



## TERMS OF REFERENCE

<b>Task Nr:</b>	ATM.004(a) ATM.004(b)
<b>Issue:</b>	2
<b>Date:</b>	30 August 2010
<b>Regulatory Reference and reference documents:</b>	<ul style="list-style-type: none"><li>• 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<sup>1</sup> as last amended by Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009 in the field of aerodromes, air traffic management and air navigation services and repealing Directive 2006/23/EC<sup>2</sup>.</li><li>• Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation for the single European sky<sup>3</sup>.</li><li>• Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky<sup>4</sup> and its Implementing Rules.</li><li>• Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky<sup>5</sup> and its Implementing Rules.</li><li>• Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network<sup>6</sup> and its Implementing Rules.</li><li>• Commission Regulation (EC) No 2096/2005 of 20 December 2005 laying down common requirements for the provision of air navigation services<sup>7</sup> as last amended by Commission Regulation (EC) No 668/2008 of 15 July 2008<sup>8</sup>.</li><li>• Commission Regulation (EC) No 1315/2007 of 8 November 2007 on safety oversight in air traffic management and amending Regulation (EC) No 2096/2005<sup>9</sup>.</li></ul>

<sup>1</sup> OJ L 79, 19.3.2008, p. 1.

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

<sup>3</sup> OJ L 96, 31.3.2004, p. 1.

<sup>4</sup> OJ L 96, 31.3.2004, p. 10.

<sup>5</sup> OJ L 96, 31.3.2004, p. 20.

<sup>6</sup> OJ L 96, 31.3.2004, p. 26.

<sup>7</sup> OJ L 335, 21.12.2005, p. 13.

<sup>8</sup> OJ L 188, 16.7.2008, p. 5.

<sup>9</sup> OJ L 291, 9.11.2007, p. 16.

	<ul style="list-style-type: none"> <li>• Directive 2006/23/EC of the European Parliament and of the Council of 5 April 2006 on a Community air traffic controller licence.</li> <li>• Opinion No 02/2010 of the European Aviation Safety Agency for two new Commission Regulations<sup>10</sup> on common requirements for the provision of air navigation services, as regards working methods and operating procedures<sup>11</sup> and on safety oversight in air traffic management and air navigation services<sup>12</sup>.</li> <li>• Opinion No 03/2010 for a new Commission Regulation<sup>13</sup> on the licensing and medical certification of air traffic controllers<sup>14</sup></li> <li>• Annex 1, Annex 2, Annex 3, Annex 4, Annex 6, Annex 11 and Annex 15 to the Convention on International Civil Aviation (Chicago Convention).</li> <li>• ICAO PANS-ATM, PAN-OPS, ICAO Document 7030 Regional Procedures.</li> <li>• Eurocontrol Safety Regulatory Requirements ESARR 1, 2, 3, 4, 5, 6 and associated means of compliance and guidance material.</li> <li>• Double Regulation Ad-Hoc Group (DRAHG) Report<sup>15</sup>.</li> </ul>
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### 1. Subject:

Extension of EASA system to safety regulation of Air Traffic Management (ATM) and Air Navigation Services (ANS) – development of Implementing Rules (ATM.004(a)) and Acceptable Means of Compliance and Guidance Material (ATM.004(b)) on competent authorities.

### 2. Problem/statement of issue and justification; reason for regulatory evolution (regulatory tasks):

Regulation (EC) No 1108/2009 amending Regulation (EC) No 216/2008 (referred to as “amended Basic Regulation” or “amended BR”) was adopted by the European co-legislators in order to cover the safety regulation of ATM/ANS (and aerodromes) by the European aviation safety regulatory system (henceforth the “EASA system”). Therefore, a series of implementing measures shall now be prepared by the European Aviation Safety Agency (the Agency). These implementing measures will define the detailed requirements with which related organisations, personnel, systems and constituents would need to comply together with the applicable certification processes.

The amended BR requires the development of a defined set of safety rules in the field of ATM/ANS within a defined timeframe. Opinion No 02/2010 of the European Aviation Safety Agency for two new Commission Regulations on common requirements for the provision of

<sup>10</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)

<sup>11</sup> [http://easa.europa.eu/ws\\_prod/r/doc/opinions/Translations/2010/02/Draft%20Regulation%20to%20Opinion%2002-2010%20\(ANSP\).pdf](http://easa.europa.eu/ws_prod/r/doc/opinions/Translations/2010/02/Draft%20Regulation%20to%20Opinion%2002-2010%20(ANSP).pdf).

<sup>12</sup> [http://easa.europa.eu/ws\\_prod/r/doc/opinions/Translations/2010/02/Draft%20Regulation%20to%20Opinion%2002-2010%20\(safety%20oversight\).pdf](http://easa.europa.eu/ws_prod/r/doc/opinions/Translations/2010/02/Draft%20Regulation%20to%20Opinion%2002-2010%20(safety%20oversight).pdf).

<sup>13</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).

<sup>14</sup> [http://easa.europa.eu/ws\\_prod/r/doc/opinions/Translations/2010/03/Draft%20Regulation%20to%20Opinion%2003-2010%20\(ATCO\).pdf](http://easa.europa.eu/ws_prod/r/doc/opinions/Translations/2010/03/Draft%20Regulation%20to%20Opinion%2003-2010%20(ATCO).pdf).

<sup>15</sup> <http://www.eurocontrol.int/src/gallery/content/public/documents/DRAHG/DRAHG%20Report.pdf>.

air navigation services, as regards working methods and operating procedures and on safety oversight in air traffic management and air navigation services, and Opinion No 03/2010 for a new Commission Regulation on the licensing and medical certification of air traffic controllers were published on 28 May 2010 with the aim to transfer the provisions from the existing Community legislation relevant to the subject matter into implementing rules to the Basic Regulation. However, further regulatory actions are necessary. These Terms of Reference are related to the second phase of implementation measures.

### 3. Objective:

The overall objective is to develop Implementing Rules (IRs) and, as appropriate, the necessary Acceptable Means of Compliance (AMC), and Guidance Material (GM) for the implementation of the amended BR in the field of ATM/ANS, specifically the requirements applicable to the competent authorities. This regulatory material shall encompass the safety regulatory requirements and related implementation material assisting and providing necessary means for the competent authorities to oversee the regulated organisations and person's compliance with the requirements. It shall also allow for alternative means of compliance, in line with the provisions of the amended BR.

These implementing measures shall include the requirements for competent authorities and qualified entities acting on their behalf to implement the provisions of the Basic Regulation and the Essential Requirements in its Annex Vb and to oversee regulated persons and organisations, taking into account the relevant requirements in the Regulation (EC) No 550/2004 (provision of air navigation services in the single European sky) and implementing Regulations as well as Opinions No 02/2010 and No 03/2010 of the European Aviation Safety Agency.

These implementing measures shall in particular provide criteria for the:

- Certification and safety oversight of air navigation service providers (ANSPs), including the safety assessment of changes;
- Certification and safety oversight of organisations providing pan-European services;
- Reaction to safety problems (including safety directives as defined by Regulation (EC) No 1315/2007 on safety oversight in air traffic management and amending Regulation (EC) No 2096/2005);
- Safety oversight of personnel involved in safety related ATM/ANS tasks (including the provisions for the issuance of ATCO licences, medical certificates and ratings and endorsements, and the oversight of the competence aspects of ATSEPs and other relevant staff) and the safety oversight and certification of organisations involved in the training and medical certification of ATCOs;
- Safety oversight of ANSP responsibilities related to ATM/ANS systems and constituents;
- Specific aspects related to safety oversight for the provision of services in a FAB arrangement; and
- Facilitating the implementation of ICAO State Safety Programme.

In accordance with Recital (14) of the amended BR and in line with Articles 3a and 6 of the amendment to Regulation (EC) No 551/2004, the safety oversight of relevant European network functions shall, if appropriate, be considered.

### 4. Specific tasks and interface issues (Deliverables):

Development of Opinion(s), including draft IR text for Commission Regulation(s) and Decision(s) of the Executive Director of the Agency, containing AMC and GM, including (but not necessarily limited to) the following elements:

- Authority requirements containing the provisions applicable to the competent

authorities (National Supervisory Authorities);

- Requirements relevant for the oversight of organisations providing pan-European services; and
- Possibly requirements relevant for the oversight of relevant European network management functions.

Based on the total system approach and to promote regulatory efficiencies, when drafting these implementing measures, a consistent regulatory structure and common general requirements on authority and organisational requirements shall be taken as a basis. Amendments to relevant general requirements as well as specific provisions for the field concerned shall be proposed.

As defined by the amended BR, the Opinion(s) shall encompass appropriate transitional mechanisms to ensure the continuity of approvals and seamless conversion of certificates already granted under existing Community Regulations.

Coordination of activities with the rulemaking groups executing the following rulemaking tasks should be established whenever appropriate:

- ATM.003 – Requirements on Air Traffic Controller licensing,
- ATM.001 – Requirements for Air Navigation Service Providers,
- ADR.001 - Requirements for aerodrome operator organisations and competent authorities

A full Regulatory Impact Assessment (RIA) on the extension of the Agency's remit to ATM/ANS has been published with Opinion 01/2008. No Pre-RIA has therefore been developed at this stage, since the legislator has defined the necessary implementing rules to be developed. However, it will be necessary to carefully evaluate the impacts of the regulatory solutions envisaged within the development of implementing rules, in particular when they are not based on the existing regulatory material, when this material has been modified based on justified and informed decisions or when the legislator left some options to be assessed during the drafting of implementing measures. The impact of the regulatory solutions proposed will be assessed by means of an associated Regulatory Impact Assessment (RIA) which will accompany the Notice of Proposed Amendment (NPA) and the Opinion on this topic.

A matrix shall be developed stating the source and justification of each regulatory provision, which shall include any cross reference to the ER's in the amended BR, the ICAO SARP's and any applicable Community legislation. In particular, any proposed change to and non-use of any of the above provisions shall be justified.

#### **5. Working methods** (in addition to the applicable Agency procedures):

The work shall be carried out by a rulemaking group established by the Agency. Due to the complexity of the task, the rulemaking group may address certain specific issues with ad hoc expertise invited.

The composition of the Group will be defined based on the rulemaking procedures of the Agency and, in particular, will reflect the complexity of the related task, the expertise necessary and stakeholders potentially affected by the work. The Agency will nominate at least two internal members into the rulemaking group who will coordinate and facilitate the work as well as carry out the secretariat functions.

The experts involved in the work of the rulemaking group will also be invited to participate in assessing the comments received to the Notice of Proposed Amendment (NPA).

Meetings of the rulemaking group shall primarily be held at the Agency's premises in Cologne.

**6. Time scale, milestones:**

- The first Notice of Proposed Amendment (NPA) based on the Rulemaking task ATM.004(a) containing the implementing rules applicable to competent authorities and the associated Regulatory Impact assessment (RIA) is to be published by 2011/Q4.
- The Comment Response Document (CRD) and the Agency Opinion *and* the associated Regulatory Impact assessment (RIA) will be issued subsequently and in accordance with the Agency rulemaking procedure by 2012/Q4.
- The related Executive Director Decision containing the relevant AMC and GM based on the rulemaking task ATM.004(b) will also be prepared by the rulemaking group and is to be issued by 2013/Q4.