

Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (Text with EEA relevance)

CHAPTER V

THE EUROPEAN UNION AVIATION SAFETY AGENCY

SECTION II

Internal structure

Article 94

Legal status, seat and local offices

- 1 The Agency shall be a body of the Union. It shall have legal personality.
- 2 In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.
- 3 The seat of the Agency shall be Cologne, Federal Republic of Germany.
- 4 The Agency may establish local offices in the Member States or co-locate staff in Union delegations in third countries, in accordance with Article 104(4).
- 5 The Agency shall be legally represented by its Executive Director.

Article 95

Staff

- 1 The Staff Regulations of Officials of the European Union, the Conditions of Employment of Other Servants of the European Union⁽¹⁾ and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and Conditions of Employment shall apply to the staff employed by the Agency.
- 2 The Agency may make use of seconded national experts or other staff not employed by the Agency. The Management Board shall adopt a decision laying down rules on the secondment of national experts to the Agency.

Status: Point in time view as at 04/07/2018.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) 2018/1139 of the European Parliament and of the Council, SECTION II. (See end of Document for details)

Article 96

Privileges and immunities

The Protocol No 7 on the Privileges and Immunities of the European Union, annexed to the TEU and to the TFEU, shall apply to the Agency and its staff.

Article 97

Liability

1 The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

2 The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.

3 In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its staff in the performance of their duties.

4 The Court of Justice shall have jurisdiction in disputes over compensation for damages referred to in paragraph 3.

5 The personal liability of its staff towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

Article 98

Functions of the Management Board

1 The Agency shall have a Management Board.

2 The Management Board shall:

- a appoint the Executive Director, and where relevant extend his or her term of office or remove him or her from office, in accordance with Article 103;
- b adopt a consolidated annual activity report on the Agency's activities and send it by 1 July each year to the European Parliament, the Council, the Commission and the Court of Auditors. The consolidated annual activity report shall be made public;
- c adopt each year the Agency's programming document by a majority of two-thirds of members entitled to vote and in accordance with Article 117;
- d adopt the annual budget of the Agency by a majority of two-thirds of the members entitled to vote and in accordance with Article 120(11);
- e establish procedures for making decisions by the Executive Director as referred to in Articles 115 and 116;
- f carry out its functions relating to the Agency's budget pursuant to Articles 120, 121 and 125;
- g appoint the members of the Board of Appeal pursuant to Article 106;
- h exercise disciplinary authority over the Executive Director;
- i give its opinion on the rules relating to fees and charges referred to in Article 126;

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- j adopt its Rules of Procedure;
- k decide on the linguistic arrangements for the Agency;
- l take decisions on the establishment of the internal structures of the Agency at directors' level and, where necessary, their modifications;
- m in accordance with paragraph 6, exercise, with respect to the staff of the Agency, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment ('the appointing authority powers');
- n adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;
- o adopt rules for the prevention and management of conflicts of interest in respect of its members, as well as of the members of the Board of Appeal;
- p ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office ('OLAF')⁽²⁾;
- q adopt the financial rules applicable to the Agency in accordance with Article 125;
- r appoint an Accounting Officer, subject to the Staff Regulations and the Conditions of Employment of Other Servants, who shall be totally independent in the performance of his or her duties;
- s adopt an anti-fraud strategy, proportionate to fraud risks taking into account the costs and benefits of the measures to be implemented;
- t give its opinion on the draft of the European Aviation Safety Programme in accordance with Article 5;
- u adopt the European Plan for Aviation Safety in accordance with Article 6;
- v take duly reasoned decisions in relation to waiver of immunity in accordance with Article 17 of Protocol No 7 on the privileges and immunities of the European Union, annexed to the TEU and to the TFEU;
- w establish procedures for expedient cooperation of the Agency with national judicial authorities, without prejudice to Regulations (EU) No 996/2010 and (EU) No 376/2014.

3 The Management Board may advise the Executive Director on any matter related to areas covered by this Regulation.

4 The Management Board shall establish an advisory body representing the full range of interested parties affected by the work of the Agency, which it shall consult prior to making decisions in the fields referred to in points (c), (e), (f) and (i) of paragraph 2. The Management Board may also decide to consult the advisory body on other issues referred to in paragraphs 2 and 3. The Management Board shall not, in any case, be bound by the opinion of the advisory body.

5 The Management Board may establish working bodies to assist in carrying out its tasks, including the preparation of its decisions and monitoring the implementation thereof.

6 The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the Executive Director and defining the conditions under which that delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Management Board may, by way of a decision, temporarily suspend the delegation of the appointing authority powers to

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the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

Article 99

Composition of the Management Board

1 The Management Board shall be composed of representatives from Member States and from the Commission, all with voting rights. Each Member State shall appoint one member of the Management Board and two alternates. An alternate shall only represent the member in his or her absence. The Commission shall appoint two representatives and their alternates. The term of office for members and their alternates shall be four years. That term shall be extendable.

2 Members of the Management Board and their alternates shall be appointed because of their knowledge, recognised experience and commitment in the field of civil aviation, taking into account relevant managerial, administrative and budgetary expertise, which are to be used to further the objectives of this Regulation. The members shall have overall responsibility at least for civil aviation safety policy in their respective Member States.

3 All parties represented in the Management Board shall make efforts to limit turnover of their representatives, in order to ensure continuity of the work of the Management Board. All parties shall aim to achieve a balanced representation between men and women on the Management Board.

4 Where appropriate, the participation of representatives of European third countries in the Management Board with observer status and the conditions for such participation shall be established in the agreements referred to in Article 129.

5 The advisory body referred to in Article 98(4) shall appoint four of its members to participate with observer status in the Management Board. They shall represent, as broadly as possible, the different views represented in the advisory body. The initial term of office shall be 48 months and shall be extendable.

Article 100

Chairperson of the Management Board

1 The Management Board shall elect a Chairperson and a Deputy Chairperson from among its members with voting rights. The Deputy Chairperson shall *ex officio* replace the Chairperson in the event of his or her inability of attending to his or her duties.

2 The term of office of the Chairperson and Deputy Chairperson shall be four years and shall be extendable once for a further four years. If their membership of the Management Board ceases at any time during their term of office, their term of office shall automatically expire on that date.

Article 101

Meetings of the Management Board

1 Meetings of the Management Board shall be convened by its Chairperson.

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2 The Management Board shall hold at least two ordinary meetings a year. In addition it shall meet at the request of the Chairperson, of the Commission or of at least one third of its members.

3 The Executive Director of the Agency shall take part in the deliberations, without the right to vote.

4 The members of the Management Board may, in accordance with its Rules of Procedure, be assisted by their advisers or experts.

5 The Management Board may invite any person whose opinion might be of interest to attend its meetings with observer status.

6 The Agency shall provide the secretariat for the Management Board.

Article 102

Voting rules of the Management Board

1 Without prejudice to points (c) and (d) of Article 98(2) and Article 103(7), the Management Board shall take decisions by majority of its members with voting rights. At the request of a member of the Management Board, the decision referred to in point (k) of Article 98(2) shall be taken by unanimity.

2 Each member appointed pursuant to Article 99(1) shall have one vote. In the absence of a member, his or her alternate shall be entitled to exercise his or her right to vote. Neither observers nor the Executive Director of the Agency shall have the right to vote.

3 The Rules of Procedure of the Management Board shall establish more detailed voting arrangements, in particular the conditions under which a member may act on behalf of another member, as well as any quorum requirements, where appropriate.

4 In order for them to be adopted, decisions on budgetary or human resources matters, in particular matters referred to in points (d), (f), (h), (m), (n), (o), and (q) of Article 98(2), require a positive vote from the Commission.

Article 103

Executive Director

1 The Executive Director shall be engaged as a temporary agent of the Agency under point (a) of Article 2 of the Conditions of Employment of Other Servants.

2 The Executive Director shall be appointed by the Management Board on grounds of merit and of documented competence and experience relevant for civil aviation, from a list of candidates proposed by the Commission, following an open and transparent selection procedure.

For the purpose of concluding the contract with the Executive Director, the Agency shall be represented by the Chairperson of the Management Board.

Before appointment, the candidate selected by the Management Board shall be invited to make a statement before the competent committee of the European Parliament and to answer questions put by its members.

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3 The term of office of the Executive Director shall be five years. By the end of that period the Commission shall undertake an assessment that takes into account an evaluation of the Executive Director's performance and the Agency's future tasks and challenges. At the midway point, the Executive Director may be invited to make a statement to the competent committee of the European Parliament and answer questions from its members regarding the Executive Director's performance.

4 The Management Board, acting on a proposal from the Commission that takes into account the assessment referred to in paragraph 3, may extend the term of office of the Executive Director once, for no more than five years. Before extending the term of office of the Executive Director, the Management Board shall inform the European Parliament that it intends to extend the Executive Director's term of office. Within one month before any such extension, the Executive Director may be invited to make a statement before the competent committee of the Parliament and answer questions put by its members.

5 An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.

6 The Executive Director may be removed from office only upon a decision of the Management Board acting on a proposal from the Commission.

7 The Management Board shall reach decisions on appointment, extension of the term of office or removal from office of the Executive Director on the basis of a two-thirds majority of its members with voting rights.

8 The Executive Director may be assisted by one or more Directors. If the Executive Director is absent or indisposed, one of the Directors shall take his or her place.

Article 104

Responsibilities of the Executive Director

1 The Executive Director shall manage the Agency. The Executive Director shall be accountable to the Management Board. Without prejudice to the powers of the Commission and of the Management Board, the Executive Director shall be independent in the performance of his or her duties and shall neither seek nor take instructions from any government or from any other body.

2 The Executive Director shall report to the European Parliament on the performance of his or her duties when invited to do so. The Council may invite the Executive Director to report on the performance of those duties.

3 The Executive Director shall be responsible for the implementation of the tasks assigned to the Agency by this Regulation or other Union acts. In particular, the Executive Director shall be responsible for:

- a approving the measures of the Agency as defined in Article 76 within the limits specified by this Regulation and by the delegated and implementing acts adopted on the basis thereof;
- b deciding on investigations, inspections, and other monitoring activities as provided for in Articles 83 and 85;
- c deciding on allocation of tasks to qualified entities in accordance with Articles 69(1) and on the conduct of investigations on behalf of the Agency by national competent authorities or qualified entities in accordance with Article 83(1);

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- d taking the necessary measures concerning the activities of the Agency related to international cooperation in accordance with Article 90;
 - e taking all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the proper functioning of the Agency in accordance with this Regulation;
 - f implementing decisions adopted by the Management Board;
 - g preparing the consolidated annual report on the Agency's activities and submitting it to the Management Board for adoption;
 - h preparing the Agency's draft statement of estimates of revenue and expenditure pursuant to Article 120, and implementing its budget pursuant to Article 121;
 - i delegating the powers of the Executive Director to other members of the Agency's staff. The Commission shall adopt implementing acts laying down the rules applicable to such delegations. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 127(2);
 - j preparing the programming document referred to in Article 117(1), and submitting it to the Management Board for adoption, after obtaining the opinion of the Commission;
 - k implementing the programming document referred to in Article 117(1), and report to the Management Board on its implementation;
 - l preparing an action plan following up conclusions of internal or external audit reports and evaluations, as well as investigations by OLAF, and reporting on progress twice a year to the Commission and regularly to the Management Board;
 - m protecting the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative and financial penalties;
 - n preparing an anti-fraud strategy for the Agency and present it to the Management Board for adoption;
 - o preparing draft financial rules applicable to the Agency;
 - p preparing the European Plan for Aviation Safety and its subsequent updates, and submitting them to the Management Board for adoption;
 - q reporting to the Management Board on the implementation of the European Plan for Aviation Safety;
 - r responding to requests for assistance from the Commission made in accordance with this Regulation;
 - s accepting the reallocation of responsibilities to the Agency in accordance with Articles 64 and 65;
 - t the day-to-day administration of the Agency;
 - u taking all decisions on the establishment of the internal structures of the Agency and, where necessary, on any changes to them, except for those at directors' level, which will be approved by the Management Board;
 - v adopting rules for the prevention and management of conflicts of interest in respect of participants in working groups and groups of experts, and other members of staff not covered by the Staff Regulations, which shall include provisions on declarations of interest and, where appropriate, post-employment occupational activities.
- 4 The Executive Director shall also be responsible for deciding whether it is necessary for the purpose of carrying out the Agency's tasks in an efficient and effective manner to establish one or more local offices in one or more Member States or to co-locate staff in Union delegations in third countries subject to the appropriate agreements with the European External Action Service. That decision requires the prior consent of the Commission, the Management

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Board and, where applicable, the Member State where the local office is to be established. That decision shall specify the scope of the activities to be carried out at that local office or by that co-located staff in a manner that avoids unnecessary costs and duplication of administrative functions of the Agency.

Article 105

Powers of the Board of Appeal

1 A Board of Appeal shall be established as part of the administrative structure of the Agency. The Commission is empowered to adopt delegated acts, in accordance with Article 128, to determine the organisation and composition of the Board of Appeal.

2 The Board of Appeal shall be responsible for deciding on appeals against the decisions referred to in Article 108. The Board of Appeal shall be convened as necessary.

Article 106

Members of the Board of Appeal

1 The members and their alternates shall be appointed by the Management Board from a list of qualified candidates established by the Commission.

2 The term of office of the members of the Board of Appeal, including the Chairperson and any alternates, shall be five years and shall be extendable for a further five years.

3 The members of the Board of Appeal shall be independent. In making their decisions they shall neither seek nor take instructions from any government or from any other body.

4 The members of the Board of Appeal shall not perform any other duties within the Agency. The members of the Board of Appeal may work on a part-time basis.

5 The members of the Board of Appeal shall not be removed from office or from the list of qualified candidates during their term of office, unless there are serious grounds for such removal and the Commission, after receiving the opinion of the Management Board, has taken a decision to that effect.

6 The Commission is empowered to adopt delegated acts, in accordance with Article 128, to determine the qualifications required for the members of the Board of Appeal, their status and contractual relationship with the Agency, the powers of individual members in the preparatory phase of decisions and the rules of, and procedures for, voting.

Article 107

Exclusion and objection

1 The members of the Board of Appeal shall not take part in any appeal proceedings if they have any personal interest therein, if they have previously been involved as representatives of one of the parties to the proceedings or if they participated in the adoption of the decision under appeal.

2 If, for one of the reasons listed in paragraph 1 or for any other reason, a member of the Board of Appeal considers that he or she should not take part in any appeal proceeding, he or she shall inform the Board of Appeal accordingly.

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3 Any party to the appeal proceedings may object to any member of the Board of Appeal on any of the grounds given in paragraph 1, or if the member is suspected of partiality. Any such objection shall not be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has taken a procedural step. No objection may be based on the nationality of members.

4 The Board of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking this decision, the member concerned shall be replaced on the Board of Appeal by his or her alternate.

Article 108

Decisions subject to appeal

1 An appeal may be brought against decisions of the Agency taken pursuant to Article 64, 65, Article 76(6), Article 77 to 83, 85 or 126.

2 An appeal lodged pursuant to paragraph 1 shall not have suspensory effect. Where the Executive Director considers that circumstances so permit, he or she may suspend the application of the decision appealed against.

3 An appeal against a decision which does not terminate proceedings as regards one of the parties may only be made in conjunction with an appeal against the final decision, unless the decision provides for separate appeal.

Article 109

Persons entitled to appeal

Any natural or legal person may appeal against a decision addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to the former. The parties to proceedings may be party to the appeal proceedings.

Article 110

Time limit and form

The appeal, together with a substantiated statement of grounds thereof, shall be filed in writing at the Board of Appeal's secretariat within two months of the notification of the measure to the person concerned or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Article 111

Interlocutory revision

1 Before examining the appeal, the Board of Appeal shall give the Agency the opportunity to review its decision. If the Executive Director considers the appeal to be well founded, he or she shall rectify the decision within two months from being notified by the Board

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of Appeal. That shall not apply where the appellant is opposed to another party to the appeal proceedings.

2 If the decision is not rectified, the Agency shall forthwith decide whether or not to suspend the application of the decision pursuant to Article 108(2).

Article 112

Examination of appeals

1 The Board of Appeal shall assess whether the appeal is admissible and well founded.

2 When examining the appeal pursuant to paragraph 1, the Board of Appeal shall act expeditiously. It shall as often as necessary invite the parties to the appeal proceedings to file, within specified time limits, written observations on notifications issued by itself or on communications from other parties to the appeal proceedings. The Board of Appeal may decide to hold an oral hearing, either of its own motion or at the substantiated request of one of the parties to the appeal.

Article 113

Decisions on appeal

Where the Board of Appeal finds that the appeal is not admissible or that the grounds for appeal are not founded, it shall reject the appeal. Where the Board of Appeal finds that the appeal is admissible and that the grounds for appeal are founded, it shall remit the case to the Agency. The Agency shall take a new reasoned decision taking into account the decision by the Board of Appeal.

Article 114

Actions before the Court of Justice

1 Actions may be brought before the Court of Justice for the annulment of acts of the Agency intended to produce legal effects vis-à-vis third parties, for failure to act and, in accordance with Article 97, for the non-contractual liability and, pursuant to an arbitration clause, the contractual liability for damages caused by acts of the Agency.

2 Actions for the annulment of decisions of the Agency taken pursuant to Articles 64, 65, 76(6), 77 to 83, 85 or 126 may be brought before the Court of Justice only after all appeal procedures within the Agency have been exhausted.

3 Union institutions and Member States may bring actions against decisions of the Agency directly before the Court of Justice, without being required to exhaust the appeal procedures within the Agency.

4 The Agency shall take all necessary measures to comply with the judgment of the Court of Justice.

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- (1) Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).
- (2) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

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