



Explanatory Note to Decision 2016/023/R

Acceptable means of compliance and guidance material to the rules of the air

RELATED NPA/CRD 2015-14 — RMT.0609

EXECUTIVE SUMMARY

This Decision addresses safety, proportionality and regulatory coordination issues related to Commission Implementing Regulation (EU) No 923/2012 (the SERA Implementing Regulation (SERA IR)).

The specific objective is to mitigate the possible risks linked to the implementation of the SERA IR if the content leaves room for interpretation. To this end, and in order to facilitate the implementation, EASA is amending Decision 2013/013/R 'Acceptable Means of Compliance and Guidance Material to the rules of the air', providing thus additional acceptable means of compliance (AMC) and guidance material (GM).

The AMC/GM issued through this Decision derive from the following sources:

- ICAO Annex 10, Volume II;
- ICAO Document 4444 (PANS-ATM);
- ICAO Document 7030;
- ICAO Document 8168 (PANS-OPS);
- ICAO Annex 2;
- The current practice in the EU Member States;
- Requests for clarification received from the stakeholders during the various consultations conducted on the SERA material; and
- A number of comments and changes made by the Single Sky Committee during the comitology procedure.

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

Affected rules	ED Decision 2013/013/R 'AMC/GM to the rules of the air'			
Affected stakeholders	Member States; competent authorities/national supervisory authorities; ATM/ANS providers; airspace users (e.g. aircraft operators); aerodrome operators; and EASA.			
Driver	Safety/Legal obligation		Reference	See Section 3.3
Rulemaking group	No	Impact assessment	None	Procedure Standard

● EASA rulemaking process

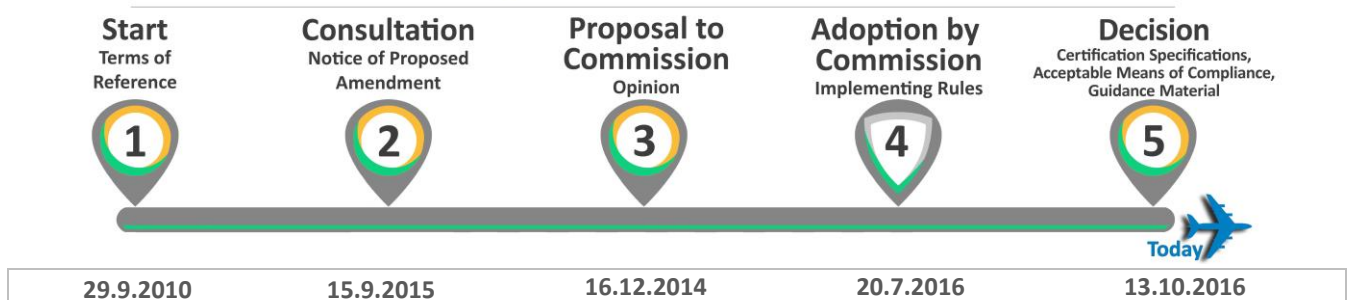


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1. Procedural information

1.1. The rule development procedure

The European Aviation Safety Agency (EASA) developed ED Decision 2016/023/R in line with Regulation (EC) No 216/2008¹ (hereinafter referred to as the ‘Basic Regulation’) and the Rulemaking Procedure².

This rulemaking activity is included in the EASA [Revised 2014–17 Rulemaking Programme](#) under RMT.0609 (ATM.001(A)) and RMT.0610 (ATM.001(B)) ‘Acceptable Means of Compliance and Guidance Material to Commission Regulation (EU) 2015/XXX laying down the common rules of the air and operational provisions regarding services and procedures in air navigation — Development of Acceptable Means of Compliance, Guidance Material and Certification Specifications.

The text of this Decision has been developed by EASA with the support of Eurocontrol and the group of experts which supported EASA with the development of SERA ‘Part C’.

EASA has reviewed the comments received on the NPA. Said comments and the EASA responses thereto are presented in Comment-Response Document (CRD) 2015-14³.

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

1.2. Structure of the Explanatory Note and of the related documents

The present document is divided in three chapters:

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

A summary of the comments received during the NPA 2015-14 public consultation, together with the list of all the comments received and the individual responses thereto, are provided in CRD 2015-14.

The AMC and GM are annexed to Decision 2016/023/R.

¹ 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 (OJ L 79, 19.3.2008, p. 1) (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1467719701894&uri=CELEX:32008R0216>).

² EASA is bound to follow a structured rulemaking process as required by Article 52(1) of the Regulation (EC) No 216/2008. Such a process has been adopted by the EASA Management Board (MB) and is referred to as the ‘Rulemaking Procedure’. See MB Decision 01-2012 of 13 March 2012 concerning the procedure to be applied by EASA for the issuing of opinions, certification specifications and guidance material (<http://www.easa.europa.eu/system/files/dfu/EASA%20MB%20Decision%2001-2012%20Revised%20MB%20Decision%20RM%20Process%20.pdf>).

³ <https://www.easa.europa.eu/document-library/comment-response-documents>



2. Explanatory note

2.1. Overview of the issues to be addressed

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

In addition, Article 8b of the Basic Regulation and its Essential Requirements contained in Chapter 1.a of Annex Vb require EASA to develop detailed operating rules and procedures for the safe conduct of air traffic in a given airspace and which are related to the safe interaction between aircraft.

The Standardised European Rules of the Air (SERA) have been developed in three phases:

- (a) Phase I (SERA Part A): Transposition of ICAO Annex 2 performed by Eurocontrol with the support of EASA and ICAO on the basis of a mandate given by the European Commission in 2009. The outcome was the Eurocontrol Final Report, submitted to the European Commission on 30 June 2010.
- (b) Phase II (SERA Part B): Transposition of the relevant provisions from ICAO Annexes 11 and 3 performed by Eurocontrol and EASA with the support of ICAO and the RMT.0148 (ATM.001) Rulemaking Group in accordance with the terms of the amended SERA mandate. The outcome was EASA Opinion No 05/2011⁴ which was submitted to the European Commission on 14 November 2011.
- (c) Phase III (SERA Part C) is the last step of the phased approach in the SERA IR-development process focusing on 'Procedures', whereas Part A and Part B addressed 'Generalities' and 'Services' respectively. Therefore, with SERA Part C, said process is concluded and a full set of harmonised European rules of the air is proposed.

SERA Part A and B were adopted by the Commission through the SERA IR⁵ and complemented by AMC and GM to the said Regulation through ED Decision 2013/013/R⁶.

SERA Part C, Commission Implementing Regulation (EU) 2016/1185⁷, has amended the SERA IR and as a logical step the related AMC/GM need to be amended accordingly.

⁴ <https://www.easa.europa.eu/document-library/opinions/opinion-052011>

⁵ Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010 (OJ L 281, 13.10.2012, p. 1) (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1474456871005&uri=CELEX:32012R0923>)

⁶ Decision 2013/013/R of the Executive Director of the European Aviation Safety Agency of 17 July 2013 adopting the Acceptable Means of Compliance and Guidance Material to Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010 'Acceptable Means of Compliance and Guidance Material to the rules of the air' (<https://www.easa.europa.eu/document-library/agency-decisions/ed-decision-2013013r>).

⁷ Commission Implementing Regulation (EU) 2016/1185 of 20 July 2016 amending Implementing Regulation (EU) No 923/2012 as regards the update and completion of the common rules of the air and operational provisions regarding services and procedures in



2.2. Objectives

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

EASA is directly involved in the rule-shaping process. It assists the Commission in its executive tasks by preparing draft regulations, and amendments thereof, for the implementation of the Basic Regulation which are submitted as 'opinions' (Article 19(1)). It also develops certification specifications and AMC, as well as GM to be used in the certification process (Article 19(2)) through Agency's decisions.

The specific objective of this Decision is to complement or amend the existing AMC and GM to the rules of the air reflecting the amendments introduced by SERA Part C (Commission Implementing Regulation (EU) 2016/1185). The newly developed AMC and GM have taken into account the advancements of the European Union and international law (ICAO), as well as the harmonisation with the rules of other authorities of the European Union main partners as set out in the objectives of Article 2 of the Basic Regulation.

2.3. Outcome of the consultation

CRD 2015-14, to be published as Appendix 1 to Decision 2016/023/R, provides a summary of the main comments received during the public consultation. It also provides a list of all comments received together with the EASA responses to each of them.

2.4. Summary of the regulatory impact assessment (RIA)

The objective of this rulemaking activity resulting in Decision 2016/023/R is the same as the objective laid down in NPA 2014-05⁸. Therefore, the impact assessment of the potential options for achieving the objectives is analysed in that NPA and is not repeated in the present document.

2.5. Overview of the amendments

The newly developed AMC and GM are have resulted from:

- transposition of some relevant procedures, notes and recommendations from ICAO Annex 2, Annex 10, ICAO Document 4444 (PANS-ATM), ICAO Document 8168 (PANS-OPS), and ICAO Document 7030 as a result of the associated rulemaking task;
- consideration of comments made by some stakeholders during the various public consultations on the SERA material; or
- consideration of a number of comments and changes made by Single Sky Committee during the comitology procedure.

The proposal also takes into account the recent amendments to ICAO provisions. In addition, EASA will through a rulemaking task (RMT.0476 'Maintaining SERA IR') address the future ICAO amendments, thus ensuring the synchronisation of the European rules of the air.

air navigation (SERA Part C) and repealing Regulation (EC) No 730/2006 (OJ L 196, 21.7.2016, p. 3) (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1474457028751&uri=CELEX:32016R1185>).

⁸ <https://www.easa.europa.eu/document-library/notices-of-proposed-amendments/npa-2014-05>



Whilst the main drafting principle of SERA and its associated AMC and GM is to include those provisions that are of 'rules-of-the-air nature', EASA decided to also introduce through this Decision the procedures to be followed by the flight crew in case of unlawful interference as provided by ICAO Annex 2, Attachment B, since it was considered that they would provide important information also to the air traffic services (ATS) personnel.

Furthermore, it was decided to include the AMC/GM to SERA.8010 and SERA.8012 in Part-ATS, since the issue is more clearly related to the obligations of the ATS provider.



3. References

3.1. Related regulations

- Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010 (OJ L 281, 13.10.2012, p. 1) (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1474459034338&uri=CELEX:32012R0923>).
- Commission Implementing Regulation (EU) 2016/1185 of 20 July 2016 amending Implementing Regulation (EU) No 923/2012 as regards the update and completion of the common rules of the air and operational provisions regarding services and procedures in air navigation (SERA Part C) and repealing Regulation (EC) No 730/2006 (OJ L 196, 21.7.2016, p. 3) (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1474457028751&uri=CELEX:32016R1185>).

3.2. Affected decisions

Decision 2013/013/R of the Executive Director of the European Aviation Safety Agency of 17 July 2013 adopting the Acceptable Means of Compliance and Guidance Material to Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010 'Acceptable Means of Compliance and Guidance Material to the rules of the air' (<https://www.easa.europa.eu/document-library/agency-decisions/ed-decision-2013013r>).

3.3. Reference documents

- ICAO Annex 10, Volume II;
- ICAO Document 4444 (PANS-ATM);
- ICAO Document 7030;
- ICAO Document 8168 (PANS-OPS); and
- ICAO Annex 2.

