

Note 2

Transition provisions of the draft Commission Regulation on the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations

I. General

1. Following the consultation on the implementing rules a number of comments addressed the issue of transition periods. It seems that in some cases the concept reflected in Article 56 of the Basic Regulation has been misinterpreted. Paragraph 1 of Article 56 only refers to the execution of Agency's certification tasks specified in Article 15 of the Basic Regulation.
2. The draft Commission Regulation includes several transition provisions. Some of them are related to the exercise by Member States of certification task which should normally be executed by the Agency. Others are related to the time at which obligations are imposed for the certification of products or organisations.

II. Article 56 of the Basic Regulation

3. This article determines the principle that the Agency shall exercise its certification tasks as from 28 September 2003.
4. Until 28 September 2003 these certification tasks are exercised by the respective Member States.
5. Article 56(2) states that during an additional period of 42 months (i.e., until March 2007) the Member States may however continue to execute such certification tasks on their own behalf by way of derogation from the provisions of Articles 5, 6, 9 and 15 of the Basic Regulation. These certification tasks include the issuance of certificates and approvals. The exercise of these tasks is subject to conditions laid down by the Commission in the implementing rules.
6. It follows that Article 56 addresses the situation where the Agency starts its operation and Member States may temporarily (continue to) exercise certification tasks that should normally be executed by the Agency, as prescribed by the Basic Regulation. Article 56 does not address other kinds of transition periods.

III. Determination of transition mechanisms

7. Apart from those related to Article 56 of the Basic Regulation, the Commission may determine transition provisions in the implementing rules, i.e., when certain obligations imposed on airworthiness management organisations or maintenance organisations are effective. These transition provisions are not related to Article 56 but to Article 5, paragraph 4 of the Basic Regulation, which states that the Commission shall adopt implementing rules, specifying *in particular* a number of conditions and responsibilities.

There is therefore no obligation to apply the period of 42 months for these transition periods specified in the implementing rules.

a) Grand-fathering

8. As the intent is to ensure continuity in the transition from the JAA to the EASA system and when differences between JARs and the implementing rules do not affect significant elements, it is considered as a matter of principle that certificates, approvals and licences issued by Member States in accordance with the JAA requirements and procedures should be grand-fathered. This would recognise the efforts effected by Member States in implementing their JAA commitments in accordance with the provisions of Council Regulation (EEC) No 3922/91. It would also minimise the administrative burden for those holding such certificates. Since however there may be slight differences between the exact national basis for certification and the newly adopted rules, a period of one year is provided to allow for rectification of such differences, which do not affect safety and can therefore be assimilated to “level two findings”.
9. A number of production and design organisations questioned the validity of affording only one year for closure of level two findings and generally requested to lift the ambiguity between the draft Regulation (Articles 3(3) and 4(3)) and Part 21 (Subparts J and G). The Agency does not recommend extending the one year period for closure action on regulatory grounds, since as explained above the differences between Part 21 and JAR 21 have been kept to a minimum. However Articles 3(3) and 4(3) have been further improved by distinguishing between usual level two findings from findings related to differences with previous (applicable) JARs.
10. It was also brought to the attention of the Agency that the transfer processes relating to existing supplemental TCs and ongoing design organisation approvals were missing from the initial draft regulation. To plug the loopholes and ensure legal certainty with those processes, new Articles 2(14) and 3(6) have been introduced.

b) Transition periods

11. The transition periods address the situation of organisations that do not comply currently with JAR provisions which were not binding under Community law. A large number of comments strongly contested the one year transition periods granted under articles 3(5) and 4(4) of the draft Regulation, considering them as unrealistic and highly burdensome for authorities and organisations alike. Consequently, in anticipation of the number of approvals required, the Agency considers reasonable to extend the period for organisations to demonstrate their capability up until 28 September 2005 (two years).