

EASA

TERMS OF REFERENCE

TOR Nr: BR.004

Issue: 1

Date: 04 July 2006

Regulatory reference: Basic Regulation, Part 21, CS-34, CS-36.

Reference documents: Annex 16, Volume I and II to the Chicago Convention.

1. Subject: Revision of the Basic Regulation, particularly Article 6 and other related articles...

2. Problem / Statement of issue and justification; reason for regulatory evolution (regulatory tasks):

Essential Requirements for environmental protection are currently specified in Article 6 of the Basic Regulation¹ as being the substantive standards included in Annex 16, Volume I and II to the Chicago Convention (Annex 16). This is not in line with the philosophy used for airworthiness, operations and licensing, which is to explicitly spell out the Essential Requirements as high level objectives instead of defining them by reference to another text. Although in principle there would not be an objection to using a system of reference, a number of difficulties result from this different approach.

The first concern is related to the uncertainty about what exactly has been transposed into Community law. It seems that the intent of the legislator was only to transpose the maximum acceptable levels of noise and emission mandated by Annex 16 so as to leave to the executive level the power to specify how this will be actually verified. However, Annex 16 closely mixes both requirements and means of compliance. This together with the fact that no implementing rules have been adopted to clarify the value of the appendices referred to in Annex 16, makes it difficult to understand what exactly are the applicable legal obligations. An example of this confusion can be found in the specification of fuel used for emission testing in Appendix 4 which is referred to in Chapter 2 of Annex 16. Therefore there is a need to clearly separate what in Annex 16 should be transposed to respectively the Basic Regulation, Part 21, AMC/GM to Part 21 and CS-34 and CS-36.

The second concern is linked to the lack of clarity of Annex 16 about its exact scope. The text of Annex 16 specifies indeed standards applicable to some types of aircraft when application for a type certificate was filed on or after a certain date. While it can be easily understood that aircrafts designed before such dates are not subject to environmental restrictions for international air traffic as this is the current practice, it is understood by some Member States as meaning that in the absence of common requirements they are free to impose whatever restrictions they feel appropriate to protect their environment. This is clearly not in compliance with the spirit of the Basic Regulation, which is aimed at creating a common and comprehensive European set of rules defining aircraft categories and, where applicable, their respective environmental protection requirements, not minimum standards for some of them.

The third concern stems from the current impossibility to certify some categories of aircraft that do not have environmental standards or have outdated standards in Annex 16, such as Tilt Rotors (only guidelines are given), Rigid Airships (no environmental requirements), supersonic aircraft (only guidelines or outdated standards).

Finally it is unclear what environmental requirements apply for aircrafts that do not qualify for type certificates, but still can affect the environment and therefore need to be subjected to appropriate requirements.

As a consequence it seems necessary to produce a set of dedicated essential requirements for

¹ Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (OJ L 240, 7.9.2002, p. 1) as last amended by Regulation (EC) No 1701/2003 (OJ L 243, 27.9.2003, p. 5).

environmental protection that allow covering in a non-ambiguous way all aircraft subject to the Basic Regulation, while providing, as initially envisaged by the legislator, for the necessary flexibility to define at executive level the best means of compliance, bearing in mind that certification is now in the hands of a single European authority, the Agency.

Consequential changes to the implementing regulations, Part 21, CS-34 and CS-36 and possibly other Implementing Regulations and Certification Specifications will also have to be envisaged, however the related work will be postponed until better knowledge is acquired about the intentions of the legislator.

When drafting the new essential requirements for environmental protection, consideration shall be given to other means of ensuring environmental compatibility of civil aviation, other than reducing noise and emissions of individual aircraft. Complementary means such as operational procedures are intrinsically part of the necessary strategy and shall also be addressed, particularly at a time when the scope of the Basic Regulation is proposed to be extended to air operations and pilot licensing.

Apart from the above, some other clarifications and improvements to the provisions of the Basic Regulations related to environmental protection should be considered to correct the ambiguities identified above as well as to introduce the necessary level of regulatory flexibility. Examples of such measures are:

- Clarifying the meaning of “environmental certificates” (Article 15(1)(h)) which is often understood to include noise certificates of individual aircraft, while this is clearly not the intent.
- Adding provisions for a restricted noise certificate and/or adding the possibility of exempting from the environmental requirements as needed for flight tests, ferry flights etc.

3. Objective:

To develop a comprehensive proposal for an Agency Opinion on its role in providing for better environmental compatibility of civil aviation, including to draft essential requirements for environmental protection, as well as a revised draft of Article 6 of the Basic Regulation and, if appropriate, revise other articles of the Basic Regulation. The work should take into account the expected extension of this Regulation to air operations and pilot licensing noting that it should not lead to revision of any safety requirements.

The total package should preserve consistency with ICAO Annex 16 (*but not limited in its scope*), and should provide flexibility to add (or withdraw) classes of aircraft and to extend the scope and applicability of the implementing rules and Certification Specifications using the normal rulemaking procedures (separately from the task described here).

4. Specific tasks and interface issues (Deliverables):

- review the issues under item 2;
- draft a proposal on the Basic Regulation for new essential requirements for environmental protection;
- consider other related possible improvements and clarifications of the Basic Regulation;
- draft a proposal for changes to the Basic Regulation;
- propose a Regulatory Impact Assessment.

5. Working Methods (in addition to the applicable EASA procedures):

- Drafting of the NPA carried out by the Agency, thus avoiding that the discussion on fundamental issues would take place while drafting the NPA instead of during the comment phase.

6. Time scale, milestones:

NPA to be published 4th Quarter of 2006.