

1.5.4 The Convention of Tokyo 1963

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A common example might be a drunk and disorderly passenger – becoming threatening and abusive. Another example might be a more serious offence that could place flight safety into question.



Figure 1.14 The Tokyo Convention agreed the rules governing the action to be taken in the event of hijacking.

The aircraft commander and others are empowered to prevent criminal acts and penal offences on-board. The commander may either disembark a disorderly passenger, or deliver a serious offender to the competent authority after landing. To do this, the offender may be restrained by people on-board the flight. To assist in making this restraint, the commander may:

- Authorise or require the crew to act
- Authorise or request passengers to assist

Once the aircraft has landed, the offender is either disembarked or handed over to the competent authority, depending on the severity of the offence committed.

- **Fifth freedom:** Allows passengers to be picked up or set down from States other than the home State.

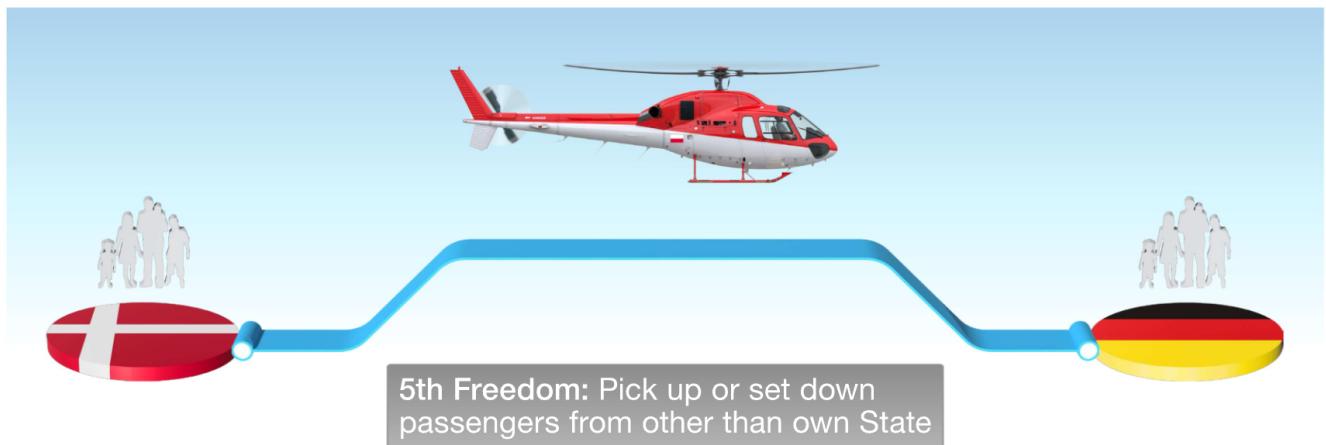


Figure 1.13 Fifth (commercial) freedom.

1.5.3 The International Air Transport Agreement

The International Air Transport Agreement goes further, allowing the carriage of traffic between the State of Registration of the aircraft and any other contracting State. These are known as the *Three Commercial Freedoms*.

- **Third freedom:** Allows passengers and freight from the home State to be set down in the State of arrival.
- **Fourth freedom:** Allows passengers and freight to be picked up for transport to the home State.

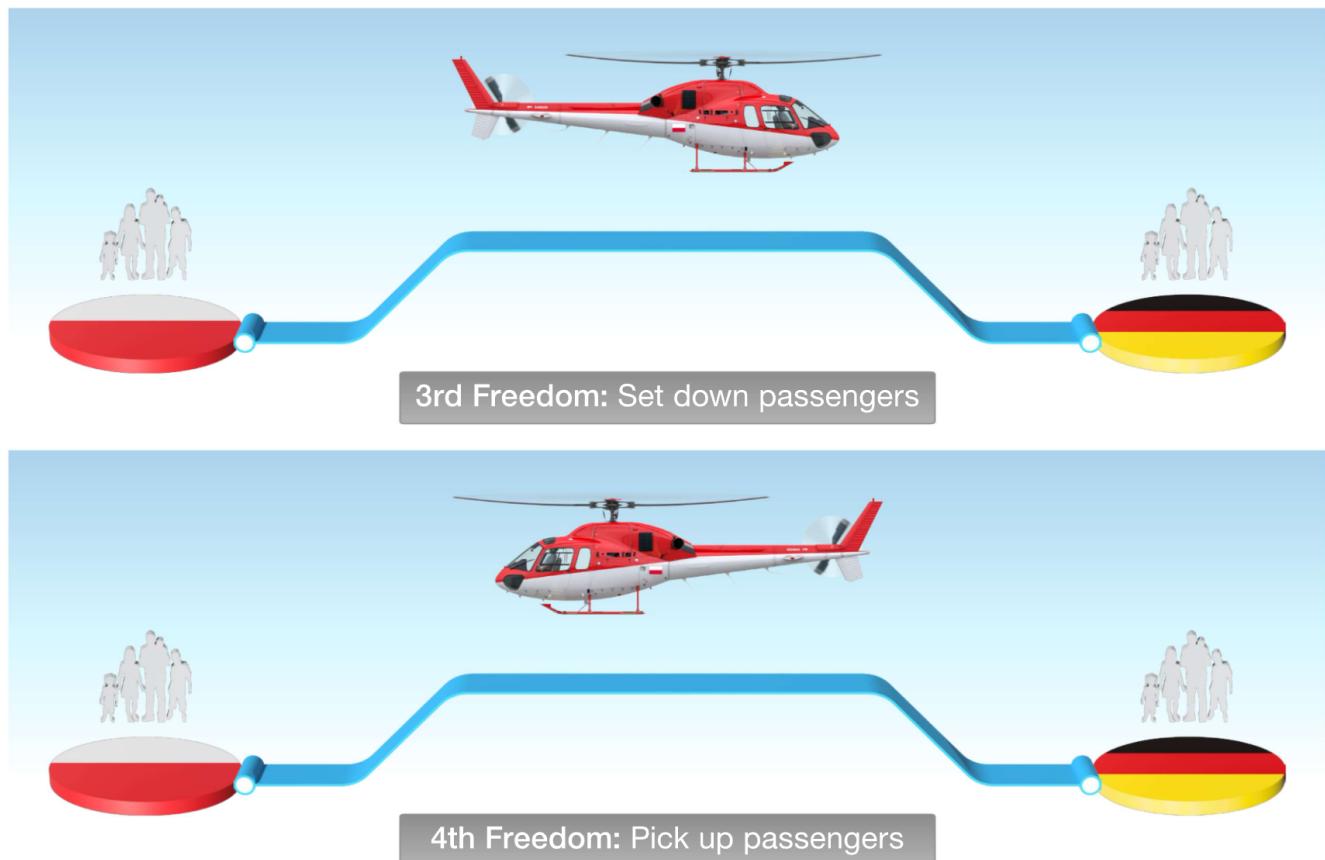


Figure 1.12 Third and fourth (commercial) freedoms.

1.5.5 The Montreal Convention 1999 (MC99): For the Unification of Certain Rules for International Carriage

The Montreal Convention of 1999 (MC99) brings together many different sets of legislation concerning an airline's liability and the compensation to be awarded to customers when things go wrong. It replaces old and out-dated legislation set in place from 1929 under the Warsaw Convention.

MC99 applies to all international flights carrying people, baggage or cargo for reward. It establishes the limits of an airline's liability for:

- Passenger death or physical injury
- Destruction, loss, damage or delay of baggage or cargo

It does not apply to postal items.

A two-tier compensation system is applied, depending on whether the carrier has been negligent.

Under these rules, a contract is deemed to have been entered when an agreement for carriage is reached by both parties:

- The *airline*
- The *passenger or cargo consignor*

A passenger ticket is evidence of this contractual agreement. The airline should issue a document of carriage (passenger ticket), baggage tags for checked baggage or an air waybill (cargo) in a suitable form.

If the airline fails to issue the required document of carriage, baggage tags or cargo air waybill, the rules still apply and a contract is deemed to have been entered into by both parties.

Limit of liability under MC99

Compensation is calculated in Special Drawing Rights (SDRs). SDRs are a form of international currency, created by the International Monetary Fund.

For loss, destruction, damage or delay of baggage the carrier is liable to pay a fixed amount of compensation, currently 1131 SDRs per passenger.

Baggage compensation is not based on the number of bags or weight, but instead on a per passenger basis only.

Summary

The following key points should be remembered:

- An individual or collective carriage document must be supplied to passengers.
- The carrier must provide a baggage identification tag for each piece of checked baggage.
- Passengers must be given written notice where MC99 is applicable and its compensation limits.
- Non-compliance (e.g. failure to deliver a document of carriage) does not affect the existence or the validity of the contract of carriage.

Section 6: European Regulation 261/2004

1.6.1 Regulation (EC) No 261/2004: Passenger Rights in the Event of Delay, Cancellation or Denial of Boarding

Regulation (EC) No 261/2004 provides for compensation and assistance when passengers face either (forced) denied boarding, cancellation or long delays. This applies to passengers who are departing from:

- Any airport in a EU country.
- An airport not located in an EU country, but travelling to an airport in an EU country.

To be applicable, the passengers must have confirmed reservations and be present for check-in at the time published, or, if the check-in time is not published, at least 45 minutes before published departure. If a flight is cancelled, passengers are not expected to arrive at check-in.

Compensation rights under this regulation do not apply to free-of-charge journeys or reduced fares which are not available to the public.

Airline Consequences for Flight Cancellations

This includes denial of boarding against the passenger's will. For flight cancellations or denial of boarding, passengers have the right to:

- Reimbursement, a return to the point of departure, or re-routing
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Airline Consequences for Delays

In the event of delays exceeding two hours passengers must be offered free meals, refreshments and two free phone calls (or telex, facsimile or emails).

Hotel accommodation and transport must also be provided when the delay extends overnight.

For delays exceeding five hours, passengers must be reimbursed for their tickets. Passengers facing these very long delays during a sequence of flights are entitled to be flown to their original point of departure.

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Section 7: The International Air Transport Association (IATA)

1.7.1 IATA

The International Air Transport Association (IATA) is the air transport industry's global trade association. Its purpose is to represent, lead and serve the airline industry.

With more than 280 airlines in its membership, IATA represents over 80% of scheduled international air traffic.

IATA's vision is for a safe, secure and sustainable air transport industry which connects the world.



Figure 1.15 IATA membership tends to include only the very largest airlines.

According to its website IATA's declared purposes are as follows:

- **Representing the airline industry:** We improve understanding of the air transport industry among decision-makers and increase awareness of the benefits that aviation brings to national and global economies. Advocating for the interests of airlines across the globe, we challenge unreasonable rules and charges, hold regulators and governments to account and strive for sensible regulation.
- **Leading the airline industry:** For over 70 years, we have developed global commercial standards upon which the air transport industry is built. Our aim is to assist airlines by simplifying processes and increasing passenger convenience while reducing costs and improving efficiency.
- **Serving the airline industry:** We help airlines to operate safely, securely, efficiently, and economically under clearly defined rules. Professional support is provided to all industry stakeholders with a wide range of products and expert services.

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Section 8: EASA and the Structure of European Law

1.8.1 The European Aviation Safety Agency (EASA)

EASA is the EU's aviation rule maker. Its primary objective is to establish and maintain a high, uniform level of civil aviation safety within the EU. Rules developed by EASA are embodied into European law. Other EASA objectives are:

- To oversee third-country operators to ensure all flights into and within the EU are operated within the remit of the Chicago Convention
- To set common rules for operations within and into Europe



Figure 1.16 EASA is based in Cologne, Germany.

1.8.2 EASA's Roles and Tasks

Mission

- Ensure the highest common level of safety protection for EU citizens.
- Ensure the highest common level of environmental protection.
- Create a single regulatory and certification process among Member States.
- Facilitate the internal aviation single market and create a level playing field.
- Work with other international aviation organisations and regulators.

Tasks

- Draft implementing rules in all fields pertinent to the EASA mission.
- Certify and approve products and organisations, in fields where EASA has exclusive competence (e.g. airworthiness).
- Provide oversight and support to Member States in fields where EASA has shared competence (e.g. Air Operations, Air Traffic Management).
- Promote the use of European and worldwide standards.
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1.8.3 The Basic Regulation

The *Basic Regulation* sets the legal basis for EASA itself, by defining EASA's competences and establishing the scope of aviation safety requirements.

The Basic Regulation was updated in 2018 and is now known as:

REGULATION (EU) 2018/1139 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency.

To achieve the requirements of their Basic Regulation, EASA employs various legal instruments, which are structured into two types of law:

Hard Law

Hard laws must be followed by Member States. Hard law uses:

- **Regulations:** Authority-maintained rules and directives.
- **Delegated acts:** These supplement or amend existing law, but can not change the basic legal elements.
- **Implementing acts:** These are legally binding acts that ensure regulations are introduced and applied fairly and uniformly.
- **Implementing rules:** Binding legislation which is used to specify a high level of safety with uniform conformity and compliance.

Soft Law

Soft law provides specifications and guidance on how things could be done. Soft law uses:

- **Certification Specifications (CS):** Technical standards aimed at meeting requirements.
- **Acceptable Means of Compliance (AMC):** Explanations and examples of applied law that are acceptable to the Authority.
- **Guidance Material (GM):** Non-binding explanatory and interpretation material on how to achieve requirements.

This diagram shows the relationship between the Basic Regulation to its subsidiary Annexes which set out hard and soft law.

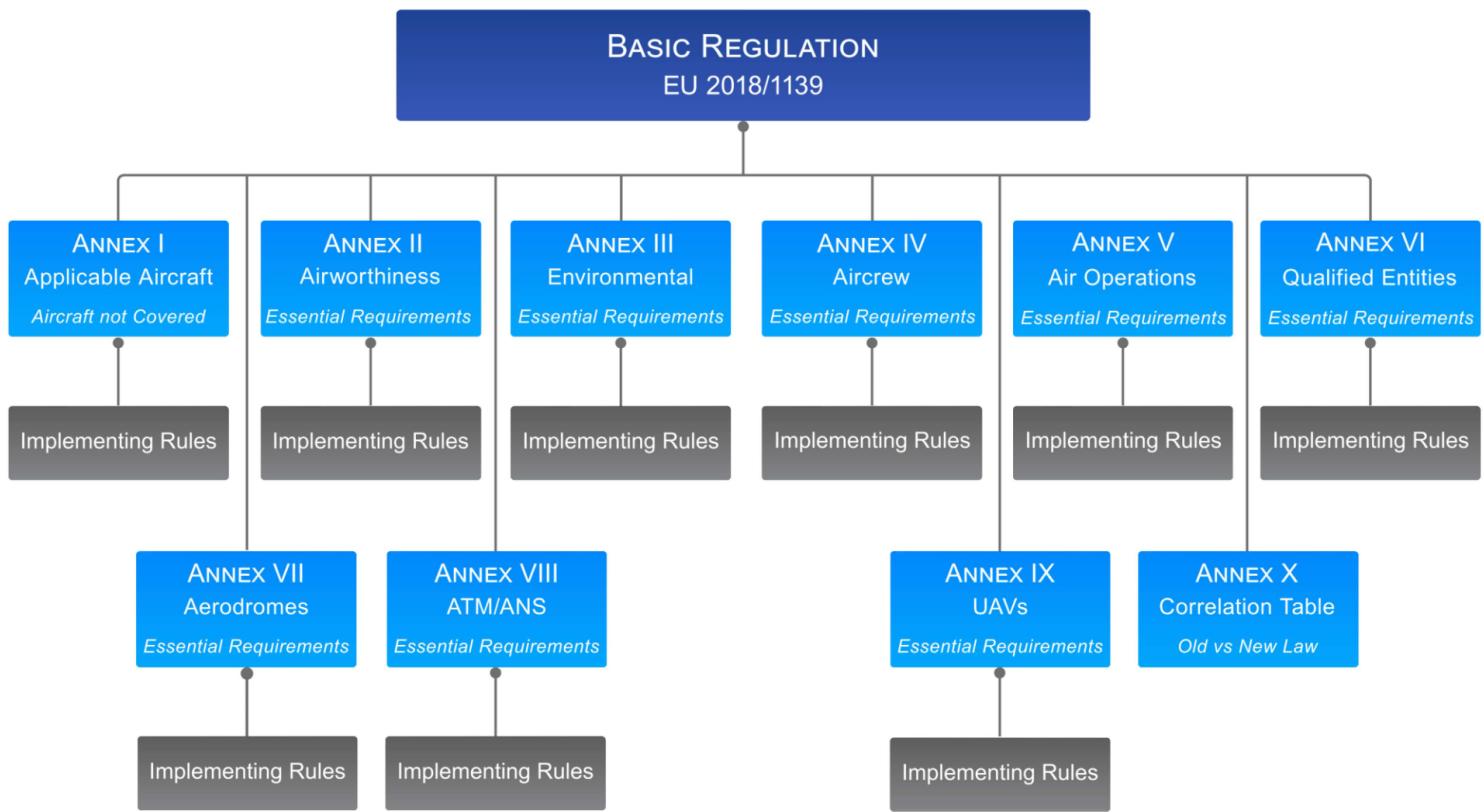


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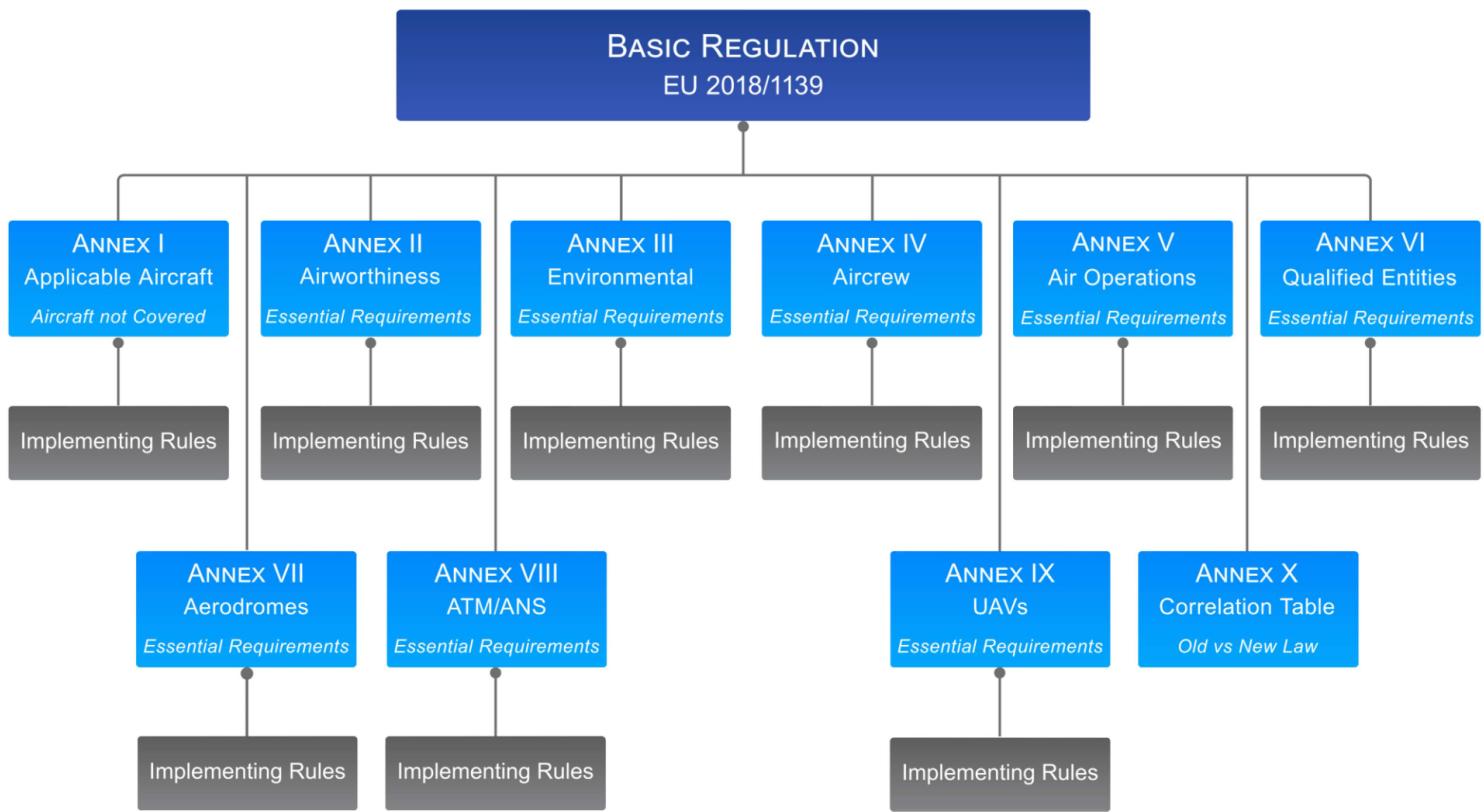


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With the exception of Annex X of the Basic Regulation, which merely contains a table of corrections between old and new Basic Law, all Annexes have corresponding Implementing Rules (IR).

IRs are hard law, which are regulations in their own right. For example, the IRs for the following Annexes are:

- **Annex IV Aircrew:** (Commission Regulation (EU) No 1178/2011), commonly known as the *Aircrew Regulation*
- **Annex V Air Operations:** (Commission Regulation (EU) No 965/2012) commonly known as the *Air Operations Regulation* (abbreviated to *IR-OPS*, *Air Ops* or *EU Ops*)

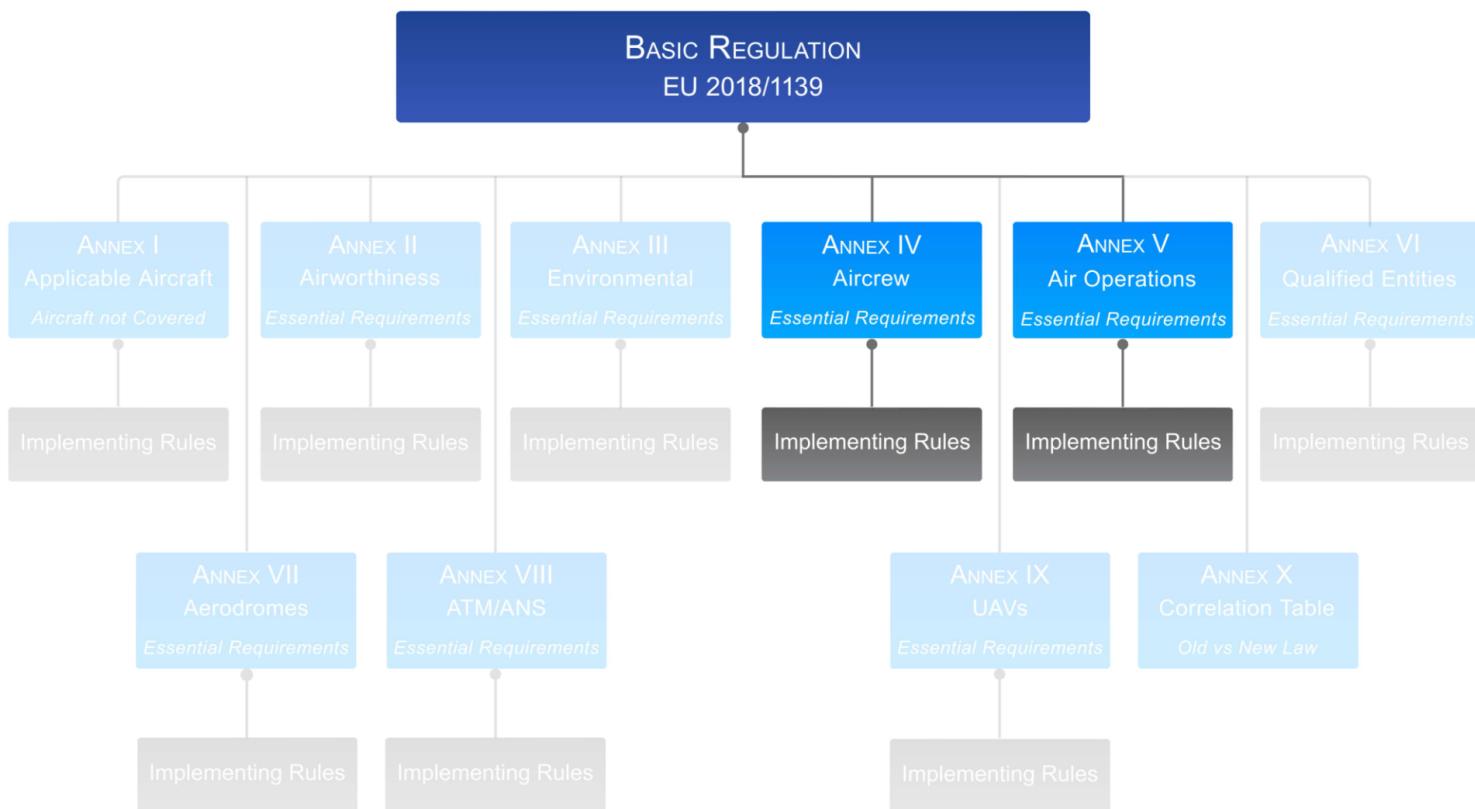


Figure 1.18 Each Annex to the Basic Regulation has its own Implementing Rule (IR).