

UK COMMENTS ON THE DRAFT COMMON REQUIREMENTS

Reference in draft Regulation	UK Suggested Text	UK Comments
New preamble	<p>We suggest a new preamble on the lines of:</p> <p>(i) The application of this Regulation shall be without prejudice to Member States' sovereignty over their airspace and to the requirements of the Member States relating to public order, public security and defence matters, as set out in Article 13 of the Single Sky Framework Regulation (EC 549/2004). This Regulation does not cover military operations and training."</p>	<p>We consider it vital to avoid any future misunderstanding that the Common Requirements Regulation clearly states upfront in the preamble that it does not apply to the military.</p> <p>The suggested text is based on Article 1.2 of the Single Sky Framework Regulation.</p>
Preamble (3)	<p>We suggest either:</p> <p>(i) the deletion of the word "all", or</p> <p>(ii) insertion of the words "subject to this Regulation" at the start of the paragraph.</p>	<p>The UK is concerned about "proportionality" and the notion of "all" air navigation services being subject to certification. We believe that some small service providers should be excluded from this Regulation.</p>
Preamble (8)	<p>We suggest:</p> <p>(i) the addition "where considered necessary" after "inspection and surveys"; and</p> <p>(ii) "regular" instead of "yearly" in the final sentence.</p>	<p>The UK's NSA (the CAA) considers that the task foreseen here would be disproportionately burdensome given the potential number of ANSPs currently covered. Regulatory oversight also needs to be risk-based with the NSA able to determine when and how many inspection and compliance monitoring checks are necessary.</p>
Preamble (9)	<p>We suggest:</p> <p>(i) "common approach" rather than "common view"; and</p> <p>(ii) after the words "certification process" in line 2, we suggest adding "and supervision".</p>	<p>Suggestions to improve the clarity of the text.</p>

<p>Preamble (10)</p>	<p>We suggest:</p> <ul style="list-style-type: none"> (i) lines 3-4, for the words “the Commission identifies and adopts ESARRs 3 and 5” we suggest, “the Commission identifies and adopts ESARR 3 and ESARR 5, para 5.3 within the framework of this Regulation”; and (ii) at the end of that sentence, the words “by way of this Regulation” would be deleted. 	<p>We consider that it is vitally important to give greater clarity on the basis on which ESARRs are to be adopted. Our suggested text makes it clear that not all of ESARR 5 will be adopted by this Regulation.</p>
<p>Preamble (11)</p>	<p>We suggest:</p> <ul style="list-style-type: none"> (i) line 2, “which is designed to ensure that so far as practicable all safety risks have been identified” rather than “which ensures that all safety risks have been identified”. 	<p>The UK considers that unlike quality management, safety management cannot be applied to the provision of meteorological services. The justification for this is that whereas it is reasonable to expect Met service providers to use best practice in the production of their forecasts, as they have no control over pilots’ discretionary use of such data whilst airborne, they cannot, therefore, be held responsible for any associated safety implications. We also consider that this point needs to be reflected in Annex 1 paragraph 1.3.2.</p> <p>Our suggested amendment is a more realistic safety-related requirement to be placed on service providers.</p>
<p>Preamble (12)</p>	<p>We suggest:</p> <ul style="list-style-type: none"> (i) line 2, “organised in such a way as to minimise their contribution” rather than “organised in a way to minimise its contribution”; and (ii) line 5, the words “provider” and “practice” should be in the plural. 	<p>Suggestions to improve the clarity of the text.</p>
<p>Preamble (13)</p>	<p>We suggest:</p> <ul style="list-style-type: none"> (i) line 2, adding the “, operational,” after “safety”; (ii) line 4, “provider” should be in the plural; and (iii) line 6, the word “effectively” should be deleted. 	<p>We consider that operational matters should be added to the list.</p> <p>Moreover, we need to ensure alignment between Preamble 13 dealing with ICAO differences and the relevant provisions in Annexes 2-5.</p>

Preamble (14)	<p>We suggest:</p> <ul style="list-style-type: none"> (i) line 1, “provider” should be in the plural; and (ii) for “losses for damages arising from liabilities” we would substitute “losses or damages arising from their legal liabilities”. 	Suggestions to improve the clarity of the text.
Article 3	<p>General comment This current text of this article is far from satisfactory as discussed in the next column. For example, there is a need to ensure that smaller ANSPs are exempt from this Regulation whilst the derogation applied to other ANSPs should be widened.</p> <p>Drafting suggestions:</p> <ul style="list-style-type: none"> (i) paragraph 1, line 1, insert at the beginning of the first sentence "Unless a Member State has decided to not certificate an air navigation service provider on the basis that it primarily provides a service to aircraft movements other than general air traffic,"; (ii) paragraph 2, line 2, the words “and only if duly justified by specific operational circumstances” add little by way of substance to the derogation requirement for small providers and should be deleted; (iii) paragraph 3, line 3, the figure of 400,000 EUR is still a very low threshold and would capture many of the smallest airport, CNS and niche MET/AIS providers. We suggest a figure of 5,000,000 EUR is a much more realistic figure; (iv) line 4, for “one or more” rather than “one of several”; (v) 3.2 (a) and 3.2(b), neither “general aviation” nor “aerial work” is defined and they should be if these phrases are retained; (vi) paragraph 2, final sentence, replacing “comply with some or all of the following provisions of Annex 1” with “comply with some or all of the following provisions which may include”; (vii) add to derogation list, "1.3.2 safety management (including ESAAR 3); 	<p>This Article, containing the derogation provisions, is at the heart of the UK’s concerns on proportionality. Representatives from the UK ATM industry have confirmed that the current scope of the Common Requirements will lead to company closures and job losses in the UK, and the consequent reduction in the UK’s competitive ATM market. We do not believe that the Commission’s intention is for this to happen, since it would act against the overall liberalisation agenda that underpins Single Sky.</p> <p>Moreover, we note that Preamble 5 indicates that the Commission recognises the need for modulation to the Common Requirements in accordance with the potential risk posed by air navigation service providers in their contribution to ATM. The current text of Article 3 is contrary to the text in the preamble.</p> <p>We consider that the right of a Member State to not certificate ANSPs that primarily provide air traffic services to aircraft movements other than general air traffic, as stated in Preamble 14, should be included in this Article. We also believe that the approach adopted should reflect the requirements of Articles 5 and 157 of the EC Treaty on proportionality, subsidiarity and encouraging an environment favourable to small and medium-sized undertakings.</p> <p>By way of comparison, we note that at the last meeting of the EASA Committee on 27 July, the Commission’s representative introduced a draft EASA Charges Regulation stating that amongst the principles underlying that Regulation was an acknowledgement that Article 157 required encouragement of small and medium-sized</p>

	<p>(viii) to add 1.4.1 to "1.4.2 and 1.4.3 details of the security...";</p> <p>(ix) paragraph 3, in lines 2/3 for "has to respect" substitute "shall respect"; and</p> <p>(x) paragraph 4, for "have to apply" substitute "shall comply with" and for "at the latest at the moment" substitute "at the time".</p>	<p>enterprises. Likewise in the ATM context, in terms of proportionality, it is essential that the burden falling on the parties concerned should be minimised and commensurate with the objective to be attained.</p> <p>In terms of subsidiarity, supervision should be carried out by the NSA where no wider European issues, or SES objectives, are involved – which is again the case for most small aerodromes, CNS providers and providers of niche MET/AIS services.</p> <p>As to how that translates into a derogation here, we note that no provider, no matter how small, is exempt from the Common Requirements. Previously the derogation for "small" providers had allowed them simply to be certificated for safety purposes. However now the only derogation for "small" providers is in respect of certain elements, none of which can be dispensed with entirely, while still leaving a substantial burden, particularly of Annex 1 requirements.</p> <p>Our clear preference is for a complete exemption of the smallest service providers from the Common Requirements, or failing that leaving their application to the discretion of the NSA. If any requirements however are to be mandated, we would wish these to be safety requirements, although in respect of the smallest providers, not necessarily on a safety management bases but rather quantified in risk-based terms.</p> <p>The UK is happy to discuss with the Commission how the scope of Common Requirements can be amended so that they are proportionate in scale and do not adversely impact on the competitive UK ATM industry. Moreover, the derogation currently included in the text should be expanded - we have suggested 1.3.2 and 1.4.1, although others should be added (we are willing to discuss these with the Commission separately).</p>
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Article 4	<p>We suggest:</p> <ul style="list-style-type: none"> (i) paragraph 2, delete “underlying documentation”; and (ii) paragraph 3, delete “the conditions of the”. 	<p>We consider there is a need for greater clarity on what is meant in paragraph 2 by “underlying documentation” and how it adds to the concept of “relevant evidence” to demonstrate compliance. We therefore think that the words should be deleted.</p> <p>We also think that “the conditions of the service provision” adds little of substance and may be confused with conditions in the certificate, hence we think the phrase should be deleted.</p>
Article 5	<p>We suggest:</p> <ul style="list-style-type: none"> (i) paragraph 1, line 8, for “being part” substitute “constituting”; (ii) paragraph 3, line 2, we suggest that after the word “regulation” a reference is inserted to monitoring compliance with conditions in the certificate; (iii) paragraph 3, line 4, for “call upon” substitute “require”; and (iv) paragraph 3, final two lines, in addition to the “sanctions” under Article 9 of the Framework Regulation, we consider that this needs to take account of such other measures, including revocation of the certificate, as referred to in Article 7(8) of the Service Provision Regulation. 	<p>We consider this Article far too prescriptive for its purpose and that the mechanism and timing of compliance monitoring should be a matter for the NSA in accordance with national law and with the subsidiarity principle.</p> <p>Unless the scope of the derogation is substantially widened, checking ongoing compliance of ANSPs every year will be a hugely burdensome and costly exercise, well beyond the current resources of the UK’s NSA.</p> <p>Moreover, the notion of the NSA consulting ANSPs before establishing inspection programmes is again unrealistic except, perhaps, in the case a national provider such as NATS. The issue of compliance monitoring is further complicated by the possibility of Recognised Organisations or other NSAs being involved in compliance arrangements.</p>
Article 6	<p>We suggest:</p> <ul style="list-style-type: none"> (i) paragraph 1, line 1, after “efficient supervision” insert “and standardisation”; (ii) at the end of the paragraph add “and dissemination of best practice”; (iii) paragraph 2, line 1, after the word “mechanism” add “to be determined by the Commission”; (iv) paragraph 3, line 2, after “Member State” insert “and NSA”; and (v) first sentence of paragraph 6 after "Member State" insert "and NSA". 	<p>We are concerned to ensure that there is an effective mechanism for a level playing field, and for this purpose there needs to be a robust standardisation process.</p> <p>One issue about paragraph 6 is what happens if the follow-up to the review report is inadequate. In the draft Charges Regulation, which may offer a precedent, the Commission can investigate, having heard the State and consulted the SSC, and can then take a decision.</p>

Article 7	<p>We suggest:</p> <p>(i) insert "20 days" after "force" and delete "on the day".</p>	<p>For consistency with other draft regulations, we suggest that this Regulation comes into force 20 days after publication in OJEC rather than on the day following such publication.</p> <p>We are concerned, however, by the overall timetable for implementing the Common Requirements. The requirements are considerable and service providers are not being given enough time to satisfy the requirements.</p>
Annex 1 paragraph 1.1.1	<p>We suggest:</p> <p>(i) line 1, for "able" substitute "competent";</p> <p>(ii) line 2 we would delete "and sustainable" and for "pursuant with demand..." would say "consistent with any reasonable level of overall demand for such services in the airspace under the responsibility of the Member State";</p> <p>(iii) delete paragraph 1.1.2 bringing the notion of "expertise" into 1.1.3 but in paragraph 1.1.3, in the second line after "capacity", we would insert "and expertise";</p> <p>(iv) the third line, for "consistency with" we would substitute "conformity with"; and</p> <p>(v) for the final words "the forthcoming Annexes" we would say "Annexes 2 to 5".</p>	<p>We do not consider it possible for service providers to meet the requirement in 1.1.1. The demands of airspace users should be reasonable. For example, if all users wanted to fly at exactly the same time in the same portion of airspace, it would be unreasonable to expect an air traffic service provider to provide the necessary capacity to meet all the demand.</p> <p>We consider that Paragraph 1.1.2 adds little value and can be deleted if "expertise" is added to 1.1.3.</p>
Annex 1 paragraph 1.2	<p>We suggest:</p> <p>(i) paragraph 1.2.1.1, for "effective" in line 2, substitute "efficient"; and</p> <p>(ii) for paragraphs 1.2.1.2 and 3, we would delete all but paragraph 2(a).</p>	<p>We do not consider that paragraphs 1.2.1.2 and 3 add value to understanding the organisational structure as foreseen in paragraph 2(a). However, we would expect to see an additional paragraph at 1.2.1.2 dealing with the provider's governance arrangements.</p>

Annex 1 paragraph 1.2.2	<p>We suggest:</p> <p>(i) that the entire section is deleted.</p>	<p>We consider that the material in this section is inappropriate to the certification process and belongs instead to the designation process. It is difficult to see how the requirements form part of the “entry ticket” to service provision. Insofar as such elements take their inspiration from the NATS Licence, it needs to be borne in mind that the Licence is not a document of initial certification but rather the authorisation (or in SES terms a designation) for NATS to provide certain services in the UK. We therefore consider that this entire section should be deleted.</p>
Annex 1 paragraph 1.3.1	<p>We suggest:</p> <p>(i) line 1, delete all of the text after "air navigation service it provides". All other text in 1.3.1 to be deleted.</p>	<p>We are concerned that the QMS requirements are unduly prescriptive. We consider that it is unnecessary to have ISO 9001 certification as against simply a system for quality management. Although the intent is for ANSPs to meet ISO standards by the end of 2006, the way in which this is framed in the Regulation is unclear in terms of the date of initiating the process as against the date of obtaining certification.</p> <p>ISO 9001 takes organisations on average 2–3 years to obtain. It should be noted that in the EASA context, ISO 9001 accreditation is not required for the airborne environment, or for maintenance, AOCs or pilot training. The relevant organisations are required to have a QMS which are assessed against EASA requirements. This does not require QMS certified by a certification body. Accordingly, we would wish the Common Requirements to provide merely for a QMS and one that is capable of interacting adequately with the SMS.</p> <p>We consider that all that is required is to include the first sentence. This would minimise the impact of this requirement on the smaller service providers and avoid the difficulties surrounding compliance with ISO 9001 specifically.</p>

<p>Annex 1 paragraph 1.3.2 (safety management (including ESARR 3))</p>	<p>We suggest:</p> <ul style="list-style-type: none"> (i) in line 1, insert the words "as far practicable" between "shall" and "institute"; and (ii) in line 4, the words "the production of" are inserted between "of" and "all". 	<p>The UK is generally content on safety management and ESARR 3 and with the “transposition” effected by this paragraph but will wish to comment further in the light of the EC’s recent table mapping the concrete transposition of the ESARR provisions in the draft.</p> <p>We would wish the ESARRs to be seen as a basic minimum safety level to which additional requirements may be applied proportionate to the safety risk posed to overall ATM. Insofar as this cannot happen under the Common Requirements, it is assumed to be possible that a greater level of detail could take place within the framework of safety levels in additional conditions (under Annex II paragraph 2(a) to the Service Provision Regulation) and/or under the designation process.</p>
<p>Paragraph 1.3.2</p>	<p>We suggest:</p> <ul style="list-style-type: none"> (i) the section "Quantitative safety levels/risk assessment and mitigation” to be re-drafted as: <p>"A provider of air traffic services shall ensure that hazard identification as well as risk assessment and mitigation are systematically conducted for all changes to the provision of air traffic services in a manner which addresses the complete life-cycle of the constituent under consideration, from initial planning and definition to post-implementation operations, maintenance and de-commissioning. The assessment shall include the hazards stemming from interactions between human elements, procedures and equipment and the remainder of the air traffic management system.</p> <p>A provider of air traffic services shall ensure:</p> <ul style="list-style-type: none"> a) that risk assessment is conducted against applicable quantitative safety levels to ensure that due consideration is given to relevant aspects of ATM; and 	<p>A significant absence in safety terms is the lack of transposition of ESARR 4. The previous version of the Common Requirements outlined elements of ESSAR 4, but it is understood that the intention is to now transpose ESARR 4 as an Implementing Rule under the Interoperability Regulation. This mechanism is questionable however as ESSAR 4 does not relate only to the interoperability of equipment but refers to the safety of systems i.e. people, procedures, equipment and airspace. It therefore needs to be reinstated in the Common Requirements but without the previous reference to target levels of safety.</p> <p>We would also observe that an ESARR 4 element has been included in para 1.3.2 under “Quantitative safety levels/risk assessment and mitigation” but in an inappropriate manner. ESARR 4 only requires a quantitative risk assessment for changes to systems, however, the requirements as set out is to perform a <i>complete</i> quantitative risk assessment before certification is granted. Such a requirement would be hugely expensive, if not impossible to meet. We are therefore suggesting a re-draft of this entire section.</p>

	b) risks are appropriately mitigated where assessment has shown this to be necessary due to the safety significance of the change."	
Paragraph 1.3.2 (Competence of staff , including part 5.3 ATSEP of ESARR 5)	We suggest: (i) deletion of all of this section except the first sentence.	Given its place within a set of certification requirements, we consider all that is needed here is the first paragraph and that much of the rest is applicable to the designation process. That aside, the presentation of elements of ESARR 5 here creates the regulatory anomaly that technical and engineering personnel are dealt with under this EC Regulation, while the requirements for their ATCO counterparts are addressed in the proposed EC Directive. This misalignment is difficult to understand. Finally it is unclear from the text that the entirety of this Section is in fact technical and engineering personnel specific (as against drawing in ATCOs as well).
Paragraph 1.3.3	We suggest: (i) the deletion of this section.	We consider that the requirement for operations manuals is a very clear example of something that is appropriate to designation rather than certification. Hence our view that this section should be deleted.
Paragraph 1.5	We suggest: (i) the deletion of the second and third sentences.	We consider that the first sentence alone is more than adequate to deal with the issue of human resources.

<p>Paragraph 1.6</p>	<p>We suggest:</p> <p>(i) that this section is re-worded to ensure that smaller air traffic service providers are not covered by these - in our view - onerous and unnecessary requirements.</p>	<p>We consider that while the detailed requirements on financial strength may be appropriate for a substantial en-route provider, they are not suitable for smaller providers (insofar as they are to remain covered by such elements of the Common Requirements).</p> <p>By way of contrast, the Council Regulation on the Licensing of Air Carriers sets out two tests which new applicant airlines have to meet prior to the grant of an Operating Licence:</p> <p>(i) Do they have sufficient resources to meet their actual and potential obligations during the first two years of operations? and</p> <p>(ii) Do they have sufficient resources to meet their first three months operational costs without taking into account any income?</p> <p>The ongoing test for established airlines is: Do they have sufficient resources to meet their actual and potential obligations for the following 12 months? There is however <i>no</i> regulation for small airlines, which are broadly defined as those operating aircraft with less than 19 seats. Given this fact, it is clearly inequitable for smaller air traffic service providers to be signalled out for harsher treatment than other parts of the aviation industry.</p> <p>Moreover, there is a conflict between 1.6.3 and the derogation list in Article 3 which needs to be resolved because of the reference to a business plan and annual plan.</p>
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Paragraph 1.7	<p>We suggest:</p> <ul style="list-style-type: none"> (i) 1.7.2, first line, should be "paragraph 1"; and (ii) 1.7.2, first line add at the end of the first sentence ", and the level of commercial insurance cover available." 	<p>We consider that liability is a vital issue, particularly In the light of current difficulties with insurance arrangements for airlines.</p> <p>We therefore suggest that allowance needs to be made in the Regulation as to the amount of insurance cover that an organisation can secure on the commercial market. This is because the potential level of loss for an ANSP could be greater than the amount of insurance cover available on the insurance market. Our suggested wording overcomes this difficulty.</p>
Paragraph 1.8	<p>We suggest:</p> <ul style="list-style-type: none"> (i) that 1.8.1.2 and 1.8.2 should be deleted. 	<p>The CAA considers that paragraph 1.8.1.2 on the formal consultation process with users, and paragraph 1.8.2 on contingency plans should be treated as elements of the designation requirements.</p>
Paragraph 1.9	<p>We suggest:</p> <ul style="list-style-type: none"> (i) the deletion of all but the first sentence of 1.9.1; and (ii) the consequential amendment to the first paragraph by saying that the Annual Report "should" (rather than "shall") include the elements listed in paragraph 1.9.2. 	<p>We consider that the wording has become confused and the suggested text of 1.9.1 is unnecessary.</p>
Annex 2 paragraph 2.1.1	<p>We suggest:</p> <ul style="list-style-type: none"> (i) that the ownership requirements are moderated; and (ii) 2.1.2, second bullet to be deleted. 	<p>We remain very concerned about the ownership and control provisions. While noting the difficulties the Commission has expressed to us on this issue, we would observe that the EU position on this point in other fora is to argue for a relaxation of nationality and ownership controls. We see no reason why the same should not apply in the ATM context if a provider is capable of performing to the required standard unless a security issue is relevant.</p> <p>As for links with other organisations (paragraph 2.1.2), we are unclear as to what the purpose is behind this requirement. We consider that no such requirement can be justified and that it should therefore be deleted.</p>

Annex 2 paragraph 2.2	<p>We suggest:</p> <p>(i) that the paragraph is reworded as follows:</p> <p>"A provider of air traffic services shall not engage in conduct that would have as its object or effect the prevention, restriction or distortion of competition within a Member State or between Member States. Neither shall it engage in conduct that amounts to an abuse of a dominant market position".</p>	<p>We consider that this paragraph should make it clear that it covers the kind of conduct prohibited by Article 82 of the Treaty. Moreover, we consider that the reference to Article 81(1) here is confusing.</p>
Annex 2 paragraph 2.3	<p>We suggest:</p> <p>(i) the two bullet points containing references to ICAO annexes and other documents are deleted; and</p> <p>(ii) in their place in line 2, we would refer to the "relevant" rather than "following" Annexes to the Convention and at the end of that line, add the words "Procedures for Air Navigation Services and appropriate regional documents".</p>	<p>Suggestions to improve the clarity of the text.</p>
Annex 3	<p>We suggest:</p> <p>(i) that the text is re-drafted along the lines of :</p> <p>"As far as practicable, a provider of Met services shall ensure that the information distributed for operations is updated with sufficient regularity and meets the accuracy and timeliness requirements specified in ICAO Annex 3 to the Convention on International Civil Aviation."</p>	<p>We consider that it is not possible, as set out in paragraph 3.1.2, for a provider of MET services to confirm the level of accuracy of information <i>before</i> such information is distributed. This is impracticable because it would be impossible to complete such verification in a timely manner. This would reduce the value and timeliness of the forecast data for no perceivable benefit. Our suggested text overcomes these difficulties and links the MET Common Requirements with those contained in ICAO ANNEX 3.</p>
Annex 4	<p>We suggest:</p> <p>(i) that the second sub-paragraph should just be "providers of air traffic services";</p> <p>(ii) in paragraph 4.2 at line 1, the word "air" can be deleted; and</p> <p>(iii) the bullet points referring to ICAO annexes and other documents, we would suggest the same formula as we have suggested in Annex 1.</p>	<p>Suggestions to improve the clarity of the text.</p>

Annex 5	We suggest: (i) that the text of Annex 5 is clarified to ensure that what is meant by providers of communication, navigation or surveillance information services.	We consider that it is not clear which organisations would be covered by this annex. The nature of providers of communication, navigation and surveillance information is complex and it is unclear who the Commission considers that they are capturing in this Annex. This needs to be clarified. The other practical difficulty is the apparent inability to designate such providers, as against certifying them. We would welcome the Commission's view on how this might be managed.
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