



Council of the
European Union

Brussels, 19 April 2016
(OR. en)

Interinstitutional File:
2015/0277 (COD)

5554/3/16
REV 3

LIMITE

AVIATION 10
CODEC 70
RELEX 55

WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	COM(2015) 613 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council
	- Objective, Scope, Basic principles : Articles 1, 2, 4 and Annex I

Delegations will find attached a further revised working document containing Presidency compromise proposals on **block I** of articles from the above-mentioned proposal. Changes with respect to the previous version of the document are marked with **bold** and ~~strike through~~.

*Article 1***Subject matter and objectives**

1. The principal objective of this Regulation is to establish and maintain a high uniform level of civil aviation safety in the Union, while ensuring a high uniform level of environmental protection.
2. This Regulation further aims at:
 - (a) contributing to the wider Union aviation policy and to the improvement of the overall performance and sustainable growth of the civil aviation sector;
 - (b) facilitating, in the fields covered by this Regulation, the free movement of goods, persons, services and capital, providing a level playing field for all actors in the internal aviation market, and improving the competitiveness of the Union's aviation industry;
 - (c) promoting cost-efficiency and effectiveness in the regulatory, certification and oversight processes as well as an efficient use of related resources at national and Union level;
 - (d) ¹contributing, in the fields covered by this Regulation, to establishing and maintaining a high uniform level of civil aviation security;
 - (e) assisting Member States, in the fields covered by this Regulation, in exercising their rights and fulfilling their obligations under the Chicago Convention, by ensuring a common interpretation and timely implementation of its provisions, including international standards and recommended practices, as appropriate;
 - (f) promoting, worldwide, the views of the Union regarding civil aviation standards and civil aviation rules by establishing appropriate cooperation with third countries and international organisations;
 - (g) promoting research and innovation, amongst others in regulatory, certification and oversight processes;
 - (h) promoting, in the fields covered by this Regulation, technical and operational interoperability.
3. The objectives set out in paragraphs 1 and 2 shall be achieved by, inter alia:
 - (a) the preparation, adoption and uniform application of all necessary acts;

¹ DE, EL, FR, HU propose to delete this point

- (b) ensuring that the declarations and certificates issued in accordance with this Regulation and its delegated and implementing acts are valid throughout the Union, without any additional requirements;
- (c) the development, with the involvement of standardisation and other industry bodies, of detailed technical standards to be used as means of compliance with this Regulation and the delegated and implementing acts adopted on the basis thereof, where appropriate;
- (d) the establishment of an independent European Union Aviation Safety Agency (the 'Agency');
- (e) the uniform implementation of all necessary acts by the national competent authorities and the Agency within their respective areas of responsibility;
- (f) the gathering, analysis and exchange of information to support evidence-based decision making;
- (g) the undertaking of awareness and promotion initiatives, including training, communication and dissemination of relevant safety information.

Article 2

Scope

1. This Regulation shall apply to:
 - (a) the design and production of products and parts by a natural or legal person under the oversight of the Agency or a Member State;
 - (b) the design, production, maintenance and operation of aircraft, as well as associated products, parts and non-installed equipment, where the aircraft is:
 - (i) registered in a Member State, unless and to the extent that the Member State has transferred its responsibilities pursuant to the Chicago Convention to a third country and the aircraft is operated by a third country operator;
 - (ii) registered in a third country and operated by an operator established, residing or with a principal place of business in the territory to which the Treaties apply;
 - (c) the operation of aircraft into, within, or out of the territory to which the Treaties apply by a third country operator;
 - (d) the design, production, maintenance and operation of aerodrome equipment used or intended for use at the aerodromes referred to in point (e) and the provision of ground handling services and apron management services at those aerodromes;

- (e) the design, maintenance and operation of aerodromes located in the territory to which the Treaties apply, which:
 - (i) are open to public use;
 - (ii) serve commercial air transport;
 - (iii) [...]; and
 - (iv) have a paved instrument runway of 800 metres or more, or exclusively serve helicopters;
 - (f) without prejudice to Union and national legislation on environment and land-use planning, the safeguarding of surroundings of the aerodromes referred to in point (e);
 - (g) the provision of 'ATM/ANS' in the Single European Sky airspace, and the design, production, maintenance and operation of systems and constituents used in the provision of those ATM/ANS;
 - (h) the design, production, maintenance and operation of unmanned aircraft, their engines, propellers, parts and non-installed equipment, as well as the equipment to control unmanned aircraft remotely, where such aircraft are operated within the territory to which the Treaties apply by an operator established, residing or with the principal place of business within that territory.
2. This Regulation shall also apply to the personnel and organisations involved in the activities referred to in paragraph 1.
3. This Regulation shall not apply to:
- (a) state aircraft, and their products, parts and non-installed equipment, and the personnel and organisations involved in the activities and services performed by state aircraft;
 - (b) aerodromes or parts thereof, as well as equipment, personnel and organisations, that are controlled and operated by the military;
 - (c) ATM/ANS, including systems and constituents, personnel and organisations, that are provided or made available by the military;
 - (d) the design, production, maintenance and operation of aircraft the operation of which involves low risk for aviation safety, as listed in Annex I, and to the personnel and organisations involved therein.

As regards point (a), Member States shall ensure that activities and services performed by the state aircraft referred to in that point are carried out having due regard, as far as practicable, to the safety objectives of this Regulation. Member States shall also ensure that, where appropriate, state aircraft are safely separated from other aircraft.

As regards point (d), the Commission shall be empowered to adopt delegated acts² in accordance with Article 117 in order to adjust, where this is necessary in light of technical or operational developments, in particular the introduction of new manufacturing techniques or new technologies, and in as far as this is justified in light of the low risk for aviation safety involved in the operation of the aircraft concerned, the following criteria set out in Annex I:

- (i) [...];
- (ii) the weight, speed, and hot air volume limits referred to in points (e), (i) and (j) of that Annex.

These adjustments shall not result in an increase or decrease of the original values of the above mentioned criteria by more than 30%.

4. An organisation responsible for the design of an aircraft type may request the Commission to decide that the provisions of Section I of Chapter III apply to the design, production and maintenance of that aircraft type and to the personnel and organisations involved in those activities, where:

- (a) the aircraft type concerned falls within the scope of points (e), (h) (i), or (j) of Annex I;
- (b) that aircraft type is intended for serial production; and
- (c) the design of that aircraft type has not been approved in accordance with the national laws of a Member State.

The Commission shall decide on the basis of that request, after having consulted the Agency and the Member State where the organisation concerned has its principal place of business, whether the criteria of the first subparagraph have been fulfilled. That decision shall be adopted by means of an implementing act which shall be adopted in accordance with the advisory procedure referred to in Article 116(2) and shall be published in the *Official Journal of the European Union*. The Agency shall also include that decision in the repository referred to in Article 63.

² The issue of delegated acts will be dealt with after the experts' meeting on Annex I.

From the date specified in that implementing decision, the design, production and maintenance of the aircraft type concerned and the personnel and organisations involved in those activities shall be solely regulated by the provisions of Section I of Chapter III and of the delegated and implementing acts adopted on the basis of those provisions. In that case, the provisions of Chapter IV and Chapter V relating to the application of the provisions of Section I of Chapter III shall also apply with respect to the aircraft type concerned.

5. Without prejudice to Article 8 of Regulation (EU) No XXX/XXXX on the implementation of the Single European Sky (recast), Member States shall, as far as practicable³, ensure that the military facilities referred to in paragraph 3(b) of this Article that are open to public use and the ATM/ANS referred to in paragraph 3(c) of this Article that are provided or made available by the military to the public offer a level of safety that is equivalent to that resulting from the application of the essential requirements set out in Annexes VII and VIII of this Regulation.
6. Member States may decide to apply the provisions of any of the Sections I, II, III, or VII of Chapter III to some or all activities referred to in paragraph 3(a) of this Article and to the personnel and organisations involved in those activities.

In that case, the Member State concerned shall notify the Commission and the Agency of its intention. That notification shall contain all relevant information, and in particular:

- (a) the Section or Sections which it intends to apply;
- (b) the activities, personnel and organisations concerned;
- (c) the reasons for the intended decision; and
- (d) the date as of which the intended decision shall be applicable.

The Commission shall decide, after having consulted the Agency, whether, in light of the characteristics of the activities, personnel and organisations in question and the purpose and content of the provisions of the Section or Sections notified to it, the provisions in question can be effectively applied and, where appropriate, under what conditions. The Commission decision, taken by means of an implementing act, shall be adopted in accordance with the advisory procedure referred to in Article 116(2) and shall be published in the *Official Journal of the European Union*. The Agency shall include that decision in the repository referred to in Article 63.

³ ES proposes the deletion of ‘*as far as practicable*’

The Member State concerned shall apply the provisions of the Section or Sections notified to the Commission only after a positive Commission decision and, where relevant, after having ensured that the conditions attached to that decision have been fulfilled. In that case, from the date specified in the Member State's decision, the activities, personnel and organisations concerned shall solely be regulated by those provisions and by the provisions of the delegated and implementing acts adopted on the basis thereof. In that case, the provisions of Chapter IV and Chapter V relating to the application of the provisions of the Section or the Sections notified with respect to the activities, personnel and organisations concerned shall also apply.

The Commission, the Agency and the competent authorities of the Member State concerned shall cooperate for the purpose of the application of this paragraph.

Member States may decide to revoke their decisions adopted pursuant to this paragraph. In that case the Member State concerned shall notify the Commission and the Agency. That notification shall be published in the *Official Journal of the European Union*, and the Agency shall include it in the repository referred to in Article 63. An appropriate transition period shall be provided for by the Member State concerned.

7. Member States may decide to exempt from the provisions of this Regulation the design, maintenance and operation of an aerodrome, and the equipment used at that aerodrome, where that aerodrome handles no more than 10 000 commercial passengers per year and no more than 850 movements related to cargo operations per year, and provided that Member States concerned ensure that such exemption does not endanger compliance with the essential requirements referred to in Article 29.

In such a case, the Member State concerned shall inform the Commission and the Agency of its decision and the reasons thereof.

The Agency shall include that decision in the repository referred to in Article 63.

In that case, from the date specified in the Member State's decision, the design, maintenance and operation of the aerodrome concerned, its equipment, and groundhandling services and apron management service at that aerodrome shall no longer be regulated by the provisions of this Regulation and of the delegated and implementing acts adopted on the basis thereof.

If such exemption by a Member State does not comply with the conditions specified in the first subparagraph, the Commission shall take the decision not to permit the exemption. The Commission decision, taken by means of an implementing act, shall be adopted in accordance with the advisory procedure referred to in Article 116 paragraph 2. The decision of the Commission shall be published in the Official Journal of the European Union and the Agency shall include it in the repository referred to in Article 63. In such a case, the Member State concerned shall revoke the exemption.

Member States shall, on an annual basis, examine the traffic figures of the aerodromes that they have exempted pursuant to this paragraph. Where that examination demonstrates that, over three consecutive years, one of those aerodromes handles more than 10 000 commercial passengers per year or more than 850 movements related to cargo operations per year, the Member State concerned shall revoke the exemption of that aerodrome. In that case, it shall inform the Commission and the Agency accordingly. The Agency shall include the decision revoking the exemption in the repository referred to in Article 63.

The provisions of this paragraph shall not affect the exemptions granted by Member States pursuant to Article 4(3b) of Regulation (EC) No 216/2008. The Agency shall include the decisions providing for those exemptions in the repository referred to in Article 63.

Article 3

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (2) ‘Chicago Convention’ means the Convention on International Civil Aviation and its Annexes, signed in Chicago on 7 December 1944;
- (3) ‘product’ means an aircraft, an engine or a propeller;
- (4) ‘part’ means any instrument, equipment, mechanism, apparatus, appurtenance, software, accessory or any other element of a product, as defined by that product’s design⁴;
- (12) ‘aerodrome’ means a defined area, on land or on water, on a fixed, fixed offshore or floating structure, including any buildings, installations and equipment thereon, intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft;
- (21) ‘international standards and recommended practices’ means the international standards and recommended practices adopted by ICAO in accordance with Article 37 of the Chicago Convention;
- (27) ‘aircraft’ means any machine that can derive support in the atmosphere from the reactions of the air other than reactions of the air against the earth’s surface;
- (28) ‘non-installed equipment’ means any instrument, equipment, mechanism, apparatus, appurtenance, software or accessory carried on board of an aircraft by the operator, which is not a part, and is used or intended to be used in operating or controlling an aircraft, supports the occupants’ survivability, or could impact the safe operation of the aircraft;

⁴ Definitions 4, 28 and 29 will be discussed in detail in Block II.

- (29) ‘unmanned aircraft’ means any aircraft operated or designed to be operated without a pilot on board;
- (31) ‘aircraft registered in a Member State’ or ‘aircraft registered in a third country’ means aircraft registered in accordance with the international standards and recommended practices relating to Annex 7 to the Chicago Convention entitled "Aircraft Nationality and Registration Marks";
- (32) ‘state aircraft’ means aircraft when carrying out military, customs, police, search and rescue, firefighting, border control and coastguard or similar activities or services under the control and responsibility of a Member State, undertaken in the public interest by or on behalf of a body vested with public authority powers;
- (33) ‘Single European Sky airspace’ means airspace of the territory to which the Treaties apply, as well as any other airspace where Member States apply Regulation (EU) No XXX/XXXX in accordance with Article 1(4) of that Regulation;

Article 4

Principles for measures under this Regulation

1. ⁵When taking measures under this Regulation the Member States, the Commission and the Agency shall:
 - (a) reflect the state of the art and best practices in the field of aviation, and take into account worldwide aviation experience and scientific and technical progress in the respective fields;
 - (b) build on the best available evidence and analysis;

⁵ FR proposes to add 2 more principles: (i) *not create regressions for unmanned professional aircraft activities previously allowed at Member States level*; (j) *ensure that, in the case of unmanned aircraft, they are without prejudice to national security requirements*. These principles will be considered in the context of the discussions in Block II. With respect to national security, PCY proposes the following new recital: *'The provisions of this Regulation, in particular the provisions on unmanned aircraft, should not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.'*

- (c) allow for immediate reaction to established causes of accidents, serious incidents and intentional security breaches;
 - (d) take due account of interdependencies between the different domains of aviation safety, and between aviation safety and other technical domains of aviation regulation;
 - (e) lay down, where possible, requirements and procedures in a manner which focuses on objectives to be achieved, while allowing different means of achieving compliance with these objectives;
 - (f) promote cooperation and efficient use of resources between authorities at Union and Member State level;
 - (g) take non-binding measures, including safety promotion actions, where possible;
 - (h) take into account the international rights and obligations in the field of civil aviation of the Union and of the Member States, including those under the Chicago Convention;
 - (i) **⁶build on national best practices as approved by the competent authorities with the view to further promoting unmanned aircraft operations at the EU level in line with technological developments.**
2. The measures taken under this Regulation shall correspond and be proportionate to the nature and risk of each particular activity to which they relate. In preparing and enacting such measures, the Member States, the Commission and the Agency shall take into account, as appropriate for the activity concerned:
- (a) whether persons other than flight crew are carried on board, and in particular whether the operation is open to members of the public;
 - (b) to what extent third parties or property on the ground could be endangered by the activity;
 - (c) the complexity and performance of the aircraft involved;
 - (d) the purpose of the flight and type of airspace used;

⁶ PCY proposes to modify recital 18 as follows: *'Since unmanned aircraft also operate within the airspace alongside with traditional aircraft, this Regulation should cover such aircraft, regardless of their operating mass. Technologies for unmanned aircraft now allow for a wide range of operations possible. **The provisions of this Regulations should open the wide use of unmanned aircraft operations by introducing** ~~that should be subject to rules that~~ are proportionate to the risk of the particular operation or type of operations.'*

- (e) the type, scale, and complexity of the operation or activity, including, where relevant, the size and type of the traffic handled by the responsible organisation or person;
- (f) the extent to which the persons affected by the risks involved in the operation are able to assess and exercise control over those risks;
- (g) the results of past certification and oversight activities.

ANNEX I

Aircraft referred to in Article 2(3)(d)

Categories of aircraft to which the Regulation does not apply:

- (a) historic aircraft meeting the following criteria:
 - (i) simple aircraft whose:
 - initial design was established before 1 January 1955, and
 - production has been stopped before 1 January 1975;or
 - (ii) aircraft having a clear historical relevance, related to:
 - a participation in a noteworthy historical event,
 - a major step in the development of aviation, or
 - a major role played into the armed forces of a Member State;
- (b) aircraft specifically designed or modified for research, experimental or scientific purposes, and likely to be produced in very limited numbers;
- (c) manned aircraft at least 51 % of which is built by an amateur, or a non-profit making association of amateurs, for their own purposes and without any commercial objective;

- (d) aircraft that have been in the service of military forces, unless the aircraft is of a type for which a design standard has been adopted by the Agency;
- (e) manned aeroplanes having the stall speed or the minimum steady flight speed in landing configuration not exceeding 35 knots calibrated air speed (CAS) manned helicopters, manned gyroplanes, manned sailplanes, manned powered sailplanes and powered parachutes, having no more than two seats, and a maximum take-off mass (MTOM), as recorded by the Member States, of no more than:

	Landplane/ helicopter/ powered parachute	Gyroplanes	Sailplanes/ powered sailplanes (including foot launched)	Amphibian or floatplane/ helicopter	Electric propulsion system	Airframe mounted total recovery parachute
Single-seater	300 kg MTOM	560 kg MTOM	250 kg MTOM	Additional 30 kg MTOM	Additional 50 kg MTOM	Additional 15 kg MTOM
Two-seater	450 kg MTOM		400 kg MTOM	Additional 45 kg MTOM	Additional 70 kg MTOM	Additional 22,5 kg MTOM
When amphibian or floatplane/helicopter is operating both as a floatplane/helicopter and as a land plane/helicopter, it must fall below the applicable MTOM limit						

- (i) [...];
- (ii) [...];
- (iii) [...];
- (iv) [...];

- (v) [...];
 - (vi) [...];
 - (vii) [...];
 - (viii) [...];
 - (f) [...];
 - (g) [...];
 - (h) replicas of aircraft meeting the criteria of points (a) or (d), for which the structural design is similar to the original aircraft;
 - (i) manned hot-air balloons having a single occupancy and a maximum design hot air volume of not more than 900 m³;
 - (j) any other manned aircraft which has a maximum empty mass, including fuel, of no more than 70 kg.
-