COMMENT RESPONSE DOCUMENT

to the consultation document on the applicability, basic principles and essential requirements for pilot licensing and air operations and for the regulation of third country aircraft operated by third country operators

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I. Introduction

1. When adopting the EASA Regulation[1] the Community legislator invited the Commission to make appropriate proposals to extend its scope to air operations and flight crew licensing. It also suggested that the opportunity be taken to reconsider the question of the regulation of third country aircraft operated by third country operators.
   To prepare for such extensions, the EASA Regulation (Article 12) defines the Agency's tasks as including also the regulation of persons and organisations involved in the operation of civil aircraft. It is therefore its role to develop and adopt the opinions on which the Commission shall base its own proposals, submitted to the Community legislator, in line with Article 14 of the EASA Regulation.

2. To fulfil these tasks the Agency published on 27 April 2004 its "Consultation Document on the applicability, basic principles and essential requirements for pilot proficiency and air operations and for the regulation of third country aircraft operated by third country operators". It explained therein the institutional framework in which the regulation of such activities could be undertaken and the reasons why a new structure for aviation regulations has to be envisaged. In that context it presented draft Essential Requirements (ERs) that could be used to define the safety objectives imposed by the Community legislator. The Agency also presented its views for the regulation of commercial air transport and the licensing of professional pilots, drawing from currently accepted practices transcribed in widely approved Joint Aviation Requirements. It finally asked the opinion of stakeholders on a number of points for which it needed inputs to define a sufficiently consensual policy on which it would build its opinion to the Commission for a legislative proposal.

3. At the end of the consultation period prescribed by the Agency's rulemaking procedure[2] the Agency had received 1,695 comments from 93 persons, national authorities, private companies or trade organisations. These comments were reviewed by Agency staff including persons not involved in the drafting of the consultation document so as to ensure fair treatment of all comments received.

4. As a result the Agency has produced this comment response document whose objective is to analyse the comments received and outline the policy the Agency envisages to use as a basis for its Opinion on the extension of the scope of the EASA Regulation to air operations, pilots licensing and third country aircraft operated by third country operators. It follows the plan of the consultation document to facilitate understanding and includes:

   - an inventory of all answers received to all questions raised in the consultation document and their analysis; and,

[1] Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing the European Aviation Safety Agency (OJ L 240 / 7.9.2002).
[2] Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of opinions, certification specifications and guidance material ("Rulemaking Procedure"), 27.6.2003.

- the detailed comment response documents related to the draft Essential Requirements for pilot licensing and air operations, including revised drafts.

5. The Agency's Opinion will be issued at least two months after the publication of this document so as to allow for any possible reaction from stakeholders. It is likely to take the form of draft new articles of the EASA Regulation defining the applicability and the basic principles, reflecting the policy for Community action described in this document. It will also include draft Essential Requirements to be attached as new Annexes to the EASA Regulation.

II. The safety objectives

6. As explained in the consultation document the act establishing Community competence in a given field shall specify the objectives to be achieved by Community actions. This requires that detailed provisions are drafted to specify the level of protection, in our case the level of civil aviation safety, required by the legislator. As quantified targets can hardly be defined, such requirements, called Essential Requirements, shall at least describe the measures that shall be implemented to mitigate all reasonably probable risks related to the regulated activity without prejudging implementations means. Their level of detail shall be sufficient to permit the necessary judicial control of executive acts or their direct implementation if some form of co-regulation or self-administration were decided. They must be proportionate to the safety objectives, which means that they must not go beyond what is strictly necessary to achieve the safety objective without creating unrelated restrictions. Last but not least they have to be consistent with the ICAO obligations of Member States.

7. It is in this context that the Agency asked stakeholders whether such Essential Requirements for Community action should be set by the transposition by reference of related ICAO Standards, as was done for Essential Requirements for environmental protection, or the establishment of dedicated Essential Requirements at Community level, as was done for the airworthiness of aeronautical products. The answers to this question can be summarised as follows:

   An overwhelming majority of commenters support the elaboration of dedicated Community Essential Requirements to serve as a basis for the safety regulation of air operations and pilots licensing. If the policy envisaged by the Agency were to exclude a variety of recreational activities using ultra-lights, simple aircraft there would be nearly no resistance to incorporating in the EASA Regulation such ERs provided they ensure full consistency with ICAO Standards and do not impose undue additional burden.

8. The Agency envisages therefore to include in its Opinion detailed Essential Requirements, which will become new Annexes to the EASA Regulation. As further explained in the following chapter of this document, the Agency will also suggest excluding a number of aircraft from the scope of Community competence.

9. Anticipating that it would receive such an answer the Agency had included draft Essential Requirements in its consultation document and asked the opinion of stakeholders on whether they constitute a good basis for the regulation of air operations and pilot licensing. The answers to this question can be summarised as follows:

   Apart from a few comments, which reflect a confusion between safety standards expressed in the form of Essential Requirements and their means of implementation, views on the adequacy of the proposed drafts for ERs are relatively balanced. While most comments indicate that they constitute a good basis for the regulation of commercial air operations and professional pilots, a strong minority consider that significant improvements have to be made to cover other types of operations and aircraft pilots involved in general and recreational aviation.

10. In view of this feedback the Agency wants to insist again on the fact that Essential Requirements should not be confused with implementation means. Their content shall strictly be limited to what is described in the introductory paragraph of this chapter. As far as implementation means are concerned, such as the need to develop implementing rules or the obligation to hold a licence or an approval, they will be specified in appropriate articles of the EASA Regulation.

11. The Agency also recognises the validity of many of the improvement suggestions received. It has therefore produced revised drafts of the Essential Requirements for pilot licensing and air operations together with detailed comment response documents which are attached to this document. It considers that they are now adequate to cover all types of activities which would be within the scope of the revised EASA Regulation. It had also verified with the ICAO obligations of Member States that they do not impose additional undue requirements. Last they constitute an adequate basis for the adoption of implementing rules transposing currently approved JAA material such as JAR-OPS, JAR-FCL, JAR-STD, JAR-26 and JAR-MMEL/MEL so as to avoid disruption and transitional bureaucratic burden. The Agency intends to incorporate such revised drafts in its Opinion.

III. The scope of common action

12. As a matter of principle, the scope of common action shall be specified in the extended EASA Regulation, which shall clearly state which products, services, persons or organisations are affected. As a consequence they will be subject to the requirements established by this Regulation and, as appropriate, to rules taken for its implementation.

13. Conversely, any product, service, person or organisation not covered by Community competence will remain under the full responsibility of Member States which shall take appropriate measures to provide for the level of protection expected by their citizens. Although these products, services, persons or organisations will benefit from the Treaty provisions on free movement, this

may not provide for all the advantages linked with the automatic recognition provisions of the EASA Regulation. This may however be acceptable if the related activities mainly are of a local or regional nature and are not adversely affected by possible restrictions. Such a sharing of competence between the Community and its Member States is already recognised by the EASA Regulation whose Annex II describes the products which remain under national competence. There are no indications until now that such products were unduly affected by this situation.

a. Third country aircraft

14. As stated in the consultation document, it is the view of the Agency that commercial operations in the Community by third country operators shall be subject to Community legislation. This is needed to protect European passengers and citizens on the ground. The Community shall therefore supervise such commercial operations while respecting international treaties, in particular the relevant ICAO obligations. It has to be recognised that by adopting the Directive of the European Parliament and of the Council on the safety of third country aircraft using Community airports[3] the Community already established its competence to exercise a certain form of supervision of these activities. As described hereunder this does not however provide the necessary tools to ensure that third country aircraft flying in European airspace respect the applicable operational specifications. It is therefore the intention of the Agency to suggest further action in the chapter related to the implementation means.

15. Concerning non-commercial activities of third country aircraft operated by third country operators, the Agency raised the question of whether they should be subject to Community legislation, taking into account, in particular, the need to supervise third country aircraft more or less permanently based in the territory of Member States. The answers to this question can be summarised as follows:

    The majority of comments are not in favour of establishing Community competence to regulate non-commercial activities of third country aircraft operated by third country operators. There is however a majority of comments recognising the need to address the case of third country aircraft more or less permanently based in the territory of Member States. A policy based on the principle of free movement established by the Chicago Convention, supported by appropriate surveillance and complemented by an obligation for third country aircraft based in the territory of Member States to be subject to corresponding Community rule, is likely to be strongly supported.

16. When considering these comments the Agency recognises that it would be disproportionate to establish Community competence to only address foreign aircraft based in the territory of Member States. This probably could be addressed by adapting the text of Article 4(1)(c) of the EASA Regulation so as to

[3] Directive (EC) No 36/2004 of the European Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports (OJ L 143 / 30.4.2004).

cover aircraft registered in a third country used in the territory of Member States by a person residing in a Member State.
By doing so nevertheless we do not provide ourselves with the necessary tools to enforce on third country aircraft, the provisions needed to ensure the safety of flights in European airspace when such safety requires specific equipment to be available on board, appropriate qualification to be held by the crew or specific procedures to be followed. At a time when the Community has established its competence to implement the European Single Sky, it would hardly be understandable if it did not put in place the tools it needs to enforce the related operational specifications.

17. As a consequence the Agency envisages suggesting that third country aircraft, more or less permanently based in the territory of Member States, be subject to the same rules as EU registered aircraft through an appropriate adjustment of Article 4 of the EASA Regulation. It also considers it necessary to set up the legal basis to impose on third country aircraft operated by third country operators operational requirements related to the use of the European airspace. It must be clear however that such powers should be limited only to this objective and should not aim at regulating at Community level subjects already covered by ICAO Standards.

b. Pilot licensing

18. Member States have already accepted within the JAA context, that common requirements (JAR-FCL) apply to all pilots, including instructors and examiners, whether they fly for private or professional purposes. Moreover, private licences are an integral part of the system and can be used as a step towards professional qualifications. As a consequence, the Agency's initial view was that there may be no reason to restrict the scope of Community competence to only some categories of pilots. Nevertheless, the Agency was aware of the concerns of those who found JAR-FCL too burdensome and not well adapted to the needs of some activities, particularly sport and recreational flying.

19. The consultation document addressed this issue by seeking the stakeholder's opinion on whether all categories of pilots should be subject to Community legislation and, if not, which categories should be excluded. From the comments received the Agency drew the following analysis:

A minority of commenters fully agrees with the principle that all categories of pilots should be subject to Community legislation. Similarly, only a few fully disagree with this principle. The remainder, making up the majority, supports Community action for all pilots provided that exclusions are made for certain categories of aircraft and that requirements are made proportionate to the type of activity.
Excluded aircraft could be those covered by Annex II of the EASA Regulation, subject to possible adjustments to take into account the various suggestions made. Furthermore, some of the comments ask that pilots of sport and recreational aircraft should be covered by a licence similar to the UK National

PPL concept. A policy providing a lighter regulatory touch for such pilots would have even stronger support.

20. The Agency envisages therefore to include in its Opinion that all categories of pilots should be included in the scope of Community competence, with the exception of pilots of some categories of aircraft. This point is further examined in section d. below. In this context the Agency also recognises that the current JAR-FCL PPL may be too demanding for flying only simple aircraft in a simple air traffic environment and considers it appropriate to create a new private pilot licence for these types of activities.

21. As a consequence the Agency intends to suggest in its opinion that not only the current JAR-FCL system continue to be used for existing categories of pilots but, that in addition, a PPL with restricted privileges be introduced as an alternative to the existing JAR-FCL PPL. The holders of such a licence would not be authorised to fly complex motor-powered aircraft or to engage in commercial aviation; access to certain high density traffic areas could also be restricted. Credits would be given to holders of a restricted PPL when applying for a full licence. Such a licence shall provide nevertheless for free movement in the territory covered by the Treaty. Bearing in mind the size of the European Community and the association agreements being concluded with the EFTA States the Agency does not consider that full compliance with ICAO Annex I is a requirement for this new licence. Of course as explained in the introduction of this chapter, such licence would not be required to fly aircraft excluded from the scope of Community competence.

c. Air operations

22. There is a wide consensus on the need to include the operation of aircraft used for commercial air transport activities within the scope of Community competence. The Agency indicated in its consultation document that it thought this point as already agreed. It also considered that in view of the objective of the EASA Regulation to facilitate the free movement of services, it would be legitimate to cover also other commercial activities by Community legislation. It therefore intends to suggest in its Opinion that all commercial operations be covered by Community legislation except for those executed with certain types of aircraft. This point is discussed in section d. of this chapter.

23. As far as non-commercial operations are concerned, several positions could be defended. One could argue that the operation of aircraft not engaged in commercial activities should be excluded from Community legislation. But one could also include aircraft not engaged in commercial activities, but with a common flexible regulatory framework acceptable to the light aviation community, if it is felt that current restrictions to the free movement of excluded aircraft would be further aggravated. Finally one could prefer a total exclusion of corporate and recreational activities executed with aircraft under a certain threshold to be defined. These interrogations were put to stakeholders.

24. The stakeholders' position concerning these interrogations is summarised as follows:

    Two main groups can be identified. Those who favour all non-commercial activities being subject to Community legislation and those that wish to exclude recreational activities or the non-commercial operation of aircraft of certain types or below a certain threshold, to be defined. Excluded aircraft could be those covered by Annex II of the EASA Regulation, subject to possible adjustments to take into account the various suggestions made.
    A clear majority of the commenters is therefore in favour of non-commercial operations being subject to EC legislation provided an appropriate solution is found to exclude the activities of certain aircraft.

25. On the basis of this clearly expressed stakeholder preference, the Agency intends to suggest in its Opinion that non-commercial operation be covered by Community legislation, subject to the exclusion of certain types of aircraft. This point is discussed in section d. below. As a consequence, care has been taken to ensure that the Essential Requirements presented are such that their level of detail is sufficient to cover all types of operations. They will allow on the one side, implementing rules such as JAR-OPS to be introduced for commercial activities and the operation of complex motor-powered aircraft as described later in this document. On the other side, they may be directly applicable for the rest of non-commercial activities without prejudice to the need to address the issue of operational specifications as explained in paragraph 70.

d. Excluded aircraft / activities

26. It is clear from the development of sections b. and c. above, that there is a need to exclude certain aircraft or activities from the scope of Community legislation. In their answers stakeholders have made many suggestions that the Agency has carefully analysed. Suggestions are the following:

    - Exclude certain types of aircraft. The following are specifically suggested: amateur built aircraft, ultra-lights and micro-lights, para-glider, hang glider, model aircraft, ex-military aircraft, autogyros, powered parachutes, balloons and skydivers.
    - Exclude aircraft under a specified maximum take-off mass and suggest the masses ranging from 150kg to 900kg.
    - Exclude aircraft with a maximum capacity of four seats.
    - Exclude aircraft engaged in non-commercial or recreational activities with or without limits on maximum take-off mass.
    - Exclude aircraft already excluded under Annex II of the EASA Regulation.

27. The Agency has already recognised in its consultation document that, if any exclusion were to be considered, it would be rational to envisage using Annex II so as to avoid inconsistencies in the handling of airworthiness, operations and crew licensing aspects for the same aircraft.

28. In the light of various comments, the Agency has envisaged improving the text of Annex II to integrate some of the suggestions made. It first considered increasing some maximum take-off masses but reached the conclusion that the balance already achieved in the Annex was correct as it leaves in Annex II aircraft that are the less likely to be significantly affected by such exclusion as they usually operate locally.. It also examined the possibility to add to the list certain types of activities but reached the conclusion that this would not be feasible as the same aircraft engaged in different types of activities would be subject to different regulations. It recognises that having an excluded aircraft engaged in commercial activities and subject to different national regulations may lead to an un-level playing field in the common market. It thinks however that it would be disproportionate to include in the scope of community competence all aircraft potentially involved in commercial operations to address this limited issue.

29. When doing this review, the Agency also considered some of the frequently asked questions about the interpretation of this Annex:

    - One of these is about the interpretation of the provisions of this Annex related to aircraft for which a type-certificate or a certificate of airworthiness has been issued on the basis of the EASA regulation and its implementing rules. It is clear for the Agency that it would be inconsistent to include into the scope of community competence some of the aircraft listed in this Annex only because some Member States have issued type-certificate or a certificate of airworthiness to them before 28 September 2003. It therefore intends suggesting the deletion of this provision.
    - Another is about the definition of micro-light aircraft, as specified in point (e) of Annex II, which is limited, in some linguistic versions, to aeroplanes while in some other languages it includes other types of aircraft. The Agency considers that there is no reason to limit the scope of the exclusion to only aeroplanes and intends to suggest its extension to all types of aircraft.

30. As a consequence of this analysis the Agency considers that the current Annex is likely to be the best possible compromise, subject to the slight adjustments presented above.

e. Other regulated activities and professions

31. As already stressed in the introduction of this chapter it is essential that the Community act establishing Community powers in a given field (EASA Regulation) specify clearly which products, persons or organisations are affected by such powers. Doing so by an implementing rule would probably not be an acceptable way to proceed because such rules would lack the necessary legal basis. Hence, the consultation document proposed to clarify some pending questions such as the status of fractional ownership, unmanned air vehicles, flight dispatchers and flight engineers. These issues are closely linked to operations and licensing and are diversely addressed throughout the European Union.

Fractional ownership

32. In its consultation document the Agency recognised that fractional ownership operations present many of the characteristics of commercial air transport, but underlined that passengers of aircraft used under fractional ownership contracts define themselves the conditions of their transportation and employ their operator through a management contract. It therefore suggested that such activities be assimilated to those of corporate aviation. Following this statement it asked stakeholders whether fractional ownership operations should be subject to Community legislation. The answers to this question can be summarised as follows:

    There is a very clear consensus for fractional ownership operations to be subject to EC legislation. The general aviation community strongly feels that shared ownership of recreational aircraft should not be assimilated to fractional ownership. This leads to the need to clearly differentiate fractional ownership from shared ownership.

33. When considering these comments the Agency intends to suggest in its Opinion that fractional ownership should be covered by Community legislation. In that context it thinks that fractional ownership operations should be treated as non-commercial operations. To do so a definition of commercial operations that excludes fractional ownership should be introduced in the EASA Regulation. On the basis of its initial comments it considers that such definition should be as follows:

    A remunerated aeronautical activity covered by a contract between an operator and a customer, where the customer is not, directly or indirectly, an owner of the aircraft used for the purpose of this contract and the operator is not, directly or indirectly, an employee of the customer.

34. As far as differentiation between fractional ownership and shared ownership is concerned the Agency recognises the need to establish such a differentiation if implementation means were to be different for aircraft fractionally owned and those whose ownership was shared. As can be seen however in paragraph 69 the Agency considers that implementation means should be linked to the complexity of the aircraft rather than the type of activity or the nature of ownership. As a consequence differentiation would result from the type of aircraft used. Any non-commercial operation of a complex aircraft, independently of the form of its ownership would be subject to a single set of rules. The same would apply for non-commercial operations of simple aircraft.

Unmanned Air Vehicles (UAV)

35. In its consultation document the Agency reminded that currently UAVs are subject to Community airworthiness and environmental rules when their mass is 150kg or more. As their activity presents the same characteristics as those of other aircraft, it suggested that the same requirements should be applied to such aircraft as other aircraft for the same activities. In this context it enquired whether UAV operations should be subject to Community legislation. The answers to this question can be summarised as follows:

There is a very clear opinion for UAV operations to be subject to EC legislation with a reservation for UAVs covered by Annex II to the EASA Regulation.

36. When considering these comments the Agency intends to suggest in its Opinion that the current situation be maintained so that only the airworthiness and operations of UAVs above 150kg be subject to Community legislation. It also thinks that they should be subject to the same implementation means as similar types of activities with other aircraft subject to appropriate adjustments.

37. As the logic underpinning Annex II is to exclude aircraft whose operations are likely to be purely local, the Agency recognises that the criterion of 150kg is difficult to justify. If UAVs are operated only locally, they should all be excluded. If most of them are likely to cross intra-Community borders they should all be included except for those which could be assimilated to model aircraft. The Agency therefore intends to examine this issue in the light of future developments.

Cabin crew

38. In its consultation document the Agency underlined that it is currently widely admitted that cabin crew shall be subject to safety requirements set at Community level so as to ensure the necessary training, appropriate medical fitness and sufficient current practice. It intends therefore to suggest in its Opinion that this be continued.

Flight dispatchers

39. In its consultation document the Agency asked the opinion of stakeholders on whether flight dispatcher should be subject to Community legislation. The answers to this question can be summarised as follows:

    A slight majority of the stakeholders seem to be in favour of excluding flight dispatchers from EC legislation. However, comparing these results with the ones obtained on question 15, there seems to have been some confusion on the part of the stakeholders when answering this question. In fact, the majority of the stakeholders agreed, when answering to question 15, that common rules related to the qualifications necessary for the exercise of the function of flight dispatch were needed, although there was no need for a licence.
    Since common requirements can only be achieved through Community legislation, it seems safe to assume that reasonable consensus could be reached if Community intervention is kept to a minimum, addressing only the qualifications needed to exercise the functions, rather than requiring flight dispatchers to hold a licence.

40. When considering these comments the Agency intends to suggest in its Opinion that flight dispatchers not be regulated as a profession but that the function remain subject to Community legislation as is currently provided for in the

Commission proposal[4] to establish common requirements for commercial transportation by aeroplanes.

Flight engineers

41. In its consultation document the Agency suggested that in view of the progressive vanishing of their function it might not be worth envisaging regulating flight engineers at Community level and asked the opinion of stakeholders on this point. The answers to this question can be summarised as follows:

    A slight majority of the stakeholders believes that flight engineers should be subject to Community legislation.

42. In view of these comments the Agency will have no objection to suggest in its Opinion that flight engineers be regulated at Community level. As however it did not receive any suggestion for the related Essential Requirements as it has invited in its question about Essential Requirements, the topic requires further work which the Agency intends to conduct in due time.

IV. The implementation means

43. The extended EASA Regulation shall specify how the essential requirements are to be implemented. This includes specifying whether issuing an official certificate, showing compliance to a third party or self-declaration shall be used to demonstrate compliance. It also requires that details be provided on how such demonstration of compliance shall be made. If such details are too complex or lengthy, executive powers shall be given to the Commission, Member States or industry to develop respectively the necessary implementing rules, national implementation measures or industry standards. When appropriate, the bodies in charge with the issue of the certificate or to which compliance is to be shown shall be identified. They can be the Agency itself, national administrations or appropriately accredited entities, whereas official certificates can only be issued by a governmental authority. In the case of accredited entities, criteria for accreditation need to be specified and accreditating authorities nominated.

44. There is a wide range of possibilities to implement the common safety objectives. The choice among them is a political decision, which depends on the public sensitivity to the subject as well as traditions and culture in the concerned sector. Such choice shall also take into account the level of uniformity that is sought for a certain type of activity. Uniformity is likely to be better achieved through common implementing rules adopted by the Commission, while more flexibility could probably be achieved by using other implementation means. Last but not least the choice shall take into account the international framework so as not to unduly affect the movement of the European citizens and companies in the rest of the world.

[4] COM (2000) 121 final of 24.03.2000-OJ C 311 E dated 31.10.2000, amended by COM (2004) final of 10.2.2004.

a. Third country aircraft

45. In its consultation document the Agency already recognised that implementation means for the regulation of third country aircraft operated by third country operators shall take into account the existing ICAO framework. It also acknowledged that common rules have already been established by the Directive of the European Parliament and of the Council on the safety of third country aircraft using Community airports, to verify that such aircraft comply with the applicable ICAO Standards.

46. The Agency however draws attention to the fact that there was no common regime to address the airworthiness of non ICAO compliant aircraft and on the possible need to go beyond the requirements of the SAFA Directive to better oversee the airworthiness of third country aircraft operated by third country operators. As a consequence it asked whether the Commission should be given the power to adopt implementing rules in this field and whether the Agency should play a role in the verification of the airworthiness of non ICAO compliant aircraft. The answers to these questions can be summarised as follows:

    There is a strong majority in favour of giving executive powers to the Commission and the Agency to regulate the airworthiness of third country aircraft operated by third country operators provided the related implementing rules respect the ICAO obligations of Member States and their scope is consistent with that of rules applicable to EU registered aircraft.

47. In view of this feedback the Agency envisages to suggest in its Opinion that the provisions of the SAFA Directive be transferred to a Commission implementing rule, that the Agency be required to analyse the data collected and draw conclusions on the safety of third country aircraft, and also that the Agency be given the power to verify the airworthiness of non ICAO compliant aircraft and to issue permits to fly as appropriate.

48. As far as third country aircraft operations are concerned, the Agency also drew the attention to the fact that there was a need to find appropriate tools to impose to third country operators the same conditions as those required of Community operators to fulfil for the same operations. Taking into account the need to provide for uniformity and a one stop shop approval, the Agency asked whether the Commission should be given the power to adopt implementing rules in this field and whether the Agency should be given the power to issue appropriate approvals to third country operators. The answers to these questions can be summarised as follows:

    There is a strong majority in favour of giving executive powers to the Commission and the Agency to regulate the operations of third country aircraft operated by third country operators flying in the territory covered by the EC Treaty provided the related implementing rules respect the ICAO obligations of Member States.

49. In the light of these comments the Agency intends to suggest in its Opinion that the Commission be given the power to adopt implementing rules for the

regulation of third country aircraft operations in the territory covered by the EC Treaty. Such rules could be comparable to those contained in the American Federal Aviation Regulation called Part-129. To ensure consistency with ICAO system they should be limited to the verification of compliance with ICAO Standards and only prescribe operational requirements in fields not covered by such Standards, as described in paragraph 17 of this document. As far as third country commercial operators are concerned the Agency considers that the verification of compliance with these rules should result in the issuing of a certificate. As already agreed in the context of the EASA Regulation the issuing of such certificates to foreign organisations shall be performed by the Agency. Of course, such certification could be facilitated through the conclusion of bilateral agreements with third countries so as to avoid multiple certifications and new burden on the industry. As far as other third country operators are concerned implementing rules shall be directly applicable without the need for any certification requirement.

b. Pilot licensing

50. The Agency's initial view was that all pilots involved in commercial operations and instructors should hold a licence and appropriate ratings attesting compliance with the essential requirements. Consequently, the extended EASA Regulation shall specify that no one may fly an aircraft involved in commercial operations without a licence and provide for the legal basis of any associated privileges. The Agency also considered that the training of such pilots should be performed by approved organisations and that the flight synthetic training devices used for such training should be certified. As already accepted by Member States under the JAA system, the Agency considered it appropriate to establish common rules for issuing and maintaining such licences, approvals and certificates. Such rules shall be set by the Commission through a comitology process. Their implementation shall be carried out at national level except for third country organisations and third country flight synthetic training devices, which shall be under the supervision of the Agency, without prejudice to possible existing bilateral arrangements with third countries. The Agency envisages therefore to suggest in its Opinion that the above described implementation means be enshrined in the EASA Regulation.

51. As far as non-commercial activities are concerned the Agency considered that stakeholders should be consulted on whether pilots, particularly pilots of corporate or heavy motor-powered aircraft, should be required to hold a licence, and if so whether the requirements for these licences should be established at Community level. The Agency also asked stakeholders to offer definitions of heavy motor-powered aircraft. From the comments received the Agency drew the following analysis:

An overwhelming majority of the stakeholders agrees that pilots of corporate and heavy motor-powered aircraft should hold an official licence. The various suggestions presented by the stakeholders for the definition of heavy motor-powered aircraft indicate that it should be based on multiple criteria, taking into account the characteristics of the aircraft and the type of activity. It is also worth

indicating that several stakeholders disagree with the creation of a formal heavy motor-powered aircraft category.
An overwhelming majority of the stakeholders agrees that powers should be given to the Commission to adopt the implementing rules for the issuing of licences to pilots of corporate or heavy motor-powered aircraft.

52. Taking this into account, the Agency intents to suggest in its Opinion that all pilots of corporate or heavy motor-powered aircraft be required to hold a licence included in the current JAR-FCL system.

53. In spite of the fact that some stakeholders objected to the creation of a new category of aircraft (heavy motor-powered aircraft) the Agency concluded that this new category would be the best solution to provide a distinction between the need for a full licence, based on JAR-FCL, and the envisaged new restricted PPL. This point is further discussed in section d. below.

54. The Agency also realized that for other activities, particularly recreational and air sport with light aircraft, the issuing of a licence may not be necessary. Instead, compliance with the Essential Requirements could be demonstrated to an accredited body, such as a federation or a qualified school or instructor. Implementing rules for such showing of compliance could be adopted either by the Commission or by Member States themselves. In either case, a vital objective would be to ensure the free movement of related aircraft and their pilots.

55. The Agency asked the stakeholders whether or not pilots of light recreational or sport aircraft should hold a licence and, if not, to offer a definition of that type of aircraft. The Agency also sought opinions as to whether such pilots should show compliance with essential requirements to qualified bodies and, finally, whether powers should be given to the Commission to adopt implementing rules for the accreditation of such qualified bodies by national aviation authorities. From the comments received the Agency drew the following analysis:

The vast majority of the stakeholders considers that pilots of recreational or sport aircraft should hold a licence, and that they should show compliance with the essential requirements to qualified bodies.
The majority also agrees that powers should be given to the Commission to adopt implementing rules for the accreditation of such qualified bodies by national aviation authorities. Some suggest that the Agency should also be entitled to accredit such bodies.
Several stakeholders (mostly national aviation authorities) stated that national aviation authorities should be the only qualified bodies. However, it was also emphasized that at least two Member States have many years of successful experience using qualified bodies.

56. Taking into account the stated preference of stakeholders, the Agency intends to suggest in its Opinion that pilots of recreational or sport aircraft hold a licence. Such a licence can be a restricted PPL as already explained in paragraph 21 above or a FCL licence, if such pilots so wish. It also intends to follow the stakeholders preference for this licence to be issued by qualified bodies. The Agency indeed thinks that Member States should not play this role as it is legitimate to implement the principles developed in the Commission's White

Paper on European Governance[5] and give a chance to this category of pilots to administer themselves as they seem to wish. As a consequence such a licence will not be an official one, but based on Community requirements it will provide fully for free movement in the Community.

57. The Agency intends also to suggest in its Opinion that criteria for the accreditation of qualified bodies be specified in Commission's implementing rules and that the competent authorities for such an accreditation shall be the Agency itself as well as Member States' national aviation authorities so that applicants have the choice. The Agency nevertheless recognizes that it may not be possible to find in all Member States appropriately qualified bodies to play this role in the short term. Therefore a transitional period may need to be envisaged during which national administrations would issue the restricted PPL.

58. Pilot licensing also requires that compliance with medical fitness criteria is demonstrated. The Agency's initial position concurred with the general consensus that, as far as pilots involved in commercial operations are concerned, such demonstration should be based on common implementing rules and that medical centres and aeromedical examiners involved in the related assessments should be approved. It therefore intends to suggest doing so in its Opinion.

59. For other categories of pilots the Agency considered that it may be possible to introduce flexibility through less stringent common rules. As far as pilots of light recreational or sport aircraft are concerned, the Agency's view was that evidence of compliance with the essential requirements could be issued directly by accredited aeromedical examiners. Accordingly, the Agency sought the opinion of stakeholders as to whether common implementing rules on medical fitness should be established by the Commission for pilots of corporate or heavy motor-powered aircraft. The same question was asked regarding pilots of light recreational or sport aircraft. Finally, the Agency wanted to know whether powers should be given to the Commission to adopt implementing rules for the accreditation of aeromedical examiners by national aviation authorities. From the comments received the Agency drew the following analysis:

    A vast majority of stakeholders agrees that powers should be given to the Commission to adopt implementing rules on medical fitness of pilots of corporate or heavy motor-powered aircraft.
    There is a slight majority of comments in favour of Community implementing rules on medical fitness for pilots of light recreational or sport aircraft, provided they are proportionate to the risk associated to the type of activity.
    A significant majority of stakeholders agrees that powers should be given to the Commission to adopt implementing rules for the accreditation of aero-medical examiners by national aviation authorities.

60. This analysis confirms the Agency's initial view on this subject. It therefore intends to suggest that the Commission be given powers to adopt implementing rules on medical fitness. Such rules shall be based on the current JAR-FCL 3 medical standards and be applicable to all categories of pilots, including pilots of

[5] COM (2001) 428 final of 25.07.2001.

corporate or heavy motor-powered aircraft, except holders of a restricted PPL for whom less stringent rules shall be developed.

61. Further, the Agency envisages that implementing rules for the accreditation of aero-medical examiners by national aviation authorities shall be adopted at Community level. When doing so the Agency does not exclude family practitioners from being considered as suitable examiners for the restricted PPL.

c. Air operations

62. As explained here above the implementation of Essential Requirements can be ensured through several different means ranging from direct certification by a competent authority to co-regulation and self administration by the industry itself. This would be dependant on the type of activity. Even if the solution seems clear for commercial air transport, the issue needs to be addressed for other activities.

63. At present, there seems to be a consensus on the need to impose a certification process to all commercial air transport operators, as already reflected by the wide implementation of JAR-OPS 1 and 3 at Member State level. The Agency therefore intends in its Opinion to suggest to continue doing so on the basis of existing JAA material and the Commission proposal to establish common requirements for commercial air transportation by aeroplanes. This will allow Member States to be in compliance with ICAO SARPs and documentation. The certificates themselves are already issued at national level, and this shall normally continue as this is the current practice for the implementation of Community law. Nonetheless, executive powers should be given to the Agency to mandate operational directives as necessary to ensure the safety of operations. Flight time limitation schemes may also require that the Agency be given the power to approve itself deviations from standard provisions as currently envisaged in the framework of the negotiations on the above mentioned Commission proposal.

64. For commercial activities other than commercial air transport, the Agency envisaged, nevertheless, in its consultation document to add flexibility by providing for some form of self-regulation. In this context it was suggested, that the industry could develop itself standards for the implementation of Essential Requirements and that qualified entities could assess conformity with such industry rules. This would have lead to the need to define criteria for the accreditation of such qualified entities and to designate an accrediting authority. Member States or the Agency could have been in charge with such accreditation. The stakeholders´ position concerning the above suggestion is summarised as follows:

Most commenters consider that there should be implementing rules for commercial operations other than air transport. As a consequence they do not agree with the approach towards self-administration suggested in the consultation document. Conversely they see no need in giving the Commission powers to adopt implementing rules for the accreditation of qualified entities.

65. As a consequence, for all commercial activities other than commercial air transport, the Agency intends to suggest in its Opinion that the Commission be empowered to adopt implementing rules mandating a certification process based on JAR-OPS 0 and 4. The certificates themselves shall be issued at national level except for foreign operators which should be subject to the Agency's oversight.

66. For corporate aviation, the same approach as for commercial activities other than commercial air transport was suggested and the same questions were raised. As for general aviation and recreational activities, a direct application of the essential requirements, without the need for implementation means was suggested. Member States would verify that they are actually respected. This would not prevent federations from developing best practices and private operators to voluntarily applying them, within the framework of incentives aimed at improving the safety culture in this domain.

67. The stakeholders´ position concerning the above suggestions is summarised as follows:

    An overwhelming majority of commenters agree that corporate aviation operations should not be subject to the form of self regulation suggested in the consultation document. They therefore do not agree that power should be given to the Commission to adopt implementing rules for the accreditation of qualified entities by national aviation authorities to oversee corporate aviation operations. This also implies that this type of activity should be subject to appropriate implementing rules based on existing JAA material.
    Most stakeholders agree that general aviation and recreational activities should be directly subject to the Essential Requirements without the need for implementing rules. Nevertheless, most of the NAA stakeholders prefer general aviation and recreational activities to be subject to implementing rules.
    Most stakeholders recommend the use of the existing ICAO definition of general aviation.

68. As a consequence, for corporate aviation, the Agency intends to suggest that the Commission be empowered to adopt implementing rules based on JAR-OPS 0 and 2. However, the operation of non complex aircraft for corporate use is not different from the use of the same aircraft for other general aviation activities. The Agency therefore thinks that the criteria for the use of more stringent rules should specifically apply for the operation of complex motor-powered aircraft. This point is further developed in section d. below.

69. In the case of other general aviation activities, even though stakeholders agree that these activities should be directly subject to the Essential Requirements, the Agency reached the view that this may not be totally appropriate when considering the need to provide an appropriate legal basis for the implementation of the European Single Sky and of operational requirements related to certain types of activities. Firstly, for simple aircraft it is common practice to address certain specific issues, such as those pertaining to the use of airspace or emergency equipment, in operational implementing rules. It is therefore necessary to envisage the adoption of implementing rules to mandate at least such requirements. Secondly, complex motor-powered aircraft share the same

operating environment as aircraft used for commercial air transport and corporate aviation thus possibly posing a risk to paying passengers. Furthermore, their complexity and size necessitate logistics that are closer to those of commercial air transport rather than those of non complex aircraft. Hence, in order to mitigate the risk and to adapt the operation to the logistics involved, a comparable set of implementing rules need to be adopted.

70. Consequently, after analysis, the Agency intends to suggest in its Opinion that the operation of general aviation aircraft be regulated through implementing rules adapted to the complexity of the aircraft rather than on the criteria of the type of activity. For non complex aircraft, light implementing rules need to be adopted by the Commission to mandate operational specifications related to the use of airspace or special operations that can be harmonised at Community level. This should be without prejudice to the possibility for Member States to mandate on their side operational specifications of a purely regional nature, subject to an appropriate Community control. The above mentioned implementing rules shall be directly applicable and compliance verified by Member Sates without the need for certification nor declaration.

71. For complex motor-powered aircraft more comprehensive rules are needed. They shall be adopted by the Commission on the basis of JAR-OPS 0 and 2 adapted as appropriate to ensure consistency with the Essential Requirements and the hierarchy of text established by the EASA Regulation. Concerning the verification of compliance the Agency does not consider necessary to envisage a certification process and thinks that the declaration envisaged in JAR-OPS 2 is sufficient.

d. Complex motor-powered aircraft

72. The development of sections b. and c. above shows that there is a need to define a threshold between two categories of aircraft engaged in non-commercial activities that requires two different types of implementation means.

73. The Agency acknowledges that the suggestion made in the consultation document to create a category of heavy motor-powered aircraft was opposed by several commenters. To answer these concerns it first wishes to restate that such a category is already defined in the Community system in Part-M that recognises the higher maintenance requirements needed to reach the same standards for larger and more complex aircraft. It also considers that in the light of the comments, there is no other means to satisfy in a simple way the majority of stakeholders who ask for a special regime adapted to the non-commercial operation of light and simple aircraft.

74. The Agency therefore undertook to examine the various suggestions made to establish such a threshold. These suggestions propose:

- a maximum take-off mass ranging from 450kg to 15,000kg,
- an additional criteria on seating configuration ranging from 3 to 10 passenger seats,
- turbine powered and pressurised aircraft,

- aircraft involved in commercial air transport, and
- any aircraft above a certain maximum take-off mass except vintage and amateur built aircraft.

75. In view of these inputs the Agency has considered the existing thresholds such as those envisaged in the draft of JAR-OPS 2. It also thought it essential to avoid imposing requirements to aircraft owners and operators as compared to what they need to do anyway as a consequence of the complexity of their aircraft and the environment in which they normally operate, so as to mirror as well as possible the current situation. Last but not least it is felt useful to establish a simple system. The Agency reached the conclusion that it would be possible to establish such a threshold based only on the complexity of the aircraft without the need to refer to their type of operation.

76. The Agency therefore intents to suggest in its Opinion a definition of complex-motor-powered aircraft, which would be required to meet all Essential Requirements for air operations through appropriate implementing rules and be operated by pilots holding a license based on the JAR-FCL system, while light simple aircraft would be subject to a lighter set of Essential Requirements and operated by pilots holding a restricted PPL. This definition is the following:

Complex-motor-powered aircraft
An aeroplane
- *with a maximum certificated take-off mass exceeding 5,700kg or,*
- *with a maximum approved passenger seating configuration of more than 9 or,*
- *certificated for operation with a minimum crew of at least 2 pilots or,*
- *equipped with (a) turbojet engine(s),*

or,
a helicopter
- *with a maximum certificated take-off mass exceeding 3,175kg or,*
- *with a maximum approved passenger seating configuration of more than 5 or,*
- *certificated for operation with a minimum crew of at least 2 pilots,*

or
a tilt rotor aircraft.

e. Other regulated professions

77. As already stressed in the introduction of this chapter the EASA Regulation shall specify how demonstration of compliance with the Essential Requirements and their possible implementing rules shall be performed. This covers in particular the need to issue licences to certain regulated persons. It is in this context that the Agency asked the opinion of stakeholders on whether cabin crew and flight dispatchers should be issued a licence.

Cabin Crew

78. The answers to the question can be summarised as follows:

There is an overwhelming majority of comments against the introduction of a licence for cabin crew but most commenters agree on the need for common rules related to the qualifications needed to exercise the related activities. The introduction of a licence could probably be seen as related more to political considerations than to safety ones.

79. As already specified in paragraph 38 the Agency intends to suggest in its Opinion that cabin crew be subject to common requirements specified by a Commission implementing rule. As far as specifying a certification process to ensure compliance with such requirements, the Agency takes into account the majority view. Therefore it does not intend to suggest that cabin crew be subject to a licensing scheme. For the sake of fairness however it will suggest that the legislator gives special attention to this question, taking into consideration the objective of free movement enshrined in the EASA Regulation and the fact that most personnel affected to aviation safety or security tasks, such as flight crew, maintenance engineers and airport security screeners are required to hold an official certificate.

Flight dispatchers

80. The answers to the question can be summarised as follows:

There is an overwhelming majority of comments against the introduction of a licence for flight dispatchers but most comments agree on the need for common rules related to the qualifications needed for the exercise of the related activities. The introduction of a licence could probably be seen as related more to political considerations than to safety ones.

81. As already stated in paragraph 40 the Agency does not intends to suggest in its Opinion that flight dispatcher be regulated as a profession. Therefore it will not propose that personnel assigned to a flight dispatch function be required to hold an official certificate. Nonetheless the Agency could consider the issue of flight dispatcher attestation of professional competence as an acceptable means of fulfilling the requirements for the flight dispatch function when so decided by an operator. If such an option were supported further work would be necessary when developing the related implementing rules.

V. Conclusions

82. On the basis of the previous developments the Agency intends to suggest in its Opinion that the EASA Regulation be extended on the basis of the following principles:

- Community Essential Requirements covering pilot licensing and air operation shall be introduced as additional Annexes to the EASA Regulation.

- Commercial operations in the Community by third country operators shall be subject to Community legislation.
- Third country aircraft, more or less permanently based in the territory of Member States shall be subject to the same rules as EU registered aircraft.
- All third country aircraft operated by third country operators shall be subject to the same Community operational specifications as EU registered aircraft.
- The SAFA Directive shall be transferred to the Commission implementing rule and the Agency shall analyse the data collected and draw conclusions on the safety of third country aircraft.
- All types of activities, encompassing commercial, corporate and recreational aviation shall be covered by Community legislation, except for the activities of aircraft listed in a slightly amended Annex II of the EASA regulation.
- Commercial activities will be covered through implementing rules for pilot licensing as well as for air operations. Such rules shall be based on JAR-FCL and JAR-OPS 1, 3 and 4. Their implementation shall normally be carried out at national level. The Agency shall however be given some powers to issue approvals to foreign organisations, to issue operational directives and to approve deviations from standard provisions, as appropriate.
- For non-commercial activities involving complex motor-powered aircraft, existing material such as the JAR-FCL and JAR-OPS 2 shall be used as a basis for implementing rules and associated AMC material. Their implementation shall normally be carried out at national level, but air operators shall not be subject to a certification process, a simple declaration will suffice.
- For non-commercial activities involving non complex motor-powered aircraft that are mainly general aviation and recreational activities a restricted PPL will be introduced as a “lighter” licence and the Essential Requirements for operations will be directly applicable. Light implementing rules and AMCs based on JAR-OPS 0 shall however be developed to mandate operational specifications. Enforcement shall normally be carried out at national level, but the restricted PPL shall be issued by qualified bodies accredited by the Agency or national aviation authorities on the basis of common rules.

Without prejudice to further comments received, the Agency will proceed in two months by forwarding to the Commission draft material to amend the EASA Regulation that reflects these principles.