

Position Paper

13th December, 2005

EXTENDED SCOPE OF THE EUROPEAN AVIATION SAFETY AGENCY AEA Comment to the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 1592/2002 of 15th July 2002 on common rules in the field of civil aviation and establishing the European Aviation Safety Agency (EASA). (COM(2005)579final, 16th November 2005)

Background:

The European Aviation Safety Agency (EASA), created in 2002, is an EU Agency based in Cologne. EASA has already taken over all the responsibilities of National Civil Aviation Safety Authorities (NAA) in the field of aircraft certification and airworthiness/aircraft maintenance, although NAAs retain some responsibilities to issue approvals/certificates to organizations in their country, but in line with common EU/EASA rules and subject to standardization inspections by EASA.

The Commission Communication proposes to extend the EASA's scope to flight operations, Flight Crew Licensing (FCL) and third country operator aircraft.

General AEA Comment

It is generally recognized that for efficiency, safety and standardization reasons, it is considered important to have all aviation safety regulatory activities in the EU dealt with by one single Authority (EASA). A single aviation safety authority is also a natural complement to the common aviation market, e.g. to ensure a level playing field. A strong EASA will also help restore the level playing field with other areas of the world, in particular the USA and its Federal Aviation Administration.

Therefore, the AEA supports the extension of EASA's legal scope as soon as possible, provided EASA & National Aviation Authorities (NAAs) bear in mind the objective to promote cost efficiency in the regulatory and certification process and to avoid duplication at national and European level. The AEA also supports an extension of EASA's scope to ATM and airport safety as a next step (see separate position paper).

A building up of resources and staff at EASA requires a gradual reduction of staff at the NAAs in order to ensure that cost efficiency objectives are met. It will require the political commitment to transfer funds from national budgets to the EU, so that EASA can hire the staff to fulfill those tasks which were previously performed by NAAs. This pooling of resources at European level has a potential for substantial cost savings, not only for the industry, but also for national administrations provided the necessary funds are transferred from national budgets to EASA.

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In this context, the AEA is concerned about the lack of public EU funding for EASA's budget and the lack of understanding from some about EASA's role replacing National Aviation Authorities, which cannot be compared with other EU Agencies. Therefore, an expansion of EASA's scope should be accompanied with a political commitment to substantially increase the EU public funding for EASA. A failure to do so risks undermining EASA's credibility and could, in the long term, put safety at risk.

Finally, the AEA would like to comment that it is very important that, in parallel, the inclusion of JAR-OPS-1 rules in Community Legislation via the pending amendment of Regulation No 3922/91 (EU-OPS-1, COM(2004)73final of 10.2.2004) goes ahead without any further delay as already planned. EU-OPS-1 could then, at a later stage (once the EASA's scope has been extended), form the basis for an EASA Implementing Rule for Operations under Regulation (EC) 1592/2002. This is also important to ensure that the future EASA Implementing Rule for Air Operations builds on the existing JAR-OPS-1/EU-OPS-1, rather than introducing new changes, which would be costly for no added safety benefit.

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Specific AEA Comments:

Definition of Commercial Operations (Article 1)

Commercial operations is defined as a remunerated aeronautical activity covered by a contract between an operator and a customer, where the customer is not, directly or indirectly, an owner of the aircraft used for purpose of this contract and the operator is not, directly or indirectly, an employee of the customer.

AEA Comment

The definition of commercial operations should include corporate operations and fractional ownership operations.

All passengers within the EU should enjoy the same safety protection. This should, in particular, be the case for passengers of corporate aircraft, e.g. when it consists of the transportation of company employees, who often have no choice whether or not to board the aircraft.

In addition, since corporate jets often fly in the same airspace as commercial operators, this is also important to protect the safety of commercial operators. Some recent accidents/incidents have highlighted that the lack of adequate regulation on corporate jets could, in some cases, endanger the safety of commercial operators.

Therefore, corporate operations and fractional ownership should be subject to the same rules (essential requirements as well as implementing rules) as commercial operations.

Objectives of EASA (Article 2)

AEA Comment

The AEA requests to add under article 2(2) an additional point (g) ‘(g) to ensure a level playing field for all actors of the internal aviation market within the global aviation market’

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Third Country Aircraft (Article 6b(2) and (6) and 15b(1))

For compliance with the common rules, third country operators engaged in commercial operations in the Community would have to be attested by a certificate.

AEA Comment:

The AEA would like to point out that such an additional certification outlines a failure of the ICAO system which was based on mutual recognition of Air Operator Certificates (AOC). The AEA expects the necessary action of the EU to ensure a proper functioning of ICAO, in order to make certain that all ICAO Member States achieve the same high safety levels as in Europe, which would make such an additional operational certification obsolete.

The AEA does not support such a tool for general implementation, since this could result in further introductions of such an additional operations certification system by other ICAO Member States and retaliations to EU airlines flying to those countries. This could result in airlines needing an additional operations certification for each and every destination country, which would be an enormous administrative burden for no added safety benefit.

However, the AEA supports such a tool as a means of restoring the level playing field with other areas of the world, which impose such a requirement on EU airlines flying to those countries. Those Regulations and associated Operations Specifications have resulted in significant administrative burden for EU airlines flying to those countries for no added safety benefit.

Therefore, if such a system is adopted, the AEA believes that there should be a possibility for EASA to sign bilateral working-agreement with third countries on the mutual recognition of AOCs, to ensure that the additional certification is only imposed on airlines coming from third countries which impose similar requirements on EU airlines flying to those countries, unless those countries agree to relieve EU airlines from their requirements.

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Operators engaged in non-commercial operation of complex motor-powered aircraft (Article 6b, 3)

It is proposed that 'operators in non commercial operation of complex motor-powered aircraft shall declare their capability and means to discharge the responsibilities associated with the operations of the aircraft'.

AEA Comment

Corporate operations and fractional ownership operations should be covered under commercial operations and referred to Article 6b, 2, in particular, they should be required to demonstrate their capability (see comment to Article 1). Since it involves the operations of complex motor-powered aircraft (Boeing 737, Airbus A319) in the same airspace as commercial operations, it is for safety reasons of the utmost importance that they are subject to identical rules as commercial operations.

There is a need to address ferry flights separately (= the repositioning of an aircraft of a commercial operator without revenue passengers) since ferry flights are considered as non-commercial flights.

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Attestation of Cabin Crew (Article 6b, 4)

It is proposed that cabin crew involved in the operation of aircraft referred to in Article 4(1)b and (c) shall comply with the essential requirements laid down in Annex IV and that they shall hold an attestation and a medical certificate appropriate to the operation performed.

AEA Comment:
 This proposal opens the way for EASA to develop implementing rules for cabin crew beyond current requirements. This wording goes beyond the political agreement reached by Council/Parliament in the context of the pending amendment of Regulation 3922/91 (EU-OPS-1) which does not include the need for a specific medical certificate - whether or not a medical certificate is required, must be left to individual governments, as already agreed in the context of EU-OPS-1.

On the question of medical examination EU-OPS-1 (SubPart O) states ‘has passed a medical examination or assessment at regular intervals as required by the Authority so as to check the medical fitness to discharge his/her duties.

Therefore, the AEA requests to amend the paragraph to read as:
 Cabin crew involved in the operation of aircraft referred to in Article 4(1)(b) and (c) shall comply with the essential requirements laid down in Annex IV. They should comply with the minimum requirements of Subpart O of Regulation No. 3922/91, pending (the wording of this Subpart O should be copied in full into Regulation 1592/2002 and the associated future Implementing Rule, as already agreed in the context of EU-OPS-1).

Para (e) (the conditions for issuing, maintaining, amending, limiting, suspending or revoking the cabin crew attestation referred to in paragraph 4) should, as a consequence, be deleted, since it goes beyond the political agreement reached in the context of EU-OPS-1.

Article 6b, para 6 (Implementing Rules)

AEA Comment:
 The AEA proposes the following amendment:
 “The implementing rules referred to in paragraph 5 shall, when in the interests of safety, reflect the state of the art and best practices in the field of air operations”

Article 11a(2) and (3) (Protection of the Source of Information):

In case of gross negligence, the source of information shall not be protected against prejudice.

AEA Comment:

We propose to reword the last sentence of (2) “This rule shall not apply in cases of intention.” and the last sentence of (3) “... except in cases of intention.”

In the introduction, it is stated in note (11) that “... Such reporting would be facilitated by the establishment of a non-punitive environment, and appropriate measures should be taken by Member States to provide for the protection of such information and of its reporters.”

In our opinion, in the interest of safety, even gross negligence would qualify for protection in a non-punitive reporting environment. In many cases, when it comes to an evaluation of an incident first by the reporting person, and later by the safety management, the distinction between negligence and gross negligence is difficult. Especially these cases may have causes in human factors, which are important to know and to analyse. These cases usually mark the borderline between the simple daily nitty-gritty details and serious incidents. When threat of prejudice becomes imminent, reporting will cease at this point, if the chances are good that no one externally took notice of what happened. Under current confidential reporting schemes (titles like “Share your experience”), safety managers get to know about such behavior and can develop strategies against them.

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Air Operator Certification (Article 15b,1)

AEA Comment:

The AEA believes there should be a possibility for operators located within the EU territory to receive their Air Operator’s Certificate (AOC) directly from the Agency. There is no justification for not allowing this option and this is also important since some airline operators have become ‘transnational’.

Therefore, the AEA suggests to amend Article 15b 1 (b) to read as:

“(b) issue and renew the certificates of:

(i) operators located within the territory of the Member States, if requested by the Member State concerned, or if requested by the airline operator concerned

(ii) operators located outside the territory of the Member States....

In addition, it is not clearly stated in article 15b that, generally, certificates will be issued by the Member States and only if requested by the Member States (or airline operator) concerned they will be issued by the Agency.

Flight Time Limitations (Article 15b, 3)

AEA Comment:

See comments to Annex IV (further in this document). The AEA outlines that it is of the utmost importance that the lengthy negotiations and political agreement reached on Flight Time Limitations (FTL) in the context of the pending amendment of Regulation 3922/91 (EU-OPS-1, Subpart Q), is not lost.

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Composition of the EASA Management Board (article 25)

Composition and Establishment of the Executive Board (Article 28a and 28b)

AEA Comment:

Experience has shown that the current composition of the EASA Management Board (MB), consisting mainly of representatives from the National Aviation Authorities, has not been adequate to ensure a proper functioning of the Agency. The current MB has been lacking strategic vision and has failed to acknowledge the need for downscaling of the NAAs in the changing environment. National Aviation Authorities (NAA) are competing for work on behalf of EASA and have certain vested interests which are not always compatible with the need for a proper and efficient functioning of the Agency. Therefore, it would be logical to limit NAA's participation to the EASA MB, since some of the decisions of the MB affect the future role of the NAAs. All the EU NAAs are already represented through the Advisory Group of National Authorities (AGNA).

The proposal to extend the composition of the MB to 4 representatives appointed by the Commission among a list laid down by the EASA Advisory Board of Interested Parties (EAB) is more than welcome, in particular, taking into account the fact that the industry is providing the lion's share of EASA's budget through fees & charges. The members of the EAB all share a desire to have a properly functioning EASA to the benefit of the European citizens and European Aeronautical Industry. The AEA believes that the appointment of the 4 representatives should be made by the EASA Advisory Board, rather than by the European Commission. The AEA also believes that there is no need to limit the renewals of the appointments since this could exclude valuable members from continuing.

However, in order to have a proper functioning MB, the AEA believes it would be more efficient to have a limited composition consisting of the 4 representatives from the EAB, as well as a limited number of 'wise men' appointed by the Parliament and Council for a limited period of time. This would greatly enhance the effectiveness of the EASA MB, while at the same time, assuring the necessary democratic control on the Agency.

Such an approach would also make the need to establish an Executive Board (Articles 28a, b and c) obsolete, thereby avoiding that the Agency gets overloaded with various Advisory Committees.

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Voting Rights for the EASA Management Board (Article 28)

AEA Comment:

The AEA believes that all parties represented in the EASA MB (with the exception of the Agency and Commission) should have voting rights. There is no justification to exclude the representatives appointed by the EASA Advisory Board of Interested Parties, in particular taking into account the fact that the lion's share of EASA's budget is funded through fees and charges paid by the industry.

Appointment of the Executive Director and of the Directors (Article 30 (b) para 4)

Currently the Executive Director and Directors are appointed for five years, but their terms of office is renewable. The proposal would limit the possibility to renew their term of office to an additional five years. This would - de-facto - limit their term of office to maximum 10 years.

AEA Comment:

It is of course, important that the Executive Director and Directors are regularly evaluated on their achievement and competence. However, the AEA is not in agreement with limiting the terms of office of the Executive Director and Directors to 10 years, since this could exclude high-quality performing persons from continuing their assignments. It could also result in valuable candidates not applying for the positions, due to their limited duration. Therefore, the AEA believes that it is sufficient to state that their terms of office can be extended, based on an in-depth assessment of the results achieved and performance, but without putting a maximum length on their mandate. This assessment should be made by the EASA Management Board together with the EASA Advisory Board.

Inspections of Member States (Article 45)

AEA Comment:

The AEA and other organizations represented in the EASA Advisory Board are very concerned about the lack of resources (lack of EU public subsidy to the EASA budget) available at EASA for such standardization inspections of EU NAAs and the lack of resources for EASA to train NAA inspectors which need to apply the common EASA rules. The fact that EASA intends to rely on NAA inspectors to do standardization inspections of other NAAs, could lead to conflicts of interest, would be detrimental to standardization within the EU and could, in certain cases, put safety at risk.

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Annex III (Essential Requirements for Pilot Licensing Referred to in Article 6a)

Instructors, theoretical instruction (para 1.i.1, Theoretical instruction)

Theoretical instruction must be given by appropriately qualified instructors.

AEA Comment:

The proposal as written seems to have omitted the use of CD-ROM for theoretical instruction, which is already a well proven standard practice in the airline industry.

Therefore, the AEA requests to amend para 1.i.1 to read as:

1.i.1 Theoretical instruction

Theoretical instruction must be given or designed by appropriately qualified instructors.

Annex IV (Essential Requirements for Air Operations Referred to in Article 6b)

Flight Operations, seats (Para 3.a.3)

Taking into account the type of aircraft, during take-off and landing, during taxiing and whenever deemed necessary in the interest of safety, the pilot in command must ensure that each passenger occupies a seat or berth with safety belt properly secured.

AEA Comment:

Infants (below the age of two) are allowed to sit on the lap. The use of berths for infants is forbidden for safety reasons during take-off, landing and taxiing (berth's are only used during cruise for baby's comfort).

Therefore, we suggest to amend this paragraph to read as "Taking into account the type of aircraft, during take-off and landing, during taxiing and whenever deemed necessary in the interest of safety, the pilot in command should ensure that each passenger is properly seated and secured'.

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Continuing Airworthiness (Para 6)

AEA Comment:

Most of the requirements under paragraph 6 are already covered in Commission Regulation No. 2042/2003 (implementation rule). However, no reference is made to this Commission Regulation which is based on article 5 (4) of the basic regulation (EC 1592/2002.). Secondly, unnecessary duplications and no consistency with regard to words/expressions etc between paragraph 6 and EC 2042/2003 (e.g. MA.201).

Therefore we suggest deleting paragraph 6 completely and rephrase this paragraph to read:

“The aircraft must not be operated unless the applicable Continuing Airworthiness requirements as stipulated by the Commission in accordance with article 5(4) including Annex I to this Regulation are adhered to.”

The number and composition of the crew (Para 7a)

The number and composition of crew must be determined taking into account

- (i) the certification limitation of the aircraft, including if applicable, the relevant emergency evacuation demonstration
- (ii) the aircraft configuration and
- (iii) the type and duration of operations

AEA Comment:

This paragraph seems to merge the number and composition of flight crew with the number and composition of cabin crew. It goes beyond current safety regulations and goes beyond the political agreement reached in the context of EU-OPS-1 (Regulation 3922/91, Subpart O, para OPS 1.990).

The number and composition of flight crew are already addressed elsewhere, since they are dependent on the aircraft certification (limitations in the aircraft flight manual, ref. para 4a) and flight time limitation rules (ref article 15b 3).

For cabin crew, the emergency evacuation during take-off and landing is the main driver for determining the minimum number, but the type and duration of operations is irrelevant (ref OPS 1.990).

Therefore, the AEA requests to amend this paragraph and to delete 7a (iii) to read as:

7a The number and composition of cabin crew

The number and composition of cabin crew must be determined taking into account

- (i) the certification limitation of the aircraft, including if applicable, the relevant emergency evacuation demonstration and
- (ii) the aircraft configuration.

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Cabin Crew (para 7b)

It is stated that ‘7.b Cabin crew members must:

- i) Be trained and checked on a regular basis to attain and maintain an adequate level of competency in order to perform their assigned safety duties; and
- ii) Be periodically assessed for medical fitness to safely exercise their assigned safety duties. Compliance must be shown by appropriate assessment based on aero medical best practice.

AEA Comment:

The words in 7b when read along side Article 6b go further than Subpart O of EU-OPS-1 (pending amendment of Regulation 3922/91) and add medical requirements beyond political agreement reached in this context.

Therefore, the paragraph should be amended to read as:

“Cabin Crew member must meet, as a minimum, the requirements of Subpart O of Annex III of Regulation 3922/91 (EU-OPS-1)’.

Additional requirements for operation for commercial purpose and operations of complex motor-powered aircraft (para 8.a.2)

It is stated that ‘8.a.2 the operator must use only properly qualified and trained personnel and implement and maintain training and checking programmes for the crew members and other relevant personnel.

AEA Comment:

The wording of 8.a.2 could introduce requirements beyond flight crew and cabin crew and include all staff working on board the aircraft (even if not safety related). Since this is not the intention, it should be limited to flight crew and cabin crew.

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Management System (para 8.a.4)

It its stated that ‘8.a.4. The operator must implement and maintain a management system to ensure compliance with the essential requirements for operations and aim for continuous improvement of this system’.

AEA Comment

The phrase “aim for continuous improvement” is not specified. Efficiency is an (economic) internal operator issue and should not be stipulated in safety regulations. Improvement as a result of the accident prevention and safety programmes is already covered in paragraph 8.a.5.

Therefore we suggest to delete the phrase “and aim for continuous improvement of this system” from para 8.a.4.

Security Programmes (para 8d)

Para 8d states that operators must develop and maintain security programmes adapted to the aircraft and the type of operation including particularly 8d (iv) protection of electronic and computer systems to prevent intentional system interference and corruption.

AEA Comment

Para 8d(iv) should be deleted

This goes beyond current security requirements and would be impossible to comply with for the operators.

Intentional interference is an aircraft certification matter but not something which can be addressed by the airline operators.

Unintentional interference is not a security matter, but a safety matter, which is already addressed elsewhere by making passengers aware on the policies for the use of Portable Electronic Devices (PED) on-board the aircraft.

Article 15b 3 & Annex IV Para 7f and 8f (Flight Time Limitations)

In article 15b, 3 it is stated that with regard to flight time limitations, the Agency shall

(a) Issue the applicable certification specifications to ensure compliance with the essential requirements and, as appropriate, the related implementing rules. In particular, with regard to commercial transportation by aeroplane, pending adoption of the related implementing rules referred to in Article 6b(5), the Agency shall issue the applicable certifications specifications to ensure compliance with Subpart Q of Annex III to Regulation 3922/91 and (b) approve individual flight time specification schemes of operators when such schemes cannot be approved, under an applicable certification specification.

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In Annex IV it is stated that:

7.f. No crew member must allow their task achievement/decision-making to deteriorate to the extent that flight safety is endangered because of the effects of fatigue, fatigue accumulation, sleep deprivation, number of sectors flown, night hours, etc. rest periods must provide sufficient time to enable crew members to overcome the effects of the previous duties and to be well rested by the start of the following flight duty period.

8.f. The prevention of fatigue must be managed through a rostering system. For a flight, or series of flights, such a rostering system needs to address flight time, flight duty periods, duty and adapted rest periods. Limitations established within the rostering system must take into account all relevant factors contributing to fatigue such as, number of sectors flown, time zone crossing, sleep deprivation, disruption of circadian cycles, night hours, positioning, cumulative duty time for given periods of time, sharing of allocated tasks between crew members, and also the provisions of augmented crews.

AEA Comment:

The AEA outlines that it is of utmost importance that the lengthy negotiations and political agreement reached on Flight Time Limitations (FTL) in the context of the pending amendment of Regulation 3922/91 (EU-OPS-1, Subpart Q), is not lost.

The words in Annex IV could - and will - be taken as giving EASA permission to start with a blank sheet of paper and construct a new FTL Scheme, disregarding the political agreement reach in Council/Parliament on Subpart Q.

Therefore, the AEA requests to delete the existing Article 15b.3 and to replace it with the wording to read as

“With regard to Flight Time Limitations, operators located in the territory of the Member States shall comply as a minimum with Subpart Q of Annex III to Regulation (EEC) No 3922/1991 (This subpart Q should be copied in full into Regulation 1592).

Para 7f and 8f of Annex IV could be replaced with Subpart Q of Annex III to Regulation (EEC) No 3922/1991.

Furthermore, it should be stated in Regulation 1592/2002 that any change to this FTL scheme will only be carried out following the scientific and medical evaluation by EASA within three years from entering into force of the present regulation, as agreed in the context of EU-OPS-1.

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- Adria Airways
- Aer Lingus
- Air France
- Air Malta
- Alitalia
- Austrian
- bmi
- British Airways
- Cargolux
- Croatia Airlines
- CSA
- Cyprus Airways
- Finnair
- Iberia
- Icelandair
- Jat Airways
- KLM
- LOT
- Lufthansa
- Luxair
- Malev
- Olympic Airlines
- SAS
- SN Brussels Airlines
- Spanair
- SWISS
- TAP Portugal
- TAROM
- Turkish Airlines
- Virgin Atlantic Airways

Continuing Airworthiness (para 8g)

AEA Comment:

This paragraph should be covered in Annex I to Regulation 1592/2002.

Therefore, we suggest deleting this paragraph and move it to Annex I.

For more information, please contact:

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