

**NOTICE OF PROPOSED AMENDMENT (NPA) No 10/2005**

**DRAFT OPINION OF THE EUROPEAN AVIATION SAFETY AGENCY,**

**for a Commission Regulation amending Commission Regulation (EC) No 1702/2003  
laying down implementing rules for the airworthiness and environmental  
certification of aircraft and related products, parts and appliances, as well as for the  
certification of design and production organisations**

**AND**

**for a Commission Regulation amending Commission Regulation (EC) No 2042/2003,  
on the continuing airworthiness of aircraft and aeronautical products, parts and  
appliances, and on the approval of organisations and personnel involved in these  
tasks**

**Approvals of unlimited duration**

		Page
A	EXPLANATORY NOTE	
I	General	3
II	Consultation	3
III	Comment Response Document	4
IV	Content of the draft decisions	4
V	Regulatory Impact Assessment	6
	Inventory of Answers	11
B	DRAFT OPINION	
I	Proposed changes to Regulation 1702/2003	12
II	Proposed changes to Regulation 2042/2003	12

## **A. Explanatory Note**

### **I. General**

1. The purpose of this Notice of Proposed Amendment (NPA) is to propose an amendment to Article 5(2) of Commission Regulation (EC) No 1702/2003<sup>1</sup> and to Article 7(4) of Commission Regulation (EC) No 2042/2003<sup>2</sup>. The reasons for this rulemaking activity are outlined further below.
2. The Agency is directly involved in the rule-shaping process. It assists the Commission in its executive tasks by preparing draft regulations, and amendments thereof, for the implementation of the Basic Regulation<sup>3</sup>, which are adopted as "Opinions" (Article 14.1). It also adopts acceptable means of compliance and guidance material to be used in the certification process (Article 14.2).
3. The text of this NPA has been developed by the Agency. It is submitted for consultation of all interested parties in accordance with Article 43 of the Basic Regulation and Articles 5(3) and 6 of the EASA rulemaking procedure<sup>4</sup>.
4. This rulemaking activity was not originally included in the Agency's rulemaking programme for 2005. According with the provisions of Article 3(6) of the rulemaking procedure, the rulemaking programme has been adapted as appropriate and the Safety Standards Consultative Committee (SSCC) and the Advisory Group of National Authorities (AGNA) have been informed of such changes by a written consultation sent on 18 May 2005 (EASA/R/SSCC-AGNA/01/02).

### **II. Consultation**

5. To achieve optimal consultation, the Agency is publishing the draft opinion on its internet site. Considering the nature of the proposal and the need to act urgently, since the system of unlimited duration approvals will enter into force automatically on 28 September 2005, if the applicable implementing rules are not amended, the Agency considers necessary to reduce the length of the consultation period. AGNA and SSCC have been consulted on the justification of the reduction of the consultation period and they agreed. Comments shall be provided therefore within 6 weeks in accordance with Article 6(5) of the rulemaking procedure.

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<sup>1</sup> OJ L 243, 27.9.2003, p. 6.

<sup>2</sup> OJ L 315, 28.11.2003, p. 1.

<sup>3</sup> OJ L 240, 7.9.2002, p. 1.

<sup>4</sup> Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of opinions, certification specifications and guidance material ("rulemaking procedure"), EASA MB/7/03, 27.6.2003.

Comments on this proposal may be forwarded (*preferably by e-mail*), using the attached comment form, to:

**By e-mail:** [NPA@easa.eu.int](mailto:NPA@easa.eu.int)

**By correspondence:** Process Support Unit  
Rulemaking Directorate  
EASA  
Postfach 10 12 53  
D-50452 Köln  
Germany  
Fax: +49(221) 89990 5508

Comments should be received by the Agency **before 23-08-2005**. If received after this deadline they might not be treated. Comments may not be considered if the form provided for this purpose is not used.

### **III. Comment response document**

6. All comments received in time will be responded to and incorporated in a Comment Response Document (CRD). This may contain a list of all persons and/or organisations that have provided comments. The CRD will be widely available ultimately before the Agency adopts its final decision.

### **IV. Content of the draft opinion**

7. On 24 September 2003 and on 20 November 2003 the European Commission adopted Regulations (EC) No 1702/2003 and No 2042/2003 respectively. These regulations establish a system of approval of unlimited duration for maintenance, maintenance training and production organisations. During the discussion related to their adoption several Member States expressed concerns about their ability to move at short notice from their current system of approvals of a limited duration to that prescribed by these regulations.
8. This led to the provisions specified in Article 5(2) of Regulation (EC) No 1702/2003 allowing Member States to issue approvals of a limited duration, by way of derogation from 21A.159 of Part-21 until 28 September 2005 and to those specified in Article 7(4) of Regulation (EC) No 2042/2003 allowing Member States to issue approvals of a limited duration until 28 September 2005, with regard to Annex II (Part-145) and Annex IV (Part-147).

9. Article 5(5) of Commission Regulation 1702/2003 establishes that the Agency shall make, in due time, an evaluation of the implication of the provisions of this Regulation on the duration of approvals in view of producing an opinion to the Commission including possible amendments to it. The Agency considers that the expression “in due time” is related to the time until which Member States may issue approvals of limited duration, 28 September 2005. To this end, the Agency initiated this task and sent a letter to the Member States on 14 February 2005, asking several questions regarding the possibility of introducing approvals of unlimited duration and the possible obstacles of administrative nature due to the introduction of such approvals.
10. Although, there is no provision in Commission Regulation (EC) No 2042/2003 requiring the Agency to make such evaluation with regard to approvals subject to Annex II (Part-145) and Annex IV (Part-147) to Regulation (EC) No 2042/2003, the Agency considers that the evaluation of the implication of Article 7(4) of the said regulation is pertinent by analogy to the provisions established in article 5(2) of Regulation 1702/2003.
11. By 15 March 2005, twenty-one Member States had sent their answers to the above mentioned letter<sup>5</sup>. Even though, not all of the Member States have answered it, a comprehensive view of the concept of limited approvals through the European Union can be appreciated putting into parallel the answers to this letter with the opt-out notifications made by the Member States to the Commission<sup>6</sup>.
12. When analysing the current situation, it appears that:
  - Ten Member States have opted to continue issuing approvals of unlimited duration during the transition period
  - Five of these Member States consider that the issuance of approvals of unlimited duration will lead them to face difficulties to enforce safety legislation.
  - Seven of these Member States state that the issuance of approvals of unlimited duration requires amending their national legislation, in particular their fees and charges acts. The established time limit for such amendment varies from a short period of time to several years.

As a conclusion the analysis of the answers show that the majority of Member States (15) already implement a system of unlimited duration approvals and that a majority

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<sup>5</sup> See inventory of answers attached to this NPA (page 9)

<sup>6</sup> Regulations 1702/2003 and 2042/2003 provide the Member States the possibility to use the opt-out provisions of these Regulations, regarding the duration of organisation approvals and the date of implementation of certain provisions of the parts. The list of Member States that have notified opt-outs to the Commission can be found in the EASA website [http://www.easa.eu.int/home/rm\\_oo\\_en.html](http://www.easa.eu.int/home/rm_oo_en.html)

of the others have no objection in principle to introducing such a system. Only five suggest restoring approvals of limited duration.

13. In view of these statistics the Agency does not envisage suggesting restoring a system of limited duration approvals. Most of the approvals currently issued in the Community are already of unlimited duration and a change would be strongly objected by their holders. Moreover the Agency does not believe that such a move would improve safety. At the contrary it thinks that approvals' duration should not be used to ensure enforcement because the duration of approvals is of two to three years while findings must be closed in the worst case in at least six months. If approvals of limited duration are used as a means of enforcement it means that findings could be let opened for as long as two years, which is not in line with the spirit of the existing regulations, which require a permanent oversight.
14. The Agency recognises however that some Member States need more time to change their fees and charges systems to introduce unlimited duration approvals. Although these Member States had already two years to prepare for such move, the Agency envisages suggesting to the Commission extending the transition period. The time necessary for such changes varies from a short period of time to several years according to the answers received. The Agency considers, after further analysis that two years would be a reasonable time for all Member States to amend their national legislation. It suggests therefore amending the deadline specified in Article 5.2 of regulation 1702/2003 and Article 7.4 of regulation 2042/2003.
15. No specific action is proposed regarding enforcement for the reasons already developed in paragraph 13. It now for Member States to adapt their administrative laws to ensure proper implementation of community law within the specified time limits set in such law.
16. As the Agency has undertaken the evaluation of the implications of the provisions of Regulation 1702/2003 as mandated by its Article 5(5), there is no reason to keep paragraph 5 and therefore it should be repealed.

## **V. Regulatory Impact Assessment**

### **17. Intent of the NPA**

The purpose of NPA 10/2005 is to set up a new deadline for Articles 5(2) and 7(4) of Commission Regulations 1702/2003 and 2042/2003 so that Member States will have the necessary time to adapt their national legislation on fees and charges to be in line with the system of approvals of unlimited duration established in the above mentioned regulations.

## 18. Options

Taking into account the proposals included within the present NPA and responses of the Member States included in the inventory of answers attached to this NPA, the Agency has considered several options:

- a) Do nothing
- b) Envisage the restoration of the limited approvals duration system
- c) Maintain the unlimited approvals system with an extension of the “opt-out” until 28 September 2007
- d) Leaving the possibility to Member States to choose between a system of limited duration and a system of unlimited duration of approvals

## 19. Sectors affected

- a) Do nothing

The option of doing nothing implies that after the 28 September 2005 the system of unlimited approvals will enter into force, therefore the industry will fully benefit of the lightened administrative burden linked to the renewal of the approval.

The absence of this rulemaking activity implies that after the 28 September 2005 the system of unlimited approvals established in Commission Regulations 1702/2003 and 2042/2003 be consolidated. Therefore, in that case, seven NAAs may face a loss of revenue as they have not yet changed their fees and charges system.

The Agency will not be affected.

- b) Envisage the restoration of the limited approvals duration system

Most of the approvals currently issued in the Community are already of unlimited duration and such a restoration would prevent Industry to benefit of such system.

The majority of Member States (15) already implement a system of unlimited duration approvals and a majority of the others have no objection in principle to introducing such a system. These 15 Member States will have to adapt their resources to the limited duration approvals system. The other Member States would not be affected.

The Agency will be affected because it has developed its establishment plan on the assumption of unlimited duration approvals.

c) Maintain the unlimited approvals system with an extension of the “opt-out” until 28 September 2007

The extension of this deadline until the 28 September 2007 means that only when this deadline comes to an end, the industry will fully benefit of the lightened administrative burden linked to the renewal of the approval.

Member States that chose the opt-out will be affected mainly by the fact that approvals of limited duration are a means of guarantying revenues and of facilitating the implementation of corrective actions by stakeholders through the threat of not renewing the approval. With the Agency’s proposal, these NAAs can still use the above mentioned means of enforcement and of guarantying revenues until the extended deadline.

The Agency will not be affected

d) Leaving the possibility to Member States to choose between a system of limited duration and a system of unlimited duration of approvals:

Member States would not be affected.

Industry would be affected for two reasons: it will not benefit as a whole of the advantages of the unlimited duration approval system and there will be unequal treatment.

The Agency will be affected because its standardisation system will have to cope with two situations.

## 20. Impacts

a) Do nothing

Safety: The option of doing nothing implies that after the 28 September 2005 the system of unlimited approvals will enter into force. Findings will have to be closed in accordance with a plan agreed between the NAA and the approval holder. Timescales for such plans are 3 months maximum unless a specific agreement is reached for particularly complex actions.

Economic: Doing nothing would allow Industry in all Member States to benefit of the unlimited duration approval system i.e. constant dialogue between the NAA and the industry avoiding thus extra costs during the renewal. On the other hand, the seven



Member States that have not yet changed their fees and charges system may face a loss of revenue in the short term and will have to review their charging scheme that might, if the new charging scheme does not generate enough revenue, reduce the efficiency of their oversight system in the longer term.

Environmental: None

Social: None

b) Envisage the restoration of the limited approvals duration system

Safety: The renewal process puts pressure on the applicant to have all findings closed before the NAA can renew the approval. On the other hand since NAAs rely on this limited duration to force the closure of findings, they may not be as proactive as they could be to close findings, thus lowering the level of safety for a certain amount of time between the end of the mandated maximum three month period to close findings and the renewal date. Furthermore this system is not conducive to develop proper enforcement procedures fundamental to safety.

Economic: The limited approval system is a means of guarantying revenues for NAAs. The pressure of the renewal process forces organisations to pay their fees at least every two years whereas in the case of unlimited approvals NAAs will need to start legal procedures to recover the unpaid fees. As Member States rely on the renewal to put pressure on organisations, who may be forced to agree to actions or investments that go beyond compliance with the rules in order to have their certificate renewed in due time.

Environmental: None

Social: None

c) Maintain the unlimited approvals system with an extension of the “opt-out” until 28 September 2007

Safety: Compared to option a) this option only postpone for two years the benefit of unlimited duration approval system. As the limited duration system has not proven to be unsafe in the past, its extension for two more years will have no measurable effect on safety.

Economic: The impact will be the same as for option a), with the advantage of giving Member States the necessary time to optimise their charging scheme strategy in order to guarantee in the long term the efficiency of their oversight system.

Environmental: None

Social: None

d) Leaving the possibility to Member States to choose between a system of limited duration and a system of unlimited duration of approvals

Safety: Each Member State in isolation would live with the pros and cons of option a) or c) depending of its choice. This also has the inconvenience of creating different levels of enforcement that will complicate the cooperation between Member States for the oversight of multi-national organisations.

Economic: Member States will not be affected as they can choose the system that suits them best. Industry as a whole will not benefit of the advantages of the unlimited duration approval system. There will be unequal treatment linked to two different regulatory frameworks. Different regulatory frameworks are not compatible with Article 2 of Regulation 1592/2002 that states that its principal objective is *to establish and maintain a high uniform level of safety in Europe*. The Agency will have to adapt its standardisation system to the two possibilities. The oversight of multi-national organisations could become more costly.

Environmental: none.

Social: relocation of organisations may not be excluded as they may seek to be located in States that have chosen for the unlimited duration approval system.

## 21. Conclusion of the Regulatory Impact Assessment:

After evaluation of the impacts of each option, the Agency has proposed to amend Commission Regulations 1702/2003 and 2042/2003 in line with option c) because it allows benefiting in the long term of the advantages of approvals of unlimited duration while enabling some Member States to adapt their charging system.

## INVENTORY OF ANSWERS

## To the letter sent to the Member States on the approvals of unlimited duration

1. The Agency is interested in knowing whether your government has opted for the issuing of approvals of limited duration.
2. The Agency is interested in knowing whether your government has examined the possibility of introducing approvals of unlimited duration
3. What are in your view the obstacles of an administrative nature (enforcement, fees and charges ...) to introducing such approvals?
4. What action would be required to overcome these obstacles?
5. How long would it take to your administration to process the transfer to approvals of unlimited duration?

Member States	Question 1	Question 2	Question 3	Question 4	Question 5
Austria	NO	YES	Fees	Amend National legislation	No specification of a particular deadline
Estonia	NO	YES	Fees	Amend National legislation	Very short time
Hungary	YES	YES	Fees	Amend National legislation	More than one year
Ireland	YES	YES	Fees	-	No specification of a particular deadline
Malta	NO	YES	Fees	Amend National legislation	No specification of a particular deadline
Netherlands	YES	YES	Fees	Amend National legislation	Two years
Sweden	YES	YES	Fees	Amend National legislation	Several years
Denmark	YES	NO	Enforcement	New means of enforcement	No specification of a particular deadline
Finland	YES	YES	Enforcement	New means of enforcement	No specification of a particular deadline
Germany	YES	YES	Enforcement	New means of enforcement	No specification of a particular deadline
*Italy	YES	YES	-	-	No specification of a particular deadline
Latvia	YES	YES	Enforcement	-	No specification of a particular deadline
Slovakia	YES	YES	Enforcement	New means of enforcement	One year
Belgium Cyprus Czech Republic *France Greece Lithuania Luxembourg Poland *Portugal *Slovenia Spain United Kingdom	NO	YES	These Member States do not foresee any mayor obstacle of an administrative nature (enforcement or fees and charges). Therefore they not precise neither any action to overcome them nor any times limit to process the transfer to approvals of unlimited duration.		

\*These Member States didn't answer the letter sent by EASA. The conclusion can be raised from the opt-out notifications made by these Member States to the Commission

“-“ Means the Agency has received no information

**B. DRAFT OPINON**

**I. Proposed changes to Commission Regulation (EC) No 1702/2003**

a) It is proposed to amend Article 5(2) of Commission Regulation (EC) No 1702/2003 as follows,

“2. By way of derogation from 21A.159 of Part 21, Member States may issue approvals of a limited duration until 28 September 2007.”

b) It is proposed to repeal Article 5(5)

**II. Proposed changes to Commission Regulation (EC) No 2042/2003**

It is proposed to amend Article 7(4) of Commission Regulation (EC) No 2042/2003 as follows:

“4. Member States may issue approvals with regard to Annex II and Annex IV of a limited duration until 28 September 2007.”