

CRD to NPA 06-2006

**Comment Response Document (CRD)
to Notice of Proposed Amendment (NPA) 06-2006**

**BASIC PRINCIPLES AND ESSENTIAL REQUIREMENTS FOR THE SAFETY AND
INTEROPERABILITY REGULATION OF AERODROMES**

Explanatory Memorandum

I. General

1. The purpose of the Notice of Proposed Amendment (NPA), dated 15 May 2006 was to envisage 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 Agency¹ (the Basic Regulation) to extend its scope to the safety and interoperability regulation of aerodromes. The scope of this rulemaking activity is outlined in ToR BR.002.

II. Consultation

2. The NPA was published on the web site (www.easa.europa.eu) on 16 May 2006. Due to the importance of the subject and on requests by significant stakeholders, the consultation period was extended by two months. By the closing date of 16 October 2006 the Agency had received more than 2900 comments from national authorities, professional organisations, private companies and private persons. However the Agency has also considered comments coming until mid November 2006. The total of 3010 logged comments includes also replies received from non-EU Member States, like f.i. from stakeholders located in Iceland, Norway and Switzerland or from international aviation organisations. The comments were reviewed by Agency staff assisted by external experts, including persons not involved in the drafting of the consultation document, so as to ensure fair treatment of all comments received.

III. Publication of the CRD

3. All comments received have been acknowledged and incorporated into this Comment Response Document (CRD), which contains the following elements:
 - a. The conclusions that can be drawn from the consultation (Chapter IV hereunder); for the ease of better understanding it is recommended to read this chapter in parallel with the parts of the NPA to which each of its sections refers;
 - b. An inventory of Answers containing all comments addressing the 9 specific questions posted in the NPA;
 - c. A dedicated Comments Response Document for comments addressing the content of the essential requirements (question 3c) + general comments, which constitute the safety content of the NPA.
4. In responding to comments in 3.c, a standard terminology has been applied to attest EASA's acceptance of the comment. This terminology is as follows:
 - **Accepted** – The comment is agreed by the Agency and any proposed amendment will be wholly transferred to the revised text.
 - **Partially Accepted** – Either the comment is only agreed in part by the Agency, or the comment is agreed by the Agency but any proposed amendment may be only partially transferred to the revised text.
 - **Noted** – The comment is acknowledged by the Agency but no change to the existing text is considered necessary.
 - **Not Accepted** - The comment is not shared by the Agency.
5. The Agency's Opinion, including revised Essential Requirements (ERs), will be issued at least two months after the publication of this CRD to allow for any possible reactions of stakeholders regarding possible misunderstandings of the comments received and answers provided.
6. Such reactions should be received by EASA **not later than 05 July 2007** and should be sent by the following link: CRD@easa.europa.eu.

¹ OJ L 240, 7.9.2002, p. 1. Regulation as last amended by Regulation (EC) No 334/2007 (OJ L 88, 29.3.2007, p. 39).

IV. Conclusions on the NPA 06/2006

General

7. Consistent with Recital 2 of Regulation 1592/2002 and the conclusions of the European Commission Communication² on the safety and interoperability of aerodromes, Air Traffic Management (ATM) and Air Navigation Services (ANS), NPA 06/2006 on the safety and interoperability regulation of aerodromes was based on the assumption that aerodromes located in the territory of Member States should be subject to common rules to provide their users and neighbours with a uniform level of protection proportionate to the risk associated with their operation. The general spirit of the answers received confirms a strong support to this assumption. It can be noted in this context that 15 Ministries (or National Aviation Authorities) expressed a favourable opinion, while only one administration of a Member State is opposing the regulation of aerodrome safety at European level. A significant number of stakeholders however, mainly individual persons and associations representing light sport aviation, would prefer that aerodromes used only for recreational or private purposes be excluded from the scope of Community competence; this point will be further examined under the section related to the scope of the envisaged Agency opinion.
8. Many of these comments suggest that a definition be given of the term “aerodrome to establish better certainty of what exactly would be covered. This is for sure a valid point and it is envisaged to propose definitions very similar to that included in the Commission proposal for a Directive on airport charges³ so as to avoid diverging definitions for the same object. Such definitions are the following:
 - (a) ‘aerodrome’ means any area on land, water or man made structure or vessel, especially adapted for the landing, taking-off and manoeuvring of aircraft including the ancillary equipment, installations and services which these operations may involve for the requirements of aircraft traffic;
 - (b) ‘airport’ means an aerodrome which includes also the installations and services needed to assist commercial air transport services.
9. Few comments question whether interoperability is a matter for regulation under the EASA system as this is already covered by ICAO requirements and the Single European Sky include provisions about interoperability. The NPA explained that in this context the intention was to transpose into Community law the interoperability requirements that are necessary to ensure safety by providing a known environment in which aircraft can be fit with standardised equipments and pilots can use pre-established procedures; it might however provide better legal certainty and alleviate some concerns if a definition of interoperability was included in the future Basic Regulation for the purpose of that regulation. Such definition could be the following:

² COM (2005) 578 final of 15 November 2005: “Extending the tasks of the European Aviation Safety Agency. An agenda for 2010”.

³ COM (2006) 820 adopted by the European Commission on 24 January 2007. where ‘airport’ means any land area especially adapted for the landing, taking-off and manoeuvring of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services;

'interoperability' means the possibility for an aircraft/aircrew to fly from place to place according to common rules devised to provide for the necessary level of safety and allowing operational situational awareness and common understanding (of instructions, procedures, signs, markings, visual aids, etc..) by all users.

10. One comment addressed the validity of the regulatory impact assessment referred to in the NPA. As indicated in this NPA, the Agency can only confirm that it sees no reason to redo an impact assessment made by an independent consultant contracted by the Commission⁴. This study concluded that the "do nothing" option was not the best one, while extending the scope of the EASA system is the most appropriate to solve the identified problems. That option would indeed reduce the economic burden for the citizens without creating significant additional requirements for the aerodrome operators as compared to what ICAO Annex 14 already mandates. It is the intention of the Agency to use this material as the basis of the impact assessment that will accompany its final opinion.

The Safety Objectives

11. NPA 06/2006 asked if stakeholders agree on the establishment of high level ERs at Community level as the best means to set the safety objectives for aerodromes or, whether the safety objectives should be set by the mere transposition of reference to the applicable ICAO Annexes. The answers to this question show that a majority of stakeholders agree with the establishment of dedicated high level essential requirements at Community level provided they ensure full compliance with the ICAO obligations of Member States. They also insist that such requirements be proportionate to the actual risks associated to the aerodrome type and operation. The Agency envisages therefore proposing in its Opinion on the safety and interoperability regulation of aerodromes, a new Annex to Regulation 1592/2002 including the related safety objectives in the form of Essential Requirements.
12. Assuming such an answer, NPA 06/2006 included draft ERs and asked the opinion of stakeholders on whether they constitute a good basis for the safety and interoperability of aerodromes. The Agency also welcomed any suggestion to improve these ERs. As can be seen from the comments received, the majority of stakeholders can broadly accept the proposed draft ERs as a good basis. Many of them propose improvements to the text. These proposed improvements have been analysed individually and separately in Appendix II. On the contrary, a significant minority is of the opinion that the proposed ERs are not a good basis either because they are too general or too detailed. A few stakeholders do not regard draft ERs as a good basis specifically for their activity.
13. In view of this feedback the Agency will revise its draft Essential Requirements to introduce many of the improvement suggestions received on the text of the ERs themselves. It might however not be justifiable to substantially amend the proposed ERs in order to make them either more general or more detailed in their nature. In order not to impose a disproportionate burden on the "small" aerodrome operators, the applicability of some ERs (e.g. safety and quality management) might be restricted to only some aerodromes as initially suggested in NPA 06/2006, i.e. possibly to the airports serving commercial air transport scheduled traffic under Instrument Flight Rules (IFR).
14. NPA 06/2006 had also invited comments as regards the requirements for Rescue and Fire Fighting Services (RFFS). The answers show that the vast majority of stakeholders do not

⁴ The related report was released on 15 September 2005 and is available on:
http://ec.europa.eu/dgs/energy_transport/evaluation/activites/doc/reports/transports/impact_assessment_extension_easa_competences_en.pdf.

favour more demanding RFFS requirements than ICAO SARPs presently⁵ provide for. Many of them indicated a need to have more flexibility to better balance costs and safety needs as well as the necessary consistency with relevant operational rules. In light of these comments flexibility shall be built in the essential requirements so as to allow the development of adapted implementing rules that would consider not only the severity of the consequences of a possible hazard, but also the assessment of its probability and the assessment of the effectiveness and cost of the possible mitigation means.

15. Many comments related to RFFS highlight the need for an appropriate qualification and number of staff. It is the understanding of the Agency that the envisaged draft of its essential requirements do already provide for such a requirement. Ways and means to implement them, including the need for certification are addressed in paragraphs 21 and 29 below.

The scope of Community competence

Aerodromes

16. NPA 06/2006 assumed that all aerodromes open to public use by civil aviation shall be subject to common and proportionate rules, whatever the size, volume, type or complexity of their traffic or whatever their ownership, public or private. This was not contested except by the comments mentioned in paragraph 7, which consider that aerodrome used only for recreational or private purposes should not be subject to common safety and interoperability rules. These airfields however serve a minority of the yearly flights in EU. Moreover it is always possible that access to such aerodromes be restricted so that they are not open to public use. In this context it might not be appropriate to exclude aerodromes from the scope of Community competence only because they are used mainly for recreational purposes. Such a system would be difficult to implement: indeed as air taxi operators can use an aerodrome open for public use and this would place the said aerodrome under a double regulatory regime, that of the Community, as soon as a commercial operator uses it, and the national one.
17. NPA 06/2006 also asked whether aerodromes not open to public use should be subject to common rules. The answers to this question show that a vast majority of stakeholders do not support this approach. A minority however, including 7 National Aviation Authorities, considers that in some cases aerodromes, which are not open for public use, should be subject to Community legislation. Some stakeholders were of the opinion that all aerodromes should be regulated at Community level, provided proportionate implementing rules apply, to protect citizens living near aerodromes. Taking into account that these views constitute only a minority, it might be appropriate to limit the scope of Community competence to those aerodromes that are open to public use, in line with ICAO recommendations. It might however be appropriate to also cover aerodromes whose activity implies a specific risk for the neighbouring population; taking into account comments received this would apply to aerodromes used as a base for flying instruction. This would not affect the right of Member States to put conditions on the opening of aerodromes for private use if they so wish when they consider this to be necessary to protect citizens living nearby.
18. The above conclusions lead, as requested by many stakeholders, to defining more precisely what is meant by “open for public use”. The objective being to facilitate the free movement of persons, an aerodrome open for public use should be accessible without discrimination when:
 - The aircraft has the equipage required to mitigate peculiar physical circumstances of the site (navigation and landing instruments for example);

⁵ I.e. 4th Edition of Annex 14, plus amendment 7 dated 11 July 2004 and amendments 8 & 9 dated 11 Jul 2006, where the aerodrome category for RFFS is determined on the basis of the aeroplanes “normally using” the aerodrome.

- The pilot holds the necessary qualifications, including specific ratings required by peculiar operational circumstances;
- The aerodrome and the associated services are available (opening hours in particular, either because published or because there is a published contact point to define the arrangements);

In other words, an aerodrome open for public use should be accessible without discrimination to any one without the need for the discretionary approval of its owner or operator. A possible definition could then be the following:

‘open to public use’ means that the use of the area and facilities of the aerodrome can be planned by any pilot-in-command⁶ 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, with whom to agree access timing, is published, provided the aircraft and the pilot qualifications comply with published non-discriminatory conditions imposed to ensure the safety of operations.

Equipment

19. NPA06/2006 posed the question whether specific aerodrome equipment, such as visual and radio navigation aids, detection systems and in general other equipment mentioned in some ICAO Annexes⁷, should be regulated at Community level, taking into account that it could be unfair to require an owner or an operator of an aerodrome to be responsible for technologies for which they have no particular competence. It was also mentioned that some of these equipments may already be covered by the Single European Sky (SES) framework⁸, and especially its Interoperability Regulation⁹. A slight majority of respondents do not consider that aerodrome equipment should be regulated at Community level. However, a significant minority, including 14 national authorities and main stakeholders, is of the opinion to regulate equipment and systems mentioned in ICAO Annex 14 through Community legislation.
20. Considering this indications and the fact that the envisaged Essential Requirements already cover the equipment needed to provide for the safety of the aerodrome design, as well as of its operation, it might not be necessary to regulate equipment mentioned in ICAO Annex 14 separately from the aerodrome itself. It is worth in this context to observe that ICAO has not established detailed standards for a number of aerodrome technical elements, such as the insulation of power cables or the design of fire fighting vehicles, considering that only minimum performance requirements for aviation safety were to be set. A similar approach could be taken, leaving to the industry the responsibility for standardisation and conformity assessment of aerodrome equipment as this is being done for systems covered by EC Regulation 552/2004. As a consequence the safety, performance and operations of the available/installed equipment is part of the safety oversight processes related to each aerodrome and the approval of the design and of the operation of an aerodrome would encompass them automatically. This could be reviewed in the future if it appears that such a global approach does not provide for sufficient control of this equipment.

Personnel

21. While NPA 06/2006 did not specifically asked whether some aerodrome design or operation related professions should be regulated, it indicated that the Community act establishing

⁶ Matching the standard 4.1 in ICAO Annex 6 Part II, on general aviation air operations.

⁷ E.g. Annex 3 on Meteorological Services for international air navigation; Annex 10 on Aeronautical Telecommunications and Annex 14 on Aerodromes.

⁸ 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.

⁹ 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.

Community powers in a given field shall specify clearly whether some persons' individual rights would be affected by such powers. This would be the case if meeting safety objectives required such persons to be certificated to attest that they satisfy minimum medical fitness and professional proficiency requirements. As already indicated in Paragraph 15, a number of comments mentioned the need to regulate staff involved in fire fighting. It might therefore be appropriate to include the necessary legal mandate in the extended Basic Regulation.

22. As for other personnel involved in aerodrome design and operation it does not seem that professional capability need to be regulated more than specified by the envisaged Essential Requirements. Compliance with such requirements would in such cases be a normal responsibility of the organisations employing them and part of their obligations as approved organisations.

The implementation means

Implementing Rules

23. NPA 06/2006 assumed that there was a need to issue implementing rules to further specify how the Essential Requirements should be interpreted as regards large aerodromes. It however asked whether such should also be the case for "small" aerodromes, taking in particular into account that the answer could be different as regards design and operations to include the necessary legal mandate in the extended Basic Regulation. 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. They recognise nevertheless that such rules should be proportionate to the complexity of operations. The Agency should therefore include in its Opinion a provision for subsequent implementing rules to be adopted by the European Commission through comitology, for all aerodromes in the scope of the extended Basic Regulation. It will also propose that the legislation itself requires the Commission to provide for proportionality when adopting such rules. In this context the question of the definition of a small aerodrome has become irrelevant.

Certification of aerodromes

24. NPA 06/2006 assumed that there was a need to certify the design and operation/management of large aerodromes as this is already mandated by ICAO. As above, it asked whether such should be the case for small aerodromes, taking into account that other options could be that aerodrome owners or operators declare themselves their compliance or that they only would have to show compliance, when so asked by the relevant competent authority. It also asked whether the certification need should be limited to demonstration of compliance with the design or the operation requirements. It finally asked what should be the definition of a small aerodrome in this context. The answers indicate that the majority of stakeholders consider that small aerodromes should be certified for the verification of compliance with the essential requirements and relevant implementing rules. They also think that both design and operations should be covered by such certification. The Agency should therefore include in its Opinion a provision requiring that compliance with design and operation/management requirement be verified for all aerodromes through a certification process. In this context the question of the definition of small aerodromes is again irrelevant.
25. Taking into account that design and operation/management certifications can be handled separately without affecting their validity, NPA 06/2006 asked stakeholders' views about the possibility for an operator to be entitled to operate several aerodromes under a single operator's certificate. From the received replies it appears that a slight majority of respondents believes that each aerodrome should have its individual certificate encompassing infrastructure and management. In general, small operators belong to this majority, while stakeholders located in States where a major company operates more than one aerodrome would be in favour of one

certificate to operate several aerodromes. Considering this division of views and that safety justifications for either solution may be difficult to find, while the economic impact of multiple certification, for operators managing several aerodromes, cannot be denied, it is likely that the Agency's Opinion will propose a separate process as a means to better meet the objectives of the Basic Regulation related to the functioning of the internal market and cost efficiency of regulatory processes. It could also be envisaged merging the two processes when the aerodrome owner and operator are the same entity and when such a merge do not affect the possibility to open competition for the operation of the concerned aerodrome.

Assessment Bodies and role of the Agency

26. NPA 06/2006 asked whether private assessment bodies, in addition to competent Authorities designated by National Governments, could be accredited to assess compliance with the certification requirements, in particular as far as small aerodromes are concerned. If this would be the case, it should also be decided how such assessment bodies would be accredited. It also asked whether the Agency should be entitled to issue certificates where centralised action is more efficient. The answers show that a significant majority of stakeholders see it feasible in principle to develop a concept of other bodies being accredited to assess compliance with requirements, providing this leads to a safe and more efficient system, in particular as regards small aerodromes. Most specify that if such a system was to be envisaged, organisations verifying compliance should be accredited, be transparent and independent and implement themselves a sound quality and safety management system. The Agency will therefore take these views into account when developing its opinion and propose that appropriately accredited assessment bodies be entitled to certify and oversee aerodromes, which are not airports, or which are not serving commercial air transport IFR traffic.
27. Few comments came in support to giving certification powers to the Agency in this domain. The Agency will therefore take this into account in its Opinion and will probably not suggest the extension of its certification tasks to aerodrome certification.

Verification of conformity of aerodrome equipment

28. Envisaging a possible positive answer to the question related to regulating certain aerodrome equipment at Community level, NPA 06/2006 asked about the best means to regulate systems at an aerodrome. The replies show the same results as already indicated in paragraph 19. A slight majority of respondents do not consider that specific technical equipment should be regulated at Community level. This however would not be compatible with the need to ensure that the aerodromes, including their equipment, meet appropriate safety requirements. This is confirmed by a significant minority of stakeholders, including 12 national authorities and the main aerodrome operators, which require regulating aerodrome equipment through implementing rules and acceptable means of compliance, but very few propose a separate certification scheme. As explained however in paragraph 20, it is not necessary to regulate equipment separately from the aerodrome using them. The time may also not be mature to split a declaration of verification of systems (or equipment) integrated at aerodromes from the certification process of the entire aerodrome. The Agency's opinion should therefore only propose that equipment be regulated as part of the aerodrome; that implementing rules specify the related safety and performance requirements; and that verification of compliance be made at the same time as the certification of the aerodrome or of its operator.

Personnel certification

29. As mentioned in paragraph 21, there was a significant support for regulating fire fighting and rescue personnel separately from the operator. The Agency's opinion will therefore include, in addition to the need for implementing rules covering the training and competence of all staff

whose activities may impact aviation safety on the air side and interfaces among organisations, as required by the draft Essential Requirements attached to the NPA, the need for a separate certification process to attest that fire fighting and rescue personnel meet appropriate medical and proficiency standards.

Conclusions

30. Taking into account the intention expressed by the legislator in recital (2) of the Basic Regulation, the Agency will now develop an Opinion proposing that the EASA Basic Regulation be extended to the safety and interoperability of aerodromes (i.e. the safety of a single aircraft operating anywhere on the aerodrome or in flight in the immediate vicinity) taking into account the consultation document (NPA 06/2006) and the analysis presented in this Comment Response Document of the comments received. Such an Opinion will detail the proposed essential requirements, which, because they set the safety levels, are the core responsibility of the Agency as well as the proposed scope and the necessary definitions. It will also describe the system that the Agency considers the best to implement such essential requirements but it will leave to the Commission to draft the related amendments of the Basic Regulation when it has decided the policy it wishes to implement. Without prejudice to further comments received, the Agency will therefore proceed after two months from the date of publication of the present document, by forwarding to the Commission the said Opinion.