

L.N. 79 of 2004**CIVIL AVIATION ACT
(CAP. 232)****Air Navigation (Air Traffic Management) Order, 2004**

IN exercise of the powers conferred by article 3 of the Civil Aviation Act, the Minister responsible for Transport and Communications has made the following order:-

1. (1) The title of this Order is the Air Navigation (Traffic Management) Order, 2004. Citation and commencement.

(2) This Order shall come into force on such date or dates as the Minister responsible for Transport and Communications may, by notice in the Gazette, appoint.

2. In this Order, unless the context otherwise requires - Interpretation.

"air traffic management (ATM)" means the aggregation of ground based (comprising variously, the Air Traffic Services, Airspace Management, Air Traffic Flow Management) and airborne functions required to ensure the safe and efficient movement of aircraft during all appropriate phases of operations.

"air traffic management service provider" means an organisation responsible and authorised to provide ATM services;

"Director" means the Director of Civil Aviation and, to the extent of the authority given, any person authorised in that behalf by the Director;

"ESARR" means a EUROCONTROL Safety Regulatory Requirement document;

"ICAO" means the International Civil Aviation Organisation;

"EUROCONTROL" means the European Organisation for the Safety of Air Navigation.

"safety management system (SMS)" means a systematic and explicit approach defining the activities by which safety management is undertaken by an organisation in order to achieve acceptable or tolerable safety.

3. (1) No person in charge of the provision of an air traffic management service shall provide a service in Maltese airspace or in Requirement for air traffic control approval.

airspace outside of Malta where Malta has in pursuance of international arrangements, undertaken to provide air navigation services, otherwise than under and in accordance with the terms of an air traffic control approval granted to him by the Director.

(2) The Director shall grant an air traffic control approval if he is satisfied that the applicant is competent, having regard to his organisation, staffing, equipment, maintenance and other arrangements, to provide a service which is safe for use by aircraft.

(3) An air traffic control approval may be granted subject to such conditions as the Director thinks fit and shall, subject to the provisions of regulation 10, remain in force for the period specified in the approval.

(4) When applying for an air traffic control approval and when operating under such an approval, the person in charge of providing an air traffic control service shall comply with the provisions of the ICAO Annex and Documents, and the ESARR documents listed in the Schedule to this Order, as applicable.

Manual of Air
Traffic Services.

4. A person shall not provide an air traffic control service at any place unless -

(a) the service is provided in accordance with the standards and procedures specified in a manual of air traffic services in respect of that place;

(b) the manual is produced to the Director within a reasonable time after a request for its production is made by the Director; and

(c) such amendments or additions have been made to the manual as the Director may from time to time require.

Air traffic
direction.

5. The Director may, in the interest of safety, direct the person in charge of an aerodrome, other than a Government aerodrome, to provide such air navigation services as the Director may consider appropriate. Such a direction may be provisional or permanent in nature.

Safety
management
system.

6. (1) A person who provides an air traffic control service shall comply with the requirements of EUROCONTROL ESARR 3 document by establishing a safety management system which -

(a) ensures a formalised, explicit and pro-active approach to systematic safety management in meeting its safety responsibilities within the provision of ATM services;

(b) operates in respect of all ATM and supporting services which are under its managerial control;

(c) includes, as its foundation, a statement of safety policy defining the organisation's fundamental approach to managing safety;

(d) ensures that everyone involved in the safety aspects of ATM service-provision has an individual safety responsibility for their own actions, and that managers are responsible for the safety performance of their own organisations;

(e) ensures that the achievement of satisfactory safety in the ATM shall be afforded the highest priority over commercial, operational, environmental or social pressures;

(f) ensures that while providing an ATM service, the principal safety objective is to minimise the ATM contribution to the risk of an aircraft accident as far as reasonably practicable.

(2) The safety management system shall be operated by qualified and competent staff who shall ensure that:

Operation of
safety
management
system.

(a) a safety management function is identified with organisational responsibility for development and maintenance of the safety management system;

(b) this point of responsibility is, wherever possible, independent of line management, and accountable directly to the highest organisational level;

(c) in the case of small organisations where combination of responsibilities may prevent sufficient independence in this regard, the arrangements for safety assurance are supplemented by additional independent means;

(d) the highest level of the service provider organisation plays a general role in ensuring safety management;

(e) wherever practicable, quantitative safety levels are derived and are maintained for all systems;

(f) risk assessment and mitigation is conducted to an appropriate level to ensure that due consideration is given to all aspects of ATM;

(g) changes to the ATM system are assessed for their safety significance, and ATM system functions are classified according to their safety severity;

(h) appropriate mitigation of risks where assessment has shown this to be necessary due to the safety significance of the change;

(i) the SMS is systematically documented in a manner which provides a clear linkage to the organisation's safety policy;

(j) adequate and satisfactory justification of the safety of the externally provided services, having regard to their safety significance within the provision of the ATM service;

(k) ATM operational or technical occurrences which are considered to have significant safety implications are investigated immediately, and any necessary corrective action is taken.

Safety surveys,
monitoring and
records.

(3) An air traffic management services provider shall ensure that:

(a) safety surveys are carried out as a matter of routine, to recommend improvements where needed, to provide assurance to managers of the safety of activities within their areas and to confirm conformance with applicable parts of their safety management systems;

(b) methods are in place to detect changes in systems or operations which may suggest any element is approaching a point at which acceptable standards of safety can no longer be met, and that corrective action is taken;

(c) safety records are maintained throughout the SMS operation as a basis for providing safety assurance to all associated with, responsible for, or dependent upon the services provided, and to the safety regulatory authority;

(d) the results and conclusions of the risk assessment and mitigation process of a new or changed safety significant system are specifically documented, and that this documentation is maintained throughout the life of the system;

(e) the lessons arising from safety occurrence investigations and other safety activities are disseminated widely within the organisation at management and operational

levels;

(f) all staff are actively encouraged to propose solutions to identified hazards; and

(g) changes are made to improve safety where they appear needed.

7. (1) A person who provides air traffic control services shall comply with the requirements of EUROCONTROL ESARR 4 document to ensure that hazard identification as well as risk assessment and mitigation are systematically conducted for any changes to those parts of the air traffic management system and supporting services within his managerial control, in a manner which addresses - ATM risk assessment and mitigation.

(a) the complete life cycle of the constituted part of the ATM system under consideration, from initial planning and definition to post implementation operation, maintenance and de-commissioning;

(b) the airborne and ground components of the ATM system through cooperation with responsible parties; and

(c) the three different types of ATM elements (human, procedures and equipment), the interaction between these elements and the interaction between the constituent part under consideration and the remainder of the ATM system.

(2) The hazard identification, risk assessment and mitigation processes shall include:

(a) a determination of the scope, boundaries and interfaces of the constituent part being considered, as well as the identification of the functions that the constituent part is to perform and the environment of operations in which it is intended to operate;

(b) a determination of the safety objectives to be placed on the constituent part, incorporating:

(i) an identification of ATM-related credible hazards and failure conditions, together with their combined effects,

(ii) an assessment of the effects they may have on the safety of aircraft, as well as an assessment of the severity of those effects, using the severity classification

scheme provided in ESARR 3 Appendix A, and

(iii) a determination of their tolerability, in terms of the hazard's maximum probability of occurrence, derived from the severity and the maximum probability of the hazard's effects, in a manner consistent with ESARR 3 Appendix A;

(c) the derivation, as appropriate, of a risk mitigation strategy which -

(i) specifies the defences to be implemented to protect against the risk-bearing hazards,

(ii) includes, as necessary, the development of safety requirements potentially bearing on the constituent part under consideration, or other parts of the ATM system, or equivalent of operations, and

(iii) presents an assurance of its feasibility and effectiveness;

(d) verification that all identified safety objectives and safety requirements have been met -

(i) prior to its implementation of the change,

(ii) during any transition phase into operational service,

(iii) during its operational life, and

(iv) during any transition phase till decommissioning.

(3) The results, associated rationales and evidence of the risk assessment and mitigation processes, including hazard identification, shall be collated and documented in a manner which ensures that:

(a) correct and complete arguments are established to demonstrate that the constituent part under consideration, as well as the overall ATM system are, and will remain, tolerably safe including, as appropriate, specifications of any predictive, monitoring or survey techniques being used; and

(b) all safety requirements related to the implementation of a change are traceable to the intended operations and, or functions.

8. (1) A person in charge of providing an air traffic control service shall ensure that:

Air traffic control staff.

(a) whilst on duty, staff employed as air traffic controllers or student air traffic controllers are properly licensed as required under the Air Navigation Order and meet the medical and physical fitness requirements laid out in the same Order; and

L.N. 176 of 1990.

(b) technical and engineering personnel employed to install and maintain equipment used for the provision of air traffic control services are properly trained and qualified. Training records shall be maintained for technical and engineering personnel and such records shall be made available for examination by the Director if he so requires.

(2) A person who fails to comply with the requirements of subregulation (1) shall be guilty on offence.

9. (1) A person who becomes aware of, either through involvement or by having witnessed, an ATM related occurrence in which there is an actual or potential threat to flight safety or which can compromise the provision of safe ATM services and which falls within the definitions of Appendix A to ESARR 2, shall report such an occurrence in writing to the Director within ninety-six hours.

Reporting and assessment of ATM related occurrences.

(2) A person who fails to comply with the requirements of subregulation (1) shall be guilty of an offence.

(3) An air navigation service provider shall record, secure and store data concerning ATM occurrences in such a manner which will ensure its quality and confidentiality whilst permitting subsequent collation and assessment.

(4) (a) The authority responsible for analysing such occurrences shall do so without delay to identify the extent to which the ATM system helped or could have helped to reduce the risk incurred.

(b) The analyses mentioned in sub-paragraph (1) of the paragraph shall include safety recommendations and the Director shall monitor the implementation of any corrective measures that are recommended to be taken.

(5) An annual report of ATM occurrences shall be submitted to EUROCONTROL by the Director in accordance with Appendix B of ESARR 2.

Revocation,
suspension and
variation of an
air traffic
control
approval.

10. (1) (a) The Director, may, if he thinks fit, provisionally suspend or vary an air traffic control approval issued under these regulations pending inquiry into, or consideration of, the case.

(b) The Director may, on sufficient ground being shown to his satisfaction after due inquiry, revoke, suspend or vary an air traffic control approval.

(2) The person having possession or custody of an air traffic control approval which has been revoked, suspended or varied, shall surrender it to the Director within a reasonable time after being required to do so by the Director.

(3) The breach of any condition subject to which an air traffic control approval has been granted shall, in the absence of provisions to the contrary in the document, render the document invalid during the continuance of the breach.

Penalties.

11. (1) A person who commits an offence under regulation 8(2) shall be liable, on conviction, to a fine (*multa*) not exceeding five hundred liri.

(2) A person who commits an offence under regulation 9(2) shall be liable, on conviction, to a fine (*multa*) not exceeding two hundred liri; and, on a second or subsequent conviction, to a fine (*multa*) not exceeding five hundred liri, or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

SCHEDULE

Annex II is the ICAO document entitled "Air traffic Services"

Doc RAC 4444 is the ICAO document entitled "Procedure for Air Navigation Services - Air Traffic Management"

Doc 7030 is the ICAO document entitled "Regional Supplementary Procedures".

ESARR 2 is the EUROCONTROL document entitled "Reporting and Assessment of Safety Occurrences in ATM", Edition 2.0 dated 3 November 2000.

ESARR 3 is the EUROCONTROL document entitled "Use of Safety management Systems by ATM Service providers" Edition 1.0 dated 17 July 2000.

ESARR 4 is the EUROCONTROL document established "Risk Assessment and Mitigation in ATM" Edition 1.0, dated 05 April 2001.

ESARR 5 is the EUROCONTROL document entitled "ATM Services' Personnel" Edition 2.0, dated 11 April 2002.
