a need for timely delivery. Please insert the need for timely delivery.

response *Not accepted*

Timely delivery is covered by the word current.

comment *1722* comment by: *DGCA-NL*

3.c.5.

The claim that communication between air traffic control and aircraft must be free from intrusion seems to be unmanageable, intrusion is a security issue and caused by unlawful use of the aeronautical spectrum. In general ICAO prescribes the communication procedures between ATC and aircraft.

response *Partially accepted*

3.c.5

Partially accepted. Text changed to 'protected from'.

comment *1723* comment by: *DGCA-NL*

3.c.6

In the first sentence "possible" should be deleted, as it is not possible to detect "possible emergencies".

response *Not accepted*

The word possible is used to cover the case where the emergency is not declared but action is needed to ensure a timely reply if the emergency is confirmed.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 3. Services - 3.d.

p. 38

comment

146

comment by: *DSNA*

Under the explanations given in paragraphs 110 to 112, the purpose is to call for "performance-based" regulation of the CNS systems, in line with the general ICAO objectives in the CNS domains. However, the draft ERs do not look consistent since they address the services as a whole, without a clear meaning.

These items will thus be considered as in relation to interoperability. Generally speaking, the changes expected from the SESAR initiative provides some grounds to shift preparation of implementing rules from Eurocontrol to a more exclusively EU framework like EASA in the longer term.

However, for the time being there is a strong logic to:

- keep interoperability clearly focussed on systems, constituents and their related procedures for use;
- keep the "new approach" as under regulation 552/04 and
- keep the system of mandates to Eurocontrol for all systems, constituents and related procedures for use as long or as far as they are not modified, or created, by the SESAR programme.

EASA would however issue more generic safety requirements on systems, specifying the requirements for "ESARR4" risk analysis and mitigation in regulation 2096/05.

Meanwhile, EASA and other entities involved in preparing the IRs and CS on interoperability should link in order to exchange views on their respective works as regards systems and constituents.

In addition:

- In 3.d.1, the requirement "**incorruptible**" is excessive as this is **impossible to achieve**, at least for VHF voice link.
- As developed in answer to question 6 on part I, the requirements on smaller providers should be alleviated.

response

Partially accepted

The Agency takes note of the initial comments. Similar general concerns related to the role of the Agency have already been addressed by the earlier responses to other comments by the same organisation.

When it comes to draft ER's, they are safety objectives to be met by regulated persons. The roles of EASA, Member States and other bodies will be specified in the articles of the Basic Regulation, not at the level of this NPA. ER's establish high level safety objectives and are not the proper vehicle to define the interfaces with interoperability. It is not the purpose of the Agency to become a regulator of technical interoperability. Also, safety objectives have to be comprehensive, irrespective of whether already implemented by specific

rules.

3.d.1 Partially accepted. Text changed to "protected from corruption".

comment

491

comment by: DGAC-DAST-FR

3.d to 3.f. Communication, Navigation, Surveillance services

Under the explanations given in paragraphs 110 to 112, the purpose is to call for "performance-based" regulation of the CNS systems, in line with the general ICAO objectives in the CNS domains. However, the draft ERs do not look consistent since they address the services as a whole, without a clear meaning.

These items will thus be considered as in relation to interoperability. Generally speaking, the changes expected from the SESAR initiative provides some grounds to shift preparation of implementing rules from Eurocontrol to a more exclusively EU framework like EASA in the longer term.

However, for the time being there is a strong logic to:

- keep interoperability clearly focussed on systems, constituents and their related procedures for use;
- keep the "new approach" as under regulation 552/04 and
- keep the system of mandates to Eurocontrol for all systems, constituents and related procedures for use as long or as far as they are not modified, or created, by the SESAR programme.

EASA would however issue more generic safety requirements on systems, specifying the requirements for "ESARR4" risk analysis and mitigation in regulation 2096/05.

Meanwhile, EASA and other entities involved in preparing the IRs and CS on interoperability should link in order to exchange views on their respective works as regards systems and constituents.

In addition:

- In 3.d.1, the requirement "**incorruptible**" is excessive as this is **impossible to achieve**, at least for VHF voice link.
- As developed in answer to question 6 on part I, the requirements on smaller providers should be alleviated.

response

Partially accepted

The Agency takes note of the initial comments. Similar general concerns related to the role of the Agency have already been addressed by the earlier responses to other comments by the same organisation.

When it comes to draft ER's, they are safety objectives to be met by regulated persons. The roles of EASA, Member States and other bodies will be specified in the articles of the Basic Regulation, not at the level of this NPA. ER's

establish high level safety objectives and are not the proper vehicle to define the interfaces with interoperability. It is not the purpose of the Agency to become a regulator of technical interoperability. Also, safety objectives have to be comprehensive, irrespective of whether already implemented by specific rules.

3.d.1 Partially accepted. Text changed to "protected from corruption".

comment 623

comment by: EUROCONTROL

ER 3.d (Communication services) : It is considered that the relevance of the proposed wording is questionable from the safety standpoint. The proposed criteria are also used to ensure interoperability. Different criteria might be considered for safety. The same requirements do not apply to air - air, air - ground or ground - ground voice and data communications. Another possible approach to draft this essential requirement in a more general way, would be to specify that a safety assessment process must be in place ensuring that the risks associated with the implementation of communication services are properly identified and mitigated.

ER 3d1: It is not possible to assure incorruptible data, it is only possible to put in place mechanisms to detect corruption. The ER should be amended accordingly.

response *Partially accepted*

The Agency believes that the response to EUROCONTROL comment 688 already covers most of the general misgivings repeated by this comment.

The fact that different requirements do apply to different modes of communication is covered by the wording of the draft ER and will be addressed, where needed, at the level of implementing rules.

The Agency indeed considers the communications which do not satisfy the criteria listed in 3.d are considered as presenting a safety risk.

3.d.1 Partially accepted. Text changed to "protected from corruption"

comment 860

comment by: UK CAA & UK MoD

3.d, 3.e and 3.f need to be related to definitions of CNS ATM service providers in the Framework Regulation and to the scope of the Interoperability Regulation.

3.d.1 To achieve a 'capability' does not imply the achievement of results. Even if always present, the capability to do something does not mean that it will always be done.

3.d.1 It is not appropriate to mandate SECURE communications. The majority of ATC communications are performed via insecure radios.

The existing wording as currently used in the Common Requirements adequately covers the requirements for Communications, Navigation and

	Surveillance services (see EC Reg 2096/2005 Annex V).
response	<p><i>Partially accepted</i></p> <p>ER's are of a legal nature and not the appropriate vehicle to mandate highly technical definitions. In the absence of such definitions, the common meaning generally attributed to the expressions should be used. Definitions will be given in the respective legislative proposal and it is indeed the purpose to use those definitions already established in the SES framework.</p> <p>3.d.1 Comment partially accepted.</p> <p>The word capability should be deleted but the reference to secure refers to the overall communications and not specifically to the radios.</p> <p>The ER's establish high level safety objectives that provide the legal basis for further detailed implementing rules. These implementing rules will be based on EC Regulations and ESARRs.</p>

comment	<p><i>1024</i> comment by: <i>European Space Agency</i></p> <p>The European Space Agency believes that without figures, this requirement can be anything. So: if this is to be accepted and later quantified by a downstream process (ICAO?) or complemented by existing figures (ICAO?) then as a minimum it would be expected that these figures should be recalled or at least the process to produce valid figures indicated</p>
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response	<p><i>Not accepted</i></p> <p>The ER's establish high level safety objectives that provide the legal basis for further detailed implementing rules. These implementing rules will be based on EC Regulations and ESARRs. Such implementing rules or non-binding specifications will include necessary numerical requirements.</p>
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comment	<p><i>1117</i> comment by: <i>AOPA Germany</i></p> <p>Distinguish between voice communications and data comms.</p> <p>The criteria give can apply for data comms only.</p> <p>For clarity it should be included, that data comms from other sources, e.g. broadcasts from other aircraft, may not fulfill these criteria.</p> <p>For voice comms, nearly no such criteria can be supplied.</p>
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response	<p><i>Not accepted</i></p> <p>The Agency considers the communications, whatever their format, which do not satisfy the criteria listed in 3.d are considered as presenting a safety risk.</p>
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comment	<p><i>1150</i> comment by: <i>Airport Operators Association</i></p> <p>3.d.1 Delete the final sentence as sufficient detail is given in the</p>
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preceding sentence to satisfy the needs of an ER. The issue of communications being "secure" and "expeditious" is covered in the first sentence. The concept of "incorruptible" communications is a complex area and requires further detailed consideration.

response *Partially accepted*

Text changed to "protected from corruption".

comment *1355*

comment by: *ECOGAS*

The terms "secure" and "incorruptible" need careful thought and definition. All communication is subject to blocking and other forms of sabotage if there is sufficient desire to do so. Rather than use these meaningless descriptors, perhaps a better way would be to stipulate the number of independent systems and back-ups that are to be available on board an aircraft and on the ground. This paragraph is superfluous as relates to airborne equipment, which is already covered by requirements for its design, manufacture, maintenance and operation.

response *Partially accepted*

Text changed to "protected from corruption".

comment *1724*

comment by: *DGCA-NL*

Again the use of incorruptible. Until now no integrity has been defined for communications.

response *Partially accepted*

Text changed to "protected from corruption".

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 3. Services - 3.e.

p. 38

comment *82*

comment by: *KLM*

3.e.1 'radio' should be deleted here as other means may be or become available

response *Accepted*

The Agency agrees with the suggestion to delete the word 'radio' in order not to limit the scope unnecessarily. Further, deletion of the word 'aeronautical' would make this draft ER consistent.

comment *146 ❖*

comment by: *DSNA*

Under the explanations given in paragraphs 110 to 112, the purpose is to call for "performance-based" regulation of the CNS systems, in line with the general ICAO objectives in the CNS domains. However, the draft ERs do not

look consistent since they address the services as a whole, without a clear meaning.

These items will thus be considered as in relation to interoperability. Generally speaking, the changes expected from the SESAR initiative provides some grounds to shift preparation of implementing rules from Eurocontrol to a more exclusively EU framework like EASA in the longer term.

However, for the time being there is a strong logic to:

- keep interoperability clearly focussed on systems, constituents and their related procedures for use;
- keep the "new approach" as under regulation 552/04 and
- keep the system of mandates to Eurocontrol for all systems, constituents and related procedures for use as long or as far as they are not modified, or created, by the SESAR programme.

EASA would however issue more generic safety requirements on systems, specifying the requirements for "ESARR4" risk analysis and mitigation in regulation 2096/05.

Meanwhile, EASA and other entities involved in preparing the IRs and CS on interoperability should link in order to exchange views on their respective works as regards systems and constituents.

In addition:

- In 3.d.1, the requirement "**incorruptible**" is excessive as this is **impossible to achieve**, at least for VHF voice link.
- As developed in answer to question 6 on part I, the requirements on smaller providers should be alleviated.

response *Noted*

The Agency takes note of the initial comments. Similar general concerns related to the role of the Agency have already been addressed by the earlier responses to other comments by the same organisation.

When it comes to draft ER's, they are safety objectives to be met by regulated persons. The roles of EASA, Member States and other bodies will be specified in the articles of the Basic Regulation, not at the level of this NPA. ER's establish high level safety objectives and are not the proper vehicle to define the interfaces with interoperability. It is not the purpose of the Agency to become a regulator of technical interoperability. Also, safety objectives have to be comprehensive, irrespective of whether already implemented by specific rules. The purpose of this ER is to establish an appropriate basis to regulate aeronautical navigation as a service. In addition to this, other ER's impose requirements on all organisations providing safety critical ATM/ANS services.

Concerning the comment on 3.d.1, refer to the answers in the respective draft ER.

comment 430

comment by: AEA

'radio' should be deleted here as other means may be or become available.

response

Accepted

The Agency agrees with the suggestion to delete the word 'radio' in order not to limit the scope unnecessarily. Further, deletion of the word 'aeronautical' would make this draft ER consistent.

comment

*861*comment by: *UK CAA & UK MoD*

3.d, 3.e and 3.f need to be related to definitions of CNS ATM service providers in the Framework Regulation and to the scope of the Interoperability Regulation. The scope of a navigation service needs to be carefully related to BR002.

The existing wording as currently used in the Common Requirements adequately covers the requirements for Communications, Navigation and Surveillance services.

Aeronautical radio navigation service implies that the only services of interest are those using electromagnetic transmission. This means that inertial navigation systems cannot be considered to be providing a navigation service in the context of this regulation.

response

Partially accepted

The first part of this comment is related to the interaction and adaptation between the EASA Basic Regulation and SES regulations. As such it does not affect the contents of the draft ER in question. The related rulemaking responsibilities will be subject to decisions on respective legal instruments, i.e. EASA Basic Regulation and Single European Sky regulations. The Agency has also elaborated on this matter through the specific NPA questions and naturally takes note of the views provided here.

The Agency fully agrees that the scope of a navigation service needs to be consistent across all regulations.

The Agency agrees with the suggestion to delete the word 'radio' in order not to limit the scope unnecessarily. Further, deletion of the word 'aeronautical' would make this draft ER consistent.

comment

*1359*comment by: *ECOGAS*

It is not sensible to specify "radio navigation", as several other methods of navigation are and will become capable of providing sufficiently accurate and timely navigation data. This paragraph is superfluous as relates to airborne equipment, which is already covered by requirements for its design, manufacture, maintenance and operation.

response

Partially accepted

The Agency agrees with the suggestion to delete the word 'radio' in order not to limit the scope unnecessarily. Further, deletion of the word 'aeronautical' would make this draft ER consistent.

The Agency however can not agree with the latter part of the comment

suggesting this ER being superfluous as being covered by requirements on airborne equipment. The purpose of this ER is to establish an appropriate basis to regulate aeronautical navigation as a service.

comment

1725

comment by: DGCA-NL

Only GNSS can be qualified by positioning. ILS, MLS, VOR/DME are guidance systems.

Please amend the ER as follows:

Aeronautical radio navigation service must achieve and maintain sufficient performance capability of the provided guidance and positioning and, when provided, timing information, including criteria for its accuracy, integrity, availability and continuity.

response

Accepted

The draft ER will be amended accordingly.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 3. Services - 3.f.

p. 38

comment

146 ❖

comment by: DSNA

Under the explanations given in paragraphs 110 to 112, the purpose is to call for "performance-based" regulation of the CNS systems, in line with the general ICAO objectives in the CNS domains. However, the draft ERs do not look consistent since they address the services as a whole, without a clear meaning.

These items will thus be considered as in relation to interoperability. Generally speaking, the changes expected from the SESAR initiative provides some grounds to shift preparation of implementing rules from Eurocontrol to a more exclusively EU framework like EASA in the longer term.

However, for the time being there is a strong logic to:

- keep interoperability clearly focussed on systems, constituents and their related procedures for use;
- keep the "new approach" as under regulation 552/04 and
- keep the system of mandates to Eurocontrol for all systems, constituents and related procedures for use as long or as far as they are not modified, or created, by the SESAR programme.

EASA would however issue more generic safety requirements on systems, specifying the requirements for "ESARR4" risk analysis and mitigation in regulation 2096/05.

Meanwhile, EASA and other entities involved in preparing the IRs and CS on interoperability should link in order to exchange views on their respective works as regards systems and constituents.

In addition:

- In 3.d.1, the requirement "**incorruptible**" is excessive as this is **impossible to achieve**, at least for VHF voice link.
- As developed in answer to question 6 on part I, the requirements on smaller providers should be alleviated.

response *Noted*

The purpose of this ER is to establish an appropriate basis to regulate surveillance as a service. In addition to this, other ER's impose requirements on all organisations providing safety critical ATM/ANS services. The rulemaking responsibilities will be subject to decisions on respective legal instruments, i.e. EASA Basic Regulation and Single European Sky regulations. The Agency has also elaborated on this matter through the specific NPA questions and naturally takes note of the views provided here.

Concerning the comment on 3.d.1, refer to the answers in the respective draft ER.

comment 624

comment by: *EUROCONTROL*

ER 3.f. (Surveillance service): The requirements applicable to the surveillance services (paragraph 3.f.1) cannot be considered as "pure" safety requirements as they are dealing with more general performance issues. Even if these requirements are not met (e.g. degraded performance), the service can still be safe, provided that the proper mitigation measures are taken in order to deal with the identified hazards. Moreover, similar requirements applicable to the surveillance systems and procedures (e.g. accuracy, quality of service) are identified in Part B of Annex II of the interoperability Regulation as part of the "Seamless operation" essential requirement and not of the "Safety" one. Along the same line, the Surveillance Performance and Interoperability mandate from the European Commission identifies the compliance with the performance requirements (accuracy, availability, continuity and integrity) separately from the compliance with the safety essential requirements (see point 2 of section 5.1 General issues of the mandate).

Another possible approach to draft this essential requirement in a more general way, would be to specify that a safety assessment process must be in place ensuring that the risks associated with the implementation of surveillance services are properly identified and mitigated.

response *Noted*

The purpose of this ER is to establish an appropriate basis to regulate surveillance as a service. Such factors, as suggested degraded performance, are indeed reflected in the wording of this draft ER, which refers, for example, to 'sufficient performance'. Appropriate mitigation measures referred to in this comment will be a matter for, the more detailed, implementing rules.

Regarding the comment on regulatory responsibilities, this will in any case be subject to decisions on respective legal instruments, i.e. EASA Basic Regulation

and Single European Sky regulations. Nonetheless, the Agency takes note of the views expressed here.

The Agency agrees that all organisations providing safety critical ATM/ANS services shall have appropriate safety assessment processes in place, as suggested also in this comment. Such organisational requirements are imposed by the draft Essential Requirements in paragraph 6. This is not however sufficient in itself to ensure that the service intrinsically is safe.

comment 862

comment by: UK CAA & UK MoD

3.d, 3.e and 3.f need to be related to definitions of CNS ATM service providers in the Framework Regulation and to the scope of the Interoperability Regulation.

The existing wording as currently used in the Common Requirements adequately covers the requirements for Communications, Navigation and Surveillance services (see EC Reg 2096/2005 Annex V).

response *Noted*

The first part of this comment is related to the interaction and adaptation between the EASA Basic Regulation and SES regulations. As such it does not affect the contents of the draft ER in question. The related regulatory responsibilities will be subject to decisions on respective legal instruments, i.e. EASA Basic Regulation and Single European Sky regulations. The Agency has also elaborated on this matter through the specific NPA questions and naturally takes note of the views provided here.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 3. Services - 3.g.

p. 38

comment 83

comment by: KLM

3.g.1. Delete: 'delaying traffic flows' and replace by: 'find other ways in order to...'

response *Not accepted*

The proposed alternative wording would not improve clarity.

comment 147

comment by: DSNA

ATFM should not be treated like a separate service, but instead as a function of ATC, implemented by ATS providers, a central part of which has been sub-contracted to Eurocontrol (CFMU Unit). In the longer term, it might be coupled to ASM. Dedicated solutions may arise for dedicated FABs as may be undertaken by the ANSPs taking part in such FABs.

In addition, regulation 551/04 already entrust to the Commission to adopt IRs on ATFM (article 9). It does seem logical keep the preparation of these rules

response	<p>within the SES system and not to transfer them to EASA, as they rather relate to operational standards and “rules of the art”.</p> <p>We thus request to delete 3.g.1.</p>
	<p><i>Noted</i></p> <p>Reservation is already in the footnote 11 to assess the nature of ATFM through the Question 3.</p> <p>As regards the latter part of the comment, the regulatory responsibilities will be subject to decisions on respective legal instruments, i.e. EASA Basic Regulation and Single European Sky regulations.</p> <p>Based on above the request to delete 3.g.1 would be premature.</p>

comment	<p>431 comment by: AEA</p> <p>Delete: ‘ delaying traffic flows’ and replace by: ‘ find other ways in order to...’</p>
response	<p><i>Not accepted</i></p> <p>The proposed alternative wording would not improve clarity.</p>

comment	<p>492 comment by: DGAC-DAST-FR</p> <p>3.g.1 ATFM should not be treated like a separate service, but instead as a function of ATC, implemented by ATS providers, a central part of which has been sub-contracted to Eurocontrol (CFMU Unit). In the longer term, it might be coupled to ASM. Dedicated solutions may arise for dedicated FABs as may be undertaken by the ANSPs taking part in such FABs.</p> <p>In addition, regulation 551/04 already entrust to the Commission to adopt IRs on ATFM (article 9). It does seem logical keep the preparation of these rules within the SES system and not to transfer them to EASA, as they rather relate to operational standards and “rules of the art”.</p> <p>We thus request to delete 3.g.1.</p>
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response	<p><i>Noted</i></p> <p>Reservation is already in the footnote 11 to assess the nature of ATFM through the Question 3.</p> <p>As regards the latter part of the comment, the regulatory responsibilities will be subject to decisions on respective legal instruments, i.e. EASA Basic Regulation and Single European Sky regulations.</p> <p>Based on above the request to delete 3.g.1 would be premature.</p>
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comment	<p>625 comment by: EUROCONTROL</p> <p>ER 3.g. (ATFM): Please refer to our answer to Question 3. Consequentially, this essential requirement should be limited to the prevention of overload</p>
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situations, without entering into any further detail on how this could be achieved.

See also the answer to Question 3 below:

This question has no direct connection or relevance to the extension to ATM/ANS of the remit of EASA as a safety regulatory body.

Concerning the specific question raised in the NPA, we do not believe that either ASM or ATFM in particular, can be considered as either purely service provision or regulatory functions. Both aspects are indeed present.

ASM and ATFM are safety-related components of the ATM and ANS systems which form part of the operating environment in which service provision can take place. We certainly believe that ASM and ATFM should be the subject of appropriate safety regulation but equally, they cannot be considered as purely service provision functions.

The ERs should only provide the basis for ensuring that the rules defining the ATFM and ASM principles, as well as their application, have no detrimental safety impact. As an example, in the case of ATFM it should be limited to the prevention of overload situations, the validity of the practical solutions retained being demonstrated to the safety regulator through the provider's safety management system.

response *Noted*

Reservation is already in the footnote 11 to assess the nature of ATFM through the Question 3. Moreover, the Agency notes in particular that according to EUROCONTROL certainly ASM and ATFM should be the subject of appropriate safety regulation.

comment

863

comment by: *UK CAA & UK MoD*

The ER needs to be clearly related to the service provision element of ATFM (see answer to Question 3).

response

Noted

Reservation is already in the footnote 11 to assess the nature of ATFM through the Question 3.

comment

1151

comment by: *Airport Operators Association*

3.g Air Traffic Flow Management should also be provided on an "equitable and transparent" basis. This ER should reflect this requirement.

response

Not accepted

The Agency agrees with the principles proposed. However, equity and transparency can not be considered as safety objectives. The Agency however is fully committed to implement Article 2.2f) of its Basic Regulation, connected to the internal market.

comment	<p>1726</p> <p>The first sentence should read:</p> <p>Air traffic Flow Management must <u>use</u> sufficiently precise and current information etc.</p> <p>The sufficiently precise and current information is in our opinion <u>to be provided</u> by the ANSPs to the air traffic flow management unit.</p>	comment by: DGCA-NL
response	<p><i>Accepted</i></p> <p>The Agency agrees that the draft ER should be reworded to reflect also the use of sufficiently precise and current information in the provision ATFM. The revised draft ER will read as follows: ATFM service must <u>use and</u> provide sufficiently...'. The latter part of the comment is also related to the Question 3 in the NPA.</p>	

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 3. Services - 3.h.

p. 39

comment	<p>84</p> <p>3.h.1 delete in total as this is not a function of airspace management but a burden that should be deleted and airspace to become usable completely.</p>	comment by: KLM
response	<p><i>Noted</i></p> <p>It is not a task of the safety regulator to decide and arbitrate on the use of airspace between different users of it.</p>	
comment	<p>148</p> <p>For similar reasons, it seems appropriate to keep EU airspace management rules, already covered by regulation 551/04 and IR regulation 2150/05. In addition, developing such rules per mandate to Eurocontrol allows to involve all parties, including all military authorities in the preparatory work.</p> <p>We thus request to delete 3.h.1.</p>	comment by: DSNA
response	<p><i>Noted</i></p> <p>Reservation is already in the footnote 11 to assess the nature of ASM through the Question 3.</p> <p>Moreover, the regulatory responsibilities will be subject to decisions on respective legal instruments, i.e. EASA Basic Regulation and Single European Sky regulations.</p> <p>Based on above the request to delete 3.h.1 in this context would be premature.</p>	
comment	<p>433</p>	comment by: AEA

	delete in total as this is not a function of airspace management but a burden that should be deleted and airspace to become usable completely.
response	<p><i>Noted</i></p> <p>It is not a task of the safety regulator to decide and arbitrate on the use of airspace between different users of it.</p>
comment	<p>493 comment by: <i>DGAC-DAST-FR</i></p> <p>For similar reasons, it seems appropriate to keep EU airspace management rules, already covered by regulation 551/04 and IR regulation 2150/05. In addition, developing such rules per mandate to Eurocontrol allows to involve all parties, including all military authorities in the preparatory work.</p> <p>We thus request to delete 3.h.1.</p>
response	<p><i>Noted</i></p> <p>Reservation is already in the footnote 11 to assess the nature of ASM through the Question 3.</p> <p>Moreover, the regulatory responsibilities will be subject to decisions on respective legal instruments, i.e. EASA Basic Regulation and Single European Sky regulations.</p> <p>Based on above the request to delete 3.h.1 in this context would be premature.</p>
comment	<p>628 comment by: <i>EUROCONTROL</i></p> <p>This essential requirement should be limited to the prevention of loss of separation between aircraft.</p> <p>See also the answer to Question 3 below:</p> <p><u><i>This question has no direct connection or relevance to the extension to ATM/ANS of the remit of EASA as a safety regulatory body.</i></u></p> <p>Concerning the specific question raised in the NPA, we do not believe that either ASM or ATFM in particular, can be considered as either purely service provision or regulatory functions. Both aspects are indeed present.</p> <p>ASM and ATFM are safety-related components of the ATM and ANS systems which form part of the operating environment in which service provision can take place. We certainly believe that ASM and ATFM should be the subject of appropriate safety regulation but equally, they cannot be considered as purely service provision functions.</p> <p>The ERs should only provide the basis for ensuring that the rules defining the ATFM and ASM principles, as well as their application, have no detrimental safety impact. As an example, in the case of ATFM it should be limited to the prevention of overload situations, the validity of the practical solutions retained being demonstrated to the safety regulator through the provider's safety management system.</p>

response

Noted

Reservation is already in the footnote 11 to assess the nature of ASM through the Question 3. Moreover, the Agency notes in particular that EUROCONTROL sees that ASM should be the subject to appropriate safety regulation.

comment

864

comment by: *UK CAA & UK MoD*

The ER needs to be clearly related to the service provision element of ASM (see answer to Question 3).

This implies that the only concern for airspace management is the management of restricted areas. This is not the case. Airspace management involves the design of long-term routes and sectors and of SIDs and STARs etc. The introduction of 'restricted areas' appears to be haphazard and introduced without relevance; it is a very specific airspace term and not the key to airspace management.

response

Noted

Reservation is already in the footnote 11 to assess the nature of ASM through the Question 3.

More specific issues mentioned in the comment, such as route and sector design, have been addressed under paragraph 1 on the 'Concept of operations'. It is the purpose of Questions 1 and 3 to seek advice of how the related safety aspects should be regulated.

comment

1153

comment by: *Airport Operators Association*

3.h
Delete.

As noted in the page 39 footnote, this ER needs redrafting.

response

Noted

Reservation is already in the footnote 11 to assess the nature of ASM through the Question 3.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 4. Systems and Constituents

p. 39

comment

865

comment by: *UK CAA & UK MoD*

Systems comprise: people, equipment and procedures, all of which can be considered to be constituents, organised to perform a function. This section seems to imply that systems consist of equipment only. Consequently any regulations based on this concept will ignore the people and procedures and more importantly ignore the relationships between the parts of the system (the 'organisation').

It is suggested that the section should simply be titled 'Systems'.

Definitions of systems and constituents should be consistent with SES definitions.

The existing wording as currently used in the Common Requirements adequately covers the requirements for the risk assessment and mitigation of systems (see EC Reg 2096/2005 Annex II paragraph 3.2). The proposed Systems ERs are overly prescriptive and can negate implementation of an adequate risk assessment and mitigation performed by an ANSP.

response *Partially accepted*

The Agency takes note of the general views expressed here. However, the SES regulation has wider scope and different background than the proposed Essential Requirements for systems and constituents. Distinction between systems and constituents is based on differing regulatory requirements. This is the case in EASA system also in other regulated fields, such as airworthiness. People and procedures are covered by other ER's.

The proposed Essential Requirements will be a mandate for detailed implementing measures, building on the existing SES regulations, which may be improved and complemented where needed. The SES 2 package together with the proposed ER and their implementing means will form a consistent regulatory framework.

The proposed ER's intend to extract the safety aspect of the SES regulation.

Definitions will be provided in the legislative proposals.

comment *1430*

comment by: *DGCA-NL*

The requirements under this heading are covered by the interoperability regulation of the SES package 552/2004 and its implementing rules. There seems at present no reason to amend the regulations, unless proven otherwise.

response *Noted*

The Agency takes note of the comment. Consistency between two legal frameworks will be ensured by the legislative proposals of the Commission, which will also specify whether specific safety regulatory measures in this field would be established.

comment *1689*

comment by: *Military Aviation Authority Netherlands*

The requirements under this heading are covered by the interoperability regulation of the SES package 552/2004 and its implementing rules. There seems at present no reason to amend the regulations, unless proven otherwise.

response *Noted*

The Agency takes note of the comment. Consistency between two legal

frameworks will be ensured by the legislative proposals of the Commission, which will also specify whether specific safety regulatory measures in this field would be established.

comment 1727

comment by: DGCA-NL

In this chapter the use of constituent should be omitted as already indicated for 2.2.b.

Chapter 4 seems to describe requirements for systems in relation to safety. Almost all stated in Chapter 4 falls under the safety management system (SMS) that the ANSP is required to have in place.

response Noted

Distinction between systems and constituents is based on differing regulatory requirements. This is the case in EASA system also in other regulated fields, such as airworthiness. NPA makes questions on the need to impose certain responsibilities also to other organisations than only for the ANSP. It is not agreed that having SMS in place is enough – safety objectives are also needed. ER's are safety objectives.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 4. Systems and Constituents - 4.a.

p. 39

comment 90 ❖

comment by: Airbus

We support the statement in paragraph 49 of the explanatory note, that "care needs to be taken when developing implementing rules that common regulatory processes are implemented to verify compliance so as to reduce the administrative burden on regulated persons."

We expect that future implementing rules will contain provisions in the spirit of Article 7.2 of Commission Regulation (EC) No 1265/2007 of 26 October 2007 laying down requirements on air-ground voice channel spacing for the single European sky, quoted below:

"2. Certification airworthiness processes complying with Regulation (EC) No 1592/2002 of the European Parliament and of the Council (1), when applied to airborne constituents of the systems referred to in Article 1(2), shall be considered as acceptable procedures for the conformity assessment of these constituents if they include the demonstration of compliance with the interoperability, performance and safety requirements of this Regulation."

In addition, it is necessary that the implementing rules contain the appropriate "grandfather" provisions for maintaining the approval, without additional showing, of previously approved/installed airborne constituents.

There is also a need to take care of airborne constituents operated by non-

	<p>European users of European airspace, without imposing an excessive administrative burden.</p>
<p>response</p>	<p><i>Noted</i></p> <p>The Agency can fully agree with the intent of the comment. Regulatory measures must be limited to the intended effect and any unnecessary duplication or overlaps must be avoided.</p> <p>Any requirement for grandfathering provisions would be addressed at the level of specific implementing rules or through the flexibility provisions of the Basic Regulation.</p> <p>Issues related to requirements for non-European users operating in European airspace are already part of the extended EASA Basic Regulation and therefore not specifically addressed by this consultation. However, the Agency fully agrees that same principles of harmonised and efficient regulatory mechanisms shall be applied.</p>

<p>comment</p>	<p><i>150</i> comment by: <i>DSNA</i></p> <p>This paragraph suggests an approach that reproduces the regulatory mechanisms implemented for the airworthiness of aeronautical products and their operation, with requirements on: design, production, maintenance and exploitation.</p> <p>Implementing such requirements for ATM would cause a considerable amount of new burdens on manufacturers, in addition of the requirements already captured in the current SES legislation and derived regulations.</p> <p>Such requirements, be they on demonstrating capability or on a certification process, are not believed to be proportionate, as, unlike aeronautical products, no failure on ATM systems is able to be directly catastrophic, that is, to cause a direct and unavoidable disaster.</p> <p>More generic requirements in relation with “ESARR” parts of regulation 2096/05, are believed to be enough, until it is demonstrated, and generally accepted by the industry, that EU action is needed under the principles of proportionality and subsidiarity.</p> <p>This paragraph should be deleted.</p> <p>However, we regret the absence in these draft ERs of any proposals concerning requirements on ATSEPs. Generic requirements as in regulation 2096/05 could at least have been inserted.</p>
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<p>response</p>	<p><i>Partially accepted</i></p> <p>The proposed Essential Requirements will mandate detailed implementing measures building on the existing SES regulations and ESARR’s. NPA makes certain questions on the need to establish separate certification schemes in</p>
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case of specific ATM/ANS systems. It is not a commonly shared view that such approach would just cause disproportionate burden on their manufacturers. This would also naturally alleviate the responsibilities imposed on service providers, which might in some cases indeed be disproportionate, if regulatory requirements were not adapted. Wording of the draft ER's are of course subject to improvements

NPA takes a clear position on ATSEP requirements. 2096/2005 is a Commission Regulation. This is a consultation document leading to a legislative proposal, and which will be implemented through different means, such as implementing rules (=Commission Regulations).

comment

494

comment by: DGAC-DAST-FR

4.a.1. This paragraph suggests an approach that reproduces the regulatory mechanisms implemented for the airworthiness of aeronautical products and their operation, with requirements on: design, production, maintenance and exploitation.

Implementing such requirements for ATM would cause a considerable amount of new burdens on manufacturers, in addition of the requirements already captured in the current SES legislation and derived regulations.

Such requirements, be they on demonstrating capability or on a certification process, are not believed to be proportionate, as, unlike aeronautical products, no failure on ATM systems is able to be directly catastrophic, that is, to cause a direct and unavoidable disaster.

More generic requirements in relation with "ESARR" parts of regulation 2096/05, are believed to be enough, until it is demonstrated, and generally accepted by the industry, that EU action is needed under the principles of proportionality and subsidiarity.

This paragraph should be deleted.

However, we regret the absence in these draft ERs of any proposals concerning requirements on ATSEPs. Generic requirements as in regulation 2096/05 could at least have been inserted.

response

Partially accepted

The proposed Essential Requirements will mandate detailed implementing measures building on the existing SES regulations and ESARR's. NPA makes certain questions on the need to establish separate certification schemes in case of specific ATM/ANS systems. It is not a commonly shared view that such approach would just cause disproportionate burden on their manufacturers. This would also naturally alleviate the responsibilities imposed on service providers, which might in some cases indeed be disproportionate, if regulatory requirements were not adapted. Wording of the draft ER's are of course subject to improvements.

NPA takes a clear position on ATSEP requirements. 2096/2005 is a Commission Regulation. This is a consultation document leading to a legislative proposal,

and which will be implemented through different means, such as implementing rules (=Commission Regulations).

comment

633

comment by: *EUROCONTROL*

There is no clear link between this paragraph and ESARR 2, 3 and 4 and the SES-CR ?

The notion of "fitness of purpose", even if already used extensively for airborne equipment, goes largely beyond safety and as such, its inclusion is therefore not justified as an essential requirement.

Proposal for 4 a. 1 :

Systems and constituents providing information to and from the aircraft and on the ground, *including critical supporting infrastructures*, must be properly designed, manufactured, maintained and operated to ensure fitness for intended purpose."

Rationale: include critical infrastructures in the scope of the systems to be properly designed, operated ... as they are essential to the provisions of ANS.

response

Partially accepted

Comment is noted. However, there is no such a direct link in the draft ER's because they are safety objectives. NPA is a consultation document leading to a legislative proposal, and which will be implemented through different means, such as implementing rules (=Commission Regulations). SES-CR is also a Commission Regulation. ESARR's are transposed through such regulations.

In the proposed ER's the notion of 'fit for purpose' is used in the sense of the intended operation. It will not be possible to ensure the safe operation of any system or constituent if it is not known what is the intended operation. It does not mean that it would be the safety regulation to determine what the needed operation is. ER's will be implemented through implementing rules and non-binding standards, which will be limited to what is necessary for safety reasons.

The general intent of the proposal to change 4.a.1 is accepted. It has to be however elaborated whether this intent is already covered in other ER's, whether it could be addressed through the definitions in law or whether this amendment would be done as suggested.

comment

866

comment by: *UK CAA & UK MoD*

See overall comments on systems in ER 4.

response

Noted

comment

1361

comment by: *ECOGAS*

This paragraph is superfluous as relates to airborne equipment, which is

already covered by requirements for its design, manufacture, maintenance and operation.

response *Not accepted*

The ER's covered in Annex I of the current version of the Basic Regulation are related to the airworthiness of the aircraft.

The proposed draft ER's relate not only to the airborne ATM/ANS equipment but also to the ground systems and constituents to support ATM/ANS service provision and therefore they complement the ER's in the current Basic Regulation.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 4. Systems and Constituents - 4.b.

p. 39

comment 90 ❖

comment by: *Airbus*

We support the statement in paragraph 49 of the explanatory note, that "care needs to be taken when developing implementing rules that common regulatory processes are implemented to verify compliance so as to reduce the administrative burden on regulated persons."

We expect that future implementing rules will contain provisions in the spirit of Article 7.2 of Commission Regulation (EC) No 1265/2007 of 26 October 2007 laying down requirements on air-ground voice channel spacing for the single European sky, quoted below:

"2. Certification airworthiness processes complying with Regulation (EC) No 1592/2002 of the European Parliament and of the Council (1), when applied to airborne constituents of the systems referred to in Article 1(2), shall be considered as acceptable procedures for the conformity assessment of these constituents if they include the demonstration of compliance with the interoperability, performance and safety requirements of this Regulation."

In addition, it is necessary that the implementing rules contain the appropriate "grandfather" provisions for maintaining the approval, without additional showing, of previously approved/installed airborne constituents.

There is also a need to take care of airborne constituents operated by non-European users of European airspace, without imposing an excessive administrative burden.

response *Noted*

The Agency can fully agree with the intent of the comment. Regulatory measures must be limited to the intended effect and any unnecessary duplication or overlaps must be avoided.

Any requirement for grandfathering provisions would be addressed at the level

of specific implementing rules or through the flexibility provisions of the Basic Regulation.

Issues related to requirements for non-European users operating in European airspace are already part of the extended EASA Basic Regulation and therefore not specifically addressed by this consultation. However, the Agency fully agrees that same principles of harmonised and efficient regulatory mechanisms shall be applied.

comment

151

comment by: *DSNA*

This requirement is appropriate as far as safety aspects are concerned. Thus, the first sentence should read : « **The integrity and safety performance...** ».

The second sentence should be deleted, as relates to more « technical » interoperability requirements, to be kept under regulation 552/04.

response

Accepted

Refer to the resulting text which will accompany the Opinion on the matter.

comment

495

comment by: *DGAC-DAST-FR*

This requirement is appropriate as far as safety aspects are concerned. Thus, the first sentence should read : « **The integrity and safety performance...** ».

The second sentence should be deleted, as relates to more « technical » interoperability requirements, to be kept under regulation 552/04.

response

Accepted

Refer to the resulting text which will accompany the Opinion on the matter.

comment

634

comment by: *EUROCONTROL*

The notion of "fitness of purpose", even if already used extensively for airborne equipment, goes largely beyond safety and as such, its inclusion is therefore not justified as an essential requirement

response

Not accepted

In the proposed ER the notion of 'fit for purpose' is used in the sense of the intended operation. It will not be possible to ensure the safe operation of any system or constituent if it is not known what is the intended operation. It does not mean that it would be the safety regulation to determine what the needed operation is.

The details how this has to be done for systems and constituents will be covered in the implementing measures.

comment

867

comment by: *UK CAA & UK MoD*

	See overall comments on systems in ER 4.
	The terms 'reliability' and 'integrity' are used inconsistently.
	Lifecycle needs to include disposal.
response	<i>Partially accepted</i>
	Use of these terms in the ER's will be checked. Please refer to the resulting text which will accompany the Opinion on the matter.

comment	1728	comment by: DGCA-NL
	In the case that this requirement has to be met in full no aircraft will take off anymore as the systems have to meet the expected level of performance for the whole operational life, presently it is allowed to operate aircraft according to minimum equipment lists.	
	Please amend the ER to reflect minimum functional equipment requirements.	

response	<i>Not accepted</i>
	The proposed ER state the safety objectives to be meet.
	The dispatch under MEL will need O&M procedures to be complied to in order to maintain the safety objective. Moreover, the specification regarding the minimum functional equipment will be part of the implementing measures (e.g. guidance material for MEL policy).

<p>B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 4. Systems and Constituents - 4.c.</p>	<p>p. 39</p>
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comment	152	comment by: DSNA
	<p>For the reasons explained under 4.a, paragraphs 4.c.1 to 4.c.3 (first sentence) should be deleted.</p> <p>(In addition: "avoiding a full loss of service" is an excessive requirement for some services, at least instantly, and because mitigation measures exist when means or functions are lost).</p> <p>However, as far as pure safety requirements are concerned, the Agency is welcomed to determine and set quantitative probabilities requirements for failure of parts of the systems. But this approach seems to be difficult and a more pragmatic one might prove preferable.</p> <p>Integrating security requirements (which seems to be the intent of the words "external elements" in 4.c.3) together with safety requirements on systems and constituents could prove appropriate. This could be done either through changing requirements in regulation 2096/05, including under "the EASA system".</p> <p>The second sentence of 4.c.3 and the paragraph 4.c.4 can be supported as additional more specific requirements to those in 2096/05.</p>	

response

Partially accepted

See response on the comment 150.

It is agreed that 'avoiding a full loss of service' has to be qualified, but that should be done at the level of implementing rules. Revised ER's will accompany the Opinion.

Quantitative targets may be used at the level of implementing rules or non-binding standards.

Security issues are not in the legal competence of the Agency.

As regards the last part of the comment, refer again to the response on the comment 150.

comment

496

comment by: *DGAC-DAST-FR*

For the reasons explained under 4.a, paragraphs 4.c.1 to 4.c.3 (first sentence) should be deleted.

(In addition: "avoiding a full loss of service" is an excessive requirement for some services, at least instantly, and because mitigation measures exist when means or functions are lost).

However, as far as pure safety requirements are concerned, the Agency is welcomed to determine and set quantitative probabilities requirements for failure of parts of the systems. But this approach seems to be difficult and a more pragmatic one might prove preferable.

Integrating security requirements (which seems to be the intent of the words "external elements" in 4.c.3) together with safety requirements on systems and constituents could prove appropriate. This could be done either through changing requirements in regulation 2096/05, including under "the EASA system".

The second sentence of 4.c.3 and the paragraph 4.c.4 can be supported as additional more specific requirements to those in 2096/05.

response

Partially accepted

See response on the comment 494.

It is agreed that 'avoiding a full loss of service' has to be qualified, but that should be done at the level of implementing rules. Revised ER's will accompany the Opinion.

Quantitative targets may be used at the level of implementing rules or non-binding standards.

Security issues are not in the legal competence of the Agency.

As regards the last part of the comment, refer again to the response on the comment 494.

comment

635

comment by: EUROCONTROL

ER 4.c.1 and 4.c.4: Although these are genuine safety requirements the way 4.c.1 is worded raises significant potential compliance issues (what "experience" is it really referring to?). Some redrafting should be considered.

ER4c1: Propose to replace the entire sentence by: "Systems and constituents must have design features or details that have shown to be acceptably safe." Lack of evidence of risk IS NOT Equal to evidence of lack of risk!

ER 4c1: The ER should also allow for new concepts with which we may not be experienced.

ER 4c2: Definition of "Extremely improbable" or referencing the existing documentation would clarify the terminology used.

response

Partially accepted

Proposals to revise these draft ER's will be taken into account in preparing the resulting texts which will accompany the Opinion on the matter. However, safety objective can not be determined by the suggested words 'acceptably safe'. Definitions will be addressed in the legislative proposal. NPA is a consultation document.

comment

868

comment by: UK CAA & UK MoD

See overall comments on systems in ER 4.

The wording 'mitigated as appropriate' should be used throughout - especially in 4.c.2 where they use the term shown to be extremely improbable.

4.c.1 The current wording is misleading. The aim is to reduce the risk associated with system hazards to an acceptable level; it cannot be reduced to zero and hazards in general cannot be eliminated. The reference to 'experience has shown' implies a purely reactive approach, where the analysis required by SES is proactive.

4.c.2. The loss of all services in a 'specified volume of airspace' can be acceptably safe provided that the impending loss is detected and contingency plans activated. The term 'extremely improbable' needs to be clarified and defined and made consistent with the proposed Risk Classification Scheme being developed for SES regulation.

4.c.3. This clause seems to reinforce the view that humans do not form part of the system. Perhaps this clause is trying to state that the system has to take environmental hazards into account, if so it should be reworded.

4.c.4. 'Information concerning unsafe conditions' cannot be known by for example, a system manufacturer, who cannot fully understand the circumstances of the use of the system he has designed and developed.

response

Partially accepted

Proposals to revise draft ER's will be taken into account in preparing the resulting texts which will accompany the Opinion on the matter. However, the

words 'experience has shown' is only one of the elements and contains a specific objective. ER 4.c.2 indeed allows using quantitative objectives at the level of implementing rules or non-binding standards, if so decided. Personnel are covered by other ER's. ER 4.c.4 is again only one of the elements and does not cover users responsibilities.

comment

1060

comment by: IFATSEA

IFATSEA proposes that "power supply" is included as an essential requirement. Power Supply is a critical element of the safety chain. This element is regulated in aircrafts where an AME license is issued.

The power supply (PWR) for CNS/ATM should be mentioned in this document. The difference between external power (primary or commercial) and the power supply (secondary or backup) for CNS/ATM should be clarified and established in this document as well as its requirements.

According to ICAO documents there is a clear difference between primary (commercial) power supplies as an external element and the secondary (backup, uninterruptible) power supply as internal element. This difference is not reflected clearly in the whole document.

IFATSEA would like to propose some definitions and references:

Power supply (PWR) equipment/system used for uninterruptible and reserve electrical supply of the CNS/ATM (e.g. on-line UPS's, standby power generator sets, batteries/batteries Station, power supply network, etc.) as a secondary power supply, provide required services for CNS/ATM fully in line with the principles of ICAO SARP's in Annexes 10 and 11 and also in line of ICAO Doc 9426-3 and Doc 9157-AN/901 Part 5 -Electrical Systems.

Power supply equipments/systems provide a vital role in the operation of CNS/ATM systems and consequentially to safe and orderly operation of ANS. The electrical power supply sources/equipments/systems quality, availability, capacity and reliability are one of the basic technical prerequisites for high integrity and reliability of CNS/ATM systems.

Proper design, installation, maintenance and operation of an electrical Power Supply system for CNS/ATM systems/equipments are prerequisites for the safety, regularity and efficiency of civil aviation. They are governed by international and national standards.

All stakeholders (CAA, NSA, ANSP and ATM) Services personnel (ATCO's, ATSEP's) understand the safety impact of the power supply in the overall CNS/ATM systems. This is why IFATSEA believes that PWR should be included in essential requirements.

response

Partially accepted

Power supply is already covered in the draft ER's. This subject will be dealt with in more detail at the level of implementing rules.

comment	1729 4.c.3 This paragraph seems to apply to security issues not to systems	comment by: DGCA-NL
response	<i>Not accepted</i> The proposed ER's are related only to safety aspects. Therefore with the notion of 'dangerous interaction' it is not intended to address unlawful human interference.	

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 4. Systems and Constituents - 4.d.

p. 39

comment	153 It is strongly suggested to enhance this paragraph as follows: "4.d.1. Where relevant, means ... and reconfiguration of systems and constituents <u>in order to maintain the relevant target level of safety</u> ".	comment by: DSNA
response	<i>Noted</i> Proposals to revise draft ER's will be taken into account in preparing the resulting texts which will accompany the Opinion on the matter.	
comment	497 It is strongly suggested to enhance this paragraph as follows: "4.d.1. Where relevant, means ... and reconfiguration of systems and constituents <u>in order to maintain the relevant target level of safety</u> ".	comment by: DGAC-DAST-FR
response	<i>Noted</i> Proposals to revise draft ER's will be taken into account in preparing the resulting texts which will accompany the Opinion on the matter.	
comment	637 This requirement goes again well beyond safety, being directly related to the level of service. It should be refocused on the implementation of the appropriate means to detect malfunctions which have a detrimental impact on safety.	comment by: EUROCONTROL
response	<i>Noted</i> Proposals to revise draft ER's will be taken into account in preparing the resulting texts which will accompany the Opinion on the matter.	

comment	869	comment by: UK CAA & UK MoD
	<p>See overall comments on systems in ER 4.</p> <p>4.d.1 This topic is covered by the contingency planning requirements contained within the Common Requirements. The UK CAA does not see a need for this clause.</p> <p>4.d.1 The explanatory text at paragraph 121 suggests that this ER is related to the integrity, reliability and stability of navigation systems only. Hence the scope of paragraph 121 and ER 4.d.1 do not appear to be consistent.</p>	
response	<p><i>Noted</i></p> <p>Proposals to revise draft ER's will be taken into account in preparing the resulting texts which will accompany the Opinion on the matter. Safety objectives have to be comprehensive, irrespective of the existing implementation means.</p>	

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 4. Systems and Constituents - 4.e.

p. 39-40

comment	85	comment by: KLM
	<p>4.e.1 replace ... that a minimum level of service is maintained' by ..'that a minimum of disruption of the service is achieved.</p>	
response	<p><i>Partially accepted</i></p> <p>Proposals to revise draft ER's will be taken into account in preparing the resulting texts which will accompany the Opinion on the matter.</p>	
comment	154	comment by: DSNA
	<p>Modifications of systems and constituents : We agree that such rules, that are linked with the rules already adopted under regulation 2096/05, could indeed be completed and updated under proposals by EASA.</p>	
response	<p><i>Noted</i></p> <p>The Agency agrees with the general intent of the comment. The details will follow in the implementing measures that will build on the existing SES regulations and ESARR's.</p>	
comment	434	comment by: AEA
	<p>replace ... that a minimum level of service is maintained' by ..'that a minimum of disruption of the service is achieved.</p>	
response	<p><i>Partially accepted</i></p> <p>Proposals to revise draft ER's will be taken into account in preparing the resulting texts which will accompany the Opinion on the matter.</p>	

comment	<p>640 comment by: EUROCONTROL</p>
	<p>ER 4.e: The proposed text is considered as acceptable, provided that the other parts of section 4 are amended on the basis of the above comment.</p> <p><u>Proposed new essential requirement on systems lifecycle</u></p> <p>An additional essential requirement might be added, specifying that the systems lifecycle must embrace the overall lifetime of CNS/ATM systems, up to the point of decommissioning.</p> <p>ER 4 e1: Changes must also be validated in advance of implementation to ensure in advance that they will be safe to put in place. Does this cover changes to the airspace and procedures or just technical systems? Many improvements cover all three.</p>
response	<p><i>Noted</i></p> <p>Proposals to revise the draft ER's will be taken into account in preparing the resulting texts which will accompany the Opinion on the matter. Details on implementation will be defined within different implementing measures. ER 4.e.1 covers only 'Systems and constituents', but it is agreed that it is relevant also in the case of airspace and procedures. Procedures are covered by the ER's on different services and airspace issues are subject to a specific question in the NPA, conclusions on which will subsequently affect the contents of the proposed ER's.</p>
comment	<p>870 comment by: UK CAA & UK MoD</p>
	<p>See overall comments on systems in ER 4.</p> <p>4.e.1 System modification is covered by SES Common Requirements and is broader than changes that enhance the level of service. Oversight of change is covered in Regulation 1315/2007.</p> <p>See General Comments i.e. the UK CAA strongly suggests that the safety related elements of the SES regulations be incorporated intact into the EASA regulatory structure, taking care to ensure that neither overlap nor gaps develop between the new regulations and remaining SES legislation.</p>
response	<p><i>Partially accepted</i></p> <p>Proposals to revise draft ER's will be taken into account in preparing the resulting texts which will accompany the Opinion on the matter. Safety objectives have to be comprehensive, irrespective of the existing implementation means.</p>
comment	<p>1360 comment by: ECOGAS</p>
	<p>This paragraph is not necessary. Modifications not complying with the essential requirements of the section will by definition no longer be in compliance with the section.</p>
response	<p><i>Partially accepted</i></p>

Proposals to revise draft ER's will be taken into account in preparing the resulting texts which will accompany the Opinion on the matter.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 5. Qualification of air traffic controllers

p. 40

comment 10 comment by: VITROCISET

Instead of "Qualification of Air Traffic Controllers" which is limitative the rule should apply to all personnel carrying out safety critical tasks (cfr. ESARR 5). if it is not so there is a safety regression!

response *Not accepted*

The training of other staff involved in safety critical tasks is the responsibility of the service provider. Paragraph 6.a.4 provides the basis for further detailed implementing rules that will be developed, based on the existing EC legislation and ESARRs. Implementing rules are directly binding law.

The essential requirements for ATCOs have to be more detailed than for other professions because this is a regulated profession, subject to a licensing scheme, which limits the right of access to the profession. Therefore, legal certainty demands that more detailed essential requirements are developed to allow for judicial and political control.

comment 251 comment by: ATSEP Belgium

The omission of qualification of personnel other than air traffic controllers in the essential requirements for air traffic management and air navigation purposes, is a major safety gap in the NPA document.

response *Not accepted*

The training of other staff involved in safety critical tasks is the responsibility of the service provider. Paragraph 6.a.4 provides the basis for further detailed implementing rules that will be developed, based on the existing EC legislation and ESARRs. Implementing rules are directly binding law.

The essential requirements for ATCOs have to be more detailed than for other professions because this is a regulated profession, subject to a licensing scheme, which limits the right of access to the profession. Therefore, legal certainty demands that more detailed essential requirements are developed to allow for judicial and political control.

comment 299 comment by: IFATSEA

Page 40, title of paragraph 5, proposed as "*qualification of ATCOs*" IFATSEA proposes "Qualification of ANS staff carrying out safety critical tasks" (or similar) as more appropriate. The "critical tasks" are those tasks that are eventually included in the implementing rules.

The text of paragraph 5 of page 40 should converge on a simple proposal covering also the ATSEPs. The rationale for this is that ATSEPs are already covered by ESARR 5, and are also regulated in several States. Furthermore ESARR 5 has already been transposed into EU legislation by Art. 1 of Regulation 2096/2005 (the "Common Requirements"): Ignoring the ATSEPs would be a "regression" from the present levels of safety in Europe.

response

Not accepted

The training of other staff involved in safety critical tasks is the responsibility of the service provider. Paragraph 6.a.4 provides the basis for further detailed implementing rules that will be developed, based on the existing EC legislation and ESARRs. Implementing rules are directly binding law.

The essential requirements for ATCOs have to be more detailed than for other professions because this is a regulated profession, subject to a licensing scheme, which limits the right of access to the profession. Therefore, legal certainty demands that more detailed essential requirements are developed to allow for judicial and political control.

comment

388

comment by: *IFSA*

IFSA would change "Qualification of air traffic controllers" with "Qualification of ATM/ANS staff carrying out safety critical tasks".

response

Not accepted

The training of other staff involved in safety critical tasks is the responsibility of the service provider. Paragraph 6.a.4 provides the basis for further detailed implementing rules that will be developed, based on the existing EC legislation and ESARRs. Implementing rules are directly binding law.

The essential requirements for ATCOs have to be more detailed than for other professions because this is a regulated profession, subject to a licensing scheme, which limits the right of access to the profession. Therefore, legal certainty demands that more detailed essential requirements are developed to allow for judicial and political control.

comment

435

comment by: *AEA*

The requirements shall be based on clear safety objectives which do not unnecessarily increase costs and administrative burden. A review of the existing EU Directive for the Licensing of Air Traffic Controllers should be made based on a comprehensive regulatory impact assessment.

response

Noted

The RIA is one of the cornerstones of the EASA Rulemaking procedure and of the European policy for better regulation. A full RIA on the essential requirements is being completed and will be presented to stakeholders.

The essential requirements will also be completed by implementing rules. When these are developed, a more detailed comparison and analysis of the existing Directive will take place, and a RIA will also be developed.

comment	<p data-bbox="352 208 408 239">609</p> <p data-bbox="1139 208 1441 239">comment by: CAA CZ</p> <p data-bbox="352 264 1441 394">We feel the proposal of qualification as too much detailed. The detailed requirements of regulation should be specified in the implementing rules. In addition directive 2006/23/EC should be taken into account. The essential requirements should specify only the basic principles and responsibilities.</p>
response	<p data-bbox="352 434 536 465"><i>Not accepted</i></p> <p data-bbox="352 488 1441 645">The essential requirements for ATCOs are more detailed because this is a regulated profession, subject to a licensing scheme, which limits the right of access to the profession. Therefore, legal certainty demands that more detailed essential requirements are developed to allow for judicial and political control. Directive 2006/23 is indeed one of the source documents used.</p>
comment	<p data-bbox="352 725 408 757">643</p> <p data-bbox="1034 725 1441 757">comment by: EUROCONTROL</p> <p data-bbox="352 781 1441 1010">The ERs provide requirements on the competence <u>only</u> for air traffic controllers. When extending to ANS this will also imply the personnel working in the field of CNS. ESARR 5 brings regulatory requirements for ATCOs, engineers and technical personnel and for other categories of ATM personnel having safety related tasks. All such categories of ATM personnel have been considered as having safety related tasks and as such there was a need to provide regulatory requirements regarding their competence.</p> <p data-bbox="352 1077 1441 1171">The ERs on air traffic controllers are too detailed. The requirements for a licensing, training, language proficiency and competence could stay at a high level, the details being developed within the Implementing Rules.</p> <p data-bbox="352 1238 1441 1361">The ER section on ATCOs looks totally unbalanced and detailed comparing with other sections (e.g. 6c on CNS and others). Also other type of ATM/ANS personnel undertaking safety related tasks are missing. What is the position of this § in regard of ESARR5 and the SES-CR?</p>
response	<p data-bbox="352 1388 536 1420"><i>Not accepted</i></p> <p data-bbox="352 1442 1441 1568">The essential requirements for ATCOs are more detailed because this is a regulated profession, subject to a licensing scheme, which limits the right of access to the profession. Therefore, legal certainty demands that more detailed essential requirements are developed to allow for judicial and political control.</p>
comment	<p data-bbox="352 1644 408 1675">871</p> <p data-bbox="994 1644 1441 1675">comment by: UK CAA & UK MoD</p> <p data-bbox="352 1704 1441 1767">The level of detail contained within ER 5 is overly prescriptive and takes no account of the ATCO Licensing Directive.</p> <p data-bbox="352 1834 1441 1991">This ER concentrates on the ATCO far more than the other parts of a system. There is therefore an imbalance between the excessive levels of detail in this ER in comparison to the other draft ERs. The UK CAA suggests that ATCOs are included within the EASA system through direct reference to the ATCO Licensing Directive. Other personnel need to be considered as part of the</p>

	<p>overall system, which is covered in the Common Requirements.</p> <p>The scope of ER 5 extends beyond the narrow field suggested by the title.</p> <p>The material is better suited to lower level rules or documentation.</p>
response	<p><i>Not accepted</i></p> <p>The essential requirements for ATCOs are more detailed because this is a regulated profession, subject to a licensing scheme, which limits the right of access to the profession. Therefore, legal certainty demands that more detailed essential requirements are developed to allow for judicial and political control.</p>

comment	<p><i>1134</i> comment by: <i>Silvio ZAPPI</i></p> <p>The title should be changed into "Qualification of ANS staff carrying out safety critical tasks" The text of Para 5 should cover also ATSEP. ATSEP are already considered by ESARR 5 and are regulated in some States. ESARR 5 has already been transposed into EU legislation by art. 1 of Reg. 2096/2005.</p>
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response	<p><i>Not accepted</i></p> <p>The training of other staff involved in safety critical tasks is the responsibility of the service provider. Paragraph 6.a.4 provides the basis for further detailed implementing rules that will be developed, based on the existing EC legislation and ESARRs. Implementing rules are directly binding law.</p> <p>The essential requirements for ATCOs have to be more detailed than for other professions because this is a regulated profession, subject to a licensing scheme, which limits the right of access to the profession. Therefore, legal certainty demands that more detailed essential requirements are developed to allow for judicial and political control.</p>
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comment	<p><i>1341</i> comment by: <i>Ente Nazionale per l'Aviazione Civile</i></p> <p>The ER should be changed in "safety related personnel" which are the controllers, the AFIS operators and the ATS Electronic Personnel. It is to be remembered that also for meteo services there are two classes of personnel for meteorological observation or forecast.</p>
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	<p>The level of detail of ERs related to Air Traffic Controllers is too detailed with respect to other ERs (see organisations).</p> <p>There's no ER related to the need of a document in which is clearly stated which kind of service the controller my provide. We are aware that such a statement may be introduced into the EASAbasic regulation</p>
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response	<p><i>Not accepted</i></p> <p>The training of other staff involved in safety critical tasks is the responsibility of the service provider. Paragraph 6.a.4 provides the basis for further detailed implementing rules that will be developed, based on the existing EC legislation</p>
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and ESARRs. Implementing rules are directly binding law.

The essential requirements for ATCOs have to be more detailed than for other professions because this is a regulated profession, subject to a licensing scheme, which limits the right of access to the profession. Therefore, legal certainty demands that more detailed essential requirements are developed to allow for judicial and political control.

comment *1431* comment by: *DGCA-NL*

The requirements under this heading are fully covered by Directive 2006/23/EC, which has recently entered into force and still requires a lot of implementing activities at national level. Unless the Agency merely wants to copy the articles of this directive under the EASA-system, inclusion of these requirements should be based on sound arguments.

response *Noted*

The inclusion of the licensing of ATCOs in the EASA system is in compliance with the concept of total system approach for aviation safety, coming from the final report of the HLG.

Directive 2006/23/EC will be the basis for the implementing rules, as well as ESARR 5.

comment *1690* comment by: *Military Aviation Authority Netherlands*

The requirements under this heading are fully covered by Directive 2006/23/EC, which has recently entered into force and still requires a lot of implementing activities at national level. Unless the Agency merely wants to copy the articles of this directive under the EASA-system, inclusion of these requirements should be based on sound arguments.

response *Noted*

The inclusion of the licensing of ATCOs in the EASA system is in compliance with the concept of total system approach for aviation safety, coming from the final report of the HLG.

Directive 2006/23/EC will be the basis for the implementing rules, as well as ESARR 5.

comment *1730* comment by: *DGCA-NL*

This whole chapter applies as well to air traffic controllers, Flight Information Service Officers and Air Traffic Safety Electronic Personnel (ATSEPs). Replace in all paragraphs "Air Traffic Controller" with "Air Traffic Controller, FISOs and ATSEPs"

response *Not accepted*

The training of other staff involved in safety critical tasks is the responsibility of the service provider. Paragraph 6.a.4 provides the basis for further detailed implementing rules that will be developed, based on the existing EC legislation and ESARRs. Implementing rules are directly binding law.

The essential requirements for ATCOs have to be more detailed than for other professions because this is a regulated profession, subject to a licensing scheme, which limits the right of access to the profession. Therefore, legal certainty demands that more detailed essential requirements are developed to allow for judicial and political control.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 5. Qualification of air traffic controllers - 5.a.

p. 40

comment 86 comment by: *KLM*

5 Qualification of air traffic controllers.

The requirements shall be based on clear safety objectives which do not unnecessarily increase costs and administrative burden. A review of the existing EU Directive for the Licensing of Air Traffic Controllers should be made based on a comprehensive regulatory impact assessment.

response *Noted*

The RIA is one of the cornerstones of the EASA Rulemaking procedure and of the European policy for better regulation. A full RIA on the essential requirements is being completed and will be presented to stakeholders.

The essential requirements will also be completed by implementing rules. When these are developed, a more detailed comparison and analysis of the existing Directive will take place, and a RIA will also be developed.

comment 165 comment by: *DSNA*

These essential requirements mean transferring the directive 2006/23 on air traffic controller licences, into the EASA system. This entails lowering the legislative value of that directive to the rank of implementing rules. It looks acceptable under some reservations.

As a general remark, the requirements in this art are far too detailed (see section "general comments" above).

- Firstly, the notions of initial training and of student controller licence have merely disappeared. These notions, as well as other essential elements of the directive should be reinserted.

- Instead, the text puts together, on the one hand, the principles of theoretical knowledge, (5.b), on the other hand, practical skills (5.c), alike the pilot licences, without distinction between initial training and continuous training or additional training. This should be reverted to the current distinction made by the directive.

- In paragraph 5.c.1, the ii) « Task specific aspects » and the v) « Threat and error management » do not appear in the directive on licences (but maybe in the Eurocontrol « common core content » ?).

Generally speaking, it is strongly suggested that this part of the ERs recall the main elements of Annex 1 of the Chicago Convention and those of the directive 2006/23 on ATCO licences, and to stick to essential points of training for the student controller licence, and for the definitive controller licence.

response *Noted*

The Basic Regulation and the essential requirements are adopted through the co-decision procedure, by the Parliament and the Council. The Basic Regulation will then empower the Commission to adopt implementing rules through comitology, which ensures political control of the results. The inclusion of the requirements for ATCO licensing in the EASA system does not lower their legislative value.

The essential requirements are supposed to contain high level safety objectives; a more detailed description of the implementing means will be made in the articles of the Basic Regulation and further developed in the implementing rules. Such detailed issues as the scope and specific contents of different types of training (initial, continuous, additional) and student controller licences are better left to the implementing rules level.

In relation to the expression 'task specific aspects' it is meant to cover the different contents of training related to the different ratings and endorsements; again, more detailed provision will be developed at the implementing rules level. As for 'threat and error management', it comes from ICAO Annex 1 SARPs.

The proposed draft essential requirements are, in the Agency's view, in compliance with ICAO SARPs and allow for integration of all the elements of the Directive into the implementing rules

comment 498

comment by: *DGAC-DAST-FR*

These essential requirements mean transferring the directive 2006/23 on air traffic controller licences, into the EASA system. This entails lowering the legislative value of that directive to the rank of implementing rules. It looks acceptable under some reservations.

As a general remark, the requirements in this art are far too detailed (see section "general comments" above).

- Firstly, the notions of initial training and of student controller licence have merely disappeared. These notions, as well as other essential elements of the directive should be reinserted.

- Instead, the text puts together, on the one hand, the principles of theoretical knowledge, (5.b), on the other hand, practical skills (5.c), alike the pilot licences, without distinction between initial training and continuous training or additional training. This should be reverted to the current distinction made by

the directive.

- In paragraph 5.c.1, the ii) « Task specific aspects » and the v) « Threat and error management » do not appear in the directive on licences (but maybe in the Eurocontrol « common core content » ?).

Generally speaking, it is strongly suggested that this part of the ERs recall the main elements of Annex 1 of the Chicago Convention and those of the directive 2006/23 on ATCO licences, and to stick to essential points of training for the student controller licence, and for the definitive controller licence.

response *Noted*

The Basic Regulation and the essential requirements are adopted through the co-decision procedure, by the Parliament and the Council. The Basic Regulation will then empower the Commission to adopt implementing rules through comitology, which ensures political control of the results. The inclusion of the requirements for ATCO licensing in the EASA system does not lower their legislative value.

The essential requirements are supposed to contain high level safety objectives; a more detailed description of the implementing means will be made in the articles of the Basic Regulation and further developed in the implementing rules. Such detailed issues as the scope and specific contents of different types of training (initial, continuous, additional) and student controller licences are better left to the implementing rules level.

In relation to the expression 'task specific aspects' it is meant to cover the different contents of training related to the different ratings and endorsements; again, more detailed provision will be developed at the implementing rules level. As for 'threat and error management', it comes from ICAO Annex 1 SARPs.

The proposed draft essential requirements are, in the Agency's view, in compliance with ICAO SARPs and allow for integration of all the elements of the Directive into the implementing rules

comment 644

comment by: *EUROCONTROL*

The ERs provide requirements on the competence only for air traffic controllers. When extending to ANS this will also imply the personnel working in the field of CNS. ESARR 5 brings regulatory requirements for ATCOs, engineers and technical personnel and for other categories of ATM personnel having safety related tasks. All such categories of ATM personnel have been considered as having safety related tasks and as such there was a need to provide regulatory requirements regarding their competence.

The ERs on air traffic controllers are too detailed. The requirements for a licensing, training, language proficiency and competence could stay at a high level, the details being developed within the Implementing Rules.

The ER section on ATCOs looks totally unbalanced and detailed comparing with other sections (e.g. 6c on CNS and others). Also other type of ATM/ANS personnel undertaking safety related tasks are missing. What is the position of this § in regard of ESARR5 and the SES-CR?

response	<i>Noted</i>
	The essential requirements for ATCOs are more detailed because this is a regulated profession, subject to a licensing scheme, which limits the right of access to the profession. Therefore, legal certainty demands that more detailed essential requirements are developed to allow for judicial and political control.
comment	646 comment by: <i>EUROCONTROL</i>
	There is a need to define "sufficiently mature educationally". There is no standard against which this can be measured.
response	<i>Noted</i>
	Further details will be provided in the implementing rules.
comment	648 comment by: <i>EUROCONTROL</i>
	All qualifications described apply to Apron Controllers as well, in case they are performing similar task like guidance of aircraft on the aerodrome surface via radio or data link. Therefore, it should be clarified that this ERs also apply to Apron Control Services
response	<i>Noted</i>
	This has to be defined at the level of basic law. The Agency agrees that the scope of the 'regulated profession' has not been addressed in the NPA, but will be clarified in the Opinion.
comment	872 comment by: <i>UK CAA & UK MoD</i>
	See Comments against ER 5.
response	<i>Noted</i>
comment	933 comment by: <i>IACA International Air Carrier Association</i>
	Only Air Traffic Controllers ATC shall be licensed under proper implementing rules. Such implementing rules shall be a strict for ATC controllers as they are for pilots. Referring to ER para 5., a review of the existing EU Directive for the Licensing of Air Traffic Controllers shall be made based on a comprehensive regulatory impact assessment.
response	<i>Noted</i>
	Directive 2006/23/EC will be the basis for the implementing rules, as well as ESARR 5. The RIA is one of the cornerstones of the EASA Rulemaking procedure and of the European policy for better regulation. The essential requirements will also be completed by implementing rules. When these are developed, a more detailed comparison and analysis of the

existing Directive will take place, and a RIA will also be developed.

comment

1152

comment by: CAA CZ

There are regulatory requirements applicable for other personnel than ATC (technical, engineers etc. having tasks related to safety. These requirements are specified by ESARR 5 and should be incorporated into national rules. These requirements have not been considered by ERs (except training), where basic requirements should be specified. In addition such requirements should be more detailed in the IRs.

response

Noted

The training of other staff involved in safety critical tasks is the responsibility of the service provider. Paragraph 6.a.4 provides the basis for further detailed implementing rules that will be developed, based on the existing EC legislation and ESARRs. Implementing rules are directly binding law.

The essential requirements for ATCOs have to be more detailed than for other professions because this is a regulated profession, subject to a licensing scheme, which limits the right of access to the profession. Therefore, legal certainty demands that more detailed essential requirements are developed to allow for judicial and political control.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 5. Qualification of air traffic controllers - 5.b.

p. 40

comment

165 ❖

comment by: DSNA

These essential requirements mean transferring the directive 2006/23 on air traffic controller licences, into the EASA system. This entails lowering the legislative value of that directive to the rank of implementing rules. It looks acceptable under some reservations.

As a general remark, the requirements in this art are far too detailed (see section "general comments" above).

- Firstly, the notions of initial training and of student controller licence have merely disappeared. These notions, as well as other essential elements of the directive should be reinserted.

- Instead, the text puts together, on the one hand, the principles of theoretical knowledge, (5.b), on the other hand, practical skills (5.c), alike the pilot licences, without distinction between initial training and continuous training or additional training. This should be reverted to the current distinction made by the directive.

- In paragraph 5.c.1, the ii) « Task specific aspects » and the v) « Threat and error management » do not appear in the directive on licences (but maybe in the Eurocontrol « common core content » ?).

Generally speaking, it is strongly suggested that this part of the ERs recall the main elements of Annex 1 of the Chicago Convention and those of the directive 2006/23 on ATCO licences, and to stick to essential points of training for the student controller licence, and for

the definitive controller licence.

response

Noted

The Basic Regulation and the essential requirements are adopted through the co-decision procedure, by the Parliament and the Council. The Basic Regulation will then empower the Commission to adopt implementing rules through comitology, which ensures political control of the results. The inclusion of the requirements for ATCO licensing in the EASA system does not lower their legislative value.

The essential requirements are supposed to contain high level safety objectives; a more detailed description of the implementing means will be made in the articles of the Basic Regulation and further developed in the implementing rules. Such detailed issues as the scope and specific contents of different types of training (initial, continuous, additional) and student controller licences are better left to the implementing rules level.

In relation to the expression 'task specific aspects' it is meant to cover the different contents of training related to the different ratings and endorsements; again, more detailed provision will be developed at the implementing rules level. As for 'threat and error management', it comes from ICAO Annex 1 SARPs.

The proposed draft essential requirements are, in the Agency's view, in compliance with ICAO SARPs and allow for integration of all the elements of the Directive into the implementing rules

comment

649

comment by: *EUROCONTROL*

All qualifications described apply to Apron Controllers as well, in case they are performing similar task like guidance of aircraft on the aerodrome surface via radio or data link. Therefore, it should be clarified that this ERs also apply to Apron Control Services

response

Noted

This would have to be defined at the level of basic law. The Agency agrees that the scope of the 'regulated profession' has not been addressed in the NPA, but will be clarified in the Opinion. More detailed requirements for the qualifications and training of other staff will be developed in the implementing rules.

comment

657

comment by: *EUROCONTROL*

ER 5b1: Editorial: please delete service from "an air traffic controller service must acquire". Additionally, there is no reference to a knowledge standard (Common Core Content).

ER 5b3: One assumes that this paragraph refers to the operational environment and if this is about the air traffic control service then surely it is important that the air traffic controller, regardless of where he works, must maintain the appropriate amount of theoretical information for the relevant rating and rating endorsement. The frequency of examination should be clearly defined.

response	<i>Partially accepted</i>	
	5.b.1 Editorial comment accepted. Text changed accordingly to "an air traffic controller must". The content and scope of the required theoretical knowledge will be further detailed in the implementing rules.	
	5.b.3 The requirements for examinations (including frequency) will be more detailed in the implementing rules.	
comment	873	comment by: <i>UK CAA & UK MoD</i>
	See Comments against ER 5.	
	5.b.1. Typographical error; delete the word 'service' after 'air traffic controller'.	
response	<i>Accepted</i>	
	Editorial comment accepted. Text changed accordingly to "an air traffic controller must".	
comment	1154	comment by: <i>Airport Operators Association</i>
	5.b line 1 Delete "service" after "controller".	
response	<i>Accepted</i>	
	Editorial comment accepted. Text changed accordingly to "an air traffic controller must".	
comment	1731	comment by: <i>DGCA-NL</i>
	5.b.1. Delete service after Air traffic controller in the first sentence.	
response	<i>Accepted</i>	
	Editorial comment accepted. Text changed accordingly to "an air traffic controller must".	

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 5. Qualification of air traffic controllers - 5.c.

p. 40

comment	165 ❖	comment by: <i>DSNA</i>
	These essential requirements mean transferring the directive 2006/23 on air traffic controller licences, into the EASA system. This entails lowering the legislative value of that directive to the rank of implementing rules. It looks	

acceptable under some reservations.

As a general remark, the requirements in this art are far too detailed (see section "general comments" above).

- Firstly, the notions of initial training and of student controller licence have merely disappeared. These notions, as well as other essential elements of the directive should be reinserted.

- Instead, the text puts together, on the one hand, the principles of theoretical knowledge, (5.b), on the other hand, practical skills (5.c), alike the pilot licences, without distinction between initial training and continuous training or additional training. This should be reverted to the current distinction made by the directive.

- In paragraph 5.c.1, the ii) « Task specific aspects » and the v) « Threat and error management » do not appear in the directive on licences (but maybe in the Eurocontrol « common core content » ?).

Generally speaking, it is strongly suggested that this part of the ERs recall the main elements of Annex 1 of the Chicago Convention and those of the directive 2006/23 on ATCO licences, and to stick to essential points of training for the student controller licence, and for the definitive controller licence.

response *Noted*

The Basic Regulation and the essential requirements are adopted through the co-decision procedure, by the Parliament and the Council. The Basic Regulation will then empower the Commission to adopt implementing rules through comitology, which ensures political control of the results. The inclusion of the requirements for ATCO licensing in the EASA system does not lower their legislative value.

The essential requirements are supposed to contain high level safety objectives; a more detailed description of the implementing means will be made in the articles of the Basic Regulation and further developed in the implementing rules. Such detailed issues as the scope and specific contents of different types of training (initial, continuous, additional) and student controller licences are better left to the implementing rules level.

In relation to the expression 'task specific aspects' it is meant to cover the different contents of training related to the different ratings and endorsements; again, more detailed provision will be developed at the implementing rules level. As for 'threat and error management', it comes from ICAO Annex 1 SARPs.

The proposed draft essential requirements are, in the Agency's view, in compliance with ICAO SARPs and allow for integration of all the elements of the Directive into the implementing rules

comment *651*

comment by: *EUROCONTROL*

All qualifications described apply to Apron Controllers as well, in case they are performing similar task like guidance of aircraft on the aerodrome surface via radio or data link. Therefore, it should be clarified that this ERs also apply to Apron Control Services

response *Noted*

This would have to be defined at the level of basic law. The Agency agrees that the scope of the 'regulated profession' has not been addressed in the NPA, but will be clarified in the Opinion. More detailed requirements for the qualifications and training of other staff will be developed in the implementing rules.

comment 659 comment by: EUROCONTROL

ER 5c1: Again no reference to a training standard (Common Core Content).

ER 5c1: Para.128 makes a reference to "third party" while §5.c.1 does not make such a reference.

ER 5c3: The frequency of assessment has to be defined.

ER 5c3: The idea that the frequency of assessments should be proportionate to the level of risk is not justified in para 129.

response *Partially accepted*

Further details on the content and scope of training standards and frequency of assessments will be given in the implementing rules.

The demonstration of skill referred in paragraph 5.c.2 is made to an assessor, qualified in accordance with 5.h.

Comment on 5.c.3 accepted; Text changed to 'The frequency of these assessments must be proportionate to the complexity and the level of risk associated with the tasks performed'.

comment 876 comment by: UK CAA & UK MoD

See Comments against ER 5.

response *Noted*

comment 1155 comment by: Airport Operators Association

5.c.1 v The sub-set of "Threat and error management" could be contained within "Human factors" at sub-set iv. We believe that sub-set v would be better phrased as "Incident awareness".

response *Not accepted*

The terminology and concepts are coming from ICAO Annex 1.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 5. Qualification of air traffic controllers - 5.d.

p. 41

comment	87	comment by: <i>KLM</i>
	<p>5d Language Proficiency</p> <p>The implementing rules for language proficiency of Air Traffic Controllers should be as strict for ATC controllers as they are for pilots. For safety reasons it is essential for the EU to take the lead to mandate the use of aviation English for all operations in EU airspace</p>	
response	<p><i>Noted</i></p> <p>The text of the essential requirements is in compliance with ICAO Annex 1 and with paragraphs 1 and 2 of article 8 of Directive 2006/23/EC. The implementing rules will be developed taking into account existing requirements for ATCOs and care will given to the articulation with the requirements applicable to pilots.</p>	
comment	155	comment by: <i>DSNA</i>
	<p>5.d.1. and 5.d.2. assert the only requirement of competence in English, with possible exception as « necessary in a given volume of airspace ».</p> <p>This breaks in an unacceptable manner a compromise that was still many times discussed, not only for the directive 2006/23 but also for the current modification the EASA basic regulation. Only a wording in line with such previous compromise could be accepted.</p>	
response	<p><i>Not accepted</i></p> <p>The text of the essential requirements is in compliance with ICAO Annex 1 and with paragraphs 1 and 2 of article 8 of Directive 2006/23/EC.</p> <p>The draft ER as such does not contradict with this compromise, but has to be clarified at the level of implementing rules.</p>	
comment	436	comment by: <i>AEA</i>
	<p>The implementing rules for language proficiency of Air Traffic Controllers should be as strict for ATC controllers as they are for pilots. For safety reasons it is essential for the EU to take the lead to mandate the use of aviation English for all operations in EU airspace</p>	
response	<p><i>Noted</i></p> <p>The text of the essential requirements is in compliance with ICAO Annex 1 and with paragraphs 1 and 2 of article 8 of Directive 2006/23/EC. The implementing rules will be developed taking into account existing requirements for ATCOs and care will given to the articulation with the requirements</p>	

applicable to pilots.

comment	499	comment by: <i>DGAC-DAST-FR</i>
	<p>5.d.1. and 5.d.2. assert the only requirement of competence in English, with possible exception as « necessary in a given volume of airspace ».</p> <p>This breaks in an unacceptable manner a compromise that was still many times discussed, not only for the directive 2006/23 but also for the current modification the EASA basic regulation. Only a wording in line with such previous compromise could be accepted.</p>	
response	<i>Not accepted</i>	
	<p>The text of the essential requirements is in compliance with ICAO Annex 1 and with paragraphs 1 and 2 of the article 8 of Directive 2006/23/EC.</p> <p>The draft ER as such does not contradict with this compromise, but has to be clarified at the level of implementing rules.</p>	
comment	652	comment by: <i>EUROCONTROL</i>
	<p>All qualifications described apply to Apron Controllers as well, in case they are performing similar task like guidance of aircraft on the aerodrome surface via radio or data link. Therefore, it should be clarified that this ERs also apply to Apron Control Services</p>	
response	<i>Noted</i>	
	<p>This would have to be defined at the level of basic law. The Agency agrees that the scope of the 'regulated profession' has not been addressed in the NPA, but will be clarified in the Opinion. More detailed requirements for the qualifications and training of other staff will be developed in the implementing rules.</p>	
comment	660	comment by: <i>EUROCONTROL</i>
	ER 5 d1 and d2: No standard is stated.	
response	<i>Noted</i>	
	<p>Further details on the standard required will be given in the implementing rules, which will be based on Directive 2006/23/EC and ESARR 5.</p>	
comment	877	comment by: <i>UK CAA & UK MoD</i>
	See Comments against ER 5.	
response	<i>Noted</i>	
comment	934	comment by: <i>IACA International Air Carrier Association</i>
	In the interest of public safety, the EU shall terminate the use of local language	

and mandate the use of Aviation English for all operations in EU airspace.

response *Noted*

The text of the essential requirements is in compliance with ICAO Annex 1 and with paragraphs 1 and 2 of article 8 of Directive 2006/23/EC. Implementing rules will be developed taking into account existing requirements for ATCOs and care will given to the articulation with the requirements applicable to pilots.

comment *1156* comment by: *Airport Operators Association*

5.d line 4 Delete "concrete and" after "on".

response *Not accepted*

The expression is coming from ICAO (see language proficiency rating scale). It is related to the type of vocabulary that will have to be used.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 5. Qualification of air traffic controllers - 5.e. p. 41

comment *157* comment by: *DSNA*

This paragraph adds a requirement on the synthetic training devices, similar to those used for aircraft pilot licence training. The advantages of using synthetic training devices for initial and for continuing training are clear for some qualifications and/or ratings. Thus, **we support the idea to have some generic requirements on their features, in the medium term.**

However:

- the use of STDs should not be mandated;
- specifications on STDs should remain at a quite simple level to be practicable; in particular, installing a certification scheme for such STDs by reproducing this requirement on pilots training would be excessive and should be precluded.

response *Noted*

The comment will be taken into account when developing implementing rules on this subject.

comment *500* comment by: *DGAC-DAST-FR*

5.e. This paragraph adds a requirement on the synthetic training devices, similar to those used for aircraft pilot licence training. The advantages of using synthetic training devices for initial and for continuing training are clear for some qualifications and/or ratings. Thus, **we support the idea to have some generic requirements on their features, in the medium term.**

However:

- the use of STDs should not be mandated;
 - specifications on STDs should remain at a quite simple level to be practicable; in particular, installing a certification scheme for such STDs by reproducing this requirement on pilots training would be excessive and should be precluded.

response *Noted*

The comment will be taken into account when developing implementing rules on this subject.

comment 653

comment by: *EUROCONTROL*

All qualifications described apply to Apron Controllers as well, in case they are performing similar task like guidance of aircraft on the aerodrome surface via radio or data link. Therefore, it should be clarified that this ERs also apply to Apron Control Services

response *Noted*

This would have to be defined at the level of basic law. The Agency agrees that the scope of the 'regulated profession' has not been addressed in the NPA, but will be clarified in the Opinion. More detailed requirements for the qualifications and training of other staff will be developed in the implementing rules.

comment 661

comment by: *EUROCONTROL*

Clarification on the use of STDs is needed (e.g. practical training on situational awareness and human factors, etc). Not all the training is possible on STDs.

response *Noted*

Further details on when STDs can be used for training will be given in the implementing rules

comment 879

comment by: *UK CAA & UK MoD*

See Comments against ER 5.

response *Noted*

<p>B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 5. Qualification of air traffic controllers - 5.f.</p>	<p>p. 41</p>
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comment 654

comment by: *EUROCONTROL*

All qualifications described apply to Apron Controllers as well, in case they are performing similar task like guidance of aircraft on the aerodrome surface via radio or data link. Therefore, it should be clarified that this ERs also apply to Apron Control Services

response	<i>Noted</i>
	This would have to be defined at the level of basic law. The Agency agrees that the scope of the 'regulated profession' has not been addressed in the NPA, but will be clarified in the Opinion. More detailed requirements for the qualifications and training of other staff will be developed in the implementing rules.
comment	664 comment by: <i>EUROCONTROL</i>
	ER 5f2: There is no stated requirement for objectives in the training plan. Clarification needed about what is synthetic training.
response	<i>Noted</i>
	Further details on the content of the training plan will be given in the implementing rules. Synthetic training is training carried out on a STD.
comment	878 comment by: <i>UK CAA & UK MoD</i>
	See Comments against ER 5.
response	<i>Noted</i>
comment	1157 comment by: <i>Airport Operators Association</i>
	5.f.1 line 1 Delete "a" after "through" and insert "an approved".
response	<i>Noted</i>
	The essential requirements contain only high level safety objectives. Further details on implementation means shall be given in the body of the Basic Regulation and the implementing rules. The idea is that the course will have to be approved, as is the case in Directive 2006/23/EC; the ER's are not the place to establish it.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 5. Qualification of air traffic controllers - 5.g.

p. 41

comment	665 comment by: <i>EUROCONTROL</i>
	ER 5g: There is clear no distinction between, classroom, simulator and on the job training instructors and as such the qualification levels required are probably overstated. This problem also exists in the Directive EC 2006/23. ER 5g1: No reference to having attended an appropriate instructional techniques course and passed any associated examinations is made.

ER 5g2 v: Clarification required regarding the purpose of receiving regular refreshing training.

ER 5g3: Text addressing Instructors should follow the provisions ESARR 5 and SES Directive 23/2006 on ATCO Licensing.

response *Partially accepted*

Not accepted. The essential requirements are general, and further detail on different qualification levels for different types of training will be further developed in the implementing rules.

Comment on 5.g.1 ii and 5.g.2 ii is accepted. Text changed to 'have demonstrated the ability to use appropriate instructional techniques'.

Clarification can be found in the text of the ER: it is to ensure that the competence of the instructor is maintained. Text will be changed to avoid misunderstandings to: "...to ensure that the instructional competences are maintained."

The ER's only contain high level safety objectives, which are in compliance with ESARR 5 and the said Directive. Further details will be given in the implementing rules, which will be based on these existing rules.

comment 875

comment by: UK CAA & UK MoD

See Comments against ER 5.

response *Noted*

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 5. Qualification of air traffic controllers - 5.h.

p. 42

comment 667

comment by: EUROCONTROL

ER 5h1: No reference to having attended an appropriate competence assessor course and passed any associated examinations. Additionally, clarification is required regarding the purpose of receiving regular refreshing training

response *Accepted*

Text of 5.h.1.i. is changed to '...have demonstrated the ability to assess the performance...'

comment 874

comment by: UK CAA & UK MoD

See Comments against ER 5.

response *Noted*



B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 5. Qualification of air traffic controllers - 5.i. p. 42

comment 669 comment by: EUROCONTROL

ER 5i1: The ER demands periodical demonstration of medical fitness. No medical standard is referred to. The ERs require that instructors and assessors have regular refresher training and periodical demonstration of medical fitness by air traffic controllers. The difference between regular and periodical must be explained.

ER 5 i1: Controllers should have a personal obligation to report any medical issues that may affect their own competence.

response *Noted*

Further details on the medical standard will be given in the implementing rules, which will be in compliance with ICAO Annex 1 and be based on Directive 2006/23/EC and ESARR 5.

The term periodical is used to indicate that the demonstration shall take place at certain pre-determined points in time. The expression regular is used to mean that the training should take place within a certain time frame, but not necessarily always at the same pre-determined point in time.

This is an obligation coming from ICAO. It will be included in the implementing rules.

comment 880 comment by: UK CAA & UK MoD

See Comments against ER 5.

Any revised ER needs to be in accord with Age and Disability discrimination legislation.

response *Noted*

The Agency considers that the ER's are in compliance with other community legislation.

comment 1158 comment by: Airport Operators Association

5.i.1.i Delete all after "account" in line 4 and insert "issues related to the natural ageing process".

response *Not accepted*

The Agency considers that the original text is adequate. Furthermore, it is similar to the text on the ER's for pilot licensing.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 6. Service providers and training organisations

p. 42

comment

881

comment by: UK CAA & UK MoD

This is covered by the ANSP certification and designation requirements of the SES Regulations, including the Common Requirements, and the Training Organisation requirements of the ATCO Licensing Directive; the latter is not restricted to standalone Training Organisations but includes ANSPs in-house Training facilities.

See General Comments i.e.

- The UK CAA strongly suggests that the safety related elements of the SES regulations be incorporated intact into the EASA regulatory structure, taking care to ensure that neither overlap nor gaps develop between the new regulations and remaining SES legislation.

It would be preferable to directly reference Directives and other associated regulations such as the European ATCO Licensing Directive, Occurrence Reporting Directive and ICAO SARPs. This may include a need to analyse the relative structures of EASA and SES essential requirements and implementing rules to create a logical and consistent structure of legislation.

response

Noted

The ER's only contain high level safety objectives. The existing EC legislation on this issue, as well as the ESARR's, will serve as a basis for the development of the implementing rules to the essential requirements.

comment

1432

comment by: DGCA-NL

The requirements for the service providers are covered by the implementing rules Cion Regulation 2096/2005, while the training organizations are covered by Directive 2006/23/EC. Any amendment to this regime should again be based on a well founded analysis.

response

Noted

The ER's only contain high level safety objectives. The existing EC legislation on this issue, as well as the ESARRs, will serve as a basis for the development of the implementing rules to the essential requirements.

comment

1691

comment by: Military Aviation Authority Netherlands

The requirements for the service providers are covered by the implementing rules Cion Regulation 2096/2005, while the training organizations are covered by Directive 2006/23/EC. Any amendment to this regime should again be based on a well founded analysis.

response

Noted

The ER's only contain high level safety objectives. The existing EC legislation

on this issue, as well as the ESARRs, will serve as a basis for the development of the implementing rules to the essential requirements.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 6. Service providers and training organisations - 6.a. p. 42-43

comment 33 ❖

comment by: MATTA

Generally the power supply (PWR) for CNS/ATM should be mentioned in this document. The difference between external power (primary or commercial) and the power supply (secondary or backup) for CNS/ATM should be clarified and established in this document as well as its requirements.

According to ICAO documents there is a clear difference between primary (commercial) power supplies as an external element and the secondary (backup, uninterruptible) power supply as internal element. This difference is not clear in the whole NPA document.

The same or similar difference should be established in this document in the way that ANS/ATM/CNS service providers shall be fully responsible for backup power supply for CNS/ATM and partly for external (commercial) power supplies services.

Explanatory definition and/or meaning of the phrase "Power supply (PWR) for CNS/ATM":

"Power supply (PWR) equipment/system used for uninterruptible and reserve electrical supply of the CNS/ATM (e.g. on-line UPS's, standby power generator sets, batteries/batteries Station, power supply network, etc.) as a secondary power supply, provide required services for CNS/ATM fully in line with the principles of ICAO SARP's in Annexes 10 and 11 and also in line of ICAO Doc 9426-3 and Doc 9157-AN/901 Part 5 - Electrical Systems.

Power supply equipments/systems provide a vital role in the operation of CNS/ATM systems and consequentially to safe and orderly operation of ANS. The electrical power supply sources/equipments/systems quality, availability, capacity and reliability are one of the basic technical prerequisites for high integrity and reliability of CNS/ATM systems.

Proper design, installation and maintenance of an electrical Power Supply system for CNS/ATM systems/equipments are prerequisites for the safety, regularity and efficiency of civil aviation. They are governed by international and national standards.

The Regulators/Designated Authorities, Service providers and ATM Services personnel (ATCO's, ATSEP's) has to understand the impact of the power supply services on the user and on the overall CNS/ATM system.

response *Noted*

See response to identical comment per paragraph 42.

comment 38

comment by: MATTA

The power supply for ANS/ATM should be mentioned in this paragraph.

The proposed text:

"6.a.1. The service provider must have directly or indirectly through contracts the means necessary for the scale and scope of the service. These means comprise but are not limited to the following: systems and constituents, facilities, power supply for ANS/ATM, management structure, personnel, equipment and its maintenance, documentation of tasks, responsibilities and procedures, access to relevant data and record keeping;"

response *Partially accepted*

The term 'systems' in the draft ER 6.a.1 already cover power supply. However, ER 6.a.5 will be amended to cover also power supplies.

comment 158

comment by: *DSNA*

6.a. No major comment as these safety requirements would take over from common requirements for service provision (regulation 2096/05) as quoted above.

However :

- In paragraph 6.a.2, the words "the management system", and the paragraph 6.a.3 about "risk based management system" do not correspond to the ICAO Annex 11 standard of a "safety management system", though the latter is well quoted in regulation 2096/05.

Operations manuals – also linked with the requirement of a quality system - should cover the organisational aspects of management without the need to create further concepts. Moreover, risk assessment is already captured within the requirements of a SMS.

These neologisms do not look to add any positive value. The words « safety management system » should be kept instead of "management system" in 6.a.2 and the paragraph 6.a.3 should be deleted . Modifying the concepts of the SMS would disrupt the already difficult appropriation of this system by the service providers and their staff, and that would be severely detrimental to safety.

Paragraphs 6.a.4 to 6.a.7 are accepted as they are.

Paragraph 6.a.8 is linked to pure technical interoperability and should be deleted as such requirements would remain within regulation 552/04. In addition, the idea of monitoring the systems and constituent is enough covered by other more general requirements in other places. At last: "any system and constituent" is definitely excessive: see comments on 4.d.

response *Partially accepted*

6.a.2 and 6.a.3; Not accepted.

The approach that was followed is that of integrated management systems. The management system of an organisation should integrate all aspects, including safety and quality. More detailed requirements on how to implement the ER's will be given in the implementing rules.

6.a.4 to 6.a.7; Noted

6.a.8; Partially accepted

The objective of this ER is to mandate the organisation to have in place a system to verify safety performance requirements of systems and constituents. It is therefore related to safety and not interoperability. However, the text will be changed to avoid misunderstandings to: '... that the safety performance requirements of...'

It is recognised that there are some areas where safety and interoperability or economic regulations may overlap. Such issues need to be identified and solved at the level of legislation. The intention of EASA is only to regulate the safety aspects of ATM/ANS.

comment

300

comment by: IFATSEA

The power supply for ANS/ATM should be mentioned in this paragraph.

The proposed text is highlighted:

"6.a.1. The service provider must have directly or indirectly through contracts the means necessary for the scale and scope of the service. These means comprise but are not limited to the following: systems and constituents, facilities, power supply for ANS/ATM, management structure, personnel, equipment and its maintenance, documentation of tasks, responsibilities and procedures, access to relevant data and record keeping;"

response

Not accepted

The Agency considers that the ER's provide the necessary legal basis to develop detailed implementing rules covering this as well as other issues (see 6.a.1, 6.a.3, 6.a.5 and 6.a.6).

The text of 6.a.5 will be slightly modified to improve understanding of the objective: 'the service provider must establish formal interfaces with all the other contributors to the service provision to ensure compliance with these essential requirements.'

comment

501

comment by: DGAC-DAST-FR

6.a. No major comment as these safety requirements would take over from common requirements for service provision (regulation 2096/05) as quoted above.

However :

- In paragraph 6.a.2, the words "the management system", and the paragraph 6.a.3 about "risk based management system" do not correspond to the ICAO Annex 11 standard of a "safety management system", though the latter is well

quoted in regulation 2096/05.

Operations manuals – also linked with the requirement of a quality system - should cover the organisational aspects of management without the need to create further concepts. Moreover, risk assessment is already captured within the requirements of a SMS.

These neologisms do not look to add any positive value. The words « safety management system » should be kept instead of “management system” in 6.a.2 and the paragraph 6.a.3 should be deleted . Modifying the concepts of the SMS would disrupt the already difficult appropriation of this system by the service providers and their staff, and that would be severely detrimental to safety.

Paragraphs 6.a.4 to 6.a.7 are accepted as they are.

Paragraph 6.a.8 is linked to pure technical interoperability and should be deleted as such requirements would remain within regulation 552/04. In addition, the idea of monitoring the systems and constituent is enough covered by other more general requirements in other places. At last: “any system and constituent” is definitely excessive: see comments on 4.d.

response *Partially accepted*

6.a.2 and 6.a.3; Not accepted.

The approach that was followed is that of integrated management systems. The management system of an organisation should integrate all aspects, including safety and quality. More detailed requirements on how to implement the ER’s will be given in the implementing rules.

6.a.4 to 6.a.7; Noted

6.a.8; Partially accepted

The objective of this ER is to mandate the organisation to have in place a system to verify safety performance requirements of systems and constituents. It is therefore related to safety and not interoperability. However, the text will be changed to avoid misunderstandings to: ‘... that the safety performance requirements of...’

It is recognised that there are some areas where safety and interoperability or economic regulations may overlap. Such issues need to be identified and solved at the level of legislation. The intention of EASA is only to regulate the safety aspects of ATM/ANS.

comment 672

comment by: *EUROCONTROL*

ER 6: Ref to SES CR and ESARR 3 and 4 should have been considered in this section.

ER 6a: It is suggested the use of the words "Unusual and Emergency Situations" instead of emergency and abnormal scenarios, that have been established within the ATC world for some years.

ER 6a3: Should this refer instead to a "risk based safety management system"?

ER 6a5: This requirement can be interpreted as concerning subcontracted responsibilities. However, the service provider must also maintain formal interfaces with other adjacent service providers to jointly coordinate provision to achieve safety.

ER 6a6: to clarify para 6.a.6:

The service provider must establish and implement contingency plans for all the services it provides, covering emergency and abnormal scenarios in the case of events which result in significant degradation or interruption of those services. Procedures shall be in place to allow a "Fail to safe" interruption of the operations that minimize the potential effects on the safety of the flights. Similarly, measures shall also be in place to ensure the gradual and safe restoration of air navigation services as conditions permit.

Rationale: bring the wording in line with the Common requirements and introduce concepts presented in our "Contingency Guidelines" "fail to safe" and "restoration of services".

ER6a8: Essential requirements 6.a.1 to 6.a.7 seem globally acceptable. This is not seen to be the case for 6.a.8, which encompasses aspects which are not safety related.

response *Partially accepted*

ER 6 and ER 6.a.6; Not accepted.

Detailed implementing rules will be developed, that will be based on ESARRS and EC legislation. The ER's high level safety objectives; they are not the place to refer to other legislation or to give detailed requirements.

6a; Partially accepted.

A term 'abnorma'l has a more specific meaning than 'unusual', and it is aligned with the expressions used in air operations, and therefore it is retained. The text of 6.a.6 is modified to '...covering emergency and abnormal situations...'.

6.a.3; Not accepted.

The approach that was followed is that of integrated management systems. The management system of an organisation should integrate all aspects, including safety and quality. More detailed requirements on how to implement the ER's will be given in the implementing rules.

6.a.5; Noted.

This ER does not apply only to subcontracted responsibilities - that is the case in 6.a.1 but not here.

6.a.5 is more general: the establishment of formal interfaces doesn't necessarily need a contract.

6.a.8; Not accepted.

See response to comment 158.

comment	<p data-bbox="351 203 406 235">882</p> <p data-bbox="989 203 1449 235" style="text-align: right;">comment by: <i>UK CAA & UK MoD</i></p> <p data-bbox="351 257 750 291">See Comments against ER 6.</p> <p data-bbox="351 358 1449 582">Notwithstanding the aforementioned comments, the four requirements contained in Annex 1 of the Basic Regulation for aircraft are generally adequate to be included here. We do not see the need for the proposed additional requirements, possibly with the exception of 6.a.6 concerning contingency planning, which could be included. However, this topic is covered by the contingency planning requirements contained within the Common Requirements.</p> <p data-bbox="351 604 1449 761">The EASA regulations should adopt the contemporary SMS and risk management approach of the SES regulations, which firmly embed risk management responsibilities in regulated industry. For example, in 6.a.3/5 the focus should be on the adequate safety of the service not on strict compliance with the ERs.</p>
response	<p data-bbox="351 784 438 828"><i>Noted</i></p> <p data-bbox="351 851 1449 952">The objective of this paragraph of the ER's is to mandate the organisation to have in place a system to verify safety performance requirements of systems and constituents, not to regulate the systems and constituents themselves.</p> <p data-bbox="351 963 1449 1131">Regarding the comment on SMS, the approach that was followed is that of integrated management systems. The management system of an organisation should integrate all aspects, including safety and quality. More detailed requirements on how to implement the ER's will be given in the implementing rules.</p>
comment	<p data-bbox="351 1198 422 1243"><i>1023</i></p> <p data-bbox="909 1198 1449 1243" style="text-align: right;">comment by: <i>European Space Agency</i></p> <p data-bbox="351 1265 1449 1523">The European Space Agency considers that under this essential requirement there should be a specific para dealing with the certification of CNS systems and components by "regulating organisation involved in the design, manufacture and maintenance of safety critical systems and constituents, as well as those involved in the verification of conformity" as mentioned in Question 5, especially for those concerning pan-European systems, such as space-based ones, and for which operators cannot be expected to take certification responsibility.</p>
response	<p data-bbox="351 1534 598 1579"><i>Partially accepted</i></p> <p data-bbox="351 1601 1449 1702">The Agency agrees with the intent of this comment, which is however subject to specific questions in the NPA. The revised essential requirements will be issued together with the Opinion.</p>
comment	<p data-bbox="351 1758 422 1803"><i>1027</i></p> <p data-bbox="1181 1758 1449 1803" style="text-align: right;">comment by: <i>INM</i></p> <p data-bbox="399 1814 430 1848">1.</p> <ul style="list-style-type: none"> <li data-bbox="494 1848 1449 1948">a. It considers that all service providers shall implement an SMS. Including MET-SP? Current SES regulation does not include SMS between requirements for MET-SP. <li data-bbox="494 1948 1449 2016">b. All service providers shall be implemented an analysis system for safety notifications, which practicability is not clear speaking

	about MET services provision.
response	<i>Noted</i> See response to comment 1079.
comment	<i>1079</i> comment by: <i>ANS-MET</i> 1. a. It considers that all service providers shall implement an SMS. Including MET-SP? Current SES regulation does not include SMS between requirements for MET-SP. b. All service providers shall be implemented an analysis system for safety notifications, which practicability is not clear speaking about MET services provision.
response	<i>Noted</i> The approach that was followed is that of integrated management systems. The management system of an organisation should integrate all aspects, including safety and quality. More detailed requirements on how to implement the ER's will be given in the implementing rules, that will be based ESARRs and EC legislation. This does not mean that all service providers will be required by the implementing rules to have a full SMS as described by ICAO and the Common requirements.
comment	<i>1159</i> comment by: <i>Airport Operators Association</i> 6.a.1 line 2 Insert after "necessary" to provide".
response	<i>Not accepted</i> Editorial not accepted.
comment	<i>1342</i> comment by: <i>Ente Nazionale per l'Aviazione Civile</i> 6.a.3 should be changed and refer to the <i>safety management system</i> europe wide accepted and in line with the most recent ICAO development. The present limitation of the introduction of SMS to ATS and CNS service providers is insufficient and should be changed in the next round on SES regulation. FUA regulation requires a RA&M for each change of airspace The regulation for the transposition of ESARR 6 has been adopted, but the extension of the software safety management system to ATFM and ASM providers has been prevented by the lack of a regulation on the SMS.
response	<i>Not accepted</i> The approach that was followed is that of integrated management systems. The management system of an organisation should integrate all aspects, including safety and quality. More detailed requirements on how to implement the ER's will be given in the implementing rules.

comment	<p>1732</p> <p>6.a.1.</p> <p>Delete "constituents. See comment 1716.</p>	comment by: DGCA-NL
response	<i>Accepted</i>	
comment	<p>1733</p> <p>6.a.3.</p> <p>Replace a risk based management system by safety management system to remain in line with the SES regulations.</p>	comment by: DGCA-NL
response	<p><i>Not accepted</i></p> <p>The approach that was followed is that of integrated management systems. The management system of an organisation should integrate all aspects, including safety and quality. More detailed requirements on how to implement the ER's will be given in the implementing rules.</p>	
comment	<p>1734</p> <p>6.a.4.</p> <p>Add after personnel "with safety related tasks" as this would not be necessary for all personnel employed by an ANSP.</p>	comment by: DGCA-NL
response	<p><i>Not accepted</i></p> <p>This addition would not be necessary, because by definition only safety related tasks are covered.</p>	
comment	<p>1735</p> <p>6.a.7</p> <p>Insert after "an accident" "and incident" prevention system for obvious reasons.</p> <p>Replace "management system" by "safety management system".</p>	comment by: DGCA-NL
response	<p><i>Not accepted</i></p> <p>The expression accident prevention is well established and includes the purpose of the comment.</p> <p>The approach that was followed is that of integrated management systems. The management system of an organisation should integrate all aspects, including safety and quality. More detailed requirements on how to implement the ER's will be given in the implementing rules.</p>	

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 6. Service providers and training organisations - 6.b.

p. 43

comment

159

comment by: *DSNA*

This paragraph introduces a whole set of requirements on the planning / rostering of the operational staff for ATC service provision. In particular, it suggests IRs on upper limits for duty periods and lower limits for rest periods, avoidance of stress through training and prevention programmes, procedures to check the cognitive judgement of the staff and medical fitness monitoring schemes.

- The medical requirements should be linked to the requirements on licensing in paragraph 5.

- In paragraph 6.b.4, the reference to ATFM measures when the the planning and operating principles are compromised, is to be deleted as such crcumstances are already one very basic reason to use ATFM flow limitation.

- Copying the main ideas of Subpart Q of "EU-OPS" is not appropriate in the case of ATM, given the major inconsistencies in the rostering of staff among States, even more than for pilots and cabin crew. There is no matter here for « competitive level playing field » either, and no dangerous practice was reported in terms of duty time and rest time. A convergence between current practices would require a number of years, and the best context to carry it out would be in a FAB, through a willing process.

Thus 6.b should be deleted.

response

Noted

The Agency will take into account this view to delete 6.b as whole in preparing the Opinion on this matter. However, this is an important safety issue that should not be forgotten, but it is fully understood that as an ER it would be (if maintained) part of the legislative proposal and subject also to political debate. The text of the ER's is general enough to allow certain flexibility in implementation and contains obligations on the service provider. It does not necessarily follow that a system similar to OPS FTL provisions will be created.

comment

301

comment by: *IFATSEA*

Comment page 43 section 6.b. and page 44 section 6.d

The work done by SESAR, Next Gen and ICAO ATMRPP proposed new concepts where technology is playing a greater role not only at EU level but worldwide. The text in section 6.b. of page 43 and section 6.d. of page 44 shall be referred to "ATS provision" instead of "ATC service provision". These conditions are also applicable to ATSEP, not only to ATCO.

- Comment page 43 section 6.c.

Section 6.c of page 43 does not guarantee a safe CNS service. The only requirement here for CNS provision is to inform the ATS Unit. There is serious flaw here. How to coop the signals that are provided directly to the aircraft? This section shall be expanded to include the service provision itself not only notifying its withdrawing.

response *Not accepted*

The need for a fatigue management for ATCOs is well established from a safety point of view. That is not necessarily the case for other safety related professions, where other mitigation measures might be adequate.

In any case, the inclusion of ER's on fatigue management and prevention for other professions would require further study and a full RIA.

comment 502

comment by: DGAC-DAST-FR

6.b. This paragraph introduces a whole set of requirements on the planning / rostering of the operational staff for ATC service provision. In particular, it suggests IRs on upper limits for duty periods and lower limits for rest periods, avoidance of stress through training and prevention programmes, procedures to check the cognitive judgement of the staff and medical fitness monitoring schemes.

- The medical requirements should be linked to the requirements on licensing in paragraph 5.

- In paragraph 6.b.4, the reference to ATFM measures when the the planning and operating principles are compromised, is to be deleted as such crcumstances are already one very basic reason to use ATFM flow limitation.

- Copying the main ideas of Subpart Q of "EU-OPS" is not appropriate in the case of ATM, given the major inconsistencies in the rostering of staff among States, even more than for pilots and cabin crew. There is no matter here for « competitive level playing field » either, and no dangerous practice was reported in terms of duty time and rest time. A convergence between current practices would require a number of years, and the best context to carry it out would be in a FAB, through a willing process.

Thus 6.b should be deleted.

response *Noted*

The Agency will take into account this view to delete 6.b as whole in preparing the Opinion on this matter. However, this is an important safety issue that should not be forgotten, but it is fully understood that as an ER it would be (if maintained) part of the legislative proposal and subject also to political debate. The text of the ER's is general enough to allow certain flexibility in implementation and contains obligations on the service provider. It does not necessarily follow that a system similar to OPS FTL provisions will be created.

comment

674

comment by: EUROCONTROL

ER 6b: Human factors aspects are of great importance within the activities the ATM personnel (ATCOs, engineers and technical personnel and others). Human factors are not limited to fatigue and stress and have to be included within the training activities for such personnel.

ER 6b: This requirement is raising potentially social and not safety issues. Demonstration to meet in 6.b.1 All relevant factors contributing to fatigue might be impossible to demonstrate.

ER 6b1: The level of detail that includes rostering shall not be addressed in the high level requirements.

ER 6b3: It is strange that a medical requirement would be referred to here and also it seems to be putting the responsibility for the verification of personnel medical fitness on the service provider.

ER 6b4: Is it not necessary to include in an ER a statement that the service provider will limit entry of traffic into its airspace.

response

Noted

6.b; Accepted. Human factors are part of the training for ATCOs, as per paragraph 5.c of the ER's.

6.b.1; Partially accepted. It does not require any demonstration, but solely that all relevant factors are taken into account when developing and implementing the rostering system. The word 'all' could be removed.

6.b.1; Not accepted. This is a requirement that limits the rights and imposes obligations on a regulated organisation, and therefore needs to be established by the legislator at a high level.

6.b.3; Not accepted. Fatigue management is not (only) a medical issue and it is a responsibility of the service provider to ensure that personnel providing ATC service does not exercise their duties when not fit to do so. 6.b.3 is not only of fatigue management.

6.b.4; Not accepted. Although it is agreed that the text may need to be revised and allocated differently.

Revised ER's will be issued as a part of the forthcoming Agency Opinion in this matter.

comment

883

comment by: UK CAA & UK MoD

See Comments against ER 6.

Consistency with SES definitions and scope should be maintained. Reference to Air Traffic Services instead of Air Traffic Control would be preferable and would better reflect the scope of the proposed ER. The proposed text does not clearly allow for oversight of the support staff. Some of the level of detail

	provided is overly prescriptive for inclusion in Essential Requirements.
response	<p><i>Not accepted</i></p> <p>Comment is noted. The Agency has however considered that it would be more appropriate to limit this part of the ER's only to ATC service providers, in case of which the system needs to be more restrictive. Oversight of other staff indeed has not been specifically addressed, other than what is covered in general requirements in 6.a. Level of detail in ER's can be adapted based on proposals.</p>
comment	<p><i>1161</i> comment by: <i>Airport Operators Association</i></p> <p>6.b.1 line 6 Insert the word "sleep" before "depravation".</p>
response	<p><i>Accepted</i></p> <p>Editorial accepted. Text changed to 'sleep deprivation'.</p>
comment	<p><i>1343</i> comment by: <i>Ente Nazionale per l'Aviazione Civile</i></p> <p>Sections 6b and 6d refer only to ATC provider excluding AFIS service providers. AFIS provisioning is the most prominent features for development of regional airport.</p>
response	<p><i>Not accepted</i></p> <p>Comment is noted. The Agency has however considered that it would be more appropriate to limit this part of the ER's only to ATC service providers, in case of which the system needs to be more restrictive. Development of regional airports should not affect such needs, but the Agency is open to receive informed proposals.</p>

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 6. Service providers and training organisations - 6.c.

p. 43

comment	<p><i>160</i> comment by: <i>DSNA</i></p> <p>The requirement for providers of C, N and S to inform users about the operational status of their services provided for ATS purposes is acceptable. However, the words "for ATS purposes" induce an inappropriate restriction, as it may be useful for an ILS even on an aerodrome without ATS.</p> <p>Conversely, the requirement would be too strong for an en-route navigation aid, where redundant.</p> <p>We thus suggest replacing "for ATS purposes" by: "where ignoring this information would affect air traffic safety"</p>
response	<p><i>Not accepted</i></p> <p>The requirement includes the situation referred to in the comment, since the requirement is for C, N and S service providers to inform relevant airspace</p>

users, and not only ATS units.

comment

503

comment by: *DGAC-DAST-FR*

6.c. The requirement for providers of C, N and S to inform users about the operational status of their services provided for ATS purposes is acceptable. **However, the words “for ATS purposes” induce an inappropriate restriction**, as it may be useful for an ILS even on an aerodrome without ATS.

Conversely, the requirement would be too strong for an en-route navigation aid, where redundant.

We thus suggest replacing “for ATS purposes” by: **“where ignoring this information would affect air traffic safety”**

response

Not accepted

The requirement includes the situation referred to in the comment, since the requirement is for C, N and S service providers to inform relevant airspace users, and not only ATS units.

comment

676

comment by: *EUROCONTROL*

ER 6c: 6.c has a very limited coverage. This was not taken into consideration within the SES CR and the CNS coverage.

ER 6c1: SLA signed between ANSP/ATMSP and CNS service providers should have been considered in the context of this requirement.

ER 6c1: The CNS provider should provide information on the quality, integrity, future planned downtime etc. of his service to the service user.

ER 6c2: Should MET services be included?

response

Not accepted

6.c; This ER is based on risk mitigation and its safety relevance seems to be clear.

6.c.1; Not accepted. A service agreement between providers is an interface issue that is covered by 6.a.5. Moreover, also C, N or S service providers need to be certified. Subcontractors are under oversight by a certified ANSP, not necessarily an ATSP

6.c.1; Noted. These elements are covered by the expression 'operational status'. Further details will be given at the level of the implementing rules.

6.c.2; Not accepted. Information on the current operational status of MET is not considered to be as safety critical as for CNS. Extending 6.c to MET would seem to be disproportionate.

comment

884

comment by: *UK CAA & UK MoD*

See Comments against ER 6.

This repeats issues already covered in ER3 and is not required.

response *Not accepted*

Paragraph 3 of the ER's is about the service. Paragraph 6 is about the management system that has to be in place by the service provider to ensure that the services provided comply with the applicable requirements. Therefore, paragraph 6 complements paragraph 3; it doesn't repeat it.

comment *1736* comment by: *DGCA-NL*

All the paragraphs under 6.b. ATC service provision must not be undertaken unless the following conditions are met; apply also for 6.c. Please amend 6.c. with the conditions stated under 6.b.

response *Not accepted*

The requirement for a fatigue management system has been put on ATC, since this is the most safety critical element of ANS/ATM. In the case of other services, other mitigation measures might be more adequate. In any case, the inclusion of ER's on fatigue management and prevention for CNS service providers would require further study and an impact assessment.

B. DRAFT ESSENTIAL REQUIREMENTS - II Essential requirements for air traffic management and air navigation services - 6. Service providers and training organisations - 6.d. p. 44

comment *161* comment by: *DSNA*

This paragraph should be grouped with the requirements on training, that is part 5.

In addition, 6.d.1 is overly detailed and should be simplified. The ii) on "a management system relating to safety" should not be mandated at this stage, as an excessive requirement.

response *Not accepted*

This paragraph contains requirements on the management of training organisations. Paragraph 5 is related to qualification of ATCO's.

The approach taken is of an integrated management system that is applicable to all organisations in the field of aviation. Implementing rules will establish further details on this, tailoring the management system to the needs of different types of organisations.

comment *302* comment by: *IFATSEA*

Comment page 43 section 6.b. and page 44 section 6.d

The work done by SESAR, Next Gen and ICAO ATMRPP proposed new concepts where technology is playing a greater role not only at EU level but worldwide. The text in section 6.b. of page 43 and section 6.d. of page 44 shall be referred to "ATS provision" instead of "ATC service provision". These conditions are also applicable to ATSEP, not only to ATCO.

response *Not accepted*

ER's on training organisations are related to the fact the ATCOs are subject to a licensing system. Extending this to cover also FIS is not shared by the Agency. In the case of other staff in safety critical tasks, the training is a responsibility of the service provider, and it is included in 6.a.4, which will be further detailed in implementing rules.

comment 504

comment by: *DGAC-DAST-FR*

This paragraph should be grouped with the requirements on training, that is part 5.

In addition, 6.d.1 is overly detailed and should be simplified. The ii) on "a management system relating to safety" should not be mandated at this stage, as an excessive requirement.

response *Not accepted*

This paragraph contains requirements on the management of training organisations. Paragraph 5 is related to qualification of ATCO's.

The approach taken is of an integrated management system that is applicable to all organisations in the field of aviation. Implementing rules will establish further details on this, tailoring the management system to the needs of different types of organisations.

comment 885

comment by: *UK CAA & UK MoD*

See Comments against ER 6.

We do not see a requirement for this as it is covered under ER 6a either as a standalone Training Organisations or as part of an ANSP's in-house training.

response *Not accepted*

6.a refers only to service providers (although the title of the whole paragraph might be misleading), not to training organisations, so the stand alone training organisations are not covered.

comment 1737

comment by: *DGCA-NL*

It is unclear why a training organisation needs a safety management system. In the case that an air traffic controller or ATSEP exercises with life traffic or equipment the trainee performs his exercise under the SMS of the ANSP not under an SMS of the training organisation.

There is a requirement for a Quality Management System for training organisations. Please amend the ER with a quality management system for training organisations.


response


Not accepted


The requirement is for a management system related to safety and the standard of training and not for a SMS.


The approach taken is of an integrated management system that is applicable to all organisations in the field of aviation. The implementing rules will establish further details on this, tailoring the management system to the needs of different types of organisation


Appendix A - Attachments


 [ICAO Doc 9426_p3_1ed.pdf](#)
Attachment #1 to comment [#33](#)

 [ICAO Doc 7192 - Nov2006 Update Clear Final.pdf](#)
Attachment #2 to comment [#33](#)

 [ETF answer NPA 2007-16 180108.pdf](#)
Attachment #4 to comment [#985](#)

 [Comments on EASA NPA 2007-16 of the DG CAA of the Republic of Bulgaria.pdf](#)
Attachment #5 to comment [#1132](#)

 [ICAO Doc 7192 - ATSEP Training Manual - Nov2006 - First Amendment included.pdf](#)
Attachment #6 to comment [#265](#)

 [comments.pdf](#)
Attachment #7 to comment [#1371](#)

INVENTORY OF ANSWERS

to the consultation document on the basic principles and essential requirements for the safety and interoperability regulation of air traffic management and air navigation services

Question 1

The Agency is interested to know whether stakeholders consider that deciding on the concepts of operations is a governmental function or that of air traffic control service providers.

Comment number	From	Nature
0025	Estonia Civil Aviation Administration	<p>These stakeholders broadly support that deciding on the concept of operations is a governmental function. Following aspects are as well emphasized;</p> <ul style="list-style-type: none"> • Concept of operations should be consulted first with the service provider • Separation between service provider and regulatory functions is vital • NSA should operate in accordance with European strategic plans for safety
0041	Charles-André QUESNEL	
0061	KLM	
0099	EUROCOPTER	
0100	City-Airport Mannheim	
0109	IDRF Association of regional aerodromes	
0313	Airport Eberswalde-Finow	
0362	KEL	
0397	AEA	
0440	Allgäu Airport GmbH & Co.KG	
0458	ETF	
0536	Hessische Flugplatz GmbH Egelsbach	
0706	Flughafen Braunschweig-Wolfsburg GmbH	
0896	MGL	
0935	skyguide	
0949	ATKINS	
1005	Adolf Würth Airport, EDTY	
1037	Ministry of Transport and Communications, Norway	
1047	Susanne Lanzerstorfer (APAC)	
1062	Civil Aviation Authority Norway	
1097	Flughafen Hof-Plauen	
1106	IAOPA Europe	
1115	DIRCAM (French Ministry of Defense)	
1160	MeteoSwiss	
1172	CAA CZ	
1174	Civil Aviation Office	

	(CAA PL)	
1345	ECOGAS	
1358	UweSchindler Gdf-ATSEP-Section	
1471	President of APTTA	
1482	Aeroclub of Switzerland	
1521	Bayer	
1531	Flugplatz GmbH Eggenfelden	
1553	Verkehrslandeplatz Chemnitz/Jahnsdorf GmbH	
1563	Flughafen Neubrandenburg	
1574	Aero Club Coburg	
1584	Augsburger Flughafen GmbH	
1606	Hellenic Air Traffic Safety Electronic Engineers' Ass.	
1614	Ahlhorn Airport	
1624	Regional Airfield EDVK Kassel-Calden	
1759	EU Permanent Representation of Romania	
0051	BAA	<p>Also these stakeholders broadly support that deciding on the concept of operations is a governmental function at the Community level (SESAR).</p> <ul style="list-style-type: none"> Some of the answers to this question reflect uncertainty about the intended scope of the concept of operations
0088	Dassault Aviation	
0176	FRAPORT AG	
0917	Pedro Vicente Azua from EBAA	
0920	IACA	
0967	ACI EUROPE	
0974	ANACNA	
1240	IFATCA	
1323	Ente Nazionale per l'Aviazione Civile	
0012	Pietro Colucci	
0254	IFSA	<p>These stakeholders broadly support that deciding on the concept of operations is mainly of service provision nature.</p>
0303	IFATSEA	
1109	AOPA Germany	
1199	SERCO (ID COOK)	
1739	Finavia	
1783	EU Permanent Representation of Romania (ROMATSA)	
0122	DSNA	<p>These stakeholders broadly support that deciding on the concept of operations is both a governmental function and of service provision nature.</p> <ul style="list-style-type: none"> Some of the answers to this question reflected some uncertainty about the intended scope of the concept of operations
0210	LFV Group, ANS Division, Sweden	
0221	BCAA	
0352	NATS	
0372	CAA SK	
0467	DGAC-DAST-FR	
0540	CANSO	
0605	UK Department for Transport	

0751	UK CAA & UK MoD	
0993	PANSA	
1127	Airport Operators Association	
1197	Aena	
1201	ATC the Netherlands	
1257	DFS Deutsche Flugsicherung GmbH	
1268	The Finnish CAA	
1281	Ministry of Transport of the Czech Republic	
1372	Walter Gessky	
1416	DGCA-NL	
1497	Swiss Federal Office of Civil Aviation (FOCA)	
1595	LFV Denmark	
1388	FSAI	
1698		
1749	European Transport Worker's Federation	
0051	BAA	These stakeholders found the question unclear or inappropriate and request further work for the definition of the concept of operations or in few cases did not indicate a clear position.
0210	LFV Group (Sweden)	
0509	EUROCONTROL	
1303	Ministry of Transport, Iceland	
1416	DGCA-NL	
1453	Swedish Civil Aviation Authority (Luftfartsstyrelsen)	
1466	International Air Transport Association (IATA)	
1511	Air Traffic Department NSA Hungary	
1648	BMVBS	
1675	Military Aviation Authority Netherlands	

Analysis

The majority of stakeholders considered that it should be governmental function. A substantial amount of commenters found that the concept of operations could be developed at different levels. However, there were evidences from the responses of a significant degree of uncertainty regarding the intended definition of 'concept of operations'.

The wide diversity of responses seems to be a clear indication that the concept of operations is not commonly defined and therefore it can not be regulated.

Question 2

The Agency is interested to know whether stakeholders consider the attached essential requirements as constituting a good basis for the regulation of the safety and interoperability of ATM/ANS. It also welcomes any suggestion to improve these essential requirements.

Comment number	From	Nature
3	VITROCISET	These stakeholders feel that the draft essential requirements are a good basis. However, some of them mention the need for further work.
14	Pietro Colucci	
26	Estonia Civil Aviation Administration	
52, 118	Giulio Martucci	
101	City-Airport Mannheim	
110	IDRF Association of regional aerodromes	
177	Fraport AG	
255	IFSA	
304	IFATSEA	
314	Airport Eberswalde-Finow	
363	KEL	
437	AVINOR	
441	Allgäu Airport GmbH & Co.KG	
459 1750	European Transport Worker's Federation	
536	Hessische Flugplatz GmbH Egelsbach	
608	UK Department for Transport	
709	Flughafen Braunschweig-Wolfsburg GmbH	
908	MGL	
936	skyguide	
968	ACI Europe	
1006	Adolf Würth Airport, EDTY	
1048	Susanne Lanzerstorfer (APAC)	
1075	ANS-MET	
1081	Flughafen Hof-Plauen	
1130	Airport Operators Association	
1162	MeteoSwiss	
1175	Civil Aviation Office	
1258	DFS Deutsche Flugsicherung GmbH	
1522	Bayer	
1532	Flugplatz GmbH Eggenfelden	
1554	Verkehrslandeplatz Chemnitz/Jahnsdorf GmbH	
1564	Flughafen Neubrandenburg	
1575	Aero Club Coburg	

1585	Augsburger Flughafen Gmb	
1615	Ahlhorn Airport	
1625	Regional Airfield EDVK Kassel-Calden	
1760	EU Permanent Representation of Romania	
1784	EU Permanent Representation of Romania (ROMATSA)	
62	KLM	These stakeholders consider that the draft essential requirements are not the correct way to regulate the total ATM concept and request that EASA covers more than safety only.
398	AEA	
921	IACA International Air Carrier Association	
89	Dassault Aviation	These stakeholders consider that the draft essential requirements are not the correct way to regulate ATM safety and request a different approach.
918	Pedro Vicente Azua from EBAA	
1362	ECOGAS	
91	BAA	These stakeholders state that further information is required to evaluate the draft essential requirements.
976	ANACNA	
1241	IFATCA	
1324	Ente Nazionale per l'Aviazione Civile	
1649	BMVBS	
128	DSNA	
211	LFV Group, ANS Division, Sweden	These stakeholders consider that the draft essential requirements are not the correct way to regulate ATM safety, since there is a need for consistency with the current SES regulation.
222	BCAA	
353	NATS	
374	CAA SK	
469	DGAC-DAST-FR	
511	EUROCONTROL	
569	CANSO	
752	UK CAA & UK MoD	
995	PANSA	
1038	Ministry of Transport and Communications, Norway	
1063	Civil Aviation Authority Norway	
1116	DIRCAM (French Ministry of Defense)	
1186	Aena	
1202	ATC The Netherlands	
1269	The Finnish CAA	
1282	Ministry of Transport of the Czech Republic	
1472	President of APTTA	
1512	Air Traffic Department NSA Hungary	
1596	LFV Denmark	
1740	Finavia	
253	ATSEP Belgium	These stakeholders don't answer directly to the question and highlight issues they consider need further discussion
950	ATKINS	
1198	CAA CZ	
1304	Ministry of Transport,	

	Iceland	
1354	Uwe Schindler Gdf-ATSEP-Section	
1374	Walter Gessky	
1417	DGAC NL	
1454	Swedish Civil Aviation Authority (Luftfartsstyrelsen)	
1498	Swiss Federal Office of Civil Aviation (FOCA)	
1676	Military Aviation Authority Netherlands	
1389 1699	FSAI	
1295	European GNSS Supervisory Authority	
1607	Hellenic Air Traffic Safety Electronic Engineers' Association	
		These stakeholders consider that the draft essential requirements are not detailed enough.

Analysis

Most of the stakeholders accepted that the draft essential requirements are an appropriate basis for the extended Basic Regulation. However, almost all of them requested further information and stated that further work is needed on the draft essential requirements. This lack of information has led many competent authorities and service providers to perceive the draft essential requirements as non mature and incompatible with the current SES framework. Many also indicated that there is a clear need to better involve stakeholders in the work to develop the future global approach to ATM regulations in Europe.

Question 3(a)

The Agency is interested to know whether stakeholders consider that ASM is of a regulatory or service provision nature.

Comment number	From	Nature
102	City-Airport Mannheim	<p>These stakeholders consider that ASM is a regulatory function.</p> <p>Some of them expressed an opinion that ASM is a State regulatory responsibility linked to sovereignty.</p> <p>One stakeholder felt that insufficient time was given for a question of this complexity.</p>
111	IDRF Association of regional aerodromes	
315	Airport Eberswalde-Finow	
354	NATS	
364	KEL	
410	Royal Norwegian Ministry of Defence	
442	Allgäu Airport GmbH & Co.KG	
536	Hessische Flugplatz GmbH Egelsbach	
710	Flughafen Braunschweig-Wolfsburg GmbH	
909	MGL	
1007	Adolf Würth Airport, EDTY	
1039	Ministry of Transport and Communications, Norway	
1049	Susanne Lanzerstorfer (APAC)	
1064	Civil Aviation Authority Norway	
1083	Flughafen Hof-Plauen	
1107	IAOPA Europe	
1118	DIRCAM (French Ministry of Defense)	
1131	Airports Operators Association	
1283	Ministry of Transport of the Czech Republic	
1327	Ente Nazionale per l'Aviazione Civile	
1418	DGAC NL	
1523	Bayer	
1533	Flugplatz GmbH Eggenfelden	
1555	Verkehrslandeplatz Chemnitz/Jahnsdorf GmbH	
1565	Flughafen Neubrandenburg	
1576	Aero Club Coburg	
1586	Augsburger Flughafen GmbH	
1616	Alhorn Airport	
1626	Regional Airfield EDVK Kassel-Calden	
1677	Military Aviation	

	Authority Netherlands	
4	VITROCISET	These stakeholders consider that ASM is a function of service provision.
11	Pietro Colucci	
27	Estonia Civil Aviation Administration	
64	KLM	
93	BAA	
183	Fraport AG	
256	IFSA	
400	AEA	
922	IACA International Air Carrier Association	
937	skyguide	
971	ACI Europe	
1166	AOPA Germany	
1259	DFS Deutsche Flugsicherung GmbH	
1366	ECOGAS	
1390 1700	FSAI	
1455	Swedish Civil Aviation Authority (Luftfartsstyrelsen)	
1473	President of APTTA	
1608	Hellenic Air Traffic Safety Electronic Engineers' Association	
1785	EU Permanent Representation of Romania	
42	Charles-André QUESNEL	These stakeholders are of the opinion that ASM comprises both regulatory and service provision functions.
129	DSNA	
212	LFV Group, ANS Division, Sweden	
223	Bulgaria CAA	
305	IFATSEA	
375	CAA SK	
460, 1751	European Transport Worker's Federation	
470	DGAC-DAST-FR	
589	CANSO	
647	UK Department for Transport	
762	UK CAA & UK MoD	
947, 952	ATKINS	
997	PANSA	
1177	Civil Aviation Office	
1188	AENA	
1203	ATC The Netherlands	
1270	The Finnish CAA	
1305	Ministry of Transport, Iceland	
1376	Walter Gessky	
1486	Aeroclub of Switzerland	
1499	Swiss Federal Office of Civil Aviation (FOCA)	
1597	LFV Denmark	
1650	BMVBS	

1741	Finavia	
1761	EU Permanent Representation of Romania (ROMATSA)	
512	EUROCONTROL	These stakeholders felt that question had no direct relevance to this task. Nevertheless, they considered ASM comprises both regulatory and service provision functions.
1513	Air Traffic Department NSA Hungary	
977	ANACNA	These stakeholders think that the lack of definition makes the question unclear.
1242	IFATCA	

Analysis

Stakeholder responses were very diverse in their nature with a broadly even distribution between ASM as a regulatory activity, service provision activity or encompassing both. (A small numerical bias toward one preference mainly reflects a number of similar responses from a group of aerodromes in one country.) The general view of States was that ASM includes aspects of regulatory function.

This diversity probably reflected a lack of common understanding of the precise nature of ASM. However, the responses tend to suggest common agreement that ASM embraces both regulatory and service provision aspects by virtue of the presence of strategic, pre-tactical and tactical elements. Moreover, certain of these elements may relate to areas, which require State regulatory activity in the context of national sovereignty over airspace. This complex situation will need to be resolved in further work.

Question 3(b)

The Agency is interested to know whether stakeholders consider that ATFM is of a regulatory or service provision nature

Comment number	From	Nature
102	City-Airport Mannheim	These stakeholders consider that ATFM is a regulatory function.
111	IDRF ASSOCIATION OF REGIONAL AERODROMES	
315	Airport Eberswalde-Finow	
354	NATS	
364	KEL	
442	Allgau Airport GmbH & Co.KG	
536	Hessische Flugplatz GmbH Egelsbach	
710	Flughafen Braunschweig-Wolfsburg	
909	MGL	
1007	Adolf Wurth Airport	
1049	APAC	
1083	Flughafen Hof-Plauen	
1107	IAOPA Europe	
1118	DIRCAM France	
1523	Bayer	
1533	Flugplatz Eggenfelden	
1555	Flugplatz Chemnitz	
1565	Flughafen Neubrandenburg	
1576	Aero Club Coburg	
1586	Augsburger Flughafen	
1616	Alhorn Airport	
1626	Airfield Kassel-Calden	
1650	BMVBS	
4	VITROCISSET	These stakeholders consider that ATFM is a function of service provision.
11	Pietro Colucci	
27	Estonia CAA	
64	KLM	
93	BAA	
183	Fraport AG	
223	Bulgarian CAA	
256	IFSA	
375	CAA SK	
400	AEA	
922	IACA	
937	skyguide	
971	ACI Europe	
1131	Airports Operators Association	
1166	AOPA Germany	

1259	DFS	
1283	CAA CZ	
1305	MoT Iceland	
1366	ECOGAS	
1390 1700	FSAI	
1455	CAA Sweden	
1473	President of APTTA	
1486	RM	
1597	LFV Denmark	
1608	Hellenic Air Traffic Safety Electronic Engineers' Association	
1785	EU Permanent Representation of Romania	
42	C-A Quesnel	These stakeholders are of the opinion that ATFM comprises both regulatory and service provision functions.
129	DSNA	
212	LFV, Sweden	
305	IFATSEA	
460 1751	ETF	
470	DGAC-DAST	
589	CANSO	
647	UK DoT	
762	UK CAA & UK MoD	
947, 952	ATKINS	
997	PANSA	
1039	Ministry of Transport and Communications, Norway	
1064	CAA Norway	
1188	AENA	
1203	ATC The Netherlands	
1270	CAA Finland	
1327	ENAC	
1376	Walter Gessky	
1418	DGCA NL	
1499	FOCA	
1677	Military Aviation Authority NL	
1741	Finavia	
1761	EU Permanent Representation of Romania	
512	EUROCONTROL	These stakeholders felt that question had no direct relevance to this task. Nevertheless, they considered ATFM comprises both regulatory and service provision functions.
1513	Air Traffic Department NSA Hungary	
977	ANACNA	These stakeholders think that the lack of definition makes the question unclear.
1242	IFATCA	

Analysis

Stakeholder responses, as is in 3(a), were diverse in their nature with a broadly even distribution between ATFM as a regulatory activity, service provision activity or encompassing

both. Compared to 3(a), the service provision nature in ATFM was clearly more emphasized. (This tendency would be even much clearer without a number of identical responses from a group of aerodromes in one specific country.) Only one State saw that ATFM is purely of a regulatory nature.

This diversity here again probably reflects a lack of common understanding of the precise nature of ATFM. This complex situation will need to be resolved in further work.

Question 4

The Agency is interested to know whether stakeholders consider that the definition of systems and components used in the context of the European Air Traffic Management Network appropriately specifies those, which need to be subject to the extended Basic Regulation?

Comment number	From	Nature
0103	City-Airport Mannheim	These stakeholders broadly support that the definition of system and components discussed by EUROCONTROL Conformity Assessment Task Force (CATF) is still under discussion and therefore not definitive answer can be provided at this stage.
0112	IDRF Association of regional aerodromes	
0316	Airport Eberswalde-Finow	
0355	NATS	
0365	KEL	
0443	Allgäu Airport GmbH & Co.KG	
0536	Hessische Flugplatz GmbH Egelsbach	
0711	Flughafen Braunschweig-Wolfsburg GmbH	
0910	MGL	
1008	Adolf Würth Airport, EDTY	
1050	Susanne Lanzerstorfer	
1084	Flughafen Hof-Plauen	
1098	BFAL	
1524	Bayer	
1534	Flugplatz GmbH Eggenfelden	
1556	Verkehrslandeplatz Chemnitz/Jahnsdorf GmbH	
1567	Flughafen Neubrandenburg	
1577	Aero Club Coburg	
1587	Augsburger Flughafen GmbH	
1617	Ahlhorn Airport	
1627	Regional Airfield EDVK Kassel-Calden	
0186	FRAPORT AG	These stakeholders support that the definition provided by the interoperability regulation 552/2004 is sufficient. <ul style="list-style-type: none"> • Some of these consider that it should not be part of the extended basic regulation • Few consider that duplication between 552/2004 and 2096/2005 should be avoided • Safety regulation should assign performance levels based of the airspace needs and the availability of back-up system • Some of these considered that it should be part of the extended basic regulation • The question has not direct impact on the
0213	LFV Group, ANS Division, Sweden	
0451	Avinor	
0513	EUROCONTROL	
0600	CANSO	
0972	ACI EUROPE	
0998	PANSA	
1040	Ministry of Transport and Communications, Norway	
1065	Civil Aviation Authority Norway	
1189	Aena	

1204	ATC The Netherlands	<p>extension of EASA remit</p> <ul style="list-style-type: none"> Extended basic regulation must focus on the safety aspect and not interference on the interoperability Some question the use of the term 'fit for purpose' in ER's Few indicate that there is a problem with the EC declarations 	
1260	DFS Deutsche Flugsicherung GmbH		
1328	Ente Nazionale per l'Aviazione Civile		
1369	ECOGAS		
1419	DGCA-NL		
1456	Swedish Civil Aviation Authority (Luftfartsstyrelsen)		
1474	President of APTTA		
1514	Air Traffic Department NSA Hungary		
1598	LFV Denmark		
1651	BMVBS		
1678	Military Aviation Authority Netherlands		
0224	BCAA		<p>These stakeholders do not want double definitions.</p> <ul style="list-style-type: none"> No duplication of conformity assessment process Clarification should be provided GM Precise definition needed but not in the Basic Regulation Worldwide uniformity is important for safety
0257	IFSA		
0376	CAA SK		
1271	The Finnish CAA		
0130	DSNA		
1119	DIRCAM (French Ministry of Defense)		
1284	Ministry of Transport of the Czech Republic		
1609	Hellenic Air Traffic Safety Electronic Engineers' Ass.		
0005	VITROCISSET	<p>These stakeholders support that the definition should be part of the extended Basic Regulation</p> <ul style="list-style-type: none"> Taking into account SESAR and already existing regulations (552/2004) Existing definitions are not appropriate Double definitions should be avoided Power supply should be specifically included 	
0016	Pietro Colucci		
0257	IFSA		
0306	IFATSEA		
0938	skyguide		
1178	Civil Aviation Office		
1377	Walter Gessky		
1391	FSAI		
1701			
1609	Hellenic Air Traffic Safety Electronic Engineers' Ass.		
1752	European Transport Worker's Federation		
1762	EU Permanent Representation of Romania		
0065	KLM		<p>Theses stakeholders support a total system approach including all aspect</p> <ul style="list-style-type: none"> Existing definitions are inadequate Over regulation must be avoided Should be included in the Basic Regulation
0355	NATS		
0403	AEA		
0923	IACA International Air Carrier Association		
0953	ATKINS		
0978	ANACNA		
1018	European Space Agency		
1243	IFATCA		
1306	Ministry of Transport, Iceland		

1487	Aeroclub of Switzerland	<p>These stakeholders did not indicate a clear position.</p> <ul style="list-style-type: none"> • Power supply in the definition • Clear list of systems and responsibilities to be identified • Power Supply safety assessment in the Basic Regulation • Same process may not be applicable to ATC suppliers • Clarification of what EASA means is needed • The extended Basic Regulations is not required
0015	Pietro Colucci	
0033	MATTA	
0094	BAA	
0232	MATTA	
0663	UK Department for Transport	
0766	UK CAA & UK MoD	
1135	Airport Operators Association	
1500	Swiss Federal Office of Civil Aviation (FOCA)	
1742	Finavia	
1786	EU Permanent Representation of Romania	

Analysis

In general answers to the question were not always very clear. Many stakeholders supported existing definitions in the Regulation 552/2004 and did not want double definitions. These views were however divided between those requesting clear distinction between safety and interoperability and those concluding that the extended Basic Regulation should not cover systems at all. Many stakeholders indicated that they can not answer because discussions are still going on in the EUROCONTROL CATF. Many stakeholders also wanted total system approach and harmonization with the existing regulations

Question 5

The Agency is interested to know whether stakeholders consider that regulating organisation involved in the design, manufacture and maintenance of safety critical systems and constituents, as well as those involved in the verification of conformity, should be required to demonstrate their capability so as to alleviate the responsibility of their operators?

Comment number	From	Nature
0001	Carmine Pezzella	<p>These stakeholders support that design, manufacturing and maintenance organisations should be separated and regulated in different scheme. Some emphasize following issues;</p> <ul style="list-style-type: none"> • Might be acceptable but further analysis is needed • The certification process should be adapted to the ground bases and not apply just the one used in airworthiness for aircraft certification • To use the same principle that are used for airworthiness • Avoid over-regulation • Light regulation • System integration should remain with the ANSP • Complemented with an ATSEP license • Strong oversight
0006	VITROCISSET	
0017	Pietro Colucci	
0028	Estonia Civil Aviation Administration	
0043	Charles-André QUESNEL	
0104	City-Airport Mannheim	
0113	IDRF Association of regional aerodromes	
0189	FRAPORT AG	
0225	BCAA	
0259	IFSA	
0317	Airport Eberswalde-Finow	
0356	NATS	
0444	Allgäu Airport GmbH & Co.KG	
0536	Hessische Flugplatz GmbH Egelsbach	
0712	Flughafen Braunschweig-Wolfsburg GmbH	
0911	MGL	
0924	IACA International Air Carrier Association	
0939	skyguide	
0955	ATKINS	
0973	ACI EUROPE	
0980	ANACNA	
1009	Adolf Würth Airport, EDTY	
1019	European Space Agency	
1051	Susanne Lanzerstorfer	
1086	Flughafen Hof-Plauen	
1099	BFAL	
1136	Airport Operators Association	
1179	Civil Aviation Office	
1211	CAA CZ	
1244	IFATCA	

1285	Ministry of Transport of the Czech Republic	
1296	European GNSS Supervisory Authority	
1307	Ministry of Transport, Iceland	
1373	ECOGAS	
1379	Walter Gessky	
1392	FSAI	
1702		
1404	UweSchindler Gdf-ATSEP-Section	
1457	Swedish Civil Aviation Authority (Luftfartsstyrelsen)	
1502	Swiss Federal Office of Civil Aviation (FOCA)	
1525	Bayer	
1535	Flugplatz GmbH Eggenfelden	
1557	Verkehrslandeplatz Chemnitz/Jahnsdorf GmbH	
1568	Flughafen Neubrandenburg	
1578	Aero Club Coburg	
1588	Augsburger Flughafen GmbH	
1618	Ahlhorn Airport	
1628	Regional Airfield EDVK Kassel-Calden	
1753	European Transport Worker's Federation	
1787	EU Permanent Representation of Romania	
0131	DSNA	<p>These stakeholders believe that design, manufacturing and maintenance organisations should be covered in SES regulations which is considered to be sufficient (552/2004) with such remarks as follows;</p> <ul style="list-style-type: none"> • Further clarification of the scope would be needed as the current scheme seems to be disproportionate for ATM • No separation (ANSP has the prime responsible) • No regulation for design and trust the notified body • + The link of declaration with a kind of certification
0214	LFV Group, ANS Division, Sweden	
0471	DGAC-DAST-FR	
0514	EUROCONTROL	
0626	CANSO	
0678	UK Department for Transport	
0778	UK CAA & UK MoD	
0999	PANSA	
1041	Ministry of Transport and Communications Norway	
1066	Civil Aviation Authority Norway	
1120	DIRCAM (French Ministry of Defense)	

1205	ATC The Netherlands	
1261	DFS Deutsche Flugsicherung GmbH	
1331	Ente Nazionale per l'Aviazione Civile	
1420	DGCA-NL	
1515	Air Traffic Department NSA Hungary	
1599	LFV Denmark	
1679	Military Aviation Authority Netherlands	
1743	Finavia	
1763	EU Permanent Representation of Romania	
0307	IFATSEA	These stakeholders do not want any separate certification scheme.
0506	BAA	
1251	IFATCA	
1279	IDCOOK	
1488	Aeroclub of Switzerland	
0067	KLM	These stakeholders did not indicate a clear position. <ul style="list-style-type: none"> • Further analysis is needed • Need to solve the quality control with ATSEP licensing and not regulation
0366	KEL	
0377	CAA SK	
0378	CAA SK	
0408	AEA	
1190	Aena	
1272	The Finnish CAA	
1475	President of APTTA	
1610	Hellenic Air Traffic Safety Electronic Engineers' Ass.	
1652	BMVBS	

Analysis

As a whole, answers to the question were not always very clear. Most of the stakeholders saw it necessary to split up the responsibilities between different organizations (design, manufacturing, operation and maintenance). However, some of them saw that SES regulations already would sufficiently do so. Especially those who have already invested in showing compliance with the existing regulations felt that a change will not be appropriated. They would need further explanation about what it is meant by safety critical systems within ATM/ANS field prior being able to provide a clear answer to the question.

Question 6:

The Agency is interested to know whether stakeholders consider that the provision of certain services should not be subject to certification. In such case, what would be these services?

Comment number	From	Nature
29	Estonia CAA	These stakeholders state that all services should be certified as in existing SES rules.
215	LFV group	
308	IFATSEA	
461,1754	ETF	
515	Eurocontrol	
645	CANSO	
956	ATKINS	
1000	PANSA	
1181	Civil Aviation Office	
1191	AENA	
1206	ATC The Netherlands	
1212	CAA CZ	
1273	Finnish CAA	
1286	Ministry of Transport CZ	
1382	Walter Gessky	
1393 1703	FSAI	
1405	UweSchindler Gdf-ATSEP-Section	
1476	President of APPTA	
1516	Air Traffic Department NSA Hungary	
1600	LFV Denmark	
1611	Hellenic Air Traffic safety Engineers Association	
1653	BMVBS	
1788	EU Permanent Representation of Romania	
18	Pietro Colucci	These stakeholders are also of the opinion that all services should be certified. Furthermore, they indicate that proportionality or the level of risk could be considered at the level of implementing rules.
44	Charles Andre Quesnel	
162	DSNA	
260	IFSA	
318	Airport Eberswalde-Finow	
445	Allgäu Airport GmbH & Co.KG	
472	DGAC-DAST-FR	
940	skyguide	
982	ANACNA	
1052	Susanne Lanzerstorfer	
1122	DIRCAM (French Ministry of Defense)	
1245	IFATCA	
1251		
1262	DFS Deutsche	

	Flugsicherung GmbH		
1421	DFS GmbH		
1458	DGCA NL		
1504	Swedish CAA		
1526	Swiss Federal Office of Civil Aviation		
1619	Ahlhorn Airport		
1680	Military Aviation Authority NL		
1744	Finavia		
1764	EU Permanent Representation of Romania		
226	BCAA		
357	NATS	<p>These stakeholders state that certain services could be excluded from certification provided that they continue to be subject to common safety rules and safety oversight. Such services indicated by stakeholders are:</p> <ul style="list-style-type: none"> - AFIS - AIS - small, low risk or low traffic service providers - non safety critical services 	
379	CAA-SK		
703	UK Department for Transport		
797	UK CAA & UK MoD		
1042	Ministry of Transport & Communications Norway		
1068	CAA Norway		
1108	IAOPA Europe		
1137	Airport Operators Association		
1332	ENAC Italy		
1489	RM		
105	City-Airport Mannheim		
114	IDRF Association of regional aerodromes		<p>These stakeholders are also of the opinion that all services should be certified and they indicate that proportionality or the level of risk could be considered at the level of implementing rules. Furthermore, they suggest that AFIS, apron management or less critical services should be part of the aerodrome certification.</p>
191	FRAPORT AG		
367	KEL		
505	BAA		
536	Hessische Flugplatz GmbH Egelsbach		
713	Flughafen Braunschweig-Wolfsburg GmbH		
912	MGL		
975	ACI Europe		
1010	Adolph Würth Airport		
1087	Flughafen Hof-Plauen		
1100	BFAL		
1536	Flugplatz Eggenfelden		
1558	Verkehrs Landep Chemnitz		
1569	Flughafen Neubrandenburg		
1579	Aero Club Coburg		
1589	Augsburger Flughafen		
1629	Regional Airfield EDVK Kassen-Calden		
68	KLM	<p>These stakeholders are of the opinion that all services should be certified where a contestable market exists.</p>	
412	AEA		
925	IACA		

1076	ANS-MET	This stakeholder is of the opinion that aeronautical and meteorological information provision should be regulated.
1163	MeteoSwiss	This stakeholder is of the opinion that MET services should always be certified.
1397	ECOGAS	This stakeholder is of the opinion that any optional requirements related to operator approval or to the use of specific airspace should not be certified.

Analysis

As a main conclusion a significant majority of the opinions considered that, as a starting point, all services should be subject to certification, as is already established by SES rules. Importantly however, a large proportion of this majority also considered that for certain services, proportionality or the level of risk should be utilised at the level of implementing rules. Furthermore, several informed views indicated that certain low-risk services could be excluded from certification. In addition, several airports primarily from one state, suggested that AFIS, apron management and less critical services should regulated under aerodrome certification. Few stakeholders also suggested that certification should occur only where a contestable market exists.

Question 7

The Agency would be interested to know stakeholders views as regards the possibility for ATM/ANS service providers to be entitled to operate several services and/or operating units under a single certificate.

Comment number	From	Nature
19	Pietro Colucci	These stakeholders agree that service providers should be issued a single certificate, which would entitle them to operate several services and/or operating units.
30	Estonia Civil Aviation Administration	
69	KLM	
95	BAA	
106	City-Airport Mannheim	
115	IDRF Association of regional aerodromes	
132	DSNA	
192	FRAPORT AG	
261	IFSA	
309	IFATSEA	
319	Airport Eberswalde-Finow	
368	KEL	
413	AEA	
446	Allgäu Airport GmbH & Co.KG	
462 1755	ETF	
473	DGAC-DAST-FR	
536	Hessische Flugplatz GmbH Egelsbach	
714	Flughafen Braunschweig-Wolfsburg GmbH	
913	MGL	
926	IACA International Air Carrier Association	
979	ACI EUROPE	
983	ANACNA	
1011 1012	Adolf Würth Airport, EDTY	
1043	Ministry of Transport and Communications, Norway	
1053	Susanne Lanzerstorfer	
1069	Civil Aviation Authority Norway	
1088	Flughafen Hof-Plauen	
1101	BFAL	
1138	Airport Operators Association	
1246	IFATCA	
1263	DFS Deutsche	

1264	Flugsicherung GmbH	
1308 1309	Ministry of Transport, Iceland	
1333	Ente Nazionale per l'Aviazione Civile	
1394 1704	FSAI	
1406	UweSchindler Gdf- ATSEP-Section	
1490 1491	Aeroclub of Switzerland	
1527	Bayer	
1537	Flugplatz GmbH Eggenfelden	
1559	Verkehrslandeplatz Chemnitz/Jahnsdorf GmbH	
1570	Flughafen Neubrandenburg	
1580	Aero Club Coburg	
1590	Augsburger Flughafen GmbH	
1620	Ahlhorn Airport	
1630	Regional Airfield EDVK Kassel-Calden	
1745	Finavia	
1765	EU Permanent Representation of Romania	
1789	EU Permanent Representation of Romania	
46	Charles-André QUESNEL	
216	LFV Group, ANS Division, Sweden	
662	CANSO	
957	ATKINS	
1001	PANSA	
1383	Walter Gessky	
1399	ECOGAS	
1251	IFATCA	
704	UK Department for Transport	These stakeholders agree with the principle of a single certificate but feel that entitlement for operating units to provide services at the local level should be subject to a State designation process.
799	UK CAA & UK MoD	
1182	Civil Aviation Office	
227	BCAA	These stakeholders feel that this issue is already covered by existing SES rules.
380	CAA SK	
516	EUROCONTROL	
1123	DIRCAM (French Ministry of Defense)	
1192	Aena	
1207	ATC The Netherlands	
1274	The Finnish CAA	

1287	Ministry of Transport of the Czech Republic	
1422	DGCA-NL	
1459	Swedish Civil Aviation Authority (Luftfartsstyrelsen)	
1517	Air Traffic Department NSA Hungary	
1601	LFV Denmark	
1654	BMVBS	
1681	Military Aviation Authority Netherlands	
941	skyguide	These stakeholders feel that a single certificate would be inappropriate.
1505	Swiss Federal Office of Civil Aviation (FOCA)	
358	NATS	Fully support this position (NB this is the current position with respect to certification and designation).

Analysis

The vast majority of stakeholders supported the notion of a single certificate. A large number of stakeholders, mainly State authorities, also qualified this with reference to existing SES certification and designation arrangements. Also following issues were emphasized by many stakeholders; role of the NSA in the certification process, need to cover in the certificate all the services entitled to provide and service provision in more than one States.

Question 8:

The Agency would be interested to know whether stakeholders consider appropriate to require the Agency to certify pan-European ANS/ATM service providers. In such a case what should be the criteria to define the pan-European nature of the service?

Comment number	From	Nature
31	Estonia Civil Aviation Administration	These stakeholders feel that EASA should certify pan-European ANS/ATM service providers. One of them emphasize that this should be conducted in co-operation with national authorities.
262	IFSA	
927	IACA International Air Carrier Association	
1193	Aena	
1400	ECOGAS	
1492	Aeroclub of Switzerland	
1655	BMVBS	
1756	European Transport Worker's Federation	
1766	EU Permanent Representation of Romania	
7	VITROCISSET	These stakeholders feel that EASA should certify pan-European ANS/ATM service providers where designation is not required.
20	Pietro Colucci	
959	ATKINS	
961		
1020	European Space Agency	
47	Charles-André QUESNEL	These stakeholders agree that EASA could certify certain pan-European ANS/ASTM service providers subject to certain conditions. Most of these stakeholders think that these services subject to EASA certification should be clearly defined. Some of them specify this further saying that this should be defined in Comitology. Many of these stakeholders state that these services should be only those of true pan-European nature, such as EGNOS, GALILEO, CFMU, EADS, etc. Some of them also emphasize that EASA certification competence is restricted to safety whereas the overall certification requirement is broader. Few of these stakeholders assume that these services should also be qualified as serving a contestable market.
70	KLM	
133	DSNA	
228	BCAA	
359	NATS	
381	CAA SK	
415	AEA	
474	DGAC-DAST-FR	
986	ANACNA	
1044	Ministry of Transport and Communications, Norway	
1070	Civil Aviation Authority Norway	
1124	DIRCAM (French Ministry of Defense)	
1140	Airport Operators Association	
1184	Civil Aviation Office	
1213	CAA CZ	
1247	IFATCA	
1265	DFS Deutsche Flugsicherung GmbH	
1288	Ministry of Transport of the Czech Republic	
1297	European GNSS Supervisory Authority	
1310	Ministry of Transport, Iceland	

1334	Ente Nazionale per l'Aviazione Civile		
1395 1705	FSAI		
715	UK Department for Transport	These stakeholders agree that EASA could certify certain pan-European ANS/ASTM service providers subject to certain conditions.	
802	UK CAA & UK MoD		
1208	ATC The Netherlands		
1423	DGCA-NL		
1506	Swiss Federal Office of Civil Aviation (FOCA)		
1602	LFV Denmark		
1682	Military Aviation Authority Netherlands		
208	FRAPORT AG		These stakeholders state that these services should be only those of true pan-European nature, such as EGNOS, GALILEO, CFMU, EADS, etc.
310	IFATSEA		
518	EUROCONTROL		
984	ACI EUROPE		
1275	The Finnish CAA		
1518	Air Traffic Department NSA Hungary		
1790	EU Permanent Representation of Romania		
217	LFV Group, ANS Division, Sweden	Some of them feel that certification of all\other ANSP's should be undertaken by the NSA, where the ANSP has its principal place of operation.	
673	CANSO		
1002	PANSA		
942	skyguide	These stakeholders in principle agree to a centralised certification activity by EASA, but also refer to current SES arrangements involving NSA's.	
1077	ANS-MET		
1746	Finavia		
96	BAA		
107	City-Airport Mannheim		
116	IDRF Association of regional aerodromes		
320	Airport Eberswalde-Finow		
369	KEL		
447	Allgäu Airport GmbH & Co.KG	These stakeholders seem to agree with the proposal subject to clear definitions and clear distinction between certification and designation.	
536	Hessische Flugplatz GmbH Egelsbach		
716	Flughafen Braunschweig-Wolfsburg GmbH		
914	MGL		
1013	Adolf Würth Airport, EDTY		
1055	Susanne Lanzerstorfer		
1092	Flughafen Hof-Plauen		
1102	BFAL		
1251	IFATCA		
1384	Walter Gessky		
1460	Swedish Civil Aviation Authority		
942	skyguide		These stakeholders do not express a discernibly clear opinion.
1077	ANS-MET		
1746	Finavia		
96	BAA		These stakeholders do not agree of such a role being given to EASA.
107	City-Airport Mannheim		
116	IDRF Association of regional aerodromes		
320	Airport Eberswalde-Finow		
369	KEL		
447	Allgäu Airport GmbH & Co.KG		
536	Hessische Flugplatz GmbH Egelsbach		
716	Flughafen Braunschweig-Wolfsburg GmbH		
914	MGL		
1013	Adolf Würth Airport, EDTY		
1055	Susanne Lanzerstorfer		
1092	Flughafen Hof-Plauen		
1102	BFAL		
1251	IFATCA		
1384	Walter Gessky		
1460	Swedish Civil Aviation Authority		

	(Luftfartsstyrelsen)	
1528	Bayer	
1538	Flugplatz GmbH Eggenfelden	
1560	Verkehrslandeplatz Chemnitz/Jahnsdorf GmbH	
1571	Flughafen Neubrandenburg	
1581	Aero Club Coburg	
1591	Augsburger Flughafen GmbH	
1621	Ahlhorn Airport	
1631	Regional Airfield EDVK Kassel-Calden	

Analysis

A clear majority of the stakeholders supported the proposed role of EASA in being the certifying body regarding providers of pan-European services.

Most of the stakeholders saw that these services had to be clearly defined and many felt that they should be limited to those of true pan-European nature, excluding cross-boarder ATS provision. A large number of stakeholders also emphasized the need for further clarification of the modalities related to such certification scheme. Those stakeholders objecting the proposed certification scheme mainly represented regional aerodromes from one Member State. Also one Member State objected.

Question 9

The Agency is interested to know whether stakeholders consider that the certification of some service providers involved in less sensitive services could be performed by assessment bodies. In such a case, should the Agency also be also empowered for the accreditation of such assessment bodies?

Comment number	From	Nature
0071	KLM	<p>These stakeholders support that certification of services provider could be done by assessment bodies and EASA should be empowered for accreditation of such assessment bodies</p> <ul style="list-style-type: none"> • Is they are more efficient than NSA and there is not additional cost associated • There is a need for clear certification criteria and clear definition of ' less sensitive services' • The accreditation by the Agency in case of certification tasks that should be carried by all Members States. By the Agency at European level and by NSA at the national level (2)
0097	BAA	
0108	IDRF Association of regional aerodromes	
0218	LFV Group, ANS Division, Sweden	
0321	Airport Eberswalde-Finow	
0360	NATS	
0370	KEL	
0416	AEA	
0448	Allgau Airport GmbH &Co.KG	
0456	Avinor	
0536	Hessische Flugplatz GmbH Egelsbach	
0679	CANSO	
0719	Flughafen Braunschweig-Wolfsburg GmbH	
0915	MGL	
1002	PANSA	
1014	Adolf Wurth Airport	
1015	EDTY	
1056	APAC	
1093	Flughafen Hof-Plauen	
1103	BFAL	
1141	Airport Operators Association	
1164	MeteoSwissS	
1186	Civil Aviation Office	
1266	DFS Deutsche FlugsicherungS GmbHS	
1276	The Finnish CAA	
1311	Ministry of Transport, Iceland	
1401	ECOGAS	
1529	Bayer	
1530	Flugplatz GmbH Eggenfelden	
1561	Verkehrslandep Chemnitz/Jahn GmbH	
1572	Flughafe Neubrandenbu	
1582	Aero Club Coburg	
1592	Augsburger Flughafen	

	GmbH		
1622	Ahlhorn Airport		
1632	Regional Airfield EDVK Kassel-Calden		
1791	EU Permanent Representation of Romania		
0229	BCAA		
0382	CAA SK	<p>These stakeholders support that certification of services provider could be done by assessment bodies but following SES philosophy. Accreditation by NSA.</p> <ul style="list-style-type: none"> • Further depth analysis is needed • The accreditation by NSA when services are carried out only in one Member State • The Agency may also accrediting such bodies 	
0987	ACI Europe		
1195	AENA		
1289	Ministry of Transport of Czech Republic		
1385	Walter Gessky		
1493	RM (Aero-Club of Switzerland)		
1507	FOCA		
1603	LFV Denmark		
0048	Charles- Andre QUESNEL		<p>These stakeholders do not support that certification of services provider is done by assessment bodies</p> <ul style="list-style-type: none"> • Many consider that these certification tasks maybe done by recognised organization under contract with NSA • Others consider that all certification tasks should be carried out by EASA. Total system approach • Harmonisation across the EU will be not ensured
0163	DSNA		
0311	IFATSEA		
0463	ETF		
1757			
0475	DGAC-DAST-FR		
0519	EUROCONTROL		
0718	UK Department of Transport		
0804	UKCAA & UK MoD		
0928	IACA		
0962	ATKINS		
0988	ANACNA		
1045	Ministry of transport and communication of Norway		
1071	Civil Aviation Authority Norway		
1125	DIRCAM (French Ministry of Defense)		
1248	IFATCA		
1335	ENAC		
1407	UweSchindler Gdf- ATSEP-Section		
1461	Swedish Civil Aviation Authority		
1477	President of APTTA		
1767	EU Permanent Representation of Romania		
0195	FRAPORT AG	<p>These stakeholders did not indicate a clear position.</p> <ul style="list-style-type: none"> • There is a need for clarification of the meaning of ' less sensitive services' 	
0943	skyguide		
1396	FSAI		
1706			
1424	DGAC-NL		
1519	Air Traffic Department NSA Hungary		

1612	Hellenic Air Traffic Safety Electronic Engineers' Association	
1656	BMVBS	
1683	Military Aviation Authority Netherlands	
1747	Finavia	

Analysis

A clear majority of the stakeholders were in favour of having assessment bodies for certain certification activities. Most of them also considered that the accreditations of such assessment bodies could also be given to the Agency. However, a significant group of stakeholder did not support assessment bodies performing certification of certain activities. Some of them consider that certain certification activities could be delegated by the NSA, as the possibility already exists in the SES. Many stakeholders asked for a clear definition of 'less sensitive services'.

Question 10

The Agency would be interested to know whether stakeholders consider appropriate to implement separate certification schemes for certain safety critical systems and constituents. If so what should be these systems and constituents

Comment number	From	Nature
0008	VITROCISSET	<p>These stakeholders support that certification scheme should be unique. And apply to systems and constituents</p> <ul style="list-style-type: none"> Grandfathering provisions for existing approvals
0032	Estonia Civil Aviation Administration	
0072	KLM	
0090	Airbus	
0312	IFATSEA	
0361	NATS	
0383	CAA SK	
0417	AEA	
0929	IACA International Air Carrier Association	
0989	ANACNA	
1250	IFATCA	
1408	UweSchindler Gdf-ATSEP-Section	
1462	Swedish Civil Aviation Authority (Luftfartsstyrelsen)	
1478	President of APTTA	
1508	Swiss Federal Office of Civil Aviation (FOCA)	
1613	Hellenic Air Traffic Safety Electronic Engineers' Ass.	
1748	Finavia	
1758	European Transport Worker's Federation	
1768	EU Permanent Representation of Romania	
1792	EU Permanent Representation of Romania	
0021	Pietro Colucci	<p>These stakeholders support that certification scheme should be different.</p> <ul style="list-style-type: none"> Safety critical CNS or ATM Safety critical elements would need to be defined AIS, ATM, MET Further analysis is required To be applied on system distributed over different Member States The provision of ATC by voice and the operation of
0098	BAA	
0263	IFSA	
0944	skyguide	
1021	European Space Agency	
1187	Civil Aviation Office	
1290	Ministry of Transport of the Czech Republic	

1298	European GNSS Supervisory Authority	surveillance
1402	ECOGAS	
0134	DSNA	<p>These stakeholders consider that SES is sufficient (service provision certification + declaration of conformity)</p> <ul style="list-style-type: none"> No different scheme
0219	LFV Group, ANS Division, Sweden	
0476	DGAC-DAST-FR	
0520	EUROCONTROL	
0683	CANSO	
1004	PANSA	
1104	BFAL	
1126	DIRCAM (French Ministry of Defense)	
1196	Aena	
1210	ATC The Netherlands	
1267	DFS Deutsche Flugsicherung GmbH	
1277	The Finnish CAA	
1386	Walter Gessky	
1425	DGCA-NL	
1520	Air Traffic Department Air Traffic Department NSA Hungary	
1684	Military Aviation Authority Netherlands	
0322*	Airport Eberswalde-Finow	
0371*	KEL	
0449*	Allgäu Airport GmbH & Co.KG	
0536	Hessische Flugplatz GmbH Egelsbach	
1016*	Adolf Würth Airport, EDTY	
1096*	Flughafen Hof-Plauen	
1336*	Ente Nazionale per l'Aviazione Civile	
1530	Bayer	
1540	Flugplatz GmbH Eggenfelden	
1562	Verkehrslandeplatz Chemnitz/Jahnsdorf GmbH	
1573	Flughafen Neubrandenburg	
1583	Aero Club Coburg	
1593	Augsburger Flughafen GmbH	
1623	Ahlhorn Airport	
1633	Regional Airfield	

	EDVK Kassel-Calden	
0196	FRAPORT AG	<p>These stakeholders did not indicate a clear position.</p> <ul style="list-style-type: none"> • Further analysis is required • Will assist the agency to identify the systems (airports) • Maybe separate certification scheme
0230	BCAA	
0457	Avinor	
0720	UK Department for Transport	
0806	UK CAA & UK MoD	
0963	ATKINS	
0990	ACI EUROPE	
1046	Ministry of Transport and Communications, Norway	
1072	Civil Aviation Authority Norway	
1142	Airport Operators Association	
1312	Ministry of Transport, Iceland	
1398 1707	FSAI	
1494	Aeroclub of Switzerland	
1604	LFV Denmark	
1657	BMVBS	

Analysis

In general the answers to this question were not very clear. Many stakeholders did not seem to understand well the question and its relationship to the EASA system. The majority of stakeholders did not want a different certification scheme. However, it was not clear from the answers whether this meant supporting EASA certification scheme, in which the applicant shows compliance with the applicable CS and certificate is issued by the Agency to the applicant, or whether they preferred the declaration of compliance to the competent authority, as is the case today within existing SES framework. Many stakeholders would need further analysis to be able to provide a clear position.