

OPINION No 5/2005

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

I. General

1. The purpose of this opinion is to suggest the Commission to amend Article 5(2) of Commission Regulation (EC) No 1702/2003¹ and Article 7(4) of Commission Regulation (EC) No 2042/2003². The reasons for this rulemaking activity are outlined further below.
2. The Opinion has been adopted, following the procedure specified by the Agency's Management Board³, in accordance with the provisions of Article 14 of Regulation (EC) No 1592/2002⁴.

II. Consultation

3. The draft opinion for a Commission Regulation amending Commission Regulations (EC) No 1702/2003 and 2042/2003 was published (notice of proposed amendment-NPA 10-2005) on the Agency website on 12.07.2005.
4. By the closing date of 23.08.2005, the Agency had received 5 comments from civil aviation authorities.
5. All comments received have been acknowledged and incorporated into a Comment Response Document (CRD), which was published on the Agency's web site on 1.09.2005. This CRD contains a list of all persons and/or organisations that have provided comments and the answers of the Agency.
6. Taking into account that all the comments received support or have no objections to the amendments proposed in the above mentioned NPA and the need to act urgently, since the system of unlimited duration approvals will enter into force automatically on 28 September 2005, the Agency's is issuing the present opinion before the two month time limit specified in Article 8 of the rulemaking procedure.

III. Content of the Opinion of the Agency

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,

¹ OJ L 243, 27.9.2003, p. 6.

² OJ L 315, 28.11.2003, p. 1.

³ Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of Opinions, Certifications Specifications and Guidance Material. EASA MB/7/03 of 27.06.2003 (rulemaking procedure).

⁴ OJ L 240, 7.09.2002, p. 1.

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, the 28 September 2005.
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. The Agency 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. By 15 March 2005, twenty-two Member States had sent their answers to the above mentioned letter.
12. In view of answers of the Member States to the above mentioned letter and their reaction during the consultation period to the notice of proposed amendment, where they support or have no objections to the proposed modifications, 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. On 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 left opened for as long as two years, which is not in line with the spirit of the existing regulations, which require permanent oversight.
13. The Agency recognises however that some Member States need more time to change their fees and charges systems to introduce approvals of unlimited duration. Although these Member States have already had 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 administrative legislation.

14. Finally the Agency has undertaken the evaluation of the implications of the provisions of Regulation 1702/2003 as mandated by its Article 5(5), therefore there is no reason to keep paragraph 5 and it should be repealed.

IV. Regulatory Impact Assessment

15. The proposed amendment only postpones for two years the benefit of the 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. Moreover, the extension of the transition period gives 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. No additional impact regarding environmental or social issues can be appreciated. Therefore after evaluation of these impacts, the Agency is of the opinion that the deadline specified in Article 5(2) of Commission Regulation (EC) No 1702/2003 and in Article 7(4) of Commission Regulation (EC) 2042/2003 should be modified since this amendment would allow benefiting in the long term of the advantages of approvals of unlimited duration while enabling some Member States to adapt their charging system.

Cologne, 6 September 2005

P. GOUDOU
Executive Director