

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Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (Text with EEA relevance) (repealed)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