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► **B** REGULATION (EC) No 216/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 February 2008

on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC

(Text with EEA relevance)

(OJ L 79, 19.3.2008, p. 1)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Commission Regulation (EC) No 690/2009 of 30 July 2009	L 199	6	31.7.2009
► <u>M2</u>	Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009	L 309	51	24.11.2009
► <u>M3</u>	Commission Regulation (EU) No 6/2013 of 8 January 2013	L 4	34	9.1.2013



**REGULATION (EC) No 216/2008 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL**

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2004/36/EC**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and
in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the Economic and Social Commit-
tee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the
Treaty ⁽²⁾,

Whereas:

- (1) A high and uniform level of protection of the European citizen should at all times be ensured in civil aviation, by the adoption of common safety rules and by measures ensuring that products, persons and organisations in the Community comply with such rules and with those adopted to protect the environment. This should contribute to facilitating the free movement of goods, persons and organisations in the internal market.
- (2) In addition, third-country aircraft operated into, within or out of the territory where the Treaty applies should be subject to appropriate oversight at Community level within the limits set by the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention), to which all Member States are parties.
- (3) The Chicago Convention already provides for minimum standards to ensure the safety of civil aviation and environmental protection relating thereto. Community essential requirements and rules adopted for their implementation should ensure that Member States fulfil the obligations created by the Chicago Convention, including those vis-à-vis third countries.
- (4) The Community should lay down, in line with standards and recommended practices set by the Chicago Convention, essential requirements applicable to aeronautical products, parts and appliances, to persons and organisations involved in the operation of aircraft, and to persons and products involved in the

⁽¹⁾ OJ C 185, 8.8.2006, p. 106.

⁽²⁾ Opinion of the European Parliament of 14 March 2007 (OJ C 301 E, 13.12.2007, p. 103), Council Common Position of 15 October 2007 (OJ C 277 E, 20.11.2007, p. 8) and Position of the European Parliament of 12 December 2007. Council Decision of 31 January 2008.

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training and medical examination of pilots. The Commission should be empowered to develop the necessary implementing rules.

- (5) It would not be appropriate to subject all aircraft to common rules, in particular aircraft that are of simple design or operate mainly on a local basis, and those that are home-built or particularly rare or only exist in a small number; such aircraft should therefore remain under the regulatory control of the Member States, without any obligation under this Regulation on other Member States to recognise such national arrangements. However, proportionate measures should be taken to increase generally the level of safety of recreational aviation. Consideration should in particular be given to aeroplanes and helicopters with a low maximum take-off mass and whose performance is increasing, which can circulate all over the Community and which are produced in an industrial manner. They therefore can be better regulated at Community level to provide for the necessary uniform level of safety and environmental protection.
- (6) The scope of Community action should be clearly defined so that persons, organisations and products subject to this Regulation and its implementing rules can be identified without ambiguity. Such scope should be clearly defined by referring to a list of aircraft which are exempted from the application of this Regulation.
- (7) Aeronautical products, parts and appliances, operators involved in commercial air transport, as well as pilots and persons, products and organisations involved in their training and medical examination, should be certified or licensed once they have been found to comply with essential requirements to be laid down by the Community in line with standards and recommended practices set by the Chicago Convention. The Commission should be empowered to develop the necessary implementing rules for establishing the conditions for the issue of the certificate or the conditions for its replacement by a declaration of capability, taking into account the risks associated with the different types of operations, such as certain types of aerial work and local flights with small aircraft.
- (8) For non-commercial operations, the operational and licensing rules should be tailored to the complexity of the aircraft and a related definition should be set out.
- (9) The privileges associated with the leisure pilot licence should be limited by the training received to obtain the related ratings, in accordance with the implementing rules.
- (10) In order to achieve Community objectives as regards the freedom of movement of goods, persons and services, as well as those of the common transport policy, Member States should, without further requirements or evaluation, accept products, parts and appliances, organisations or persons certified in accordance with this Regulation and its implementing rules.
- (11) Enough flexibility should be provided for addressing special circumstances such as urgent safety measures, unforeseen or limited operational needs. Provision should also be made for reaching an equivalent safety level by other means. Member

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States should be entitled to grant exemptions from the requirements of this Regulation and its implementing rules, provided that they are strictly limited in scope and subject to appropriate Community control.

- (12) There is a need for better arrangements in all the fields covered by this Regulation so that certain tasks currently performed at Community or national level should be carried out by a single specialised expert body. There is, therefore, a need within the Community's existing institutional structure and balance of powers to establish a European Aviation Safety Agency (hereinafter referred to as the Agency) which is independent in relation to technical matters and has legal, administrative and financial autonomy. To that end, it is necessary and appropriate that it should be a Community body having legal personality and exercising the implementing powers which are conferred on it by this Regulation.
- (13) Under the Community institutional system, implementation of Community law is primarily the responsibility of the Member States. Certification tasks required by this Regulation and its implementing rules are therefore to be executed at national level. In certain clearly defined cases, however, the Agency should also be empowered to conduct certification tasks as specified in this Regulation. The Agency should, for the same reason, be allowed to take the necessary measures related to the operation of aircraft, the qualification of crew or the safety of third-country aircraft when this is the best means to ensure uniformity and facilitate the functioning of the internal market.
- (14) Regulation (EC) No 2111/2005 ⁽¹⁾ imposes a duty on the Agency to communicate all information that may be relevant for the updating of the Community list of air carriers which, for safety reasons, are subject to an operating ban in the Community. If the Agency refuses to grant an authorisation to an air carrier under the terms of this Regulation, it should pass on to the Commission all relevant information on which this refusal was based, so that the name of the air carrier may be entered, if necessary, on that list.
- (15) The effective functioning of a Community civil aviation safety scheme in the fields covered by this Regulation requires strengthened cooperation between the Commission, the Member States and the Agency to detect unsafe conditions and take remedial measures as appropriate.
- (16) The promotion of a 'culture of safety' and the proper functioning of a regulatory system in the fields covered by this Regulation require that incidents and occurrences be spontaneously reported by the witnesses thereto. Such reporting would be facilitated by

⁽¹⁾ Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier (OJ L 344, 27.12.2005, p. 15).

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the establishment of a non-punitive environment, and appropriate measures should be taken by Member States to provide for the protection of such information and of those who report it.

- (17) Results of air accident investigations should be acted upon as a matter of urgency, in particular when they relate to defective aircraft design and/or operational matters, in order to ensure consumer confidence in air transport.
- (18) To help achieve the safety objectives of this Regulation, the Community should be given powers to impose financial penalties on holders of certificates and approvals issued by the Agency. In accordance with the Community legal order, such financial penalties should be imposed by the Commission acting upon a recommendation of the Agency. It should be underlined that through the introduction of financial penalties the Commission will be able to give a more nuanced, flexible and graduated response to a breach of the rules, compared to the withdrawal of a certificate.
- (19) Since all decisions taken by the Commission under this Regulation are subject to review by the Court of Justice of the European Communities in accordance with the Treaty, the Court of Justice should, in accordance with Article 229 thereof, be given unlimited jurisdiction in respect of decisions by which the Commission imposes fines or periodic penalty payments.
- (20) In order to respond to increasing concerns about the health and welfare of passengers during flights, it is necessary to develop aircraft designs which better protect the safety and health of passengers.
- (21) The objectives of this Regulation may be efficiently achieved through cooperation with third countries. In such a case, the provisions of this Regulation and its implementing rules may be adapted through agreements concluded by the Community with these countries. In the absence of such agreements, Member States should nevertheless be allowed, subject to appropriate Community control, to recognise the approvals granted to foreign products, parts and appliances, organisations and personnel by a third country.
- (22) In order to properly assist the Community, the Agency should be allowed to develop its expertise in all aspects of civil aviation safety and environmental protection covered by this Regulation. It should assist the Commission in the preparation of the necessary legislation and assist the Member States and industry in its implementation. It should be able to issue certification specifications and guidance material and to make technical findings and issue certificates as required, it should assist the Commission in monitoring the application of this Regulation and of its implementing rules, and it should be given the necessary authority to carry out its tasks.
- (23) The Commission and the Member States should be represented within a Management Board in order to control effectively the functions of the Agency. This Board should be entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency and appoint the Executive Director. It is also appropriate that the

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Agency be allowed to conduct research and to organise appropriate coordination with the Commission and the Member States. It is desirable that the Agency assist the Community and its Member States in the field of international relations, including the harmonisation of rules, recognition of approvals and technical cooperation, and be entitled to establish the appropriate relations with the aeronautical authorities of third countries and international organisations competent in matters covered by this Regulation.

- (24) In the interests of transparency, observers from interested parties should be represented within the Management Board of the Agency.
- (25) Public interest requires the Agency to base its safety-related action solely on independent expertise, strictly applying this Regulation and the rules adopted by the Commission for its implementation. To that end, all safety-related decisions of the Agency should be made by its Executive Director, who should enjoy a high degree of flexibility to obtain advice and to organise the internal functioning of the Agency. When, however, the Agency has to develop draft rules of a general nature to be implemented by national authorities, Member States should be involved in the process of decision.
- (26) It is necessary to ensure that parties affected by decisions made by the Agency enjoy the necessary remedies in a manner which is suited to the special character of the field of aviation. An appropriate appeal mechanism should be set up so that decisions of the Executive Director can be subject to appeal to a specialised Board of Appeal, whose decisions are, in turn, open to action before the Court of Justice.
- (27) In order to guarantee the full autonomy and independence of the Agency, it should be granted an autonomous budget whose revenue comes essentially from a contribution from the Community and from fees paid by the users of the system. Any financial contribution received by the Agency from Member States, third countries or other entities should not compromise its independence and impartiality. The Community budgetary procedure should be applicable as far as the Community contribution and any other subsidies chargeable to the general budget of the European Union are concerned. The auditing of accounts should be carried out by the Court of Auditors.
- (28) Before any local offices of the Agency are set up, general rules should be established to clarify what requirements need to be met and what contribution the Member State concerned must provide.
- (29) Since the objectives of this Regulation, namely the establishment and uniform application of common rules in the field of civil aviation safety and environmental protection, cannot be sufficiently achieved by the Member States and can therefore, by reason of the Europe-wide scope of this Regulation, be better

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achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

- (30) It has been recognised that the involvement of European countries not Members of the European Union should be pursued, so as to ensure a proper pan-European dimension in order to facilitate the improvement of civil aviation safety throughout Europe. European countries that have concluded agreements with the Community to adopt and apply the Community *acquis* in the field covered by this Regulation should be associated with its work in accordance with conditions to be agreed in the framework of those agreements.
- (31) It is a general objective that the transfer of functions and tasks from the Member States, including those resulting from their cooperation through the Joint Aviation Authorities, to the Agency should be effected efficiently, without any reduction in the current high levels of safety, and without any negative impact on certification schedules. Appropriate measures should be adopted to provide for the necessary transition.
- (32) This Regulation sets common rules in the field of civil aviation and establishes a European Aviation Safety Agency. 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⁽¹⁾ should therefore be repealed.
- (33) This Regulation establishes an appropriate and comprehensive framework for the definition and implementation of common technical requirements and administrative procedures in the field of civil aviation. Annex III to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation⁽²⁾ and Council Directive 91/670/EEC of 16 December 1991 on mutual acceptance of personnel licences for the exercise of functions in civil aviation⁽³⁾ should therefore be repealed in due course, without prejudice to the certification or licensing of products, persons and organisations already carried out in accordance with those acts.
- (34) This Regulation establishes an appropriate and comprehensive framework for the safety of third-country aircraft using Community airports. Directive 2004/36/EC of the European Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports⁽⁴⁾ should therefore be repealed in due course and without prejudice to the implementing measures on collection of information, ramp inspection and exchange of information.
- (35) This Regulation will apply to any other area related to civil aviation safety on the basis of a future proposal in accordance with the Treaty.

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

⁽²⁾ OJ L 373, 31.12.1991, p. 4. Regulation as last amended by Commission Regulation (EC) No 8/2008 (OJ L 10, 12.1.2008, p. 1).

⁽³⁾ OJ L 373, 31.12.1991, p. 1.

⁽⁴⁾ OJ L 143, 30.4.2004, p. 76. Directive as amended by Regulation (EC) No 2111/2005.

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- (36) It is necessary to establish appropriate measures to ensure both the necessary protection of sensitive safety data and to provide the public with adequate information pertaining to the level of civil aviation safety and environmental protection relating thereto, taking into account Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾ and relevant national legislation. Decisions taken by the Agency pursuant to Article 8 of that Regulation should be capable of giving rise to the lodging of a complaint to the Ombudsman or should be capable of being the subject of an action before the Court of Justice, under Articles 195 and 230 of the Treaty respectively.
- (37) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾.
- (38) In particular, power should be conferred on the Commission to adopt implementing rules for airworthiness, flight crew licensing and associated approvals, air operations, aircraft used by third-country operators, oversight and enforcement, as well as to adopt a regulation on the fees and charges of the Agency. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, *inter alia*, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (39) On grounds of efficiency, the normal time-limits for the regulatory procedure with scrutiny should be curtailed for the adaptation of the essential requirements for environmental protection and for the adoption of the implementing rules for environmental protection.
- (40) On grounds of urgency it is necessary to apply the urgency procedure provided for in Article 5a(6) of Decision 1999/468/EC for the Commission to decide on the measures taken by Member States in immediate reaction to a safety problem, as well as on derogating approvals submitted by Member States,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

PRINCIPLES

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Article 1

Scope

1. This Regulation shall apply to:
 - (a) the design, production, maintenance and operation of aeronautical products, parts and appliances, as well as personnel and

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

⁽²⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

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organisations involved in the design, production and maintenance of such products, parts and appliances;

- (b) personnel and organisations involved in the operation of aircraft;
- (c) the design, maintenance and operation of aerodromes, as well as personnel and organisations involved therein and, without prejudice to Community and national legislation on environment and land-use planning, the safeguarding of surroundings of aerodromes;
- (d) the design, production and maintenance of aerodrome equipment, as well as personnel and organisations involved therein;
- (e) the design, production and maintenance of systems and constituents for air traffic management and air navigation services (ATM/ANS), as well as personnel and organisations involved therein;
- (f) ATM/ANS, as well as personnel and organisations involved therein.

2. This Regulation shall not apply to:

- (a) products, parts, appliances, personnel and organisations referred to in paragraph 1(a) and (b) while carrying out military, customs, police, search and rescue, firefighting, coastguard or similar activities or services. The Member States shall undertake to ensure that such activities or services have due regard as far as practicable to the objectives of this Regulation;
- (b) aerodromes or part thereof, as well as equipment, personnel and organisations, referred to in paragraph 1(c) and (d), that are controlled and operated by the military;
- (c) ATM/ANS, including systems and constituents, personnel and organisations, referred to in paragraph 1(e) and (f), that are provided or made available by the military. The Member States shall undertake to ensure that aircraft referred to in point (a) of this paragraph are separated, where appropriate, from other aircraft.

3. Member States shall, as far as practicable, ensure that any military facilities open to public use referred to in paragraph 2(b) or services provided by military personnel to the public referred to in paragraph 2(c), offer a level of safety that is at least as effective as that required by the essential requirements as defined in Annexes Va and Vb.

▼ B*Article 2***Objectives**

1. The principal objective of this Regulation is to establish and maintain a high uniform level of civil aviation safety in Europe.
2. Additional objectives are, in the fields covered by this Regulation, as follows:
 - (a) to ensure a high uniform level of environmental protection;

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- (b) to facilitate the free movement of goods, persons and services;
- (c) to promote cost-efficiency in the regulatory and certification processes and to avoid duplication at national and European level;
- (d) 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 this Regulation and in the rules drawn up for its implementation;
- (e) to promote Community views regarding civil aviation safety standards and rules throughout the world by establishing appropriate cooperation with third countries and international organisations;
- (f) to provide a level playing field for all actors in the internal aviation market.

3. The means of achieving the objectives set out in paragraphs 1 and 2 shall be:

- (a) the preparation, adoption and uniform application of all necessary acts;
- (b) the recognition, without additional requirements, of certificates, licences, approvals or other documents granted to products, personnel and organisations in accordance with this Regulation and its implementing rules;
- (c) the establishment of an independent European Aviation Safety Agency (hereinafter referred to as the Agency);
- (d) the uniform implementation of all necessary acts by the national aviation authorities and the Agency within their respective areas of responsibility.

Article 3

Definitions

For the purposes of this Regulation:

- (a) ‘continuing oversight’ shall mean the tasks to be conducted to verify that the conditions under which a certificate has been granted continue to be fulfilled at any time during its period of validity, as well as the taking of any safeguard measure;
- (b) ‘Chicago Convention’ shall mean the Convention on International Civil Aviation and its Annexes, signed in Chicago on 7 December 1944;
- (c) ‘product’ shall mean an aircraft, engine or propeller;

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- (d) ‘parts and appliances’ shall mean any instrument, equipment, mechanism, part, apparatus, appurtenance, software or accessory, including communications equipment, that is used or intended to be used in operating or controlling an aircraft in flight; it shall include parts of an airframe, engine or propeller, or equipment used to manoeuvre the aircraft from the ground;
- (da) ‘ATM/ANS constituents’ shall mean any constituent as defined in Article 2(19) of Regulation (EC) No 549/2004 of the European

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Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) ⁽¹⁾;

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- (e) ‘certification’ shall mean any form of recognition that a product, part or appliance, organisation or person complies with the applicable requirements including the provisions of this Regulation and its implementing rules, as well as the issuance of the relevant certificate attesting such compliance;
- (f) ‘qualified entity’ shall mean a body which may be allocated a specific certification task by, and under the control and the responsibility of, the Agency or a national aviation authority;
- (g) ‘certificate’ shall mean any approval, licence or other document issued as the result of certification;

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- (h) ‘operator’ shall mean any legal or natural person, operating or proposing to operate one or more aircraft or one or more aerodromes;

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- (i) ‘commercial operation’ shall mean any operation of an aircraft, in return for remuneration or other valuable consideration, which is available to the public or, when not made available to the public, which is performed under a contract between an operator and a customer, where the latter has no control over the operator;
- (j) ‘complex motor-powered aircraft’ shall mean:
 - (i) an aeroplane:
 - with a maximum certificated take-off mass exceeding 5 700 kg, or
 - certificated for a maximum passenger seating configuration of more than nineteen, or
 - certificated for operation with a minimum crew of at least two pilots, or
 - equipped with (a) turbojet engine(s) or more than one turboprop engine, or
 - (ii) a helicopter certificated:
 - for a maximum take-off mass exceeding 3 175 kg, or
 - for a maximum passenger seating configuration of more than nine, or
 - for operation with a minimum crew of at least two pilots, or
 - (iii) a tilt rotor aircraft;
- (k) ‘flight simulation training device’ shall mean any type of device in which flight conditions are simulated on the ground; they include flight simulators, flight training devices, flight and navigation procedures trainers and basic instrument training devices;

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

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- (l) 'rating' shall mean a statement entered on a licence, setting forth privileges, special conditions or limitations pertaining thereto;

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- (m) 'aerodrome' shall mean a defined area (including any buildings, installations and equipment) on land or water or on a fixed, fixed offshore or floating structure intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft;
- (n) 'aerodrome equipment' shall mean any equipment, apparatus, appurtenance, software or accessory, that is used or intended to be used to contribute to the operation of aircraft at an aerodrome;
- (o) 'apron' shall mean a defined area intended to accommodate aircraft for purposes of loading or unloading passengers, mail or cargo, fuelling, parking or maintenance;
- (p) 'apron management service' shall mean a service provided to manage the activities and the movement of aircraft and vehicles on an apron;
- (q) 'ATM/ANS' shall mean the air traffic management functions as defined in Article 2(10) of Regulation (EC) No 549/2004, air navigation services defined in Article 2(4) of that Regulation, and services consisting in the origination and processing of data and formatting and delivering data to general air traffic for the purpose of safety-critical air navigation;
- (r) 'ATM/ANS system' shall mean any combination of safety-related equipment and systems as defined in Article 2(39) of Regulation (EC) No 549/2004;
- (s) 'flight information service' shall mean a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights.

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CHAPTER II

SUBSTANTIVE REQUIREMENTS

*Article 4***Basic principles and applicability**

1. Aircraft, including any installed product, part and appliance, which are:
 - (a) designed or manufactured by an organisation for which the Agency or a Member State ensures safety oversight; or
 - (b) registered in a Member State, unless their regulatory safety oversight has been delegated to a third country and they are not used by a Community operator; or
 - (c) registered in a third country and used by an operator for which any Member State ensures oversight of operations or used into, within or out of the Community by an operator established or residing in the Community; or

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- (d) registered in a third country, or registered in a Member State which has delegated their regulatory safety oversight to a third country, and used by a third-country operator into, within or out of the Community

shall comply with this Regulation.

2. Personnel involved in the operations of aircraft referred to in paragraph 1(b), (c) or (d) shall comply with this Regulation.
3. Operations of aircraft referred to in paragraph 1(b), (c) or (d) shall comply with this Regulation.

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3a. Aerodromes, including equipment, located in the territory subject to the provisions of the Treaty, open to public use and which serve commercial air transport and where operations using instrument approach or departure procedures are provided, and:

- (a) have a paved runway of 800 metres or above; or
- (b) exclusively serve helicopters;

shall comply with this Regulation. Personnel and organisations involved in the operation of these aerodromes shall comply with this Regulation.

3b. By way of derogation from paragraph 3a, Member States may decide to exempt from the provisions of this Regulation an aerodrome which:

- handles no more than 10 000 passengers per year, and
- handles no more than 850 movements related to cargo operations per year.

If such exemption by a Member State does not comply with the general safety objectives of this Regulation or any other rule of Community law, the Commission shall take a decision in accordance with the safeguard procedure referred to in Article 65(7) not to permit the exemption in question. In such a case, the Member State concerned shall revoke the exemption.

3c. ATM/ANS provided in the airspace of the territory to which the Treaty applies, as well as in any other airspace where Member States apply Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation)⁽¹⁾ in accordance with Article 1(3) of that Regulation, shall comply with this Regulation. Systems and constituents, personnel and organisations involved in the provision of these ATM/ANS shall comply with this Regulation.

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4. Paragraph 1 shall not apply to aircraft referred to in Annex II.
5. Paragraphs 2 and 3 shall not apply to aircraft referred to in Annex II, with the exception of aircraft referred to in points (a)(ii), (d) and (h) thereof when used for commercial air transportation.
6. This Regulation shall not affect the rights of third countries as specified in international conventions, in particular the Chicago Convention.

⁽¹⁾ OJ L 96, 31.3.2004, p. 20.

▼B*Article 5***Airworthiness**

1. Aircraft referred to in Article 4(1)(a), (b) and (c) shall comply with the essential requirements for airworthiness laid down in Annex I.

2. Compliance of aircraft referred to in Article 4(1)(b), and of products, parts and appliances mounted thereon shall be established in accordance with the following:
 - (a) products shall have a type-certificate. The type-certificate, and certification of changes to that type-certificate, including supplemental type-certificates, shall be issued when the applicant has shown that the product complies with a type-certification basis as specified in Article 20, established to ensure compliance with the essential requirements referred to in paragraph 1, and when it has no feature or characteristic making it unsafe for operation. The type-certificate shall cover the product, including all parts and appliances fitted thereon;

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- (b) the measures referred to in paragraph 5 may lay down a requirement for certification in respect of parts and appliances. The certificates for parts and appliances shall be issued when the applicant has shown that the parts and appliances comply with the detailed airworthiness specifications established to ensure compliance with the essential requirements referred to in paragraph 1;

- (c) no aircraft shall be operated, unless it has a valid certificate of airworthiness. The certificate shall be issued when the applicant has shown that the aircraft conforms to the type design approved in its type-certificate and that relevant documentation, inspections and tests demonstrate that the aircraft is in condition for safe operation. This certificate of airworthiness shall remain valid as long as it is not suspended, revoked or terminated and as long as the aircraft is maintained in accordance with the essential requirements related to continuing airworthiness set out in point 1.d of Annex I and the measures adopted pursuant to paragraph 5;

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- (d) organisations responsible for the maintenance of products, parts and appliances shall demonstrate their capability and means to discharge the responsibilities associated with their privileges. Unless otherwise accepted these capabilities and means shall be recognised through the issuance of an organisation approval. The privileges granted to the approved organisation and the scope of the approval shall be specified in the terms of approval;

- (e) organisations responsible for the design and manufacture of products, parts and appliances shall demonstrate their capability and means to discharge the responsibilities associated with their privileges. Unless otherwise accepted these capabilities and means shall be recognised through the issuance of an organisation approval. The privileges granted to the approved organisation and the scope of the approval shall be specified in the terms of approval;

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in addition:

- (f) personnel responsible for the release of a product, part or appliance after maintenance may be required to hold an appropriate certificate (personnel certificate);
- (g) the capability of maintenance training organisations to discharge the responsibilities associated with their privileges in relation to the issuance of the certificates referred to in point (f) may be recognised by the issuance of an approval.

3. Aircraft referred to in Article 4(1)(a) and products, parts and appliances mounted thereon shall comply with paragraph 2(a), (b) and (e) of this Article.

4. By way of derogation from paragraphs 1 and 2:

- (a) a permit to fly may be issued when it is shown that the aircraft is capable of performing safely a basic flight. It shall be issued with appropriate limitations, in particular to protect third parties' safety;
- (b) a restricted certificate of airworthiness may be issued to aircraft for which a type certificate has not been issued according to paragraph 2(a). In this case, the aircraft shall be shown to comply with specific airworthiness specifications and deviations from the essential requirements referred to in paragraph 1 shall nevertheless ensure adequate safety with regard to the purpose. Aircraft eligible for these restricted certificates, and limitations for use of these aircraft, shall be defined according to the measures referred to in paragraph 5;
- (c) when the number of aircraft of the same type eligible for a restricted certificate of airworthiness so justifies, a restricted type certificate may be issued and an appropriate type certification basis shall be established.

5. The measures designed to amend non-essential elements of this Article, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(4). Those measures shall specify in particular:

- (a) conditions for establishing and notifying to an applicant the type-certification basis applicable to a product;
- (b) conditions for establishing and notifying to an applicant the detailed airworthiness specifications applicable to parts and appliances;
- (c) conditions for establishing and notifying to an applicant the specific airworthiness specifications applicable to aircraft eligible for a restricted certificate of airworthiness;
- (d) conditions for issuing and disseminating mandatory information in order to ensure the continuing airworthiness of products;

▼B

- (e) conditions for issuing, maintaining, amending, suspending or revoking type-certificates, restricted type-certificates, approval of changes to type-certificates, individual certificates of airworthiness, restricted certificates of airworthiness, permits to fly and certificates for products, parts or appliances, including:
 - (i) conditions on the duration of these certificates, and conditions to renew certificates when a limited duration is fixed;
 - (ii) restrictions applicable to the issue of permits to fly. These restrictions should in particular concern the following:
 - purpose of the flight,
 - airspace used for the flight,
 - qualification of flight crew,
 - carriage of persons other than flight crew;
 - (iii) aircraft eligible for restricted certificates of airworthiness, and associated restrictions;
 - (iv) the minimum syllabus of maintenance certifying staff type rating training to ensure compliance with paragraph (2)(f);
 - (v) the minimum syllabus of pilot type rating and the qualification of associated simulators to ensure compliance with Article 7;
 - (vi) the master minimum equipment list as appropriate and additional airworthiness specifications for a given type of operation to ensure compliance with Article 8;
 - (f) conditions to issue, maintain, amend, suspend or revoke organisation approvals required in accordance with paragraph 2(d), (e) and (g) and conditions under which such approvals need not be requested;
 - (g) conditions to issue, maintain, amend, suspend or revoke personnel certificates required in accordance with paragraph 2(f);
 - (h) responsibilities of the holders of certificates;
 - (i) how aircraft referred to in paragraph 1 which are not covered by paragraphs 2 or 4 are to show compliance with the essential requirements;
 - (j) how aircraft referred to in Article 4(1)(c) are to show compliance with the essential requirements.
6. When adopting the measures referred to in paragraph 5, the Commission shall take specific care that they:
- (a) reflect the state of the art and the best practices in the field of airworthiness;
 - (b) take into account worldwide aircraft experience in service, and scientific and technical progress;
 - (c) allow for immediate reaction to established causes of accidents and serious incidents;

▼B

- (d) do not impose on aircraft referred to in Article 4(1)(c) requirements which would be incompatible with the International Civil Aviation Organization (ICAO) obligations of Member States.

*Article 6***Essential requirements for environmental protection****▼M3**

1. Products, parts and appliances shall comply with the environmental protection requirements contained in Amendment 10 of Volume I and in Amendment 7 of Volume II of Annex 16 to the Chicago Convention as applicable on 17 November 2011, except for the Appendices to Annex 16.

▼B

2. The measures designed to amend non-essential elements of the requirements referred to in paragraph 1 in order to bring them into line with subsequent amendments to the Chicago Convention and its Annexes which enter into force after the adoption of this Regulation and which become applicable in all Member States, shall, in so far as such adaptations do not broaden the scope of this Regulation, be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(5).

3. The measures designed to amend non-essential elements of the requirements referred to in paragraph 1, by supplementing them, shall, using as necessary the content of the Appendices referred to in paragraph 1, be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(5).

*Article 7***Pilots**

1. Pilots involved in the operation of aircraft referred to in Article 4(1)(b) and (c), as well as flight simulation training devices, persons and organisations involved in the training, testing, checking or medical assessment of these pilots, shall comply with the relevant 'essential requirements' laid down in Annex III.

2. Except when under training, a person may only act as a pilot if he or she holds a licence and a medical certificate appropriate to the operation to be performed.

A person shall only be issued a licence when he or she complies with the rules established to ensure compliance with the essential requirements on theoretical knowledge, practical skill, language proficiency and experience as set out in Annex III.

A person shall only be issued a medical certificate when he or she complies with the rules established to ensure compliance with the essential requirements on medical fitness as set out in Annex III. This medical certificate may be issued by aero-medical examiners or by aero-medical centres.

▼ B

Notwithstanding the third subparagraph, in the case of a leisure pilot licence a general medical practitioner who has sufficient detailed knowledge of the applicant's medical background may, if so permitted under national law, act as an aero-medical examiner, in accordance with detailed implementing rules adopted pursuant to the procedure referred to in Article 65(3); these implementing rules shall ensure that the level of safety is maintained.

The privileges granted to the pilot and the scope of the licence and the medical certificate shall be specified in such licence and certificate.

The requirements of the second and third subparagraphs may be satisfied by the acceptance of licences and medical certificates issued by or on behalf of a third country as far as pilots involved in the operation of aircraft referred to in Article 4(1)(c) are concerned.

3. The capability of pilot training organisations and of aero-medical centres to discharge the responsibilities associated with their privileges in relation to the issuance of licenses and medical certificates shall be recognised by the issuance of an approval.

Pilot training organisations or aero-medical centres shall be issued an approval when they comply with the rules established to ensure compliance with the relevant essential requirements as laid down in Annex III.

The privileges granted by the approvals shall be specified thereon.

▼ M2

4. A certificate shall be required in respect of each flight simulation training device used for the training of pilots. The certificate shall be issued when the applicant has shown that the device complies with the rules established to ensure compliance with the relevant essential requirements as set out in Annex III.

▼ B

5. Persons responsible for providing flight training or flight simulation training, or for assessing pilots' skill, and aero-medical examiners shall hold an appropriate certificate. Such certificate shall be issued when it is shown that the person concerned complies with the rules established to ensure compliance with the relevant essential requirements as laid down in Annex III.

The privileges granted by the certificate shall be specified therein.

6. The measures designed to amend non-essential elements of this Article by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(4). Those measures shall specify in particular:

- (a) the different ratings for pilots' licences and the medical certificates adequate for the different types of activities performed;
- (b) the conditions for issuing, maintaining, amending, limiting, suspending or revoking licences, ratings for licences, medical certificates, approvals and certificates referred to in paragraphs 2, 3, 4 and 5, and the conditions under which such certificates and approvals need not be requested;
- (c) the privileges and responsibilities of the holders of licences, ratings for licences, medical certificates, approvals and certificates referred to in paragraphs 2, 3, 4 and 5;
- (d) the conditions for the conversion of existing national pilots' licences and of national flight engineers' licences into pilots' licences as well as the conditions for the conversion of national medical certificates into commonly recognised medical certificates;

▼B

- (e) without prejudice to the provisions of bilateral agreements concluded in accordance with Article 12, the conditions for the acceptance of licences from third countries;
- (f) how pilots of aircraft referred to in points (a)(ii), (d) and (f) of Annex II, when used for commercial air transportation, comply with the relevant essential requirements of Annex III.

7. When adopting the measures referred to in paragraph 6, the Commission shall take specific care that they reflect the state of the art, including best practices and scientific and technical progress, in the field of pilot training.

Such measures shall also include provisions for the issuance of all types of pilot licences and ratings required under the Chicago Convention, and of a leisure pilot licence covering non-commercial activities involving aircraft with a maximum certificated take off mass of 2 000 kg or less and which do not meet any of the criteria referred to in Article 3(j).

*Article 8***Air operations****▼M2**

1. The operation of aircraft referred to in Article 4(1)(b) and (c) shall comply with the essential requirements set out in Annex IV and, if applicable, Annex Vb.

▼B

2. Unless otherwise determined in the implementing rules, operators engaged in commercial operations shall demonstrate their capability and means of discharging the responsibilities associated with their privileges. These capabilities and means shall be recognised through the issuance of a certificate. The privileges granted to the operator and the scope of the operations shall be specified in the certificate.

3. Unless otherwise determined in the implementing rules, operators engaged in the non-commercial operation of complex motor-powered aircraft shall declare their capability and means of discharging the responsibilities associated with the operation of that aircraft.

4. Cabin crew involved in the operation of aircraft referred to in Article 4(1)(b) and (c) shall comply with the essential requirements laid down in Annex IV. Those involved in commercial operations shall hold an attestation as initially set out in Annex III, Subpart O, point (d) of OPS 1 1005 as set out in Regulation (EC) No 1899/2006 of the European Parliament and of the Council of 12 December 2006 amending Council Regulation (EEC) No 3922/91 ⁽¹⁾; at the discretion of the Member State, such attestation may be issued by approved operators or training organisations.

5. The measures designed to amend non-essential elements of this Article, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(4). Those measures shall specify in particular:

⁽¹⁾ OJ L 377, 27.12.2006, p. 1.

▼ M2

- (a) conditions to operate an aircraft in compliance with the essential requirements set out in Annex IV and, if applicable, Annex Vb;

▼ B

- (b) conditions for issuing, maintaining, amending, limiting, suspending or revoking the certificates referred to in paragraph 2 and the conditions under which a certificate shall be replaced by a declaration of the capability and means of the operator to discharge the responsibilities associated with the operation of the aircraft;
- (c) privileges and responsibilities of the holders of certificates;
- (d) conditions and procedures for the declaration by, and for the oversight of, operators referred to in paragraph 3 and the conditions under which a declaration shall be replaced by a demonstration of capability and means to discharge the responsibilities associated with the privileges of the operator recognised by the issuance of a certificate;
- (e) conditions for issuing, maintaining, amending, limiting, suspending or revoking the cabin crew attestation referred to in paragraph 4;
- (f) conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety;

▼ M2

- (g) how operations of aircraft referred to in point (a)(ii) and points (d) and (h) of Annex II, when used for commercial air transportation, comply with the relevant essential requirements set out in Annex IV and, if applicable, Annex Vb.

▼ B

6. The measures referred to in paragraph 5 shall:
- reflect the state of the art and the best practices in the field of air operations,
 - define different types of operations and allow for related requirements and compliance demonstrations proportionate to the complexity of operations and the risk involved,
 - take into account worldwide aircraft experience in service, and scientific and technical progress,
 - with regard to commercial transportation by aeroplane, and without prejudice to the previous indent, be developed initially on the basis of the common technical requirements and administrative procedures specified in Annex III to Regulation (EEC) No 3922/91,
 - be based on a risk assessment and shall be proportional to the scale and scope of the operation,
 - allow for immediate reaction to established causes of accidents and serious incidents,

▼B

- not impose on aircraft referred to in Article 4(1)(c) requirements which would be incompatible with the ICAO obligations of Member States,

▼M2

- take into account the safety aspects related to ATM/ANS.

*Article 8a***Aerodromes**

1. Aerodromes and aerodrome equipment as well as the operation of aerodromes shall comply with the essential requirements set out in Annex Va and, if applicable, Annex Vb.
2. The compliance of aerodromes, aerodrome equipment and operation of aerodromes with the essential requirements shall be established in accordance with the following:
 - (a) a certificate shall be required in respect of each aerodrome. The certificate and certification of changes to that certificate shall be issued when the applicant has shown that the aerodrome complies with the aerodrome certification basis set out in point (b), and that the aerodrome has no feature or characteristic making it unsafe for operation. The certificate shall cover the aerodrome, its operation and its safety-related equipment;
 - (b) the certification basis for an aerodrome shall consist of the following:
 - (i) the applicable certification specifications related to the type of aerodromes;
 - (ii) the provisions for which an equivalent level of safety has been accepted; and
 - (iii) the special detailed technical specifications necessary when the design features of a particular aerodrome or the experience in operation render any of the specifications referred to in point (i) inadequate or inappropriate to ensure conformity with the essential requirements set out in Annex Va;
 - (c) the measures referred to in paragraph 5 may lay down a requirement of certification in respect of safety-critical aerodrome equipment. The certificate for such equipment shall be issued when the applicant has shown that the equipment complies with the detailed specifications established to ensure compliance with the essential requirements referred to in paragraph 1;
 - (d) organisations responsible for the operation of aerodromes shall demonstrate their capability and means to discharge the responsibilities associated with their privileges. These capabilities and means shall be recognised through the issuance of the certificate referred to in point (a). They may also be recognised through the issuance of a separate certificate if the Member State where the aerodrome is located so decides. The privileges granted to the certified organisation and the scope of the certificate, including a list of aerodromes to be operated, shall be specified in the certificate;
 - (e) by way of derogation from point (d), Member States may decide that providers of apron management services shall be allowed to declare their capability and means of discharging the responsibilities associated with the services provided.

▼ M2

3. Member States shall ensure that provisions are in place to safeguard aerodromes against activities and developments in their surroundings which may cause unacceptable risks to aircraft using the aerodrome.

4. Aerodrome operators shall monitor activities and developments which may cause unacceptable safety risks to aviation in the aerodrome surroundings and take, within their competence, mitigating measures as appropriate.

5. The measures designed to amend non-essential elements of the requirements referred to in this Article, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(4).

Those measures shall specify in particular:

- (a) the conditions for establishing and notifying to an applicant the certification basis applicable to an aerodrome;
- (b) the conditions for establishing and notifying to an applicant the detailed specifications applicable to aerodrome equipment;
- (c) the conditions for issuing, maintaining, amending, suspending or revoking certificates for aerodromes and certificates for aerodrome equipment, including operating limitations related to the specific design of the aerodrome;
- (d) the conditions for operating an aerodrome in compliance with the essential requirements set out in Annex Va and, if applicable, Annex Vb;
- (e) the conditions for issuing, maintaining, amending, suspending or revoking the certificates referred to in paragraph 2(d);
- (f) the responsibilities of the holders of certificates;
- (g) the conditions for the acceptance and for the conversion of aerodrome certificates issued by Member States, including measures which are already authorised by the Member State concerned on the basis of notified deviations from Annex 14 of the Chicago Convention before the entry into force of this Regulation;
- (h) the conditions for the decision not to permit exemptions referred to in Article 4(3b), including criteria for cargo aerodromes, the notification of exempted aerodromes and for the review of granted exemptions;
- (i) the conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety;
- (j) the conditions and procedures for the declaration by and for the oversight of service providers referred to in paragraph 2(e).

6. The measures referred to in paragraph 5 shall:

- (a) reflect the state of the art and the best practices in the field of aerodromes and take into account the applicable ICAO Standards and Recommended Practices;
- (b) be proportionate to the size, traffic, category and complexity of the aerodrome and nature and volume of operations thereon;

▼ **M2**

- (c) take into account worldwide aerodrome operation experience, and scientific and technical progress;
- (d) allow for immediate reaction to established causes of accidents and serious incidents;
- (e) provide for the necessary flexibility for customised compliance.

*Article 8b***ATM/ANS**

1. Provision of ATM/ANS shall comply with the essential requirements set out in Annex Vb and, as far as practicable, Annex Va.

2. ATM/ANS providers shall be required to hold a certificate. The certificate shall be issued when the provider has demonstrated its capability and means of discharging the responsibilities associated with the provider's privileges. The privileges granted and the scope of the services provided shall be specified in the certificate.

3. By way of derogation from paragraph 2, Member States may decide that providers of flight information services shall be allowed to declare their capability and means of discharging the responsibilities associated with the services provided.

4. The measures referred to in paragraph 6 may lay down a requirement for certification in respect of organisations engaged in the design, manufacture and maintenance of safety-critical ATM/ANS systems and constituents. The certificate for those organisations shall be issued when they have demonstrated their capability and means of discharging the responsibilities associated with their privileges. The privileges granted shall be specified in the certificate.

5. The measures referred to in paragraph 6 may lay down a requirement for certification, or alternatively, validation by the ATM/ANS provider, in respect of safety-critical ATM/ANS systems and constituents. The certificate for those systems and constituents shall be issued, or validation shall be given, when the applicant has shown that the systems and constituents comply with the detailed specifications established to ensure compliance with the essential requirements referred to in paragraph 1.

6. The measures necessary for the implementation of this Article shall be adopted in accordance with the regulatory procedure referred to in Article 5(3) of Regulation (EC) No 549/2004.

Those measures shall specify in particular:

- (a) the conditions for the provision of ATM/ANS in compliance with the essential requirements set out in Annex Vb and, if applicable, in Annex Va;
- (b) the conditions for establishing and notifying to an applicant the detailed specifications applicable to ATM/ANS systems and constituents;
- (c) the conditions for issuing, maintaining, amending, suspending or revoking the certificates referred to in paragraphs 2 and 4;
- (d) the responsibilities of the holders of certificates;

▼M2

- (e) the conditions and procedures for the declaration by, and for the oversight of service providers referred to in paragraph 3;
 - (f) the conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety.
7. The measures referred to in paragraph 6 shall:
- (a) reflect the state of the art and the best practices in the field of ATM/ANS;
 - (b) be proportionate to the type and complexity of the services provided;
 - (c) take into account worldwide ATM/ANS experience, and scientific and technical progress;
 - (d) be developed using as far as practicable the relevant provisions of Regulation (EC) No 549/2004 and of Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation)⁽¹⁾, Regulation (EC) No 551/2004 and Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation)⁽²⁾ and provide for transitional mechanisms to ensure the continuity of certificates already granted under those Regulations; initially they shall include the safety provisions of those Regulations and, where appropriate, in case of future amendments, take into account latest scientific and technical progress;
 - (e) allow for immediate reaction to established causes of accidents and serious incidents.

*Article 8c***Air traffic controllers**

1. Air traffic controllers as well as persons and organisations involved in the training, testing, checking or medical assessment of air traffic controllers, shall comply with the relevant essential requirements set out in Annex Vb.
2. Air traffic controllers shall be required to hold a licence and a medical certificate appropriate to the service provided.
3. The licence referred to in paragraph 2 shall only be issued when the applicant for the licence demonstrates that he or she complies with the rules established to ensure compliance with the essential requirements regarding theoretical knowledge, practical skill, language proficiency and experience as set out in Annex Vb.
4. The medical certificate referred to in paragraph 2 shall only be issued when the air traffic controller complies with the rules established to ensure compliance with the essential requirements on medical fitness as set out in Annex Vb. The medical certificate may be issued by aero medical examiners or by aero medical centres.

⁽¹⁾ OJ L 96, 31.3.2004, p. 10.

⁽²⁾ OJ L 96, 31.3.2004, p. 26.

▼ M2

5. The privileges granted to the air traffic controller and the scope of the licence and the medical certificate shall be specified in such licence and certificate.
6. The capability of air traffic controller training organisations, aero medical examiners and aero medical centres to discharge the responsibilities associated with their privileges in relation to the issuance of licences and medical certificates shall be recognised by the issuance of a certificate.
7. A certificate shall be issued to training organisations, aero medical examiners and aero medical centres for air traffic controllers that have demonstrated that they comply with the rules established to ensure compliance with the relevant essential requirements as set out in Annex Vb. The privileges granted by the certificate shall be specified therein.
8. Persons responsible for providing practical training or for assessing air traffic controllers' skill shall hold a certificate. The certificate shall be issued when the person concerned has demonstrated that he or she complies with the rules established to ensure compliance with the relevant essential requirements as set out in Annex Vb. The privileges granted by the certificate shall be specified therein.
9. Synthetic training devices shall comply with the relevant essential requirements set out in Annex Vb.
10. The measures designed to amend non-essential elements of this Article by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(4).

Those measures shall specify in particular:

- (a) the different ratings and endorsements for air traffic controllers' licences;
- (b) the conditions for issuing, maintaining, amending, limiting, suspending or revoking licences, ratings and endorsements for licences, medical certificates, approvals and certificates, and the conditions under which such certificates and approvals need not be requested, while providing for transitional mechanisms to ensure the continuity of approvals and certificates already granted;
- (c) the privileges and responsibilities of the holders of licences, ratings and endorsements for licences, medical certificates, approvals and certificates;
- (d) the conditions for the acceptance and for the conversion of air traffic controllers' licences as well as the conditions for the acceptance and for the conversion of national medical certificates into commonly recognised medical certificates.

11. The measures referred to in paragraph 10 shall reflect the state of the art, including best practices and scientific and technical progress, in the field of air traffic controller training. They shall initially be developed on the basis of the provisions of Directive 2006/23/EC of the European Parliament and of the Council of 5 April 2006 on a Community air traffic controller licence ⁽¹⁾.

⁽¹⁾ OJ L 114, 27.4.2006, p. 22.

▼ B*Article 9***Aircraft used by a third-country operator into, within or out of the Community****▼ M2**

1. Aircraft referred to in Article 4(1)(d), as well as their crew and their operations, shall comply with applicable ICAO standards. To the extent that there are no such standards, these aircraft and their operations shall comply with the requirements set out in Annexes I, III, IV and, if applicable, Annex Vb, provided these requirements are not in conflict with the rights of third countries under international conventions.

▼ B

2. Operators engaged in commercial operations using aircraft referred to in paragraph 1 shall demonstrate their capability and means of complying with the requirements specified in paragraph 1.

The requirement referred to in the first subparagraph may be satisfied by acceptance of certificates issued by or on behalf of a third country.

The capabilities and means referred to in the first subparagraph shall be recognised through the issuance of an authorisation. The privileges granted to the operator and the scope of the operations shall be specified in that authorisation.

3. Operators engaged in non-commercial operations of complex motor-powered aircraft using aircraft referred to in paragraph 1 may be required to declare their capability and means of discharging the responsibilities associated with the operation of that aircraft.

4. The measures designed to amend non-essential elements of this Article, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(4). Those measures shall specify in particular:

- (a) how aircraft referred to in Article 4(1)(d), or crew, which do not hold a standard ICAO certificate of airworthiness or licence, may be authorised to operate into, within or out of the Community;
- (b) conditions to operate an aircraft in compliance with the provisions of paragraph 1;
- (c) conditions for issuing, maintaining, amending, limiting, suspending or revoking the operator's authorisation referred to in paragraph 2, taking into account the certificates issued by the state of registry or the state of the operator, without prejudice to Regulation (EC) No 2111/2005 and its implementing rules;
- (d) privileges and responsibilities of the holders of authorisations;
- (e) conditions and procedures for the declaration by, and for the oversight of, operators referred to in paragraph 3;
- (f) conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety in accordance with Article 22(1).

▼ B

5. When adopting the measures referred to in paragraph 4, the Commission shall take specific care that:
- (a) use is made, as appropriate, of ICAO recommended practices and guidance documents;
 - (b) no requirement exceeds what is required from aircraft referred to in Article 4(1)(b), and from the operators of such aircraft;
 - (c) use is made, where appropriate, of measures issued in accordance with Articles 5(5) and 8(5);
 - (d) the process by which authorisations are obtained is simple, proportionate, cost-effective and efficient in all cases, allowing for requirements and compliance demonstrations proportionate to the complexity of operations and the risk involved. The process shall in particular take account of:
 - (i) results of the ICAO Universal Safety Oversight Audit Programme;
 - (ii) information from ramp inspections and the Safety Assessment of Foreign Aircraft Programme records; and
 - (iii) other recognised information on safety aspects with regard to the operator concerned;

▼ M2

- (e) safety aspects related to ATM/ANS are taken into account.

▼ B*Article 10***Oversight and enforcement****▼ M2**

1. The Member States, the Commission and the Agency shall cooperate with a view to ensuring compliance with this Regulation and its implementing rules.

▼ B

2. For the purposes of the implementation of paragraph 1, Member States shall, in addition to their oversight of certificates that they have issued, conduct investigations, including ramp inspections, and shall take any measure, including the grounding of aircraft, to prevent the continuation of an infringement.
3. For the purposes of the implementation of paragraph 1, the Agency shall conduct investigations in accordance with Article 24(2) and Article 55.
4. In order to facilitate the taking of appropriate enforcement action by competent authorities, the Member States, the Commission and the Agency shall exchange information on identified infringements.
5. The measures designed to amend non-essential elements of this Article, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(4). Those measures shall specify in particular:
- (a) conditions for the collection, exchange and dissemination of information;
 - (b) conditions for conducting ramp inspections, including systematic ones;

▼B

- (c) conditions for the grounding of aircraft that do not comply with the requirements of this Regulation or its implementing rules.

*Article 11***Recognition of certificates**

1. Member States shall, without further technical requirements or evaluation, recognise certificates issued in accordance with this Regulation. When the original recognition is for a particular purpose or purposes, any subsequent recognition shall cover only the same purpose or purposes.

2. The Commission, on its own initiative or at the request of a Member State or of the Agency, may initiate the procedure referred to in Article 65(7) to decide whether a certificate issued in accordance with this Regulation effectively complies with this Regulation and its implementing rules.

In case of non-compliance or ineffective compliance, the Commission shall require the issuer of a certificate to take appropriate corrective action and safeguard measures, such as limitation or suspension of the certificate. Moreover, the provisions of paragraph 1 shall cease to apply to the certificate from the date of the notification of the Commission's decision to the Member States.

3. When the Commission has sufficient evidence that appropriate corrective action has been taken by the issuer referred to in paragraph 2 to address the case of non-compliance or ineffective compliance and that the safeguard measures are no longer necessary, it shall decide that the provisions of paragraph 1 apply again to this certificate. These provisions shall apply as from the date of the notification of this decision to the Member States.

▼M2

4. Pending the entry into effect of the measures referred to in Articles 5(5), 7(6) and 9(4) and the expiry of any transition periods provided for by those measures, and without prejudice to Article 69(4), certificates which cannot be issued in accordance with this Regulation may be issued on the basis of the applicable national regulations.

5. Pending the entry into effect of the measures referred to in Article 8(5) and the expiry of any transition periods provided for by those measures, and without prejudice to Article 69(4), certificates which cannot be issued in accordance with this Regulation may be issued on the basis of the applicable national regulations.

5a. Pending the entry into effect of the measures referred to in Articles 8a(5) and 8c(10) and the expiry of any transition periods provided for by those measures, and without prejudice to Article 69(4), certificates which cannot be issued in accordance with this Regulation may be issued on the basis of the applicable national regulations.

5b. Pending the entry into effect of the measures referred to in Article 8b(6) and the expiry of any transition periods provided for by those measures, and without prejudice to Article 69(4), certificates which cannot be issued in accordance with this Regulation may be

▼M2

issued on the basis of the applicable national regulations or, where applicable, on the basis of the relevant requirements of Commission Regulation (EC) No 2096/2005 of 20 December 2005 laying down common requirements for the provision of air navigation services⁽¹⁾.

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6. The provisions of this Article shall be without prejudice to Regulation (EC) No 2111/2005 and its implementing rules.

*Article 12***Acceptance of third-country certification**

1. By way of derogation from the provisions of this Regulation and its implementing rules, the Agency or the aviation authorities in the Member State may issue certificates on the basis of certificates issued by aeronautical authorities of a third country, as provided for in recognition agreements between the Community and that third country.

2. (a) In the absence of an agreement concluded by the Community, a Member State or the Agency may issue certificates on the basis of certifications issued by the competent authorities of a third country in application of an agreement concluded by that Member State with the third country in question before the entry into force of the related provisions of this Regulation and notified to the Commission and the other Member States. The Agency may also issue such certificates on behalf of any Member State in application of an agreement concluded by one of the Member States with the third country in question.

(b) If the Commission considers that:

- the provisions of an agreement between a Member State and a third country would not provide for a level of safety equivalent to that specified by this Regulation and its implementing rules, and/or
- such agreement would discriminate among Member States without compelling safety reasons or is contrary to Community foreign policy vis-à-vis a third country,

it may, in accordance with the procedure laid down in Article 65(2), require the Member State concerned to modify the agreement, to suspend its application or to renounce it, in accordance with Article 307 of the Treaty.

(c) Member States shall take the necessary measures to renounce agreements as soon as possible after the entry into force of an agreement between the Community and the third country in question, for those domains covered by that latter agreement.

*Article 13***Qualified entities**

When allocating a specific certification task to a qualified entity, the Agency or the national aviation authority concerned shall ensure that such entity comply with the criteria laid down in Annex V.

▼M2

Qualified entities shall not issue certificates.

⁽¹⁾ OJ L 335, 21.12.2005, p. 13.



Article 14

Flexibility provisions

1. The provisions of this Regulation and of its implementing rules shall not prevent a Member State from reacting immediately to a safety problem which involves a product, person or organisation subject to the provisions of this Regulation.

The Member State shall immediately notify the Agency, the Commission and the other Member States of the measures taken and the reasons therefor.

2. (a) The Agency shall assess whether the safety problem can be addressed within the powers conferred on it in accordance with Article 18(d). In this case it shall, within one month of being notified pursuant to paragraph 1, take the appropriate decision.

(b) If the Agency concludes that the safety problem cannot be addressed in accordance with point (a), it shall, within the period referred to in that point, issue a recommendation in accordance with Article 18(b) as to whether this Regulation or its implementing rules should be amended and whether the notified measures should be withdrawn or maintained.

3. The measures designed to amend non-essential elements of this Regulation, *inter alia*, by supplementing it, and relating to whether an inadequate level of safety or a shortcoming in this Regulation or its implementing rules justify initiating their amendment and whether the measures adopted pursuant to paragraph 1 may be continued, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(6). In such a case the measures shall be implemented as appropriate by all Member States and the provisions of Article 11 shall apply to such measures. If the measures are found not to be justified, they shall be revoked by the Member State concerned.

4. Member States may grant exemptions from the substantive requirements laid down in this Regulation and its implementing rules in the event of unforeseen urgent operational circumstances or operational needs of a limited duration, provided the level of safety is not adversely affected. The Agency, the Commission and the other Member States shall be notified of any such exemptions as soon as they become repetitive or where they are granted for periods of more than two months.

5. The Agency shall assess whether the exemptions notified by a Member State are less restrictive than the applicable Community provisions and, within one month of being notified thereof, shall issue a recommendation in accordance with Article 18(b) on whether these exemptions comply with the general safety objectives of this Regulation or any other rule of Community law.

If an exemption does not comply with the general safety objectives of this Regulation or any other rule of Community law, the Commission shall take a decision not to permit the exemption in accordance with the procedure referred to in Article 65(7). In such a case, the Member State concerned shall revoke the exemption.

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6. Where an equivalent level of protection to that attained by the application of the rules implementing this Regulation can be achieved by other means, Member States may, without discrimination on grounds of nationality, grant an approval derogating from those implementing rules.

In such cases, the Member State concerned shall notify the Agency and the Commission that it intends to grant such an approval, and shall give reasons demonstrating the need to derogate from the rule concerned, as well as the conditions laid down to ensure that an equivalent level of protection is achieved.

7. Within two months of being notified in accordance with paragraph 6, the Agency shall issue a recommendation in accordance with Article 18(b) on whether an approval proposed in accordance with paragraph 6 fulfils the conditions laid down in that paragraph.

The measures designed to amend non-essential elements of this Regulation, by supplementing it, relating to whether a proposed approval may be granted shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(6) within one month of receiving the Agency's recommendation. In such a case, the Commission shall notify its decision to all Member States, which shall also be entitled to apply that measure. The provisions of Article 15 shall apply to the measure in question.

*Article 15***Information network**

1. The Commission, the Agency and the national aviation authorities shall exchange any information available to them in the context of the application of this Regulation and its implementing rules. Entities entrusted with the investigation of civil aviation accidents and incidents, or with the analysis of occurrences, are entitled to access to that information.

2. Without prejudice to the public's right of access to the Commission's documents as laid down in Regulation (EC) No 1049/2001, the Commission shall adopt, in accordance with the procedure referred to in Article 65(3), measures for the dissemination to interested parties on its own initiative of the information referred to in paragraph 1 of this Article. These measures, which may be generic or individual, shall be based on the need:

- (a) to provide persons and organisations with the information they need to improve aviation safety;
- (b) to limit the dissemination of information to what is strictly required for the purpose of its users, in order to ensure appropriate confidentiality of that information.

3. The national aviation authorities shall, in accordance with their national legislation, take necessary measures to ensure appropriate confidentiality of the information received by them pursuant to paragraph 1.

4. In order to inform the public of the general safety level, a safety review shall be published annually by the Agency. From the entry into force of the measures referred to in Article 10(5), this safety review shall contain an analysis of all information received pursuant to Article 10. This analysis shall be simple and easy to understand and shall indicate whether there are increased safety risks. In this analysis, the sources of information shall not be revealed.

▼B*Article 16***Protection of the source of information**

1. Where the information referred to in Article 15(1) is provided by a natural person on a voluntary basis to the Commission or the Agency, the source of such information shall not be revealed. When the information has been provided to a national authority, the source of such information shall be protected in accordance with national legislation.

2. Without prejudice to applicable rules of criminal law, Member States shall refrain from instituting proceedings in respect of unpremeditated or unintentional infringements of the law which come to their attention only because they have been reported pursuant to this Regulation and its implementing rules.

This rule shall not apply in cases of gross negligence.

3. Without prejudice to applicable rules of criminal law, and in accordance with the procedures set out in national law and practice, Member States shall ensure that employees who provide information in application of this Regulation and its implementing rules are not subject to any prejudice on the part of their employer.

This rule shall not apply in cases of gross negligence.

4. This Article shall apply without prejudice to national rules relating to access to information by judicial authorities.

CHAPTER III

THE EUROPEAN AVIATION SAFETY AGENCY*SECTION I****Tasks****Article 17***Establishment and functions of the Agency**

1. For the purpose of the implementation of this Regulation, a European Aviation Safety Agency shall be established.

2. For the purposes of ensuring the proper functioning and development of civil aviation safety, the Agency shall:

- (a) undertake any task and formulate opinions on all matters covered by Article 1(1);
- (b) assist the Commission by preparing measures to be taken for the implementation of this Regulation. Where these comprise technical rules and in particular rules relating to construction, design and operational aspects, the Commission may not change their content without prior coordination with the Agency. The Agency shall also provide the Commission with the necessary technical, scientific and administrative support to carry out its tasks;
- (c) take the necessary measures within the powers conferred on it by this Regulation or other Community legislation;
- (d) conduct inspections and investigations as necessary to fulfil its tasks;

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- (e) in its fields of competence, carry out, on behalf of Member States, functions and tasks ascribed to them by applicable international conventions, in particular the Chicago Convention.

*Article 18***Agency measures**

The Agency shall, where appropriate:

- (a) issue opinions addressed to the Commission;
- (b) issue recommendations addressed to the Commission for the application of Article 14;

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- (c) issue certification specifications and acceptable means of compliance, as well as any guidance material for the application of this Regulation and its implementing rules;
- (d) take the appropriate decisions for the application of Articles 20, 21, 22, 22a, 22b, 23, 54 and 55 including the granting of exemptions to holders of certificates it has issued, from the substantive requirements laid down in this Regulation and its implementing rules in the event of unforeseen urgent operational circumstances or operational needs of a limited duration, provided that the level of safety is not affected, that they are granted for a period not exceeding two months, that they are notified to the Commission and that they are not renewed;

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- (e) issue the reports following standardisation inspections carried out pursuant to Articles 24(1) and 54.

*Article 19***Opinions, certification specifications and guidance material**

1. In order to assist the Commission in the preparation of proposals for basic principles, applicability and essential requirements to be presented to the European Parliament and to the Council and the adoption of the implementing rules, the Agency shall prepare drafts thereof. These drafts shall be submitted by the Agency as opinions to the Commission.

2. The Agency shall, in accordance with Article 52 and the implementing rules adopted by the Commission, develop:

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- (a) certification specifications and acceptable means of compliance; and

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- (b) guidance material;

to be used in the certification process.

These documents shall reflect the state of the art and the best practices in the fields concerned and be updated taking into account worldwide aircraft experience in service, and scientific and technical progress.

*Article 20***Airworthiness and environmental certification**

1. With regard to the products, parts and appliances referred to in Article 4(1)(a) and (b), the Agency shall, where applicable and as specified in the Chicago Convention or its Annexes, carry out on behalf of Member States the functions and tasks of the state of design, manufacture or registry when related to design approval. To that end, it shall in particular:

- (a) for each product for which a type-certificate or a change to a type-certificate is requested, establish and notify the type-certification basis. That certification basis consists of the applicable airworthiness code, the provisions for which an equivalent level of safety has been accepted and the special detailed technical specifications necessary when the design features of a particular product or the experience in operation render any of the airworthiness code provisions inadequate or inappropriate to ensure conformity with essential requirements;
- (b) for each product for which a restricted certificate of airworthiness is requested, establish and notify the specific airworthiness specifications;
- (c) for each part or appliance for which a certificate is requested, establish and notify the detailed airworthiness specifications;
- (d) for each product for which environmental certification is required in accordance with Article 6, establish and notify the appropriate environmental requirements;
- (e) conduct, itself or through national aviation authorities or qualified entities, investigations associated with products, parts and appliances certification;
- (f) issue the appropriate type-certificates or associated changes;
- (g) issue certificates for parts and appliances;
- (h) issue the appropriate environmental certificates;
- (i) amend, suspend or revoke the relevant certificate when the conditions according to which it was issued are no longer fulfilled or if the legal or natural person holding the certificate fails to fulfil the obligations imposed on it by this Regulation or its implementing rules;
- (j) ensure the continuing airworthiness functions associated with the products, parts and appliances which are under its oversight, including reacting without undue delay to a safety problem and issuing and disseminating the applicable mandatory information;
- (k) for aircraft for which a permit to fly is to be issued, establish airworthiness standards and procedures to comply with Article 5(4)(a);
- (l) issue permits to fly to aircraft for the purpose of certification under the control of the Agency, in agreement with the Member State in which the aircraft is registered or is to be registered.

2. With regard to organisations, the Agency shall:

- (a) conduct, itself or through national aviation authorities or qualified entities, inspections and audits of the organisations it certifies;

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- (b) issue and renew the certificates of:
 - (i) design organisations; or
 - (ii) production organisations located within the territory of the Member States, if requested by the Member State concerned; or
 - (iii) production and maintenance organisations located outside the territory of the Member States;
- (c) amend, suspend or revoke the relevant organisation certificate when the conditions according to which it was issued are no longer fulfilled, or if the organisation concerned fails to fulfil the obligations imposed on it by this Regulation or its implementing rules.

*Article 21***Pilot certification**

1. With regard to the personnel and organisations referred to in Article 7(1), the Agency shall:

- (a) conduct, itself or through national aviation authorities or qualified entities, investigations and audits of the organisations it certifies and, where relevant, their personnel;
- (b) issue and renew the certificates of pilot training organisations and aero-medical centres located outside the territory of the Member States and, where relevant, their personnel;
- (c) amend, limit, suspend or revoke the relevant certificate when the conditions according to which it was issued by it are no longer fulfilled, or if the legal or natural person holding the certificate fails to fulfil the obligations imposed on it by this Regulation or its implementing rules.

2. With regard to the flight simulation training devices referred to in Article 7(1), the Agency shall:

- (a) conduct, itself or through national aviation authorities or qualified entities, technical inspections of the devices it certifies;
- (b) issue and renew the certificates of:
 - (i) flight simulation training devices used by training organisations certified by the Agency; or
 - (ii) flight simulation training devices located within the territory of the Member States, if requested by the Member State concerned;
 - (iii) flight simulation training devices located outside the territory of the Member States;
- (c) amend, limit, suspend or revoke the relevant certificate when the conditions according to which it was issued are no longer fulfilled, or if the legal or natural person holding the certificate fails to fulfil the obligations imposed on it by this Regulation or its implementing rules.

▼ B*Article 22***Air operation certification**

1. The Agency shall react without undue delay to a problem affecting the safety of air operations by determining corrective action and by disseminating related information, including to the Member States.
2. With regard to flight time limitation:
 - (a) the Agency shall issue the applicable certification specifications to ensure compliance with essential requirements and, as appropriate, the related implementing rules. Initially, the implementing rules shall include all substantive provisions of Subpart Q of Annex III to Regulation (EEC) No 3922/91, taking into account the latest scientific and technical evidence;
 - (b) a Member State may approve individual flight time specification schemes which deviate from the certification specifications referred to in point (a). In this case the Member State shall without delay notify the Agency, the Commission and the other Member States that it intends to grant approval for such an individual scheme;
 - (c) upon notification the Agency shall, within one month, assess the individual scheme on the basis of a scientific and medical evaluation. Thereafter the Member State concerned may grant the approval as notified, unless the Agency has discussed the scheme with that Member State and proposed changes thereto. Should the Member State agree with these changes, it may grant the approval accordingly;
 - (d) in the event of unforeseen urgent operational circumstances or operational needs of limited duration and non-repetitive nature, derogations to certification specifications may apply provisionally until the Agency expresses its opinion;
 - (e) should a Member State disagree with the Agency's conclusions concerning an individual scheme, it shall refer the issue to the Commission to decide whether that scheme complies with the safety objectives of this Regulation, in accordance with the procedure referred to in Article 65(3);
 - (f) the contents of individual schemes which are acceptable to the Agency, or on which the Commission has taken a positive decision in accordance with point (e), shall be published.

▼ M2*Article 22a***ATM/ANS**

With regard to ATM/ANS referred to in Article 4(3c) the Agency shall:

- (a) conduct, itself or through national aviation authorities or qualified entities, inspections, and audits of the organisations it certifies;
- (b) issue and renew certificates of organisations located outside the territory subject to the provisions of the Treaty, responsible for providing services in the airspace of the territory to which the Treaty applies;
- (c) issue and renew certificates of organisations providing pan-European services;

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- (d) amend, suspend or revoke the relevant certificate, when the conditions according to which it was issued are no longer fulfilled or if the holder of the certificate fails to fulfil the obligations imposed on it by this Regulation or by its implementing rules.

*Article 22b***Air traffic controller certification**

With regard to the persons and organisations referred to in Article 8c(1), the Agency shall:

- (a) conduct, itself or through national aviation authorities or qualified entities, investigations and audits of the organisations it certifies and, where relevant, their personnel;
- (b) issue and renew the certificates of air traffic controller training organisations located outside the territory of the Member States and, where relevant, their personnel;
- (c) amend, suspend or revoke the relevant certificate when the conditions according to which it was issued by it are no longer fulfilled, or if the legal or natural person holding the certificate fails to fulfil the obligations imposed on it by this Regulation or its implementing rules.

▼B*Article 23***Third-country operators**

1. With regard to operators of aircraft referred to in Article 4(1)(d) engaged in commercial operations, the Agency shall:

- (a) conduct, itself or through national aviation authorities or qualified entities, investigations and audits;
- (b) issue and renew the authorisations referred to in Article 9(2), unless a Member State carries out the functions and tasks of the state of operator in respect of these operators;
- (c) amend, limit, suspend or revoke the relevant authorisation when the conditions according to which it was issued by it are no longer fulfilled, or if the organisation concerned fails to fulfil the obligations imposed on it by this Regulation or its implementing rules.

2. With regard to operators of aircraft referred to in Article 4(1)(d) not engaged in commercial operations, the Agency shall:

- (a) receive the declarations referred to in Article 9(3); and
- (b) conduct, itself or through national aviation authorities or qualified entities, the oversight of operators from which it has received a declaration.

3. With regard to aircraft referred to in Article 4(1)(d), the Agency shall issue authorisations in accordance with Article 9(4)(a).

▼B*Article 24***Monitoring the application of the rules**

1. The Agency shall conduct standardisation inspections in the fields covered by Article 1(1), in order to monitor the application by national competent authorities of this Regulation and of its implementing rules, and shall report to the Commission.
2. The Agency shall conduct investigations of undertakings to monitor the application of this Regulation and its implementing rules.
3. The Agency shall assess the impact of the implementation of this Regulation and its implementing rules, having regard to the objectives set out in Article 2.
4. The Agency shall be consulted on, and issue recommendations to the Commission for, the application of Article 14.
5. The working methods of the Agency for conducting the tasks referred to in paragraphs 1, 3 and 4 shall be subject to requirements to be adopted in accordance with the procedure referred to in Article 65(2), taking into account the principles laid down in Articles 52 and 53.

*Article 25***Fines and periodic penalty payments**

1. Without prejudice to Articles 20 and 55, at the Agency's request the Commission may:
 - (a) impose on the persons and the undertakings to which the Agency has issued a certificate, fines, where, intentionally or negligently, the provisions of this Regulation and its implementing rules have been breached;
 - (b) impose, on the persons and undertakings to which the Agency has issued a certificate, periodic penalty payments, calculated from the date set in the decision, in order to compel those persons and undertakings to comply with the provisions of this Regulation and its implementing rules.
2. The fines and periodic penalty payments referred to in paragraph 1 shall be dissuasive and proportionate to both the gravity of the case and the economic capacity of the certificate holder concerned, taking into particular account the extent to which safety has been compromised. The amount of the fines shall not exceed 4 % of the annual income or turnover of the certificate holder. The amount of the periodic penalty shall not exceed 2,5 % of the average daily income or turnover of the certificate holder.
3. The Commission shall adopt, in accordance with the procedure laid down in Article 65(3), the detailed rules for the implementation of this Article. In doing so, it shall specify in particular:
 - (a) detailed criteria for establishing the amount of the fine or periodic penalty payment; and
 - (b) procedures for enquiries, associated measures and reporting, as well as rules of procedure for decision-making, including provisions on rights of defence, access to file, legal representation, confidentiality and temporal provisions and the quantification and collection of fines and periodic penalty payments.

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4. The Court of Justice of the European Communities shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

5. Decisions taken pursuant to paragraph 1 shall not be of a criminal law nature.

*Article 26***Research**

1. The Agency may develop and finance research in so far as is strictly related to the improvement of activities in its field of competence, without prejudice to Community law.

2. The Agency shall coordinate its research and development activities with those of the Commission and the Member States so as to ensure that policies and actions are mutually consistent.

3. The results of research funded by the Agency shall be published, provided the Agency does not classify them as confidential.

*Article 27***International relations**

1. The Agency shall assist the Community and the Member States in their relations with third countries in accordance with the relevant Community law. It shall, in particular, assist in the harmonising of rules and mutual recognition regarding approvals attesting the satisfactory application of rules.

2. The Agency may cooperate with the aeronautical authorities of third countries and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded with those bodies, in accordance with the relevant provisions of the Treaty. Such arrangements shall have received the Commission's prior approval.

3. The Agency shall assist Member States to respect their international obligations, in particular those under the Chicago Convention.

*SECTION II****Internal structure****Article 28***Legal status, location, local offices**

1. The Agency shall be a body of the Community. It shall have legal personality.

2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

3. The Agency may establish its own local offices in the Member States, subject to their consent.

4. The Agency shall be represented by its Executive Director.

*Article 29***Staff**

1. The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for purposes of the application of those Staff Regulations and Conditions of Employment shall apply to the staff of the Agency, without prejudice to the application of Article 39 of this Regulation to the members of the Board of Appeal.
2. Without prejudice to Article 42, the powers conferred on the appointing authority by the Staff Regulations and the Conditions of Employment shall be exercised by the Agency in respect of its own staff.
3. The Agency's staff shall consist of a strictly limited number of officials assigned or seconded by the Commission or Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks.

*Article 30***Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Communities annexed to the Treaties establishing the European Community and the European Atomic Energy Community shall apply to the Agency.

*Article 31***Liability**

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Communities shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.
3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its services or by its servants in the performance of their duties.
4. The Court of Justice of the European Communities shall have jurisdiction in disputes relating to compensation for any damage as referred to in paragraph 3.
5. The personal liability of its servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

▼B*Article 32***Publication of documents**

1. Without prejudice to decisions taken on the basis of Article 290 of the Treaty, the following documents shall be produced in all official languages of the Community:
 - (a) the safety review referred to in Article 15(4);
 - (b) opinions addressed to the Commission pursuant to Article 19(1);
 - (c) the annual general report and programme of work referred to in Article 33(2)(b) and (c) respectively.
2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for bodies of the European Union.

*Article 33***Powers of the Management Board**

1. The Agency shall have a Management Board.
2. The Management Board shall:
 - (a) appoint the Executive Director, and the Directors on a proposal from the Executive Director, in accordance with Article 39;
 - (b) adopt the annual general report on the Agency's activities and forward it by 15 June at the latest to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States; acting on behalf of the Agency, it shall forward annually to the European Parliament and the Council (hereinafter referred to as budgetary authority) any information relevant to the outcome of the evaluation procedures, in particular, information concerning the effects or consequences of changes in the tasks assigned to the Agency;
 - (c) before ►**M2** 30 November ◀ each year, and after receiving the opinion of the Commission, adopt the Agency's programme of work for the coming year and forward it to the European Parliament, the Council, the Commission and the Member States; this programme of work shall be adopted without prejudice to the annual Community budgetary procedure and the Community legislative programme in relevant areas of aviation safety; the opinion of the Commission shall be attached to the programme of work;
 - (d) adopt guidelines for the allocation of certification tasks to national aviation authorities and qualified entities in agreement with the Commission;
 - (e) establish procedures for making decisions by the Executive Director as referred to in Articles 52 and 53;
 - (f) carry out its functions relating to the Agency's budget pursuant to Articles 59, 60 and 63;
 - (g) appoint the members of the Board of Appeal pursuant to Article 41;
 - (h) exercise disciplinary authority over the Executive Director and over the Directors in agreement with the Executive Director;
 - (i) give its opinion on the measures relating to fees and charges as referred to in Article 64(1);

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- (j) establish its Rules of Procedure;
 - (k) decide on the linguistic arrangements for the Agency;
 - (l) complement, where appropriate, the list of documents referred to in Article 32(1);
 - (m) establish the organisational structure of the Agency and adopt the Agency's staffing policy.
3. The Management Board may advise the Executive Director on any matter strictly related to the strategic development of aviation safety, including research as defined in Article 26.
4. The Management Board shall establish an advisory body of interested parties, which it shall consult prior to making decisions in the fields referred to in paragraph 2(c), (e), (f) and (i). The Management Board may also decide to consult the advisory body on other issues referred to in paragraphs 2 and 3. The Management Board shall not be bound by the opinion of the advisory body.
5. The Management Board may establish working bodies to assist in carrying out its functions, including the preparation of its decisions and monitoring the implementation thereof.

*Article 34***Composition of the Management Board**

1. The Management Board shall be composed of one representative of each Member State and one representative of the Commission. Members shall be selected on the basis of their recognised experience and commitment in the field of civil aviation, their managerial capabilities and their expertise, which are to be used to further the objectives of this Regulation. The competent committee of the European Parliament shall be fully informed accordingly.

Each Member State shall appoint a member of the Management Board as well as an alternate who will represent the member in his/her absence. The Commission shall also designate its representative and alternate. The duration of the terms of office shall be five years. This term of office shall be renewable.

2. Where appropriate, the participation of representatives of European third countries and the conditions of such participation shall be established in the arrangements referred to in Article 66.

3. The advisory body referred to in Article 33(4) shall appoint four of its members to participate as observers in the Management Board. They shall represent, as broadly as possible, the different views represented in the advisory body. The duration of their term of office shall be 30 months, renewable once.

*Article 35***Chairmanship of the Management Board**

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall ex officio replace the Chairperson in the event of his/her being prevented from attending to his/her duties.

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2. The terms of office of the Chairperson and Deputy Chairperson shall expire when their membership of the Management Board ceases. Subject to this, the duration of the terms of office of the Chairperson and Deputy Chairperson shall be three years. These terms of office shall be renewable once.

*Article 36***Meetings**

1. Meetings of the Management Board shall be convened by its Chairperson.
2. The Executive Director of the Agency shall take part in the deliberations.
3. The Management Board shall hold at least two ordinary meetings a year. In addition it shall meet at the instance of the Chairperson or at the request of at least one third of its members.
4. The Management Board may invite any person whose opinion might be of interest to attend its meetings as an observer.
5. The members of the Management Board may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.
6. The secretariat of the Management Board shall be provided by the Agency.

*Article 37***Voting**

1. Without prejudice to Article 39(1), the Management Board shall take its decisions by a two-thirds majority of its members. At the request of a member of the Management Board, the decision referred to in Article 33(2)(k) shall be taken by unanimity.
2. Each member designated pursuant to Article 34(1) shall have one vote. In the absence of a Member, his/her alternate shall be entitled to exercise his/her right to vote. Neither observers nor the Executive Director of the Agency shall vote.
3. The Rules of Procedure shall establish more detailed voting arrangements, in particular the conditions under which a member may act on behalf of another member as well as any quorum requirements, where appropriate.

*Article 38***Functions and powers of the Executive Director**

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. Without prejudice to the competencies of the Commission and the Management Board, the Executive Director shall neither seek nor take instructions from any government or from any other body.
2. The European Parliament or the Council may invite the Executive Director to report on the carrying out of his/her tasks.

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3. The Executive Director shall have the following functions and powers:
- (a) to approve the measures of the Agency as defined in Article 18 within the limits specified by this Regulation, its implementing rules and any applicable law;
 - (b) to decide on inspections and investigations as provided for in Articles 54 and 55;
 - (c) to allocate certification tasks to national aviation authorities or qualified entities according to guidelines set by the Management Board;
 - (d) to undertake any international functions and technical cooperation with third countries pursuant to Article 27;
 - (e) to take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with the provisions of this Regulation;
 - (f) to prepare each year a draft general report and submit it to the Management Board;
 - (g) to exercise in respect of the Agency's staff the powers laid down in Article 29(2);
 - (h) to draw up estimates of the revenues and expenditure of the Agency pursuant to Article 59, and to implement the budget pursuant to Article 60;
 - (i) to delegate his/her powers to other members of the Agency's staff subject to rules to be adopted in accordance with the procedure referred to in Article 65(2);
 - (j) with the consent of the Management Board, to take decisions regarding the establishment of local offices in the Member States in accordance with Article 28(3);
 - (k) to prepare and to implement the annual programme of work;
 - (l) to respond to requests for assistance from the Commission.

*Article 39***Appointment of senior officials**

1. The Executive Director shall be appointed on grounds of merit and of documented competence and experience relevant for civil aviation. The Executive Director shall be appointed or dismissed by the Management Board on a proposal from the Commission. The Management Board shall take its decision by a three-quarters majority of its members. Before being appointed, the candidate selected by the Management Board may be asked to make a declaration before the competent committee or committees of the European Parliament and answer questions from its, or their, members.
2. The Executive Director may be assisted by one or more Directors. If the Executive Director is absent or indisposed, one of the Directors shall take his/her place.
3. The Directors of the Agency shall be appointed on grounds of professional competence relevant for civil aviation. The Directors shall be appointed or dismissed by the Management Board on a proposal from the Executive Director.
4. The terms of office of the Executive Director and the Directors shall be five years. The term of office of the Directors shall be renewable and the term of office of the Executive Director shall be renewable only once.

▼B*Article 40***Powers of the Boards of Appeal**

1. One or more Boards of Appeal shall be established within the Agency.
2. The Board or Boards of Appeal shall be responsible for deciding on appeals against the decisions referred to in Article 44.
3. The Board or Boards of Appeal shall be convened as necessary. The number of boards of Appeal and the work allocated to it or them shall be determined by the Commission acting in accordance with the procedure referred to in Article 65(3).

*Article 41***Composition of the Boards of Appeal**

1. A Board of Appeal shall consist of a Chairperson and two other members.
2. The Chairperson and the other members shall have alternates to represent them in their absence.
3. The Chairperson, the other members and their alternates shall be appointed by the Management Board from a list of qualified candidates adopted by the Commission.
4. Where the Board of Appeal considers that the nature of the appeal so requires, it may call up to two further members from the list referred to in paragraph 3.
5. The qualifications required for the members of each Board of Appeal, the powers of individual members in the preparatory phase of decisions and the voting conditions shall be determined by the Commission acting in accordance with the procedure referred to in Article 65(3).

*Article 42***Members of the Board of Appeal**

1. The term of office of the members of a Board of Appeal, including the Chairperson and any alternates, shall be five years. This term shall be renewable.
2. The members of a Board of Appeal shall be independent. In making their decisions they shall not be bound by any instructions.
3. The members of a Board of Appeal may not perform any other duties within the Agency. The members of a Board of Appeal may work on a part-time basis.
4. The members of a Board of Appeal may not be removed from office or from the list of qualified candidates during their term of office, unless there are serious grounds for such removal and the Commission, after obtaining the opinion of the Management Board, takes a decision to that effect.

▼B*Article 43***Exclusion and objection**

1. The members of a Board of Appeal may not take part in any appeal proceedings if they have any personal interest therein, if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.
2. If, for one of the reasons listed in paragraph 1 or for any other reason, a member of a Board of Appeal considers that he/she should not take part in any appeal proceeding, he/she shall inform the Board of Appeal accordingly.
3. Members of a Board of Appeal may be objected to by any party to the appeal proceedings on any of the grounds given in paragraph 1, or if any such member is suspected of partiality. Any such objection shall not be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has taken a procedural step. No objection may be based on the nationality of members.
4. The Boards of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking this decision, the member concerned shall be replaced on the Board of Appeal by his/her alternate.

*Article 44***Decisions subject to appeal****▼M2**

1. An appeal may be brought against decisions of the Agency taken pursuant to Articles 20, 21, 22, 22a, 22b, 23, 55 or 64.

▼B

2. An appeal lodged pursuant to paragraph 1 shall not have suspensory effect. The Agency may, however, if it considers that circumstances so permit, suspend the application of the decision appealed against.
3. An appeal against a decision which does not terminate proceedings as regards one of the parties may only be made in conjunction with an appeal against the final decision, unless the decision provides for separate appeal.

*Article 45***Persons entitled to appeal**

Any natural or legal person may appeal against a decision addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to the former. The parties to proceedings may be party to the appeal proceedings.

▼B*Article 46***Time limit and form**

The appeal, together with the statement of grounds thereof, shall be filed in writing at the Agency within two months of the notification of the measure to the person concerned, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

*Article 47***Interlocutory revision**

1. If the Executive Director considers the appeal to be admissible and well founded, he/she shall rectify the decision. This shall not apply where the appellant is opposed to another party to the appeal proceedings.

2. If the decision is not rectified within one month after receipt of the statement of grounds for the appeal, the Agency shall forthwith decide whether or not to suspend the application of the decision pursuant to the second sentence of Article 44(2), and shall remit the appeal to the Board of Appeal.

*Article 48***Examination of appeals**

1. If the appeal is admissible, the Board of Appeal shall examine whether it is well founded.

2. When examining the appeal pursuant to paragraph 1, the Board of Appeal shall act expeditiously. It shall as often as necessary invite the parties to the appeal proceedings to file, within specified time limits, observations on notifications issued by itself or on communications from other parties to the appeal proceedings. Parties to the appeal proceedings shall be entitled to make oral presentations.

*Article 49***Decisions on appeal**

The Board of Appeal may exercise any power which lies within the competence of the Agency or may remit the case to the competent body of the Agency. The latter shall be bound by the decision of the Board of Appeal.

*Article 50***Actions before the Court of Justice**

1. Actions may be brought before the Court of Justice of the European Communities for the annulment of acts of the Agency which are legally binding on third parties, for failure to act and for damages caused by the Agency in the course of its activities.

▼M2

2. Actions for the annulment of decisions of the Agency taken pursuant to Articles 20, 21, 22, 22a, 22b, 23, 55 or 64 may be brought before the Court of Justice of the European Communities only after all appeal procedures within the Agency have been exhausted.

▼B

3. The Agency shall take all necessary measures to comply with the judgment of the Court of Justice of the European Communities.

*Article 51***Direct appeal**

Member States and the Community institutions may lodge a direct appeal before the Court of Justice of the European Communities against decisions of the Agency.

*SECTION III****Working methods****Article 52***Procedures for the development of opinions, certification specifications and guidance material**

1. ►**M2** As soon as possible after the entry into force of this Regulation, the Management Board shall establish transparent procedures for issuing opinions, certification specifications, acceptable means of compliance and guidance material referred to in Article 18(a) and(c). ◀

Those procedures shall:

- (a) draw on expertise available in the aviation regulatory authorities of Member States;
- (b) whenever necessary, involve appropriate experts from relevant interested parties;
- (c) ensure that the Agency publishes documents and consults widely with interested parties, according to a timetable and a procedure which includes an obligation on the Agency to make a written response to the consultation process.

▼M2

2. When the Agency, pursuant to Article 19, develops opinions, certification specifications, acceptable means of compliance and guidance material to be applied by Member States, it shall establish a procedure for consulting the Member States. To this effect, it may create a working group in which each Member State is entitled to designate an expert.

▼B

3. Measures referred to in Article 18(a) and (c) and the procedures established pursuant to paragraph 1 of this Article shall be published in an official publication of the Agency.

4. Special procedures shall be established to address immediate action to be taken by the Agency to react to a safety problem and to inform the relevant interested parties of the action they are to take.

*Article 53***Procedures for taking decisions**

1. The Management Board shall establish transparent procedures for taking individual decisions as provided for in Article 18(d).

▼B

Those procedures shall:

- (a) ensure the hearing of the natural or legal person to be addressed in the decision and of any other party with a direct and individual concern;
 - (b) provide for notification of the decision to natural or legal persons and for its publication;
 - (c) provide for the natural or legal person to whom the decision is addressed, and any other parties to proceedings, to be informed of the legal remedies available to that person under this Regulation;
 - (d) ensure that the decision contains reasons.
2. The Management Board shall establish procedures specifying the conditions under which decisions are notified while taking due account of the appeal procedure.
3. Special procedures shall be established to address immediate action to be taken by the Agency to react to a safety problem and to inform the relevant interested parties of the action they are to take.

Article 54

Inspections of Member States

1. Without prejudice to the enforcement powers conferred by the Treaty on the Commission, the Agency shall assist the Commission in monitoring the application of this Regulation and its implementing rules by conducting standardisation inspections of Member States competent authorities as specified in Article 24(1). The officials authorised under this Regulation, and those seconded by the national authorities participating in such inspections, are thus empowered, in compliance with the legal provisions of the Member State concerned:
- (a) to examine the relevant records, data, procedures and any other material relevant to the achievement of aviation safety levels in accordance with this Regulation;
 - (b) to take copies of or extracts from such records, data, procedures and other material;
 - (c) to ask for an oral explanation on the spot;
 - (d) to enter any relevant premises, land or means of transport.
2. The officials of the Agency authorised for the purpose of the inspections referred to in paragraph 1 shall exercise their powers upon production of an authorisation in writing specifying the subject matter, the purpose of the inspection and the date on which it is to begin. In good time before the inspection, the Agency shall inform the Member State concerned of the inspection and of the identity of the authorised officials.
3. The Member State concerned shall submit to the inspections and shall ensure that bodies or persons concerned also submit to them.
4. When an inspection carried out pursuant to this Article entails an inspection of an undertaking or an association of undertakings, the provisions of Article 55 shall apply. Where an undertaking opposes the inspection, the Member State concerned shall afford the necessary assistance to officials authorised by the Agency to enable them to carry out the inspection.

▼B

5. Reports drawn up in application of this Article shall be made available in the official language or languages of the Member State where the inspection took place.

*Article 55***Investigation of undertakings**

1. ►**M2** The Agency may itself conduct or assign to national aviation authorities or qualified entities all necessary investigations of undertakings in accordance with Articles 7, 20 21, 22, 22a, 22b 23 and 24(2). ◀ These investigations shall be carried out in compliance with the legal provisions of the Member States in which they are to be undertaken. To that end, the persons authorised under this Regulation are empowered:

- (a) to examine the relevant records, data, procedures and any other material relevant to the execution of the tasks of the Agency;
- (b) to take copies of or extracts from such records, data, procedures and other material;
- (c) to ask for an oral explanation on site;
- (d) to enter relevant premises, lands or means of transport of undertakings;
- (e) to conduct inspections of aircraft in cooperation with Member States.

2. The persons authorised for the purpose of the investigations referred to in paragraph 1 shall exercise their powers upon production of an authorisation in writing specifying the subject matter and purpose of the investigation.

3. In good time before the investigation, the Agency shall inform the Member State in whose territory the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the Member State concerned shall, at the request of the Agency, assist those authorised persons to carry out their duties.

*Article 56***Annual programme of work**

The annual programme of work shall aim to promote the continuous improvement of European aviation safety and comply with the objectives, mandates and tasks of the Agency, as set out in this Regulation. It shall clearly indicate which of the mandates and tasks of the Agency have been added, changed or deleted in comparison with the previous year.

The presentation of the annual programme of work shall be based on the methodology used by the Commission as part of Activity-Based Management.

*Article 57***Annual general report**

The annual general report shall describe the way in which the Agency has implemented its annual programme of work. It shall clearly indicate which of the mandates and tasks of the Agency have been added, changed or deleted in comparison with the previous year.

▼B

The report shall outline the activities carried out by the Agency and evaluate the results thereof with respect to the objectives and timetable set, the risks associated with those activities, the use of resources and the general operations of the Agency.

*Article 58***Transparency and communication**

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Agency.
2. The Agency may communicate on its own initiative in the fields within its mission. It shall ensure in particular that, in addition to the publication specified in Article 52(3), the public and any interested party are rapidly given objective, reliable and easily understandable information with regard to its work.
3. Any natural or legal person shall be entitled to address himself/herself in writing to the Agency in any of the languages referred to in Article 314 of the Treaty. That person shall have the right to receive an answer in the same language.
4. The information gathered by the Agency in accordance with this Regulation shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽¹⁾.

*SECTION IV***Financial requirements***Article 59***Budget**

1. The revenues of the Agency shall consist of:
 - (a) a contribution from the Community;
 - (b) a contribution from any European third country with which the Community has concluded agreements as referred to in Article 66;
 - (c) the fees paid by applicants for, and holders of, certificates and approvals issued by the Agency;
 - (d) charges for publications, training and any other services provided by the Agency; and
 - (e) any voluntary financial contribution from Member States, third countries or other entities, provided such a contribution does not compromise the independence and impartiality of the Agency.
2. The expenditure of the Agency shall include staff, administrative, infrastructure and operational expenses.
3. Revenue and expenditure shall be in balance.
4. Regulatory budgets and the fees set and collected for certification activities shall be dealt with separately in the Agency's budget.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

▼B

5. Each year the Management Board, on the basis of a draft statement of estimates of revenue and expenditure, shall produce a statement of estimates of revenue and expenditure of the Agency for the following financial year.

6. The statement of estimates referred to in paragraph 4, which shall include a draft establishment plan together with the provisional work programme, shall by 31 March at the latest be forwarded by the Management Board to the Commission and to the states with which the Community has concluded agreements as referred to in Article 66.

7. The statement of estimates shall be forwarded by the Commission to the budgetary authority together with the preliminary draft general budget of the European Union.

8. On the basis of the statement of estimates, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.

9. The budgetary authority shall authorise appropriations for the subsidy to the Agency. The budgetary authority shall adopt the establishment plan of the Agency.

10. The budget shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

11. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of the budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project.

*Article 60***Implementation and control of the budget**

1. The Executive Director shall implement the budget of the Agency.

2. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer, together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC) No 1525/2007(OJ L 343, 27.12.2007, p. 9).

▼B

3. By 31 March at the latest following each financial year, the Commission's accounting officer shall forward the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be forwarded to the European Parliament and the Council.

4. Pursuant to Article 129 of Regulation (EC, Euratom) No 1605/2002, on receipt of the Court of Auditors' observations on the Agency's provisional accounts, the Executive Director shall draw up the Agency's final accounts under his own responsibility and submit them to the Management Board for an opinion.

5. The Management Board shall deliver an opinion on the Agency's final accounts.

6. The Executive Director shall, by 1 July at the latest following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

7. The final accounts shall be published.

8. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.

9. The Executive Director shall submit to the European Parliament, at the latter's request, any information necessary for the smooth application of the discharge procedure for the financial year in question, as provided for by Article 146(3) of Regulation (EC, Euratom) No 1605/2002.

10. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

*Article 61***Combating fraud**

1. In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁽¹⁾ shall apply without restriction.

2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF)⁽²⁾ and shall issue, without delay, the appropriate provisions applicable to its staff.

3. Decisions concerning funding and the implementing agreements and instruments resulting therefrom shall explicitly state that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks of the recipients of the Agency's funding and the agents responsible for its allocation.

⁽¹⁾ OJ L 136, 31.5.1999, p. 1.

⁽²⁾ OJ L 136, 31.5.1999, p. 15.

▼B*Article 62***Evaluation**

1. Within three years from the date of the Agency having taken up its duties, and every five years thereafter, the Management Board shall commission an independent external evaluation on the implementation of this Regulation.
2. The evaluation shall examine how effectively the Agency is fulfilling its mission. It shall also assess the impact of this Regulation, the Agency and its working practices in establishing a high level of civil aviation safety. The evaluation shall take into account the views of stakeholders at both European and national level.
3. The Management Board shall receive the findings of the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which may forward them, together with its own opinion as well as appropriate proposals, to the European Parliament and to the Council. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

*Article 63***Financial provisions**

The financial rules applicable to the Agency shall be adopted by the Management Board after consultation of the Commission. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ unless such departure is specifically required for the Agency's operation and the Commission has given its prior consent.

*Article 64***Fees and charges regulation**

1. The measures designed to amend non-essential elements of this Regulation, by supplementing it, relating to fees and charges shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(4).
2. The Commission shall consult the Management Board on the draft of the measures referred to in paragraph 1.
3. The measures referred to in paragraph 1 shall determine in particular the matters for which fees and charges pursuant to Article 59(1)(c) and (d) are due, the amount of the fees and charges and the way in which they are to be paid.
4. Fees and charges shall be levied for:
 - (a) the issuing and renewal of certificates, as well as the related continuing oversight functions;
 - (b) the provision of services; they shall reflect the actual cost of each individual provision;

⁽¹⁾ OJ L 357, 31.12.2002, p. 72.

▼B

(c) the processing of appeals.

All fees and charges shall be expressed, and payable, in euro.

5. The amount of the fees and charges shall be fixed at such a level as to ensure that the revenue in respect thereof is in principle sufficient to cover the full cost of the services delivered. These fees and charges, including those collected in 2007, shall be assigned revenues for the Agency.

CHAPTER IV

FINAL PROVISIONS*Article 65***Committee**

1. The Commission shall be assisted by a committee.
 2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
 3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
- The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.
4. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
 5. Where reference is made to this paragraph, Article 5a(1) to (4) and (5)(b), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
- The time limits laid down in Article 5a(3)(c), (4)(b) and (4)(e) of Decision 1999/468/EC shall be set at 20 days.
6. Where reference is made to this paragraph, Article 5a(1), (2), (4), (5)(b) and (6), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
 7. Where reference is made to this paragraph, Article 6 of Decision 1999/468/EC shall apply.

Before adopting its decision, the Commission shall consult the committee referred to in paragraph 1 of this Article.

The period provided for in Article 6(b) of Decision 1999/468/EC shall be set at three months.

When a Commission decision is referred to the Council by a Member State, the Council, acting by a qualified majority, may take a different decision within a period of three months.

▼M2*Article 65a***Amendments**

In accordance with the provisions of the Treaty, the Commission shall propose to amend Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to take into account the requirements of this Regulation.

▼B*Article 66***Participation of European third countries**

The Agency shall be open to the participation of European third countries which are contracting parties to the Chicago Convention and which have entered into agreements with the European Community whereby they adopted and apply Community law in the field covered by this Regulation and its implementing rules.

Under the relevant provisions of these agreements, arrangements will be developed which shall, *inter alia*, specify the nature and extent of, and the detailed rules for, the participation by these countries in the work of the Agency, including provisions on financial contributions and staff.

*Article 67***Commencement of the Agency's operation**

1. The Agency shall undertake the certification tasks incumbent upon it pursuant to Article 20 as from 28 September 2003. Until that date, Member States shall continue to implement applicable legislation and regulations.

2. During an additional transition period of 42 months from the date referred to in paragraph 1, Member States may continue to issue certificates and approvals by way of derogation from the provisions of Articles 5, 6, 12 and 20 under the conditions specified by the Commission in the measures adopted for their application. When in that context Member States issue certificates on the basis of certificates issued by third countries, the measures adopted by the Commission shall give due consideration to the principles laid down in Article 12(2)(b) and (c).

*Article 68***Penalties**

Member States shall lay down penalties for infringement of this Regulation and its implementing rules. The penalties shall be effective, proportionate and dissuasive.

*Article 69***Repeals**

1. Regulation (EC) No 1592/2002 is hereby repealed, without prejudice to the provisions of the second subparagraph.

References made to the repealed Regulation shall be construed as being made to this Regulation and should be read in accordance with the correlation table set out in Annex VI.

2. Council Directive 91/670/EEC is hereby repealed as from the entry into force of the measures referred to in Article 7(6).

3. Annex III to Regulation (EEC) No 3922/91 shall be deleted as from the entry into force of the corresponding measures referred to in Article 8(5).

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4. The provisions of Article 11 shall apply to products, parts and appliances, organisations and persons whose certification has been performed, or recognised, in accordance with the provisions of the acts referred to in paragraph 1, 2 and 3 of this Article.

5. Directive 2004/36/EC is hereby repealed as from the entry into force of the measures referred to in Article 10(5) of this Regulation, and without prejudice to the implementing rules referred to in Article 8(2) of that Directive.

*Article 70***Entry into force**

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Articles 5, 6, 7, 8, 9 and 10 shall apply as from the dates specified in their respective implementing rules, but not later than 8 April 2012.

This Regulation shall be binding in its entirety and directly applicable in all Member States.



ANNEX I

Essential requirements for airworthiness referred to in Article 5

1. *Product integrity: product integrity must be assured for all anticipated flight conditions for the operational life of the aircraft. Compliance with all requirements must be shown by assessment or analysis, supported, where necessary, by tests.*
 - 1.a. Structures and materials: the integrity of the structure must be ensured throughout, and sufficiently beyond, the operational envelope for the aircraft, including its propulsion system, and maintained for the operational life of the aircraft.
 - 1.a.1. All parts of the aircraft, the failure of which could reduce the structural integrity, must comply with the following conditions without detrimental deformation or failure. This includes all items of significant mass and their means of restraint.
 - 1.a.1.a. All combinations of load reasonably expected to occur within, and sufficiently beyond, the weights, centre of gravity range, operational envelope and life of the aircraft must be considered. This includes loads due to gusts, manoeuvres, pressurisation, movable surfaces, control and propulsion systems both in flight and on the ground.
 - 1.a.1.b. Consideration must be given to the loads and likely failures induced by emergency landings either on land or water.
 - 1.a.1.c. Dynamic effects must be covered in the structural response to these loads.
 - 1.a.2. The aircraft must be free from any aeroelastic instability and excessive vibration.
 - 1.a.3. The manufacturing processes and materials used in the construction of the aircraft must result in known and reproducible structural properties. Any changes in material performance related to the operational environment must be accounted for.
 - 1.a.4. The effects of cyclic loading, environmental degradation, accidental and discrete source damage must not reduce the structural integrity below an acceptable residual strength level. All necessary instructions for ensuring continued airworthiness in this regard must be promulgated.
 - 1.b. Propulsion: the integrity of the propulsion system (i.e. engine and, where appropriate, propeller) must be demonstrated throughout, and sufficiently beyond, the operational envelope of the propulsion system and must be maintained for the operational life of the propulsion system.
 - 1.b.1. The propulsion system must produce, within its stated limits, the thrust or power demanded of it at all required flight conditions, taking into account environmental effects and conditions.
 - 1.b.2. The fabrication process and materials used in the construction of the propulsion system must result in known and reproducible structural behaviour. Any changes in material performance related to the operational environment must be accounted for.
 - 1.b.3. The effects of cyclic loading, environmental and operational degradation and likely subsequent part failures must not reduce the integrity of the propulsion system below acceptable levels. All necessary instructions for ensuring continued airworthiness in this regard must be promulgated.

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- 1.b.4. All necessary instructions, information and requirements for the safe and correct interface between the propulsion system and the aircraft must be promulgated.
- 1.c. Systems and equipment
 - 1.c.1. The aircraft must not have design features or details that experience has shown to be hazardous.
 - 1.c.2. The aircraft, including those systems, equipment and appliances required for type-certification, or by operating rules, must function as intended under any foreseeable operating conditions, throughout, and sufficiently beyond, the operational envelope of the aircraft, taking due account of the system, equipment or appliance operating environment. Other systems, equipment and appliance not required for type-certification, or by operating rules, whether functioning properly or improperly, must not reduce safety and must not adversely affect the proper functioning of any other system, equipment or appliance. Systems, equipment and appliances must be operable without needing exceptional skill or strength.
 - 1.c.3. The aircraft systems, equipment and associated appliances, considered separately and in relation to each other, must be designed such that any catastrophic failure condition does not result from a single failure not shown to be extremely improbable and an inverse relationship must exist between the probability of a failure condition and the severity of its effect on the aircraft and its occupants. With respect to the single failure criterion above, it is accepted that due allowance must be made for the size and broad configuration of the aircraft and that this may prevent this single failure criterion from being met for some parts and some systems on helicopters and small aeroplanes.
 - 1.c.4. Information needed for the safe conduct of the flight and information concerning unsafe conditions must be provided to the crew, or maintenance personnel, as appropriate, in a clear, consistent and unambiguous manner. Systems, equipment and controls, including signs and announcements must be designed and located to minimise errors which could contribute to the creation of hazards.
 - 1.c.5. Design precautions must be taken to minimise the hazards to the aircraft and occupants from reasonably probable threats, both inside and external to the aircraft, including protecting against the possibility of a significant failure in, or disruption of, any aircraft appliance.
- 1.d. Continuing airworthiness
 - 1.d.1. Instructions for continuing airworthiness must be established to ensure that the aircraft type certification airworthiness standard is maintained throughout the operational life of the aircraft.
 - 1.d.2. Means must be provided to allow inspection, adjustment, lubrication, removal or replacement of parts and appliances as necessary for continuing airworthiness.
 - 1.d.3. The instructions for continuing airworthiness must be in the form of a manual, or manuals, as appropriate for the quantity of data to be provided. The manuals must cover maintenance and repair instructions, servicing information, trouble-shooting and inspection procedures, in a format that provides for a practical arrangement.
 - 1.d.4. The instructions for continuing airworthiness must contain airworthiness limitations that set forth each mandatory replacement time, inspection interval and related inspection procedure.

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2. *Airworthiness aspects of product operation*
- 2.a. The following must be shown to have been addressed to ensure a satisfactory level of safety for those onboard or on the ground during the operation of the product:
 - 2.a.1. The kinds of operation for which the aircraft is approved must be established and limitations and information necessary for safe operation, including environmental limitations and performance, must be established.
 - 2.a.2. The aircraft must be safely controllable and manoeuvrable under all anticipated operating conditions including following the failure of one or, if appropriate, more propulsion systems. Due account must be taken of pilot strength, flight deck environment, pilot workload and other human-factor considerations and of the phase of flight and its duration.
 - 2.a.3. It must be possible to make a smooth transition from one flight phase to another without requiring exceptional piloting skill, alertness, strength or workload under any probable operating condition.
 - 2.a.4. The aircraft must have such stability as to ensure that the demands made on the pilot are not excessive taking into account the phase of flight and its duration.
 - 2.a.5. Procedures for normal operations, failure and emergency conditions must be established.
 - 2.a.6. Warnings, or other deterrents intended to prevent exceedance of the normal flight envelope, must be provided, as appropriate to type.
 - 2.a.7. The characteristics of the aircraft and its systems must allow a safe return from extremes of the flight envelope that may be encountered.
- 2.b. The operating limitations and other information necessary for safe operation must be made available to the crew members.
- 2.c. Product operations must be protected from hazards resulting from adverse external and internal conditions, including environmental conditions.
 - 2.c.1. In particular, no unsafe condition must occur from exposure to phenomena such as, but not limited to, adverse weather, lightning, bird strike, high frequency radiated fields, ozone, etc., reasonably expected to occur during product operation.
 - 2.c.2. Cabin compartments must provide passengers with suitable transport conditions and adequate protection from any expected hazard arising in flight operations or resulting in emergency situations, including fire, smoke, toxic gases and rapid decompression hazards. Provisions must be made to give occupants every reasonable chance of avoiding serious injury and quickly evacuating the aircraft and to protect them from the effect of the deceleration forces in the event of an emergency landing on land or water. Clear and unambiguous signs or announcements must be provided, as necessary, to instruct occupants in appropriate safe behaviour and the location and correct use of safety equipment. Required safety equipment must be readily accessible.

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- 2.c.3. Crew compartments must be arranged in order to facilitate flight operations, including means providing situational awareness, and management of any expected situation and emergencies. The environment of crew compartments must not jeopardise the crew's ability to perform their tasks and its design must be such as to avoid interference during operation and misuse of the controls.
3. *Organisations (including natural persons undertaking design, manufacture or maintenance)*
 - 3.a. Organisation approvals must be issued when the following conditions are met:
 - 3.a.1. the organisation must have all the means necessary for the scope of work. These means comprise, but are not limited to, the following: facilities, personnel, equipment, tools and material, documentation of tasks, responsibilities and procedures, access to relevant data and record-keeping;
 - 3.a.2. the organisation must implement and maintain a management system to ensure compliance with these essential requirements for airworthiness, and aim for continuous improvement of this system;
 - 3.a.3. the organisation must establish arrangements with other relevant organisations, as necessary, to ensure continuing compliance with these essential requirements for airworthiness;
 - 3.a.4. the organisation must establish an occurrence reporting and/or handling system, which must be used by the management system under point 3.a.2 and the arrangements under point 3.a.3, in order to contribute to the aim of continuous improvement of the safety of products.
 - 3.b. In the case of maintenance training organisations, the conditions under points 3.a.3 and 3.a.4 do not apply.



ANNEX II

Aircraft referred to in Article 4(4)

Article 4(1), (2) and (3) do not apply to aircraft falling in one or more of the categories set out below:

- (a) historic aircraft meeting the criteria below:
 - (i) non-complex aircraft whose:
 - initial design was established before 1 January 1955, and
 - production has been stopped before 1 January 1975;
 or
 - (ii) aircraft having a clear historical relevance, related to:
 - a participation in a noteworthy historical event, or
 - a major step in the development of aviation, or
 - a major role played into the armed forces of a Member State;
- (b) aircraft specifically designed or modified for research, experimental or scientific purposes, and likely to be produced in very limited numbers;
- (c) aircraft of which at least 51 % is built by an amateur, or a non-profit making association of amateurs, for their own purposes and without any commercial objective;
- (d) aircraft that have been in the service of military forces, unless the aircraft is of a type for which a design standard has been adopted by the Agency;
- (e) aeroplanes, helicopters and powered parachutes having no more than two seats, a maximum take-off mass (MTOM), as recorded by the Member States, of no more than:
 - (i) 300 kg for a land plane/helicopter, single-seater; or
 - (ii) 450 kg for a land plane/helicopter, two-seater; or
 - (iii) 330 kg for an amphibian or floatplane/helicopter single-seater; or
 - (iv) 495 kg for an amphibian or floatplane/helicopter two-seater, provided that, where operating both as a floatplane/helicopter and as a land plane/helicopter, it falls below both MTOM limits, as appropriate;
 - (v) 472,5 kg for a land plane, two-seater equipped with an airframe mounted total recovery parachute system;
 - (vi) 315 kg for a land plane single-seater equipped with an airframe mounted total recovery parachute system;

and, for aeroplanes, having the stall speed or the minimum steady flight speed in landing configuration not exceeding 35 knots calibrated air speed (CAS);
- (f) single and two-seater gyroplanes with a maximum take off mass not exceeding 560 kg;
- (g) gliders with a maximum empty mass, of no more than 80 kg when single-seater or 100 kg when two-seater, including those which are foot launched;
- (h) replicas of aircraft meeting the criteria of (a) or (d) above, for which the structural design is similar to the original aircraft;
- (i) unmanned aircraft with an operating mass of no more than 150 kg;
- (j) any other aircraft which has a maximum empty mass, including fuel, of no more than 70 kg.

*ANNEX III***Essential requirements for pilot licensing referred to in Article 7**

1. *Training*
 - 1.a. *General*
 - 1.a.1. A person undertaking training to fly an aircraft must be sufficiently mature educationally, physically and mentally to acquire, retain and demonstrate the relevant theoretical knowledge and practical skill.
 - 1.b. *Theoretical knowledge*
 - 1.b.1. A pilot must acquire and maintain a level of knowledge appropriate to the functions exercised on the aircraft and proportionate to the risks associated to the type of activity. Such knowledge must include at least the following:
 - (i) air law;
 - (ii) aircraft general knowledge;
 - (iii) technical matters related to the category of the aircraft;
 - (iv) flight performance and planning;
 - (v) human performance and limitations;
 - (vi) meteorology;
 - (vii) navigation;
 - (viii) operational procedures, including resource management;
 - (ix) principles of flight;
 - (x) communications; and
 - (xi) non-technical skills, including the recognition and management of threats and errors.
 - 1.c. *Demonstration and maintenance of theoretical knowledge*
 - 1.c.1. The acquisition and retention of theoretical knowledge must be demonstrated by continuous assessment during training, and where appropriate, by examinations.
 - 1.c.2. An appropriate level of competence in theoretical knowledge must be maintained. Compliance must be demonstrated by regular assessments, examinations, tests or checks. The frequency of examinations, tests or checks must be proportionate to the level of risk associated with the activity.
 - 1.d. *Practical skill*
 - 1.d.1. A pilot must acquire and maintain the practical skills as appropriate to exercise his/her functions on the aircraft. Such skills must be proportionate to the risks associated to the type of activity and must cover, if appropriate to the functions exercised on the aircraft, the following:
 - (i) pre-flight and in-flight activities, including aircraft performance, mass and balance determination, aircraft inspection and servicing, fuel planning, weather appreciation, route planning, airspace restrictions and runway availability;
 - (ii) aerodrome and traffic-pattern operations;
 - (iii) collision avoidance precautions and procedures;
 - (iv) control of the aircraft by external visual reference;

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- (v) flight manoeuvres, including in critical situations, and associated 'upset' manoeuvres, as technically achievable;
- (vi) normal and cross-wind take-offs and landings;
- (vii) flight by reference solely to instruments, as appropriate to the type of activity;
- (viii) operational procedures, including team skills and resource management, as appropriate to the type of operation, whether single or multi-crew;
- (ix) navigation and implementation of rules of the air and related procedures, using as appropriate, visual reference or navigation aids;
- (x) abnormal and emergency operations, including simulated aircraft equipment malfunctions;
- (xi) compliance with air traffic services and communications procedures;
- (xii) aircraft type or class specific aspects;
- (xiii) additional practical skill training that may be required to mitigate risks associated with specific activities; and
- (xiv) non-technical skills, including the recognition and management of threats and errors, using an adequate assessment methodology in conjunction with the technical skills assessment.

1.e. Demonstration and maintenance of practical skill

1.e.1. A pilot must demonstrate the ability to perform the procedures and manoeuvres with a degree of competence appropriate to the functions exercised on the aircraft, by:

- (i) operating the aircraft within its limitations;
- (ii) completing all manoeuvres with smoothness and accuracy;
- (iii) exercising good judgement and airmanship;
- (iv) applying aeronautical knowledge;
- (v) maintaining control of the aircraft at all times in a manner such that the successful outcome of a procedure or manoeuvre is assured; and
- (vi) non-technical skills, including the recognition and management of threats and errors, using an adequate assessment methodology in conjunction with the technical skills assessment.

1.e.2. An appropriate level of competence in practical skill must be maintained. Compliance must be demonstrated by regular assessments, examinations, tests or checks. The frequency of examinations, tests or checks must be proportionate to the level of risk associated with the activity.

1.f. Language Proficiency

A pilot must have demonstrated language proficiency to a degree appropriate to the functions exercised on the aircraft. Such demonstrated proficiency shall include:

- (i) the ability to understand weather information documents;
- (ii) the use of aeronautical en-route, departure and approach charts and associated aeronautical information documents; and

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- (iii) the ability to communicate with other flight crew and air navigation services during all phases of flight, including flight preparation.

1.g. Flight simulation training devices

When a flight simulation training device (FSTD) is used for training, or for demonstration that practical skill is acquired or maintained, this FSTD must be qualified to a given level of performance in those areas, which are relevant to completing the related task. In particular, the replication of configuration, handling qualities, aircraft performance, and systems behaviour must adequately represent the aircraft.

1.h. Training course

1.h.1. Training must be executed through a training course.

1.h.2. A training course must meet the following conditions:

- (i) a syllabus must be developed for each type of course; and
- (ii) the training course must comprise a breakdown of theoretical knowledge and practical flight instruction (including synthetic training), if applicable.

1.i. Instructors

1.i.1. Theoretical instruction

Theoretical instruction must be given by appropriately qualified instructors. They must:

- (i) have appropriate knowledge in the field where instruction is to be given; and
- (ii) be capable of using appropriate instructional techniques.

1.i.2. Flight and flight simulation instruction

Flight and flight simulation instruction must be given by appropriately qualified instructors, who have the following qualifications:

- (i) meet the theoretical knowledge and the experience requirements appropriate for the instruction being given;
- (ii) be capable of using appropriate instructional techniques;
- (iii) have practised instructional techniques in those flight manoeuvres and procedures in which it is intended to provide flight instruction;
- (iv) have demonstrated the ability to instruct in those areas in which flight instruction is to be given, including pre-flight, post-flight and ground instruction; and
- (v) receive regular refresher training to ensure that the instructional standards are maintained up to date.

Flight instructors must also be entitled to act as pilot in command on the aircraft for which instruction is being given, except for training on new aircraft types.

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1.j. Examiners

1.j.1. Persons responsible for assessing the skill of pilots must:

- (i) meet the requirements for flight or flight simulation instructors;
- (ii) be capable of assessing pilot performance and conducting flight tests and checks.

2. *Experience requirements*

2.a.1. A person acting as flight crew member, instructor or examiner must acquire and maintain sufficient experience for the functions being exercised, unless the implementing rules provide for competence to be demonstrated in accordance with point 1.e.

3. *Training organisations*

3.a. Training organisation requirements

3.a.1. A training organisation providing pilot training must meet the following requirements:

- (i) have all the means necessary for the scope of responsibilities associated with their activity. These means comprise, but are not limited to, the following: facilities, personnel, equipment, tools and material, documentation of tasks, responsibilities and procedures, access to relevant data and record-keeping;
- (ii) implement and maintain a management system relating to safety and the standard of training, and aim for continuous improvement of this system; and
- (iii) establish arrangements with other relevant organisations, as necessary, to ensure continuing compliance with the above requirements.

4. *Medical fitness*

4.a. Medical criteria

4.a.1. All pilots must periodically demonstrate medical fitness to satisfactorily execute their functions, taking into account the type of activity. Compliance must be shown by appropriate assessment based on aero-medical best practice, taking into account the type of activity and the possible mental and physical degradation due to age.

Medical fitness, comprising physical and mental fitness, means not suffering from any disease or disability, which makes the pilot unable:

- (i) to execute the tasks necessary to operate an aircraft; or
- (ii) to perform assigned duties at any time; or
- (iii) to perceive correctly his/her environment.

4.a.2. Where medical fitness cannot be fully demonstrated, mitigation measures that provide equivalent flight safety may be implemented.

4.b. Aero-medical examiners

4.b.1. An aero-medical examiner must:

- (i) be qualified and licensed in the practice of medicine;
- (ii) have received training in aviation medicine and regular refresher training in aviation medicine to ensure that assessment standards are maintained;
- (iii) have acquired practical knowledge and experience of the conditions in which pilots carry out their duties.

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4.c. Aero-medical centres

4.c.1. Aero-medical centres must meet the following conditions:

- (i) have all the means necessary for the scope of responsibilities associated with their privileges. These means comprise, but are not limited to, the following: facilities, personnel, equipment, tools and material, documentation of tasks, responsibilities and procedures, access to relevant data and record-keeping;
- (ii) implement and maintain a management system relating to safety and the standard of medical assessment, and aim for continuous improvement of this system;
- (iii) establish arrangements with other relevant organisations, as necessary, to ensure continuing compliance with these requirements.

*ANNEX IV***Essential requirements for air operations referred to in Article 8**

1. *General*
 - 1.a. A flight must not be performed if the crew members and, as appropriate, all other operations personnel involved in its preparation and execution are not familiar with applicable laws, regulations and procedures, pertinent to the performance of their duties, prescribed for the areas to be traversed, the aerodromes planned to be used and the air navigation facilities relating thereto.
 - 1.b. A flight must be performed in such a way that the operating procedures specified in the Flight Manual or, where required the Operations Manual, for the preparation and execution of the flight are followed. To facilitate this, a checklist system must be available for use, as applicable, by crew members in all phases of operation of the aircraft under normal, abnormal and emergency conditions and situations. Procedures must be established for any reasonably foreseeable emergency situation.
 - 1.c. Before every flight, the roles and duties of each crew member must be defined. The pilot in command must be responsible for the operation and safety of the aircraft and for the safety of all crew members, passengers and cargo on board.
 - 1.d. Articles or substances, which are capable of posing a significant risk to health, safety, property or the environment, such as dangerous goods, weapons and ammunition, must not be carried on any aircraft, unless specific safety procedures and instructions are applied to mitigate the related risks.
 - 1.e. All necessary data, documents, records and information to record the respect of the conditions specified in point 5.c must be retained for each flight and kept available for a minimum period of time compatible with the type of operation.
2. *Flight preparation*
 - 2.a. A flight must not be commenced unless it has been ascertained by every reasonable means available that all the following conditions are complied with:
 - 2.a.1. Adequate facilities directly required for the flight and for the safe operation of the aircraft, including communication facilities and navigation aids, are available for the execution of the flight, taking into account available Aeronautical Information Services documentation.
 - 2.a.2. The crew must be familiar with and passengers informed of the location and use of relevant emergency equipment. Sufficient related information regarding emergency procedures and use of cabin safety equipment must be made available to crew and passengers using specified information.
 - 2.a.3. The pilot in command must be satisfied that:
 - (i) the aircraft is airworthy as specified in point 6;
 - (ii) if required, the aircraft is duly registered and that appropriate certificates with respect thereto are aboard the aircraft;
 - (iii) instruments and equipment as specified in point 5 required for the execution of that flight are installed in the aircraft and are operative, unless waived by the applicable Minimum Equipment List (MEL) or equivalent document;

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- (iv) the mass of the aircraft and centre of gravity location are such that the flight can be conducted within limits prescribed in the airworthiness documentation;
 - (v) all cabin baggage, hold luggage and cargo is properly loaded and secured; and
 - (vi) the aircraft operating limitations as specified in point 4 will not be exceeded at any time during the flight.
- 2.a.4. Information regarding meteorological conditions for departure, destination and, where applicable, alternate aerodromes, as well as en-route conditions, must be available to the flight crew. Special attention must be given to potentially hazardous atmospheric conditions.
- 2.a.5. In case of flight into known or expected icing conditions, the aircraft must be certified, equipped and/or treated to operate safely in such conditions.
- 2.a.6. For a flight based on visual flight rules, meteorological conditions along the route to be flown must be such as to render compliance with these flight rules possible. For a flight based on instrument flight rules a destination and where applicable alternate aerodrome(s) where the aircraft can land must be selected, taking into account in particular the forecasted meteorological conditions, the availability of air navigation services, the availability of ground facilities and the instrument flight procedures approved by the State in which the destination and/or alternate aerodrome is located.
- 2.a.7. The amount of fuel and oil on board must be sufficient to ensure that the intended flight can be completed safely, taking into account the meteorological conditions, any element affecting the performance of the aircraft and any delays that are expected in flight. In addition, a fuel reserve must be carried to provide for contingencies. Procedures for in-flight fuel management must be established when relevant.
3. *Flight operations*
- 3.a. With regard to flight operations, all the following conditions must be complied with:
- 3.a.1. where relevant for the type of aircraft, during take-off and landing, and whenever deemed necessary by the pilot in command in the interest of safety, each crew member must be seated at their crew station and must use the provided restraint systems, taking into account the type of aircraft;
 - 3.a.2. where relevant for the type of aircraft, all flight crew members required to be on flight deck duty must be and remain at their station, with their seatbelts fastened except en-route for physiological or operational needs;
 - 3.a.3. where relevant for the type of aircraft and the type of operation, before take-off and landing, during taxiing and whenever deemed necessary in the interest of safety, the pilot in command must ensure that each passenger is properly seated and secured;
 - 3.a.4. a flight must be performed in such a way that appropriate separation from other aircraft is maintained and that adequate obstacle clearance is ensured, during all phases of the flight. Such separation must at least be those required by the applicable rules of the air;

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- 3.a.5. a flight must not be continued unless known conditions continue to be at least equivalent to those in point 2. Furthermore, for a flight based on instrument flight rules, an approach toward an aerodrome must not be continued below certain specified heights or beyond a certain position, if prescribed visibility criteria are not met;
- 3.a.6. in an emergency, the pilot in command must ensure that all passengers are instructed in such emergency action as may be appropriate to the circumstances;
- 3.a.7. a pilot in command must take all necessary measures so as to minimise the consequences on the flight of disruptive passenger behaviour;
- 3.a.8. an aircraft must not be taxied on the movement area of an aerodrome, or its rotor must not be turned under power, unless the person at the controls is appropriately competent;
- 3.a.9. the applicable in-flight fuel management procedures must be used, when relevant.
4. *Aircraft performance and operating limitations*
- 4.a. An aircraft must be operated in accordance with its airworthiness documentation and all related operating procedures and limitations as expressed in its approved flight manual or equivalent documentation, as the case may be. The flight manual or equivalent documentation must be available to the crew and kept up to date for each aircraft.
- 4.b. The aircraft must be operated in accordance with the applicable environmental documentation.
- 4.c. A flight must not be commenced or continued unless the aircraft's scheduled performance, considering all factors which significantly affect its performance level, allows all phases of flight to be executed within the applicable distances/areas and obstacle clearances at the planned operating mass. Performance factors which significantly affect take-off, en-route and approach/landing are, particularly:
- (i) operating procedures;
 - (ii) pressure altitude of the aerodrome;
 - (iii) temperature;
 - (iv) wind;
 - (v) size, slope and condition of the take-off/landing area; and
 - (vi) the condition of the airframe, the power plant or the systems, taking into account possible deterioration.
- 4.c.1. Such factors must be taken into account directly as operational parameters or indirectly by means of allowances or margins, which may be provided in the scheduling of performance data, as appropriate to the type of operation.
5. *Instruments, data and equipment*
- 5.a. An aircraft must be equipped with all navigation, communication and other equipment necessary for the intended flight, taking account of air traffic regulations and rules of the air applicable during any phase of the flight.

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- 5.b. When relevant, an aircraft must be equipped with all necessary safety, medical, evacuation and survival equipment, taking account of the risks associated to the areas of operation, the routes to be flown, the flight altitude and the duration of the flight.
- 5.c. All data necessary for the execution of the flight by the crew must be updated and available on board the aircraft taking account of applicable air traffic regulations, rules of the air, flight altitudes and areas of operation.
6. *Continuing airworthiness*
- 6.a. The aircraft must not be operated unless:
- (i) the aircraft is in an airworthy condition;
 - (ii) the operational and emergency equipment necessary for the intended flight is serviceable;
 - (iii) the airworthiness document of the aircraft is valid; and
 - (iv) the maintenance of the aircraft is performed in accordance with its maintenance programme.
- 6.b. Before each flight or consistent series of consecutive flights, the aircraft must be inspected, through a pre-flight check, to determine whether it is fit for the intended flight.
- 6.c. The maintenance programme must contain in particular, maintenance tasks and intervals, especially those that have been specified as mandatory in the instructions for continuing airworthiness.
- 6.d. The aircraft must not be operated unless it is released to service by qualified persons or organisations, after maintenance. The signed release to service must contain in particular, the basic details of the maintenance carried out.
- 6.e. All records demonstrating the airworthiness of the aircraft must be kept until the information contained has been superseded by new information equivalent in scope and detail but not less than 24 months in the case of detailed maintenance records. When the aircraft is leased, all records demonstrating the airworthiness of the aircraft must be kept at least for the length of the lease.
- 6.f. All modifications and repairs must comply with the essential requirements for airworthiness. The substantiating data supporting compliance with the airworthiness requirements must be retained.
7. *Crew members*
- 7.a. The number and composition of the crew must be determined taking into account:
- (i) the certification limitations of the aircraft, including if applicable, the relevant emergency evacuation demonstration;
 - (ii) the aircraft configuration; and
 - (iii) the type and duration of operations.
- 7.b. Cabin crew members must:
- (i) be trained and checked on a regular basis to attain and maintain an adequate level of competency in order to perform their assigned safety duties; and

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- (ii) be periodically assessed for medical fitness to safely exercise their assigned safety duties. Compliance must be shown by appropriate assessment based on aero-medical best practice.
- 7.c. The pilot in command must have the authority to give all commands and take any appropriate actions for the purpose of securing the operation and the safety of the aircraft and of persons and/or property carried therein.
- 7.d. In an emergency situation, which endangers the operation or the safety of the aircraft and/or persons on board, the pilot in command must take any action he/she considers necessary in the interest of safety. When such action involves a violation of local regulations or procedures, the pilot in command must be responsible for notifying the appropriate local authority without delay.
- 7.e. Emergency abnormal situations must not be simulated when passengers or cargo are being carried.
- 7.f. No crew member must allow their task achievement/decision making to deteriorate to the extent that flight safety is endangered because of the effects of fatigue, taking into account, *inter alia*, fatigue accumulation, sleep deprivation, number of sectors flown, night duties or time zone changes. Rest periods must provide sufficient time to enable crew members to overcome the effects of the previous duties and to be well rested by the start of the following flight duty period.
- 7.g. A crew member must not perform allocated duties on board an aircraft when under the influence of psychoactive substances or alcohol or when unfit due to injury, fatigue, medication, sickness or other similar causes.
- 8. *Additional requirements for operation for commercial purposes and operation of complex motor-powered aircraft*
- 8.a. The operation for commercial purposes and the operation of complex motor-powered aircraft must not be undertaken unless the following conditions are met:
 - 8.a.1. the operator must have directly or indirectly through contracts the means necessary for the scale and scope of the operations. These means comprise but are not limited to the following: aircraft, facilities, management structure, personnel, equipment, documentation of tasks, responsibilities and procedures, access to relevant data and record keeping;
 - 8.a.2. the operator must use only suitably qualified and trained personnel and implement and maintain training and checking programmes for the crew members and other relevant personnel;
 - 8.a.3. the operator must establish a MEL or equivalent document, taking account of the following:
 - (i) the document must provide for the operation of the aircraft, under specified conditions, with particular instruments, items of equipment or functions inoperative at the commencement of the flight;
 - (ii) the document must be prepared for each individual aircraft, taking account of the operator's relevant operational and maintenance conditions; and
 - (iii) the MEL must be based on the Master Minimum Equipment List (MMEL), if available, and must not be less restrictive than the MMEL;

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- 8.a.4. the operator must implement and maintain a management system to ensure compliance with these essential requirements for operations and aim for continuous improvement of this system; and
- 8.a.5. the operator must establish and maintain an accident prevention and safety programme, including an occurrence reporting programme, which must be used by the management system in order to contribute to the aim of continuous improvement of the safety of operations.
- 8.b. The operation for commercial purposes and the operation of complex motor-powered aircraft must only be undertaken in accordance with an operator's operations manual. Such manual must contain all necessary instructions, information and procedures for all aircraft operated and for operations personnel to perform their duties. Limitations applicable to flight time, flight duty periods and rest periods for crew members must be specified. The operations manual and its revisions must be compliant with the approved flight manual and be amended as necessary.
- 8.c. The operator must establish procedures, as appropriate, so as to minimise the consequences to safe flight operations of disruptive passenger behaviour.
- 8.d. The operator must develop and maintain security programmes adapted to the aircraft and the type of operation including particularly:
- (i) security of the flight crew compartment;
 - (ii) aircraft search procedure checklist;
 - (iii) training programmes;
 - (iv) protection of electronic and computer systems to prevent intentional system interference and corruption; and
 - (v) reporting acts of unlawful interference.

When security measures may adversely affect the safety of operations, the risks must be assessed and appropriate procedures developed to mitigate safety risks, this may necessitate the use of specialist equipment.

- 8.e. The operator must designate one pilot amongst the flight crew as the pilot in command.
- 8.f. The prevention of fatigue must be managed through a rostering system. For a flight, or series of flights, such a rostering system needs to address flight time, flight-duty periods, duty and adapted rest periods. Limitations established within the rostering system must take into account all relevant factors contributing to fatigue such as, in particular, number of sectors flown, time-zone crossing, sleep deprivation, disruption of circadian cycles, night hours, positioning, cumulative duty time for given periods of time, sharing of allocated tasks between crew members, and also the provision of augmented crews.

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- 8.g. The tasks specified in point 6.a and those described in points 6.d and 6.e must be controlled by an organisation responsible for the continuing airworthiness management that must meet, in addition to those requirements of Annex I point 3.a, the following conditions:
- (i) the organisation must be qualified for the maintenance of products, parts and appliances under its responsibility or have established a contract with such a qualified organisation for these products, parts and appliances; and
 - (ii) the organisation must establish an organisation manual providing, for use and guidance of personnel concerned, a description of all continuing airworthiness procedures of the organisation including when applicable a description of administrative arrangements between the organisation and the approved maintenance organisation.

▼ B*ANNEX V***▼ M2****Criteria for qualified entities referred to in Article 13 ('qualified entity' or 'entity')****▼ B**

1. The entity, its Director and the staff responsible for carrying out the checks, may not become involved, either directly or as authorised representatives, in the design, manufacture, marketing or maintenance of the products, parts, appliances, constituents or systems or in their operations, service provision or use. This does not exclude the possibility of an exchange of technical information between the involved organisations and the qualified entity.
2. The entity and the staff responsible for the certification tasks must carry out their duties with the greatest possible professional integrity and the greatest possible technical competence and must be free of any pressure and incentive, in particular of a financial type, which could affect their judgment or the results of their investigations, in particular from persons or groups of persons affected by the results of the certification tasks.
3. The entity must employ staff and possess the means required to perform adequately the technical and administrative tasks linked with the certification process; it should also have access to the equipment needed for exceptional checks.
4. The staff responsible for investigation must have:
 - sound technical and vocational training,
 - satisfactory knowledge of the requirements of the certification tasks they carry out and adequate experience of such processes,
 - the ability required to draw up the declarations, records and reports to demonstrate that the investigations have been carried out.
5. The impartiality of the investigation staff must be guaranteed. Their remuneration must not depend on the number of investigations carried out or on the results of such investigations.
6. The entity must take out liability insurance unless its liability is assumed by one Member State in accordance with its national law.
7. The staff of the entity must observe professional secrecy with regard to all information acquired in carrying out their tasks under this Regulation.

▼ M2*ANNEX Va***ESSENTIAL REQUIREMENTS FOR AERODROMES****A — Physical characteristics, infrastructure and equipment**1. *Movement area*

- (a) Aerodromes shall have a designated area for the landing and take-off of aircraft, which satisfies the following conditions:
 - (i) the landing and take-off area shall have dimensions and characteristics suitable for the aircraft intended to use the facility;
 - (ii) the landing and take-off area, where applicable, shall have a bearing strength sufficient to support repetitive operations of the intended aircraft. Those areas not intended for repetitive operations only need to be capable of supporting the aircraft;
 - (iii) the landing and take-off area shall be designed to drain water and to prevent standing water becoming an unacceptable risk to aircraft operations;
 - (iv) the slope and slope changes of the landing and take-off area shall not create an unacceptable risk to aircraft operations;
 - (v) the surface characteristics of the landing and take-off area shall be adequate for use by the intended aircraft; and
 - (vi) the landing and take-off area shall be free from objects which might create an unacceptable risk to aircraft operations.
- (b) Where there are several designated landing and take-off areas, they shall be such that they do not create an unacceptable risk to aircraft operations.
- (c) The designated landing and take-off area shall be surrounded by defined areas. These areas are intended to protect aircraft flying over them during take-off or landing operations or to mitigate the consequences of undershooting, running off the side or overrunning the take-off and landing area, and shall satisfy the following conditions:
 - (i) these areas shall have dimensions appropriate to the aircraft operations anticipated;
 - (ii) the slope and slope changes of these areas shall not create an unacceptable risk to aircraft operations;
 - (iii) these areas shall be free from objects which might create an unacceptable risk to aircraft operations. This should not preclude frangible equipment to be located in those areas, if required to assist aircraft operations; and
 - (iv) each of these areas shall have a bearing strength sufficient to serve its purpose.
- (d) Those areas of an aerodrome, with their associated immediate surroundings, that are to be used for taxiing or parking aircraft, shall be designed to permit safe operation of the aircraft expected to use the particular facility under all the conditions planned for, and shall satisfy the following conditions:
 - (i) these areas shall have a bearing strength sufficient to support repetitive operations of the intended aircraft, except for areas which are expected for only occasional use which only need to be capable of supporting the aircraft;
 - (ii) these areas shall be designed to drain water and to prevent standing water becoming an unacceptable risk to aircraft operations;

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- (iii) the slope and slope changes of these areas shall not create an unacceptable risk to aircraft operations;
 - (iv) the surface characteristics of these areas shall be adequate for use by the intended aircraft; and
 - (v) these areas shall be free from objects which might create an unacceptable risk to aircraft. This should not preclude parking equipment required for that area in specifically identified positions or zones.
- (e) Other infrastructure intended for use by aircraft shall be so designed that use of that infrastructure does not create an unacceptable risk to aircraft using it.
 - (f) Constructions, buildings, equipment or storage areas shall be located and designed so as not to create an unacceptable risk for aircraft operations.
 - (g) Suitable means shall be provided to prevent unauthorised persons, unauthorised vehicles or animals large enough to create an unacceptable risk to aircraft operations from entering the movement area, without prejudice to national and international animal protection provisions.
2. *Obstacle clearances*
- (a) To protect aircraft proceeding to an aerodrome for landing, or for their departure from an aerodrome, arrival and departure routes or areas shall be established. Such routes or areas shall provide aircraft with the required clearance from obstacles located in the area surrounding the aerodrome taking due account of the local physical characteristics.
 - (b) Such obstacle clearance shall be appropriate to the phase of flight and type of operation being conducted. It shall also take into account the equipment being used for determining the position of the aircraft.
3. *Visual and non-visual aids and aerodrome equipment*
- (a) AIDS shall be fit for purpose, recognisable and provide unambiguous information to users under all intended operational conditions.
 - (b) Aerodrome equipment shall function as intended under the foreseen operating conditions. Under operating conditions or in case of failure, aerodrome equipment shall not cause an unacceptable risk to aviation safety.
 - (c) The aids and their electrical power supply system shall be so designed that failures do not result in inappropriate, misleading or insufficient information being given to users or in interruption of an essential service.
 - (d) Suitable means of protection shall be provided to avoid damage or disturbance to such aids.
 - (e) Sources of radiation or the presence of moving or fixed objects shall not interfere with or adversely affect the performance of aeronautical communications, navigation and surveillance systems.
 - (f) Information on operation and use of aerodrome equipment shall be made available to relevant staff, including clear indications of the conditions which may create unacceptable risks to aviation safety.
4. *Aerodrome data*
- (a) Data relevant to the aerodrome and the available services shall be established and kept up to date.
 - (b) The data shall be accurate, readable, complete and unambiguous. Appropriate integrity levels shall be maintained.
 - (c) The data shall be made available to the users and the relevant ANS providers in a timely manner, using a sufficiently secure and expeditious method of communication.

▼ M2**B — Operations and management**

1. *The aerodrome operator is responsible for operation of the aerodrome. The responsibilities of the aerodrome operator are as follows:*
 - (a) the aerodrome operator shall have, directly or under contracts, all the means necessary to ensure safe operation of aircraft at the aerodrome. These means shall include, but are not limited to, facilities, personnel, equipment and material, documentation of tasks, responsibilities and procedures, access to relevant data and record-keeping;
 - (b) the aerodrome operator shall verify that the requirements of Section A are complied with at all times or take appropriate measures to mitigate the risks associated with non-compliance. Procedures shall be established and applied to make all users aware of such measures in a timely manner;
 - (c) the aerodrome operator shall establish and implement an appropriate aerodrome wildlife risk management programme;
 - (d) the aerodrome operator shall ensure that movements of vehicles and persons in the movement area and other operational areas are coordinated with movements of aircraft in order to avoid collisions and damage to aircraft;
 - (e) the aerodrome operator shall ensure that procedures to mitigate risks related to aerodrome operations in winter operation, adverse weather conditions, reduced visibility or at night, if applicable, are established and implemented;
 - (f) the aerodrome operator shall establish arrangements with other relevant organisations to ensure continuing compliance with these essential requirements for aerodromes. These organisations include, but are not limited to, aircraft operators, air navigation service providers, ground handling service providers and other organisations whose activities or products may have an effect on aircraft safety;
 - (g) the aerodrome operator, either by itself or by means of contracts with third parties, shall ensure that procedures exist to provide aircraft with fuel which is uncontaminated and of the correct specification;
 - (h) manuals for maintenance of aerodrome equipment shall be available, applied in practice and cover maintenance and repair instructions, servicing information, troubleshooting and inspection procedures;
 - (i) the aerodrome operator shall establish and implement an aerodrome emergency plan, covering emergency scenarios that may occur at the aerodrome or in its surroundings. This plan shall be coordinated, as appropriate, with the local community emergency plan;
 - (j) the aerodrome operator shall ensure that adequate aerodrome rescue and firefighting services are provided. Such services shall respond to an incident or accident with due urgency and shall include at least equipment, extinguishing agents and a sufficient number of personnel;
 - (k) the aerodrome operator shall use only trained and qualified personnel for aerodrome operations and maintenance and shall implement and maintain training and check programmes to ensure the continuing competence of all relevant personnel;
 - (l) the aerodrome operator shall ensure that any person permitted unescorted access to the movement area or other operational areas is adequately trained and qualified for such access;

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- (m) the rescue and firefighting personnel shall be properly trained and qualified to operate in the aerodrome environment. The aerodrome operator shall implement and maintain training and check programmes to ensure the continuing competence of this personnel; and
- (n) all rescue and firefighting personnel potentially required to act in aviation emergencies shall periodically demonstrate their medical fitness to execute their functions satisfactorily, taking into account the type of activity. In this context, medical fitness, comprising both physical and mental fitness, means not suffering from any disease or disability which could make this personnel unable:
 - (i) to execute the tasks necessary to operate in aviation emergencies;
 - (ii) to perform their assigned duties at any time; or
 - (iii) to perceive their environment correctly.

2. Management systems

- (a) The aerodrome operator shall implement and maintain a management system to ensure compliance with these essential requirements for aerodromes and to aim for continuous and proactive improvement of safety. The management system shall include organisational structures, accountability, responsibilities, policies and procedures.
- (b) The management system shall include an accident and incident prevention programme, including an occurrence-reporting and analysis scheme. The analysis shall involve the parties listed in point 1(f) above, as appropriate.
- (c) The aerodrome operator shall develop an aerodrome manual and operate in accordance with that manual. Such manuals shall contain all necessary instructions, information and procedures for the aerodrome, the management system and for operations personnel to perform their duties.

C — Aerodrome surroundings

1. The airspace around aerodrome movement areas shall be safeguarded from obstacles so as to permit the intended aircraft operations at the aerodromes without creating an unacceptable risk caused by the development of obstacles around the aerodrome. Obstacle monitoring surfaces shall therefore be developed, implemented and continuously monitored to identify any infringing penetration.
 - (a) Any infringement of these surfaces will require an assessment to identify whether or not the object creates an unacceptable risk. Any object posing an unacceptable risk shall be removed or appropriate mitigating action shall be taken to protect aircraft using the aerodrome.
 - (b) Any remaining such obstacles shall be published and, depending on the need, shall be marked and, where necessary, made visible by means of lights.
2. Hazards related to human activities and land use, such as, but not limited to, items on the following list, shall be monitored. The risk caused by them shall be assessed and mitigated as appropriate:
 - (a) any development or change in land use in the aerodrome area;
 - (b) the possibility of obstacle-induced turbulence;
 - (c) the use of hazardous, confusing and misleading lights;
 - (d) the dazzling caused by large and highly reflective surfaces;

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- (e) the creation of areas that might encourage wildlife activity in the surroundings of the aerodrome movement area;
 - (f) sources of non-visible radiation or the presence of moving or fixed objects which may interfere with, or adversely affect, the performance of aeronautical communications, navigation and surveillance systems.
3. A local community emergency plan shall be established for aviation emergency situations occurring in the aerodrome local area.

D — Others

Except for aircraft emergency situations, when diverting to an alternate aerodrome, or under other conditions specified in each case, an aerodrome or parts thereof shall not be used by aircraft for which the aerodrome design and operating procedures are not normally intended.

▼ M2*ANNEX Vb***ESSENTIAL REQUIREMENTS FOR ATM/ANS AND AIR TRAFFIC CONTROLLERS****1. Use of the airspace**

- (a) All aircraft, excluding those engaged in the activities referred to in Article 1(2)(a), in all phases of flight or on the movement area of an aerodrome, shall be operated in accordance with common general operating rules and any applicable procedure specified for use of that airspace.
- (b) All aircraft, excluding those engaged in the activities referred to in Article 1(2)(a), shall be equipped with the required constituents and operated accordingly. Constituents used in the ATM/ANS system shall also comply with the requirements in point 3.

2. Services

- (a) Aeronautical information and data for airspace users for the purpose of air navigation
 - (i) The data used as a source for aeronautical information shall be of sufficient quality, complete, current and provided in a timely manner.
 - (ii) Aeronautical information shall be accurate, complete, current, unambiguous and be of adequate integrity in a suitable format for users.
 - (iii) The dissemination of such aeronautical information to airspace users shall be timely and use sufficiently reliable and expeditious means of communication protected from interference and corruption.
- (b) Meteorological information
 - (i) The data used as a source for aeronautical meteorological information shall be of sufficient quality, complete and current.
 - (ii) To the extent possible, aeronautical meteorological information shall be precise, complete, current, be of adequate integrity and unambiguous in order to meet the needs of airspace users.
 - (iii) The dissemination of such aeronautical meteorological information to airspace users shall be timely and use sufficiently reliable and expeditious means of communication protected from interference and corruption.
- (c) Air traffic services
 - (i) The data used as a source for the provision of air traffic services shall be correct, complete and current.
 - (ii) Air traffic services shall be sufficiently precise, complete, current, and unambiguous to meet the safety needs of users.
 - (iii) Automated tools providing information or advice to users shall be properly designed, manufactured and maintained to ensure that they are fit for their intended purpose.
 - (iv) Air traffic control services and related processes shall provide for adequate separation between aircraft and, where appropriate, assist in protection from obstacles and other airborne hazards and shall ensure prompt and timely coordination with all relevant users and adjacent volumes of airspace.
 - (v) Communication between air traffic services and aircraft and between relevant air traffic services units shall be timely, clear, correct and unambiguous, protected from interference and commonly understood and, if applicable, acknowledged by all actors involved.

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(vi) Means shall be in place to detect possible emergencies and, when appropriate, to initiate effective search and rescue action. Such means shall, as a minimum, comprise appropriate alerting mechanisms, coordination measures and procedures, means and personnel to cover the area of responsibility efficiently.

(d) Communication services

Communication services shall achieve and maintain sufficient performance with regard to their availability, integrity, continuity and timeliness. They shall be expeditious and protected from corruption.

(e) Navigation service

Navigation services shall achieve and maintain a sufficient level of performance with regard to guidance, positioning and, when provided, timing information. The performance criteria include accuracy, integrity, availability and continuity of the service.

(f) Surveillance service

Surveillance services shall determine the respective position of aircraft in the air and of other aircraft and ground vehicles on the aerodrome surface, with sufficient performance with regard to their accuracy, integrity, continuity and probability of detection.

(g) Air traffic flow management

The tactical management of air traffic flows at Community level shall use and provide sufficiently precise and current information of the volume and nature of the planned air traffic affecting service provision and shall coordinate and negotiate re-routing or delaying traffic flows in order to reduce the risk of overloading situations occurring in the air or at the aerodromes.

(h) Airspace management

The designation of specific volumes of airspace for a certain use shall be monitored, coordinated and promulgated in a timely manner in order to reduce the risk of loss of separation between aircraft in all circumstances.

(i) Airspace design

Airspace structures and flight procedures shall be properly designed, surveyed and validated before they can be deployed and used by aircraft.

3. Systems and constituents

(a) General

ATM/ANS systems and constituents providing related information to and from the aircraft and on the ground shall be properly designed, manufactured, installed, maintained and operated to ensure that they are fit for their intended purpose.

(b) System and constituent integrity, performance and reliability

The integrity and safety-related performance of systems and constituents whether on aircraft, on the ground or in space, shall be fit for their intended purpose. They shall meet the required level of operational performance for all their foreseeable operating conditions and for their whole operational life.

(c) Design of systems and constituents

(i) Systems and constituents shall be designed to meet applicable safety requirements.

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- (ii) Systems and constituents, considered collectively, separately and in relation to each other, shall be designed in such a way that an inverse relationship exists between the probability that any failure can result in a total system failure and the severity of its effect on the safety of services.
- (iii) Systems and constituents, considered individually and in combination with each other, shall be designed taking into account limitations related to human capabilities and performance.
- (iv) Systems and constituents shall be designed in a manner that protects them from unintended harmful interactions with external elements.
- (v) Information needed for manufacturing installation, operation and maintenance of the systems and constituents as well as information concerning unsafe conditions shall be provided to personnel in a clear, consistent and unambiguous manner.

(d) Continuing level of service

Safety levels of systems and constituents shall be maintained during service and any modifications to service.

4. Qualification of air traffic controllers

(a) General

A person undertaking training as an air traffic controller or as a student air traffic controller, shall be sufficiently mature educationally, physically and mentally to acquire, retain and demonstrate the relevant theoretical knowledge and practical skill.

(b) Theoretical knowledge

- (i) An air traffic controller shall acquire and maintain a level of knowledge appropriate to the functions exercised and proportionate to the risks associated with the type of service.
- (ii) Acquisition and retention of theoretical knowledge shall be demonstrated by continuous assessment during training, or by appropriate examinations.
- (iii) An appropriate level of theoretical knowledge shall be maintained. Compliance shall be demonstrated by regular assessments or examinations. The frequency of examinations shall be proportionate to the level of risk associated with the type of service.

(c) Practical skill

- (i) An air traffic controller shall acquire and maintain the practical skills appropriate to exercise his/her functions. Such skills shall be proportionate to the risks associated with the type of service and shall cover at least, if appropriate to the functions exercised, the following items:
 - i. operational procedures;
 - ii. task specific aspects;
 - iii. abnormal and emergency situations; and
 - iv. human factors.
- (ii) An air traffic controller shall demonstrate the ability to perform the associated procedures and tasks with a level of competence appropriate to the functions exercised.
- (iii) A satisfactory level of competence in practical skill shall be maintained. Compliance shall be verified by regular assessments. The frequency of these assessments shall be proportionate to the complexity and the level of risk associated with the type of service and the tasks performed.

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(d) Language proficiency

- (i) An air traffic controller shall demonstrate proficiency to speak and understand English to the extent he/she is able to communicate effectively in voice-only (telephone/radiotelephone) and in face-to-face situations on concrete and work-related topics, including in emergency situations.
- (ii) Whenever necessary in a defined volume of airspace for ATS service provision purposes, an air traffic controller shall also have proficiency to speak and understand the national language(s) to the extent described above.

(e) Synthetic training devices (STD)

When an STD is used for practical training on situational awareness and human factors or to demonstrate that skills are acquired or maintained, it shall have a level of performance that allows adequate simulation of the working environment and operational situations appropriate to the training provided.

(f) Training course

- (i) Training shall be given by a training course, which may comprise theoretical and practical instruction, including training on an STD, if applicable.
- (ii) A course shall be defined and approved for each type of training.

(g) Instructors

- (i) Theoretical instruction shall be given by appropriately qualified instructors. They shall:
 - i. have appropriate knowledge in the field where instruction is to be given; and
 - ii. have demonstrated the ability to use appropriate instructional techniques.
- (ii) Instruction on practical skills shall be given by appropriately qualified instructors, who have the following qualifications:
 - i. meet the theoretical knowledge and the experience requirements appropriate to the instruction being given;
 - ii. have demonstrated the ability to instruct and to use appropriate instructional techniques;
 - iii. have practised instructional techniques in those procedures in which it is intended to provide instruction; and
 - iv. receive regular refresher training to ensure that the instructional competences are maintained.
- (iii) Instructors on practical skills shall also be or have been entitled to act as an air traffic controller.

(h) Assessors

- (i) Persons responsible for assessing the skill of air traffic controllers shall:
 - i. have demonstrated the ability to assess the performance of, and conduct tests and checks on air traffic controllers; and
 - ii. receive regular refresher training to ensure that the assessment standards are maintained up to date.
- (ii) Assessors on practical skills shall also be or have been entitled to act as an air traffic controller in those areas in which assessment is to be made.

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- (i) Medical fitness of an air traffic controller
 - (i) Medical criteria
 - i. All air traffic controllers shall periodically demonstrate medical fitness to satisfactorily execute their functions. Compliance shall be shown by appropriate assessment taking into account the possible mental and physical degradation due to age;
 - ii. Demonstration of medical fitness, comprising physical and mental fitness, shall include the demonstrated absence of any disease or disability, which makes the person providing an air traffic control (ATC) service unable:
 - to execute properly the tasks necessary to provide an ATC service,
 - to perform assigned duties at any time, or
 - to perceive correctly his/her environment.
 - (ii) Where medical fitness cannot be fully demonstrated, mitigation measures that provide equivalent safety may be implemented.

5. Service providers and training organisations

- (a) Service provision shall not be undertaken unless the following conditions are met:
 - (i) the service provider shall have directly or indirectly through contracts the means necessary for the scale and scope of the service. These means shall comprise but are not limited to the following: systems, facilities, including power supply, management structure, personnel, equipment and its maintenance, documentation of tasks, responsibilities and procedures, access to relevant data and record-keeping;
 - (ii) the service provider shall develop and keep up-to-date management and operations manuals relating to the provision of its services and operate in accordance with those manuals. Such manuals shall contain all necessary instructions, information and procedures for the operations, the management system and for operations personnel to perform their duties;
 - (iii) the service provider shall implement and maintain a risk-based management system to ensure compliance with the essential requirements in this Annex and aim for continuous proactive improvement of this system;
 - (iv) the service provider shall use only suitably qualified and trained personnel and implement and maintain training and checking programmes for the personnel;
 - (v) the service provider shall establish formal interfaces with all the other contributors to the service provision to ensure compliance with these essential requirements;
 - (vi) the service provider shall establish and implement a contingency plan covering emergency and abnormal situations that may occur in relation to its services;
 - (vii) the service provider shall establish and maintain an accident and incident prevention and safety programme including an occurrence reporting and analysis programme, which shall be used by the management system in order to contribute to the aim of continuous improvement of safety; and

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- (viii) the service provider shall make arrangements to verify that the safety performance requirements of any system and constituent they operate are met at any time.
- (b) ATC service provision shall not be undertaken unless the following conditions are met:
- (i) the prevention of fatigue of personnel providing an ATC service shall be managed through a rostering system. Such a rostering system needs to address duty periods, duty time and adapted rest periods. Limitations established within the rostering system shall take into account relevant factors contributing to fatigue such as, in particular, sleep deprivation, disruption of circadian cycles, night hours, cumulative duty time for given periods of time and also the sharing of allocated tasks between personnel;
 - (ii) the prevention of stress of personnel providing an ATC service shall be managed through education and prevention programmes;
 - (iii) the ATC service provider shall have in place procedures to verify that the cognitive judgement of personnel providing ATC services is not impaired or their medical fitness insufficient;
 - (iv) the ATC service provider shall take into account operational and technical constraints as well as human factor principles in its planning and operations.
- (c) Communication, navigation and/or surveillance service provision shall not be undertaken unless the following condition is met:
- The service provider shall keep relevant airspace users and ATS units informed on a timely basis of the operational status (and changes thereof) of their services provided for ATS purposes.
- (d) Training organisations
- A training organisation providing training for personnel providing an ATC service shall meet the following requirements:
- (i) have all the means necessary for the scope of responsibilities associated with their activity. These means comprise, but are not limited to, the following: facilities, personnel, equipment, methodology, documentation of tasks, responsibilities and procedures, access to relevant data and record-keeping;
 - (ii) implement and maintain a management system relating to safety and the standard of training, and aim for continuous improvement of this system; and
 - (iii) establish arrangements with other relevant organisations, as necessary, to ensure continuing compliance with these essential requirements.



ANNEX VI

CORRELATION TABLE

Regulation (EC) No 1592/2002	This Regulation
Article 1	Article 1
Article 2(1)	Article 2(1)
Article 2(2)(a) to (e)	Article 2(2)(a) to (e)
—	Article 2(2)(f)
Article 2(3)	Article 2(3)
Article 3(a) to (g)	Article 3(a) to (g)
—	Article 3(h) to (l)
Article 4(1)(a) to (c)	Article 4(1)(a) to (c)
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Article 5(1)	Article 5(1)
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Article 5(2), first subparagraph, points (a) to (c)	Article 5(2), first subparagraph, points (a) to (c)
Article 5(2), first subparagraph, point (d)	Article 5(2), first subparagraph, points (d) and (e)
Article 5(2), first subparagraph, points (e) and (f)	Article 5(2), first subparagraph, points (f) and (g)
—	Article 5(3)
Article 5(3)	Article 5(4)
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Article 5(4), first subparagraph, points (a) to (d)	Article 5(5), first subparagraph, points (a) to (d)
Article 5(4), first subparagraph, point (e)(i) to (iii)	Article 5(5), first subparagraph, point(e)(i) to (iii)
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Article 5(4), first subparagraph, points (f) to (i)	Article 5(5), first subparagraph, points (f) to (i)
—	Article 5(5), first subparagraph, point (j)
Article 5(5), first subparagraph, introductory wording	Article 5(6), first subparagraph, introductory wording
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