

**SINGLE EUROPEAN SKY: OUTCOME OF CONSULTATION ON IMPLEMENTING
THE ECONOMIC AND FINANCIAL PARTS OF THE COMMON REQUIREMENTS
REGULATION**

SINGLE EUROPEAN SKY: OUTCOME OF CONSULTATION ON IMPLEMENTING THE ECONOMIC AND FINANCIAL PARTS OF THE COMMON REQUIREMENTS REGULATION

INTRODUCTION

1. The CAA published a consultation paper in September this year¹ that set out its proposed approach to implementing the economic and financial aspects of the Single European Sky Common Requirements regulation and invited comments.
2. Two workshops attended by a number of air navigation service providers (ANSPs), airports and representative bodies were held during the consultation period which allowed for open discussion of the CAA's proposed approach and helped identify areas where further clarification was required. We have taken account of these points in this response. The CAA also received a limited number of written responses to the consultation paper from airports, ANSPs and representative bodies. Those responses that were not marked as commercial in confidence are available on the CAA's website².
3. This paper:
 - outlines the approach the CAA proposed in September to implementing the economic and financial aspects of the Common Requirements regulation;
 - summarises the responses received to the questions posed in the consultation document, including points made at the workshops, grouped under each of the questions in the September consultation document;
 - sets out the CAA's analysis of those responses; and
 - documents the CAA's conclusions on how it will approach the task of implementing the economic and financial aspects of the Common Requirements regulation.

CONSULTATION QUESTIONS

The user consultation process

The CAA's proposal

4. The existence in the UK of a contestable air navigation service provision market, set against the backdrop of a broadly competitive airports market, places a significant discipline on aerodromes and their ANSPs to provide cost effective services. Against this background, the CAA proposed to adopt a risk-based approach to implementing the economic and financial aspects of the Common Requirements regulation.
5. In line with this approach, and taking on board the principle of proportionality, the CAA, in its consultation document, outlined its desire to discharge its duties through a relatively unintrusive regulatory process, placing the onus on ANSPs to demonstrate that they are in compliance with the six financial and economic aspects of the Common Requirements regulation.

¹ Single European Sky: CAA approach to implementing the economic and financial aspects of the Common Requirements. A consultation document. September 2005.

² Responses are available at <http://www.caa.co.uk/default.aspx?categoryid=589&pagetype=90&pageid=5838>

6. A key element of the CAA's proposed approach was to use the existing requirement in the SES legislation for ANSPs to carry out a formal user consultation process as a means of testing the quality of the information provided within an ANSP's Business and Annual Plans and Annual Reports, rather than the CAA carrying out its own detailed 'quality check' of this information.

<p>Question 1: Do you agree with the proposed use of the user consultation process as an appropriate means of quality checking the information contained within Business and Annual Plans and Reports?</p>

Summary of received responses

7. All respondents to the CAA's consultation process agreed that user consultation was an effective means of quality checking the information found in the Business and Annual Plans and Annual Reports.
8. Some respondents asked for greater clarity as to what information would need to be put in the public domain.

The CAA's conclusions

9. The CAA will allow for user consultation to provide the appropriate 'quality check' of the information contained within the Business and Annual Plans and Annual Report. The question of what information needs to be put in the public domain is addressed in response to questions 4, 5 and 8 below.
10. As the CAA aims to rely on user consultation to 'quality check' the information provided, it is essential that the ANSP makes available to its users the following information, as required by the economic and financial aspects of the Common Requirements legislation:
 - overall goals and strategy;
 - performance objectives and indicators;
 - information on the implementation of new infrastructure;
 - expected short-term financial position;
 - information on the level and quality of service; and
 - the Annual Report.

Discharge of National Supervisory Authority's (NSA) duties

The CAA's proposals

- Complaints

11. In its consultation document, the CAA proposed to allow for a complaints process should parties have evidence that a particular ANSP was not in compliance with the economic and financial aspects of the Common Requirements regulation.

- Financial fitness

12. The Common requirements regulation requires an ANSP to demonstrate that it can meet its financial obligations. The CAA suggested that the process of an ANSP undergoing an independent annual audit that checks that the "going

concern” assumption is still valid would provide sufficient assurance that this requirement is being met.

- Non-compliance

13. Where an ANSP appears no longer to be in compliance with the financial and economic aspects of the Common Requirements, e.g. through a failure to complete the questionnaire fully, failure to send in the relevant documents, concerns over financial fitness, or following a complaint, the CAA suggested that the ANSP would be contacted and required to remedy the situation within a given time period. Failure of ANSPs to comply with the Common Requirements would result in the ANSP’s certificate being refused or revoked.

- Different types of provider

14. Finally, the CAA outlined its intended approach to implementing the economic and financial aspects of the Common Requirements with respect to the different types of air navigation service provider and to NATS En-Route Ltd (NERL). The overall policy approach set out in the consultation document was intended to apply in the same way to all providers of air navigation service. The CAA proposed to maintain its existing economic regulation of NERL along the lines of the present licence arrangements.

Question 2: Do you agree with the CAA’s proposed overall approach to discharging its duties as NSA for the economic and financial aspects of the common requirements regulation?

Summary of responses received

15. All respondents agreed with the CAA’s proposed overall approach, although one respondent noted strong reservations as to which “services” are (or should be) considered as MET and AIS providers for the purposes of the SES legislation.
16. One respondent argued that the definition of AIS and MET within the Single European Sky regulations remains sufficiently unclear that there is currently no test of whether a particular company is an air navigation service provider or not (and hence is required to comply with the Common Requirements regulation). It called for a set of criteria to be developed to determine whether or not a particular service could be defined as a MET or an AIS service for the purposes of the SES legislation.

The CAA’s conclusions

17. The CAA will adopt the approaches proposed in the consultation paper when discharging its economic and financial duties under the Common Requirements regulation. These include:
 - the establishment of a complaints procedure for parties with evidence that an ANSP may not be in compliance with the financial and economic aspects of the Common Requirements;
 - the use of the independent audit as the means of determining an ANSP’s financial fitness;
 - the proposed procedure for non-compliance;
 - the equal treatment of all types of air navigation service provider; and

- maintaining the existing “financial” regulation of NERL.
18. The issue of which MET and AIS services will require certification is still under consideration. The CAA is currently discussing this issue with the European Commission and will provide further guidance in this area in due course.

Additional factors affecting the CAA’s approach

The CAA’s proposals

19. The CAA outlined its approach for both initial certification of ANSPs and ongoing monitoring of compliance with the economic and financial aspects of the Common Requirements. The CAA proposed that initial compliance would be on the basis of completion by an ANSP of the CAA’s compliance questionnaire, sending in the relevant documents to the CAA, and establishing a formal user consultation process. Ongoing monitoring of compliance would be achieved through the ongoing process of receiving – and thereby checking the ANSP is producing – Business Plans, Annual Plans, Annual Reports and audited accounts, and through the ANSP providing information about the user consultation process in its Annual Report.
20. Due to the absence of historical information for new start-up ANSPs, the CAA proposed to undertake a more detailed scrutiny of the financial and economic information provided by such companies ahead of certification.
21. Where an ANSP operates at more than one airport, the CAA proposed that consolidated Business and Annual Plans and Annual Reports could be produced, as long as these plans and reports identified separately each aspect of the corporate group’s air navigation service provision activity.
22. Finally, the CAA discussed whether a different approach was required for NATS Services Ltd (NSL) operations at London airports where direct charging occurs. The CAA proposed that, while direct charging remained in place, the CAA would undertake a more detailed check of the quality of the financial and economic information provided by NSL at the BAA London airports.

Question 3: Do you agree with the CAA’s proposed approach on these additional points?
--

Summary of responses received

23. There was a general agreement to the CAA’s proposed approach. However, BAA questioned CAA’s proposal to undertake additional scrutiny of the economic and financial information provided by NSL at the BAA London airports. BAA argued that the contract between NSL and BAA currently places emphasis on the need for extensive user consultation, as well as setting a cap on prices that can be charged to users of these airports, and that the case for additional scrutiny had not been made.

The CAA’s conclusions

24. The CAA has considered how best it should implement the economic and financial aspects of the Common Requirements regulation at airports where direct charging occurs. Whilst the contract between NSL and BAA may place cost disciplines on NSL, as well as placing a requirement on the NSL to hold a sufficient degree of user consultation, there is still a lack of either market discipline on NSL or price cap regulation on BAA (because the direct charging

mechanism takes the activity outwith the regulatory till) to ensure that users' interests will be protected.

25. The CAA therefore concludes that, while direct charging remains in place, there will be a need for a greater role for the CAA in assessing the information provided by NSL in its Business and Annual Plans in relation to the BAA London airports. However, the extent of the invigilation required will take account of the degree of user consensus achieved by BAA and NSL in the consultation process.

Business Plans

The CAA's proposal

26. The CAA proposed to collect the Business Plans of all ANSPs not subject to derogation every five years and to check that the information required by the regulation is contained therein. The user consultation process was proposed as the means of 'quality-checking' the information provided.

Question 4: Do you agree with the CAA's proposed approach on Business Plans?

Summary of responses received

27. Many respondents said that they were content with the CAA's proposed approach on Business Plans. However, some concern was expressed by a number of respondents about any requirement to publish commercially sensitive information that may be contained within the Business Plan.
28. Clarification was also sought as to whether ANSPs that operate at a number of aerodromes would be required to publish separate Business Plans for each of its activities.

The CAA's conclusions

- Commercially sensitive information

29. The Common Requirements regulation requires non-derogated ANSPs to produce a Business Plan that sets out:
 - the overall aims and goals of the provider;
 - its strategy for achieving them; and
 - appropriate performance objectives in terms of quality and level of service, safety and cost effectiveness.
30. As mentioned above, the CAA will rely on the user consultation process to provide the 'quality check' of the information contained within the Business Plan. Hence, the above aspects of the ANSP's Business Plan must be made available to its users.
31. However, the CAA recognises the concerns surrounding the publication of commercially sensitive information and does not propose that such information be made available publicly. However, the Common Requirements regulation mandates that companies must provide information about its short-term financial position and the CAA cannot alter that fact. A separate summary document that excludes commercially sensitive information could be produced

and would be sufficient, as long as it covered the points in the bulleted list above.

- ANSPs operating at more than one airport

32. The CAA recognises that the Common Requirements legislation leaves some ambiguity as to what ANSPs operating within a group, or providing services at several airports need to do to meet the terms of the legislation.
33. The two principles the CAA considers relevant here are the need for users and the NSA to have sufficient information to confirm that the Common Requirements are met, and to minimise the burden on any organisation that has complex corporate structures or provides services at multiple sites.
34. Where an ANSP operates at more than one location, is part of a wider organisation, or if an aerodrome “self supplies” air navigation services, it will be required to produce a Business Plan that sets out the information as listed above as they relate to type of air navigation service provided and/or each airport where the company provides air navigation services. This meets the need for users to be able to understand the plans the company has at the airport level.
35. However, to avoid undue burdens on ANSPs, the CAA will not require separate documents for each ANS activity. Rather the information for each type of service, or each airport where the ANSP operates may form part of an overarching group-wide Business Plan.
36. As for question 1 above, a separate summary document that removed commercially sensitive information (other than that required by the legislation) could be produced for the user consultation process.

Annual Plans

The CAA’s proposal

37. The CAA proposed to require all ANSPs not subject to derogation to produce an Annual Plan that contains the required information as set out in the Common Requirements regulation.

Question 5: Do you agree with the CAA’s proposed approach on Annual Plans?

Summary of responses received

38. Respondents to the consultation document and at the workshop raised similar concerns as above regarding the publication of commercially sensitive information within the Annual Plan and the requirement to produce separate plans for ANSPs operating at more than one aerodrome or for “self-supplying” aerodromes.

The CAA’s conclusions

39. The Common Requirements regulation requires non-derogated ANSPs to produce an Annual Plan that sets out:
 - Information on the implementation of new infrastructure or other developments and a statement on how they will contribute to improving the level and quality of services;

- Indicators of performance against which the level and quality of service may be reasonably assessed; and
 - The service provider's expected short-term financial position as well as any changes to or impacts on the Business Plan.
40. The CAA has considered the same issues here as set out in the responses to question four above. ANSPs need only publish the information sufficient to meet the Common Requirements. This need not include other commercially sensitive information. A summary document could be published for the user consultation process.
41. As for Business Plans, where an ANSP operates as part of a larger group, at different aerodromes or where an aerodrome “self supplies” air navigation services, this information could be contained within an overarching corporate Annual Plan, as long as the company identifies and provides the required information for each type of air navigation service that it provides or each airport where it operates separately within that Plan.

Ability to meet financial obligations and the independent audit

The CAA's proposal

42. The CAA argued that the financial fitness of an ANSP would best be demonstrated by the ANSP, or the wider company, undergoing an independent financial audit as, if the company were not considered to be a ‘going concern’, the auditor would be compelled to produce a statement highlighting any financial difficulties.
43. The CAA proposed that all non-derogated ANSPs be required to send in their audited accounts to the CAA and that no further financial analysis would be undertaken by the CAA.

Question 6: Do you agree with the CAA's proposed approach on ability to meet financial obligations and independent audit?

Summary of responses received

44. There was broad support for the CAA's intention to use the requirement to undergo an independent annual audit as a means of assessing an ANSP's ability to meet its financial obligations. However, some smaller providers that currently do not undergo an independent auditing process warned that this could increase their costs and questioned whether a reporting accountant could instead perform the role of an independent auditor for smaller ANSPs.
45. Respondents also questioned whether the CAA would require individual audited accounts from those ANSPs operating as part of a wider group, or where an airport “self-supplies” air navigation services.

The CAA's conclusion

46. The Service Provision regulation requires all ANSPs, regardless of size, to undergo an independent annual audit. The Common Requirements regulation, on the other hand, allows the NSA to derogate smaller providers from certain aspects of the regulation, including the economic and financial aspects. Hence the regulation is currently ambiguous as to who should be required to undergo an independent annual audit.

47. The CAA intends to use the derogation opportunity provided for by the Common Requirements regulation. It is therefore the CAA's position that small ANSPs that meet the derogation criteria will not be required to undergo an independent annual audit. Those ANSPs that fall above the derogation threshold will be required – as set out in the Common Requirements regulation - to undergo an independent annual audit.
48. Where an ANSP forms part of a wider organisation, or where an aerodrome "self-supplies" air navigation services, the CAA will accept group-level audited accounts.

Liability and insurance cover

The CAA's proposal

49. The consultation document set out how the CAA intended to approach the requirement for ANSPs to hold appropriate levels of liability insurance and did so based on the type of air navigation service provider.
50. The CAA proposed that liability insurance would be mandatory for all types of ANSP and that smaller providers would not qualify for derogation from this aspect of the Common Requirements regulation.

Question 7: Do you agree with the CAA's proposed approach on liability insurance?
--

Summary of responses received

51. Most of the respondents agreed with the CAA's proposed approach on liability insurance, recognising that the requirement to hold liability insurance is, in many cases, an existing obligation for ANSPs. However, some of the smaller AIS and MET providers, that do not currently hold liability insurance, raised concerns that the cost of obtaining liability insurance cover could be disproportionately high given their level of activity. Smaller providers sought further clarification from the CAA as to what would be an acceptable level of cover.

The CAA's conclusions

52. The CAA has considered the representations put forward by the AIS and MET providers and has reassessed the level of risk that may be attached to the limited activities in which they are engaged and the CAA's proposed mandatory requirement to hold liability insurance cover.
53. The Common Requirements regulation allows AIS and MET providers to be derogated from certain aspects of the regulation in cases where such providers can demonstrate an annual gross turnover of less than €1 million and would not provide services outside the UK. The CAA has decided to amend its initial proposal and permit derogation from the need to hold liability insurance for those MET and AIS providers that fall below the derogation threshold.
54. Such derogation would, however, be subject to those providers demonstrating they continue to meet the derogation criteria. The CAA would retain the right to review this position and require mandatory cover in the future for such providers should it be deemed necessary.

Annual Report

The CAA's proposal

55. The CAA proposed to require all ANSPs not subject to derogation to produce and to publish an Annual Report that covered the required information set out in the regulation.

Question 8: Do you agree with the CAA's proposed approach on reporting requirements?

Summary of responses received

56. All respondents agreed with the CAA's proposed approach on reporting requirements. Again, concerns were raised as to the potential requirement to disclosed commercially sensitive information.
57. It was noted that the CAA had not set out the "conditions under which the Annual Report should be disclosed".

The CAA's conclusions

58. Article 12 of the Service Provision regulation requires all ANSPs regardless of size to produce an Annual Report that sets out:
- an assessment of the level and quality of service generated and of the level of safety provided;
 - the performance of the service provider compared to the performance objectives established in the Business Plan, reconciling actual performance against the Annual Plan by using the indicators of performance established in the Annual Plan;
 - developments in operations and infrastructure;
 - the financial results, as long as they are not separately published in accordance with Article 12(1) of the Service Provision regulation;
 - information about the formal consultation process with the users of its services; and
 - information about the human resources policy.
59. The Common Requirements regulation allows smaller providers to be derogated from the economic and financial aspects of the regulation. The CAA will therefore only require non-derogated ANSPs to produce an Annual Report.
60. The Annual Report should be published in full as well as being sent to the CAA. Commercially sensitive information (other than the extent to which it is required in the SES legislation) need not be included as part of the Annual Report.
61. As with the requirement to produce Business and Annual Plans the CAA will again accept a consolidated group level Annual Report, as long as it identifies and addresses each of the aspects above for each type of air navigation service provided and/or each airport where the ANSP provides services
62. The CAA proposed in the consultation document that publication of the Annual Report should be considered to be "the means by which the ANSP should make the report available to the public." This remains our position.