

TERMS OF REFERENCE

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Regulatory reference:

- Regulation (EC) No 1592/2002 of the European Parliament and the Council of 15 July 2002¹ - Articles 2(3)(d), 5(4)(e) and (f), 13(b), 14(2), 15(1)(e) and (2)(c), and 29(3)(a).
- Annex to the Commission Regulation No 1702/2003 of 24 September 2003² (Part 21) – Paragraphs 21A.51, 21A.118B, 21A.125B, 21A.125C, 21A.158, 21A.159, 21A.181, 21A.211, 21A.258, 21A.259, 21A.619, 21B.20, 21B.5(b), 21B.143, 21B.145, 21B.150, 21B.225, 21B.245, 21B.260, 21B.330, 21B.345, 21B.430, 21B.445.
- Annexes I (Part-M), II (Part-145), III (Part-66) and IV (Part-147) to the Commission Regulation No 2042/2003 of 20 November 2003³ - Paragraphs M.A.618, M.A.619, M.A.715, M.A.716, M.A.902, M.A.905, M.B.103, M.B.104, M.B.303(e) to (h), M.B.304, M.B.604(c) and (d), M.B.605, M.B.607, M.B.704(d) and (e), M.B.705, M.B.707, M.B.903, 145.A.90, 145.A.95, 145.B.17, 145.B.45, 145.B.50, 145.B.55, 66.B.500, 147.A.155, 147.A.160, 147.B.20, 147B.130 and 147.B.200.
- Management Board Decision No 7-2004, of 30 March 2004 (Product Certification Procedures) – Articles 3, 13, 14 and 15.
- Management Board Decision No 3-2004, of 30 February 2004 (Organisations Certification Procedures) – Articles 2, 8, 9 and 10.
- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of aviation and establishing a European Aviation Safety Agency – General approach COREPER [2005/0228(COD)- 15901/06 AVIATION 198 CODEC 1417] – draft article 56a.
- Report on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of aviation and establishing a European Aviation Safety Agency – Committee n Transport and Tourism, European Parliament [COM(2005)0579 – C6-0403/2006 – 2005/0228(COD) – Final A6-9999/2007] – Amendment 17 (draft article 6a).

Reference documents:

- Federal Aviation Regulations, Part 13 – Investigative and enforcement procedures.
- FAA Order 2150.3A – Compliance and enforcement program:
 - Chapter 11 – Administrative enforcement action;
 - Chapter 12 – Legal enforcement action;
 - Appendix 4 – Enforcement Sanction Guidance Table.
- Australian CASA Enforcement Manual.

1. Subject: Harmonisation of enforcement system.

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

It is widely accepted that compliance with legal requirements needs to be supported by enforcement means. Such is the reason why the European Court of Justice has established that Member States obligations under the Treaty include proper enforcement. Such enforcement may be done using administrative measures, such as the withdrawal, suspension or limitation of certificates/approvals issued, or the application of fines .

¹ OJ L 240, 7.9.2002, p. 1. Regulation as last amended by Regulation (EC) No 334/2007 (OJ L 88, 29.3.2007, p. 39).

² OJ L 243, 27.9.2003, p. 6. Regulation as last amended by Regulation (EC) No 375/2007 (OJ L 94, 4.4.2007, p. 3).

³ OJ L 315, 28.11.2003, p. 1 Regulation as last amended by Regulation (EC) No 376/2007 (OJ L 94, 4.4.2007, p. 18).

The Basic Regulation and the implementing rules give the Agency and the NAAs the power to amend, suspend or revoke the certificates and organisations approvals they issue, and establish the conditions to exercise these powers. The way they are exercised by the NAAs shall be further specified in national administrative measures in order to create certainty for the applicants and establish the basis of possible legal remedies. In the same way, the procedure to be followed by the Agency is established by the Management Board and further detailed by implementing measures of the Executive Director. In order to avoid any discrimination between certificate and approval holders, it seems legitimate that a harmonised approach is followed. The procedures and criteria used by the competent authorities and the Agency for limiting, suspending and revoking certificates and approvals should be as similar as possible. However, the answers received by the Agency to a questionnaire it sent to Member States have confirmed that great disparities exist.

Along with the direct action on certificates and approvals there is also the need to apply fines. Member States have indeed a duty, stemming from the Treaty of the European Community, to establish such sanctions and to use them to ensure proper application of Community law, as action on certificates may not be proportionate and because all regulated persons are not subject to a certification process. The proposal of the Council for the extension of the Regulation contains a general enforcement clause, which reinforces this principle. Notwithstanding the fact that the establishment of these sanctions and their application will have to be made in accordance with each Member State's legal system, it would be desirable to have a certain degree of harmonisation both in the procedures used and in the extent of the sanctions to ensure that throughout Europe these sanctions would fulfil their double objective of punishment and dissuasion.

Regulation (EC) No 1592/2002 of 15 July 2002 did not give powers to the Agency to make use of administrative fines to correct infractions in a proportionate way, but the Parliament's opinion on the extension of the scope of that Regulation has proposed that the Agency be given the power to issue such fines to the holders of certificates or approvals that it issues. Here again, for reasons of equity, it would be legitimate that such fines are harmonised with those applied by the Member States in the same circumstances.

Taking the above elements into account, the Agency arrived to the conclusion that a harmonised approach to enforcement would be of an added value to safety and to the good functioning of the internal market in the field of civil aviation. A harmonised policy would facilitate the correct application and implementation of the Basic Regulation and its implementing rules by creating a common enforcement system for similar violations. Its actual implementation could be overseen using the standardisation inspections.

3. Objective:

To develop regulatory material to harmonise the enforcement system in Europe within the scope of the Basic Regulation.

4. Specific tasks and interface issues (Deliverables):

The work would take place in two phases.

In a first phase, the Agency would concentrate on creating regulatory material for direct action on certificates and approvals. This would involve the development of new provisions to be included in Section B of the existing implementing rules and of the new implementing rules that will be developed by the Agency for operations, flight crew licensing and third country aircraft, as well as the related AMC and GM.

The second phase of the work would be dependent on the developments in the legislative process of the above mentioned opinions of the Council and of the Parliament. This phase of the work would involve developing the list of possible infractions and the scale of the related fines and sanctions; such material would be used to develop the implementing rules for Agency fines (if the measure is adopted by the legislator) as well as AMC and guidance material that could be used by Member States to adjust their national enforcement system as appropriate.

For both phases special care should be taken to clearly identify appeal possibilities and procedures.

In order to find the right balance between the content of the implementing rules and that of the related AMC and GM, the Agency shall examine in detail various sub-options and present the most adequate.

When drafting the NPA, the Agency should also take into account the results of the Questionnaire on national enforcement systems, sent to the Member States by letter on 10 October 2005 [Ref: EASA CP/sb D(2005) 50487].

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

Agency.

6. Time scale, milestones:

NPA to be published by December 2007.

Opinion and/or Decision to be issued by July 2008.

These dates may be reviewed taking into account the legislative process for the adoption of the extension of the Basic Regulation to operations, flight crew licensing and third country aircraft.