

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Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (Text with EEA relevance) (repealed)

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(Text with EEA relevance) (repealed)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the Economic and Social Committee<sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>(2)</sup>,

Whereas:

- (1) A high and uniform level of protection of the European citizen should at all times be ensured in civil aviation, by the adoption of common safety rules and by measures ensuring that products, persons and organisations in the Community comply with such rules and with those adopted to protect the environment. This should contribute to facilitating the free movement of goods, persons and organisations in the internal market.
- (2) In addition, third-country aircraft operated into, within or out of the territory where the Treaty applies should be subject to appropriate oversight at Community level within the limits set by the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention), to which all Member States are parties.
- (3) The Chicago Convention already provides for minimum standards to ensure the safety of civil aviation and environmental protection relating thereto. Community essential requirements and rules adopted for their implementation should ensure that Member States fulfil the obligations created by the Chicago Convention, including those vis-à-vis third countries.

---

*Status: Point in time view as at 20/08/2009.*

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no known outstanding effects for the Regulation (EC) No 216/2008 of the European Parliament and of the Council (repealed), Introductory Text.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

---

- (4) The Community should lay down, in line with standards and recommended practices set by the Chicago Convention, essential requirements applicable to aeronautical products, parts and appliances, to persons and organisations involved in the operation of aircraft, and to persons and products involved in the training and medical examination of pilots. The Commission should be empowered to develop the necessary implementing rules.
- (5) It would not be appropriate to subject all aircraft to common rules, in particular aircraft that are of simple design or operate mainly on a local basis, and those that are home-built or particularly rare or only exist in a small number; such aircraft should therefore remain under the regulatory control of the Member States, without any obligation under this Regulation on other Member States to recognise such national arrangements. However, proportionate measures should be taken to increase generally the level of safety of recreational aviation. Consideration should in particular be given to aeroplanes and helicopters with a low maximum take-off mass and whose performance is increasing, which can circulate all over the Community and which are produced in an industrial manner. They therefore can be better regulated at Community level to provide for the necessary uniform level of safety and environmental protection.
- (6) The scope of Community action should be clearly defined so that persons, organisations and products subject to this Regulation and its implementing rules can be identified without ambiguity. Such scope should be clearly defined by referring to a list of aircraft which are exempted from the application of this Regulation.
- (7) Aeronautical products, parts and appliances, operators involved in commercial air transport, as well as pilots and persons, products and organisations involved in their training and medical examination, should be certified or licensed once they have been found to comply with essential requirements to be laid down by the Community in line with standards and recommended practices set by the Chicago Convention. The Commission should be empowered to develop the necessary implementing rules for establishing the conditions for the issue of the certificate or the conditions for its replacement by a declaration of capability, taking into account the risks associated with the different types of operations, such as certain types of aerial work and local flights with small aircraft.
- (8) For non-commercial operations, the operational and licensing rules should be tailored to the complexity of the aircraft and a related definition should be set out.
- (9) The privileges associated with the leisure pilot licence should be limited by the training received to obtain the related ratings, in accordance with the implementing rules.
- (10) In order to achieve Community objectives as regards the freedom of movement of goods, persons and services, as well as those of the common transport policy, Member States should, without further requirements or evaluation, accept products, parts and appliances, organisations or persons certified in accordance with this Regulation and its implementing rules.
- (11) Enough flexibility should be provided for addressing special circumstances such as urgent safety measures, unforeseen or limited operational needs. Provision should also be made for reaching an equivalent safety level by other means. Member States

---

*Status: Point in time view as at 20/08/2009.*

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

---

should be entitled to grant exemptions from the requirements of this Regulation and its implementing rules, provided that they are strictly limited in scope and subject to appropriate Community control.

- (12) There is a need for better arrangements in all the fields covered by this Regulation so that certain tasks currently performed at Community or national level should be carried out by a single specialised expert body. There is, therefore, a need within the Community's existing institutional structure and balance of powers to establish a European Aviation Safety Agency (hereinafter referred to as the Agency) which is independent in relation to technical matters and has legal, administrative and financial autonomy. To that end, it is necessary and appropriate that it should be a Community body having legal personality and exercising the implementing powers which are conferred on it by this Regulation.
- (13) Under the Community institutional system, implementation of Community law is primarily the responsibility of the Member States. Certification tasks required by this Regulation and its implementing rules are therefore to be executed at national level. In certain clearly defined cases, however, the Agency should also be empowered to conduct certification tasks as specified in this Regulation. The Agency should, for the same reason, be allowed to take the necessary measures related to the operation of aircraft, the qualification of crew or the safety of third-country aircraft when this is the best means to ensure uniformity and facilitate the functioning of the internal market.
- (14) Regulation (EC) No 2111/2005<sup>(3)</sup> imposes a duty on the Agency to communicate all information that may be relevant for the updating of the Community list of air carriers which, for safety reasons, are subject to an operating ban in the Community. If the Agency refuses to grant an authorisation to an air carrier under the terms of this Regulation, it should pass on to the Commission all relevant information on which this refusal was based, so that the name of the air carrier may be entered, if necessary, on that list.
- (15) The effective functioning of a Community civil aviation safety scheme in the fields covered by this Regulation requires strengthened cooperation between the Commission, the Member States and the Agency to detect unsafe conditions and take remedial measures as appropriate.
- (16) The promotion of a 'culture of safety' and the proper functioning of a regulatory system in the fields covered by this Regulation require that incidents and occurrences be spontaneously reported by the witnesses thereto. Such reporting would be facilitated by the establishment of a non-punitive environment, and appropriate measures should be taken by Member States to provide for the protection of such information and of those who report it.
- (17) Results of air accident investigations should be acted upon as a matter of urgency, in particular when they relate to defective aircraft design and/or operational matters, in order to ensure consumer confidence in air transport.
- (18) To help achieve the safety objectives of this Regulation, the Community should be given powers to impose financial penalties on holders of certificates and approvals

---

*Status: Point in time view as at 20/08/2009.*

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

---

issued by the Agency. In accordance with the Community legal order, such financial penalties should be imposed by the Commission acting upon a recommendation of the Agency. It should be underlined that through the introduction of financial penalties the Commission will be able to give a more nuanced, flexible and graduated response to a breach of the rules, compared to the withdrawal of a certificate.

- (19) Since all decisions taken by the Commission under this Regulation are subject to review by the Court of Justice of the European Communities in accordance with the Treaty, the Court of Justice should, in accordance with Article 229 thereof, be given unlimited jurisdiction in respect of decisions by which the Commission imposes fines or periodic penalty payments.
- (20) In order to respond to increasing concerns about the health and welfare of passengers during flights, it is necessary to develop aircraft designs which better protect the safety and health of passengers.
- (21) The objectives of this Regulation may be efficiently achieved through cooperation with third countries. In such a case, the provisions of this Regulation and its implementing rules may be adapted through agreements concluded by the Community with these countries. In the absence of such agreements, Member States should nevertheless be allowed, subject to appropriate Community control, to recognise the approvals granted to foreign products, parts and appliances, organisations and personnel by a third country.
- (22) In order to properly assist the Community, the Agency should be allowed to develop its expertise in all aspects of civil aviation safety and environmental protection covered by this Regulation. It should assist the Commission in the preparation of the necessary legislation and assist the Member States and industry in its implementation. It should be able to issue certification specifications and guidance material and to make technical findings and issue certificates as required, it should assist the Commission in monitoring the application of this Regulation and of its implementing rules, and it should be given the necessary authority to carry out its tasks.
- (23) The Commission and the Member States should be represented within a Management Board in order to control effectively the functions of the Agency. This Board should be entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency and appoint the Executive Director. It is also appropriate that the Agency be allowed to conduct research and to organise appropriate coordination with the Commission and the Member States. It is desirable that the Agency assist the Community and its Member States in the field of international relations, including the harmonisation of rules, recognition of approvals and technical cooperation, and be entitled to establish the appropriate relations with the aeronautical authorities of third countries and international organisations competent in matters covered by this Regulation.
- (24) In the interests of transparency, observers from interested parties should be represented within the Management Board of the Agency.

---

*Status: Point in time view as at 20/08/2009.*

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

---

- (25) Public interest requires the Agency to base its safety-related action solely on independent expertise, strictly applying this Regulation and the rules adopted by the Commission for its implementation. To that end, all safety-related decisions of the Agency should be made by its Executive Director, who should enjoy a high degree of flexibility to obtain advice and to organise the internal functioning of the Agency. When, however, the Agency has to develop draft rules of a general nature to be implemented by national authorities, Member States should be involved in the process of decision.
- (26) It is necessary to ensure that parties affected by decisions made by the Agency enjoy the necessary remedies in a manner which is suited to the special character of the field of aviation. An appropriate appeal mechanism should be set up so that decisions of the Executive Director can be subject to appeal to a specialised Board of Appeal, whose decisions are, in turn, open to action before the Court of Justice.
- (27) In order to guarantee the full autonomy and independence of the Agency, it should be granted an autonomous budget whose revenue comes essentially from a contribution from the Community and from fees paid by the users of the system. Any financial contribution received by the Agency from Member States, third countries or other entities should not compromise its independence and impartiality. The Community budgetary procedure should be applicable as far as the Community contribution and any other subsidies chargeable to the general budget of the European Union are concerned. The auditing of accounts should be carried out by the Court of Auditors.
- (28) Before any local offices of the Agency are set up, general rules should be established to clarify what requirements need to be met and what contribution the Member State concerned must provide.
- (29) Since the objectives of this Regulation, namely the establishment and uniform application of common rules in the field of civil aviation safety and environmental protection, cannot be sufficiently achieved by the Member States and can therefore, by reason of the Europe-wide scope of this Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (30) It has been recognised that the involvement of European countries not Members of the European Union should be pursued, so as to ensure a proper pan-European dimension in order to facilitate the improvement of civil aviation safety throughout Europe. European countries that have concluded agreements with the Community to adopt and apply the Community *acquis* in the field covered by this Regulation should be associated with its work in accordance with conditions to be agreed in the framework of those agreements.
- (31) It is a general objective that the transfer of functions and tasks from the Member States, including those resulting from their cooperation through the Joint Aviation Authorities, to the Agency should be effected efficiently, without any reduction in the current high levels of safety, and without any negative impact on certification schedules. Appropriate measures should be adopted to provide for the necessary transition.

---

**Status:** Point in time view as at 20/08/2009.

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

---

- (32) This Regulation sets common rules in the field of civil aviation and establishes a European Aviation Safety Agency. Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency<sup>(4)</sup> should therefore be repealed.
- (33) This Regulation establishes an appropriate and comprehensive framework for the definition and implementation of common technical requirements and administrative procedures in the field of civil aviation. Annex III to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation<sup>(5)</sup> and Council Directive 91/670/EEC of 16 December 1991 on mutual acceptance of personnel licences for the exercise of functions in civil aviation<sup>(6)</sup> should therefore be repealed in due course, without prejudice to the certification or licensing of products, persons and organisations already carried out in accordance with those acts.
- (34) This Regulation establishes an appropriate and comprehensive framework for the safety of third-country aircraft using Community airports. Directive 2004/36/EC of the European Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports<sup>(7)</sup> should therefore be repealed in due course and without prejudice to the implementing measures on collection of information, ramp inspection and exchange of information.
- (35) This Regulation will apply to any other area related to civil aviation safety on the basis of a future proposal in accordance with the Treaty.
- (36) It is necessary to establish appropriate measures to ensure both the necessary protection of sensitive safety data and to provide the public with adequate information pertaining to the level of civil aviation safety and environmental protection relating thereto, taking into account Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>(8)</sup> and relevant national legislation. Decisions taken by the Agency pursuant to Article 8 of that Regulation should be capable of giving rise to the lodging of a complaint to the Ombudsman or should be capable of being the subject of an action before the Court of Justice, under Articles 195 and 230 of the Treaty respectively.
- (37) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(9)</sup>.
- (38) In particular, power should be conferred on the Commission to adopt implementing rules for airworthiness, flight crew licensing and associated approvals, air operations, aircraft used by third-country operators, oversight and enforcement, as well as to adopt a regulation on the fees and charges of the Agency. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, *inter alia*, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

---

**Status:** Point in time view as at 20/08/2009.

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

---

- (39) On grounds of efficiency, the normal time-limits for the regulatory procedure with scrutiny should be curtailed for the adaptation of the essential requirements for environmental protection and for the adoption of the implementing rules for environmental protection.
- (40) On grounds of urgency it is necessary to apply the urgency procedure provided for in Article 5a(6) of Decision 1999/468/EC for the Commission to decide on the measures taken by Member States in immediate reaction to a safety problem, as well as on derogating approvals submitted by Member States,

HAVE ADOPTED THIS REGULATION:

---

**Status:** Point in time view as at 20/08/2009.

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

---

- (1) [OJ C 185, 8.8.2006, p. 106.](#)
- (2) Opinion of the European Parliament of 14 March 2007 ([OJ C 301 E, 13.12.2007, p. 103](#)), Council Common Position of 15 October 2007 ([OJ C 277 E, 20.11.2007, p. 8](#)) and Position of the European Parliament of 12 December 2007. Council Decision of 31 January 2008.
- (3) Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier ([OJ L 344, 27.12.2005, p. 15](#)).
- (4) [OJ L 240, 7.9.2002, p. 1.](#) Regulation as last amended by Commission Regulation (EC) No 334/2007 ([OJ L 88, 29.3.2007, p. 39](#)).
- (5) [OJ L 373, 31.12.1991, p. 4.](#) Regulation as last amended by Commission Regulation (EC) No 8/2008 ([OJ L 10, 12.1.2008, p. 1](#)).
- (6) [OJ L 373, 31.12.1991, p. 1.](#)
- (7) [OJ L 143, 30.4.2004, p. 76.](#) Directive as amended by Regulation (EC) No 2111/2005.
- (8) [OJ L 145, 31.5.2001, p. 43.](#)
- (9) [OJ L 184, 17.7.1999, p. 23.](#) Decision as amended by Decision 2006/512/EC ([OJ L 200, 22.7.2006, p. 11](#)).

**Status:**

Point in time view as at 20/08/2009.

**Changes to legislation:**

There are currently no known outstanding effects for the Regulation (EC) No 216/2008 of the European Parliament and of the Council (repealed), Introductory Text.