

SES IMPLEMENTING RULES

CANSO EUROPEAN WORKING PAPER

ON

COMMON REQUIREMENTS

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1. DEVELOPMENT PROCESS FOR COMMON REQUIREMENTS

CANSO welcomes the open spirit in which the Commission is beginning discussion working towards the establishment of a mature regulatory framework for the certification of ANSPs. CANSO will contribute general and detailed proposals to the Commission, mindful of the importance of complete transparency. CANSO thus requests the organization of as many workshops as necessary before any regulation is adopted to take into account the different comments of the stakeholders.

2. A LEVEL PLAYING FIELD

The Regulation should contain provisions that are already recognized by international or European instruments. In the field of safety, adopting the ESARRs is a reasonable guarantee for a level playing field. Referring to the quality management system, the same can be done with ISO9001. (Many ANSPs across Europe are already compliant with ISO9001:2000.) Applying the existing instruments limits the need for further detail with respect to the CR. This is the way to ensure the best level playing field. CANSO believes that it is important to focus on high-level objectives in order to avoid too much interpretation by the NSAs.

A transition period to achieve the EN/ISO9001:2000 certification should be introduced in order to allow smooth transition without cost burden.

After a certain period, an evaluation of the effects of the Common requirements should also be envisaged.

3. LIABILITY

The Regulation should contain liability aspects but this liability should be limited to damages for which the ANSPs are directly accountable. Liability should be based on the concept of fault liability. It is not acceptable, for example, for ANSPs to have a liability for delay, as delay can exist for reasons not related to air navigation services. It is uncertain as to whether the EC can legally introduce a new liability regime via an implementing rule. It is

CANSO's contention that this should be dealt with by means of a council regulation with respect to the introduction of new liabilities.

4. PEER REVIEW PROCEDURES BETWEEN NSAs

In itself, the objective or the "peer review procedure" seems appropriate for ensuring the level playing field for ANSPs. Nevertheless, a balance should be found so as to ensure that this process does not lead to over-regulation of the European ANSPs, and is not in

opposition to the general performance objectives set by the Article 11 of the framework regulation. It should be investigated as to whether existing review procedures from the telecom, railway or energy sector could be applied.

5. PROPORTIONALITY

Some proportionality is needed in applying the CR to all ANSPs regardless of the scale or type of their operation. Where they cannot be excluded, the aim should be to tailor the CRs to reduce the burden on them depending on the scale and type of their operations and subject to tests of reasonableness, proportionality and relevance to the SES objectives.

6. CUSTOMER'S REQUIREMENTS FULFILLMENT

For CANSO the obligation to meet customers' requirements is not consistent with the ICAO framework regulation, particularly regarding the principles of non-discrimination between users. The "pseudo-commercial" context of air navigation provision is well known for requiring some specific procedures such as extensive consultation of users - usually through the mediation of recognized association of users- and performance review at an international level. This CR must therefore be deleted and could be replaced by a specific requirement for consultation of users. Furthermore, Article 11 of the framework regulation, legally establishing a performance review framework in Single Sky, should be considered as complementary to the certification process established by the service provision regulation.

7. CONFLICT OF INTEREST

CANSO considers that the requirement addressing the "ownership" status of the ANSP should be clarified, as the "absence of conflict of interest" requirement may lead to several misleading interpretations.

8. STATUS OF INTERNATIONAL STANDARDS

CANSO awaits the Commission's final legal investigation on that matter. In particular, it is not clear whether the intention of the Commission is to divert from the current ICAO framework where States remain responsible for the application of ICAO standards, including the appropriate notification of differences in these standards, as and when required.

9. ON THE SPOT VISITS & ACCESS TO FACILITIES

If it is considered as important to have unlimited and unannounced access to all facilities of ANSPs and to all employees and documents, CANSO is of the opinion that the NSA should base their inspections on a risk assessment of ANSPs' operations and that they should conduct their inspections in a generic way that is openly discussed and agreed with the ANSPs concerned.

10. ESARRs

The ESARRs 3/4/5 have been integrally adopted by the CRs. ESARR 2 is missing. The reason for this may be that there is a separate directive available (2003/42/EC). In this case the status of ESARR 2 must be made clear.

11. ORGANISATIONAL STRUCTURE

The requirement 1.2 "Organisational Structure" seems based on hierarchical structures within the company, whereas cost-efficiency and modern management best practices advocate looking at processes and added-value for all partners.

12. SYSTEMS & PROCESSES FOR SAFETY MANAGEMENT

Annex 2, Paragraph 2.2 of the Draft Regulation contains material on safety management systems and risk assessment & mitigation which appear to be drawn from ESARRs 3 and 4. This creates an obvious overlap with those ESARRs. This paragraph can therefore safely be deleted.

Most confusingly ESARR5 will be mandatory under this regulation while at the same time the EC is proposing a Directive on ATCO licensing, substantially based on the very same ESARR.

Finally, it is unclear whether in the SES programme, ESARRs represent a minimum or a maximum level of safety or whether the ANSPs' current standards can be maintained.

The EC directives mentioned in Section 2.2.4 introduce risk assessment procedures which substantially deviate from ESARR 4. Since ESARR 4 is made mandatory, ESARR 4 risk assessment procedure should be applied.

13. BUSINESS AND ANNUAL PLAN

The business plan and the annual plan should not be included in paragraph 1.6 of the draft regulation entitled 'Financial Strength'. These two documents fulfil an essential role in the planning and control cycle of the organisation and are not just financial. It is suggested, therefore, to put these 2 plans under a new heading 'Organisational Management' and

place it after Par 1.2. Hence the business plan would be seen to fulfil its role at a strategic level and the annual plan at a tactical level.

The business plan should indeed cover a minimum period of five years. Because this plan plays its role at a strategic level, it should set out the major goals for the organisation. Further details in plans and more specific objectives do belong in an Annual Plan and not in a Business Plan. Implementation plans under (e) on Page 11/19 of the Draft Regulation do not belong in an Annual Plan, because they do not receive their specifications and boundary conditions until after the design phase of the process.

14. TIMING OF IMPLEMENTATION

Certification and designation processes are not due to enter into force until one year after publication of the CRs. CANSO believes that a level playing field is needed so that the requirements may only be imposed when all NSAs are functional and all ANSPs comply with the common requirements.

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