



Terms of Reference

for rulemaking task RMT.0736

Update of Commission Regulation (EU) No 452/2014 (Third-Country Operator (TCO) Regulation)

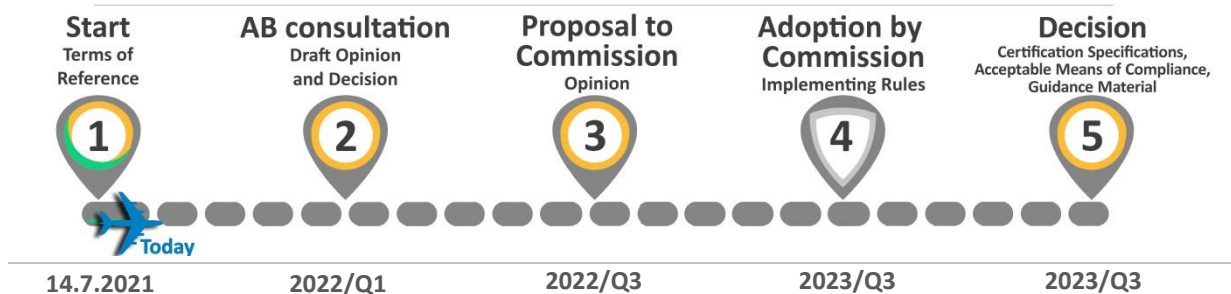
ISSUE 1

Issue/rationale

The task is based on the results of the Evaluation of the Third-Country Operator (TCO) Regulation (EVT.008) finalised in 2020. The evaluation recommends an update of the TCO Regulation to foster the risk-based approach in the processing and assessment of the compliance of third-country operators and hence improve the efficiency of EASA as the authority being responsible for the implementation of the TCO Regulation. The task will deal with cleaning, clarifying and removing inconsistencies and improve the coherence with the EU Air Safety List.

Domain:	CAT & NCC operations		
Affected rules:	Commission Regulation (EU) No 452/2014 (TCO Regulation)		
Affected stakeholders:	Third-country operators		
Driver:	Efficiency and Proportionality	Rulemaking group:	No
Impact assessment:	No	Rulemaking Procedure:	Accelerated

EASA special rulemaking procedure milestones



1. Why we need to change the rules — issue/rationale

In 2020, EASA performed an internal evaluation (EVT.008) of the TCO Regulation¹ and the related soft law, based on the experienced gained and lessons learned by EASA with its implementation.

The objective of the analysis was to assess the efficiency and effectiveness of the TCO Regulation and related AMC & GM (hereinafter referred to as ‘TCO rules’) as well as of the related EASA internal procedures, and to suggest improvements to foster a risk-based approach and hence gain regulatory efficiencies. The evaluation took into account the results of the ex post evaluation² of Regulation (EC) No 2111/2005³ (the Safety List Regulation).

EVT.008 proposed several improvements to the TCO rules, grouped in the five main topics mentioned below.

Efficiency

Several of the recommendations had the objective to increase efficiency, in terms of reducing time or resources needed. Some of the topics covered are the process to be applied to the authorisation of operators whose activities have a limited exposure for the public (e.g. business aviation); the clarification of the initial evaluation time frame; tools for dealing with non-responsive operators and the simplification of the revocation process following a suspension.

Enforcement

Some of the recommendations grouped under this category concern the process for dealing with systemic findings; widening the portfolio of enforcement measures; achieving more flexibility in the timelines and methodology for lifting suspensions and the introduction of a ‘cool-down period’ following negative decisions.

Flexibility

The evaluation recommended the introduction of more flexibility in the TCO rules to deal with extraordinary circumstances (e.g. COVID-19), for example, through the use of exemptions.

Articulation with the Safety List Regulation

Several of the recommendations coming from the evaluation dealt with the articulation between the TCO rules and the Safety List Regulation. EASA will be working in close coordination with the European Commission to address these topics, focusing on avoiding duplication of efforts and optimising synergies between the two processes.

Clarification / Guidance

Finally, some of the recommendations focused on the need to provide further guidance or clarification on existing provisions (e.g. one-off notification flights and Safety Directives) as well as on addressing some taxonomy issues, outdated references and on reviewing some definitions.

Related safety issues

¹ Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 133, 6.5.2014, p. 12) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.133.01.0012.01.ENG).

² Final report of the Evaluation of Regulation (EC) No 2111/2005 on the establishment of a Community list of air carriers subject to an operating ban in the Community, published on 6.5.2019 (<https://op.europa.eu/en/publication-detail/-/publication/17ff74cf-7076-11e9-9f05-01aa75ed71a1>).

³ Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC (OJ L 344, 27.12.2005, p. 15) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02005R2111-20190726>).

As stated above, the purpose of this task is to foster a risk-based approach and hence gain regulatory efficiencies. The TCO rules mainly address administrative aspects; the technical standards are laid down in International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPs) or other EU regulations.

Accordingly, no relevant safety risks linked to the implementation of the TCO Regulation have been identified, as well as no related safety recommendations (SRs).

No exemptions issued in accordance with Article 76 'Agency measures' of Regulation (EU) 2018/1139⁴ are pertinent to the scope of this RMT.

There are no Alternative means of compliance (AltMoC) having an impact on the development of this RMT.

ICAO and third-country references relevant to the content of this RMT

ICAO SARPs — in particular those in ICAO Annexes 1 (Personnel licensing), 2 (Rules of the Air), 6 (Operation of Aircraft, Part I (International Commercial Air Transport – Aeroplanes) or Part III (International Operations-Helicopters), as applicable, 8 (Airworthiness of Aircraft), 18 (Dangerous Goods), and 19 (Safety Management) — are referred to in the TCO Rules, and are therefore relevant for this RMT.

There are no current or intended differences between the content of the RMT and ICAO SARPs.

2. What we want to achieve — objective

The overall objectives of the EASA system are defined in Article 1 of Regulation (EU) 2018/1139. Third-country aircraft operators are covered by Section VIII and Article 82 of the same Regulation. This project will contribute to the achievement of the overall objectives by addressing the issues outlined in Chapter 1.

The specific objectives of this proposal are:

- to foster a risk-based approach in the processing and assessment of the compliance of third-country operators, thereby improving the efficiency of EASA as the competent authority for the implementation of the Regulation;
- to improve the articulation between the TCO rules and the Safety List Regulation.

3. How we want to achieve it

During the development of the draft rules, EASA will propose to amend the TCO rules to address the topics of efficiency, enforcement, flexibility, articulation with the Safety List Regulation and provide clarification/guidance, as described in Chapter 1.

As explained above, this task intends to address the improvements to the TCO rules that were proposed by EVT.008. These proposed improvements were assessed as non-controversial, and are not expected to have any negative impact, regarding safety, economic or social terms, both for the EASA and for industry. Therefore, the development of an impact assessment is not foreseen at this point.

⁴ Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=i536149403076&uri=CELEX:32018R1139>).

This will be reassessed if during the development of the task there is any indication that any of the elements may require further consideration.

EASA shall work in close coordination with the European Commission.

4. What are the deliverables

- Opinion with a draft delegated act proposing the amendment of the TCO Regulation
- Decision with the related AMC and GM

5. How we consult

EASA will perform a focused consultation of the draft amended rules. This focused consultation will take the form of technical meetings / workshops with Member States TCO focal points and with the European Commission.

6. Dependencies

This task will address the interface between TCO rules and the Safety List Regulation, as described in Chapter 1.

7. Reference documents

7.1. Affected regulations

Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, as amended by Commission Regulation (EU) 2016/1158 of 15 July 2016 .

7.2. Affected decisions

EASA Management Board Decision 01-2014, adopting the Third Country authorisation procedures.

ED Decision 2014/023/R of 6 May 2014, adopting Acceptable Means of Compliance and Guidance Material to Part TCO – Third country operators - of Commission Regulation (EU) No 452/2014.

7.3. Reference documents

Report of EVT.008 - Analysis of the lessons learnt in the implementation on Commission Regulation (EU) No. 452/2014 related to air operations of third country operators and the related soft law, dated August 2020.

Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC.

Final report of the Evaluation of Regulation (EC) No 2111/2005 on the establishment of a Community list of air carriers subject to an operating ban in the Community, published on 6.5.2019.

ICAO Doc 8335, Manual of Procedures for Operations Inspection, Certification and Continued Surveillance.

