



**European Aviation Safety Agency**

**COMMENT RESPONSE DOCUMENT (CRD)  
TO NOTICE OF PROPOSED AMENDMENT (NPA) 2009-02B**

**for an Agency Opinion on a Commission Regulation establishing the  
Implementing Rules for air operations of Community operators**

**and**

**draft Decision of the Executive Director of the European Aviation Safety Agency  
on Acceptable Means of Compliance and Guidance Material related to the  
Implementing Rules for air operations of Community operators**

***"Part-OPS"***

**CRD b.1 – Cover Regulation Air Operations**

**Proposal for a  
Commission Regulation  
On Air Operations**

THE COMMISSION OF THE EUROPEAN UNION,

Having regard to the Treaty on the functioning of the European Union,

Having regard to 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<sup>1</sup>, amended by Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009<sup>2</sup> and in particular Article 8 thereof,

Whereas:

- (1) Regulation (EC) No 216/2008 establishes common essential requirements to provide for a high uniform level of civil aviation safety and environmental protection; it requires the Commission to adopt the necessary Implementing Rules to ensure their uniform application; it establishes the European Aviation Safety Agency (hereinafter referred to as the 'Agency') to assist the Commission in the development of such Implementing Rules.
- (2) Article 8 of Regulation (EC) No 216/2008 mandates the Commission to adopt common technical requirements and administrative procedures for air operators of aircraft to ensure compliance with the essential requirements laid down in Annexes IV and Vb of that Regulation.
- (3) In order to ensure a smooth transition and a high level of civil aviation safety in the European Union, Implementing Rules should reflect the state of the art, including best practices, and scientific and technical progress in the field of air operations. Accordingly, technical requirements and administrative procedures agreed under the auspices of the International Civil Aviation Organisation (hereinafter referred to

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<sup>1</sup> OJ L 79, 13.3.2008, p.1.

<sup>2</sup> OJ L 309, 24.11.2009, p. 51.

as "ICAO") and the European Joint Aviation Authorities (hereinafter referred to as "JAA"), as well as existing European and national rules, should be considered.

- (4) With regard to commercial transportation by aeroplane, the implementing measures shall be developed initially on the basis of the common technical requirements and administrative procedures specified in Annex III to Regulation (EEC) No 3922/91.
- (5) The implementing measures shall 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 and take into account the safety aspects related to ATM/ANS.
- (6) With a view to ensuring uniformity in the application of common requirements, it is necessary that common procedures be followed by the competent authorities and, where applicable, the Agency when assessing compliance with these requirements; the Agency should develop Acceptable Means of Compliance and Guidance Material to facilitate the necessary regulatory uniformity.
- (7) It is necessary to provide sufficient time for the aeronautical industry and Member State administrations to adapt to the new regulatory framework, in accordance with Article 70 of Regulation (EC) No 216/2008, and to recognise the validity of certificates issued before the entry into force of this Regulation under certain conditions, in accordance with Article 69 of that Regulation.
- (8) The measures provided by this Regulation are based on the Opinion issued by the Agency in accordance with Articles 17 and 19 of Regulation (EC) No 216/2008.
- (9) The measures provided for in this Regulation are in accordance with the Opinion of the European Aviation Safety Agency Committee established by Article 65 of Regulation (EC) No 216/2008,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

##### ***Objective and scope***

- (1) This Regulation establishes common technical requirements to be followed by:
  - (a) air operators of aircraft referred to in Article 4(1)(b) and (c) of Regulation (EC) No 216/2008; and
  - (b) personnel involved in the operation of such aircraft.
- (2) This Regulation shall not apply to:
  - (a) aircraft referred to in Article 4(5) of Regulation (EC) 216/2008. Pending the adoption of common technical requirements for these aircraft, they shall be operated under the conditions set out in Commission Decision C(2009) 7633 of 14.10.2009;
  - (b) airships, tilt-rotor aircraft, tethered balloons and unmanned aerial systems. Pending the adoption of common technical requirements for the operation of

these aircraft, they shall be operated under the conditions set out in Member States' national law;

- (c) in the case of flights related to the introduction or modification of aircraft types conducted by design or production organisations within the scope of their privileges. Pending the adoption of common technical requirements for these flights, they shall continue to be operated under the conditions set out in Member States' national law.

## *Article 2*

### ***Air Operations***

- (1) Any aeroplane, helicopter, sailplane or balloon used for commercial air transport operations shall be operated in accordance with the provisions of Annex IV to this Regulation, hereinafter referred to as Part-CAT.
- (2) In addition to the applicable Part referred in paragraph 1, the following aircraft operations shall also comply with the relevant provisions of Annex VI to this Regulation, herein referred to as Part-SPA:
  - (a) Aeroplanes and helicopters used for:
    - (i) operations using performance-based navigation (PBN);
    - (ii) operations in accordance with minimum navigation performance specifications (MNPS);
    - (iii) operations in airspace with reduced vertical separation minima (RVSM);
    - (iv) low visibility operations (LVO);
  - (b) aeroplanes, helicopters, balloons and sailplanes used for the transport of dangerous goods (DG);
  - (c) two-engined aeroplanes used for extended range operations (ETOPS) in commercial air transport;
  - (d) helicopters used for commercial air transport, operations with the aid of night vision imaging systems (NVIS);
  - (e) helicopters used for commercial air transport, hoist operations (HHO); and
  - (f) helicopters used for commercial air transport, emergency medical service operations (HEMS).
  - (g) Air operator certificates issued or recognised by a Member State before the applicability of this Regulation shall be deemed to have been issued in accordance with this Regulation if they were issued in accordance with:
    - (i) Regulation (EC) No 3922/1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation; or
    - (ii) the applicable JAR-OPS 3 requirements and procedures, if the Member State that issued the certificate has implemented JAR-OPS 3 and was

recommended for mutual recognition within the JAA system in relation to JAR-OPS 3.

- (1) In such case:
  - (a) the privileges of these operators shall be limited to those included in the approval issued by the Member State;
  - (b) the period for closure of level two findings, referred to in Subpart GEN of Part-AR of Regulation xxx/xxxx, shall not exceed two years when those findings arise from differences with Regulation (EC) No 3922/1991 or previous national legislation reflecting JAR-OPS 3 requirements and procedures, as applicable.

### *Article 3*

#### ***Entry into force***

- (1) This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union and shall become applicable as from 8 April 2012.
- (2) By way of derogation from paragraph 1, Member States may elect not to apply:
  - (a) the provisions of Part-CAT and Part-SPA to commercial air transport operators with helicopters until [*2 years after the applicability of this Regulation*], if the Member State that issued the certificate was not recommended for mutual recognition within the JAA system in relation to JAR-OPS 3;
  - (b) the provisions of Part-SPA to commercial air transport operators with sailplanes or balloons or operators conducting specialised operations until [3 years after applicability of this Regulation]; and
  - (c) the provisions of Part-SPA to non-commercial operators not conducting specialised operations until [2 years after the applicability of this Regulation].
- (3) When a Member State makes use of the provisions of paragraph 2, it shall notify the Commission and the Agency. This notification shall describe the justification for such derogation as well as the programme for implementation containing actions envisaged and related timing.

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

Done at Brussels, XXXX.

*For the Commission*