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 (Text with EEA relevance)

REGULATION (EC) No 1108/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 October 2009

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)],

Whereas:

(1) In its communication of 15 November 2005 to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions entitled ‘Extending the tasks of the European Aviation Safety Agency — an agenda for 2010’, the Commission announced its intention to progressively extend the tasks of the European Aviation Safety Agency (the Agency), with a view towards a ‘total system approach’, to aerodrome/airport safety and interoperability, air navigation services (ANS) and air traffic management (ATM).

(2) 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.

(3) The achievements of the single European sky initiative need to be complemented by the harmonised safety element to be applied to aerodromes and ATM/ANS. To this end, the appropriate safety regulatory framework should also be developed with regard to the deployment of new technologies in this field.

(4) The Community should lay down, in line with the Standards and Recommended Practices set by the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention), essential requirements applicable to

aeronautical products, parts and appliances, aerodromes and the provision of ATM/ANS; essential requirements applicable to persons and organisations involved in the operation of aerodromes and in the provision of ATM/ANS; and essential requirements applicable to persons and products involved in the training and medical assessment of air traffic controllers. The Commission should be empowered to develop the necessary related implementing rules.

(5) Taking into account that services consisting in the origination and processing of data and formatting and delivering data for the purpose of air navigation are different from ANS services as defined in Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation)[(4)], the Commission should develop specific requirements adapted to such services.

(6) It would not be appropriate to subject all aerodromes to common rules. In particular, aerodromes which are not open to public use and aerodromes mainly used for recreational flying or serving commercial air transport other than in accordance with instrument flight procedures and with paved runways of less than 800 metres, should remain under the regulatory control of the Member States, without any obligation under this Regulation on other Member States to recognise such national arrangements. However, proportionate measures should be taken by Member States to increase generally the level of safety of recreational aviation and of all commercial air transport. The Commission will re-examine in due time, extending the scope of application to aerodromes currently excluded in a modular manner, and taking full account of the impact this might have on such aerodromes.

(7) Taking into account the large variety of aerodromes and their highly individual infrastructures and environments, common aerodrome safety rules should provide for the necessary flexibility for customised compliance, through an adequate balance between implementing rules, certification specifications and acceptable means of compliance. These rules should be proportionate to the size, traffic, category and complexity of the aerodrome and nature and volume of operations thereon, thereby avoiding unnecessary bureaucratic and economic burdens in particular for smaller aerodromes which only involve very limited passenger traffic.

(8) Aerodrome infrastructure and operations should be certified by means of a single certificate. However, Member States may certify aerodrome infrastructure and operations separately. In that case, certificates should be delivered by the same authority. Operators of multiple aerodromes, having established appropriate central functions, may request a single certificate, covering operations and management at all aerodromes under their responsibility.

(9) Aeronautical products, parts and appliances, aerodromes and their equipment, operators involved in commercial air transport and in the operation of aerodromes, ATM/ANS systems and providers, as well as pilots and air traffic controllers, and persons, products and organisations involved in their training and medical assessment, should be certified or licensed once they have been found to comply with essential requirements to be laid down by the Community in line with Standards and Recommended Practices set by the

Chicago Convention. The Commission should be empowered to develop the necessary implementing rules for establishing the conditions for the issue of the certificate or the conditions for its replacement by a declaration of capability, taking into account the risks associated with the different types of operations or services.

(10) Implementing rules relating to the certification of the design, manufacture and maintenance of ATM/ANS systems and constituents as well as to organisations engaged in the design, manufacture and maintenance should only be laid down when related to safety-critical issues identified following a detailed impact assessment study.

(11) The Commission intends to begin work, in due time, on an examination of the feasibility and the necessity of introducing accredited bodies for the certification of ATM/ANS systems and an evaluation of all possible options and impacts. The Commission could, if appropriate, make a proposal for further revision of this Regulation based on a full impact assessment.

(12) Under the Community institutional system, implementation of Community law is primarily the responsibility of the Member States. Certification tasks required by this Regulation and its implementing rules are therefore to be executed at national level. In certain clearly defined cases, however, the Agency should also be empowered to conduct certification tasks as specified in this Regulation. The Agency should, for the same reason, be allowed to take the necessary measures related to the fields covered by this Regulation when this is the best means to ensure uniformity and facilitate the functioning of the internal market.

(13) The implementing rules to be developed by the Agency in the domain of ATM/ANS should be prepared in accordance with the results of the consultation process of the Agency on a basis that should be adapted to new stakeholders, and build on the provisions of Regulation (EC) No 549/2004, 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 (the service provision Regulation)[(5)], 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 (the airspace Regulation)[(6)], 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 (the interoperability Regulation)[(7)], and in particular the transposed Eurocontrol Safety Regulatory Requirements. Such implementing rules should be adopted by the Commission in accordance with the regulatory procedure set out in Article 5 of Regulation (EC) No 549/2004. Transitional mechanisms should be designed in order to provide for the continuity of approvals already granted under the rules of those Regulations.

(14) Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 include provisions on several regulatory functions of ATM, such as, but not limited to interoperability and the management of air traffic flows and of the airspace. All these areas involve safety aspects, which need to be properly addressed. Therefore, when regulating on these subjects, Member States and the Commission should ensure

proper coverage of such safety aspects by means of appropriate coordination with the Agency.

(15) It is a general objective that the transfer of functions and tasks from the Member States, including those resulting from their cooperation through the Safety Regulation Commission of Eurocontrol, to the Agency should be done efficiently, without any reduction in the current high levels of safety, and without any negative impact on certification schedules. Appropriate measures should be adopted to provide for the necessary transition. The Agency should have sufficient resources for its new tasks, and the timing of the allocation of these resources should be based on a defined need and schedule for the adoption and the respective applicability of the related implementing rules.

(16) Regulation (EC) No 216/2008 of the European Parliament and of the Council[(8)] 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 of 5 April 2006 on a Community air traffic controller licence[(9)] should therefore be repealed, without prejudice to the certification or licensing of products, persons and organisations already carried out in accordance with that Directive.

(17) With regard to the regulation of professions which are not covered by this Regulation, the competence of Member States should be retained to establish or maintain at their own discretion, inter alia, certification or licensing requirements of the personnel.

(18) The implementing rules to be developed by the Agency in the domain of ATM/ANS should be developed in the context of a comprehensive review of the safety requirements in the single European sky legislation, namely, Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004. In order to avoid duplication of safety requirements applicable to ATM/ANS services on the one hand, and to avoid a legal void without applicable safety requirements on the other hand, the date of entry into force of the amendments to the single European sky legislation should be in line with those of the new safety measures made under this Regulation.

(19) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(10)].

(20) In particular the Commission should be empowered to adopt implementing rules for air traffic controller licensing and associated approvals, aerodromes and aerodrome operations, air traffic management and air navigation services, and associated certificates, oversight and enforcement, as well as to adopt a regulation on the fees and charges of the Agency. Since those measures are of general scope and are designed to amend non-essential elements of Regulation (EC) No 216/2008, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(21) Without prejudice to the competences of the Member States, the Commission, if necessary, could make recommendations to the Council to establish a framework of coordination between the Community and the International Civil Aviation Organization (ICAO) on safety audits, with the aim of avoiding duplication and in the interests of the efficient use of resources.

(22) When drafting safety rules, the Agency should ensure the involvement of all interested parties. Rule-making opinions should be based on a full scale consultation of all stakeholders, including the smaller industry operators, as well as on a proper assessment of their potential impact in the applicable fields. As provided for in Regulation (EC) No 216/2008, the advisory body of interested parties should be consulted by the Agency prior to making decisions,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 216/2008 is hereby amended as follows:

1. Article 1 is replaced by the following:

Article 1

Scope

1 This Regulation shall apply to:

a the design, production, maintenance and operation of aeronautical products, parts and appliances, as well as personnel and organisations involved in the design, production and maintenance of such products, parts and appliances;

b personnel and organisations involved in the operation of aircraft;

c the design, maintenance and operation of aerodromes, as well as personnel and organisations involved therein and, without prejudice to Community and national legislation on environment and land-use planning, the safeguarding of surroundings of aerodromes;

d the design, production and maintenance of aerodrome equipment, as well as personnel and organisations involved therein;

e the design, production and maintenance of systems and constituents for air traffic management and air navigation services (ATM/ANS), as well as personnel and organisations involved therein;

f ATM/ANS, as well as personnel and organisations involved therein.

2 This Regulation shall not apply to:

a products, parts, appliances, personnel and organisations referred to in paragraph 1(a) and (b) while carrying out military, customs, police, search and rescue, firefighting, coastguard or similar activities or services. The Member States shall undertake to ensure that such activities or services have due regard as far as practicable to the objectives of this Regulation;

b aerodromes or part thereof, as well as equipment, personnel and organisations, referred to in paragraph 1(c) and (d), that are controlled and operated by the military;