



# Terms of Reference

## for rulemaking task RMT.0476

### Regular update of SERA rule (IR/AMC/GM)

ISSUE 1 — 18.8.2017

#### Issue/rationale

Rulemaking task RMT.0476 is intended to be used to regularly update the Commission Implementing Regulation (EU) 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and the associated acceptable means of compliance (AMC) and guidance material (GM).

Regular updates are issued based on the selection of non-complex, non-controversial or mature subjects originating from European Commission requests, International Civil Aviation Organization (ICAO) developments, stakeholders and expert groups or individuals, which the European Aviation Safety Agency (EASA) has assessed as beneficial.

The general objective of this rulemaking task is to ensure a high and uniform level of safety and to reflect the state of the art and best practices.

<b>Action area:</b>	Regular updates.	<b>Rulemaking group:</b>	No
<b>Affected regulations and decisions</b>	Commission Implementing Regulation (EU) No 923/2012; ED Decision 2013/013/R on AMC/GM to Commission Implementing Regulation (EU) No 923/2012.	<b>Rulemaking Procedure:</b>	In accordance with MB Decision 18-2015 of 15 December 2015
<b>Affected stakeholders:</b>	Member States, competent authorities/national supervisory authorities, ATM/ANS providers, airspace users (e.g. aircraft operators), aerodrome operators and EASA		
<b>Driver:</b>	Safety, legal obligations		
<b>Impact assessment:</b>	No		



## 1. Why we need to change the rules — issue/rationale

Regular updates are issued based on the selection of subjects originating from the European Commission requests, ICAO developments, stakeholders and expert groups or individuals. The subjects may vary in nature. Some of them may be directly driven by safety issues (e.g. safety recommendations received from accident investigation authorities, etc.) or other factors, such as the introduction or the evolution of concepts/technologies, proposals from stakeholders, other regulatory developments, including the consideration of the latest amendments of the ICAO provisions (i.e. Standards and Recommended Practices (SRPs), procedures, documents) as part of the 'ICAO-EU synchronisation mechanism'<sup>1</sup>.

When amendments to Regulation (EU) No 923/2012<sup>2</sup> are necessary to ensure the incorporation of relevant, newly introduced ICAO provisions (i.e. SRPs, procedures, documents), or amendments to those already transposed, the EU regulatory process needs to be closely aligned with the corresponding ICAO process when the relevant ICAO provisions are undergoing regular revisions. This would avoid persisting discrepancies between the applicability of EU regulations and the originating ICAO provisions.

In order to increase the efficiency of the regulatory process, EASA decided to reduce the administrative burden that individual tasks generate for stakeholders by grouping (emerging) rulemaking issues which are considered to be of a non-controversial nature and may directly lead to EASA opinions and/or decisions, albeit following at least a consultation with the EASA's advisory bodies (ABs). This concept was introduced with MB Decision No 18-2015<sup>3</sup> (see Articles 15 and 16).

On these grounds, EASA will perform, on a regular basis, a review of identified or notified subjects which could lead to amendments to the rules and, where appropriate, may propose amendments to the implementing rules (IRs) and/or the acceptable means of compliance (AMC) and guidance material (GM).

## 2. What we want to achieve — objective

The general objectives of the European Union in the field of civil aviation are defined in Article 2 of Regulation (EC) No 216/2008 (the 'Basic Regulation').

In addition to the general objectives above, the specific objectives are:

- to ensure that (emerging) miscellaneous safety issues are addressed; and
- to align updates of European rules with amendments to the relevant ICAO provisions (i.e. SRPs, procedures, documents).

This rulemaking task is intended to regularly update, as necessary, Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012 and the associated AMC and GM.

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<sup>1</sup> See Appendix 1

<sup>2</sup> COMMISSION IMPLEMENTING REGULATION (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010

<sup>3</sup> MB Decision N° 18-2015 of 15 December 2015 replacing Decision 01/2012 concerning the procedure to be applied by the Agency for the issuing of opinions, certification specifications, acceptable means of compliance and guidance material ('Rulemaking Procedure').

### 3. How we want to achieve it

In accordance with MB Decision No 18-2015, and, as necessary, EASA will:

- select subjects meeting the criteria of the above-mentioned objectives;
- publish a notice of proposed amendment (NPA) proposing an amendment to IR and/or AMC/GM;
- prepare a comment-response document (CRD);
- publish an opinion containing the proposed changes to the IR; and/or
- publish an ED decision amending AMC/GM; and
- issue a report to the European Commission, if/as requested.

Depending on the outcome of the consultation and the expected significance of the impact of the proposed amendments, EASA will either activate the accelerated rulemaking procedure<sup>4</sup> or follow the full rulemaking procedure. When the impact of the proposal is considered low or medium, EASA will issue directly an opinion (proposing the amendment to the affected European regulation) or a decision (introducing amendments to AMC/GM). When the impact is expected to be high, the proposal will follow the standard rulemaking procedure, including also the preparation of an NPA and its public consultation (before the opinion/decision).

When this rulemaking task is conducted to align the rules with the relevant ICAO provisions (i.e. SARPs, procedures, documents), it will be based on the implementation of the 'ICAO-EU synchronisation mechanism'. This coordinated process – ensuring a timely maintenance of the EU-rules and ICAO provisions – will facilitate the way this rulemaking task is conducted and the smooth introduction of the 'amendment packages' that will be launched.

### 4. What are the deliverables

- An NPA describing the subjects that have been selected and proposing an amendment to IR and/or AMC/GM;
- A CRD to the above-mentioned NPAs;
- An ED Decision amending AMC/GM;
- An opinion containing the proposed changes to the IR.

### 5. How we consult

Due to the generic nature of this rulemaking task, these ToR remain open without an end date. Each individually proposed amendment package should, however, provide the specific planning and intended date for the issuing of the respective opinions (i.e. IRs) or decisions (i.e. AMC/GM).

Consequently, EASA will:

- select those rulemaking issues which meet the criteria of the above-mentioned objectives;

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<sup>4</sup> Article 16 Management Board Decision DECISION N° 18-2015 of 15 December 2015

- consult the affected stakeholders using an appropriate method as prescribed in MB Decision No 18-2015 on the Rulemaking Procedure, proposing amendments to the affected IRs or AMC/GM as mentioned above; and
- publish an opinion or a decision in accordance with the latest MB Decision No 18-2015.

## 6. Interface issues

As the proposals for a change to the ATM/ANS rules will be specific and affect only Regulation (EU) No 923/2012 and its associated AMC/GM, the interfaces will vary and therefore will be assessed for each proposal.

## 7. Profile and contribution of the rulemaking group

When the impact of the proposal is expected to be high, the standard rulemaking process will be followed. Consequently, EASA may set-up a rulemaking group, which would be composed by subject matter experts with relevant profile for the subject to be addressed.

## 8. Reference documents

### 8.1. Related regulations

Commission Implementing Regulation (EU) 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010

### 8.2. Related decisions

ED Decision 2013/013/R of the Executive Director of the European Aviation Safety Agency of 17 July 2013 on Acceptable Means of Compliance and Guidance Material to Commission Implementing Regulation (EU) No 923/2012 and ED Decision 2016/023/R of the Executive Director of the European Aviation Safety Agency of 13 October 2016 amending the Acceptable Means of Compliance and Guidance Material to Commission Implementing Regulation (EU) No 923/2012.

### 8.3. Reference documents

- 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, 19.3.2008, p. 1)
- Annex 2 to the Convention on International Civil Aviation
- Annex 3 to the Convention on International Civil Aviation
- Annex 10, Volume II to the Convention on International Civil Aviation
- Annex 11 to the Convention on International Civil Aviation
- ICAO Doc 4444 – PANS-ATM, Procedures for Navigation Services – Air Traffic Management
- ICAO Doc 8168, Volume I – Aircraft Operations
- ICAO Doc 7030 – Regional supplementary Procedures



The above list is not to be considered an exhaustive one, as other reference documents might support the activities undertaken in accordance with these Terms of Reference.



## APPENDIX — The ICAO-EU synchronisation mechanism

## EC/EASA PROCESS

### FOR

### SYNCHRONISATION OF EU ATM RULES WITH ICAO PROVISIONS

This paper relates to the EC/EASA synchronisation process in order to align the applicability dates of the ICAO provisions with the applicability dates of the affected EU implementing measures. It explains the mechanism that can be used to achieve this timely synchronisation.

#### 1. The EU upstream coordination mechanism

The upstream coordination mechanism is the process for coordinating European action before the ICAO State Letter (SL) is issued.

The aim of this coordination is to monitor, influence as needed, and prepare for the impact assessment of the ICAO provisions developments on EU regulatory material through:

- 1) a pro-active exchange of information and views among European stakeholders;
- 2) coordination between the participating European organisations (EC, EASA, and EUROCONTROL) and the EU Member States' experts who are active in the ICAO panels and working groups.

#### A. **Pro-active exchange of information**

In a continuous and regular manner, European organisations shall exchange information for preparing, sharing, and discussing the content of the ICAO panel's work<sup>5</sup>.

##### At ICAO level:

Representatives of the EC and EASA participate in ICAO meetings during the development of the ICAO proposals and are provided with advance information regarding the anticipated SL developments.

##### At European level:

The 'European ICAO ATM Coordination' meeting<sup>6</sup>, which takes place every two months, provides a platform to ensure European coordination on ICAO ATM matters for monitoring the overall provision developments. Also, several European expert coordination group meetings are regularly taking place on specific matters (e.g. 'MET Knowledge Network' for MET related SARPS or ATM Management Requirements and Performance Panel (ATMRRP) meetings).

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<sup>5</sup> This is already the case for some of the ICAO panels, with notably experts of EASA and EUROCONTROL, as well as in the context of the European ICAO ATM coordination where panel review meetings are organised to discuss the content of the respective job cards of each ICAO panel.

<sup>6</sup> Involving EASA, EUROCONTROL, the SJU, EUROCAE, and ECAC and currently led by the EC DG MOVE.



#### At EASA level:

EASA will request its relevant technical Advisory Bodies (e.g. ATM/ANS TeB/STeB) to nominate focal points<sup>7</sup> and thus ensure that all issued SLs are discussed from a technical perspective and that all upcoming SLs can be anticipated and discussed by these focal points. An early assessment of the ICAO proposed changes is paramount in order to define the regulatory and implementation actions at the EU level, coordinated by EASA. The focal points nominated by the EASA Advisory Bodies would also be actively involved in the development of the proposals of the EU ATM rules resulting from ICAO proposed changes. EASA will also ensure that the Member States representatives in the ICAO Panel are involved in the assessment and discussion of the ICAO proposed changes.

Contact with the relevant ICAO experts should be maintained during this upstream coordination, as useful feedback could be provided to ICAO at this stage.

### **B. The coordination between all involved actors**

Before the start of the downstream coordination (State Letter type I)), EASA will evaluate whether the response to the SL can be coordinated electronically or if a teleconference/webex with Member States' points of contacts is needed based on the impact of the proposal covered in the SL. This meeting should take place one week after the distribution of SL type I, to perform an evaluation of the content of the SL, and, if necessary, coordinate the establishment of a dedicated group of experts for the particular subject, should the impact of the SL proposed amendment require it.

## **2. The EU downstream coordination mechanism**

The EU downstream coordination mechanism is the process for coordinating the ICAO SLs once they have been issued.

It is important to note that there is already an EC/EASA process for proposing recommendations to ICAO SLs types I and II to be used by EU Member States.

In addition to this process, EASA is establishing 'permanent rulemaking tasks', which aim at setting up the framework for the regular updates of the relevant ATM rules. These regular updates will be triggered, among other input, by amendments to the ICAO provisions which affected the content of the rules.

For each of those rulemaking tasks, EASA will coordinate with the technical advisory bodies' point of contact nominated to address ICAO SLs. Most of the work will be done via email and via focussed consultations to be flexible and to accelerate the process, as well as to ensure timely response to the ICAO SLs together with an agreement for the required rulemaking action.

These 'permanent rulemaking tasks' are included in the EASA rulemaking programme<sup>8</sup>. They will cover the whole downstream coordination process (SL type I and SL type II). The activities would be launched, as necessary, e.g. when the ICAO SL type I is issued and will be continued with the issue of the related ICAO SL type II. The existing

<sup>7</sup> Focal points should be technical experts who are expected to provide their input on the different services (e.g. ATS, CNS, AIM, MET) or different topics (e.g. SMS).

<sup>8</sup> Please refer to RMT.0476 (SERA), RMT.0668 (ATCO) and RMT.0719 (ATM/ANS) in [https://www.easa.europa.eu/system/files/dfu/RMP-EPAS\\_2017-2021.pdf](https://www.easa.europa.eu/system/files/dfu/RMP-EPAS_2017-2021.pdf)

EASA rulemaking procedure allows for flexibility should an accelerated procedure be needed in order to facilitate timely alignment with the related ICAO amendments.

EASA intends to amend its rulemaking process to address the upstream and downstream coordination processes for answering the ICAO SLs aiming at timely synchronisation between ICAO provisions and EU ATM Regulations.

**A. Process applied when State letters type I (Proposal for Amendment) are sent by ICAO**

This section explains how EASA intends to manage the ICAO SL, draft the final recommendation, and, at the same time, (re-launch) the rulemaking task in order to ensure timely preparation of the final EASA deliverables (opinion, decision) once the ICAO amendment has been adopted (SL type II).

**1) EC/EASA process for handling ICAO SL type I amendments**

As shown in the table below, the existing EC/EASA process for responding to ICAO State Letters type I takes 13 weeks.

Phase	0	1	2	3	4	5
<b>Activity</b>	SL issued by ICAO	Notification to Member States by EASA	Draft EASA recommendation to MS	MS comments and reactions	Preparation of final recommendation	MS reply to ICAO
<b>Turnaround time Type I</b>	0	<1 week>	<4 weeks>	<4 weeks>	<2 weeks>	<2 weeks>
<b>Timeline (weeks)</b>	0	1	5	9	11	13
===== +/- <b>13 weeks</b> (approx. ICAO deadline for replies) =====>						

In parallel to the preparation of the final recommendation, EASA initiates the process for developing the proposals to amend the EU ATM rules, as applicable.

**2) EASA process for timely anticipation of the rulemaking activity**

The table below shows the activity and expected timeline for the preparation of the rulemaking task.

Phase	0	1	2	3	4	5
<b>Rulemaking activity</b>	Task launched	Consultation	Assessment of impact	Preparation of opinion/decision	Early draft opinion for SL II	
<b>Expected timeline</b>	0	<2 weeks>	<3 weeks>	<3 weeks>	<before incoming SL II>	
<b>Timeline (weeks)</b>	0	2	5	8	11	



The consultation process is facilitated through the ‘permanent rulemaking task’ which is set up to ensure the regular update of the EU rules with the latest ICAO amendments. The draft proposal will also be consulted with the Member States’ focal points, along with an assessment of the impact of the proposal on the EU rules.

**NOTE ON THE CRITERIA USED TO IDENTIFY THE IMPACT OF THE CHANGE**

*Non-significant impact is identified when the change:*

- *is expected to have negligible impact on the affected stakeholders, their functional systems, procedures, or personnel;*
- *addresses issues of non-controversial nature; and*
- *affects a limited group of stakeholders.*

*Minor impact is identified when the change*

- *is expected to have minor impact on the affected stakeholders, their functional system, procedures, or personnel, and therefore requiring just a focussed consultation. The change can be integrated smoothly with an adequate transition period.*

*Major impact is identified when the change*

- *is expected to significantly affect stakeholders, requiring them to change their procedures and manuals, which may involve extra costs or investments. These potential negative impacts need to be counterbalanced by an assessment of the potential benefits.*

Depending on the outcome of the consultation and the significance of the impact, EASA will decide to follow one of the following procedures<sup>9</sup>:

- 1) When the impact of the ICAO amendment is considered non-significant or minor: EASA applies a special rulemaking procedure<sup>10</sup>. This means that the draft proposal only needs consultation with the EASA ABs and/or affected stakeholders before the proposed amendment is sent to the EC (opinion) or published as a decision
- 2) When the impact is considered high: EASA will follow the standard rulemaking procedure and the proposal will be managed like a normal rulemaking task, following the entire rulemaking process.

**B. Process applied when ICAO State letters type II (Adoption of Amendment) is sent.**

**1) EC/EASA process for handling ICAO SL type II**

As shown in the table below, the existing EASA/EC process for responding to ICAO SL type II lasts 26 weeks.

<sup>9</sup> EASA Management Board Decision 18-2015 of 15 December 2015 replacing Decision 01/2012 concerning the procedure to be applied by the Agency for the issuing of opinions, certification specifications, acceptable means of compliance and guidance material (‘Rulemaking Procedure’)

<sup>10</sup> Article 15 or 16 of EASA Management Board Decision 18-2015.



Phase	0	1	2	3	4	5
<b>Activity</b>	SL issued by ICAO	Notification to Member States by EASA	Draft EASA recommendation to MS	MS comments and reactions	Preparation of final recommendation	MS reply to ICAO
<b>Turnaround time Type II, notification of differences or compliance</b>	0	<1 week>	<13 weeks>	<6 weeks>	<4 weeks>	<2 weeks>
<b>Timeline (weeks)</b>	0	1	14	20	24	26
===== +/- <b>26 weeks</b> (approx. ICAO deadline for replies) =====>						

NOTE: from the issuing of SL type II and the applicability date of the adopted amendments, the timeline is about 80 weeks (e.g. from March to November the following year).

As for the case of State letters type I, EASA’s intention is to combine the processes in a similar manner. In this case, the preparation of the recommended response to the SL type II and the preparation of the opinion/decision will depend on the differences between the proposals in the ICAO SL type I and SL type II, and the resulting significance of the amendment and impacts on the regulated parties identified at the SL type I phase.

EASA will verify the potential impact of the proposed changes on the EU rules. The result of the verification will be sent for consultation to the relevant focal points nominated for the associated rulemaking tasks.

Depending on the outcome of this consultation and the significance of the impact, EASA will use the required rulemaking procedure (standard or special).

The below tables show the EASA special procedures and normal rulemaking procedure.

**2) EASA special rulemaking procedure for timely synchronisation with ICAO applicability date**

The below table shows the EASA accelerated procedure (Article 16) when handling ICAO SL type II amendments with **non-significant or minor potential impact**.

Phase	0	1	2	3	4	5	<b>ICAO Applicability Date</b>
<b>Rulemaking Activity</b>	Early Draft Opinion	Draft rule	Focussed consultation	Draft Opinion / Decision	Publish Opinion Decision EU differences	EU adoption	
<b>Expected Timeline</b>	0	<8 weeks>	<4 weeks>	<12 weeks>	<2 weeks>	13 months for adoption	
<b>Timeline</b>	0	8	12	24	26	XX	



This process follows a ‘light’ procedure because the impact of the amendments on the EU rules justifies that a focused consultation with affected stakeholders is sufficient. As the drafting of the amendment has already been prepared at SL type I level, the draft opinion/decision should take into account the differences in content between SL type I and SL type II, if any, and should be ready for the focused consultation process. In this case, the time allocated for the adoption of the rule should be sufficient to align with the applicability date of the ICAO provisions. At the same time, the assessment of the impact is reflected in the final recommendation to the Member States.

**3) EASA standard rulemaking procedure for timely synchronisation with ICAO applicability date**

The below table shows the EASA rulemaking procedure when handling ICAO SL type II amendments with **major potential impact**.

Phase	0	1	2	3	4	6	ICAO Applicability Date (80 weeks)
Rulemaking Activity	Early Draft Opinion	RIA development	NPA drafting	NPA consultation	CRD Opinion / Decision drafting	EU adoption	
Expected Timeline	0	<12 weeks>	<24 weeks>	<8 weeks>	<12 weeks>	6 months for adoption	
Timeline (weeks)	0	12	36	44	56	XX	

This process follows the complete cycle of a rulemaking task, requiring a full regulatory impact assessment, NPA public consultation, CRD and final opinion and/or decision. In the case of amendments to the implementing regulations, it entails the adoption of the draft regulation by the comitology process prior to publication into the EU Official Journal. Therefore, the time allocated for the adoption of the EU regulation is tight as shown in phase 6 in the table. Depending on the ICAO applicability date, the synchronisation between the applicability date of ICAO amendment and the EU proposal may not always be ensured. Only in exceptional cases would there be short time deviation to such synchronisation.

When preparing the response to the ICAO State letter type II, the outcome of the assessment and the significance of the impact will be taken into account.

When timely synchronisation cannot be ensured, the recommendation will include:

- a request for extension of the ICAO applicability date; or
- the publication of common EU differences to ICAO SARPs.

