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**Extension of the competence of the European Aviation Safety Agency to public use airports**

**Abstract:** The article discusses issues related to European Aviation Safety Agency competences in reference to public aerodromes. The article includes, among others the introduction of the aerodromes regulations to the EU legal order. Also, it describes in detail the Commission Regulation (EC) No 139/2014. In addition, new legal instruments and institutions for public aerodromes and the main areas of EASA regulation in this respect have been discussed. Finally, the article discusses the issues of derogations, acceptable means of compliance and flexibility for aerodrome operators.

**Keywords:** European Aviation Safety Agency; Public use aerodrome; Aerodrome certificate

**Introduction**

The European Aviation Safety Agency (EASA) is a specialized European Union body set up to provide a uniform regulatory system for civil aviation safety. EASA was established on the basis of 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. This regulation, referred to as the basic Regulation, first authorized the European Commission to issue implementing provisions relating to the broadly understood aviation technique. Another basic Regulation - Regulation (EC) 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 has extended EU competences to include licensing of airline personnel, flight operations and safety assessments of aircraft from third countries. Subsequently, under Regulation (EC) No 216/2008 of the European Parliament and of the Council (EC) of 21 October 2009 in the field of aerodromes, air traffic management and air navigation services, competence in the field of regulation of aerodrome safety was transferred to the EU level public and air traffic management and air navigation services. In December 2015, the European Commission announced in the European Aviation Strategy [14] the need to pass a new Basic Regulation.

The legal base of the basic regulation is art. 100 sec. 2 of the Treaty on the Functioning of the European Community, allowing the adoption of regulations to improve the safety of air transport. The primary purpose of the basic regulation is to establish and maintain a high and uniformly regulated level of civil aviation safety in Europe.

This goal is to be achieved, above all, at the level of legislation, i.e. aviation safety regulations, to be applied in a uniform manner by all aviation authorities. That is why the

main task of EASA is to help the European Commission, especially in the legislative process, in matters relating to civil aviation safety. The idea is to present draft regulations to the European Commission for the basic Regulation (in the form of the so-called EASA opinion) and to issue supporting materials for the application of implementing provisions.

On the basis of the authorizations included in the basic regulation, since 2003 the European Commission - at the request of EASA - has adopted new implementing regulations regulating in detail the various issues related to civil aviation safety. Regarding security issues at airports of public use, Commission Regulation (EU) No 139/2014 of 12 February 2014 laying down requirements and administrative procedures for aerodromes in accordance with Regulation (EC) No 216/2008 of the European Parliament and of the Council was issued. The present study aims to present the basic assumptions of these provisions because until now safety issues at airports of public use were regulated exclusively by national law - the Act of 3 July 2002 - Air Law [15] and a number of executive acts (regulations of the minister responsible for transport). For a better understanding of the subject matter, it is also necessary to approximate the legislative process preceding the adoption of the EC Regulation No. 139/2014. Knowledge of documents from the legislative process at the EU level allows in many cases to determine the reasons for such and not other solutions contained in the final text of the adopted executive regulation. These documents are publicly available on the EASA website [16].

### **Extending the EASA competence - the legislative process**

In accordance with the requirements of the basic Regulation, the proposal to amend this legal act and extend EU competences to legislation regarding the safety of public use airports was initiated by the EASA opinion, i.e. a draft submitted to the European Commission for further processing. On 6 December 2007, Opinion No 3/2007 concerning the amendment of the base regulation was published with a view to its extension to air safety and interoperability regulations. The publication of Opinion 3/2007 was, however, preceded by the publication in 2006 of the first draft new legislation (NPA 06/2006), as well as public consultations as a result of which a document was created to address the comments submitted, published in 2007 (CRD 06/2006). The detailed course of consultations is contained in Opinion 3/2007, so there is no need to zoom in, as does the content of Opinion 3/2007 itself. The most important proposal included in this document was the intention to include common security requirements for all public airports located on the territory of the EU Member States. The proposals for safety requirements for airports have been elaborated on the basis of standards and recommendations of Annex 14 to the Chicago Convention, or more specifically, Volume I on the design and operation of airports. In EASA's work, experts from specialist organizations such as JAA (Joint Aviation Authority) and GASR (Group of Aerodrome Safety Regulators) were involved. Opinion 3/2007 was also accompanied by a comprehensive Regulatory Impact Assessment.

Based on the Opinion 3/2007, the European Commission prepared (June 25, 2008) a formal request addressed to the European Parliament and the Council initiating the initiation of the legislative process aimed at amending the basic Regulation [1]. However, the draft prepared by the European Commission refrained from the EASA proposal to cover all public use airports with regulations. Due to the lack of consent of the majority of EU Member States to such a proposal, with reference to the principle of subsidiarity, the scope of the new regulations was ultimately limited to those public airports that can handle IFR traffic or aircraft of a certain weight. The European Commission's project was also accompanied by an impact assessment of the regulation [13].

### **Extending the competence of EASA - Basic Regulation**

In the final text of Regulation (EC) No. 1108/2009 of the European Parliament and of the Council amending Regulation (EC) No 216/2008 adopted on 21 October 2009 in the field of aerodromes, air traffic management and air navigation services, the scope of the basic Regulation and the provisions issued on its the basis for aerodromes is defined as follows (Article 4 (3a)): 'Aerodromes, including their equipment, located in the territory subject to the provisions of the Treaty, intended for public use and providing commercial air transport operations of approach or departure operations using procedures instrumental, and (a) which have a paved runway of at least 800 meters in length; or (b) operate only on helicopters, they shall meet the requirements of this Regulation. The personnel and organizations involved in the operation of these aerodromes should comply with the requirements of this Regulation. "

As explained in the preamble of Regulation 1108/2009 (point 6) "It would not be appropriate to include all airports in a common manner. In particular, airports which are not public airports, airports used primarily for recreational purposes or operating commercial air transport other than those operated in accordance with instrument flight rules and having paved runways not exceeding 800 meters in length should continue to be subject to provisions laid down by the Member States, this Regulation shall in no way oblige the other Member States to recognize those national arrangements."

It has been also foreseen (in Article 4 (3b)) that the Member States will be entitled to opt out of the application of the airport default regulation, which handles no more than 10,000 passengers per year, and handles no more than 850 operations related to the handling of goods per year.

The basic Regulation empowers the European Commission to regulate three issues related to the safety of airports (Article 1 (1)). First, the design, maintenance, and operation of airports, as well as the personnel and organization involved, in particular, the airport manager. Secondly, the protection of the aerodrome surroundings but "without prejudice to Community and national environmental and land-use planning". Thirdly, finally, the design, production, and maintenance of "aerodrome equipment", incorrectly translated in the Polish version of the regulation as "aerodrome equipment". The most important definitions were also defined for the purposes of the basic Regulation: the airport, the airport operator (operator), the apron and the service managing it (see Article 3). Since detailed implementing provisions were to be adopted on the basis of the basic regulation, it was necessary to determine - precisely in the basic regulation - the so-called essential requirements. This is a kind of detailed guidelines for the European Commission that bind the Commission when issuing the implementing regulation. Until these essential requirements are specified in the implementing provisions, they do not constitute a direct source of law. With regard to airports, the essential requirements are included in Annex Va to the basic Regulation, divided into parts concerning, among others physical characteristics, infrastructure and equipment, operations and management, and aerodrome surroundings. In Appendix V, it explicitly refers to art. 8a, which is at the same time the basis for issuing an executive regulation by the European Commission. In the aforementioned art. 8a it was also settled that the compliance of the aerodrome and its operation with safety requirements will be confirmed in the airport certification process. The condition for issuing the certificate will be to show that the airport meets the requirements of the so-called basics of airport certification and lack of characteristics or characteristics of the aerodrome that make its operation unsafe. The basis for airport certification consists of three types of requirements: the applicable certification specifications for types of airports; provisions for which an equivalent level of safety has been accepted; as well as the special detailed technical specifications necessary in those cases where the design features of the aerodrome concerned or the experience gained during its operation prove that the certification specifications are inadequate or inappropriate for the aerodrome concerned. At the same time, the organizations responsible for the operation of the

airport are subject to evaluation of the aerodrome - obviously in terms of meeting the requirements addressed to these organizations.

### **Implementing Regulation of the European Commission 139/2014**

In December 2011, EASA submitted to the public consultation a draft implementing the regulation on airport requirements together with draft guidelines and guidance material (collected in the NPA 2011-20 document). Comments from several months of consultations were collected in the CRD 2011-20 document in November 2012. In February 2013, EASA published Opinion 01/2013 containing the final draft of the new European Commission Regulation. In April 2013, this project - with minor changes - was unanimously voted on at the meeting of the European Commission Committee on EASA. The publication of the regulation prolonged (the main reason for the delays was the translation of EU law acts into Croatian and the country's accession in July 2013) EC Implementing Regulation No. 139/2014 was published on February 12, 2014. It should be noted that the process Legislation was not limited only to consideration of the remarks submitted but within its framework, a series of conferences and workshops were organized, including workshops organized by ACI in Poland [4].

EC Regulation No. 139/2014, referred to as ADR or PART ADR (Aerodrome) outside the general part, contains four annexes: containing definitions regarding requirements for aerodrome regulatory authorities (ADR.AR), requirements for airport managers (ADR.OR), and also operational requirements (ADR.OPS).

A detailed discussion of this legal act goes beyond the scope of this study, but it should be mentioned that the EASA guidelines and consultancy materials issued in the form of decisions of the EASA Executive Director are very important for the practice of its application. In the first place, they are so-called certification basis (CS - Certification Specification) being a type of requirements to be met by public use airports. Currently, it is the Decision of the Executive Director No. 2016/027 / R. Then it's about the so-called Acceptable Means of Compliance (AMC) and consulting materials (GM - Guidance Materials). They were included in the Decision of the Executive Director No. 2014/12 (with later amendments.).

Regulation 139/2014 provides for a fairly long transitional period, ending on 31 December 2017. This is a limit date for both the President of the Civil Aviation Office to adapt to the requirements addressed to the aviation authority (ADR.AR), as well as for airport managers and airports, which up to that date should already have certificates issued under Regulation 139/2014. It is worth adding that the certificates issued on the basis of this regulation are indefinite certificates, the validity of which depends on the fulfillment of the requirements, and the certificates issued so far (based on national regulations) were certificates with a specified period of validity.

Preparations for the implementation of the new EU regulations were initiated in March 2014, when ULC published consultation material [5]. Part of the conclusions resulting from the preparatory and consultative work was included in the form of proposals contained in the draft Act on the Amendment of 3 July 2002 Aviation Law (UC32). The project proposes this, among others changes to art. 59a of the Act (deletion of national provisions being the basis for certification requirements for public use airports covered by EU regulations), introduction of a form of administrative decision for the application of derogations from the certification basis or refinement of certain issues arising from EC Regulation No. 139/2014 in the Implementing Regulation (e.g. and approving changes to the aviation authority). The draft amendment to the Aviation Law has not yet been directed to parliamentary work until now there are works at the government level.

Without waiting for changes in national regulations, the first certificates for public use airports have already been issued, applying directly and directly the provisions of Regulation 139/2014 [6]. As already mentioned, the issuance of these certificates is necessary by the end of 2017 at the latest. At the same time, 15 national airports that have been notified to EASA in accordance with Article 15 are now eligible under the EU legislation on aerodromes. 4 of Regulation 139/2014 [7]. Therefore, such activities can - in principle - be assessed positively. However, having regard to the negative assessment of the activities of the President of the CAA regarding the certification of airports in 2010-2013 (ie before the entry into force of EU regulations regarding airports) formulated by the Supreme Audit Office [8], it is necessary to keep a moderate abstention in expressing opinions on of how airport certification processes have been or will be based on new EU legislation.

It should also be kept in mind that the national legislator should ultimately determine the fate of these national regulations, which seem to encroach on the matter already regulated in EU regulations regarding the safety of public use airports. As incompatible with the EC Regulation No. 139/2014, for example, the regulation of the Minister of Transport, Construction and Maritime Economy of August 28, 2013 on technical and operational requirements for public use airports subject to certification [2], which should not be applied to airports "subject" to the scope of application of EU rules. Finally, the "further fate" of the executive regulation issued on the basis of the Construction Law on technical and construction regulations for civilian airports [11] should be resolved. After all, the provisions of the EC Regulation 139/2014 are based on a completely different approach to determining the certification base for airports. The basis for airport certification is determined individually, taking into account both the CS issued by EASA and the possibility to "adapt" this basis to the characteristics and characteristics of the given airport.

It should also be clearly stated how the obligations imposed on a Member State in Article 8 (airport security), art. 9 (monitoring of the airport surroundings), or art. 10 (management of threats related to wild animals) of the Regulation of the European Commission 139/2014.

While postulating changes in national regulations, it should be borne in mind that legislative work on amendments to the EC Regulation 139/2014 is underway in EASA, included in the EASA legislative program for 2017-2021 [3]. They cover even issues such as apron management (Opinion 02/2014), or the introduction of specification certification for landing sites for helicopters located at airports (NPA 2017-14). It should be noted, however, that work on the draft amendment to the EC Regulation No. 139/2014 in the field of apron management (Opinion 02/2014) has been suspended and the regulation is expected to be issued (as well as AMC EASA) only in the fourth quarter of 2018 [17]. instead, the issuance of regulations on the storage of dangerous goods at airports [18]. However, no technical regulations regarding the certification of aerodrome equipment are currently envisaged, despite the authorization to issue them in the basic regulation.

As for the basic regulation itself, bearing in mind that currently legislative works at the level of the European Parliament and the Council regarding the adoption of a new basic regulation, it is worth adding that the draft new basic regulation does not provide for a change in the scope of EU regulations to public airports. The current criteria (public use airport, IFR traffic, a stripe of a certain length) should, therefore, remain unchanged. However, it was proposed explicit authorization of the European Commission to regulate the issue of apron management (which would confirm the thesis that the work to date on this issue has been halted from legislative measures), as well as extending airport safety regulations also to handling agent services.

### **The main areas of EASA regulation in the field of airports**

Moving to the main areas that are regulated by the EC Regulation No. 139/2014, general requirements (ADR.OR) and operational requirements defining the relevant procedures (ADR.OPS) should be indicated. General requirements related to the certification process, management system and documentation kept by the airport operator. A new solution, previously not used in the domestic legal system, is the introduction of a change system. The provisions of ADR.OR.B.040 give the operator of the airport the opportunity to introduce changes to the organization that do not require prior approval by the competent authority. This is an element of the assumption adopted by EASA, according to which the operator is the main entity deciding on the scope of its activity and the body exercises only the supervisory function. In the current legal status, any change related to the operator's or airport's operations required the approval of the President of ULC before its introduction.

In the scope of general requirements, the management system requirements (ADR.OR.D.005) were also specified in detail, consistent with other areas of civil aviation (such as the EC Regulation No. 965/2012 in the field of air operations).

The EC Regulation No. 139/2014 contains requirements related to the procedures that must be established and implemented by the certified public airport operator (ADR.OPS.). In the system of national law, these aspects are regulated in several legal acts - in the area of operational procedures, there is a regulation concerning the operation of airports [10], an action plan in an emergency situation and an air rescue and firefighting service [12]. At this point, particular attention should be paid to the inconsistency between the EC Regulation No. 139/2014 and the national regulations regarding the operation of airports. EU regulations require certified airports to establish LVP procedures and procedures for adverse weather conditions (ADR.OPS.B.045 and 050), while national regulations only give the operator the option of introducing LVP procedures (§ 4 point 7 of the Regulation) but omit procedures altogether. operations in unfavorable weather conditions. Provisions included in the Regulation EC No. 139/2014 also include a number of obligations that must be met by the airport operator, such as the introduction of a maintenance program, monitoring the quality of fuel, maintenance of the ground movement or monitoring the possibility of colliding with wild animals (including birds).

By comprehensively analyzing legal acts prepared by EASA, including EC Regulation No. 139/2014, we do not have the impression that EU regulations are created in a way that gives operators a significant level of decision-making and flexibility. It is noticeable to move away from the rigid framework and requirements adopted in the domestic legal system, aimed at finding solutions and implementing procedures tailored to the operator and the airport's specific activities. In many acquisitions, the operator is required to determine the level of business complexity, risk and take appropriate measures to maintain an adequate level of security. In this system, the role of the supervisory authority focuses rather on checking that the airport operator is properly using the powers granted to him by EASA. And also on making a cyclic assessment (as part of constant supervision over the certificate holder), whether the safety requirements conditional on maintaining the validity of the issued certificate are met.

The manifestation of EASA's flexible approach to airport operators is the introduction, as substantive law, of a single condensed legal act (EC Regulation No. 139/2014) and a number of explanatory documents, the so-called "soft law" (e.g. CS - certification specifications, GM - guidance materials and AMC - acceptable methods of meeting requirements). Due to the fact that the mandatory provisions are included in the EC Regulation No. 139/2014 and the obligations imposed on them are determined to a large degree of generality, airport operators have a certain freedom in the methods and means used in achieving the goal of meeting the provisions contained in Regulation. As a rule, this freedom is limited by soft-law, but exceptions in this respect are also allowed. In practice, EU

regulations require the operator to meet a certain obligation, but the method of fulfillment and the tools used depend largely on the specifics of operations at the airport, the number of threats identified or the complexity and complexity of the operator himself - these principles have been defined in soft-law materials.

Going to the mode of issuing the AC certificate itself, it should be pointed out that the detailed method of certification of airport operators is based on the so-called certification bases. These are the guidelines that apply to the applicant in the certification process, including CS (certification specifications issued by EASA) and conditions recognized by the authority it is appropriate for the design and type of operation of the aerodrome concerned. In this respect, too, Community law allows flexibility and allows the body to apply an equivalent level of security as demonstrated by the applicant (ADR.AR.C.020 (c)). Additionally, if the given airport is not able to meet the certification specifications for example, due to physical or topographical constraints, the competent authority may specify specific special technical specifications (other than CSs issued by EASA), called special conditions. The issuance of special conditions is also possible in case the aerodrome has innovative or unusual construction features (ADR.AR.C.025). In each of these cases, the authority using the derogations must take into account the need to ensure an adequate level of security.

The DAAD tool [9] (Deviation Acceptance and Action Document) is another element that confirms the significant flexibility of EU law with airport operators. DAAD allows the supervisory authority to apply a derogation to the use of other tools and methods to meet the basic requirements (set out in EC Regulation No. 139/2014). The competent authority may issue a DAAD until December 31, 2024, specifying the period of validity of the document. A DAAD release is admitted if the following conditions are met in full:

- Derogations do not qualify as cases of an equivalent level of security or special requirements (described above),
- These derogations existed earlier on the basis of pre-entry provisions of ADR.,
- Despite the derogations applied, the basic requirements for airport requirements are met (Annex Va to base regulation 216/2008),
- An additional safety assessment has been prepared for each derogation.

#### Source materials:

- [1] COM(2008)390 final
- [2] Dz. U. z 2013, poz. 1020.
- [3] EASA Rulemaking and safety promotion programme 2017-2022
- [4] <http://ulc.gov.pl/pl/107-aktualnosci/wiadomosci/2888-warsztaty-aci-europe-easa-what-impact-will-easa-s-aerodrome-rules-have-on-airports>
- [5] <http://www.ulc.gov.pl/pl/publikacje/wiadomosci/3167-konsultacje-w-sprawie-wdrozenia-w-polsce-rozporzadzenia-ke-w-sprawie-lotnisk>
- [6] <http://www.ulc.gov.pl/pl/prawo/projekty/krajowe/archiwum/107-aktualnosci/wiadomosci/3747-kolejne-spotkanie-z-zaradzajacymi-lotniskami-dotyczace-certyfikacji-wedlug-nowych-przepisow-unijnych>
- [7] <https://www.easa.europa.eu/system/files/dfu/List%20of%20EASA%20ADRs-Art%204%20%26%205.pdf>
- [8] <https://www.nik.gov.pl/plik/id,10834,vp,13167.pdf>
- [9] Narzędzie DAAD zostało wprowadzone na podstawie art. 7 rozporządzenia KE nr 139/2014.
- [10] Rozporządzenie Ministra Infrastruktury i Rozwoju z dnia 11 września 2014 r. w sprawie warunków eksploatacji lotnisk (t.jedn. Dz. U. z 2016 r., poz.91).

- [11] Rozporządzenie Ministra Transportu i Gospodarki Morskiej z 31 sierpnia 1998 r. w sprawie przepisów techniczno-budowlanych dla lotnisk cywilnych (Dz. U. Nr 130 , poz. 859);
- [12] Rozporządzenie MTBiGM z dnia 4 kwietnia 2013 r. w sprawie przygotowania lotnisk do sytuacji zagrożenia oraz lotniskowych służb ratowniczo-gaśniczych (Dz. U. z 2013 r., poz. 487)
- [13] SEC(2008)2086
- [14] SWD.2015.261.final
- [15] T.j. z 2017, poz. 959.
- [16] [www.easa.eu](http://www.easa.eu)
- [17] Zob. RMT.0485
- [18] Zob. RMT.0705