



OPINION No 02/2010

OF THE EUROPEAN AVIATION SAFETY AGENCY

of 28 May 2010

**for a Commission Regulation XXX/2010 on common requirements for the provision
of air navigation services, as regards working methods and operating
procedures**

AND

**for a Commission Regulation XXX/2010 on safety oversight in air traffic management
and air navigation services**

I. General

1. Regulation (EC) No 216/2008¹ of the European Parliament and of the Council as amended by Regulation (EC) No 1108/2009² (hereinafter referred to as the Basic Regulation) requires the Commission to adopt a comprehensive framework of rules for the implementation of the essential requirements for Air Traffic Management (ATM) and Air Navigation Services (ANS). In accordance with Article 8b(7), the proposed Implementing Rules shall be developed using the relevant provisions of 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 (the framework Regulation), 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 (the service provision Regulation), 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 (the airspace Regulation) and 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 (the interoperability Regulation) and the related Implementing Rules. In particular, the proposed draft Regulations in this Opinion are based on the following Commission Regulations:
 - a. Commission Regulation (EC) No 2096/2005 laying down common requirements for the provision of air navigation services³; and
 - b. Commission Regulation (EC) No 1315/2007 on safety oversight in air traffic management and amending Regulation (EC) No 2096/2005⁴.
2. The scope of the rulemaking activities that resulted in this Opinion is outlined in the Terms of Reference (ToR) ATM.001⁵ 'Extension of the EASA system to safety regulation of Air Traffic Management (ATM) and Air Navigation Services (ANS) — development of rules on Requirements for Air Navigation Service Providers' and ATM.004⁶ 'Extension of the EASA system to safety regulation of Air Traffic Management (ATM) and Air Navigation Services (ANS) — development of rules on competent authorities' and is described in more detail below. However, as it is explained in chapter II of this Opinion, the content and the rulemaking process followed by the European Aviation Safety Agency (hereinafter referred to as the Agency) has not been conducted in full accordance with the above mentioned ToRs. The content of the draft Regulations in this Opinion follows the decisions taken at the 33rd and 34th meetings of the Single European Sky Committee held on 3-4 December 2009 and the letter⁷ sent to the Agency by the European Commission requesting that a 'fast-track' process would be applied for the accelerated transposition of existing Single European Sky (SES) rules. Therefore, based on these decisions, this Opinion covers the transposition of Regulation (EC) No 2096/2005 and Regulation (EC)

¹ 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, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ L 79, 19.03.2008, p. 1).

² Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 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 (OJ L 309, 24.11.2009, p. 51).

³ Commission regulation (EC) No 2096/2005 of 20 December 2005 laying down common requirements for the provision of air navigation services (OJ L 335, 21.12.2005, p. 13–30).

⁴ Commission Regulation (EC) No 1315/2007 of 8 November 2007 on safety oversight in air traffic management and amending Regulation (EC) No 2096/2005 (OJ L 291, 9.11.2007, p. 16–22).

⁵ http://www.easa.europa.eu/ws_prod/r/doc/TORs2/ToR%20ATM.001.pdf.

⁶ http://www.easa.europa.eu/ws_prod/r/doc/TORs2/ToR%20ATM.004.pdf.

⁷ TREN F2/JP/sr D(2009) 74614.

No 1315/2007 with the necessary minimal technical updates and partially implementing the Basic Regulation.

3. The content of this Opinion represents only the first phase of the process and the full implementation of the Basic Regulation shall be undertaken during a second phase following the rulemaking procedure adopted by the Agency's Management Board⁸. The Agency will amend the above mentioned ToRs to reflect this phased approach.
4. The Agency herewith submits its Opinion to the Commission, which purports to fulfil the 'fast-track' process as a first phase to implement Articles 8b and 22a of the Basic Regulation.
5. The proposed rules have been developed taking into account the European Union Regulations under the Single European Sky framework and applicable international standards and recommended practices published by ICAO (i.e. the ICAO Annexes) on the basis of Article 37 of the Chicago Convention. In accordance with Article 2.2(d) of the Basic Regulation, the Agency shall assist Member States in fulfilling their obligations under the mentioned Convention, by providing a basis for a common interpretation and uniform implementation of its provisions, and by ensuring that its provisions are duly taken into account when drafting Implementing Rules.
6. The present Opinion has been adopted partially following the procedure specified by the EASA Management Board⁹, in accordance with the provisions of Article 19 of the Basic Regulation. Deviations from that procedure stemming from the application of the 'fast-track' process, as requested by the Commission and the SSC, have been presented to the Agency's Management Board, which confirmed its support, in principle, for use of such a procedure in this specific case where existing legislation is already in place, with the assumption that there would be no significant change in content from existing rules.

II. Consultation

7. The tight time schedule imposed by the 'fast-track' process, requested by the European Commission in its letter and confirmed by EASA Management Board and by the Single Sky Committee (requiring the first Implementing Rules to be adopted at the end of 2010, meaning that the Agency had to deliver this Opinion by June 2010), did not allow the Agency to follow the regular phases of the Rulemaking procedure, which requires formal consultation of the stakeholders through public consultation. If the full Rulemaking procedure adopted by the Management Board had been followed, a minimum period of 6 to 7 months would be required from the moment the Notice of Proposed Amendment (NPA) would have been published until the adoption of this Opinion. Therefore, in order to accomplish the deadline established by the above mentioned decisions, no NPA has been published on the Agency's website; neither was a Comment Response Document (CRD) developed or published. In this case, only an Opinion is directly issued to the European Commission. Moreover, since the proposed draft rules are a simple transposition of the existing SES Regulations, no Agency's Decision(s) containing Acceptable Means of Compliance or Guidance Material will be issued.
8. In order to ensure that all the relevant stakeholders are informed of the content of this Opinion, the Agency together with the European Commission will hold dedicated workshops to explain thoroughly the content and the plans for the immediate second phase. In addition, the Agency will provide, as appropriate, separate information sessions on the contents of this Opinion for the following bodies: SES Committee (SSC), Industry

⁸ Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of Opinions, Certifications Specifications and Guidance Material (Rulemaking Procedure). EASA MB 08-2007, 13.06.2007.

⁹ Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of Opinions, Certifications Specifications and Guidance Material (Rulemaking Procedure). EASA MB 08-2007, 13.06.2007.

Consultation Body (ICB, EASA Advisory Board (EASAAB), Advisory Group of National Authorities (AGNA) and Safety Standards Consultative Committee (SSCC).

9. The Agency will provide written conclusions on the results of the workshops and information sessions to the European Commission and will publish them (through the dedicated ATM & Airports webpage¹⁰) so that they can be properly taken into account by the Commission to make its legislative proposal.

III. Content of the Opinion of the Agency

a) *Common requirements for the provision of air navigation services, as regards working methods and operating procedures*

10. At present, the SES Regulations have still not been amended to take into account the provisions of the Basic Regulation, as required by the European legislator (article 65a of the Basic Regulation). Therefore, the SES Regulations on one hand still contain some safety requirements applicable to the implementation of the certification scheme of air navigation service providers (ANSPs) and, on the other hand, do not clarify the relationship between these safety requirements and other requirements that are not directly related to safety. This creates an overlap between the Basic Regulation and the SES Regulations. The ideal situation would therefore have been to amend the SES Regulation as explained above and which would have allowed the Agency to issue an implementing rule to the Basic Regulation only. However, what the European Commission has requested from the Agency was to issue an Opinion transposing the existing regulations without major changes and therefore to propose draft Regulations with a dual legal basis. This will allow the continued existence of only one Regulation defining the requirements for ANSPs and authorities, until such time as the situation can be clarified.
11. For the transposition of Regulation (EC) No 2096/2005 into Implementing Rules under the Basic Regulation, while following the 'fast-track' process requested by the European Commission, the Agency has replicated this Regulation with the introduction of the following minimum necessary changes and minimal technical updates to implement the Basic Regulation:
 - i. Addition of the term of **competent authority** (new Article 3 of the draft Implementing Rule). This change is required for the implementation of Article 8b and 22a. This term recognises the following competent authorities: the National Supervisory Authority (NSA) as defined in Regulation (EC) No 549/2004, as amended by Regulation (EC) No 1070/2009; the authority or authorities competent for the oversight in a FAB as determined by the Member States involved in the FAB arrangement, if they are different from the NSA; and the Agency as required in Article 22a of the Basic Regulation for pan-European service providers and for service providers located outside the territory where the European Union Treaty applies but providing services in the airspace of that territory. Further details about the Agency as a competent authority are included in paragraph c).
 - ii. The **definition of pan-European service**. This definition is required to further implement the Article 22a. The intention of this definition is to help to better identify those pan-European services. These are the services which are designed and established to be available for users within most or all Member States. The term 'most or all Member States' is needed to cover cases in which the service, although designed to be pan-European, might not be available to users in each and every Member State (e.g. a satellite constellation does not provide coverage to all Member States).
 - iii. The addition of **references to the Basic Regulation** where it has been found necessary for legal certainty. These proposed changes implement the Basic

¹⁰ <http://www.easa.europa.eu/atm/>.

Regulation and are the direct outcome of the extension of the EASA system to the regulation of Air Traffic Management and Air Navigation Services.

- iv. The references to **National Supervisory Authorities (NSA)** as specified in Regulation (EC) No 549/2004 as amended by Regulation (EC) 1070/2009 have been **replaced by** references to **competent authorities** where it has been considered necessary (e.g. in the case of the provisions related to peer review it has not been considered necessary). Some stakeholders have questioned the legal basis of the Agency to execute certain tasks as a competent authority and they have requested to always specify who the competent authority (NSA or Agency) is. In the Agency's opinion, there is no need to specify this in each and every provision of the draft regulations because this would repeat the tasks and responsibilities that are already specified in the Basic Regulation. For instance, in the case of former Article 6 (new Article 7) 'Facilitation of compliance monitoring', the term NSA has been replaced by competent authority. However, in this case, it is clear that the empowering of the Agency's inspectors is already ensured through the application of Article 55 of the Basic Regulation 'Investigation of undertakings'.
- v. The term **recognised organisation** has been **replaced by** the term **qualified entity**. This is required to implement Article 13 of the Basic Regulation. It is also important to highlight that Article 3 of Regulation (EC) No 550/2004 was amended by Regulation (EC) No 1070/2009 replacing the term "recognised organisation" by "qualified entity".
- vi. The **recitals** have also been updated to reflect better the situation today, the new legal basis, the basis for the proposed implementing rule and the future phases of rulemaking in this field.
- vii. The introduction of **some changes in the peer review process**. During the 34th meeting of the SSC, the peer review process was discussed and it was the request of some Member States to include the Agency as part of the peer review process. Therefore, the Agency has proposed very simple modifications to this former Article 9 (new Article 10). In addition, and based on the advice by the European Commission, there is no clear decision yet whether the peer reviews will be continued after the first round that is due to conclude at the end of 2012. For this reason, and based on the advice of the European Commission, the proposal is to replace the word 'shall' by the word 'may'.

Although the term 'peer review' or the scope or objectives of these peer reviews have not been defined in the Regulation (EC) No. 2096/2005, in the Agency's opinion similar practices to the peer reviews (teach and learn exercise, exchange of implementation experiences, agreed conclusions of the best operational practices etc) are already covered by the so called 'Standardisation meetings' which exist in other fields of aviation (e.g. airworthiness, air operations, flight crew licensing). Moreover, the Agency's intentions are to extend these 'Standardisation meetings' to the fields of ATM/ANS and aerodromes to provide the competent authorities with the necessary forum to discuss any implementation issues, to provide a 'teach and learn' exercise and also to discuss safety issues which are common to the whole aviation system. It is the understanding of the Agency that this kind of voluntary cooperation does not need to be regulated.

- viii. The introduction of the **transitional provisions and repeals** of existing regulations. These provisions have been necessary to clarify that:
 - All existing ANSPs' certificates which have been issued in accordance with the Regulation (EC) No 2096/2005 are grandfathered;
 - Those applicants having applied to the relevant competent authority for their ANSP certificate before the date of entry into force of the proposed Regulation shall demonstrate compliance with the applicable requirements of the proposed regulation and, therefore, will be issued with an ANSP certificate in

accordance with the proposed Regulation. The Agency's opinion is that no transition period for existing on-going applications is needed since the above-mentioned changes do not impact the demonstration of compliance with the requirements from the applicant's point of view. Paragraph 2 explains the transition provisions for those cases in which there is a change of competent authority for the safety oversight function with the application of the new regulations;

- For those cases in which the Agency is the competent authority for ANSPs (in the case of pan-European service providers and in the case of service providers located outside the European Union), the provisions in paragraph 3 apply. These provisions are needed to guarantee the continuity of the certification process already initiated by the authority(ies) of the Member State(s) and to ensure a smooth transition for those applicants. The proposal of the Agency is to allow the continuation of the certification process, in cooperation with the Agency, and to transfer the oversight activities to the Agency after the certificate has been issued.
- 20 days after the publication of the proposed Regulation, once adopted, the applicants applying for ANSP certificates shall then apply this Regulation; and
- **The repeal of the Regulation (EC) No 2096/2005 and Regulation (EC) No 668/2008 and Article 6 of Regulation (EC) No 482/2008 as these requirements are entirely included in the proposed Regulation.**

12. Regarding the **references to ICAO Annexes**, the Agency is aware that since the adoption of Regulation (EC) No 668/2008, the ICAO Annexes have been amended as follows:

- i. **Annex 2**, 10th ed July 2005 amd up to **No 40** has been amended to amd **No 42**;
- ii. **Annex 3**, 16th ed July 2007 amd up to No 74;
- iii. **Annex 4, 10th ed July 2001** amd up to **No 54** has been amended to **11th ed July 2009**;
- iv. **Annex 10 vol I**, 6th ed July 2006 amd up to **No 82** has been amended to amd **No 84**;
- v. **Annex 10 vol I**, 6th ed October 2001 amd up to **No 82** has been amended to amd **No 84**;
- vi. **Annex 10 vol III**, 2th ed July 2007 amd up to **No 82** has been amended to amd **No 84**;
- vii. **Annex 10 vol IV**, 4th ed July 2007 amd up to **No 82** has been amended to amd **No 84**;
- viii. **Annex 10 vol V**, 2th ed July 2001 amd up to **No 82** has been amended to amd **No 84**;
- ix. **Annex 11**, 13th ed July 2001 amd up to **No 45** has been amended to amd **No 47-B**;
- x. **Annex 14**, vol I **4th ed July 2004** amd up to No 9 has been amended to **5th ed July 2009**;
- xi. **Annex 14**, vol II **2th ed July 1995** amd up to No 3 has been amended **3th ed July 2009**;
- xii. **Annex 15**, 12th ed July 2004 amd up to **No 34** has been amended to amd **No 35**

13. The Agency has not yet introduced these updated references in the draft Regulation to this Opinion. However, and in order to assist Member States in fulfilling their obligations under the Chicago Convention (refer to article 2.2(d) of the Basic Regulation), the Agency proposes to analyse the changes stemming from the latest versions of the

Annexes in order to evaluate and assess the impacts of their implementation, and to issue accordingly an Opinion to the Commission on the issue.

It is also important to highlight that the transposition of the relevant ICAO Standards and Recommended Practises that will take place during the 2nd phase will make such references unnecessary and will be therefore replaced by the appropriated Union measures.

14. It is also important to highlight that Article 25 of the recently adopted Commission Regulation on performance scheme for air navigation services and network function requires an amendment to Section 2.2 and Section 9 of Annex I of Regulation (EC) No 2096/2005. In this Opinion, the Agency proposes to repeal Regulation (EC) No 2096/2005 and to replace it with this Regulation. Therefore, the Agency's recommendation would be to incorporate the amendments required by the Regulation on performance scheme in the Commission's legislative proposal for this Regulation.
15. In addition to the minimal technical updates presented above, and the issues that the Agency proposes to amend based on paragraph 11, the Agency, advised by the experts of the rulemaking groups ATM.001 and ATM.004, has identified the following areas where improvement would be necessary. The Agency has, together with the experts, conducted a preliminary assessment of these improvements for their suitability, maturity and possibility to be included as part of the 'fast-track' process. However, as concluded by the above mentioned SSC meetings and because of the lack of normal rulemaking consultation process, the Agency has not yet included them as part of the proposed regulations. Therefore, in the Agency's opinion, these following proposals for improvement should be set as priorities to be addressed during the second phase of the rulemaking process together with the transposition of the relevant ICAO Standards and Recommend Practises:
 - i. The provisions for **derogations** contained in article 5 of the proposed Regulation: even if the Agency has transposed the existing provisions in former article 4 of Regulation (EC) No 2096/2005 as requested by the European Commission and confirmed by SSC, the Agency would like to highlight that word-by-word transposition of this article may raise some issues in terms of compatibility with the Basic Regulation. First of all, because it is established that the certificate shall be limited to the airspace under the responsibility of the competent authority that issued it. This could be interpreted as not being consistent with Article 11 of the Basic Regulation. Secondly, it is the Agency's opinion that the original drafting of the article does not establish the level of legal certainty that is required to fulfil the objective of uniform implementation of aviation safety requirements established by the Basic Regulation. Besides the exclusion of some provisions that cannot be subject to derogations, the Agency understands that no criteria are given on which requirements should be applied to the ANSPs subject to derogations. This may create a situation where very different criteria could be applied by different competent authorities, potentially leading to situations where similar applicants are required to comply with very different requirements. This does not mean that the Agency considers that no flexibility should be possible. It is precisely for this flexibility that the Basic Regulation tries to ensure in its Article 14, which establishes the possibility for Member States to deviate from requirements under specific circumstances, but in a fully transparent manner and under the scrutiny of the Commission, assisted by the Agency and the other Member States. Specifically Article 14(6) of the Basic regulation contemplates precisely the type of situation that is covered by article 5 of the draft Regulation, and could be used to cover these cases with clear advantages to safety and uniform implementation of requirements.

Moreover, article 8b(3) of the Basic Regulation requires the Agency to propose implementing rules providing the possibility for Member States to decide under which conditions flight information service providers shall be allowed to declare the

services they provide. Because of the 'fast-track' process, the Agency has not yet been able to make such a proposal.

Based on the above, the Agency will further evaluate the provisions of the proposed article 5 on the derogations with the view to implement article 8b(3) and with the view to provide the necessary flexibility and proportionality for those ANSPs that are today subject to derogations. Based on the evaluation, the Agency will make the relevant amendments as appropriate in the second phase.

Finally, it should be added that the Agency considers that some of the requirements from which today derogations are possible should be reassessed in the 2nd phase. In particular, the requirements in paragraphs 2.1, 3.2(b), 3.3 of Annex I, are, in the Agency's view, not only essential safety elements, but also flexible enough to allow implementation by all ANSPs.

- ii. The so-called '**non-safety requirements**' (e.g. requirements for ANSPs to have a business plan) for the ANSPs' certification as well as the definition and identification of these non-safety provisions. The topic has been discussed at length with the experts of the rulemaking groups. During the 34th meeting of the SSC, it was decided that the European Commission will make a proposal for the SSC's consideration. Depending on the outcome of this discussion, the Agency's proposal may be amended by the European Commission. As already mentioned above, the Agency has been requested to copy those provisions and therefore maintain the dual legal basis (EASA Basic Regulation and Regulation (EC) No 550/2004).

Regarding the application of these provisions to the responsibilities of the Agency as competent authority for pan-European Service Providers and for providers of services located outside the territory of the European Union, the Agency's views are provided below in paragraph (c).

- iii. The introduction of **management systems** as required by chapter 5(a)(iii) of the Essential Requirements in Annex Vb. The intention of the European co-legislator (the European Parliament and the European Council) was to streamline the requirements for quality and safety management systems, by requiring an integrated management system. This would allow service providers and organisations in general, to adapt their management systems to their size and the scope and complexity of the services they provide. This approach would have the benefit of requiring only one management system instead of the two (or even three, together with the security management system) required by Regulation (EC) No 2096/2005. Moreover, this approach is also promoted by the ICAO Safety Management Manual¹¹ and would facilitate the integration of ATM/ANS into the total system approach to safety regulation¹². This would benefit ANSPs by giving them flexibility for the implementation of the requirements, while ensuring harmonisation, as the elements of the management system would be clearly defined. This would also allow the existence of different Acceptable Means of

¹¹ ICAO Safety Management Manual, Second Edition - 2009 (Doc 9859-AN/474).

¹² The concept of '*total system approach*' for safety regulation was introduced in the Agency's Notice of Proposed Amendment 2008-22. This NPA proposes that the so called 'organisation' requirements for regulated aviation organisations are included in a single implementing rule applicable to all regulated aviation organisations (Part-OR). Equally, the same NPA proposes that the corresponding authority requirements are included in a single implementing rule applicable to the competent authorities overseeing these organisations (Part-AR). Those common organisation requirements which are applicable to all organisations (e.g. management system, general personal requirements, facilities and record keeping between others) are generalised into what has been named subpart OR.GEN. Those specific provisions for each type of aviation organisation (e.g. ANSPs, training organisations, air operators, aerodromes operators) will contain additional organisation requirements in additional subparts (e.g. OR.ATO, OR.OPS).

Compliance (AMCs) and Guidance Material (GM) for different type of ANSPs and for different type of services. An additional safety benefit would be the facilitation and assessment of the interfaces of ANSPs with other aviation organisations, such as aerodrome operators or air operators, by the application of the same set of management system requirements. It is clear that one of the safety risks identified and well known in the aviation chain is the interface between different organisations involved in the aviation system and the identification of responsibilities for the overall risk management.

Different proposals for the 'fast-track' process were studied by the experts and presented to the ATM.001 rulemaking group members and different stakeholders. However, the decisions taken at the 34th meeting of the SSC have not allowed the Agency to include this change as part of the 'fast-track' process. Therefore, the Agency can only highlight it as one of the most important enhancements that should take place as part of the 2nd phase.

The only related change that was considered appropriate for the 'fast-track' process was to add a sentence in Annex I to clarify that the ANSPs may decide to integrate quality and safety management systems into a single management system. This provision does not prohibit the ANSPs to also integrate other management systems (e.g. such as the security management system) together.

- iv. Proposal for enhancing the **safety requirements on risk assessment and mitigation** with regards to changes (former paragraph 3.2 of Annex II of Regulation 2096/2005) and the requirements for the competent authorities for safety oversight of changes to functional systems (former Article 8 and 9 of the Regulation (EC) No 1315/2007):

Based on the outcome of the EUROCONTROL work on a risk classification scheme, following the mandate given by the European Commission and following the adoption of the Basic Regulation extending the EASA system to the field of ATM/ANS, the Agency, together with an informal group of experts from the major European NSAs and ANSPs, conducted an analysis of the existing provisions in Regulation (EC) No 2096/2005 and Regulation (EC) No 1315/2007 regarding the requirements for safety assessment of changes and the safety oversight of this changes. The intention was to make proposals and recommendations to the rulemaking groups ATM.001 and ATM.004. The main conclusions of the review are summarised below:

- The existing provisions are too difficult to interpret and even to apply in some cases. Terms such as 'constituent part', 'ATM-related credible hazards' and the application of the required quantitative methodology and of the severity class table in the case of changes related to human and procedures were not easy to interpret and neither have they been uniformly, if at all, applied among different Member States.
- The criteria provided to the competent authorities for their decision whether or not to review the change proposed by the organisation would also need to be improved, as the existing criteria, based on hazards rather than risks, ultimately mean that the competent authority should review almost all the changes
- The Agency considers that there would be significant benefits to implement a more performance-based approach for regulating safety assessment of changes and for their safety oversight. By streamlining the requirements and the associated responsibilities for the management of changes, clarifying the associated processes for notification and review of the changes at the level of the implementing rules and by providing the methodologies to be used for the different type of changes to different type of functional systems in AMCs and GMs, the requirements would be more easily understood and applied. The

Agency considers that only when the requirements are clear and easy to interpret and when the responsibilities and processes are clearly allocated, the requirements can be uniformly applied and safety enhanced.

- The lack of AMCs and GMs under the SES regulatory framework made it difficult to adopt such a system for the initial set of the SES Regulations. However, the EASA regulatory framework offers this possibility. Based on the experience gained so far with the application of AMCs and GMs within other fields of aviation (e.g. airworthiness and maintenance) and on the existing proposals for dealing with alternatives AMCs, the desired level of harmonisation within the European Union — very much required for the development and safely functioning of the Functional Airspace Blocks (FAB) and the Single European Sky — will be guaranteed. This will also encourage flexibility, by allowing standardised approaches that best suit the type of change and operations under consideration, without the need to change the Regulation or request for derogations. It will also provide the means to develop and update these approaches to embrace the latest best practices.
- Based on the initial regulatory impact assessment conducted by the Agency when assessing the possible options to enhance these provisions, the Agency's preferred option would have been to streamline the implementing rules by making them more performance-based. The implementing rules would have contained the safety objectives needed to be met and the AMCs and GMs would have contained the technical details on how to meet the safety objectives. This approach has already been adopted for the airworthiness certification of aircraft, and it would also be more appropriate for the ATM/ANS field which is very dependent on technology and which is based more and more on highly complex and air-ground integrated systems.

Based on the above conclusions and aiming to enhance the system, a proposal was developed by this informal group of experts and was presented to the members of ATM.001 and ATM.004, supported by the initial conclusions of the regulatory impact assessment. Here again, the decisions taken at the 34th meeting of the SSC have not allowed the Agency to include this change at this time.

- v. Proposal for **integrating the requirements for organisations** (in this case ANSPs) **into one single Regulation** and the requirements for the competent authorities into another Regulation. This would have required the transfer of the authority requirements that are included in Regulation (EC) No 2096/2005 under the same regulation as the requirements for safety oversight of ANSPs and organisations providing ATFM and ASM. The requirements for competent authorities in Regulation (EC) No 2096/2005 are those addressed to either Member States or to National Supervisory Authorities, such as the requirements for the certification of ANSPs, on-going compliance and enforcement, plus the requirements for peer review, among others the requirements for organisations (ANSPs and organisations providing ATFM and ASM) in Regulation (EC) No 1315/2007, namely those mandating the development of procedures for the safety assessment of changes to functional systems, the notification of safety changes to functional systems, as well as the requirements on how to deal with audits findings raised by competent authorities as a result of their compliance monitoring, should have been transferred into the Regulation for organisations. The Agency considers that this proposal would have improved the existing regulations by clarifying the responsibilities for ANSPs and competent authorities, ensuring consistency and facilitating the integration into the overall regulatory structure implementing the total system approach. However, the scopes of the Regulation (EC) No 2096/2005 and the Regulation (EC) No 1315/2007 are different (Regulation (EC) No 2096/2005 applies only to the certification of ANSPs and Regulation (EC) No 1315/2007 applies to the safety oversight of ANSPs and organisations providing ATFM and ASM). Therefore, it was feared that the transfer of provisions between the two regulations would mean that

existing requirements for organisations providing ATFM and ASM would be discontinued until the entire set of requirements for these organisations would have been developed. Although in the Agency's view this could have been easily solved, once again the high level decisions required the Agency to postpone this amendment for the 2nd phase.

- vi. **Proposal for enhancing the requirements for engineering and technical personnel undertaking safety related tasks** in Article 9 and in paragraph 3.3 of its Annex II. The present article 9 requires Member States to issue appropriate safety rules for engineering and technical personnel who undertake operational safety-related tasks. The intention of the Agency is to establish common requirements in this field, following an evaluation of the suitability and consistency with the regulatory framework of the work carried out by EUROCONTROL to develop specifications containing competence schemes and competence assessment for ATS engineering personnel (ATSEPs) and also taking into account the on-going discussions between the relevant parties (ANSPs and engineering and technical personnel). To this end, the Agency, based on the input provided by some experts from the rulemaking groups, proposed a definition and requirements for the ANSPs to implement a procedure to define safety related tasks and establish training requirements consisting of competence schemes and competence assessment for the relevant engineering personnel. However, once more it was not possible for the Agency to carry out this work during the 'fast track', and it will have to be considered as a priority for the 2nd phase. Meanwhile, and without prejudice to recital 17 of the Basic Regulation, it is important to highlight that in the Agency's view the European legislator's intention was to transfer the competences for the development of safety rules for engineering personnel to the European Union through the Basic Regulation. Moreover, the Agency considers that maintaining this possibility could potentially increase the difficulty of the Agency's task for the second phase as the Member States may continue to develop new national requirements while the Agency is in the process of evaluating the existing system to propose European-wide rules. However, based on the mandate given to the Agency, it has been decided not to propose any change to these provisions as part of the 1st phase.
- vii. In the Agency's opinion, the existing Regulation (EC) No 2096/2005 could be enhanced regarding the **responsibilities of ANSPs** when they allocate certain activities, such as the maintenance of certain equipment, to **contracted organisations**. There are certain requirements in Regulation (EC) No 2096/2005 that ANSPs have to fulfil, regarding engineering personnel, when they use what has been named as 'subcontracted operating organisations'. It is the Agency's understanding that the existing regulations would benefit from a clarification of the definition of 'operating organisation' (the current definition could be interpreted as if these organisations could provide services without being certified) and of the term 'subcontracted' organisation and the responsibilities, if any, of the ANSPs with regards to third parties (organisations contracted by the organisation directly contracted by the ANSPs). The existing provisions will be evaluated and assessed during the 2nd phase.
16. As already explained above, the Agency sees the proposed Regulations as the first building blocks of the implementation of the extension of the European aviation safety regulatory system to the field of ATM/ANS. The already identified areas of improvement will, in the Agency's opinion, clearly enhance the system, and these areas should, together with the transposition of the relevant ICAO SARPs, be the first priorities for the rulemaking in the 2nd phase.
17. It is also important to highlight that there are provisions in Article 8b of the Basic Regulation that have not been implemented with these proposed Regulations. These include for example the following:

- i. The implementation of Article 8b(3) of the Basic Regulation, as already explained above;
 - ii. The implementation of Article 8b(4)&(5) of the Basic Regulation. The options for the implementation of these provisions will be evaluated and assessed as part of the future rulemaking task ATM.005.
 - iii. The development of measures for organisations providing services consisting in the origination and processing of data and formatting and delivering data to general air traffic for the purpose of safety-critical air navigation. The evaluation and assessment of the options for the implementation of these provisions based on existing processes within the EASA system (Letters of Acceptance), as appropriate, will be carried out during the 2nd phase.
18. This 2nd phase will be developed in accordance with the Agency's rulemaking procedures.

b) Requirements on safety oversight in air traffic management and air navigation services

19. As explained above, based on the request from the European Commission for a transposition of Commission Regulation (EC) No 1315/2007 without any further delay, the Agency has transferred this Regulation into an implementing rule under the Basic Regulation with the introduction of necessary changes and minimal technical updates. The following are considered to be necessary changes:
- i. The introduction of the term **'competent authority'** in a new Article 3. This is required for the implementation of Articles 8b and 22a of the Basic Regulation. In accordance with this provision, the oversight of organisations which have their principal place of operation in a Member State shall be done by the national supervisory authority of that Member States (as referred to in Article 4 of the Framework Regulation, as amended by Regulation (EC) No 1070/2009) or by the authority or authorities as determined in the agreement concluded by the Member States involved in FAB arrangements, if the agreement specifies that the competent authority is different from the NSA. The oversight of organisation located outside the territory of the Member States but providing services in the airspace where the European Union Treaty applies shall be conducted by the Agency. Further explanations are placed below in paragraph (c) of this chapter.
 - ii. The **definition of pan-European service**. This definition is required for the implementation of Article 22a. The intention with this definition is to clarify what those pan-European services are.
 - iii. The addition of **references to the relevant articles of the Basic Regulation**. As already explained in paragraph (a), the draft Regulation will have a dual legal basis. Therefore, the references to Regulation (EC) No 550/2004 were complemented with references to the relevant articles of the Basic Regulation.
 - iv. The **references to National Supervisory Authorities (NSA)** as referred to Article 4 of the Regulation (EC) No 549/2004 have been **replaced by** references to **competent authorities**. As already stated above, some stakeholders have expressed their concerns on the legal basis for the Agency to execute certain tasks as a competent authority and they have requested that some provisions specify who the competent authority is. It is the Agency's opinion that there is no need to specify this in the implementing rules because this would repeat the tasks and responsibilities that have already been adopted by the European co-legislator in the Basic Regulation. One example is the case of Safety Directives, foreseen in the former Article 12 of Regulation (EC) No 1315/2007 (Article 13 of the proposed Regulation). In this case, the term NSA has simply been replaced by 'competent authority'. The Agency considers that Article 8b of the Basic Regulation requires that the Agency is also entitled to issue these safety directives. In fact, the implementing

rules foreseen in Article 8b (6)(f) of the Basic Regulation should ensure that adequate powers are given to authorities with oversight functions to react to unsafe conditions that might occur during the provision of ATM/ANS. Moreover, the development of the implementing rules should be done, as far as possible, taking into account the provisions of Commission Regulation (EC) No 1315/2007. The Agency, as a competent authority, needs to be empowered by those implementing rules, and therefore be entitled to use the Safety Directive mechanism in relation to those organisations/services it oversees. Therefore, the Basic Regulation provides an adequate legal basis for the Agency to issue safety directives within the meaning of Article 12 of Regulation (EC) No 1315/2007.

- v. The term **recognised organisation** has been **replaced by** the term **qualified entity**, following Article 13 of the Basic Regulation.
 - vi. The **recitals** have also been updated in order to reflect the current situation, the Basic Regulation implementation, the basis for the proposed implementing rule and the further phases in the future.
 - vii. The introduction of **transitional provisions** for the transfer of safety oversight functions from the relevant competent authority(ies) to the Agency in those cases in which the Agency is the competent authority in accordance with Article 22a of the Basic Regulation (organisations providing services in the airspace of the territory to which the Treaty applies and having their principal place of operation and, if any, its registered office located outside that territory and for organisations providing pan-European services) within the period of six months. The Agency considers that six months would be sufficient time for its preparation to take over its responsibilities allocated by the legislator in the Basic Regulation.
 - viii. The introduction of a **repeal provision** of existing regulation as a new Article 17. This Article repeals Commission Regulation (EC) No 1315/2007 as all provisions are entirely transposed in the proposed implementing rule.
20. The above proposed changes and minimal technical updates are considered to be within the scope of the instructions given by the European Commission and endorsed by the Single Sky Committee (SSC) on their 33rd and 34th meetings. In the process of reviewing the existing provisions, the Agency, advised by the members of the rulemaking groups ATM.001 and ATM.004, has identified some other areas where improvement would be necessary. It is the Agency's opinion that the following proposals for improvements should be set as the first priorities to be undertaken during the second phases of the rulemaking process together with the transposition of the relevant ICAO Standards and Recommend Practises:
- i. Implementation of **the total system approach on authority requirements**. The 'total system approach' aims at streamlining the certification and oversight processes and to reduce the burden on regulated persons and organisations. The total system approach for authority requirements also aims at harmonising the oversight processes for persons, organisations, products, parts and appliances and systems and constituents. The aviation system components — products, operators, crews, aerodromes, ATM/ANS — on the ground or in the air, are part of a single network. The 'total system approach' aims at eliminating the risk of safety gaps or overlaps, and seeks to avoid conflicting requirements and confused responsibilities. The Regulations shall be interpreted and applied in a standardised manner. It shall allow for the use of best practices. The proposals for amending the requirements for authorities (Part-AR) being developed as part of the Agency's work on the 1st extension of the EASA system (extension of the EASA system to the field of air operations and flight crew licensing) as well as the amendment to proposed subpart AR.GEN (subpart of Part-AR, applicable to all competent authorities overseeing all aviation organisations) should, where applicable, be developed on the basis of the fast-track implementation rules. This will ensure better consistency and should simplify the certification process. In the 2nd phase, all the requirements for

competent authorities that are initially included in the draft Regulations for the provision of air navigation services and for the licensing of air traffic controllers should be also integrated into the same implementing rule (Part-AR) to provide for the harmonization of the oversight processes. They should also be adapted to the fundamental principles of the European Union, implementing the principles outlined in the Basic Regulation on oversight, enforcement, exchange of information between the competent authorities and mutual recognition of certificates, as it has already been initiated by the Agency with its proposal in NPA 2008-22.

- ii. The principles of the **State Safety Programme** promoted by ICAO should also be integrated in those requirements. The Agency has already initiated this work with the adaptation of the provisions initially proposed in NPA 2008-22 and with the implementation of a European Aviation Safety Programme¹³.
- iii. The provisions for **safety oversight of safety changes** to functional systems (former Article 8 and 9 of the Regulation (EC) No 1315/2007) need to be streamlined as already explained in paragraph (a), and need to be integrated into the common regulatory framework.
- iv. The so-called '**non-safety requirements**' for the certification of the organisations providing services as well as their identification. The topic has been discussed with the experts of the rulemaking groups during their working and ad hoc meetings. During the 34th SSC meeting, it was decided that the European Commission will make a proposal on how to deal with the 'non-safety requirement' for the SSC's consideration.

The need to harmonise the terminology as much as possible for naming the acts of the competent authorities to react to unsafe conditions without undue delay. While in the proposed article 13 of the draft regulation to this Opinion (former article 12 of Regulation (EC) No 1315/2007) the term used is 'safety directives', the term used in EASA NPA 2008-22 is the ICAO term 'Mandatory Safety Information'. In addition, the term 'safety directive' has been proposed by the Agency under EASA NPA 2009-01¹⁴ to refer to the measures that the Agency may be allowed to issue to address retroactive airworthiness requirements for operations (enhancing the level of safety) and to mandate corrections of shortcomings identified in the elements which are part of the operational suitability data of aircraft. The assessment of the terms to be used in each case will be properly done during the 2nd phase.

21. The above-mentioned proposals together with the transposition of the relevant ICAO SARPs should be the first priorities for the Agency's 2nd phase as already mentioned. The proposed Regulations will be the starting point for the Agency for the 2nd phase.

c) *The Agency as competent authority in accordance with Article 22a of the Basic Regulation and further explanation of Article 3 of the draft implementing rules*

22. The principle of separation of safety regulation from operational functions (obligation for ANSPs to be certified and the certificates normally issued by NSAs) was maintained by the European co-legislator in 2009 when adopting the SES II package, and when adopting the extension of the Agency's remit to ATM/ANS. Therefore, there is no doubt that the NSA nominated or established by a Member State is the competent authority for certification and oversight of ANSPs having their principal place of operation and, if any, their registered office, located in the same Member State. This is logical also for subsidiary and proximity reasons. This is the case established in Article 3(a) of the proposed implementing rules to these opinion.

¹³ http://www.easa.europa.eu/ws_prod/g/doc/COMMS/easanews/EASA-Newsletter-issue-3.pdf.
http://www.easa.europa.eu/ws_prod/g/doc/About_EASA/Manag_Board/2009/EASA%20MB%2003-2009%20Summary%20of%20Discussions%20MB%20Special%20Meeting.pdf.

¹⁴ http://www.easa.europa.eu/ws_prod/r/doc/NPA/NPA%202009-01.pdf

23. Furthermore, SES I introduced the concept of Functional Airspace Blocks (FABs) encompassing the airspace over more than one Member State. In respect of FABs that extend across the airspace falling under the responsibility of more than one Member State, the European co-legislator established that the Member States concerned shall conclude an agreement on the supervision of ANSPs providing services relating to that FAB. This provision was confirmed again when adopting SES II. Many solutions could exist to implement this principle; such as to nominate a single NSA for safety oversight of all ANSPs providing services in a FAB; maintain the principle of territorial competence for different ANSPs active in the FAB or to nominate several NSAs, but each of them being responsible for a specific type of service. The implementing rules proposed by the Agency should not limit the existing SES' provisions which allow the Member States to choose the applicable arrangements for the safety oversight of ANSPs providing services in a FAB. Therefore, the proposed Article 3(b) makes reference to this agreement between the Member States involved in the FAB, as based on Regulation (EC) No 550/2004 the agreement between the Member States could also include a clear allocation of responsibilities for the supervisory tasks.
24. Regulation (EC) No 550/2004 allows certification of ANSPs providing 'bundled' services (e.g. a provider of en-route ATC services providing also TWR ATC at aerodromes, FIS, Communication, Navigation or other ANS), but also 'unbundled' services (e.g. one aerodrome operator providing directly TWR services at its location or a provider of only radio-navigation signals). This possibility has already been widely used: the EUROCONTROL Report on implementation of SES¹⁵ released in June 2009, showed 212 certified ANSPs, a number that is much larger than the number of EU Member States. Such a number would of course not be possible without 'unbundling' some ANS from the major national Air Traffic Control Provider (ATCP). In the future, SESAR and NEXTGEN might bring significant innovations to ATM/ANS, especially in the field of exchange of digital information and the underlying need for a communication network. SESAR, in particular, postulates to use not only mobile data links in radio line of sight, but also satellite based aeronautical mobile communications. Nothing prevents a provider of satellite communications to provide services in the airspace of the territory to which the European Union Treaty applies, while having its registered office located outside the territory of the Member States. Other examples may exist, e.g. in relation to designers of instrument procedures or providers of data for flight management systems.
25. Article 22a(b) of the Basic Regulation requires the Agency to be responsible for issuing certificates and authorisations to organisations located outside the territory subject to the provisions of the European Union Treaty, but providing services in the airspace of the territory to which the European Union Treaty applies. Therefore, the Agency will be the competent authority issuing certificates of organisations in those cases. The proposed implementing rules shall be consistent with the above and that is the rationale for the Article 3(c) of the proposed implementing rules.
26. In its Communication of November 2008¹⁶, announcing the 2nd extension of the Agency's remit, the European Commission noted that, with the development of new technologies, service providers operating all over the continent, or even beyond, are emerging. Already, the grouping of EGNOS¹⁷ providers and the future operator of Galileo¹⁸ in the field of satellite navigation, the EAD¹⁹, communication services such as ARINC and SITA²⁰ are examples of this. The European common rules should make it possible to ensure that

¹⁵ http://www.eurocontrol.int/Issip/gallery/content/public/2009Sep/SESReport_WEB.pdf.

¹⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0578:FIN:EN:DOC>.

¹⁷ EGNOS: European Geostationary Navigation and Overlay Service.

¹⁸ Galileo is the European satellite navigation system.

¹⁹ EAD: European Information Database.

²⁰ ARINC and SITA: Aeronautical Radio Inc. and Société Internationale de Télécommunications Aéronautiques market communication services for the aviation industry.

the certification of these new types of organisations is successfully achieved in a consistent and coordinated fashion.

27. The European co-legislator decided (Article 22a(c) of the Basic Regulation) that the Agency shall issue and renew certificates of organisations providing pan-European ATM/ANS services. Proposed Article 3(d) only reflects, at the level of implementing rules, the decision already taken by the European co-legislator.
28. As already mentioned above, the question however exists whether a certificate issued by the Agency should only cover the 'safety' requirements applicable to the pan-European ANSPs, or 'all' requirements (i.e. 'safety' and those named 'non-safety' or provisions which do not have a 'direct impact on safety') regarding certification. Although it was decided that the European Commission will make a proposal for the SSC's consideration regarding the issue related to the 'non-safety' requirements of the certification, in the opinion of the Agency one ANSP shall hold a single certificate demonstrating compliance with all applicable legal requirements, for the following reasons:
 - Splitting the oversight role between the Agency and one NSA will lead to a double certification process or not clear allocation of responsibilities, which will cause burden to the regulated organisations;
 - This burden will be contrary to Article 2.2(c) of Basic Regulation, which requires the Agency to promote the cost-efficiency of the regulatory and certification processes and to avoid duplication at national and EU level;
 - The Basic Regulation does not limit the certification to safety certification (the term certification as defined in Article 3 of the Basic Regulation shall mean 'any form of recognition that a product, part or appliance, organisation or person complies with the applicable requirements including the provisions of this Regulation and its implementing rules, as well as the issuance of the relevant certificate attesting such compliance');
 - Article 22a of the Basic Regulation does not limit in any way the scope and content of the certificates to be issued by the Agency, which then have to cover the entire range of applicable requirements;
 - Splitting 'safety' requirements from 'non-safety' ones is to a certain extent arbitrary and would require a thorough consultation.
29. It is the Agency's opinion that splitting the oversight responsibilities for 'safety' and 'non-safety' aspects of the certification of an organisation between different competent authorities would undermine the purpose of the European co-legislator and is not a legal requirement. Moreover, such decision would be considered contradictory with the objectives of the Basic Regulation which requires the centralisation of the certification and oversight activities of certain services providers.
30. Finally, and as already explained above, the European Commission will make the final legislative proposal on how to deal with the so-called 'non-safety' provisions.

IV. Regulatory Impact Assessment

31. The purpose of a Regulatory Impact Assessment (RIA) is to assess the impacts and consequences of rules and requirements which are being proposed. The assessment thus would aim to support the decision making process (e.g. between all the possible regulatory options which is the one with less overall impact on the regulated persons/organisations) on the implementation of the Basic Regulation.
32. The purpose and methodology of a RIA have been explained in several documents, i.e. the RIA on the extension of the competence of the European Aviation Safety Agency (EASA) to the regulation of Air Traffic Management and Air Navigation Services (ATM/ANS).

33. Because of the reasons already explained in chapter III, the present Opinion comprises a set of implementing rules that have been copied from the SES Regulations; in particular Regulation (EC) No 2096/2005 and Regulation (EC) No 1315/2007. There are no changes proposed to the contents of the said Regulations that would justify further analysis in the context of a RIA. The proposed minimal changes implementing the Basic Regulation are changes that do not allow for any other alternatives or options worth additional study.
34. Therefore, a RIA has not been undertaken. Still, the Agency would like to highlight that there are some relevant data regarding the affected population that are of interest in the context of this new set of rules. Those can be found in the EUROCONTROL Report on the SES Legislation Implementation²¹ which reveals numbers of organisations and persons involved in ATM/ANS in the Member States of the European Union, Norway and Switzerland.
35. In its 2008 report²², EUROCONTROL highlighted that there are some pan-European issues requiring action at the European level:
- Lack of arrangements for the safety oversight of ATFM and ASM by NSA's, notably in the case of the ATFM elements operated centrally by CFMU;
 - Lack of formalisation of safety oversight arrangements as regards cross-border situations;
 - Poor implementation by NSA's of safety oversight of changes, which is important as regards the acceptance of new systems and changes to existing systems;
 - Lack of specification of enforcement measures for infringements to SES Regulations by certified providers as required in the relevant SES regulations;
 - In general, there are concerns regarding double regulation, Just Culture development and the availability of resources, especially qualified auditing personnel.
36. In its 2009 report, EUROCONTROL highlighted that the record of the industry, in terms of accidents and incidents, continues to show that major risks are being recognised and successfully mitigated. In a number of cases, however, existing levels of resources and expertise are insufficient to exercise their safety responsibilities to the extent needed to contribute to safety improvement.
37. Although it can be concluded that there are no immediate risks in the field of ATM/ANS, there are still many aspects that need to be addressed. Oversight, monitoring and enforcement are still areas where improvement would be desirable and there is still no uniformity as to the implementation of ATM/ANS safety measures. The RIA on the extension of the EASA system to the regulation of Air Traffic Management and Air Navigation Services (ATM/ANS) already stated it and this analysis confirms that action needs to be taken. This involves mainly the goal of clear regulation and uniform implementation and oversight. In the 2nd phase of the implementation this will be further evaluated and addressed.

V. Conclusions

38. The Agency has prepared this Opinion as an answer to the request by the European Commission and the Single Sky Committee (SSC) to implement the extension of the European aviation safety regulatory system to ATM/ANS in the first phase through the so called 'fast-track' process. In doing so, the Agency has carefully reflected the further advice it has received during the process from the Commission, SSC and EASA's Management Board as well as from all stakeholders involved.

²¹ www.eurocontrol.int/lssip/gallery/content/public/2009Sep/SESReport_WEB.pdf.

²² http://www.eurocontrol.int/src/gallery/content/public/documents/report/srcdoc44_e1.0.pdf.

39. The Agency strongly believes that this 'fast-track' process will provide early benefits in the safety regulatory system, such as:
- The Agency may develop the necessary Acceptable Means of Compliance and Certification Specifications whose use facilitate the compliance with rules and provide the necessary proportionality and subsidiarity. This implies also making use of industry best practices;
 - The new rules in place will allow the Agency to initiate its standardisation inspections purposed to ensure the safe and uniform application of common rules and to assist the authorities in their safety oversight role;
 - The Agency will become the competent authority in the tasks attributed to it by law — for pan-European and non-EU ANSP's, as well as for non-European ATCO training organisations;
 - Other elements in the European aviation safety system — such as international cooperation agreements as well as enforcement measures set in the BR — would become applicable also in this domain;
 - Allowing the Agency to contribute through various regulatory measures to the implementation of the SES II, including in particular the support to the FAB arrangements, the safety oversight of the ATM network management functions and to provide the support necessary to facilitate the implementation of the SESAR programme.
40. The Agency recommends that the Commission initiates the executive process to adopt draft implementing rules based on the present Opinion and amends accordingly the existing legislation applicable to the Single European Sky in order to avoid double regulation and conflicting requirements.

Cologne, 28 May 2010

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