

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Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (Text with EEA relevance) (repealed)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

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- (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;

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- 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;

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- 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.

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## 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:

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- 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.

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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.

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