

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Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (Text with EEA relevance) (repealed)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

THE EUROPEAN AVIATION SAFETY AGENCY

SECTION I

Tasks

Article 17

Establishment and functions of the Agency

- 1 For the purpose of the implementation of this Regulation, a European Aviation Safety Agency shall be established.
- 2 For the purposes of ensuring the proper functioning and development of civil aviation safety, the Agency shall:
 - a undertake any task and formulate opinions on all matters covered by Article 1(1);
 - b assist the Commission by preparing measures to be taken for the implementation of this Regulation. Where these comprise technical rules and in particular rules relating to construction, design and operational aspects, the Commission may not change their content without prior coordination with the Agency. The Agency shall also provide the Commission with the necessary technical, scientific and administrative support to carry out its tasks;
 - c take the necessary measures within the powers conferred on it by this Regulation or other Community legislation;
 - d conduct inspections and investigations as necessary to fulfil its tasks;
 - e in its fields of competence, carry out, on behalf of Member States, functions and tasks ascribed to them by applicable international conventions, in particular the Chicago Convention.

Article 18

Agency measures

The Agency shall, where appropriate:

- (a) issue opinions addressed to the Commission;
- (b) issue recommendations addressed to the Commission for the application of Article 14;

- (c) issue certification specifications, including airworthiness codes and acceptable means of compliance, as well as any guidance material for the application of this Regulation and its implementing rules;
- (d) take the appropriate decisions for the application of Articles 20, 21, 22, 23, 54 and 55;
- (e) issue the reports following standardisation inspections carried out pursuant to Articles 24(1) and 54.

Article 19

Opinions, certification specifications and guidance material

1 In order to assist the Commission in the preparation of proposals for basic principles, applicability and essential requirements to be presented to the European Parliament and to the Council and the adoption of the implementing rules, the Agency shall prepare drafts thereof. These drafts shall be submitted by the Agency as opinions to the Commission.

2 The Agency shall, in accordance with Article 52 and the implementing rules adopted by the Commission, develop:

- a certification specifications, including airworthiness codes and acceptable means of compliance; and
- b guidance material;

to be used in the certification process.

These documents shall reflect the state of the art and the best practices in the fields concerned and be updated taking into account worldwide aircraft experience in service, and scientific and technical progress.

Article 20

Airworthiness and environmental certification

1 With regard to the products, parts and appliances referred to in Article 4(1)(a) and (b), the Agency shall, where applicable and as specified in the Chicago Convention or its Annexes, carry out on behalf of Member States the functions and tasks of the state of design, manufacture or registry when related to design approval. To that end, it shall in particular:

- a for each product for which a type-certificate or a change to a type-certificate is requested, establish and notify the type-certification basis. That certification basis consists of the applicable airworthiness code, the provisions for which an equivalent level of safety has been accepted and the special detailed technical specifications necessary when the design features of a particular product or the experience in operation render any of the airworthiness code provisions inadequate or inappropriate to ensure conformity with essential requirements;
- b for each product for which a restricted certificate of airworthiness is requested, establish and notify the specific airworthiness specifications;
- c for each part or appliance for which a certificate is requested, establish and notify the detailed airworthiness specifications;
- d for each product for which environmental certification is required in accordance with Article 6, establish and notify the appropriate environmental requirements;
- e conduct, itself or through national aviation authorities or qualified entities, investigations associated with products, parts and appliances certification;

- f issue the appropriate type-certificates or associated changes;
 - g issue certificates for parts and appliances;
 - h issue the appropriate environmental certificates;
 - i amend, suspend or revoke the relevant certificate when the conditions according to which it was issued are no longer fulfilled or if the legal or natural person holding the certificate fails to fulfil the obligations imposed on it by this Regulation or its implementing rules;
 - j ensure the continuing airworthiness functions associated with the products, parts and appliances which are under its oversight, including reacting without undue delay to a safety problem and issuing and disseminating the applicable mandatory information;
 - k for aircraft for which a permit to fly is to be issued, establish airworthiness standards and procedures to comply with Article 5(4)(a);
 - l issue permits to fly to aircraft for the purpose of certification under the control of the Agency, in agreement with the Member State in which the aircraft is registered or is to be registered.
- 2 With regard to organisations, the Agency shall:
- a conduct, itself or through national aviation authorities or qualified entities, inspections and audits of the organisations it certifies;
 - b issue and renew the certificates of:
 - (i) design organisations; or
 - (ii) production organisations located within the territory of the Member States, if requested by the Member State concerned; or
 - (iii) production and maintenance organisations located outside the territory of the Member States;
 - c amend, suspend or revoke the relevant organisation certificate when the conditions according to which it was issued are no longer fulfilled, or if the organisation concerned fails to fulfil the obligations imposed on it by this Regulation or its implementing rules.

Article 21

Pilot certification

- 1 With regard to the personnel and organisations referred to in Article 7(1), the Agency shall:
- a conduct, itself or through national aviation authorities or qualified entities, investigations and audits of the organisations it certifies and, where relevant, their personnel;
 - b issue and renew the certificates of pilot training organisations and aero-medical centres located outside the territory of the Member States and, where relevant, their personnel;
 - c amend, limit, suspend or revoke the relevant certificate when the conditions according to which it was issued by it are no longer fulfilled, or if the legal or natural person holding the certificate fails to fulfil the obligations imposed on it by this Regulation or its implementing rules.
- 2 With regard to the flight simulation training devices referred to in Article 7(1), the Agency shall:
- a conduct, itself or through national aviation authorities or qualified entities, technical inspections of the devices it certifies;

- b issue and renew the certificates of:
 - (i) flight simulation training devices used by training organisations certified by the Agency; or
 - (ii) flight simulation training devices located within the territory of the Member States, if requested by the Member State concerned;
 - (iii) flight simulation training devices located outside the territory of the Member States;
- c amend, limit, suspend or revoke the relevant certificate when the conditions according to which it was issued are no longer fulfilled, or if the legal or natural person holding the certificate fails to fulfil the obligations imposed on it by this Regulation or its implementing rules.

Article 22

Air operation certification

- 1 The Agency shall react without undue delay to a problem affecting the safety of air operations by determining corrective action and by disseminating related information, including to the Member States.
- 2 With regard to flight time limitation:
 - a the Agency shall issue the applicable certification specifications to ensure compliance with essential requirements and, as appropriate, the related implementing rules. Initially, the implementing rules shall include all substantive provisions of Subpart Q of Annex III to Regulation (EEC) No 3922/91, taking into account the latest scientific and technical evidence;
 - b a Member State may approve individual flight time specification schemes which deviate from the certification specifications referred to in point (a). In this case the Member State shall without delay notify the Agency, the Commission and the other Member States that it intends to grant approval for such an individual scheme;
 - c upon notification the Agency shall, within one month, assess the individual scheme on the basis of a scientific and medical evaluation. Thereafter the Member State concerned may grant the approval as notified, unless the Agency has discussed the scheme with that Member State and proposed changes thereto. Should the Member State agree with these changes, it may grant the approval accordingly;
 - d in the event of unforeseen urgent operational circumstances or operational needs of limited duration and non-repetitive nature, derogations to certification specifications may apply provisionally until the Agency expresses its opinion;
 - e should a Member State disagree with the Agency's conclusions concerning an individual scheme, it shall refer the issue to the Commission to decide whether that scheme complies with the safety objectives of this Regulation, in accordance with the procedure referred to in Article 65(3);
 - f the contents of individual schemes which are acceptable to the Agency, or on which the Commission has taken a positive decision in accordance with point (e), shall be published.

Article 23

Third-country operators

- 1 With regard to operators of aircraft referred to in Article 4(1)(d) engaged in commercial operations, the Agency shall:
 - a conduct, itself or through national aviation authorities or qualified entities, investigations and audits;
 - b issue and renew the authorisations referred to in Article 9(2), unless a Member State carries out the functions and tasks of the state of operator in respect of these operators;
 - c amend, limit, suspend or revoke the relevant authorisation when the conditions according to which it was issued by it are no longer fulfilled, or if the organisation concerned fails to fulfil the obligations imposed on it by this Regulation or its implementing rules.
- 2 With regard to operators of aircraft referred to in Article 4(1)(d) not engaged in commercial operations, the Agency shall:
 - a receive the declarations referred to in Article 9(3); and
 - b conduct, itself or through national aviation authorities or qualified entities, the oversight of operators from which it has received a declaration.
- 3 With regard to aircraft referred to in Article 4(1)(d), the Agency shall issue authorisations in accordance with Article 9(4)(a).

Article 24

Monitoring the application of the rules

- 1 The Agency shall conduct standardisation inspections in the fields covered by Article 1(1), in order to monitor the application by national competent authorities of this Regulation and of its implementing rules, and shall report to the Commission.
- 2 The Agency shall conduct investigations of undertakings to monitor the application of this Regulation and its implementing rules.
- 3 The Agency shall assess the impact of the implementation of this Regulation and its implementing rules, having regard to the objectives set out in Article 2.
- 4 The Agency shall be consulted on, and issue recommendations to the Commission for, the application of Article 14.
- 5 The working methods of the Agency for conducting the tasks referred to in paragraphs 1, 3 and 4 shall be subject to requirements to be adopted in accordance with the procedure referred to in Article 65(2), taking into account the principles laid down in Articles 52 and 53.

Article 25

Fines and periodic penalty payments

- 1 Without prejudice to Articles 20 and 55, at the Agency's request the Commission may:

- a impose on the persons and the undertakings to which the Agency has issued a certificate, fines, where, intentionally or negligently, the provisions of this Regulation and its implementing rules have been breached;
- b impose, on the persons and undertakings to which the Agency has issued a certificate, periodic penalty payments, calculated from the date set in the decision, in order to compel those persons and undertakings to comply with the provisions of this Regulation and its implementing rules.

2 The fines and periodic penalty payments referred to in paragraph 1 shall be dissuasive and proportionate to both the gravity of the case and the economic capacity of the certificate holder concerned, taking into particular account the extent to which safety has been compromised. The amount of the fines shall not exceed 4 % of the annual income or turnover of the certificate holder. The amount of the periodic penalty shall not exceed 2,5 % of the average daily income or turnover of the certificate holder.

3 The Commission shall adopt, in accordance with the procedure laid down in Article 65(3), the detailed rules for the implementation of this Article. In doing so, it shall specify in particular:

- a detailed criteria for establishing the amount of the fine or periodic penalty payment; and
- b procedures for enquiries, associated measures and reporting, as well as rules of procedure for decision-making, including provisions on rights of defence, access to file, legal representation, confidentiality and temporal provisions and the quantification and collection of fines and periodic penalty payments.

4 The Court of Justice of the European Communities shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

5 Decisions taken pursuant to paragraph 1 shall not be of a criminal law nature.

Article 26

Research

1 The Agency may develop and finance research in so far as is strictly related to the improvement of activities in its field of competence, without prejudice to Community law.

2 The Agency shall coordinate its research and development activities with those of the Commission and the Member States so as to ensure that policies and actions are mutually consistent.

3 The results of research funded by the Agency shall be published, provided the Agency does not classify them as confidential.

Article 27

International relations

1 The Agency shall assist the Community and the Member States in their relations with third countries in accordance with the relevant Community law. It shall, in particular, assist in the harmonising of rules and mutual recognition regarding approvals attesting the satisfactory application of rules.

2 The Agency may cooperate with the aeronautical authorities of third countries and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded with those bodies, in accordance with the relevant provisions of the Treaty. Such arrangements shall have received the Commission's prior approval.

3 The Agency shall assist Member States to respect their international obligations, in particular those under the Chicago Convention.

SECTION II

Internal structure

Article 28

Legal status, location, local offices

1 The Agency shall be a body of the Community. 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 Agency may establish its own local offices in the Member States, subject to their consent.

4 The Agency shall be represented by its Executive Director.

Article 29

Staff

1 The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for purposes of the application of those Staff Regulations and Conditions of Employment shall apply to the staff of the Agency, without prejudice to the application of Article 39 of this Regulation to the members of the Board of Appeal.

2 Without prejudice to Article 42, the powers conferred on the appointing authority by the Staff Regulations and the Conditions of Employment shall be exercised by the Agency in respect of its own staff.

3 The Agency's staff shall consist of a strictly limited number of officials assigned or seconded by the Commission or Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks.

Article 30

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities annexed to the Treaties establishing the European Community and the European Atomic Energy Community shall apply to the Agency.

Article 31

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 of the European Communities 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 its services or by its servants in the performance of their duties.

4 The Court of Justice of the European Communities shall have jurisdiction in disputes relating to compensation for any damage as referred to in paragraph 3.

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

Article 32

Publication of documents

1 Without prejudice to decisions taken on the basis of Article 290 of the Treaty, the following documents shall be produced in all official languages of the Community:

- a the safety review referred to in Article 15(4);
- b opinions addressed to the Commission pursuant to Article 19(1);
- c the annual general report and programme of work referred to in Article 33(2)(b) and (c) respectively.

2 The translation services required for the functioning of the Agency shall be provided by the Translation Centre for bodies of the European Union.

Article 33

Powers of the Management Board

1 The Agency shall have a Management Board.

2 The Management Board shall:

- a appoint the Executive Director, and the Directors on a proposal from the Executive Director, in accordance with Article 39;

- b adopt the annual general report on the Agency's activities and forward it by 15 June at the latest to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States; acting on behalf of the Agency, it shall forward annually to the European Parliament and the Council (hereinafter referred to as budgetary authority) any information relevant to the outcome of the evaluation procedures, in particular, information concerning the effects or consequences of changes in the tasks assigned to the Agency;
 - c before 30 September each year, and after receiving the opinion of the Commission, adopt the Agency's programme of work for the coming year and forward it to the European Parliament, the Council, the Commission and the Member States; this programme of work shall be adopted without prejudice to the annual Community budgetary procedure and the Community legislative programme in relevant areas of aviation safety; the opinion of the Commission shall be attached to the programme of work;
 - d adopt guidelines for the allocation of certification tasks to national aviation authorities and qualified entities in agreement with the Commission;
 - e establish procedures for making decisions by the Executive Director as referred to in Articles 52 and 53;
 - f carry out its functions relating to the Agency's budget pursuant to Articles 59, 60 and 63;
 - g appoint the members of the Board of Appeal pursuant to Article 41;
 - h exercise disciplinary authority over the Executive Director and over the Directors in agreement with the Executive Director;
 - i give its opinion on the measures relating to fees and charges as referred to in Article 64(1);
 - j establish its Rules of Procedure;
 - k decide on the linguistic arrangements for the Agency;
 - l complement, where appropriate, the list of documents referred to in Article 32(1);
 - m establish the organisational structure of the Agency and adopt the Agency's staffing policy.
- 3 The Management Board may advise the Executive Director on any matter strictly related to the strategic development of aviation safety, including research as defined in Article 26.
- 4 The Management Board shall establish an advisory body of interested parties, which it shall consult prior to making decisions in the fields referred to in paragraph 2(c), (e), (f) and (i). 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 be bound by the opinion of the advisory body.
- 5 The Management Board may establish working bodies to assist in carrying out its functions, including the preparation of its decisions and monitoring the implementation thereof.

Article 34

Composition of the Management Board

- 1 The Management Board shall be composed of one representative of each Member State and one representative of the Commission. Members shall be selected on the basis of their recognised experience and commitment in the field of civil aviation, their managerial

capabilities and their expertise, which are to be used to further the objectives of this Regulation. The competent committee of the European Parliament shall be fully informed accordingly.

Each Member State shall appoint a member of the Management Board as well as an alternate who will represent the member in his/her absence. The Commission shall also designate its representative and alternate. The duration of the terms of office shall be five years. This term of office shall be renewable.

2 Where appropriate, the participation of representatives of European third countries and the conditions of such participation shall be established in the arrangements referred to in Article 66.

3 The advisory body referred to in Article 33(4) shall appoint four of its members to participate as observers in the Management Board. They shall represent, as broadly as possible, the different views represented in the advisory body. The duration of their term of office shall be 30 months, renewable once.

Article 35

Chairmanship of the Management Board

1 The Management Board shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall ex officio replace the Chairperson in the event of his/her being prevented from attending to his/her duties.

2 The terms of office of the Chairperson and Deputy Chairperson shall expire when their membership of the Management Board ceases. Subject to this, the duration of the terms of office of the Chairperson and Deputy Chairperson shall be three years. These terms of office shall be renewable once.

Article 36

Meetings

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

2 The Executive Director of the Agency shall take part in the deliberations.

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

4 The Management Board may invite any person whose opinion might be of interest to attend its meetings as an observer.

5 The members of the Management Board may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.

6 The secretariat of the Management Board shall be provided by the Agency.

Article 37

Voting

- 1 Without prejudice to Article 39(1), the Management Board shall take its decisions by a two-thirds majority of its members. At the request of a member of the Management Board, the decision referred to in Article 33(2)(k) shall be taken by unanimity.
- 2 Each member designated pursuant to Article 34(1) shall have one vote. In the absence of a Member, his/her alternate shall be entitled to exercise his/her right to vote. Neither observers nor the Executive Director of the Agency shall vote.
- 3 The Rules of Procedure 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.

Article 38

Functions and powers of the Executive Director

- 1 The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. Without prejudice to the competencies of the Commission and the Management Board, the Executive Director shall neither seek nor take instructions from any government or from any other body.
- 2 The European Parliament or the Council may invite the Executive Director to report on the carrying out of his/her tasks.
- 3 The Executive Director shall have the following functions and powers:
 - a to approve the measures of the Agency as defined in Article 18 within the limits specified by this Regulation, its implementing rules and any applicable law;
 - b to decide on inspections and investigations as provided for in Articles 54 and 55;
 - c to allocate certification tasks to national aviation authorities or qualified entities according to guidelines set by the Management Board;
 - d to undertake any international functions and technical cooperation with third countries pursuant to Article 27;
 - e to take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with the provisions of this Regulation;
 - f to prepare each year a draft general report and submit it to the Management Board;
 - g to exercise in respect of the Agency's staff the powers laid down in Article 29(2);
 - h to draw up estimates of the revenues and expenditure of the Agency pursuant to Article 59, and to implement the budget pursuant to Article 60;
 - i to delegate his/her powers to other members of the Agency's staff subject to rules to be adopted in accordance with the procedure referred to in Article 65(2);
 - j with the consent of the Management Board, to take decisions regarding the establishment of local offices in the Member States in accordance with Article 28(3);
 - k to prepare and to implement the annual programme of work;
 - l to respond to requests for assistance from the Commission.

Article 39

Appointment of senior officials

1 The Executive Director shall be appointed on grounds of merit and of documented competence and experience relevant for civil aviation. The Executive Director shall be appointed or dismissed by the Management Board on a proposal from the Commission. The Management Board shall take its decision by a three-quarters majority of its members. Before being appointed, the candidate selected by the Management Board may be asked to make a declaration before the competent committee or committees of the European Parliament and answer questions from its, or their, members.

2 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/her place.

3 The Directors of the Agency shall be appointed on grounds of professional competence relevant for civil aviation. The Directors shall be appointed or dismissed by the Management Board on a proposal from the Executive Director.

4 The terms of office of the Executive Director and the Directors shall be five years. The term of office of the Directors shall be renewable and the term of office of the Executive Director shall be renewable only once.

Article 40

Powers of the Boards of Appeal

1 One or more Boards of Appeal shall be established within the Agency.

2 The Board or Boards of Appeal shall be responsible for deciding on appeals against the decisions referred to in Article 44.

3 The Board or Boards of Appeal shall be convened as necessary. The number of boards of Appeal and the work allocated to it or them shall be determined by the Commission acting in accordance with the procedure referred to in Article 65(3).

Article 41

Composition of the Boards of Appeal

1 A Board of Appeal shall consist of a Chairperson and two other members.

2 The Chairperson and the other members shall have alternates to represent them in their absence.

3 The Chairperson, the other members and their alternates shall be appointed by the Management Board from a list of qualified candidates adopted by the Commission.

4 Where the Board of Appeal considers that the nature of the appeal so requires, it may call up to two further members from the list referred to in paragraph 3.

5 The qualifications required for the members of each Board of Appeal, the powers of individual members in the preparatory phase of decisions and the voting conditions shall

be determined by the Commission acting in accordance with the procedure referred to in Article 65(3).

Article 42

Members of the Board of Appeal

- 1 The term of office of the members of a Board of Appeal, including the Chairperson and any alternates, shall be five years. This term shall be renewable.
- 2 The members of a Board of Appeal shall be independent. In making their decisions they shall not be bound by any instructions.
- 3 The members of a Board of Appeal may not perform any other duties within the Agency. The members of a Board of Appeal may work on a part-time basis.
- 4 The members of a Board of Appeal may 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 obtaining the opinion of the Management Board, takes a decision to that effect.

Article 43

Exclusion and objection

- 1 The members of a Board of Appeal may 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 decision under appeal.
- 2 If, for one of the reasons listed in paragraph 1 or for any other reason, a member of a Board of Appeal considers that he/she should not take part in any appeal proceeding, he/she shall inform the Board of Appeal accordingly.
- 3 Members of a Board of Appeal may be objected to by any party to the appeal proceedings on any of the grounds given in paragraph 1, or if any such 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 Boards 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/her alternate.

Article 44

Decisions subject to appeal

- 1 An appeal may be brought against decisions of the Agency taken pursuant to Articles 20, 21, 22, 23, 55 or 64.
- 2 An appeal lodged pursuant to paragraph 1 shall not have suspensory effect. The Agency may, however, if it considers that circumstances so permit, 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 45

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 46

Time limit and form

The appeal, together with the statement of grounds thereof, shall be filed in writing at the Agency 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 47

Interlocutory revision

1 If the Executive Director considers the appeal to be admissible and well founded, he/she shall rectify the decision. This shall not apply where the appellant is opposed to another party to the appeal proceedings.

2 If the decision is not rectified within one month after receipt of the statement of grounds for the appeal, the Agency shall forthwith decide whether or not to suspend the application of the decision pursuant to the second sentence of Article 44(2), and shall remit the appeal to the Board of Appeal.

Article 48

Examination of appeals

1 If the appeal is admissible, the Board of Appeal shall examine whether it is 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, observations on notifications issued by itself or on communications from other parties to the appeal proceedings. Parties to the appeal proceedings shall be entitled to make oral presentations.

Article 49

Decisions on appeal

The Board of Appeal may exercise any power which lies within the competence of the Agency or may remit the case to the competent body of the Agency. The latter shall be bound by the decision of the Board of Appeal.

Article 50

Actions before the Court of Justice

1 Actions may be brought before the Court of Justice of the European Communities for the annulment of acts of the Agency which are legally binding on third parties, for failure to act and for damages caused by the Agency in the course of its activities.

2 Actions for the annulment of decisions of the Agency taken pursuant to Articles 20, 21, 22, 23, 55 or 64 may be brought before the Court of Justice of the European Communities only after all appeal procedures within the Agency have been exhausted.

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

Article 51

Direct appeal

Member States and the Community institutions may lodge a direct appeal before the Court of Justice of the European Communities against decisions of the Agency.

SECTION III

Working methods

Article 52

Procedures for the development of opinions, certification specifications and guidance material

1 As soon as possible after the entry into force of this Regulation, the Management Board shall establish transparent procedures for issuing opinions, certification specifications and guidance material referred to in Article 18(a) and (c).

Those procedures shall:

- a draw on expertise available in the aviation regulatory authorities of Member States;
- b whenever necessary, involve appropriate experts from relevant interested parties;
- c ensure that the Agency publishes documents and consults widely with interested parties, according to a timetable and a procedure which includes an obligation on the Agency to make a written response to the consultation process.

2 When the Agency, pursuant to Article 19, develops opinions, certification specifications and guidance material to be applied by Member States, it shall establish a procedure for consulting the Member States. To this effect, it may create a working group in which each Member State is entitled to designate an expert.

3 Measures referred to in Article 18(a) and (c) and the procedures established pursuant to paragraph 1 of this Article shall be published in an official publication of the Agency.

4 Special procedures shall be established to address immediate action to be taken by the Agency to react to a safety problem and to inform the relevant interested parties of the action they are to take.

Article 53

Procedures for taking decisions

1 The Management Board shall establish transparent procedures for taking individual decisions as provided for in Article 18(d).

Those procedures shall:

- a ensure the hearing of the natural or legal person to be addressed in the decision and of any other party with a direct and individual concern;
- b provide for notification of the decision to natural or legal persons and for its publication;
- c provide for the natural or legal person to whom the decision is addressed, and any other parties to proceedings, to be informed of the legal remedies available to that person under this Regulation;
- d ensure that the decision contains reasons.

2 The Management Board shall establish procedures specifying the conditions under which decisions are notified while taking due account of the appeal procedure.

3 Special procedures shall be established to address immediate action to be taken by the Agency to react to a safety problem and to inform the relevant interested parties of the action they are to take.

Article 54

Inspections of Member States

1 Without prejudice to the enforcement powers conferred by the Treaty on the Commission, the Agency shall assist the Commission in monitoring the application of this Regulation and its implementing rules by conducting standardisation inspections of Member States competent authorities as specified in Article 24(1). The officials authorised under this Regulation, and those seconded by the national authorities participating in such inspections, are thus empowered, in compliance with the legal provisions of the Member State concerned:

- a to examine the relevant records, data, procedures and any other material relevant to the achievement of aviation safety levels in accordance with this Regulation;
- b to take copies of or extracts from such records, data, procedures and other material;
- c to ask for an oral explanation on the spot;
- d to enter any relevant premises, land or means of transport.

2 The officials of the Agency authorised for the purpose of the inspections referred to in paragraph 1 shall exercise their powers upon production of an authorisation in writing specifying

the subject matter, the purpose of the inspection and the date on which it is to begin. In good time before the inspection, the Agency shall inform the Member State concerned of the inspection and of the identity of the authorised officials.

3 The Member State concerned shall submit to the inspections and shall ensure that bodies or persons concerned also submit to them.

4 When an inspection carried out pursuant to this Article entails an inspection of an undertaking or an association of undertakings, the provisions of Article 55 shall apply. Where an undertaking opposes the inspection, the Member State concerned shall afford the necessary assistance to officials authorised by the Agency to enable them to carry out the inspection.

5 Reports drawn up in application of this Article shall be made available in the official language or languages of the Member State where the inspection took place.

Article 55

Investigation of undertakings

1 The Agency may itself conduct or assign to national aviation authorities or qualified entities all necessary investigations of undertakings in application of Articles 7, 20, 21, 22, 23 and 24(2). These investigations shall be carried out in compliance with the legal provisions of the Member States in which they are to be undertaken. To that end, the persons authorised under this Regulation are empowered:

- a to examine the relevant records, data, procedures and any other material relevant to the execution of the tasks of the Agency;
- b to take copies of or extracts from such records, data, procedures and other material;
- c to ask for an oral explanation on site;
- d to enter relevant premises, lands or means of transport of undertakings;
- e to conduct inspections of aircraft in cooperation with Member States.

2 The persons authorised for the purpose of the investigations referred to in paragraph 1 shall exercise their powers upon production of an authorisation in writing specifying the subject matter and purpose of the investigation.

3 In good time before the investigation, the Agency shall inform the Member State in whose territory the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the Member State concerned shall, at the request of the Agency, assist those authorised persons to carry out their duties.

Article 56

Annual programme of work

The annual programme of work shall aim to promote the continuous improvement of European aviation safety and comply with the objectives, mandates and tasks of the Agency, as set out in this Regulation. It shall clearly indicate which of the mandates and tasks of the Agency have been added, changed or deleted in comparison with the previous year.

The presentation of the annual programme of work shall be based on the methodology used by the Commission as part of Activity-Based Management.

Article 57

Annual general report

The annual general report shall describe the way in which the Agency has implemented its annual programme of work. It shall clearly indicate which of the mandates and tasks of the Agency have been added, changed or deleted in comparison with the previous year.

The report shall outline the activities carried out by the Agency and evaluate the results thereof with respect to the objectives and timetable set, the risks associated with those activities, the use of resources and the general operations of the Agency.

Article 58

Transparency and communication

- 1 Regulation (EC) No 1049/2001 shall apply to documents held by the Agency.
- 2 The Agency may communicate on its own initiative in the fields within its mission. It shall ensure in particular that, in addition to the publication specified in Article 52(3), the public and any interested party are rapidly given objective, reliable and easily understandable information with regard to its work.
- 3 Any natural or legal person shall be entitled to address himself/herself in writing to the Agency in any of the languages referred to in Article 314 of the Treaty. That person shall have the right to receive an answer in the same language.
- 4 The information gathered by the Agency in accordance with this Regulation shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽¹⁾.

SECTION IV

Financial requirements

Article 59

Budget

- 1 The revenues of the Agency shall consist of:
 - a a contribution from the Community;
 - b a contribution from any European third country with which the Community has concluded agreements as referred to in Article 66;
 - c the fees paid by applicants for, and holders of, certificates and approvals issued by the Agency;
 - d charges for publications, training and any other services provided by the Agency; and

- e any voluntary financial contribution from Member States, third countries or other entities, provided such a contribution does not compromise the independence and impartiality of the Agency.
- 2 The expenditure of the Agency shall include staff, administrative, infrastructure and operational expenses.
- 3 Revenue and expenditure shall be in balance.
- 4 Regulatory budgets and the fees set and collected for certification activities shall be dealt with separately in the Agency's budget.
- 5 Each year the Management Board, on the basis of a draft statement of estimates of revenue and expenditure, shall produce a statement of estimates of revenue and expenditure of the Agency for the following financial year.
- 6 The statement of estimates referred to in paragraph 4, which shall include a draft establishment plan together with the provisional work programme, shall by 31 March at the latest be forwarded by the Management Board to the Commission and to the states with which the Community has concluded agreements as referred to in Article 66.
- 7 The statement of estimates shall be forwarded by the Commission to the budgetary authority together with the preliminary draft general budget of the European Union.
- 8 On the basis of the statement of estimates, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.
- 9 The budgetary authority shall authorise appropriations for the subsidy to the Agency. The budgetary authority shall adopt the establishment plan of the Agency.
- 10 The budget shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.
- 11 The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of the budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project.

Article 60

Implementation and control of the budget

- 1 The Executive Director shall implement the budget of the Agency.
- 2 By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer, together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom)

No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁽²⁾.

3 By 31 March at the latest following each financial year, the Commission's accounting officer shall forward the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be forwarded to the European Parliament and the Council.

4 Pursuant to Article 129 of Regulation (EC, Euratom) No 1605/2002, on receipt of the Court of Auditors' observations on the Agency's provisional accounts, the Executive Director shall draw up the Agency's final accounts under his own responsibility and submit them to the Management Board for an opinion.

5 The Management Board shall deliver an opinion on the Agency's final accounts.

6 The Executive Director shall, by 1 July at the latest following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

7 The final accounts shall be published.

8 The Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.

9 The Executive Director shall submit to the European Parliament, at the latter's request, any information necessary for the smooth application of the discharge procedure for the financial year in question, as provided for by Article 146(3) of Regulation (EC, Euratom) No 1605/2002.

10 The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

Article 61

Combating fraud

1 In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁽³⁾ shall apply without restriction.

2 The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF)⁽⁴⁾ and shall issue, without delay, the appropriate provisions applicable to its staff.

3 Decisions concerning funding and the implementing agreements and instruments resulting therefrom shall explicitly state that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks of the recipients of the Agency's funding and the agents responsible for its allocation.

Article 62

Evaluation

1 Within three years from the date of the Agency having taken up its duties, and every five years thereafter, the Management Board shall commission an independent external evaluation on the implementation of this Regulation.

2 The evaluation shall examine how effectively the Agency is fulfilling its mission. It shall also assess the impact of this Regulation, the Agency and its working practices in establishing a high level of civil aviation safety. The evaluation shall take into account the views of stakeholders at both European and national level.

3 The Management Board shall receive the findings of the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which may forward them, together with its own opinion as well as appropriate proposals, to the European Parliament and to the Council. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

Article 63

Financial provisions

The financial rules applicable to the Agency shall be adopted by the Management Board after consultation of the Commission. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities⁽⁵⁾ unless such departure is specifically required for the Agency's operation and the Commission has given its prior consent.

Article 64

Fees and charges regulation

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

2 The Commission shall consult the Management Board on the draft of the measures referred to in paragraph 1.

3 The measures referred to in paragraph 1 shall determine in particular the matters for which fees and charges pursuant to Article 59(1)(c) and (d) are due, the amount of the fees and charges and the way in which they are to be paid.

4 Fees and charges shall be levied for:

- a the issuing and renewal of certificates, as well as the related continuing oversight functions;
- b the provision of services; they shall reflect the actual cost of each individual provision;

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c the processing of appeals.

All fees and charges shall be expressed, and payable, in euro.

5 The amount of the fees and charges shall be fixed at such a level as to ensure that the revenue in respect thereof is in principle sufficient to cover the full cost of the services delivered. These fees and charges, including those collected in 2007, shall be assigned revenues for the Agency.

- (1) OJ L 8, 12.1.2001, p. 1.
- (2) OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC) No 1525/2007(OJ L 343, 27.12.2007, p. 9).
- (3) OJ L 136, 31.5.1999, p. 1.
- (4) OJ L 136, 31.5.1999, p. 15.
- (5) OJ L 357, 31.12.2002, p. 72.