

**OPINION No 3/2007**

**OF THE EUROPEAN AVIATION SAFETY AGENCY**

**for amending Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, to extend its scope to the regulation of safety and interoperability of aerodromes**

## I. General

1. When adopting the Regulation (EC) No 1592/2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency<sup>1</sup> (“Basic Regulation”) the Community legislator invited the Commission to make as soon as possible<sup>2</sup> appropriate proposals to extend its scope to air operations and flight crew licensing. The Community legislator also anticipated<sup>3</sup> the future application of the Basic Regulation and the development of essential requirements (ERs), for any other area related to civil aviation safety, on the basis of subsequent legislative proposals. Therefore the Commission, when presenting its proposal<sup>4</sup> for the first extension of the competences of the European Aviation Safety Agency (EASA) to air operations, flight crew licensing and safety of third country aircraft, also announced<sup>5</sup> its intention to progressively extend such competences, in the perspective of a “total system approach”, to aerodrome/airport safety and interoperability, Air Navigation Services (ANS) and Air Traffic Management (ATM).
2. The Basic Regulation defines, as one of the Agency’s tasks, the provision to the Commission of the necessary technical support<sup>6</sup>, as well as development and adoption of Opinions on which the Commission bases its own legislative proposals concerning safety of civil aviation<sup>7</sup>. The present Opinion has been developed on such a basis. The Agency therefore herewith submits to the Commission its Opinion which purports to fulfil the commitments included in Communication COM(2005) 578 final of 15 November 2005 as far as aerodrome safety and interoperability are concerned.
3. This Opinion is composed by the present memorandum, which explains the views of the Agency on the policy underpinning the safety and interoperability regulation of aerodromes at Community level and which suggests the content of amendments to be made to the Basic Regulation and to the ground handling Directive to implement the said proposed policy. This Opinion also includes in attachments a new Annex to the Basic Regulation containing the essential requirements (ERs) for aerodrome safety and interoperability and a Regulatory Impact Assessment (RIA).

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<sup>1</sup> Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing the European Aviation Safety Agency (OJ L 240, 7.09.2002, p. 1.). Regulation as last amended by Regulation (EC) No 334/2007 (OJ L 88, 29.3.2007, p. 39).

<sup>2</sup> Article 7 therein.

<sup>3</sup> Recitals 2 and 23 *ibidem*.

<sup>4</sup> Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1592/2002 of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency - COM(2005) 579 final of 16 November 2005.

<sup>5</sup> Communication COM(2005) 578 final of 15 November 2005 from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – “Extending the tasks of the European Aviation Safety Agency: an agenda for 2010”.

<sup>6</sup> Article 12 of the Basic Regulation.

<sup>7</sup> Article 14.1 *ibidem*.

## II. Consultation

### a. Notice of Proposed Amendment 06/2006

4. This Opinion has been adopted following the procedure specified by the Agency's Management Board<sup>8</sup>, in accordance with the provisions of Article 14 of the Basic Regulation.
5. A "Consultation Document on the basic principles and essential requirements (ERs) for the safety and interoperability regulation of aerodromes" was published on the Agency website ([www.easa.europa.eu](http://www.easa.europa.eu)) on 16 May 2006 (NPA No 06/2006). The Agency explained therein the institutional framework in which the regulation of such activities could be undertaken; and the reasons why the structure already established by the Basic Regulation for the regulation of other aspects of civil aviation safety had to be used also for the regulation of aerodrome safety. In this context the Agency presented draft Essential Requirements (ERs), which would define the safety objectives imposed by the legislator while ensuring compliance with the ICAO<sup>9</sup> obligations of Member States.
6. The consultation document also presented Agency's suggestions, drawing from currently accepted practices, for broad principles for the regulation of aerodrome safety in the Community context. It finally asked the opinion of stakeholders on a number of questions for which it needed inputs to define a sufficiently consensual policy on which it would build the present Opinion.

### b. Comment Response Document (CRD 06/2006)

7. NPA No 06/2006 attracted a considerable interest and stakeholders requested the extension of the normal three months' consultation period to better prepare their positions; this was agreed. The original closing date (16 August 2006) was hence postponed by two months; the Agency also took into account comments received until November 2006. 3,010 comments were logged by about 1850 stakeholders, the vast majority of which were individuals. However, it is important to highlight that 91 respondents were Aviation Authorities, aerodrome operators or their associations, other companies or trade organisations, as listed in the attached Regulatory Impact Assessment (RIA). Consequently, in quantitative and qualitative terms, it can be considered that the respondents to the NPA constitute a representative sample of the affected European society.
8. All comments logged were acknowledged and incorporated into a Comment Response Document (CRD), which contained an inventory of the answers to the nine questions asked in the NPA, a list of all persons and organisations having provided comments, the replies by the Agency to these comments, and finally an Explanatory Memorandum suggesting possible policy guidelines. The CRD

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<sup>8</sup> Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of Opinions, Certifications Specifications and Guidance Material. EASA MB/7/03 of 27.06.2003 ("Rulemaking Procedure"), subsequently amended and replaced by Decision of the Management Board MB/08/2007 of 13 June 2007.

<sup>9</sup> In particular Annex 14 (Aerodromes) to the Convention on International Civil Aviation signed in Chicago on 7 December 1944, on which the International Civil Aviation Organisation (ICAO) is based.

06/2006 was published on 05 May 2007 on the Agency's website and it is still available there for reading.

**c. Reactions to CRD 06/2006**

9. The Agency has received 103 reactions to CRD 06/2006 from 15 stakeholders: four Authorities (BMVBS-GE, CAA-UK, DGAC-FR & ENAC-IT), ACI Europe, four other aerodrome operation stakeholders, EUROCONTROL, AEA, one airline, GAAC and two professional associations, representing 16.5% of the 91 organisations that had originally replied to the NPA. Indirectly this could suggest that more than 80% of the original respondents to the NPA were sufficiently comfortable with the policy guidelines anticipated by the CRD. Nevertheless, the following paragraphs describe the key points raised in the reactions and answer the concerns they raise.
10. In general stakeholders reiterate their agreement on the establishment of uniform high level essential requirements across the entire Community, provided that said requirements ensure compliance with the ICAO obligations of Member States and do not introduce revolutionary changes to existing national practices. Few stakeholders requested again to clarify the relationship between the common EU rules and ICAO Standards, as well as the sharing of roles and responsibilities between the Agency and the regulatory authorities nominated nationally.
11. The Agency then clarifies that one of the main objectives of the Basic Regulation<sup>10</sup> is to assist Member States in fulfilling their obligations under the ICAO Convention. ICAO Annexes however are not immediately legally binding. The present Opinion proposes therefore that transposition is done at once for all the 31 involved States<sup>11</sup> at the same date through the adoption of a single set of requirements. These requirements, as well as the implementing rules taken for their implementation, will replace national law, without creating an additional layer of legislation, as consistent with the Community system. National regulatory authorities, assisted by the Agency, will be bound to verify their correct implementation but will have no autonomous power to impose additional requirements in domains subject to such Community legislation.

**(i) Lost comments to NPA 06/2006**

12. Unfortunately due to overload of the Agency's IT system when comments were logged, one message from Union des Aéroports Français (UAF) containing ten comments and two comments from the German Airports Association (ADV) were lost during the original consultation. They of course sent them again and their inputs were counted and analysed in the 103 reactions logged on the CRD. These comments amount to only twelve out of the 3010 received (about 0.4%) and most of them are related to issues already made in other comments. Their evaluation does not alter the overall analysis already provided in the CRD. In the few cases where such comments suggested ideas not expressed during the NPA consultation, for fairness, they, have been taken into account in the present Opinion

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<sup>10</sup> As set by its Article 2.2(d)

<sup>11</sup> This includes the 27 EU Member States plus the four associated States (Iceland, Liechtenstein, Norway and Switzerland); additionally the European Civil Aviation Area Agreement will soon extend this to the ten Balkan States, which are parties to that agreement.

(ii) Reactions on the correctness of the analysis of replies to NPA

13. One stakeholder considered that technically sound comments had not produced any change in the text, having only been acknowledged. The Agency recalls that, except for the draft ERs, this opinion is not a proposal for legal text; as regards the attached ERs, it considers that the necessary changes have been made wherever possible to take into account technically sound comments. This stakeholder also stated that the analysis of the replies to the question on the segregation between “large” and “small” aerodromes had not been totally fair. Following this reaction, the Agency verified that among 30 respondents on this point, three had not taken a very clear position, 13 saw the distinction between “large” and “small” aerodromes as not relevant, but 14, on the contrary, more or less accepted the distinction in principle. There was no clear consensus among them though on the criterion and threshold for such segregation. This Opinion does not therefore propose to use the words “large” and “small” in the legal text, but suggests instead lighter proportionate requirements for the less complex aerodromes.
14. Two other stakeholders considered that their position aiming at limiting Community competence only to airports open to regular commercial traffic had not been understood. The Agency observes that there is a strong majority in favour of establishing common rules for all aerodromes open to public use. This is moreover consistent with the total system approach advocated by the majority of stakeholders and supported by objective safety and economic considerations as detailed in the attached RIA.
15. Finally, a few stakeholders considered that some of their comments on specific points had not been fully understood. Having re-analysed these comments in detail, the Agency accepts the point and has taken this into account when finalising the present opinion.
16. The Agency concluded that the correctness of the process was only criticised by a small minority of those having participated in the consultation, which seems to indicate that the result of the review is generally accepted by the majority. Consequently the Agency saw no reason to change the global analysis it presented in the CRD when formulating this Opinion, even if its conclusions of course cannot totally satisfy all European stakeholders. It believes then that this opinion constitutes a fair reflection of the majority views expressed during the two steps’ consultation it has conducted on best means to regulate aerodromes safety.

(iii) Other reactions to the CRD

17. 22 reactions simply reiterated comments which had already been considered when analysing the replies to the NPA.
18. The remaining 55 stakeholders’ reactions (around 53%) contained various helpful suggestions, some aiming at clarifying the explanatory text, others recommending adjustments to the possible policy highlighted in the CRD, in particular as regards definitions, scope of Community legislation, thresholds, regulation of aerodrome equipment, requirements for RFFS staff or the wording to be used for the ERs. All of them have been taken into account in this Opinion. These reactions once more highlight the existence of a wide support for centralising at EU level the regulation of the safety and interoperability of aerodromes open to public use. Of course these

reactions also confirm that the tasks related to certification and safety oversight should be left to competent authorities for proximity reasons, subject to proper standardisation oversight by the Community to ensure uniformity and a level playing field. Generally, the reactions also stress that the subsequent implementing rules should not duplicate other Commission Regulations, be proportionate and flexible enough to allow alternative methods of compliance whenever appropriate, provided an equivalent level of safety is achieved.

### **III. Content of the Opinion of the Agency**

#### **a. The scope of common action**

19. As a matter of principle, the scope of common action is specified in the Basic Regulation, whose extension shall clearly state which infrastructures, products, systems, equipment, services, persons or organisations are affected. As a consequence they will be subject to the requirements established by this Regulation and, as appropriate, to rules taken for its implementation.
20. Conversely, any infrastructure, product, system, equipment, service, person or organisation not covered by Community competence remains under the full responsibility of Member States, which have to take, as appropriate, measures to provide for the level of protection expected by their citizens.
21. When regulating aerodromes<sup>12</sup> the Agency considers that the objective is to provide for the safety of an individual aircraft, by ensuring that the appropriate means are provided to allow for its safe take-off, landing and ground manoeuvring, while Air Traffic Management aims mainly at managing the mutual interaction among two or more aircraft. As these two types of activity are fundamentally different they need to be addressed separately in order to avoid overlap and confusion. The present Opinion is therefore limited to the safety of the ground infrastructure and its operation, seen from the perspective of operation by a single aircraft. A separate task is currently being handled by the Agency to address the ANS/ATM dimensions of civil aviation safety, on the ground and in all phases of flight, under a gate-to-gate perspective. A separate consultation will be carried out, and a specific opinion issued, for that purpose.
22. Aircraft fly from place to place and the rules devised to provide for the necessary level of safety have also to be known and understood by all users. Such a need for interoperability is therefore not only a tool to facilitate the free movement of persons, but also an essential safety requirement. The Agency considers therefore that interoperability cannot be dissociated from safety when regulating civil aviation and that the present Opinion must also cover interoperability requirements. Even though there may be many different definitions of “interoperability” from different perspectives, the intention here is only to transpose into Community provisions the requirements that are necessary to ensure that the interoperability objectives contained in ICAO Standards and Recommended Practices are also taken into consideration, so safeguarding the

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<sup>12</sup> i.e. any especially adapted area on land, water or man made structure or vessel, for the landing, taking-off and manoeuvring of aircraft including the aerodrome equipment, installations and services, which these operations may involve for the requirements of aircraft traffic.

global system they underpin. This will have to be duly reflected in the Basic Regulation.

23. In this context the Agency recalls that the objective of the Basic Regulation only address safety of civil aviation and some aspects of environmental protection, excluding any aspects of economic regulation, which are addressed by separate Community legislation or initiatives when deemed necessary, as it was the case in early 2007, for airport charges<sup>13</sup>.

(i) Aerodromes

24. As already mentioned here above, the vast majority of stakeholders supported the principle that all aerodromes open to public use<sup>14</sup> should be subject to common and proportionate rules, whatever the size, volume, type or complexity of their traffic, whatever their ownership, public or private, or whatever the legal nature of its operator. This was in particular the point of view of 18 authorities out of 20 replying to the NPA. This limitation would naturally not affect the right of Member States to establish national rules on aerodromes excluded from Community competence. This could for instance be the case for bases for instruction in flying, or helidecks located on off-shore platforms or heliports on the roof of hospitals, when these aerodromes are not open to public use. It is recalled that the basic regulation excludes State aircraft from the scope of Community competence; this means that aerodromes exclusively used for military, customs, police, or similar services are not affected by the present opinion.
25. On the basis of the clearly expressed stakeholder opinion the Agency hence is of the opinion that the applicability of the Basic Regulation shall be extended to all aerodromes open to public use. This will be entirely consistent with the “total system approach” pursued by the Community legislator, emphasised by the Commission in Communication COM(2005) 578 and called again by the High Level Group established by Vice-President Barrot to consider the future of civil aviation regulation in the Community context. As General Aviation is fully integrated in the EASA system as regards airworthiness, operations and pilot licensing, and will of course be subject to that system as much as air traffic management is concerned, it would be inconsistent, and possibly create safety gaps, if only aerodromes were excluded from the regulatory framework, which must govern that sector of civil aviation.

(ii) Aerodrome equipment

26. NPA06/2006 asked if specific aerodrome equipment, such as visual and radio navigation aids, detection or meteorological systems, fire fighting apparatus and trucks, etc contributing to the safe operation of one aircraft at or near the aerodrome, should be regulated at Community level. Though a slight majority of respondents were against the regulation of aerodrome equipment at Community level, most key stakeholders insisted that the safety implications of aerodrome

<sup>13</sup> COM(2006) 820 final of 24 January 2007 – Proposal for a Directive of the European Parliament and of the Council on airport charges.

<sup>14</sup> “open to public use” means that the use of the area and facilities of the aerodrome can be planned by any pilot-in-command of a General Air Traffic (GAT) flight either because the opening hours and services available are made known to the public, or because a contact point, from which to obtain a prior permission, is published in addition to publicly available aerodrome information, provided the aircraft and the pilot qualifications comply with non discriminatory safety conditions.

equipment could not be ignored. Some also stressed that a better standardisation of aerodrome equipment could not only contribute to safety, but also to improving the ratio cost/quality. They however emphasised the need to avoid duplicating existing rules, be they in “New Approach” directives or “Single European Sky” implementing rules<sup>15</sup>. Furthermore EASA was reminded to take advantage of standards issued by recognised standardisation bodies such as ISO, CEN, CENELEC, ETSI or EUROCAE.

27. The Agency therefore is of the opinion that aerodrome equipment directly contributing to the safe operation of a single aircraft on the ground, must be included in the scope of the EASA system. While it is not possible to set in advance the exact list of the affected equipments because technology evolves, it suggests that safety critical equipment be identified on a case by case basis in the implementing rules referred to in paragraph c(i) here under. When doing so it recognizes that care shall be taken to avoid overlap of requirements addressing the same equipment and that appropriate adjustments of existing rules should be made; due consideration will also be given to ensuring consistency of regulatory processes with those established by the “Single European Sky” and the “New Approach”.

(iii) Organisations

28. It is widely agreed and accepted at ICAO and European level, that safety of aviation operations at aerodromes is not ensured only by the design of the infrastructure itself, but also by the proper management of the related aerodrome operations and services. This was confirmed by stakeholders when commenting the NPA. Indeed certain hazards can only be mitigated by imposing specific requirements on organisations involved in the operation of aerodromes. This position is fully shared by the Agency, which therefore is of the opinion that aerodrome operators<sup>16</sup> should be included in the scope of the extended Basic Regulation. Their responsibility extends from operating and maintaining aerodrome infrastructure and equipment so that they fulfil their intended purpose at any time, to taking appropriate mitigating measures in case of any degradation.
29. The safe operation of an aircraft however consists of several sub-operations by a chain of different actors. While the aerodrome operator is the main one, many others involved in the service chain must interface and coordinate their activities to provide for a fully safe system. The Agency is of the opinion that the significance of this coordination makes it necessary to require that all organisations whose activities may have an effect on aircraft safety, including aircraft operators, air navigation service providers, ground handlers, refuelling companies, be legally required to properly train their personnel entitled unescorted access to the airside; to define and implement procedures to work air side; and to cooperate in the reporting and analysis of safety occurrences. To ensure the necessary coordination, such arrangements should be developed under the direction of the aerodrome operator.

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<sup>15</sup> 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 (*OJ L 096 31.03.2004 p.1*) and in particular Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (*OJ L 96, 31 March 2004, pages 26-42*).

<sup>16</sup> i.e. any public official, legal or natural person, operating or proposing to operate one or more aerodromes and taking responsibility for safety of aviation operations at and/or near it or them, including imposing procedures and processes on other companies.



30. In general installed aerodrome equipment will be assessed during the aerodrome certification process. It is then assumed that the directives adopted under the “New Approach” and related industry standards will apply to the design and production of such equipment. However it might be unfair to require aerodrome designers or operators to take responsibility for technologies for which they have no competence. When aerodrome equipment is critical for aviation safety it could be therefore appropriate to apply processes that have demonstrated their efficiency for decades in the field of airworthiness<sup>17</sup>, similar to the ETSO (i.e. “European Technical Standard Order”) system used for aircraft parts. Such systems are based on the recognised capabilities of the organisations, which design or manufacture such equipment. Therefore, the Agency is of the opinion that the extended Basic Regulation shall apply to design and production organisations of critical aerodrome equipment to allow such an option when it is the most appropriate to regulate such equipment. As already explained in paragraph 27, it is not possible yet to define what equipment may be subject to such processes, it is therefore more appropriate to leave it to future implementing rules to specify when the option will be used, following proper assessment and justification. It is important to note that such is already the situation as regards the airworthiness of parts and appliances.

#### (iv) Personnel

31. During the consultation process many comments stressed the relevance of professional staff competence for aerodrome safety. Some also suggested regulating the most safety critical professions, such as rescue and fire fighting personnel. If such were to be the case, the extended basic regulation should specify clearly which persons are subject to such regulation, including individuals’ certification or licensing to attest that they satisfy minimum medical fitness and professional proficiency requirements. Other comments however advised that such a regulatory regime could be too complex and disproportionate, while confirming that their professional competence shall nevertheless be regulated.

32. The Agency concludes that personnel involved in the operations of aerodromes must be subject to common safety requirements and therefore referred to in the extended Basic Regulation. Compliance with requirements related to professional competence and possible medical fitness shall however be the normal responsibility of the organisations employing them. The affected personnel are those whose activities may affect the safety of air operations at or near the aerodromes, such as, but not limited to, employees or contractors of aircraft operators, air navigation service providers, ground handling service providers, the aerodrome operator itself and other organisations whose activities or products may have an effect on aircraft safety. In particular this relates to staff authorised unescorted access to the air side, or to drive a vehicle on the movement area.

#### (v) Immediate vicinity and use of an aerodrome

33. As suggested in NPA06/2006, a vast majority of stakeholders considered that some critical elements necessary to mitigate safety hazards related to air operations near aerodromes, can simply not be legally imposed on the aerodrome owner or operator. The reason for this is that these hazards originate in areas outside the

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<sup>17</sup> Reference in particular to Article 5.2b) of the existing Basic Regulation which requires organisations responsible for design and manufacture of aircraft parts to demonstrate their capabilities and means to discharge the responsibilities associated with their privileges, under rules and procedures proportionate to the complexity of their respective tasks.

aerodrome perimeter and cannot be directly addressed by the aerodrome owner or operator. The Agency then is of the opinion that the Basic Regulation must create obligations on Member States themselves to ensure that the necessary measures are taken to protect aerodromes against activities or developments, which may cause unacceptable risks to aviation in their direct vicinity.

**b. The safety objectives**

(i) Essential requirements - new Annex

34. NPA 06/2006 asked if stakeholders agreed on the establishment of uniform high level ERs across the entire Community as the best means to set the safety objectives for aerodromes regulation rather than merely transposing by reference the applicable ICAO SARPs. The answers to this question showed that a majority of stakeholders prefer setting dedicated ERs at Community level, provided they ensure compliance with the ICAO obligations of Member States and do not create additional unjustified requirements. From the comments it also emerged that the majority broadly considered the content and the level of detail in the proposed draft ERs to be satisfactory.
35. As explained in the attached explanatory memorandum, these ERs have been developed from identified hazards in order to provide for an appropriate mitigation of any reasonably probable risk specific to aerodrome operations. There after a cross check was made to verify that they allow Member states to comply with their ICAO obligations without additional constraints. The Agency is hence of the opinion that the dedicated ERs, in attachment to this Opinion and representing the safety objectives for the safety regulation of aerodromes, shall be mandated by the Basic Regulation 1592/2002 and annexed to it.

(ii) Management Systems

36. One of the key points raised in the NPA was the appropriateness of requiring all aerodrome operators to adopt and implement a full formal safety management system (SMS). Replies from stakeholders were contrasted. Only two stakeholders insisted that such SMS should be imposed on all aerodrome operators. Many noted that small organisations can hardly implement a genuine SMS; imposing such a burden on small aerodromes' operators would also be disproportionate with the actual risks related with their operation. While ICAO requires such a system for all aerodromes, it must be borne in mind that ICAO Standards only apply to aerodromes used for international operations. Such a requirement may create difficulties in the Community context where all aerodromes open to public use are by definition open to intra-Community air traffic.

37. Consequently The Agency concludes that only complex aerodromes shall be imposed an SMS; to define the appropriate level of complexity while being consistent with ICAO, it suggests that such a requirement only applies to aerodromes serving scheduled air services<sup>18</sup>.

### c. The implementation means

38. The Basic Regulation must specify how the ERs are to be implemented. If this is too complex or lengthy, executive powers may be given to the Commission, Member States, the Agency or industry to adopt respectively implementing rules, national implementation measures, certification specifications or industry standards. When appropriate, the bodies in charge of issuing the certificate or to which compliance is to be shown must be identified. They can be the Agency itself, other competent authorities<sup>19</sup> or appropriately accredited assessment bodies<sup>20</sup>. In the latter case criteria for accreditation need to be specified and accrediting authorities identified.

39. There is a range of possibilities to implement the safety objectives. The choice is a political decision, which depends on the public sensitivity, on traditions and culture in the sector. Such a choice must also take into account the level of uniformity that is sought for a certain activity, uniformity being likely to be better achieved through common implementing rules adopted by the Commission. The choice must also take into account not only that uniformity means equally protecting citizens and providing a level playing field for internal market, but also in the perspective of interoperability, being harmonised within the international framework. Last but not least such a choice must be based on the principles of good governance<sup>21</sup> so as to best use available resources and further develop the sense of responsibility and just culture in the regulation of civil aviation safety.

#### (i) Implementing Rules

40. NPA 06/2006 assumed that there probably was a need to issue implementing rules to further specify how the ERs should be applied at least as regards “large” aerodromes. It however asked whether such should also be the case for “small” aerodromes. In this context it also asked what should be the definition of a “small” aerodrome. The answers to this question show that the majority of stakeholders consider that detailed implementing rules should be developed in all cases,

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<sup>18</sup> **Scheduled air service** means a series of flights possessing all the following characteristics:

- (a) On each flight, seats and/or capacity to transport cargo and/or mail are available for individual purchase by the public (either directly from the air carrier or from its authorised agents);
- (b) It is operated so as to serve traffic between the same two or more airports, either:

- according to a published timetable; or
- with flights so regular or frequent that they constitute a recognisably systematic series.

<sup>19</sup>“competent authority” means either the Agency or one of the authorities nominated or established by Member States, empowered to issue certificates and to exercise safety oversight on either aerodromes, products, equipment, systems, parts or appliances, organisations or people, as well as on hazards originating from the immediate vicinity of an aerodrome. Any competent authority shall be independent from aerodrome operations and management.

<sup>20</sup> “assessment body” means an accredited body which may assess conformity of legal or natural persons with the rules established to ensure compliance with the essential requirements laid down in this Regulation and issue the related certificate.

<sup>21</sup> COM (2001) 428 final of 25.07.2001 – “European Governance – A white paper” (*Official Journal* 287 , 12/10/2001 P. 0001 – 0029).

regardless the size and complexity of operations at the aerodrome. They emphasise nevertheless that such rules should be proportionate to the complexity and type of operations.

41. This being said, a number of stakeholders fear that the legal status of the implementing rules and the time required to change them, could make the regulatory framework too rigid to follow the evolution of the state of the art. They also consider that having most, if not all, of the technical details included in implementing rules would remove the flexibility that is necessary to accommodate different aerodromes, being each of them different from any other. The Agency agrees. Such a risk could be mitigated by placing, whenever possible, technical provisions, or procedures for conformity assessment, at the level of certification specifications<sup>22</sup> in order to respond to the above concerns. Compliance with such material would provide with a presumption of compliance but would not be the only means to comply. Authorities and stakeholders can apply other means provided they ensure an equivalent level of compliance. It should therefore be understood that the implementing rules to be developed will mainly specify the processes to be followed by stakeholders and competent authorities, and in particular the flexibility criteria and procedures for acceptance of alternative compliance means.
42. Stakeholders stressed that some aspects of aerodrome safety are already addressed by other legislation. Such is the case for instance of radio systems for departure, approach and landing, which could already be covered by “Single European Sky” rules. Safety and performance of such systems does not however only depend on their design/production, but also on their implementation/integration at the site. It is necessary therefore to ensure that this aspect of aerodrome equipment be also regulated while ensuring synergy with the “Single Sky” to avoid overlapping or duplication of requirements and certification processes.
43. The Agency therefore is of the opinion that the legislator should empower the Commission to adopt, in accordance with the procedures already specified in the Basic Regulation, the necessary rules for the implementation of the ERs applicable to aerodrome safety and interoperability. As mentioned earlier such rules shall be proportionate to the complexity of the aerodrome, taking into account the volume and nature of its activity.

#### (ii) Aerodromes certification<sup>23</sup>

44. NPA 06/2006 assumed that there was a need to certify at least “large” aerodromes as this is already required by ICAO<sup>24</sup>. None of the respondents to the NPA opposed this. But the said NPA also asked whether such should also be the case for “small” aerodromes open to public use, in line with the ICAO recommended

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<sup>22</sup> The Basic Regulation requires the Agency to develop Certification Specifications, including airworthiness codes and acceptable means of compliance, as means to be used in the certification process. Such material is non binding but reflects the state of the art and the best practices that regulators and regulated persons have an interest to use to comply with the legal requirements.

<sup>23</sup> In this context, and as already specified in the Basic Regulation, “certification” means any form of recognition that an aerodrome, product, equipment, system, part or appliance, organisation or person complies with the applicable requirements including the provisions of the Basic Regulation and its implementing rules, as well as the issuance of the relevant certificate attesting such compliance.

<sup>24</sup> Paragraph 1.4.1 of ICAO Annex 14 establishes that, as of 27 November 2003, States shall certify aerodromes used for international air operations, through an appropriate regulatory framework. The latter shall include criteria for the said certification.

practice<sup>25</sup>, taking into account that other options could exist, in the perspective of a possible “self-management”. The answers indicate that the stakeholders do not support such options and prefer that all aerodromes be certified. About half of them however recommend simplified processes for the least complex aerodromes. The consensus on the need to impose a certification process to all aerodromes in the scope of the Basic Regulation is already reflected by the wide implementation at Member State level of the ICAO standards and recommendations on the matter<sup>26</sup>. The Agency is therefore of the opinion that each aerodrome open to public use and located in a Member State shall be subject to certification. Such certification shall aim at verifying compliance with the essential requirements and cover both design and operations, ensuring therefore that the aerodrome design is safe and that the operator has demonstrated its capability and means to discharge its responsibilities.

45. Although aerodromes have traditionally been regarded as a single entity, in most cases different legal persons act as owner and operator with very different roles and responsibilities. It is the owner who usually is responsible for the infrastructure and the design of the aerodrome, while the operator is mainly responsible for its safe operation. It would be unfair to create obligations on one of them that can only be met by the other. Moreover, the increasing trend towards new financial models to build or extend aerodromes to better respond to a growing demand in capacity, should not be impaired by the way safety is regulated. In addition safety regulation should not hamper the proper functioning of the internal market. The Agency considers therefore necessary to distinguish the certification process for the aerodrome design from the certification process of its operating entity. Two separate certificates shall then be issued: one reflecting compliance with Section A of the ERs and the other addressed to the operator reflecting section B thereof. In case owner and operator are the same legal person, Member States may however be entitled, at the request of that person, to merge the two certificates into one.
46. As regards entities managing more than one aerodrome, replies to the NPA show a majority, encompassing a majority of authorities and small operators, favouring an individual operator’s certificate for each aerodrome operated. Authorities of, and stakeholders located in, States where major companies operate more than one aerodrome, are in favour of a single operator’s certificate to operate several aerodromes. The attached RIA demonstrates that while there are no safety reasons to impose either option, there are clear economic benefits with the second one. It may be useful in this context to recall that such option is that already retained in all other sectors subject to the Basic Regulation, as an organisation can operate several aircraft, maintenance shops, manufacturing sites, etc, under a single approval certificate. The Agency is therefore of the opinion that aerodrome operators managing more than one aerodrome and having established a central safety and quality management function should be allowed to apply, in the State where they have their principal place of business, for a single operator’s certificate, if they so wish. Leaving the choice to the operators themselves has also been

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<sup>25</sup> Paragraph 1.4.2 therein, recommends that States should certify all aerodromes open to public use.

<sup>26</sup> A survey conducted through the Group of Aerodrome Safety Regulators (GASR) in 2006, confirmed that within 17 EU Member States there were more than 700 aerodromes certified or shortly to be certified, including fields only used for non-commercial operations under Visual Flight Rules (VFR). Further information on the aerodromes affected by the present Opinion is presented in the associated Regulatory Impact Assessment (RIA).

supported by some reactions to the CRD, since it was observed that the concept may fit with the more centralized structures that apply in several Member States.

(iii) Certification of aerodrome equipment

47. As explained in paragraph 27, the Agency considers necessary that aerodrome equipment contributing to the safe operation of aircraft, be subject to appropriate requirements as detailed in implementing rules. While, as said in paragraph 30, verification of compliance is generally the responsibility of the aerodrome owner or operator, depending of the type of equipment, it might be more appropriate to directly certify some safety critical equipment for which the owner or the operator have no competence. The Agency is therefore of the opinion that some safety critical equipment shall be subject to a dedicated certification process and be issued a certificate, as specified in the implementing rules after proper assessment of the benefit for doing so.
48. As for the issuance of the certificate, an approach similar to the so called “New Approach”<sup>27</sup> should be taken. This means leaving most of the responsibility for conformity assessment to the organisation that designs and manufactures the equipment. As this is also the approach used in the “Single European Sky” this delegation of responsibility to industry would facilitate synergy when developing implementing rules. Statements of conformity would accordingly be issued by the manufacturing industry.
49. As explained in paragraph 30 the Agency also believes that products produced in large quantity shall be subject to a certification system similar to the ETSO system applied to some aeronautical parts and appliances. That would facilitate standardisation of products and help reducing cost as suggested by several stakeholders. Such an option would be decided on a case by case basis after proper regulatory impact assessment when developing the related implementing rules. Doing so also requires that organisations designing and manufacturing the affected equipment demonstrate their capability and means to discharge their responsibilities. The Agency is therefore of the opinion that design and production organisations of specific aerodrome equipment, shall be subject to specific rules and approval processes when so specified in the implementing rules after a proper assessment of the benefits for doing so.
50. In all cases it is recalled that, consistent with what is said in paragraph 42, verification of installation and proper functioning of aerodrome equipment on the site is part of the aerodrome certification process. Moreover the operation and maintenance of the said equipment will be carried out under the responsibility of the aerodrome operator and will therefore be covered by the operator certification and oversight.

(iv) Verification of personnel qualification and medical fitness

51. As said in paragraph 31 and 32, the Agency considers necessary that personnel whose activity may affect the safety of aerodrome operations, be subject to appropriate requirements as regards their continuing qualification and eventually

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<sup>27</sup> Some 25 Directives adopted since 1987 on the basis of the “new approach” stemming from Council Resolution of 07 May 1985 on the new approach to technical harmonisation and standards, Council Resolution of 21 December 1989 on a global approach for certification and testing which states the guiding principles on conformity assessment and Council Decision 93/465/EC laying down detailed procedures for conformity assessment.

medical fitness. It also thinks that compliance therewith should generally be the responsibility of their employers.

52. During the consultation, some comments suggested however regulating fire fighting and rescue personnel separately from the aerodrome operator and to establish therefore a dedicated certification process; some others strongly objected. Some others invoked the need for an appropriate competency scheme for such staff, but thought that they should be set at national level. In this context, the Agency concludes that there is no reason to treat RFFS personnel differently from other categories of staff involved in safety sensitive tasks in the aerodrome perimeter. Verification of professional qualification and medical fitness of these personnel, based on the applicable common rules, should be part of the obligations the aerodrome operator and should as such constitute one of the conditions to obtain a certificate.

(v) Assessment bodies

53. NPA 06/2006 asked whether assessment bodies, instead of competent authorities designated by National Governments, should be accredited to assess compliance with the certification requirements, *“only for the design of the least complex aerodromes and for their operators”*. A significant majority of stakeholders saw it feasible to allow such bodies, in addition to national regulatory authorities, assessing compliance with requirements and releasing certificates, provided this leads to an equally safe but more efficient system. Most specified that if such a system were to be envisaged, organisations verifying compliance should be subject to a proper accreditation to verify that they will act in a transparent and independent manner and implement themselves a sound management system.
54. The Agency has taken these views into account and it is therefore of the opinion that appropriately accredited assessment bodies should be entitled to oversee and certify aerodromes, including their operators, that do not serve scheduled air services. Furthermore, the aerodrome operator or designer should have the choice to send its application to the competent authority of a Member State or to such an assessment body. To avoid any potential conflict of interest, such bodies should be accredited by the Agency itself.

(vi) Competent authorities

55. Of course, apart from the points above, the extension of Community competence to aerodromes can have no other effect on the roles of Member States and of their competent authorities. The institutional form of the State (e.g. Federation), the extension of the territory, the number of aerodromes and proximity reasons, may suggest that certification and oversight authorities be established at regional level (e.g. as today for the 16 States of the Federal Republic of Germany) rather than at the national one. States may also want to delegate oversight to the competent authority of a nearby country or to pool resources and create a regional supervisory authority. Such a choice is entirely with Member States, which are free to organise their executive system the way they see fit as indeed they already do today.
56. Therefore, the Agency does not make any proposal that would tend to impose a structure to Member States for their oversight system. The Member States' administrative structure will continue to be their sole responsibility. Nonetheless, this structure should meet two main objectives. Firstly it should allow efficient oversight to ensure the proper implementation of regulations by the different

regulated persons. Secondly, as in the “Single European Sky”<sup>28</sup>, the competent authorities should be independent from aerodrome designers and operators and exercise their powers impartially and transparently.

57. As a consequence, with the only exception in paragraph (v) above, all certification and oversight tasks should be carried out by competent authorities nominated by Member States. Applicants will interact with the competent authority appointed by the Member States in which the aerodrome is located or in which the operator has its principal place of business. In this context it must be recalled that the Basic Regulation requires the Agency to oversee the way competent authorities fulfil their obligations; this is done by means of systematic and regular standardisation inspections.

#### **d. Consistency with the Directive on Ground Handling**

58. Some of the topics presented in this Opinion and some essential requirements, imply a strict coordination between aerodrome operators and ground handlers. The extended Basic Regulation will put obligations on the latter as explained in paragraph 29. As ground handling is already regulated, mainly for its economic and commercial aspects, by a specific directive<sup>29</sup> adopted in 1996, care has to be taken to avoid overlapping and possibly conflicting requirements. The Agency suggests therefore that the said Directive be amended in order to align its provisions with the safety provisions proposed in this Opinion, while clearly defining the respective responsibilities of aerodrome operators and ground handlers with respect to safety.

### **IV. Subsidiarity**

59. The Basic Regulation adopted in 2002 transferred competences from the Member States to the Community in the field of airworthiness and environmental certification, with the main objective of maintaining a high and uniform level of civil aviation safety. Its first extension to air operations, flight crew licensing and safety of third country aircraft, has already received the support of the European Parliament (first reading; March 2007) and the political agreement of Council (June 2007). The legislator has also anticipated its progressive extension to all other fields related to the regulation of civil aviation safety in order to provide for the total system approach that is the only means to avoid safety gaps and inconsistent, potentially conflicting, requirements.
60. The idea that a high and uniform level of safety could only be attained through common action at the Community level is not new. There has been a general consensus in Europe to that effect, and the European States started long ago to work jointly within the JAA and/or EUROCONTROL, with the objective of creating common rules in the field of civil aviation safety. In the aerodrome domain also five States gave birth in 1996 to the Group of Aerodrome Safety Regulators (GASR). Since then the membership of GASR increased to 28 national aviation authorities, 22 of which from EU Member States. Among the other six

<sup>28</sup> Article 4.2 of Regulation (EC) 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 (*OJ L 96 of 31 March 2004, pages 1-9*).

<sup>29</sup> Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports (*Official Journal L 272 , 25/10/1996 P. 0036 – 0045*).



members of GASR, one could notice the presence of Iceland, Norway and Switzerland, which are also part of the EASA system.

61. This steady increase of the number of members of the said GASR, based on voluntary decisions by each individual State, confirms that, even in the aerodrome domain, the need for common rules implemented uniformly at continental level is strongly felt. However, as already acknowledged when establishing the EASA system, no such voluntary intergovernmental approach can achieve the intended uniformity. Replies to NPA 06/2006 showed therefore that the vast majority of stakeholders, while stressing that certification and oversight should remain mainly tasks carried out by competent authorities for proximity reasons, were also convinced about the benefits of centralised action, with common rules entering into force at the same date, under the oversight of a centralised independent body.
62. Consequently, it is clear that the objectives of the proposed action, namely the establishment and uniform application of common rules for the regulation of safety and interoperability of aerodromes, cannot be sufficiently achieved by the Member States and can, therefore, only be achieved by the Community. In particular, as quantified in the attached RIA, a single transposition of the ICAO provisions for the entire EU 27 + 4 is a more efficient process than the separate action of each of them.
63. Moreover, the risk mitigation process followed for developing the ERs ensures that the common action is proportionate to the safety objectives and do not extend beyond what is strictly necessary to achieve these objectives. In addition the high level of these ERs and the possibility to use non legally binding CSs to verify compliance will allow accommodating local peculiarities that neither affect the expected benefits nor the level of safety. The EASA system, with its possibility to combine “hard” and “soft” law provides indeed a good answer to the needs for subsidiarity and proportionality in the aerodrome domain. Care of course shall be taken that these principles are also respected when developing the related implementing rules.
64. In conclusion it is considered that the present proposal is in accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty establishing the European Community.

## **V. Regulatory Impact Assessment**

65. The impact assessment of the measures suggested in this opinion has been made with the view to avoid duplication of work with that of the Commission, which is also obliged to produce its own impact assessment. The attached RIA demonstrates that all proposed measures provide for the best possible solution when several alternative options are possible, taking into account their possible safety, economical and social impacts, as well as their compatibility with international and other aviation legislation.
66. The Agency therefore considers that the extension of the scope of Regulation (EC) No 1592/2002 to the safety and interoperability of aerodromes on the basis of this opinion will have a globally positive impact on operators and citizens in the Community.

## VI. Conclusion

67. In summary the Agency is of the opinion that Community competence shall be established to regulate aerodrome safety and interoperability. Therefore:

- All aerodromes open to public must be subject to Community legislation;
- Dedicated common essential requirements (ERs) covering physical characteristics, infrastructure, aerodrome equipment, operations, management and mitigation of hazards originating in the immediate vicinity of aerodromes, must be introduced as an additional Annex to the Basic Regulation;
- Aerodrome owners, aerodrome operators, organisations or personnel providing services or equipment, which can affect the safety of aerodrome operations shall be responsible for the implementation of these essential requirements under the control and oversight of Member States;
- Rulemaking, safety analysis and standardisation inspections shall be the tasks of the Agency;
- Operators of aerodromes serving scheduled air services shall adopt and implement a fully-fledged safety management system;
- Powers shall be given to the Commission to adopt implementing rules defining the detailed requirements the above mentioned organisations and persons have to comply with, as well as the applicable certification processes;
- Such implementing rules shall be proportionate to the level of complexity of the aerodrome, taking into account the nature and volume of its activity;
- Powers shall be given to the Agency to adopt certification specifications to be used in the certification process, which would provide for flexibility in the implementation of the ERs while providing for a uniform level of safety;
- Aerodrome design and operations shall be certificated separately, but a single certificate may be issued when the aerodrome owner and operator are the same person;
- Operators of multiple aerodromes, having established appropriate central functions, may request a single certificate covering operations and management at all aerodromes under their responsibility;
- Certification and oversight of aerodromes not serving scheduled air services may, at the request of their owner or operators, done by accredited assessment bodies;
- While the verification of compliance of aerodrome equipment shall be part of the certification of the aerodrome design or operator, depending on their intended use, safety critical equipment may be subject to dedicated certification schemes, involving a possible demonstration of capability of their designer and manufacturer, when so specified by the implementing rules, after proper assessment of the safety and economic benefits in doing so.

68. The Agency is of the opinion that the above described policy is the best means to regulate safety and interoperability at and near the aerodromes in the territory of the Member States. It reflects the majority of the views expressed by all parties that answered the consultations organised to prepare it. The proposed policy also organises a balanced sharing of powers consistent with the institutional structures

of the Community by limiting the centralisation of tasks to what can be better achieved by the Commission or the Agency. The Agency therefore recommends that the Commission initiates the legislative process based on the present Opinion.

Cologne, 6 December 2007

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