



**OPINION No 03/2010**

**OF THE EUROPEAN AVIATION SAFETY AGENCY**

**of 28 May 2010**

**for a Commission Regulation XXX/2010 laying down implementing rules for the  
licensing and medical certification of air traffic controllers**

## I. General

1. The continuous growth of aviation in Europe leads to many challenges, in particular regarding the key safety factors of aerodromes and ATM/ANS. Therefore, necessary risk mitigation measures need to be established to ensure safety through a harmonised, holistic regulatory approach across the Member States.
2. Regulation (EC) No 216/2008 of the European Parliament and of the Council<sup>1</sup> (hereinafter referred to as the 'Basic Regulation') as amended by Regulation (EC) No 1108/2009<sup>2</sup> establishes an appropriate and comprehensive framework for the definition and implementation of common technical requirements and administrative procedures in the field of civil aviation. Directive 2006/23/EC of the European Parliament and of the Council on a Community air traffic controller licence<sup>3</sup> has therefore been repealed, without prejudice to the certification or licensing of persons and organisations already carried out in accordance with that Directive. The Basic Regulation empowers the Commission to adopt implementing rules for air traffic controller licensing and associated approvals, which shall reflect the state of the art, including best practices and scientific and technical progress, in the field of air traffic controller training. Furthermore, the Basic Regulation requires that implementing rules are initially developed on the basis of the provisions of Directive 2006/23/EC of the European Parliament and of the Council on a Community air traffic controller licence.
3. The scope of this rulemaking activity is outlined in the Terms of Reference (ToR) ATM.003<sup>4</sup> 'Extension of the EASA system to safety regulation of Air Traffic Management (ATM) and Air Navigation Services (ANS) – development of rules on Air Traffic Controller licensing'. However, as is explained further in Chapter II of this Opinion, the content and the rulemaking process followed by the European Aviation Safety Agency (hereinafter referred to as 'the Agency') has not been fully in accordance with the above-mentioned ToR. The content of this Opinion follows the decision taken by the 33rd meeting of the Single European Sky Committee held on 3-4 December 2009 and outlined in the subsequent letter<sup>5</sup> of the European Commission addressed to the Agency by further defining the 'fast-track' process for the accelerated transposition of the already existing rules, inter alia Directive 2006/23/EC of the European Parliament and of the Council on a Community air traffic controller licence.
4. With regard to the above, the present Opinion covers the transposition of that Directive with only minimal technical updates. It has to be highlighted that the content of this Opinion represents only the first step of the two-stage process envisaged in the letter of the European Commission, while the complete implementation of the requirements stemming from the Basic Regulation and full compliance with the essential requirements listed in Annex Vb of that Regulation will be established in a later stage following the rulemaking procedure adopted by the Agency's Management Board. The Agency should amend the above mentioned ToR to better reflect this phased approach.

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<sup>1</sup> 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, 19.03.2008, p. 1).

<sup>2</sup> Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services and repealing Directive 2006/23/EC (OJ L 309, 24.11.2009, p. 51).

<sup>3</sup> Directive 2006/23/EC of the European Parliament and of the Council of 5 April 2006 on a Community air traffic controller licence (OJ L 114, 27.4.2006, p. 22).

<sup>4</sup> [http://www.easa.europa.eu/ws\\_prod/r/doc/TORs2/ToR%20ATM.003.pdf](http://www.easa.europa.eu/ws_prod/r/doc/TORs2/ToR%20ATM.003.pdf)

<sup>5</sup> TREN F2/JP/sr D(2009) 74614, dated 9 December 2009.

5. The work has been carried out by a rulemaking group established by the Agency. The composition of the rulemaking group has been defined based on the rulemaking procedures of the Agency with the aim to reflect the complexity of the task, the necessary expertise and stakeholders potentially affected by the work. The Agency itself carried out the secretariat functions of this rulemaking group and has formulated this Opinion.
6. The Agency herewith submits its Opinion to the Commission which purports to fulfil as a first phase the 'fast-track' approach in legal compliance with Articles 8c and 22b of the Basic Regulation.
7. The proposed rules have been developed taking into account Directive 2006/23/EC of the European Parliament and of the Council of 5 April 2006 on a Community air traffic controller licence, as well as the already existing Community legislation under the Single European Sky framework and applicable international standards and recommended practices published by ICAO (i.e. the Annexes) on the basis of Article 37 of the Chicago Convention, based on Article 2(2)(d) of the Basic Regulation, which calls upon the Agency 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 when drafting the implementing rules.
8. To ensure the full implementation of the above-mentioned Articles of the Basic Regulation and to establish full compliance with the essential requirements described in Annex Vb of the Basic Regulation, the Agency shall make an evaluation of the European air traffic controller licensing system and of further improvements necessary towards a 'total aviation system approach' with a view to submitting as a second step an Opinion to the Commission, including the necessary implementing measures.
9. The present Opinion has been adopted, partially following the procedure specified by the Agency's Management Board<sup>6</sup>, in accordance with the provisions of Article 19 of the Basic Regulation. Deviations from that procedure stemming from the use of the 'fast-track' approach, as requested by the Commission and the Single Sky Committee, have been presented to the Agency's Management Board, which confirmed its support in principle for use of such a process in this specific case where existing legislation is already in place, with the assumption that there would be no significant change in content from the existing rules.

## **II. Consultation**

10. The tight time schedule imposed by the 'fast-track' approach requires that the first set of implementing rules should be adopted at the end of 2010. This in turn entails that the Agency has to deliver this Opinion the latest by June 2010, which made it impossible for the Agency to follow the regular steps of the rulemaking procedure, particularly when it comes to the formal public consultation of stakeholders. Following the regular rulemaking procedure would have required the Agency to issue a Notice of Proposed Amendment (NPA) followed by a public consultation, which altogether would have necessitated a minimum of six to seven months from the moment of the publication of the NPA to publish the Comment Response Document (CRD) and to issue the Opinion. The proposed draft rule represents a transposition of the already existing Directive, and no Agency's Decision(s) containing acceptable means of compliance or guidance material has been issued. Due to these reasons the 'fast-track' was proposed and the Opinion will be directly issued to the European Commission and published.

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<sup>6</sup> Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of Opinions, Certifications Specifications and Guidance Material (Rulemaking Procedure). EASA MB 08-2007, 13.06.2007.

11. In order to ensure that stakeholders are informed of the content of this Opinion to the widest possible extent, the Agency together with the European Commission will hold a dedicated conference to explain thoroughly the contents of this Opinion. In addition, the Agency will provide separate information sessions on the contents of this Opinion at least to the following bodies: Single Sky Committee (SSC), Industry Consultation Body (ICB), EASA Advisory Board, Advisory Group of National Authorities (AGNA) and Safety Standards Consultative Committee (SSCC).
12. The Agency will provide written conclusions on the results of the conference and information sessions to the European Commission and will publish them via the dedicated ATM & Airports website<sup>7</sup>.

### III. Content of the Opinion of the Agency

#### **Background**

13. When accomplishing this rulemaking task based on the instructions referenced above, the following challenges had to be taken into consideration.
14. The existing legal instrument takes the form of a Directive, which needs to be 'transferred' into a Regulation. This change in the legal nature already implies a significant change in the level of the binding power of the provisions of the future legal act. Contrary to Directives, which by their nature are binding as to the result to be achieved, but leave to the national authorities the choice of form and methods, therefore requiring transposition into the Member States' national legal system, a Regulation has general application and it is binding in its entirety and directly applicable in all Member States.
15. The existing Directive was enacted by the European Parliament and the Council based on Article 80(2) of the Treaty establishing the European Community, whereas the new implementing rule's legal basis is Article 8c of the Basic Regulation, which empowered the Commission to adopt measures to amend the non-essential elements of that Article by supplementing it. The objectives, scope and content of the delegation of power are clearly defined in the Basic Regulation and these constitute clear boundaries for enacting the implementing rules based on that Regulation. Furthermore, the Basic Regulation establishes common essential requirements to provide for a high uniform level of civil aviation safety and requires the Commission to adopt the necessary implementing rules to ensure their uniform application.
16. Uniform application of the implementing rules is a key element in establishing and maintaining a high uniform level of civil aviation safety in Europe and thus a key factor to achieve the objectives set out by the Basic Regulation. Therefore, discretionary powers of Member States regarding the implementation of the common requirements cannot be maintained.
17. Ultimately, maintaining and enhancing the common licensing scheme for air traffic controllers in the European Union is an essential element of the European air traffic control system. Providing for the common uniform level of safety will also reinforce the mutual recognition of the licences and facilitate the free movement of persons and services.

#### **Changes performed compared to the existing Directive**

18. In accomplishing this rulemaking task the Agency has not introduced any substantive changes to the air traffic controller licensing scheme nor to the licensing requirements. Certain changes affecting some provisions of the Directive were however unavoidable due to the **changed legal basis** described above and due to the clearly defined

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<sup>7</sup> <http://easa.europa.eu/atm/index.html>

objectives, scope and content of the delegation of powers stemming from the higher ranking regulation (see in particular Article 8c(10) of the Basic Regulation). In such cases both the Agency and the experts of the rulemaking group aimed at finding solutions that allow for maintaining the current status quo existing in the Member States and do not constitute significant changes on the level of the requirements.

Examples:

- (1) The definition of the scope of the Basic Regulation does not allow for extending the scope of this implementing rule directly to air traffic controllers working under the responsibility of an ANSP offering services to aircraft movements other than GAT (meaning typically the military providers). Instead, and fully in line with the provisions of the Basic Regulation, Member States shall ensure that services provided or made available by military personnel to the public offer at least the equivalent level of safety and may decide to apply the principles of this implementing rule to their military personnel providing services to the public on a voluntary basis;
  - (2) Introduction of basic requirements regarding the management system of training organisations with explicit reference to the appointment of the accountable manager, record-keeping obligations and granting access to the facilities to the competent authority in order to establish a basis for compliance with the applicable essential requirements and ICAO rules.
19. Further changes were necessary to **handle the discretionary powers** attributed to Member States under the Directive. These powers cannot be maintained under the regime of the Basic Regulation as they contradict the governing principles of that Regulation. As a compromise solution it is proposed to maintain some of these arrangements via appropriate transitional arrangements instead of general provisions allowing Member States to continue to define national 'variants'. Such transitional measures would allow Member States that have already established such variants to continue to apply their national law until the common rules are created to replace the existing variations. This will allow for Member States to continue their current practices without compromising the system established by the Basic Regulation without allowing them to establish deviations from the general rules outside the possibility already given by the Basic Regulation.

Examples:

- (1) Use of national endorsements;
  - (2) Possibility given to the Member States to introduce an age limit for exercising the privileges of a unit endorsement.
20. Other appearances of discretionary powers given to Member States had to be approached by a different methodology. Regarding those **deviation possibilities**, which qualify for using the flexibility provisions offered by Article 14(6) and (7) of the Basic Regulation, there is no legal possibility to deviate from the requirements by other means than via those provisions. The application of the provisions of Article 14 allows Member States the possibility to deviate from the standards set out in the implementing rules in duly justified cases, while ensuring that an equivalent level of protection is attained, allowing mutual recognition and even the application by other Member States of the same measure to similar cases. This applies to the deviation possibilities with regard to educational standards and minimum age.

Examples:

- (1) With regard to the powers given to Member States to deviate from the educational standards prescribed, the Agency is proposing to amend and generalise the requirement relevant to educational standards so that there would be no need to establish a special procedure for the sub-standard cases, which would be diverging from the general deviation possibility offered by the Basic Regulation itself.

- (2) The possibility of allowing a lower entry age constitutes a more complex issue since this deviation under the current regime of the Directive may also affect the mutual recognition of the licences. The Agency is of the opinion that the possibility to deviate concerning the entry age is automatically given to the Member States by the Basic Regulation, if the conditions for the use of the flexibility provisions are met. However, as explained above, the Basic Regulation's flexibility provisions explicitly imply mutual recognition of all licences issued in accordance with the applicable common rules, which principle also applies to the licences issued under the flexibility provisions. Therefore, maintaining the possibility to refuse mutual recognition of licences issued under the flexibility provisions in order to allow for a lower age limit would legally and technically not be possible and justifiable. Having this in mind and being confronted with the limited mandate to perform minimal technical updates only, the Agency proposes two options for the purpose of Article 29 linked to Article 8(3)(a), with a clear preference for option A in both cases, being the technically and legally sound solution and at the same time ensuring compliance with the relevant ICAO requirement.

21. Certain **editorial changes** had to be pursued to facilitate direct applicability of the provisions without national implementing rules (1), to align the terminology of the implementing rule with that of the Basic Regulation (2), or to harmonise the references used with regard to validity periods throughout the text (3).

Examples:

- (1) The Regulation stipulates that an application for a licence has to be addressed to the competent authority in a form and manner required by this authority – such procedural requirements did not appear in the Directive, as it was only setting the aims to be reached by means of national implementing rules;
- (2) Using the term 'training organisation' instead of 'training provider' in order to align the terminology with that of the Basic Regulation; using the term 'competent authority' instead of NSA, as for certain limited but well-defined tasks, the Agency has to take over the roles of the national authorities, which requires the use of a more general term;
- (3) Harmonising the references to validity periods with a preference for using calculations in years instead of months.

22. **Minimal technical updates** had to be pursued in order to comply with the requirement set out in Article 8c(11) of the Basic Regulation and to reflect the state of the art, including best practices and scientific and technical progress, in the field of air traffic controller training. These changes include the necessary updating of the references (1) and other clarifications that were found necessary by the experts of the rulemaking group (2)(3).

Examples:

- (1) Updating the reference to the latest edition of the Eurocontrol Specifications for the ATCO Common Core Content Initial Training in the relevant Annex;
- (2) Student air traffic controllers should be clearly required to hold a language endorsement in order to harmonise diverging national practices in this field;
- (3) Revalidation of medical certificates is suggested to be clarified with the introduction of a 45-day revalidation period not affecting the starting/ending date of the validity.

23. Further **changes to the structure** needed also to be introduced. Based on the instructions referenced above this draft implementing rule does not follow the horizontal structure envisaged for the implementing rules of the Basic Regulation and contains all provisions relevant to the air traffic controller licensing in one piece of legislation. The draft text is now divided into Chapters and Articles. With a view to facilitate easy application and later on the incorporation of these provisions into the horizontal structure

of implementing rules, separate chapters are dedicated to the medical certification of air traffic controllers, to the requirements applicable to training organisations and those applicable to the competent authorities. Within each Chapter the requirements are grouped together according to their subjects (1)(2).

Examples:

- (1) Privileges and conditions relevant to the student air traffic controller licence are grouped into one article;
- (2) The provision on validity of ratings and rating endorsements is now divided into two provisions and they appear respectively in the relevant articles.

### ***Planning for the second stage***

24. By its specific legal nature, a Directive leaves the implementation of its requirements to the Member States, which is not the case for a Regulation, whose aim is to be directly applicable and have direct effect in Member States' legal order. Due to the 'fast-track' process and the limited mandate given to the Agency to perform minimal technical updates only, it was not possible to address all issues, requirements and procedures currently missing from the Directive compared to the requirements set out in the Basic Regulation.
25. It was agreed that these issues could only be fully addressed and solved during the second phase of the development of implementing rules for air traffic controller licensing, which will aim at complete implementation of the requirements stemming from the Basic Regulation and establishing full compliance with the essential requirements listed in Annex Vb of that Regulation.
26. Based on the assessment conducted by the Agency together with the experts of the rulemaking group a number of issues are identified already at this stage, where further legislative actions are needed for the above purpose, including the development of additional requirements to enhance the existing provisions. These issues should include, but are not limited to the following:
  - Harmonisation of the applicable requirements to age limit, educational qualifications and language requirements;
  - Review of the training requirements, as well as the training modules with the view to establish full compliance with the essential requirements and the establishment of implementing rules and acceptable means of compliance relevant to air traffic controller training;
  - Establishment of detailed and tailored rules applicable to competence assessment, to instructors and assessors taking into account the type of instruction given or assessment provided in order to establish compliance with the essential requirements, as well as of the procedures applicable to their certification;
  - Establishment of implementing rules and acceptable means of compliance relevant to the medical certification of air traffic controllers;
  - Introduction of more detailed provisions concerning reduced medical fitness and the use of psychoactive substances and medicines;
  - Eventual introduction of additional ratings and rating endorsements;
  - Introduction of templates for licences and certificates;

- Integration of the requirements for competent authorities and for training organisations into the relevant parts of the horizontal rule structure proposed by the Agency in NPA 2008-22<sup>8</sup>;
  - Development of requirements and criteria for the approval of assessors and, if needed, for examiners;
  - Enhancement of the requirements for management system in accordance with what has been proposed in said NPA and implementing ICAO Annex 1 requirements for safety management;
  - Definition of privileges of training organisations with regard to training courses, training plans and competence scheme approvals and changes; and
  - Development of requirements for synthetic training devices.
27. For this purpose the Agency is proposing to make an evaluation of the European air traffic controller licensing system and of further improvements necessary towards a 'total aviation system approach' with a view to submitting as a second step an Opinion to the Commission, including the necessary implementing measures.
28. The opinion referenced above should also address those issues, where now, under the accelerated procedure, there was no possibility to establish common rules instead of the diverging national provisions and thus the Agency is proposing to maintain the applicability of Member States' national legislation, where applicable, on a transitional basis (see also point 19 for more explanation).

## **Content**

### **Chapter 1 – Basic principles**

29. This Chapter contains the basic principles that are applicable throughout this Regulation. Articles 1 and 2 define the **objectives, subject matter and scope** of the Regulation. The subject matter is to clarify what the act deals with, whilst scope refers to the categories of situations of fact or of law and the persons to which the act applies. This chapter also contains the list of definitions and the definition of the competent authority. The terminology in these articles had to be aligned with the new terminology of the Lisbon Treaty. The scope and subject matter of this implementing rule is dependent on those of the Basic Regulation, thus it cannot be extended beyond those of the legal act delegating the powers.
30. The definition of the scope of the Basic Regulation does not allow for extending the scope of this implementing rule directly to air traffic controllers working under the responsibility of an ANSP offering services to aircraft movements other than GAT (meaning typically the military providers). Instead, and fully in line with the provisions of the Basic Regulation, Member States shall ensure that services provided or made available by military personnel to the public offer at least the equivalent level of safety (paragraph 3). It is important to highlight that due to the clear exclusion of the military of the scope of the Basic Regulation it is not possible to extend the applicability of the common rules to them via this implementing rule. As a compromise, EASA suggests therefore highlighting

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<sup>8</sup> This NPA proposes that 'organisation' requirements for regulated aviation organisations are included in a single implementing rule applicable to all regulated aviation organisations (Part-OR). Those common organisation requirements which are applicable to all organisations (e.g. management system, general personal requirements, access to facilities, record-keeping) are generalised into what has been named subpart OR.GEN. Those specific provisions for each type of aviation organisation (e.g. ANSPs, training organisations, air operators, aerodromes operators) will contain additional organisation requirements in additional subparts (e.g. OR.ATO, OR.OPS). The proposed provisions for safety management are included in Part-OR, Subpart OR.GEN, section 2, OR.GEN.200. The Agency is currently reviewing the comments received during the public consultation of this NPA. The relevant Comment Response Document and the revised text will be published soon.

both in the main body of the text as well as in the recitals that that Member States may decide to apply the principles of this Regulation (i.e. the principles of the civilian rules) to their military controllers on a voluntary basis if they wish so in order to maintain the same level of safety (paragraph 4).

31. The terminology is aligned with that of the Basic Regulation. Even though it is different, it is considered that the use of the term 'public' ('services provided or made available to the public') ensures sufficiently wide coverage for the purpose of ensuring the equivalent safety level. It should be noted that the term 'effective' has been changed to 'equivalent' in order to stay as close as possible to the text of the Directive. To facilitate the interpretation, explanations on the intent of the legislator are also placed into the recitals.
32. Article 3 contains the **definitions**, where only editorial changes were made, in order to make sure that they are in line with the terminology used in the Basic Regulation, as well as to limit them to the necessary elements of a definition, meaning the deletion of the normative and later repeated elements for example in the definition of 'rating'. With regard to the second stage it should be noted that the Basic Regulation consistently uses the term 'certificate' in relation to instructors and assessors, but to introduce this term was not foreseeable in the 'fast-track'. It also needs to be noted that the scope of the 'instructor endorsement', to be called certificate, is very restricted in relation to what is foreseen in the Basic Regulation.
33. Article 4 introduces and defines the term **competent authority**. The references to National Supervisory Authorities (NSA) as used in the Directive have been replaced by references to competent authorities. The reason for this change is the necessity for a broader approach and terminology, since in certain well-defined cases the Agency is appointed to act as a competent authority. This shared workload is explained in this Article followed by the consistent use of the term 'competent authority' throughout the text of the draft implementing rule. It has to be highlighted as well that this change in the wording does not affect the status and continuity of the current NSAs. To facilitate the interpretation, a relevant recital has also been added.

### ***Chapter 2 – Licensing principles***

34. The aim of this Chapter is to set out and group together the **basic principles** applicable to the licensing of air traffic controllers.
35. Article 5 implies that the competent authority shall have established the procedures and the application form to handle the applications. Applications shall be accompanied with evidence concerning the competencies of the applicant. Another important principle to emphasise is that the licence or certificate shall contain all information relevant to the privileges granted by that document. Besides, as before, the licence shall remain the property of the person to whom it is granted in order to facilitate the free movement of air traffic controllers and this article defines the cases for the suspension or revocation of the licence.
36. The aim of the newly introduced Article 6 is just to reinforce the overarching basic principle of licensing when stating that the privileges granted by a licence are always dependent on the validity of the ratings, endorsements and of the medical certificate.

### ***Chapter 3 – Licences, ratings and endorsements***

37. The aim of this Chapter is to highlight the privileges and conditions associated with the licences, ratings and endorsements, while also grouping the relevant requirements (for example the validity periods) together with the actual issue they refer to.
38. Article 7 groups together the privileges (paragraph 1) given by the **student air traffic controller licence** and the conditions (paragraph 2) applicable for obtaining this licence, which were previously placed in Articles 4 and 5 of the Directive.

39. Regarding the requirements for obtaining a student air traffic controller licence no significant change is introduced. However, the approach towards a required minimum educational standard needed to be revised in order to eliminate the possibility attributed to Member States by the Directive to decide on eventual deviations. As having different approaches and procedures amongst the Member States would undermine the expected effect of the common rules, it is now proposed to generalise the requirement relevant to educational standards so that there would be no need to establish special procedures for specific cases, but still leaving certain room for manoeuvre to evaluate the ability of the applicant to successfully complete its training.
40. In paragraph 3 certain technical and editorial changes were made in order to clarify the obligation to include also the language endorsement in the student licence, as well as that the term 'if applicable' relates to the rating in relation to the rating endorsement and does not offer a choice to the service provider.
41. Article 8 groups together the privileges (paragraph 1) given by the **air traffic controller licence** and the conditions (paragraph 3) applicable for obtaining this licence. The new provision inserted in paragraph 2 addresses situations where an air traffic controller has to undertake further training, either because of moving to another country or because of changing the unit he/she is working in. It is considered important that in such cases the 'trainee' controller can build on his/her air traffic controller licence, which naturally includes the privileges of a student air traffic controller licence.
42. Regarding the requirements for obtaining an air traffic controller licence, no significant change is introduced. However, the approach towards requiring a minimum age needed to be adapted to the philosophy and principles of the Basic Regulation, being the higher ranking source of legal obligations. Under the Basic Regulation Member States have the possibility to deviate from the requirements established in the implementing provisions by using the procedure described in Article 14(6) and (7) of the Basic Regulation, the so-called 'flexibility provisions'. This already allows Member States to deviate from the standard in duly justified cases, while ensuring that an equivalent level of protection is attained, allowing mutual recognition and even the application by other Member State of the same measure to similar cases. Therefore, there is no need (and no legal possibility) in this implementing rule to establish another procedure to handle deviations from this specific requirement. The Agency also wishes to highlight that the minimum age of 21 for applicants for an air traffic controller licence is an ICAO standard, which only reinforces the need to duly justify and mitigate the possible safety consequences of a deviation from it. Despite of this reasoning, to overcome the difficulty originating from the conflicting mandates received, the Agency is now proposing two options for further consideration. In option A paragraph (a) of Article 8(3) is limited to a single sentence containing a clear age limit of 21 years based on the relevant ICAO requirement without any deviation possibility. In option B, however, the deviation possibility with regard to the minimum age is added as copied from the Directive.
43. Regarding the consequences of deviating from the minimum age requirement as prescribed by ICAO another procedural issue needs to be highlighted. Using the flexibility provisions offered by the Basic Regulation to deviate automatically implies mutual recognition of the eventual deviation, if justified and approved, which in itself constitutes a different approach compared to the one of the Directive, where Member States were allowed not to recognise licences of holders with a lower age (see Article 15(1) on mutual recognition of air traffic controller licences). To overcome the difficulty originating from the conflicting mandates received, the Agency is now proposing two options for further consideration. Option A, as presented in the draft text of Article 29, consisting of one paragraph only, reinforces the principle of mutual recognition without any further limitation. Option B however maintains in addition a limitation possibility to Member States with regard to those air traffic controllers, who have not yet reached the minimum age limit of 21 years. In order not to compromise the principle of mutual recognition, this limitation is formulated in a slightly different way and restricts the exercising of their privileges to the Member State that has issued their licence.

44. Based on the above explanations the Agency has a clear preference for option A in both places, being the technically and legally sound solution and at the same time ensuring compliance with the relevant ICAO requirement.
45. Article 9 contains the description of **ratings**, which is unchanged and, in addition, the validity period relevant to the ratings placed into paragraph 2 of this Article for reasons of consistency and easy-reading.
46. Article 10 contains the description of **rating endorsements**, also unchanged and, in addition the validity period relevant to the ratings placed into paragraph 4 of this Article for reasons of consistency and easy-reading.
47. In the subject of rating endorsements an important discretionary power given to the Member States by the Directive had to be handled according to the new legal circumstances. As already described above in paragraph 19, these powers cannot be maintained under the regime of the Basic Regulation as they contradict the governing principles of that Regulation. As a compromise solution it is proposed to delete paragraph 4 of Article 7 of the Directive and maintain the possibility of national rating endorsements via an appropriate transitional arrangement allowing Member States to continue to apply national 'variants'. Such transitional measure allows Member States that have already established national rating endorsements to continue to apply them according to their national law until there is sufficient time to establish common rules instead of the diverging national provisions. The benefit of this approach is that it allows Member States to continue their current practices, but at the same time this approach does not allow the continuation of establishing deviations from general rules outside the possibilities given by the Basic Regulation. It also has the advantage of creating a 'standstill' situation to facilitate the development of the common requirements during the second phase.
48. Article 11 is now dealing with the **unit endorsements**, including their validity period and the procedure to extend their validity for the reason of consistency. Editorial changes were made compared to the relevant text of the Directive in paragraphs 3 and 4 in order to make sure that the validity of unit endorsements can not only be extended once 'for the following 12 months', but 'for a subsequent period of 12 months'. It is also regarded as a necessary technical change to spell out the right of the licence holders to acquire data on the hours effectively worked. The addition in paragraph 4 is about assigning the responsibility for reducing the number of hours, according to the current practice.
49. Regarding the second sentence of Article 10 of the Directive allowing for the introduction of an age limit for exercising the privileges of a unit endorsement, it has to be stated clearly that such discretionary power is not in line with the Basic Regulation and it cannot be maintained as such. As already explained in the context of changes, the only possibility for Member States to deviate from the Basic Regulation and its implementing rules is by using the flexibility provision offered by Article 14 of that Regulation, provided that an equivalent level of protection is achieved, but this should not be used to create additional requirements. Therefore, this issue is not covered by Article 14(6). As a compromise solution it is proposed maintaining the use of existing national deviations on a transitional basis, until there will be sufficient time to establish common rules, similarly to the issue of the national rating endorsements. With regard to the 'to be established' common rules it has to be noted that not only their establishment, but also their application will require adaptation periods to ensure that air navigation service providers have the means to adapt their staffing plans and policy to the eventually changing requirements.
50. Article 12 is dealing with the requirements relevant to language proficiency. The newly introduced paragraph 1 aims at emphasising the basic requirement of being obliged to have a **language endorsement** in English in order to exercise the privileges of an air traffic controller or of a student air traffic controller licence. Moving the last sentence of the old Article 8(1) to the end of this Article (paragraph 4) intends to clarify that that requirement applies to both the English and the local language.

51. Member States remain free to impose local language requirements when deemed necessary for reasons of safety, in line with the essential requirements of Annex Vb, point 4(d)(ii) of the Basic Regulation. With regard to this latter requirement, for the reasons of harmonisation and equal treatment, further transparency and procedural requirements are proposed to be built in.
52. The text of the Directive's Annex III is integrated into the requirements of paragraph 3 in order to emphasise their general applicability and have the complete set of applicable requirements at one place. This editorial change has certainly an effect on Annex III, which does not have to be repeated, except from the table on the rating scale.
53. Paragraph 5 deals with the possibility to require extended level (level five) of the language proficiency rating scale, as already established by the Directive. In order to clearly allocate the tasks and responsibilities attributed generally to Member States under the Directive, this item is regarded to be best allocated to the ANSPs, with a justification obligation and the same guarantees as already established in the Directive and approval by the competent authority.
54. Rules on the validity of language endorsements are placed in paragraph 6 of this Article for consistency reasons. The text is reworded based on the suggestion of the experts to align the terminology used with other items dealing with validity periods. It is suggested to fix the intervals at 3 and 6 years (deletion of 'no longer') for the reasons of legal certainty and to avoid air traffic controllers being obliged to undergo language testing at shorter periods according to the discretion of the ANSP.
55. The requirements relevant to the **instructor endorsement** are now grouped together in Article 13, where the aim was to clarify that the instructor endorsement, as known from the Directive, is only relevant in the case of on-the-job training. It has to be noted that the essential requirements attached to the Basic Regulation follow another, more detailed approach towards the certification of instructors and the terminology used there also relates to instructors on theoretical skills. As in the first phase this implementing rule aims at the transposition of the already existing requirements, it was not possible to elaborate the necessary detailed and distinguished requirements for the certification of instructors.
56. Further to the previous paragraph, certain editorial changes were also introduced when defining the requirements applicants for an instructor endorsement have to fulfil. The addition in paragraph 2(b) intends to clarify that a student air traffic controller does not qualify for an instructor endorsement. It has to be noted that the experts have identified the necessity to introduce stricter requirements based on ESARR 5 regarding the period required in paragraph 2(b), but at the same time also to elaborate a flexible approach by the competent authority allowing for a shortened period in defined circumstances. These issues should be further elaborated during the second phase.
57. The provision on the validity of instructor endorsements is also placed in this Article for consistency reasons. Conditions for renewal and revalidation need to be elaborated in the second phase.

#### **Chapter 4 – Medical certification**

58. It is suggested to dedicate a specific chapter to the issue of **medical certification**. No changes, apart from certain editorials, were introduced with regard to the issuance of the medical certificates and the requirements, against which the certificates are issued.
59. Regarding the **institutional side** in the medical field, certain terminological changes were introduced in order to align the text with the terminology used in Part-MED and in the update of the Eurocontrol Class 3 medical requirements. The referenced requirements, against which the certificates shall be issued, remain unchanged.
60. A significant novelty is introduced concerning the **validity of the medical certificates** with the aim to facilitate revalidations and renewals undertaken by the responsible

medical personnel, but at the same time to make sure that the entire validity period of the medical certificates is safeguarded, meaning that the applicant will not risk losing valuable days or weeks out of the validity dependent on the date of the examination. The new text is based on the provision 1.2.4.2.1 of ICAO Annex 1 on personnel licensing, which stipulates that the period of validity of a medical assessment may be extended, at the discretion of the Licensing Authority, up to 45 days. ICAO also advises to let the calendar day on which the medical assessment expires remain constant year after year by allowing the expiry date of the current medical assessment to be the beginning of the new validity period under the proviso that the medical examination takes place during the period of validity of the current medical assessment but no more than 45 days before it expires.

61. The allocation of tasks and responsibilities with regard to **reduced medical fitness** had to be clarified compared to the text of the Directive. Following the respective roles and responsibilities in this regard, this Regulation has first to put an obligation to the air traffic controllers not to exercise their privileges in cases of reduced medical fitness. Following that it has to be made clear that the notification obligation of the licence holder is not dependent on a procedure being established or not by their service provider. Thirdly, there is a need for a procedure to be established by the service provider to deal with cases of reduced medical fitness.

### **Chapter 5 – Requirements for training organisations**

62. The requirements in this Chapter are stemming from Article 13 and from the first paragraph of Annex IV of Directive 2006/23/EC. These requirements have been organised into three different Articles as follows:
- Article 17 'Certification of training organisations';
  - Article 18 'Management system of training organisations'; and
  - Article 19 'Requirements with regard to training courses, initial and unit training plans and unit competence schemes'.
63. The term 'training provider' has been replaced by the term 'training organisation' throughout the draft text. The reason for this editorial change is that this term was adopted by the European Parliament and the European Council (hereinafter referred to as 'the legislator') for the purpose of the Basic Regulation. Moreover, this is also the term used in ICAO Annex 1.
64. Regarding Article 17 on the **certification of training organisations**, it has to be noted that Article 13(1) of the Directive is already covered in Article 8c(6) and (7) of the Basic Regulation. It is the general principle of legal drafting that issues already regulated by the higher ranking legislation should not be repeated by the implementing rule. In this case, Article 8c of Basic Regulation already requires the training organisations to be subject to certification. Article 13(2) of the Directive containing requirements for technical and operational competence of training organisations is now included in the second paragraph of the proposed Article 17. Article 13(3) of the Directive is related to the determination of the competent authority to which the training organisation has to submit its application. This has been moved to the proposed Article 4 being a general article on the determination of the competent authority to which the applicant for a training organisation certificate has to submit his/her application. It is important to highlight that in accordance with Article 22b of the Basic Regulation the Agency is the competent authority for training organisations located outside the territory of the Member States but training air traffic controllers who are going to exercise their privileges within the Member States.
65. The proposed Article 17 now starts with a general provision requiring the applicant to submit his/her application to the relevant competent authority in a form and a manner established by this competent authority. This general requirement is a typical requirement for certification of organisations, based on the principle that the competent

authority shall establish the procedures and forms for the applicants wishing to obtain a certificate and the applicants shall use them to apply. Because of its legal nature, the Directive did not contain such provision, but it is the understanding of the Agency that each Member State has developed these procedures and the associated Regulations to be used by the applicants. The second paragraph is a condition (to be properly staffed and equipped to provide training) to obtain a training organisation certificate which comes from Annex IV of the Directive. The last paragraph of Article 17 constitutes a new element compared to the Directive, which is necessary to implement the essential requirements in Annex Vb point 5(b)(i) of the Basic Regulation. It is of utmost importance for the competent authority responsible for the oversight of a training organisation to have access to the training organisation's premises and to the relevant data needed to perform their oversight duties.

66. The proposed Article 18 on the **management system of training organisations** contains mainly the requirements stemming from paragraph 1 of Annex IV of the Directive. This Article implements the essential requirements in Annex Vb point 5(b)(ii) of the Basic Regulation. These requirements are aligned with the requirements contained in Appendix 2 and Appendix 4 of ICAO Annex 1 which require training organisation to implement a safety management system (SMS). While Appendix 2 of ICAO Annex 1 requires an SMS and a quality assurance system to ensure that training organisations comply with the applicable requirements, the legislator did not require to have two independent systems but a 'management system' allowing the organisations to organise themselves in a way that suits them best to achieve the safety objectives. This is the principle proposed by the Agency in its NPA 2008-22 to be applied in relation of other aviation training organisations. Based on the fact that the Agency has to limit the proposed changes to the provisions of the Directive to the minimum, the proposal only contains three changes that are considered technically necessary at this stage:

- (1) Introducing the term management system to implement the Basic Regulation. This means that the requirement to have a management structure and to have a quality system in place are to be considered as being parts of the requirement to implement and maintain a management system in accordance with the essential requirements in point 5(d)(ii) of Annex Vb of the Basic Regulation. This approach is reflected in the proposed changes;
- (2) Requiring organisations to appoint an accountable manager. It is the Agency's opinion that defining the direct accountability of the accountable manager for safety is a very important safety requirement. This requirement is also in line with paragraph 1.2 of Appendix 4 of ICAO Annex 1.
- (3) Introducing a requirement for record-keeping to implement the essential requirements in Annex Vb point 5(d)(i) of the Basic Regulation. Although industry standards for quality system can include this requirement in practice, it is necessary in the Agency's opinion to guarantee that the relevant competent authority can trace the activities of the training organisation when inspecting them.

While the Agency would have preferred to further enhance the existing provisions of the Directive with regard to the requirements for a management system, the proposed changes are now only limited to the absolutely necessary.

67. The provisions of the proposed Article 19 on **requirements with regard to training courses, initial and unit training plans and unit competence schemes** are directly taken from paragraph 1(c) of Annex IV of the Directive. In addition to the usual changes ('NSA' replaced by 'competent authority' and the term 'training provider' replaced by 'training organisation'), the introduction of the term 'where applicable' before 'unit training plan' and the addition of the term 'assessor' to the term 'examiner' are the proposed editorial changes. The term 'where applicable' has been added in order to clarify that a training organisation can also provide initial training only and in such case there is certainly no need to provide unit training plans. The term 'examiner' was used in

the text of the Directive, while the term 'assessor' is now used in the Basic Regulation. However, the Directive does not contain any criteria for the conditions to apply either for the approval of examiners or for assessors. Even though the Basic Regulation contains clear criteria for assessors, the Agency, based on the instructions referred to above as well as on the view of the experts group, has considered that further implementation and determination of the conditions and the requirements for assessors and, if needed, for examiners should be postponed for the second phase.

68. The provisions in paragraph 2 of Annex IV of the Directive remain unchanged and are placed into Annex IV of this proposed Regulation. As the content of the Annex has been adapted, its title has been changed too in order to refer precisely to the **specifications for the certificates of training organisations**.

### **Chapter 6 – Requirements for competent authorities**

69. The requirements in this chapter are stemming from Articles 3(2), 3(3), 4(6), 4(7), 13(5), 13(6), 14 and 15 of Directive 2006/23/EC. These requirements have been organised into different Articles as follows:
- Article 20 'Independence of the competent authority';
  - Article 21 'Tasks of the competent authorities';
  - Article 22 'Issuing and maintaining licences, ratings, endorsements and certificates';
  - Article 23 'Competence assessment';
  - Article 24 'Record-keeping';
  - Article 25 'Exchange of information';
  - Article 26 'Certification procedure for training organisations';
  - Article 27 'Monitoring of training organisations activities and enforcement';
  - Article 28 'Qualified entities'; and
  - Article 29 'Mutual recognition of air traffic controller licences'.
70. As in other chapters, the term 'training provider' has been replaced with the term 'training organisation' and the term 'national supervisory authority' has been replaced with the term 'competent authority'.
71. The Agency considers that the provisions of Articles 3(2) and 3(3) of the Directive are necessary to guarantee the **independence of the competent authority** from the air navigation service provider and from the training organisation. The notification of the names and addresses of the competent authorities and the changes thereof shall now be done to the Agency instead of the European Commission. This change has been introduced because the Agency needs this information for the purpose of the standardisation inspections to be conducted in accordance with Article 54 of the Basic Regulation. After discussions with the European Commission, it was agreed that the Member States would not need to provide this information twice (to the European Commission and to the Agency) but only once (to the Agency). Moreover, as the Agency submits its standardisation reports to the European Commission, the relevant data on competent authorities will also be submitted.
72. The proposed Article 21 on the **tasks of the competent authorities** builds on Article 14 of the Directive. It has been found more appropriate to change the title of this Article to 'Tasks of the competent authorities' in order to better reflect its content. Although it is the Agency's view that the content of this Article does not add any additional obligation to the competent authorities compared to those already required by other articles of this draft Regulation, the Agency decided to keep this list in order to limit the changes to text of the Directive to the minimum. This consideration and the need for consistency lead to the introduction of one additional task of the competent authority in point (h), namely the task to approve the request of the air navigation service provider wishing to require

an extended level (level 5) of language proficiency from the air traffic controllers they employ. This requirement is needed to complement the provisions of the proposed Article 12(5) and to guarantee that this practise is conducted in a non-discriminatory, proportionate, transparent and objectively justified manner.

73. The first three newly inserted paragraphs of Article 22 are proposed to complement the provisions in Articles 4(6) and 4(7) of the Directive on the **issuance of licenses and associated ratings, endorsements and medical certificates** as well as their renewal and revalidation. These requirements are common licensing requirements for competent authorities which are necessary to complement the requirements for applicants for licenses (e.g. requirements to establish procedures for the application, issuance, renewal and revalidation, requirements on the process to follow once the competent authority receives the application). Such provisions were not included in the Directive because of its legal nature. However, it is the understanding of the Agency that these general licensing requirements are needed when transposing the Directive into an Implementing Regulation. Moreover, the proposed provisions will facilitate, in the second phase, the integration of the requirements for competent authorities into the horizontal rule structure, proposed by the Agency in its NPA 2008-22 in particular, when integrating these requirements into the general subpart (named subpart AR.GEN) applicable to all competent authorities when overseeing aviation organisations and professions subject to licenses.
74. The proposed provisions in Articles 23, 24 and 25 on **competence assessment, record-keeping and exchange of information** are transposed from paragraphs 14(4), 14(3) and 14(2) of the Directive. The proposed order has been found more logical regarding the sequence of tasks of the competent authorities. The proposed provisions will need to be assessed and eventually revised during the second phase when integrating all the authority requirements together. It is important to highlight again that the proposed Regulation does not include the requirements relevant to the examiners, as well as the requirements and criteria for the approval to be issued by the competent authority. As already stated above, these requirements will be developed during the second phase. It needs also to be highlighted that the provisions of Article 25 on exchange of information are already covered by Article 15 of the Basic Regulation; therefore this Article should be deleted from this implementing rule, which, however, does not meet the criteria established by the limited mandate given to the Agency for the 'fast-track'.
75. The proposed provisions in Articles 26 and 27 on the **certification procedure for training organisations and monitoring the training organisations' activities** are based on paragraphs 13(3), 13(5), 13(6) and 14(5) of the Directive. The addition of paragraph 1 in the Article 26 is considered to be necessary to complement the requirements relevant to training organisations' certification from the competent authorities' point of view. The competent authority is therefore required to establish the relevant procedures for the application, issuance and maintaining the validity of the training organisation's certificates. While the Directive did not include such provisions, the proposed requirement is needed when transposing the Directive into an Implementing Regulation. This requirement, together with the requirement for the competent authorities to establish procedures for the licensing of ATCOs, will be streamlined when integrating the provisions of this chapter into the horizontal rule structure; as such, these requirements will be part of the management system requirements for the competent authorities.
76. Regarding Article 27(3), an additional editorial change is the replacement of the term 'on-the-spot visits' by the term 'unannounced inspections'. The term 'on-the-spot visits' was considered by the experts ambiguous as it is not a common term used when describing the safety oversight functions of competent authorities. In addition, in the context of the Basic Regulation and its implementing rules for authority requirements the term 'inspections' and 'unannounced inspections' is used. Based on the assessment conducted by the Agency, the proposed change is not considered to have any impact

neither on competent authorities nor on training organisations as it only clarifies the intent of the requirement. Moreover, the scope of the term 'visits' is not defined in the Directive, while the overall meaning of an inspection can be generally found in the Basic Regulation (e.g. Article 54 of the Basic Regulation).

77. It has also to be noted that Article 27(5) on the mutual recognition of certificates issued in accordance with the provisions of this Regulation is redundant, taking into account Article 11 of the Basic Regulation. From a legal drafting point of view provisions already established by the higher ranking legislation should not be repeated in an implementing rule, and the paragraph should therefore be deleted. However, these considerations do not meet the criteria established by the limited mandate given to the Agency for the 'fast-track'.
78. Article 28 of the proposed Regulation on **qualified entities** is based on paragraph 14(6) of the Directive. Article 13 of the Basic Regulation allows the competent authority to delegate any certification task. Based on the concept behind the term 'certification' in the Basic Regulation, any oversight task related to training organisations is considered to be a certification task as they are necessary to obtain a certificate or to keep the certificate valid. Therefore, it is proposed to delete the specific reference to a particular task of the competent authority. Based on Article 13 of the Basic Regulation, the competent authority can delegate any task except the issuance of licenses and certificates (and the limitation, suspension or revocation of those). Moreover, the reference to Article 3 of Regulation (EC) No 550/2004 has been replaced by a reference to Article 13 of the Basic Regulation as being the legal basis for this implementing rule. It is also important to highlight that Regulation (EC) No 1070/2009 has amended Article 3 of Regulation (EC) No 550/2004 and has replaced the term 'recognise organisation' with the term 'qualified entity'. For the second phase, the Agency will evaluate the need to maintain such article taking into account that its provisions are already included in the Basic Regulation and that the paragraph could, in principle, be deleted.
79. Article 29 on the **mutual recognition of air traffic controller licences** transposes Article 15 of the Directive. First of all it has to be noted that provisions on the mutual recognition of licences and certificates issued in accordance with the provisions of this Regulation are redundant, taking into account Article 11 of the Basic Regulation. From a legal drafting point of view provisions already established by the higher ranking legislation should not be repeated in an implementing rule, and the paragraph should therefore be deleted. However, these considerations do not meet the criteria established by the limited mandate given to the Agency for the 'fast-track'. On the other hand the Directive has a more restrictive approach towards mutual recognition as compared to the Basic Regulation, since it gives the possibility to Member States not to recognise licences of air traffic controllers who have not reached the minimum age limit of 21 years. As explained above, such limitation is not in line with the principles of the Basic Regulation and raises legal concerns since an implementing rule is not entitled to deviate from the higher ranking legislation.
80. To overcome the difficulty originating from the conflicting mandates received, the Agency is now proposing two options for political arbitration. In Option A, as presented in the draft text, paragraph 1 consists of a single sentence only, which is reinforcing the principle of mutual recognition without any further limitation. Option B, however, maintains in addition a second sentence adding a limitation possibility to Member States with regard to those air traffic controllers who have not yet reached the minimum age limit of 21 years. In order not to compromise the principle of mutual recognition, this limitation is formulated in a slightly different way compared to the Directive and restricts the exercising of the privileges of those air traffic controllers who have not yet reached the age of 21 years to the Member State that has issued their licence. Certainly, option B in this Article can only be selected in conjunction with option B presented in Article 8(3)(a) on whether or not to allow for a deviation from the minimum age requirement.

81. Paragraph 2, 3 and 4 of the proposed Article 29 copy the rest of Article 15 of the Directive. These requirements regulate the procedures for the cases where a licence holder exercises the privileges of the licence in a Member State other than the one in which the licence has been issued. The content of these paragraphs and the procedure described remain unchanged.

### **Chapter 7 – Final provisions**

82. Due to the changes in the legal nature, timing and the nature of obligations of Member States, certain provisions are not transposed as being outdated, such as Article 14(7) on submitting a report on the application of the Directive at three yearly intervals. As the Directive is already repealed and taking into account the expected entry into force of this Regulation, it is redundant to submit a report on the application of the Directive. On the other hand the standardisation inspections undertaken by the Agency based on this implementing rule will provide the necessary information to the Commission on the application of this Regulation.
83. Similarly, Article 16 of the Directive on adaptation to technical and scientific progress is considered to be redundant, taking into account the different level of the new legal instrument. Having a Commission Regulation as an implementing rule means that any amendment to this Regulation should also be done via the same procedure for delegated acts (earlier: comitology), therefore there is no need to specify its applicability for certain provisions.
84. Instead a new **revision clause** is suggested to be built in Article 30 with the aim to establish full compliance with the essential requirements of the Basic Regulation. The Agency is proposing to make an evaluation of the European air traffic controller licensing system which would result in an Opinion identifying the necessary further improvements and the needs to establish full compliance with the Essential Requirements. This Opinion may also include possible amendments to this Regulation. Such revision clause constitutes a usual element of implementing rules already adopted in the field of aviation safety.
85. Article 17 of the Directive on establishing a committee and specifying the applicable procedure is not relevant in an implementing rule, as this rule does not delegate tasks for a lower level and the responsible committee for the matters related to air traffic controller licensing is already determined by Article 8c(10) of the Basic Regulation. Therefore, this provision has not been transposed.
86. Article 18 of the Directive on penalties is also considered to be unnecessary as this subject is sufficiently regulated in Article 68 of the Basic Regulation.
87. Concerning the **transitional arrangements**, two new provisions are inserted in Article 31 on maintaining the applicability of the eventual national rating endorsements Member States may have developed based on Article 7(4) of the Directive and on the possibility of Member States to limit the exercise of the privileges of a unit endorsement below a given age based on Article 10 of the Directive. The Agency is proposing to allow Member States already making use of these provisions to maintain the application of their existing national legislation on a transitional basis until the common rules in these fields are elaborated and become applicable. With regard to the common rules of the second phase it has to be noted that not only their establishment, but also their application will require transition and adaptation periods to ensure that air navigation service providers have the means to adapt their plans and policies to the eventually changing requirements. The clear benefit of this approach is that it allows for a smooth transition, as required by the Basic Regulation, without compromising the system established by it, by allowing Member States to continue establishing deviations from the general rules outside the possibility given therein. In order to ensure the appropriate flow of information, Member States are also requested to inform the Agency when making use of these transitional arrangements.

88. Further additional provisions are included in this Article to reflect the **transitional arrangements** necessary **with respect to licences, ratings, endorsements, medical certificates and training organisations' certificates**.
- The provisions of Article 31(4) are to grandfather the licences, ratings, endorsements, medical certificates and training organisations' certificates which have been issued on the basis of national legislation issued in accordance with the relevant provisions of the Directive.
  - The provisions of Article 31(5) are to guarantee that those applicants who have already applied for a licence, rating, endorsement, medical certificate or training organisation certificate, but who have not yet been issued with one, show compliance with the provisions of this Regulation before the relevant licence, rating, endorsement or certificate is issued. As the relevant requirements did not fundamentally change compared to those contained in the Directive, the Agency considers the impact of this provision to be low.
  - The provisions of Article 31(6) and 31(7) are necessary for training organisations having the Agency as competent authority (training organisations having their principal place of operation outside the territory of the Member States). The provisions in Article 31(6) guarantee the continuity of the certification process already initiated by the competent authority(ies) of the Member State(s) and to ensure a smooth transition for those applicants. The provisions in Article 31(7) are to ensure that transfer of the oversight activities from the authority(ies) of the Member State(s) to the Agency six months after the entry into force of this Regulation. The Agency considers that six months would be sufficient time for preparing to take over its responsibilities allocated by the legislator in the Basic Regulation (see Article 22b).
89. Article 20 of the Directive on transposition is not applicable due to the changed nature of the legal instrument; therefore this provision has not been transposed. Following its entry into force, this Regulation shall be binding in its entirety and directly applicable in all Member States.
90. Regarding the **entry into force** of this Regulation, the Agency is proposing the standard approach, meaning on the twentieth day following its publication in the Official Journal of the European Union. This is also in line with the recent request of the Member States to accelerate the implementation of the so called SES II package.

### **Annexes**

91. Annex I, which contains the **specifications for licences**, remains unchanged apart from minor editorial updates.
92. Annex II, which specifies the **training requirements**, contains the updated reference to the latest edition of Eurocontrol's 'Specification for the ATCO Common Core Content Initial Training' of 21 October 2008, which is considered as a necessary technical update. In addition, the requirement to train air traffic controllers in safety, security and crisis management, coming from Article 4(8) of the Directive is added to both the unit training requirements in Part B and to the continuation training requirements in Part C based on the experts' view, with the aim to ensure that air traffic controllers are sufficiently trained in particular in local security and crisis management issues, and safety of course as well.
93. As the descriptive items of Annex III were moved into Article 12 on language endorsement, this annex now contains the table with the **language proficiency rating scale** only.
94. Annex IV has also been streamlined by inserting the descriptive elements into the relevant articles; therefore it only contains the previous paragraph 2 on the **specifications for the certificates of training organisations**.

#### **IV. Regulatory Impact Assessment**

95. The purpose of a Regulatory Impact Assessment (RIA) is to assess the consequences of certain rules and requirements which are to be developed. In this case this would address the introduction of requirements regarding the licensing of air traffic controllers. The assessment thus would aim to support the decision-making process on the implementation of the amended Basic Regulation.
96. The purpose and methodology of a RIA have been explained in several related documents, e.g. the RIA on the extension of the competence of the European Aviation Safety Agency (EASA) to the Regulation of Air Traffic Management and Air Navigation Services (ATM/ANS)<sup>9</sup>.
97. The implementation of the Basic Regulation with regard to air traffic controller licensing now requires two phases. The first phase ('fast-track') aims at the transfer of the already existing Directive without significant changes at the level of the substantive requirements, in line with the instructions given by the Commission and the decisions taken by the Single Sky Committee.
98. The present Opinion comprises a set of draft implementing measures that have been transferred from Directive 2006/23/EC. There are no substantive changes to the contents of the Directive, which would justify further analysis in the context of a RIA, meaning that the minor changes categorised and explained above would not allow for any other alternatives or options being worth an additional study. Therefore a specific RIA at this stage has not been undertaken.
99. Although it can be concluded that there are no immediate risks in the field of ATM, there are still many aspects that need to be addressed. Oversight, monitoring and enforcement are still not functioning well and there is still no uniformity as to the implementation of ATM/ANS safety measures. The RIA on the extension of the EASA system to the regulation of Air Traffic Management and Air Navigation Services (ATM/ANS)<sup>10</sup> already stated and this analysis confirms that action needs to be taken. Although it is safe in Europe's skies, it is clear that still some aspects need to be addressed. This involves mainly the goal of clear regulation and uniform oversight. In the second phase of the implementation this will be further evaluated and addressed.

#### **V. Conclusions**

100. The Agency has prepared this Opinion as an answer to the European Commission and the Single Sky Committee's request to implement the extension of the European aviation safety regulatory system to ATM/ANS in the first phase through the so-called 'fast-track' process. In doing so the Agency has carefully reflected the further advice it has received during the process from the Commission, the Single Sky Committee and the EASA Management Board as well as from all stakeholders involved.
101. The Agency strongly believes that this 'fast-track' process will provide early benefits in the safety regulatory system, such as:
- Direct applicability of a Commission Regulation achieves more efficiently the high and uniform level of safety compared to a Directive with different and diverging national transposition levels and methods;
  - A licensing system through directly applicable rules should facilitate establishing the FAB arrangements;

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<sup>9</sup> [www.easa.europa.eu/ws\\_prod/r/doc/opinions/Translations/01\\_2008/Attachment%20%20-%20RIA.pdf](http://www.easa.europa.eu/ws_prod/r/doc/opinions/Translations/01_2008/Attachment%20%20-%20RIA.pdf)

<sup>10</sup> [www.easa.europa.eu/ws\\_prod/r/doc/opinions/Translations/01\\_2008/Attachment%20%20-%20RIA.pdf](http://www.easa.europa.eu/ws_prod/r/doc/opinions/Translations/01_2008/Attachment%20%20-%20RIA.pdf)

- The Agency may develop acceptable means of compliance and certification specifications whose use facilitate the compliance with rules and provide the necessary proportionality and subsidiarity. This implies also making use of industry best practices;
- The new rules in place provide the legal basis for the standardisation inspections purposed to ensure the safe and uniform application of common rules and to assist the authorities in their safety oversight role;
- The Agency will become the competent authority in the tasks attributed to it by law – for pan-European and non-EU ANSP's, as well as for non-European ATCO training organisations;
- Other elements in the European aviation safety system – such as international cooperation agreements as well as enforcement measures set in the BR – would become applicable also in this domain;
- The Agency may contribute through various regulatory measures to the implementation of the SES II, including in particular supporting the FAB arrangements, transposition of ICAO SARP's, safety oversight of the ATM network management functions and support implementation of the SESAR programme.

102. The Agency recommends that the Commission initiates the executive process for the adoption of the new Commission Regulation on the licensing and medical certification of air traffic controllers based on the present Opinion.

Cologne, 28 May 2010

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