



### TERMS OF REFERENCE

<b>Task Nr:</b>	ATM.001(a) & (b)
<b>Issue:</b>	2
<b>Date:</b>	29 September 2010
<b>Regulatory reference and reference documents:</b>	<ul style="list-style-type: none"><li>• Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency<sup>1</sup> as amended by Regulation (EC) No 690/2009<sup>2</sup> and by Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 7 September 2009 amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services and repealing Directive 2006/23/EC.</li><li>• Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky<sup>3</sup> as amended by Regulation (EC) No 1070/2009.</li><li>• Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky<sup>4</sup> as amended by Regulation (EC) No 1070/2009.</li><li>• Commission Regulation (EC) No 2096/2005 of 20 December 2005 laying down common requirements for the provision of air navigation services as amended by Commission Regulation (EC) No 668/2008 of 15 July 2008.</li><li>• Commission Regulation (EC) No 1315/2007 of 8 November 2007 on safety oversight in air traffic management and amending Regulation (EC) No 2096/2005.</li><li>• Commission Regulation (EC) No 482/2008 of 30 May 2008 establishing a software safety assurance system to be implemented by air navigation service providers and amending Annex II to Regulation (EC) No 2096/2005.</li><li>• Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky<sup>5</sup> as amended by Regulation (EC) No 1070/2009 and its Implementing Rule.</li><li>• Regulation (EC) No 552/2004 of the European Parliament</li></ul>

<sup>1</sup> OJ L 79, 19.3.2008, p. 1.

<sup>2</sup> OJ L 199, 31.7.2009, p. 6.

<sup>3</sup> OJ L 96, 31.3.2004, p. 1.

<sup>4</sup> OJ L 96, 31.3.2004, p. 10.

<sup>5</sup> OJ L 96, 31.3.2004, p. 20.

	<p>and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network<sup>6</sup> as amended by Regulation (EC) No 1070/2009 and its Implementing Rules.</p> <ul style="list-style-type: none"> <li>• Directive 2006/23/EC of the European Parliament and of the Council of 5 April 2006 on a Community air traffic controller licence<sup>7</sup>.</li> <li>• EASA Opinion No 02/2010<sup>8</sup> and associated draft Regulations on Air Navigation Service Providers (ANSPs)<sup>9</sup> and on safety oversight functions<sup>10</sup>.</li> <li>• EASA Opinion No 03/2010<sup>11</sup> and associated draft Regulation<sup>12</sup>.</li> <li>• Annex 1, Annex 2, Annex 3, Annex 4, Annex 10, Annex 11 and Annex 15 to the Convention on International Civil Aviation (Chicago Convention).</li> <li>• ICAO PANS-ATM, PAN-OPS, ICAO Document 7030 Regional Procedures.</li> <li>• Eurocontrol Safety Regulatory Requirements ESARR 1, 2, 3, 4, 5, 6 and associated means of compliance and guidance material.</li> <li>• Relevant Community Specifications and Industry Standards.</li> <li>• Double Regulation Ad-Hoc Group (DRAHG) Report<sup>13</sup>.</li> </ul>
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### 1. Subject:

Extension of the EASA system to safety regulation of Air Traffic Management (ATM) and Air Navigation Services (ANS) – development of Implementing Rules (ATM.001(a)) and Acceptable Means of Compliance, Guidance Material and Certification Specifications (ATM.001(b)) on requirements for Air Navigation Service Providers.

<sup>6</sup> OJ L 96, 31.3.2004, p. 26.

<sup>7</sup> OJ L 114, 27.4.2006, p. 22.

<sup>8</sup> [http://www.easa.europa.eu/ws\\_prod/r/doc/opinions/Translations/2010/02/Opinion%2002-2010.pdf](http://www.easa.europa.eu/ws_prod/r/doc/opinions/Translations/2010/02/Opinion%2002-2010.pdf).

<sup>9</sup> [http://www.easa.europa.eu/ws\\_prod/r/doc/opinions/Translations/2010/02/Draft%20Regulation%20to%20Opinion%2002-2010%20\(ANSP\).pdf](http://www.easa.europa.eu/ws_prod/r/doc/opinions/Translations/2010/02/Draft%20Regulation%20to%20Opinion%2002-2010%20(ANSP).pdf).

<sup>10</sup> [http://www.easa.europa.eu/ws\\_prod/r/doc/opinions/Translations/2010/02/Draft%20Regulation%20to%20Opinion%2002-2010%20\(safety%20oversight\).pdf](http://www.easa.europa.eu/ws_prod/r/doc/opinions/Translations/2010/02/Draft%20Regulation%20to%20Opinion%2002-2010%20(safety%20oversight).pdf).

<sup>11</sup> [http://www.easa.europa.eu/ws\\_prod/r/doc/opinions/Translations/2010/03/Opinion%2003-2010.pdf](http://www.easa.europa.eu/ws_prod/r/doc/opinions/Translations/2010/03/Opinion%2003-2010.pdf).

<sup>12</sup> [http://www.easa.europa.eu/ws\\_prod/r/doc/opinions/Translations/2010/03/Draft%20Regulation%20to%20Opinion%2003-2010%20\(ATCO\).pdf](http://www.easa.europa.eu/ws_prod/r/doc/opinions/Translations/2010/03/Draft%20Regulation%20to%20Opinion%2003-2010%20(ATCO).pdf).

<sup>13</sup> <http://www.eurocontrol.int/src/gallery/content/public/documents/DRAHG/DRAHG%20Report.pdf>.

## **2. Problem/statement of issue and justification; reason for regulatory evolution (regulatory tasks):**

Regulation (EC) No 1108/2009 amending Regulation (EC) No 216/2008 (referred to as the "Basic Regulation" or "BR") was adopted by the European co-legislators in order to cover the safety regulation of ATM/ANS (and aerodromes) by the European aviation safety regulatory system (henceforth the EASA system). Therefore, a series of implementing measures need to be prepared by the European Aviation Safety Agency (the Agency). These implementing measures will define the detailed requirements with which related organisations, personnel, systems and constituents will need to comply together with the applicable certification processes.

The BR requires the development of a defined set of safety rules in the field of ATM/ANS within a defined timeframe. Opinion No 02/2010 for a Commission Regulation laying down common requirements for the provision of air navigation services, as regards working methods and operating procedures and for a Commission Regulation laying down safety oversight in air traffic management and air navigation services was published on 28 May 2010 with the aim to transfer the existing Community legislation relevant to the subject matter into implementing rules to the BR. However, further regulatory actions are necessary to ensure full compliance with the safety objectives described in the Essential Requirements of the Basic Regulation.

These Terms of Reference are related to the second phase of implementation measures, but they will also provide a consistent basis for the further rulemaking activities by the Agency.

## **3. Objective:**

The overall objective is to develop Implementing Rules (IRs) and, as appropriate, the necessary Acceptable Means of Compliance (AMC), Certification Specification (CS) and Guidance Material (GM) for the implementation of the BR in the field of ATM/ANS. More precisely, the requirements and responsibilities applicable to air navigation service providers and associated services will be specified. This regulatory material will encompass the safety regulatory requirements and related implementation material assisting and providing necessary means for the regulated organisations and persons to comply with the requirements.

The following implementation measures will be developed in this domain:

### 3.1 Air Navigation Service Providers (ANSPs)

The BR in its essential requirements for ANSPs (Annex Vb, chapter 5) requires ANSPs to:

- implement management systems (including all necessary safety management aspects);
- provide ATM/ANS services in accordance with related rules;
- verify that any system and constituent they operate meets the related safety performance requirements and the applicable technical specifications; and
- fulfil their responsibilities to ensure the competence of personnel with safety related duties, including Air Traffic Controllers (ATCOs), Air Traffic Safety Electronic Personnel (ATSEP) and other relevant staff.

These implementing measures will include the eligibility criteria, rights, responsibilities and privileges associated to certificates and declarations, including organisations providing pan-European ATM/ANS services, and will:

- be built on and be developed in the context of a comprehensive review of the safety requirements of the existing SES Regulations, in particular the Commission Regulation (EC) No 2096/2005 on common requirements for the provision of air navigation services (which have been transferred into draft Implementing Rules with the Agency's Opinion No 02/2010);
- initially include the provisions established by the Directive 2006/23/EC (which has been

transferred into draft Implementing Rules with the Agency's Opinion No 03/2010);

- initially include the relevant safety requirements established by the Regulation (EC) No 552/2004 (interoperability of the European ATM network) and in the Commission Regulations issued for its implementation.

These implementing measures will be proportionate to the type and complexity of the services provided.

As defined by the BR, all ANS service provision will be covered, including:

- the tactical aspects of Airspace Management (ASM) and Air Traffic Flow Management (ATFM) functions when these functions are carried out by ANSPs (Annex Vb, chapter 2);
- the certification of organisations involved in the origination and processing of data, formatting and delivering data to general air traffic for the purpose of safety-critical air navigation (Annex Vb, chapter 2);
- the declaration of an ANSP providing flight information services on the basis of proportionate safety requirements (article 8b(3) of the BR).

Specific considerations to be assessed during the work:

- where applicable, the regulatory measures should facilitate the Functional Airspace Block (FAB) arrangements;
- safety provisions for training and qualification of ATM/ANS personnel should be based on the identification and assessment of the tasks (or functions/roles) typically performed within an ANSP (Annex Vb, chapter 5 (a)(iv));
- safety provisions for ANSPs including the requirements for occurrence reporting and analysis programme (Annex Vb, chapter 5);
- specific provisions for Air Traffic Control (ATC) service providers, as defined by the BR, should be developed as far as feasible taking into consideration the time scale for the initial set of rules (Annex Vb, chapter 5 (b));
- requirements for validating and managing changes to functional systems should be established taking into account Commission Regulation (EC) No 2096/2005 laying down common requirements for the provision of air navigation services and Commission Regulation (EC) No 1315/2007 on safety oversight in air traffic management and amending Regulation (EC) No 2096/2005 (which have been transferred into draft Implementing Rules with the Agency's Opinion No 02/2010));
- provisions for risk assessment, on the basis of the principles defined in Regulation (EC) No 2096/2005, should be considered as far as it is feasible and taking into consideration the total system approach and the time scale for the initial set of rules.
- the measures to be proposed should avoid duplication by reflecting the various relationships between ANSPs and aerodrome operators where these entities are the same or operate under sub-contract arrangements, or in cases where one of either ANSP or aerodrome organisation operate outside the scope of EASA competence as defined in the BR (Annex Vb, chapter 5 (a)(v)).

### 3.2 ATM/ANS services

Implementing measures will include the safety requirements and technical specifications of the ATM/ANS services to implement the provisions of the amended BR for all services mentioned in its ERs (Annexe Vb, chapter 2), and building on ICAO Standards and Recommended Practices (SARPs) and, where relevant, including the requirements established by Regulation (EC) No 2096/2005, which has been transferred into draft Implementing Rules with the Agency's Opinion No 02/2010.

As defined by the BR, the implementing measures will include:

- Applicable and proportionate safety requirements for the airspace design.
- Adapted requirements for services consisting in the origination, processing, formatting and delivering of data for the purpose of air navigation.
- Safety requirements for ASM and ATFM when provided by certified ANS providers.

#### **4. Specific tasks and interface issues (Deliverables):**

Development of Opinion(s), including draft text of IR for Commission Regulation(s) and Decision(s) of the Executive Director of the Agency containing AMC, CS and GM material, including (but not necessarily limited to) the following elements:

- organisation requirements containing the provisions for ANSPs, including the requirements for organisations providing pan-European ATM/ANS services and service providers subject to declaration; and
- provisions for ATM/ANS services stemming from the ERs in the annexes Va and Vb of the amended BR, existing SES regulations (including transposed ESARRs), and applicable ICAO SARPs.

Based on the total system approach and promoting regulatory efficiencies, when drafting these implementing measures a consistent regulatory structure and common general requirements on authority and organisational requirements will be taken as a basis, as far as it is feasible. Amendments to relevant general requirements as well as specific provisions for the field concerned will be proposed, as far as it is considered necessary.

As defined by the BR, the Opinion(s) will encompass appropriate transitional mechanism to ensure the continuity of approvals and seamless conversion of certificates already granted under existing Community Regulations.

Coordination of activities with the rulemaking groups executing the following rulemaking tasks should be established whenever appropriate:

- ATM.003 – Requirements on Air Traffic Controller licensing,
- ATM.004 – Requirements for Competent Authorities in ATM/ANS.

Coordination should also be ensured with the development of the rulemaking tasks ADR.001, ADR.002 and ADR.003 and its rulemaking groups whenever appropriate.

A full Regulatory Impact Assessment (RIA) on the extension of the Agency's remit to ATM/ANS has been published with Opinion 01/2008. No Pre-RIA has therefore been developed at this stage, since the legislator has defined the necessary implementing rules to be developed. However, it will be necessary to carefully evaluate the impact of the regulatory solutions envisaged within the development of implementing rules, in particular when they are not based on the existing regulatory material, when this material has been modified based on justified and informed decisions or when the legislator left some options to be assessed during the drafting of implementing measures. The impact of the regulatory solutions proposed will be assessed by means of an associated Regulatory Impact Assessment (RIA) which will accompany the Notices of Proposed Amendment (NPA) and the Opinions on this topic.

A matrix will be developed stating the source and justification of each regulatory provision, which will include any cross-reference to the ERs in the amended BR, applicable Community legislation and to the ICAO SARPs. In particular, any proposed change to and non-use in the IRs of established provisions of existing Community legislation, SES Regulations and ICAO SARPs will be justified and presented in said matrices.

#### **5. Working Methods** (in addition to the applicable Agency procedures):

The work will be carried out by a rulemaking group established by the Agency. Due to the complexity of the task, the rulemaking group may address certain specific issues with ad hoc

group of experts, as deemed necessary to accomplish these Terms of Reference.

Rulemaking group composition will be defined based on the rulemaking procedures of the Agency and, in particular, will reflect the complexity of the related task, the expertise necessary and stakeholders potentially affected by the work. The Agency will nominate at least two internal members into the rulemaking group, one of which will coordinate and facilitate the work as well as carry out the secretariat functions.

The experts involved in the work of the rulemaking group may also be invited to participate in assessing the comments received to the Notice of Proposed Amendments (NPA).

Meetings of the rulemaking group will primarily be held at the Agency's premises in Cologne.

**6. Time scale, milestones:**

The first Notice of Proposed Amendment (NPA), including the implementing measures applicable to air navigation service providers and the associated Regulatory Impact Assessment (RIA), is to be published during the second quarter of 2011.

Subsequent NPAs, including implementing measures on the remaining issues included in these ToR, will be published during the second half of 2011 and during 2012.

The first Comment Response Document (CRD) and the first Agency Opinion will be issued during the first quarter of 2012.

Subsequent CRDs and Agency's Opinions and Decisions will be issued during the second half of 2012 and during 2013.