



European Aviation Safety Agency  
Rulemaking Directorate – ATM/ANS Department

## **Report**

*Outcome of the Conference*

*"Towards Common Safety Rules –  
first phase ATM Opinions"*

*Cologne on 24 June 2010*



## ***Background***

Regulation (EC) No 216/2008 of the European Parliament and of the Council as amended by Regulation (EC) No 1108/2009 (hereinafter referred to as the Basic Regulation) requires the Commission to adopt a comprehensive framework of rules for the implementation of the essential requirements for Air Traffic Management (ATM) and Air Navigation Services (ANS). In accordance with Article 8b (7), the proposed Implementing Rules shall be developed using the relevant provisions of the Single European Sky (SES) Regulations. In particular, the proposed rules shall be based on the Commission Regulation (EC) No 2096/2005 laying down common requirements for the provision of air navigation services<sup>3</sup> and the Commission Regulation (EC) No 1315/2007 on safety oversight in air traffic management. Also, the Directive 2006/23/EC of the European Parliament and of the Council on a Community air traffic controller licence has been repealed, without prejudice to the certification or licensing of persons and organisations already carried out in accordance with that Directive. The Basic Regulation therefore empowers the Commission to adopt implementing rules for air traffic controller licensing and associated approvals, which shall reflect the state of the art, including best practices and scientific and technical progress, in the field of air traffic controller training. Furthermore, the Basic Regulation requires that implementing rules are initially developed on the basis of the provisions of Directive 2006/23/EC.

By letter of December 2009 the Commission - having heard the Single Sky Committee - requested that a 'fast-track' process would be applied for the accelerated transposition of existing SES rules and the ATCO Directive to introduce new regulations by transposing them with just necessary technical updates or changes.

The tight time schedule imposed by the 'fast-track' process did not allow the Agency to follow the regular phases of its Rulemaking procedure, which requires formal consultation of the stakeholders through public consultation. In order to accomplish the deadline established by the above mentioned decisions, no NPA was published on the Agency's website; neither was a Comment Response Document (CRD) developed or published. In this case, only an Opinion was directly issued to the European Commission. In order to ensure that all the relevant stakeholders are informed of the content of this Opinion, the Agency together with the European Commission held a dedicated workshop to explain thoroughly the content and the plans for the immediate second phase of EASA's rulemaking in the field of ATM/ANS. As already announced in Opinion No 02/2010 and in Opinion No 03/2010, the Agency is therefore providing in this report written conclusions on the results of the workshops and information sessions to the European Commission so that they can be properly taken into account by the Commission to make its legislative proposal.

On 28 May the Agency published the following Opinions:

- Opinion No 02/2010 of the European Aviation Safety Agency of 28 May 2010 for two new Commission Regulations on common requirements for the provision of air navigation services, as regards working methods and operating procedures and on safety oversight in air traffic management and air navigation services<sup>1</sup>

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<sup>1</sup> [http://easa.europa.eu/ws\\_prod/r/doc/opinions/Translations/2010/02/Opinion%2002-2010.pdf](http://easa.europa.eu/ws_prod/r/doc/opinions/Translations/2010/02/Opinion%2002-2010.pdf)



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- Opinion No 03/2010 of the European Aviation Safety Agency of 28 May 2010 for a new Commission Regulation on the licensing and medical certification of air traffic controllers<sup>2</sup>

On 24 June 2010 the Agency held the conference, "Towards Common Safety Rules – first phase ATM Opinions", in Cologne.

### **Objectives**

The objectives of the Conference were to allow stakeholders to become well informed of the Opinions, to facilitate the establishment of a common understanding and to collect their important feedback.

### **Participation**

The Conference was attended by more than 100 participants from the competent authorities of the Member States and other EASA States, Air Navigation Service Providers, professional organisations, airlines, the Commission, EUROCONTROL and others. Comments were given, orally and in writing, during the conference, and afterwards. This broad participation by a very experienced audience enabled the Conference to meet its objectives.

The following describes the main issues and conclusions that were reached in connection with the conference.

### **Institutional matters**

The Commission was asked about the roles of SES and EASA Committees with regard to the adoption of EASA's opinions on ATM/ANS. It confirmed that the EASA Committee is the relevant committee to discuss and adopt the regulation on the licensing and medical certification of air traffic controllers, whereas the SES Committee will deal with Opinion 02/2010 and its two draft regulations. It was also suggested that coordination between the two Committees should be organised by the Commission.

### **Future challenges and opportunities**

Presentations were given by the European Commission addressing:

- Safety & SES II
- SES latest developments including
  - the network manager
  - integrated rule structure
  - the SES pillar (of EUROCONTROL)

a) Collaboration

The conference put a strong emphasis on the future way of working and the general approach to the contents when developing rules applicable to ATM/ANS. The audience saw clear challenges for the future:

- for the Agency, or the EU in general, regarding the partnership with third countries that are not (yet) a member in the EASA safety regulatory system, and
- with regard to the cooperation between EUROCONTROL and the Agency.

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<sup>2</sup> [http://easa.europa.eu/ws\\_prod/r/doc/opinions/Translations/2010/03/Opinion%2003-2010.pdf](http://easa.europa.eu/ws_prod/r/doc/opinions/Translations/2010/03/Opinion%2003-2010.pdf)



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Initiatives to support the efforts on collaboration have already been started by the Commission and EASA. The Commission in its presentations showed this. Particularly the collaboration between the Agency and EURCONTROL has been laid down in an agreement and the work programme for 2010 onwards shows the elements of cooperation. The partnership with non-EU States has been drawn up in working arrangements.

### **b) Rulemaking Challenges**

As presented by the Commission, there will be an emphasis on the many rulemaking challenges in SES II, in particular the development of an Integrated Rulemaking Structure incorporating both rules developed under the EASA Basic Regulation in accordance with the Agency's rulemaking procedure and the rules developed by the European Commission under the SES Basic Regulations. Among the most important areas to be addressed are:

- the transposition of ICAO SARPs on ANS;
- the facilitation of Functional Airspace blocks;
- safety related provisions and safety oversight function of the Network Management Function;
- regulatory support to SESAR; it was proposed to align the EASA rulemaking programme with SESAR regulatory roadmap, where necessary.

These issues will be addressed by the Agency in the next phase of the on-going rulemaking tasks for the field of ATM/ANS that has started already in July of this year.

### **c) Management and procedures**

The need was highlighted by the audience to have good management when there are many different groups of experts working on many different subjects. The possibility and the need to start all the work at the same time were questioned. It was suggested to implement a phased approach. The Agency is very much aware of the managerial challenges that are posed to it, for example the Rulemaking Groups and related ad hoc groups will not start all at once.

It was also reinforced that there is a close link and even interdependency between ATM/ANS (more specifically ANSPs) and aerodrome rulemaking activities that the Agency has already started. This would need to be taken into account. The Agency confirmed its full agreement. A close coordination will be ensured between the different rulemaking tasks.

There was also a strong plea to restrict the applied 'fast-track' process only to the opinions mentioned above.

The importance of Acceptable Means of Compliance (AMC) and Guidance Material (GM) was highlighted and it was confirmed by the Agency that AMC and GM material can be developed as necessary, and even in relation to the first phase rules if specific needs would so necessitate.

### **d) Single rules structure**

Due to the various regulations applicable to different persons and organisations, some concerns were expressed about the difficulty to deal with the different websites and different sources of legislation. Stakeholders would appreciate the single rules structure is also used to simplify the means to find the regulations applicable to them. As shown during the Conference and mentioned here above, the Commission is developing a single integrated rule structure, which will facilitate the means for the stakeholder to obtain the provisions applicable to them.



## ***ATCO licensing***

### **a) Differences**

A separate and more detailed session was held with ATCO licensing issues. A concern was expressed by the audience about possible – theoretical – differences between Directive 2006/23/EC on a Community air traffic controller licence and the new draft Regulation. The Agency assured that the draft Regulation aims to follow as closely as possible the Directive taking of course into account the difference of the two legal instruments. Therefore the Agency concluded that compliance with the Directive implies also compliance with the new IR.

### **b) Transitional arrangements**

The need for a transition period regarding the introduction of the new version<sup>3</sup> of the Common Core Content requirements also is acknowledged by the Agency. A one year transition period from the date of entry into force of this new Regulation is considered to be sufficient in order to give time for the training organisations to accomplish the necessary updates of their training plans originating from the new version. After the expiry of this transition period all initial training courses should be built on the new requirements. The transitional arrangement is proposed to be added to article 31 of the Draft Regulation on licensing and medical certification of air traffic controllers

### **c) Medical requirements**

The Conference highlighted as well that medical certificates issued in consistency with the current version of the Eurocontrol Class 3 medical requirements and ICAO Annex I may provide for national limitations, which, according to the new version of the Eurocontrol Class 3 medical requirements will not anymore be possible. After having analysed the situation the Agency has come to the conclusion that the issue could be best solved within the new version of the Class 3 medical requirements itself via appropriate grandfathering provisions. This solution allows for medical certificates bearing a limitation that backdates to the establishment of the current Class 3 medical requirements being grandfathered. Once adopted, the Agency will also consider the publication of the new Eurocontrol Class 3 medical requirements as acceptable means of compliance to the implementing rule in question.

### **d) Military aspects**

The licensing of military air traffic controllers was also extensively discussed. At this moment the scope of the Basic Regulation does not allow for extending the scope of the ATCO IR directly to ATM/ANS personnel and organisations that are provided or made available by the military. Instead, and fully in line with the provisions of the Basic Regulation, Member States shall ensure that services provided or made available by military personnel to the public offer at least the equivalent level of safety.

The Agency acknowledges the need for further discussion between the European Commission, Member States and EASA assisted by Eurocontrol, not only in this case, but in order to maintain and to enhance the level of civil-military cooperation in all safety matters. The cooperation with the representatives of military aviation is structured on Commission level. E.g. military persons participate in the Single Sky Committee. EASA will enhance that cooperation. It is acknowledged that EUROCONTROL already has a system in place.

### **e) Scientific and technical progress**

The need for further development of the rules to take into account scientific and technical progress was also discussed (e.g. new ratings). This will be assessed in the second phase.

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<sup>3</sup> Edition 1.0, Edition date: 21.10.2008, Reference nr: EUROCONTROL-SPEC-0113.



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The Agency suggests the European Commission to take into account the issues highlighted above in their proposal for an implementing rule on the licensing and medical certification of air traffic controllers.

### ***ANSP requirements and oversight***

#### **a) ATSEPs**

The role of the Air Traffic Safety Electronics Personnel (ATSEPs) was emphasized and they are indeed recognised as important actors in the safety chain of ATM/ANS provision. The Agency confirmed that the Annex Vb of the amended Basic Regulation lays down an essential requirement for organisations to have in place suitably qualified and trained personnel in all safety related tasks. It was reinforced however that the introduction of common safety rules should not compromise the high level of safety already achieved by some Member States. As it was also highlighted by the European Commission, this is a priority for the Agency during the second phase.

#### **b) ANSPs' certification**

The status of current certificates and the question regarding 'safety' and so-called 'non-safety' requirements regarding certification was raised. The Agency reminded that the current certificates encompass all requirements (i.e. 'safety' and those provisions which do not have a 'direct impact on safety') regarding the functioning of the holder of the certificate, i.e. an ANSP. But there is a single certificate. As already was highlighted in the Opinion No 02/2010, the subject will be handled by the European Commission. They will make a proposal for the SSC's consideration regarding this issue. However, it is important to highlight that in the opinion of the Agency the splitting of the certification responsibilities for 'safety' and 'non-safety' aspects for one organisation between different competent authorities would lead to a double certification process or an unclear allocation of responsibilities, which will cause burden to the regulated organisations. As highlighted by the European Commission during the conference's presentation, the proposal on the overall rule structure and coordinate rulemaking programming should help to solve this issue from the regulatory point of view.

Another aspect brought up was the transition period proposed in the Opinion No 02/2010 for the Agency to take the role of competent authority regarding pan-European services as the certificates for some pan-European services (e.g. EGNOS) have now been issued by a single Member State. The Opinion No 02/2010 offers a period of 6 months for the Agency to prepare for a take-over of these responsibilities. This transition period was considered not to be enough by a State representative during the conference. The Agency confirmed its willingness to take this proposal into further consideration and it is open for suggestions coming from the comitology process.

Current certificates for Non EASA ANSPs were discussed, and also the Agency's role as a competent authority was asked to be specified and clarified further with regard to cross-border activities and territories enjoying special status\*. As already foreseen by the European Legislator (the European Parliament and the European Council) in Article 22a of the EASA Basic Regulation, service providers located outside the EU territory but providing services within the EU are required to hold a certificate issued by the Agency. The proposed implementing rules implement the way this should be done but it was highlighted that no guidance or policy was provided in the explanatory material neither in AMC/GM on how this could be implemented for

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\* for example: Jersey, which is formally not a part of the EU.



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these very special cases. Here too the transition period proposed in the implementing rules shall be 6 months, in the case of the certificates being already issued by an EU Member State.

This issue will also be arising in the context of cross-border FABs of the future. If an air navigation service provider provides services in the airspace of the territory to which the Treaty applies and it has its principal place of operation and, if any, its registered office located outside the territory subject to the provisions of the treaty, it has to apply for a certificate by the Agency.

In the process of transposition of the SES rules, the Agency, advised by the members of the rulemaking groups, has identified that further elaboration is needed in the provisions for the FAB or multi-State air navigation service provision, and for the agreement between the competent authorities which may include arrangements regarding recognition of supervisory tasks, or the division of responsibilities regarding supervisory tasks. This will be handled by the Agency with the support of the different group of experts during the 2<sup>nd</sup> phase.

### c) Peer Reviews

The role of Peer Reviews in the future was also raised. It was observed that peer reviews and standardisation inspections do not produce the same outcome. While peer reviews are considered to be a teach and learn exercise, the Standardisation inspections have a more directive kind of effect, as they require corrective actions, that, if not implemented would result in an infringement procedure by the European Commission. While Peer reviews do not have any legally binding follow up, the standardisation inspections do the latter being also enforceable under EU Law. The Agency will analyse this further together with the European Commission to try to propose ways forward for smooth transition and continuity.

### ***Place of Business vs. place of operation and the registered office.***

Some stakeholders have expressed their concern regarding the different definition of competent authorities used in the various proposals from the Agency and in particular regarding the term related to the determination of who is the competent authority for each organisation: principal place of business or principal place of operation.

The concept of place of **business** is used on many places in the EU aviation legislation. Both in economic and technical legislation the concept returns. Examples are Regulations (EC) No.1008/2008, No. 1702/2003, No. 2042/2003. It is used also in other EU legislation.

In NPA 09/2005 and the following CRD EASA proposes that:

"Principal place of business is intended to mean the organisation site from which the majority of the organisation's management personnel ..... directs, controls or co-ordinates its technical activities, ensuring that the organisation complies with the requirements ....."

SES Regulation (EC) No 550/2004 in article 7 and 8 introduces the concept of principle place of **operations**. This has been taken over by directive 2006/23/EC on a Community Air Traffic Controller License. Now it has been introduced in the Draft Regulations. The concept has not been defined and it has been used in different contexts if compared to articles 7 and 8 of Regulation (EC) No. 550/2004. This probably has influenced the different transfer of these concepts into the underlying new drafts. Actually the concept in its full understanding is: "principal place of operation and, if any, its registered office."

Because of the 'fast-track' process and due to the fact that some of the most relevant certification requirements are still being regulated at the level of the Regulation (EC) No



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550/2004 and because this was not amended with Regulation (EC) 1070/2009, the Agency did not have any other choice than to use these terms in the proposed regulations to define the competent authority. However, in the proposed article 4 (a) and (b) of the regulation on ATCO licensing and medical certification the concept has been transposed without the mention to the "registered office". The reason why it is different in both opinions is because the Agency has followed the advice of some of the experts of the rulemaking groups which suggested the Agency that the term "registered office" is not working for the definition of the competent authority for certification and safety oversight of training organisations. After analysing the issue based on the opinion of a wider audience, the Agency proposes to the European Commission to amend the draft regulation on ATCOs and to align the term with the SES Regulation (EC) No 550/2004 for consistency in the determination of the competent authority for ANSPs and training organisations.

However, analysis in detail of the proposal shows that:

- a. The word "and" in the concept (principal place of operation AND, if any, its registered office) means that both requirements are valid. This means that if one of them does not apply, than the rule will not apply.
- b. Elsewhere in EU Aviation legislation the "place of business" is applicable, which may be confusing.

In summary, the Agency's opinion would be to align all the proposals so that they are consistent in how the competent authorities are determined for the different aviation organisations. However, as there are many places in the EU aviation legislation where the concepts described are used but not aligned (e.g. Regulation (EC) No 550/2004 versus Regulation (EC) 1702/2004), it seems better to solve these issues in a coherent manner for all legislations. For some of them the Agency can not make this proposal because it implies the change of Regulations at the level of the European Parliament and the European Council (e.g. Regulation (EC) No 550/2004).