

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Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (Text with EEA relevance) (repealed)

## CHAPTER II

### SUBSTANTIVE REQUIREMENTS

#### *Article 4*

#### **Basic principles and applicability**

- 1 Aircraft, including any installed product, part and appliance, which are:
- a designed or manufactured by an organisation for which the Agency or a Member State ensures safety oversight; or
  - b registered in a Member State, unless their regulatory safety oversight has been delegated to a third country and they are not used by a Community operator; or
  - c registered in a third country and used by an operator for which any Member State ensures oversight of operations or used into, within or out of the Community by an operator established or residing in the Community; or
  - d registered in a third country, or registered in a Member State which has delegated their regulatory safety oversight to a third country, and used by a third-country operator into, within or out of the Community

shall comply with this Regulation.

- 2 Personnel involved in the operations of aircraft referred to in paragraph 1(b), (c) or (d) shall comply with this Regulation.

- 3 Operations of aircraft referred to in paragraph 1(b), (c) or (d) shall comply with this Regulation.

[<sup>F1</sup>3a Aerodromes, including equipment, located in the territory subject to the provisions of the Treaty, open to public use and which serve commercial air transport and where operations using instrument approach or departure procedures are provided, and:

- a have a paved runway of 800 metres or above; or
- b exclusively serve helicopters;

shall comply with this Regulation. Personnel and organisations involved in the operation of these aerodromes shall comply with this Regulation.

- 3b By way of derogation from paragraph 3a, Member States may decide to exempt from the provisions of this Regulation an aerodrome which:

- handles no more than 10 000 passengers per year, and
- handles no more than 850 movements related to cargo operations per year.

If such exemption by a Member State does not comply with the general safety objectives of this Regulation or any other rule of Community law, the Commission shall take a decision in accordance with the safeguard procedure referred to in Article 65(7) not to

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permit the exemption in question. In such a case, the Member State concerned shall revoke the exemption.

3c ATM/ANS provided in the airspace of the territory to which the Treaty applies, as well as in any other airspace where Member States apply 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)<sup>(1)</sup> in accordance with Article 1(3) of that Regulation, shall comply with this Regulation. Systems and constituents, personnel and organisations involved in the provision of these ATM/ANS shall comply with this Regulation.]

4 Paragraph 1 shall not apply to aircraft referred to in Annex II.

5 Paragraphs 2 and 3 shall not apply to aircraft referred to in Annex II, with the exception of aircraft referred to in points (a)(ii), (d) and (h) thereof when used for commercial air transportation.

6 This Regulation shall not affect the rights of third countries as specified in international conventions, in particular the Chicago Convention.

#### Textual Amendments

- F1** Inserted by [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 \(Text with EEA relevance\)](#).

### Article 5

#### Airworthiness

1 Aircraft referred to in Article 4(1)(a), (b) and (c) shall comply with the essential requirements for airworthiness laid down in Annex I.

2 Compliance of aircraft referred to in Article 4(1)(b), and of products, parts and appliances mounted thereon shall be established in accordance with the following:

- a products shall have a type-certificate. The type-certificate, and certification of changes to that type-certificate, including supplemental type-certificates, shall be issued when the applicant has shown that the product complies with a type-certification basis as specified in Article 20, established to ensure compliance with the essential requirements referred to in paragraph 1, and when it has no feature or characteristic making it unsafe for operation. The type-certificate shall cover the product, including all parts and appliances fitted thereon;
- [<sup>F2</sup>b] the measures referred to in paragraph 5 may lay down a requirement for certification in respect of parts and appliances. The certificates for parts and appliances shall be issued when the applicant has shown that the parts and appliances comply with the detailed airworthiness specifications established to ensure compliance with the essential requirements referred to in paragraph 1;
- c no aircraft shall be operated, unless it has a valid certificate of airworthiness. The certificate shall be issued when the applicant has shown that the aircraft conforms to the type design approved in its type-certificate and that relevant documentation, inspections and tests demonstrate that the aircraft is in condition for safe operation. This certificate of airworthiness shall remain valid as long as it is not suspended, revoked or terminated and as long as the aircraft is maintained in accordance with the essential requirements

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related to continuing airworthiness set out in point 1.d of Annex I and the measures adopted pursuant to paragraph 5;]

- d organisations responsible for the maintenance of products, parts and appliances shall demonstrate their capability and means to discharge the responsibilities associated with their privileges. Unless otherwise accepted these capabilities and means shall be recognised through the issuance of an organisation approval. The privileges granted to the approved organisation and the scope of the approval shall be specified in the terms of approval;
- e organisations responsible for the design and manufacture of products, parts and appliances shall demonstrate their capability and means to discharge the responsibilities associated with their privileges. Unless otherwise accepted these capabilities and means shall be recognised through the issuance of an organisation approval. The privileges granted to the approved organisation and the scope of the approval shall be specified in the terms of approval;

in addition:

- f personnel responsible for the release of a product, part or appliance after maintenance may be required to hold an appropriate certificate (personnel certificate);
- g the capability of maintenance training organisations to discharge the responsibilities associated with their privileges in relation to the issuance of the certificates referred to in point (f) may be recognised by the issuance of an approval.

3 Aircraft referred to in Article 4(1)(a) and products, parts and appliances mounted thereon shall comply with paragraph 2(a), (b) and (e) of this Article.

4 By way of derogation from paragraphs 1 and 2:

- a a permit to fly may be issued when it is shown that the aircraft is capable of performing safely a basic flight. It shall be issued with appropriate limitations, in particular to protect third parties' safety;
- b a restricted certificate of airworthiness may be issued to aircraft for which a type certificate has not been issued according to paragraph 2(a). In this case, the aircraft shall be shown to comply with specific airworthiness specifications and deviations from the essential requirements referred to in paragraph 1 shall nevertheless ensure adequate safety with regard to the purpose. Aircraft eligible for these restricted certificates, and limitations for use of these aircraft, shall be defined according to the measures referred to in paragraph 5;
- c when the number of aircraft of the same type eligible for a restricted certificate of airworthiness so justifies, a restricted type certificate may be issued and an appropriate type certification basis shall be established.

5 The measures designed to amend non-essential elements of this Article, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(4). Those measures shall specify in particular:

- a conditions for establishing and notifying to an applicant the type-certification basis applicable to a product;
- b conditions for establishing and notifying to an applicant the detailed airworthiness specifications applicable to parts and appliances;
- c conditions for establishing and notifying to an applicant the specific airworthiness specifications applicable to aircraft eligible for a restricted certificate of airworthiness;
- d conditions for issuing and disseminating mandatory information in order to ensure the continuing airworthiness of products;
- e conditions for issuing, maintaining, amending, suspending or revoking type-certificates, restricted type-certificates, approval of changes to type-certificates,

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individual certificates of airworthiness, restricted certificates of airworthiness, permits to fly and certificates for products, parts or appliances, including:

- (i) conditions on the duration of these certificates, and conditions to renew certificates when a limited duration is fixed;
- (ii) restrictions applicable to the issue of permits to fly. These restrictions should in particular concern the following:
  - purpose of the flight,
  - airspace used for the flight,
  - qualification of flight crew,
  - carriage of persons other than flight crew;
- (iii) aircraft eligible for restricted certificates of airworthiness, and associated restrictions;
- (iv) the minimum syllabus of maintenance certifying staff type rating training to ensure compliance with paragraph (2)(f);
- (v) the minimum syllabus of pilot type rating and the qualification of associated simulators to ensure compliance with Article 7;
- (vi) the master minimum equipment list as appropriate and additional airworthiness specifications for a given type of operation to ensure compliance with Article 8;
- f conditions to issue, maintain, amend, suspend or revoke organisation approvals required in accordance with paragraph 2(d), (e) and (g) and conditions under which such approvals need not be requested;
- g conditions to issue, maintain, amend, suspend or revoke personnel certificates required in accordance with paragraph 2(f);
- h responsibilities of the holders of certificates;
- i how aircraft referred to in paragraph 1 which are not covered by paragraphs 2 or 4 are to show compliance with the essential requirements;
- j how aircraft referred to in Article 4(1)(c) are to show compliance with the essential requirements.

6 When adopting the measures referred to in paragraph 5, the Commission shall take specific care that they:

- a reflect the state of the art and the best practices in the field of airworthiness;
- b take into account worldwide aircraft experience in service, and scientific and technical progress;
- c allow for immediate reaction to established causes of accidents and serious incidents;
- d do not impose on aircraft referred to in Article 4(1)(c) requirements which would be incompatible with the International Civil Aviation Organization (ICAO) obligations of Member States.

#### **Textual Amendments**

- F2** Substituted by [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 \(Text with EEA relevance\).](#)

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## Article 6

### Essential requirements for environmental protection

[<sup>F3</sup>1 Products, parts and appliances shall comply with the environmental protection requirements contained in Amendment 9 of Volume I and in Amendment 6 of Volume II of Annex 16 to the Chicago Convention as applicable on 20 November 2008, except for the Appendices to Annex 16.]

2 The measures designed to amend non-essential elements of the requirements referred to in paragraph 1 in order to bring them into line with subsequent amendments to the Chicago Convention and its Annexes which enter into force after the adoption of this Regulation and which become applicable in all Member States, shall, in so far as such adaptations do not broaden the scope of this Regulation, be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(5).

3 The measures designed to amend non-essential elements of the requirements referred to in paragraph 1, by supplementing them, shall, using as necessary the content of the Appendices referred to in paragraph 1, be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(5).

#### Textual Amendments

- F3** Substituted by [Commission Regulation \(EC\) No 690/2009 of 30 July 2009 amending Regulation \(EC\) No 216/2008 of the European Parliament and the Council 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 \(Text with EEA relevance\).](#)

## Article 7

### Pilots

1 Pilots involved in the operation of aircraft referred to in Article 4(1)(b) and (c), as well as flight simulation training devices, persons and organisations involved in the training, testing, checking or medical assessment of these pilots, shall comply with the relevant 'essential requirements' laid down in Annex III.

2 Except when under training, a person may only act as a pilot if he or she holds a licence and a medical certificate appropriate to the operation to be performed.

A person shall only be issued a licence when he or she complies with the rules established to ensure compliance with the essential requirements on theoretical knowledge, practical skill, language proficiency and experience as set out in Annex III.

A person shall only be issued a medical certificate when he or she complies with the rules established to ensure compliance with the essential requirements on medical fitness as set out in Annex III. This medical certificate may be issued by aero-medical examiners or by aero-medical centres.

Notwithstanding the third subparagraph, in the case of a leisure pilot licence a general medical practitioner who has sufficient detailed knowledge of the applicant's medical background may, if so permitted under national law, act as an aero-medical examiner, in

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accordance with detailed implementing rules adopted pursuant to the procedure referred to in Article 65(3); these implementing rules shall ensure that the level of safety is maintained.

The privileges granted to the pilot and the scope of the licence and the medical certificate shall be specified in such licence and certificate.

The requirements of the second and third subparagraphs may be satisfied by the acceptance of licences and medical certificates issued by or on behalf of a third country as far as pilots involved in the operation of aircraft referred to in Article 4(1)(c) are concerned.

3 The capability of pilot training organisations and of aero-medical centres to discharge the responsibilities associated with their privileges in relation to the issuance of licenses and medical certificates shall be recognised by the issuance of an approval.

Pilot training organisations or aero-medical centres shall be issued an approval when they comply with the rules established to ensure compliance with the relevant essential requirements as laid down in Annex III.

The privileges granted by the approvals shall be specified thereon.

[<sup>F24</sup> A certificate shall be required in respect of each flight simulation training device used for the training of pilots. The certificate shall be issued when the applicant has shown that the device complies with the rules established to ensure compliance with the relevant essential requirements as set out in Annex III.]

5 Persons responsible for providing flight training or flight simulation training, or for assessing pilots' skill, and aero-medical examiners shall hold an appropriate certificate. Such certificate shall be issued when it is shown that the person concerned complies with the rules established to ensure compliance with the relevant essential requirements as laid down in Annex III.

The privileges granted by the certificate shall be specified therein.

6 The measures designed to amend non-essential elements of this Article by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(4). Those measures shall specify in particular:

- a the different ratings for pilots' licences and the medical certificates adequate for the different types of activities performed;
- b the conditions for issuing, maintaining, amending, limiting, suspending or revoking licences, ratings for licences, medical certificates, approvals and certificates referred to in paragraphs 2, 3, 4 and 5, and the conditions under which such certificates and approvals need not be requested;
- c the privileges and responsibilities of the holders of licences, ratings for licences, medical certificates, approvals and certificates referred to in paragraphs 2, 3, 4 and 5;
- d the conditions for the conversion of existing national pilots' licences and of national flight engineers' licences into pilots' licences as well as the conditions for the conversion of national medical certificates into commonly recognised medical certificates;
- e without prejudice to the provisions of bilateral agreements concluded in accordance with Article 12, the conditions for the acceptance of licences from third countries;
- f how pilots of aircraft referred to in points (a)(ii), (d) and (f) of Annex II, when used for commercial air transportation, comply with the relevant essential requirements of Annex III.

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7 When adopting the measures referred to in paragraph 6, the Commission shall take specific care that they reflect the state of the art, including best practices and scientific and technical progress, in the field of pilot training.

Such measures shall also include provisions for the issuance of all types of pilot licences and ratings required under the Chicago Convention, and of a leisure pilot licence covering non-commercial activities involving aircraft with a maximum certificated take off mass of 2 000 kg or less and which do not meet any of the criteria referred to in Article 3(j).

#### Textual Amendments

- F2** Substituted by 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).

### Article 8

#### Air operations

[<sup>F21</sup> The operation of aircraft referred to in Article 4(1)(b) and (c) shall comply with the essential requirements set out in Annex IV and, if applicable, Annex Vb.]

2 Unless otherwise determined in the implementing rules, operators engaged in commercial operations shall demonstrate their capability and means of discharging the responsibilities associated with their privileges. These capabilities and means shall be recognised through the issuance of a certificate. The privileges granted to the operator and the scope of the operations shall be specified in the certificate.

3 Unless otherwise determined in the implementing rules, operators engaged in the non-commercial operation of complex motor-powered aircraft shall declare their capability and means of discharging the responsibilities associated with the operation of that aircraft.

4 Cabin crew involved in the operation of aircraft referred to in Article 4(1)(b) and (c) shall comply with the essential requirements laid down in Annex IV. Those involved in commercial operations shall hold an attestation as initially set out in Annex III, Subpart O, point (d) of OPS 1 1005 as set out in Regulation (EC) No 1899/2006 of the European Parliament and of the Council of 12 December 2006 amending Council Regulation (EEC) No 3922/91<sup>(2)</sup>; at the discretion of the Member State, such attestation may be issued by approved operators or training organisations.

5 The measures designed to amend non-essential elements of this Article, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(4). Those measures shall specify in particular:

- [<sup>F2a</sup> conditions to operate an aircraft in compliance with the essential requirements set out in Annex IV and, if applicable, Annex Vb;]
- b conditions for issuing, maintaining, amending, limiting, suspending or revoking the certificates referred to in paragraph 2 and the conditions under which a certificate shall be replaced by a declaration of the capability and means of the operator to discharge the responsibilities associated with the operation of the aircraft;
- c privileges and responsibilities of the holders of certificates;

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- d conditions and procedures for the declaration by, and for the oversight of, operators referred to in paragraph 3 and the conditions under which a declaration shall be replaced by a demonstration of capability and means to discharge the responsibilities associated with the privileges of the operator recognised by the issuance of a certificate;
  - e conditions for issuing, maintaining, amending, limiting, suspending or revoking the cabin crew attestation referred to in paragraph 4;
  - f conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety;
  - [<sup>F2</sup>g how operations of aircraft referred to in point (a)(ii) and points (d) and (h) of Annex II, when used for commercial air transportation, comply with the relevant essential requirements set out in Annex IV and, if applicable, Annex Vb.]
- 6 The measures referred to in paragraph 5 shall:
- reflect the state of the art and the best practices in the field of air operations,
  - define different types of operations and allow for related requirements and compliance demonstrations proportionate to the complexity of operations and the risk involved,
  - take into account worldwide aircraft experience in service, and scientific and technical progress,
  - with regard to commercial transportation by aeroplane, and without prejudice to the previous indent, be developed initially on the basis of the common technical requirements and administrative procedures specified in Annex III to Regulation (EEC) No 3922/91,
  - be based on a risk assessment and shall be proportional to the scale and scope of the operation,
  - allow for immediate reaction to established causes of accidents and serious incidents,
  - not impose on aircraft referred to in Article 4(1)(c) requirements which would be incompatible with the ICAO obligations of Member States[<sup>F2</sup>,]
  - [<sup>F1</sup>take into account the safety aspects related to ATM/ANS.]

#### Textual Amendments

- F1** Inserted by 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).
- F2** Substituted by 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).

#### [<sup>F1</sup> Article 8a

#### Aerodromes

- 1 Aerodromes and aerodrome equipment as well as the operation of aerodromes shall comply with the essential requirements set out in Annex Va and, if applicable, Annex Vb.
- 2 The compliance of aerodromes, aerodrome equipment and operation of aerodromes with the essential requirements shall be established in accordance with the following:



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- a a certificate shall be required in respect of each aerodrome. The certificate and certification of changes to that certificate shall be issued when the applicant has shown that the aerodrome complies with the aerodrome certification basis set out in point (b), and that the aerodrome has no feature or characteristic making it unsafe for operation. The certificate shall cover the aerodrome, its operation and its safety-related equipment;
  - b the certification basis for an aerodrome shall consist of the following:
    - (i) the applicable certification specifications related to the type of aerodromes;
    - (ii) the provisions for which an equivalent level of safety has been accepted; and
    - (iii) the special detailed technical specifications necessary when the design features of a particular aerodrome or the experience in operation render any of the specifications referred to in point (i) inadequate or inappropriate to ensure conformity with the essential requirements set out in Annex Va;
  - c the measures referred to in paragraph 5 may lay down a requirement of certification in respect of safety-critical aerodrome equipment. The certificate for such equipment shall be issued when the applicant has shown that the equipment complies with the detailed specifications established to ensure compliance with the essential requirements referred to in paragraph 1;
  - d organisations responsible for the operation of aerodromes shall demonstrate their capability and means to discharge the responsibilities associated with their privileges. These capabilities and means shall be recognised through the issuance of the certificate referred to in point (a). They may also be recognised through the issuance of a separate certificate if the Member State where the aerodrome is located so decides. The privileges granted to the certified organisation and the scope of the certificate, including a list of aerodromes to be operated, shall be specified in the certificate;
  - e by way of derogation from point (d), Member States may decide that providers of apron management services shall be allowed to declare their capability and means of discharging the responsibilities associated with the services provided.
- 3 Member States shall ensure that provisions are in place to safeguard aerodromes against activities and developments in their surroundings which may cause unacceptable risks to aircraft using the aerodrome.
- 4 Aerodrome operators shall monitor activities and developments which may cause unacceptable safety risks to aviation in the aerodrome surroundings and take, within their competence, mitigating measures as appropriate.
- 5 The measures designed to amend non-essential elements of the requirements referred to in this Article, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(4).

Those measures shall specify in particular:

- a the conditions for establishing and notifying to an applicant the certification basis applicable to an aerodrome;
- b the conditions for establishing and notifying to an applicant the detailed specifications applicable to aerodrome equipment;
- c the conditions for issuing, maintaining, amending, suspending or revoking certificates for aerodromes and certificates for aerodrome equipment, including operating limitations related to the specific design of the aerodrome;
- d the conditions for operating an aerodrome in compliance with the essential requirements set out in Annex Va and, if applicable, Annex Vb;

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- e the conditions for issuing, maintaining, amending, suspending or revoking the certificates referred to in paragraph 2(d);
  - f the responsibilities of the holders of certificates;
  - g the conditions for the acceptance and for the conversion of aerodrome certificates issued by Member States, including measures which are already authorised by the Member State concerned on the basis of notified deviations from Annex 14 of the Chicago Convention before the entry into force of this Regulation;
  - h the conditions for the decision not to permit exemptions referred to in Article 4(3b), including criteria for cargo aerodromes, the notification of exempted aerodromes and for the review of granted exemptions;
  - i the conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety;
  - j the conditions and procedures for the declaration by and for the oversight of service providers referred to in paragraph 2(e).
- 6 The measures referred to in paragraph 5 shall:
- a reflect the state of the art and the best practices in the field of aerodromes and take into account the applicable ICAO Standards and Recommended Practices;
  - b be proportionate to the size, traffic, category and complexity of the aerodrome and nature and volume of operations thereon;
  - c take into account worldwide aerodrome operation experience, and scientific and technical progress;
  - d allow for immediate reaction to established causes of accidents and serious incidents;
  - e provide for the necessary flexibility for customised compliance.

#### **Textual Amendments**

- F1** Inserted by [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 \(Text with EEA relevance\)](#).

#### *Article 8b*

#### **ATM/ANS**

1 Provision of ATM/ANS shall comply with the essential requirements set out in Annex Vb and, as far as practicable, Annex Va.

2 ATM/ANS providers shall be required to hold a certificate. The certificate shall be issued when the provider has demonstrated its capability and means of discharging the responsibilities associated with the provider's privileges. The privileges granted and the scope of the services provided shall be specified in the certificate.

3 By way of derogation from paragraph 2, Member States may decide that providers of flight information services shall be allowed to declare their capability and means of discharging the responsibilities associated with the services provided.

4 The measures referred to in paragraph 6 may lay down a requirement for certification in respect of organisations engaged in the design, manufacture and maintenance of safety-critical ATM/ANS systems and constituents. The certificate for those organisations shall be issued when

they have demonstrated their capability and means of discharging the responsibilities associated with their privileges. The privileges granted shall be specified in the certificate.

5 The measures referred to in paragraph 6 may lay down a requirement for certification, or alternatively, validation by the ATM/ANS provider, in respect of safety-critical ATM/ANS systems and constituents. The certificate for those systems and constituents shall be issued, or validation shall be given, when the applicant has shown that the systems and constituents comply with the detailed specifications established to ensure compliance with the essential requirements referred to in paragraph 1.

6 The measures necessary for the implementation of this Article shall be adopted in accordance with the regulatory procedure referred to in Article 5(3) of Regulation (EC) No 549/2004.

Those measures shall specify in particular:

- a the conditions for the provision of ATM/ANS in compliance with the essential requirements set out in Annex Vb and, if applicable, in Annex Va;
- b the conditions for establishing and notifying to an applicant the detailed specifications applicable to ATM/ANS systems and constituents;
- c the conditions for issuing, maintaining, amending, suspending or revoking the certificates referred to in paragraphs 2 and 4;
- d the responsibilities of the holders of certificates;
- e the conditions and procedures for the declaration by, and for the oversight of service providers referred to in paragraph 3;
- f the conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety.

7 The measures referred to in paragraph 6 shall:

- a reflect the state of the art and the best practices in the field of ATM/ANS;
- b be proportionate to the type and complexity of the services provided;
- c take into account worldwide ATM/ANS experience, and scientific and technical progress;
- d be developed using as far as practicable the relevant provisions of Regulation (EC) No 549/2004 and of 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)<sup>(3)</sup>, Regulation (EC) No 551/2004 and 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)<sup>(4)</sup> and provide for transitional mechanisms to ensure the continuity of certificates already granted under those Regulations; initially they shall include the safety provisions of those Regulations and, where appropriate, in case of future amendments, take into account latest scientific and technical progress;
- e allow for immediate reaction to established causes of accidents and serious incidents.

#### Textual Amendments

- F1** Inserted by [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 \(Text with EEA relevance\)](#).

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## Article 8c

### Air traffic controllers

1 Air traffic controllers as well as persons and organisations involved in the training, testing, checking or medical assessment of air traffic controllers, shall comply with the relevant essential requirements set out in Annex Vb.

2 Air traffic controllers shall be required to hold a licence and a medical certificate appropriate to the service provided.

3 The licence referred to in paragraph 2 shall only be issued when the applicant for the licence demonstrates that he or she complies with the rules established to ensure compliance with the essential requirements regarding theoretical knowledge, practical skill, language proficiency and experience as set out in Annex Vb.

4 The medical certificate referred to in paragraph 2 shall only be issued when the air traffic controller complies with the rules established to ensure compliance with the essential requirements on medical fitness as set out in Annex Vb. The medical certificate may be issued by aero medical examiners or by aero medical centres.

5 The privileges granted to the air traffic controller and the scope of the licence and the medical certificate shall be specified in such licence and certificate.

6 The capability of air traffic controller training organisations, aero medical examiners and aero medical centres to discharge the responsibilities associated with their privileges in relation to the issuance of licences and medical certificates shall be recognised by the issuance of a certificate.

7 A certificate shall be issued to training organisations, aero medical examiners and aero medical centres for air traffic controllers that have demonstrated that they comply with the rules established to ensure compliance with the relevant essential requirements as set out in Annex Vb. The privileges granted by the certificate shall be specified therein.

8 Persons responsible for providing practical training or for assessing air traffic controllers' skill shall hold a certificate. The certificate shall be issued when the person concerned has demonstrated that he or she complies with the rules established to ensure compliance with the relevant essential requirements as set out in Annex Vb. The privileges granted by the certificate shall be specified therein.

9 Synthetic training devices shall comply with the relevant essential requirements set out in Annex Vb.

10 The measures designed to amend non-essential elements of this Article by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(4).

Those measures shall specify in particular:

- a the different ratings and endorsements for air traffic controllers' licences;
- b the conditions for issuing, maintaining, amending, limiting, suspending or revoking licences, ratings and endorsements for licences, medical certificates, approvals and certificates, and the conditions under which such certificates and approvals need not be requested, while providing for transitional mechanisms to ensure the continuity of approvals and certificates already granted;

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- c the privileges and responsibilities of the holders of licences, ratings and endorsements for licences, medical certificates, approvals and certificates;
- d the conditions for the acceptance and for the conversion of air traffic controllers' licences as well as the conditions for the acceptance and for the conversion of national medical certificates into commonly recognised medical certificates.

11 The measures referred to in paragraph 10 shall reflect the state of the art, including best practices and scientific and technical progress, in the field of air traffic controller training. They shall initially be developed on the basis of the provisions of Directive 2006/23/EC of the European Parliament and of the Council of 5 April 2006 on a Community air traffic controller licence<sup>(5)</sup>.]

#### Textual Amendments

- F1** Inserted by [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 \(Text with EEA relevance\)](#).

### Article 9

#### Aircraft used by a third-country operator into, within or out of the Community

[<sup>F21</sup> Aircraft referred to in Article 4(1)(d), as well as their crew and their operations, shall comply with applicable ICAO standards. To the extent that there are no such standards, these aircraft and their operations shall comply with the requirements set out in Annexes I, III, IV and, if applicable, Annex Vb, provided these requirements are not in conflict with the rights of third countries under international conventions.]

2 Operators engaged in commercial operations using aircraft referred to in paragraph 1 shall demonstrate their capability and means of complying with the requirements specified in paragraph 1.

The requirement referred to in the first subparagraph may be satisfied by acceptance of certificates issued by or on behalf of a third country.

The capabilities and means referred to in the first subparagraph shall be recognised through the issuance of an authorisation. The privileges granted to the operator and the scope of the operations shall be specified in that authorisation.

3 Operators engaged in non-commercial operations of complex motor-powered aircraft using aircraft referred to in paragraph 1 may be required to declare their capability and means of discharging the responsibilities associated with the operation of that aircraft.

4 The measures designed to amend non-essential elements of this Article, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(4). Those measures shall specify in particular:

- a how aircraft referred to in Article 4(1)(d), or crew, which do not hold a standard ICAO certificate of airworthiness or licence, may be authorised to operate into, within or out of the Community;
- b conditions to operate an aircraft in compliance with the provisions of paragraph 1;
- c conditions for issuing, maintaining, amending, limiting, suspending or revoking the operator's authorisation referred to in paragraph 2, taking into account the certificates

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- issued by the state of registry or the state of the operator, without prejudice to Regulation (EC) No 2111/2005 and its implementing rules;
- d privileges and responsibilities of the holders of authorisations;
  - e conditions and procedures for the declaration by, and for the oversight of, operators referred to in paragraph 3;
  - f conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety in accordance with Article 22(1).
- 5 When adopting the measures referred to in paragraph 4, the Commission shall take specific care that:
- a use is made, as appropriate, of ICAO recommended practices and guidance documents;
  - b no requirement exceeds what is required from aircraft referred to in Article 4(1)(b), and from the operators of such aircraft;
  - c use is made, where appropriate, of measures issued in accordance with Articles 5(5) and 8(5);
  - d the process by which authorisations are obtained is simple, proportionate, cost-effective and efficient in all cases, allowing for requirements and compliance demonstrations proportionate to the complexity of operations and the risk involved. The process shall in particular take account of:
    - (i) results of the ICAO Universal Safety Oversight Audit Programme;
    - (ii) information from ramp inspections and the Safety Assessment of Foreign Aircraft Programme records; and
    - (iii) other recognised information on safety aspects with regard to the operator concerned<sup>[F2,]</sup>
- [F1e safety aspects related to ATM/ANS are taken into account.]

#### Textual Amendments

- F1** Inserted by 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).
- F2** Substituted by 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).

### Article 10

#### Oversight and enforcement

[F21 The Member States, the Commission and the Agency shall cooperate with a view to ensuring compliance with this Regulation and its implementing rules.]

2 For the purposes of the implementation of paragraph 1, Member States shall, in addition to their oversight of certificates that they have issued, conduct investigations, including ramp inspections, and shall take any measure, including the grounding of aircraft, to prevent the continuation of an infringement.

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*Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 216/2008 of the European Parliament and of the Council (repealed), CHAPTER II. (See end of Document for details)*

3 For the purposes of the implementation of paragraph 1, the Agency shall conduct investigations in accordance with Article 24(2) and Article 55.

4 In order to facilitate the taking of appropriate enforcement action by competent authorities, the Member States, the Commission and the Agency shall exchange information on identified infringements.

5 The measures designed to amend non-essential elements of this Article, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(4). Those measures shall specify in particular:

- a conditions for the collection, exchange and dissemination of information;
- b conditions for conducting ramp inspections, including systematic ones;
- c conditions for the grounding of aircraft that do not comply with the requirements of this Regulation or its implementing rules.

#### **Textual Amendments**

- F2** Substituted by [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 \(Text with EEA relevance\)](#).

### *Article 11*

#### **Recognition of certificates**

1 Member States shall, without further technical requirements or evaluation, recognise certificates issued in accordance with this Regulation. When the original recognition is for a particular purpose or purposes, any subsequent recognition shall cover only the same purpose or purposes.

2 The Commission, on its own initiative or at the request of a Member State or of the Agency, may initiate the procedure referred to in Article 65(7) to decide whether a certificate issued in accordance with this Regulation effectively complies with this Regulation and its implementing rules.

In case of non-compliance or ineffective compliance, the Commission shall require the issuer of a certificate to take appropriate corrective action and safeguard measures, such as limitation or suspension of the certificate. Moreover, the provisions of paragraph 1 shall cease to apply to the certificate from the date of the notification of the Commission's decision to the Member States.

3 When the Commission has sufficient evidence that appropriate corrective action has been taken by the issuer referred to in paragraph 2 to address the case of non-compliance or ineffective compliance and that the safeguard measures are no longer necessary, it shall decide that the provisions of paragraph 1 apply again to this certificate. These provisions shall apply as from the date of the notification of this decision to the Member States.

[<sup>F24</sup> Pending the entry into effect of the measures referred to in Articles 5(5), 7(6) and 9(4) and the expiry of any transition periods provided for by those measures, and without prejudice to Article 69(4), certificates which cannot be issued in accordance with this Regulation may be issued on the basis of the applicable national regulations.

*Status: Point in time view as at 14/12/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 216/2008 of the European Parliament and of the Council (repealed), CHAPTER II. (See end of Document for details)*

5 Pending the entry into effect of the measures referred to in Article 8(5) and the expiry of any transition periods provided for by those measures, and without prejudice to Article 69(4), certificates which cannot be issued in accordance with this Regulation may be issued on the basis of the applicable national regulations.]

[<sup>F1</sup>5a Pending the entry into effect of the measures referred to in Articles 8a(5) and 8c(10) and the expiry of any transition periods provided for by those measures, and without prejudice to Article 69(4), certificates which cannot be issued in accordance with this Regulation may be issued on the basis of the applicable national regulations.

5b Pending the entry into effect of the measures referred to in Article 8b(6) and the expiry of any transition periods provided for by those measures, and without prejudice to Article 69(4), certificates which cannot be issued in accordance with this Regulation may be issued on the basis of the applicable national regulations or, where applicable, on the basis of the relevant requirements of Commission Regulation (EC) No 2096/2005 of 20 December 2005 laying down common requirements for the provision of air navigation services<sup>(6)</sup>.]

6 The provisions of this Article shall be without prejudice to Regulation (EC) No 2111/2005 and its implementing rules.

#### Textual Amendments

- F1** Inserted by [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 \(Text with EEA relevance\).](#)
- F2** Substituted by [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 \(Text with EEA relevance\).](#)

### Article 12

#### Acceptance of third-country certification

1 By way of derogation from the provisions of this Regulation and its implementing rules, the Agency or the aviation authorities in the Member State may issue certificates on the basis of certificates issued by aeronautical authorities of a third country, as provided for in recognition agreements between the Community and that third country.

2

- a In the absence of an agreement concluded by the Community, a Member State or the Agency may issue certificates on the basis of certifications issued by the competent authorities of a third country in application of an agreement concluded by that Member State with the third country in question before the entry into force of the related provisions of this Regulation and notified to the Commission and the other Member States. The Agency may also issue such certificates on behalf of any Member State in application of an agreement concluded by one of the Member States with the third country in question.
- b If the Commission considers that:



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- the provisions of an agreement between a Member State and a third country would not provide for a level of safety equivalent to that specified by this Regulation and its implementing rules, and/or
- such agreement would discriminate among Member States without compelling safety reasons or is contrary to Community foreign policy vis-à-vis a third country,

it may, in accordance with the procedure laid down in Article 65(2), require the Member State concerned to modify the agreement, to suspend its application or to renounce it, in accordance with Article 307 of the Treaty.

- c Member States shall take the necessary measures to renounce agreements as soon as possible after the entry into force of an agreement between the Community and the third country in question, for those domains covered by that latter agreement.

### Article 13

#### Qualified entities

When allocating a specific certification task to a qualified entity, the Agency or the national aviation authority concerned shall ensure that such entity comply with the criteria laid down in Annex V.

[<sup>F1</sup>Qualified entities shall not issue certificates.]

#### Textual Amendments

- F1** Inserted by 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).

### Article 14

#### Flexibility provisions

1 The provisions of this Regulation and of its implementing rules shall not prevent a Member State from reacting immediately to a safety problem which involves a product, person or organisation subject to the provisions of this Regulation.

The Member State shall immediately notify the Agency, the Commission and the other Member States of the measures taken and the reasons therefor.

2

- a The Agency shall assess whether the safety problem can be addressed within the powers conferred on it in accordance with Article 18(d). In this case it shall, within one month of being notified pursuant to paragraph 1, take the appropriate decision.
- b If the Agency concludes that the safety problem cannot be addressed in accordance with point (a), it shall, within the period referred to in that point, issue a recommendation in accordance with Article 18(b) as to whether this Regulation or its implementing rules should be amended and whether the notified measures should be withdrawn or maintained.

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*Status: Point in time view as at 14/12/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 216/2008 of the European Parliament and of the Council (repealed), CHAPTER II. (See end of Document for details)*

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3 The measures designed to amend non-essential elements of this Regulation, *inter alia*, by supplementing it, and relating to whether an inadequate level of safety or a shortcoming in this Regulation or its implementing rules justify initiating their amendment and whether the measures adopted pursuant to paragraph 1 may be continued, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(6). In such a case the measures shall be implemented as appropriate by all Member States and the provisions of Article 11 shall apply to such measures. If the measures are found not to be justified, they shall be revoked by the Member State concerned.

4 Member States may grant exemptions from the substantive requirements laid down in this Regulation and its implementing rules in the event of unforeseen urgent operational circumstances or operational needs of a limited duration, provided the level of safety is not adversely affected. The Agency, the Commission and the other Member States shall be notified of any such exemptions as soon as they become repetitive or where they are granted for periods of more than two months.

5 The Agency shall assess whether the exemptions notified by a Member State are less restrictive than the applicable Community provisions and, within one month of being notified thereof, shall issue a recommendation in accordance with Article 18(b) on whether these exemptions comply with the general safety objectives of this Regulation or any other rule of Community law.

If an exemption does not comply with the general safety objectives of this Regulation or any other rule of Community law, the Commission shall take a decision not to permit the exemption in accordance with the procedure referred to in Article 65(7). In such a case, the Member State concerned shall revoke the exemption.

6 Where an equivalent level of protection to that attained by the application of the rules implementing this Regulation can be achieved by other means, Member States may, without discrimination on grounds of nationality, grant an approval derogating from those implementing rules.

In such cases, the Member State concerned shall notify the Agency and the Commission that it intends to grant such an approval, and shall give reasons demonstrating the need to derogate from the rule concerned, as well as the conditions laid down to ensure that an equivalent level of protection is achieved.

7 Within two months of being notified in accordance with paragraph 6, the Agency shall issue a recommendation in accordance with Article 18(b) on whether an approval proposed in accordance with paragraph 6 fulfils the conditions laid down in that paragraph.

The measures designed to amend non-essential elements of this Regulation, by supplementing it, relating to whether a proposed approval may be granted shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(6) within one month of receiving the Agency's recommendation. In such a case, the Commission shall notify its decision to all Member States, which shall also be entitled to apply that measure. The provisions of Article 15 shall apply to the measure in question.

#### Article 15

##### Information network

1 The Commission, the Agency and the national aviation authorities shall exchange any information available to them in the context of the application of this Regulation and its

implementing rules. Entities entrusted with the investigation of civil aviation accidents and incidents, or with the analysis of occurrences, are entitled to access to that information.

2 Without prejudice to the public's right of access to the Commission's documents as laid down in Regulation (EC) No 1049/2001, the Commission shall adopt, in accordance with the procedure referred to in Article 65(3), measures for the dissemination to interested parties on its own initiative of the information referred to in paragraph 1 of this Article. These measures, which may be generic or individual, shall be based on the need:

- a to provide persons and organisations with the information they need to improve aviation safety;
- b to limit the dissemination of information to what is strictly required for the purpose of its users, in order to ensure appropriate confidentiality of that information.

3 The national aviation authorities shall, in accordance with their national legislation, take necessary measures to ensure appropriate confidentiality of the information received by them pursuant to paragraph 1.

4 In order to inform the public of the general safety level, a safety review shall be published annually by the Agency. From the entry into force of the measures referred to in Article 10(5), this safety review shall contain an analysis of all information received pursuant to Article 10. This analysis shall be simple and easy to understand and shall indicate whether there are increased safety risks. In this analysis, the sources of information shall not be revealed.

### *Article 16*

#### **Protection of the source of information**

1 Where the information referred to in Article 15(1) is provided by a natural person on a voluntary basis to the Commission or the Agency, the source of such information shall not be revealed. When the information has been provided to a national authority, the source of such information shall be protected in accordance with national legislation.

2 Without prejudice to applicable rules of criminal law, Member States shall refrain from instituting proceedings in respect of unpremeditated or unintentional infringements of the law which come to their attention only because they have been reported pursuant to this Regulation and its implementing rules.

This rule shall not apply in cases of gross negligence.

3 Without prejudice to applicable rules of criminal law, and in accordance with the procedures set out in national law and practice, Member States shall ensure that employees who provide information in application of this Regulation and its implementing rules are not subject to any prejudice on the part of their employer.

This rule shall not apply in cases of gross negligence.

4 This Article shall apply without prejudice to national rules relating to access to information by judicial authorities.

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**Status:** Point in time view as at 14/12/2009.

**Changes to legislation:** There are currently no known outstanding effects for the Regulation (EC) No 216/2008 of the European Parliament and of the Council (repealed), CHAPTER II. (See end of Document for details)

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- (1) [<sup>F1</sup>OJ L 96, 31.3.2004, p. 20.]
- (2) OJ L 377, 27.12.2006, p. 1.
- (3) [<sup>F1</sup>OJ L 96, 31.3.2004, p. 10.]
- (4) OJ L 96, 31.3.2004, p. 26.
- (5) OJ L 114, 27.4.2006, p. 22.]
- (6) [<sup>F1</sup>OJ L 335, 21.12.2005, p. 13.]

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#### **Textual Amendments**

- F1** Inserted by 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).

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