



## Explanatory Note to Decision 2013/013/R

### Acceptable Means of Compliance and Guidance Material to the rules of the air

RELATED NPA/CRD 2012-14 — RMT.0149 (ATM.001(b)) — 17/07/2013

#### EXECUTIVE SUMMARY

This Decision addresses safety, proportionality and regulatory coordination issues related to the SERA Implementing Regulation (SERA IR).

The specific objective is to mitigate the possible risks linked to the implementation of the SERA IR if the content is not well understood and, therefore, the main objective is to provide Member States and stakeholders with AMC/GM to facilitate the implementation.

This Decision proposes AMC and GM derived from the following sources:

- relevant notes in ICAO Annex 2, 3 and 11;
- current practice in the EU Member States and on the basis of the requests for clarification received from the stakeholders during the various consultations conducted on the SERA material;
- comments and changes made by the Single Sky Committee during the comitology procedure.

The proposals are expected to improve harmonisation and to ensure compliance with ICAO.

Applicability		Process map	
Affected regulations and decisions:	SERA Implementing Regulation	Concept Paper:	No
Affected stakeholders:	Member States; competent authorities/national supervisory authorities; ATM/ANS providers; airspace users (e.g. aircraft operators); aerodrome operators and EASA	Rulemaking group:	No
Driver/origin:	Legal obligations (Basic Regulation, EASp and ICAO SARPs)	RIA type:	None
Reference:	N/A	Technical consultation during NPA drafting:	No
		Publication date of the NPA:	24/09/2012
		Duration of NPA consultation:	3 months
		Review group:	No
		Focussed consultation:	No
		Publication date of the Opinion:	N/A
		Publication date of the Decision:	2013/Q3

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## 1. Procedural information

### 1.1. The rule development procedure

The European Aviation Safety Agency (hereinafter referred to as the 'Agency') developed this Comment-Response Document (CRD) in line with Regulation (EC) No 216/2008 (hereinafter referred to as the 'Basic Regulation') and the Rulemaking Procedure.

This rulemaking activity is included in the Agency's Rulemaking Programme for 2013, under RMT.0149 (ATM.001(b)) 'Extension of the EASA system to safety regulation of Air Traffic Management (ATM) and Air Navigation Services (ANS) — Development of Acceptable Means of Compliance, Guidance Material and Certification Specifications. The scope and timescale of the task were defined in the related Terms of Reference (see process map on the title page).

The draft text of this Decision has been developed by the Agency with the support of EUROCONTROL and a group of experts as explained in Chapter IV, point iii, of the Explanatory Note of NPA 2011-02<sup>1</sup>. All interested parties were consulted through NPA 2012-14<sup>2</sup>, which was published on 24 September 2012. The consultation was carried out in accordance with Article 52 of the Basic Regulation and Articles 5.3 and 5.6 of the Rulemaking Procedure. 85 comments were received from interested parties, including air navigation services providers, national supervisory authorities, airspace users, military, industry, etc.

The Agency has reviewed the comments received on the NPA. The comments received and the Agency's responses are presented in the Comment-Response Document (CRD) 2012-14<sup>3</sup>.

The final text of this Decision with the Acceptable Means of Compliance (AMC)/Guidance Material (GM) has been developed by the Agency with the support of EUROCONTROL.

The process map on the title page summarises the major milestones of this rulemaking activity.

### 1.2. Structure of the related documents

The Explanatory Note is divided in three chapters:

- Chapter 1 contains the procedural information related to this task,
- Chapter 2 explains the technical content in general,
- Chapter 3 provides references to related rules and documents.

A summary of the comments received during the public consultation of NPA 2012-14, together with the list of all the comments received and the individual answers, are provided in the Comment-Response Document CRD 2012-14.

The AMC and GM are annexed to Decision 2013/013/R.

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<sup>1</sup> <http://easa.europa.eu/rulemaking/docs/npa/2011/NPA%202011-02.pdf>

<sup>2</sup> <http://easa.europa.eu/rulemaking/docs/npa/2012/NPA%202012-14.pdf>

<sup>3</sup> <http://easa.europa.eu/rulemaking/docs/npa/2012/NPA%202012-14.pdf>

## 2. Explanatory Note

### 2.1. Overview of the issues to be addressed

Article 2.2(d) of the Basic Regulation mandates the Agency to assist Member States in fulfilling their obligations under the Chicago Convention by providing a basis for a common interpretation and uniform implementation of its provisions and by ensuring that its provisions are duly taken into account in the implementation measures. The same article mandates to aim not only at *high* but also at *uniform* safety.

In addition, Article 8b of the Basic Regulation and its essential requirements contained in paragraph 1(a) of Annex Vb require the Agency to develop detailed operating rules and procedures for the safe conduct of air traffic in a given airspace and which are related to the safe interaction between aircraft.

Moreover, Article 4 of the SES airspace regulation requires the Commission to adopt implementing rules related to the rules of the air and to uniform application of airspace classification.

The standardised European rules of the air have been developed in two phases:

- (a) Phase I: Transposition of the ICAO Annex 2 performed by EUROCONTROL on the basis of a mandate given by the European Commission in 2009. The outcome was the EUROCONTROL Final Report submitted to the European Commission on 30 June 2010.
- (b) Phase II: Transposition of the relevant provisions from Annex 11 and Annex 3 performed by the Agency together with EUROCONTROL and a group of experts including members from the ATM.001 rulemaking group, in accordance with the terms of the amended SERA mandate. The outcome was the Agency's Opinion No 05/2011 which was submitted to the European Commission on 14 November 2011.

The above-mentioned technical proposals were combined by the European Commission in one integrated structure and the Single European Sky Committee gave a positive vote at its 45th meeting that took place on 15–16 March 2012. The adopted regulation, i.e. Commission 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 Commission 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 (SERA IR)<sup>4</sup>, has already been published in the *Official Journal of the European Union*.

The applicability date of the new regulation was the 4 December 2012, but all Member States have opted out based on the possibility given to do so in Article 11 of said regulation. The final applicability date is 4 December 2014.

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<sup>4</sup> OJ L 281, 13.10.2012, p. 1.

In order to facilitate Member States and other stakeholders (such as air navigation service providers and airspace users) with the implementation of said regulation, the Agency adopts this Decision as an initial set of Acceptable Means of Compliance and Guidance Material to the SERA IR. The Agency intends to develop further AMC and GM in the coming years. However, their development will be subject to separate and dedicated rulemaking tasks which will be launched as part of the SERA maintenance mechanism (e.g. to align with new amendments to ICAO Annex 2, Annex 3 or Annex 11, or to correct detected inconsistencies, or to enhance the rule based on the feedback from its implementation by Member States and other stakeholders concerned).

The AMC and GM annexed to Decision 2013/013/R are derived from the following sources:

- (a) from relevant notes in ICAO Annex 2, 3 and 11;
- (b) from the current practice in the EU Member States and on the basis of the requests for clarification received from stakeholders during the various consultations conducted on the SERA material;
- (c) as result of the changes made based on the comments received during the NPA public consultation.

A table indicating the sources of each AMC and GM and explaining the intent of such non-binding implementing measures is contained in Chapter IV of the Explanatory Note of NPA 2012-14.

## **2.2. Objectives**

The overall objectives of the EASA system are defined in Article 2 of the Basic Regulation. This proposal will contribute to the achievement of the overall objectives by addressing the issues outlined in section 2.1.

The specific objective of this proposal is, therefore, to develop AMC and GM to the SERA IR.

## **2.3. Outcome of the consultation**

Chapter 2 of CRD 2012-14, published together with this Explanatory Note and this Decision, provides a summary of the main comments received during the public consultation. It also provides a list of all comments received together with the Agency's responses to each of them.

## **2.4. Summary of the Regulatory Impact Assessment (RIA)**

The objective of this rulemaking activity resulting in this Decision is the same as the objective laid down in the regulatory impact assessment of NPA 2011-02 (contained in Chapter V). Therefore, the impact assessment of the potential options for achieving the objectives is analysed in that NPA and it is not repeated in the present Explanatory Note.

Moreover, most of its content is guidance material taken either from notes in ICAO Annex 2 or Annex 11, or has been developed in order to clarify the implementing rule based on the stakeholders' request during the various public consultations. There are a few AMCs which are developed based on the changes made by the Single Sky Committee on the technical proposals presented by the European Commission and prior to the adoption of the SERA IR. The aim of these Acceptable Means of Compliance is to provide some criteria for the implementation of the implementing rule in those cases where it was felt that more

specific criteria were needed. The aim is to harmonise the application of the SERA IR (Member States/competent authorities and airspace users need to comply with the Agency's published AMC, unless they choose to develop their own AMC) while providing for the necessary flexibility (they can choose to use an alternative means of compliance but they will need to inform the Agency about it).

## **2.5. Overview of the amendments**

As a result of the comments received during the NPA consultation to some of the proposed GM to definitions in Article 2 of the SERA IR, the GM related to the definitions of 'altitude', 'flight level' and 'height' has been amended and a new GM to definition number 114 'runway holding position' in Article 2 has been introduced.

Comments related to the responsibilities for safe operations and for the way approvals are granted by the competent authority resulted also in some amendments to *GM1 SERA.3105 Minimum heights* and *GM2 SERA.3105 Minimum heights*.

A few comments were made on the content of *GM1 SERA.3220(b) Simulated instrument flights – Safety pilots*, as it was considered that the proposed GM repeated the intent of the IR. As a result, there is a new GM to explain the notion of 'safety pilot' in the SERA IR.

Few comments to *AMC1 SERA.6001(d);(e);(f);(g) Classification of airspaces on Speed limitation – Safety assessment and approval by the competent authority*, considered it to be too detailed for AMC. Therefore, the Agency has redrafted the content of the proposed AMC and it has accepted the related comments urging for more general AMC. However, the previous content of the proposed AMC has been included in a new GM on the subject matter after the amendments made taking into account the comments.

A few comments were made regarding the initially proposed *GM1 SERA.8015(d)(4) Air traffic control clearances* which led to the deletion of the proposed GM as the content was not considered to be clear enough and further details of such a procedure are still under discussion within the ICAO framework on radio communication failure procedures.

### **3. References**

#### **3.1. Related regulations**

Commission 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 Commission 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 (OJ L 281, 13.10.2012, p. 1).

#### **3.2. Reference documents**

- Annex 2 (10th edition, up to and including all amendments up to No 42) to the Convention on International Civil Aviation on rules of the air;
- Annex 11 (13th edition of July 2001, including all amendments up to No 48) to the Convention on International Civil Aviation on air traffic services; and
- Annex 3 (17th edition of July 2010, including all amendments up to No 75) to the Convention on International Civil Aviation on meteorological service for international air navigation.