OPINION NO 05/2012

OF THE EUROPEAN AVIATION SAFETY AGENCY

OF 22 NOVEMBER 2012

for a Commission Regulation establishing the Implementing Rules on Third Country Operators for Commercial Air Transport

and

for a Commission Regulation establishing the Implementing Rules on the Agency for the authorisation of Third Country Operators

'Third Country Operators'

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Executive Summary

This Opinion contains the following documents:

- Cover Regulation on Third Country Operators (TCO);
- Annex 1 – Part-TCO, Requirements for third country operators;
- Annex 2 – Part-ART, Authority requirements for the authorisation of third country operators.

This Opinion is the result of an extensive consultation process involving authorities, associations and operators. It provides updated draft rules for third country operators performing commercial air transport operations into, within or out of the EU (Part-TCO) as well as draft rules for the initial authorisation, continuous monitoring and the follow-up of findings with regard to third country operators (Part-ART).

The development of these rules was based on the following objectives:

- ensure a high level of safety;
- create a distinctive and proportionate set of rules for third country operators;
- guarantee flexibility and efficiency for third country operators and the Agency.

The main issues and concerns that resulted from the comments and reactions received were:

- the possibility of retaliation measures on EU-operators;
- proportionality of the assessment methodology;
- the relation between the rules proposed in NPA 2011-05 and Regulation (EC) No 2111/2005;
- envisaged fees for the authorisation and continuous oversight of third country operators.

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Explanatory Note

I. General

1. Regulation (EC) No 216/2008[1] of the European Parliament and of the Council (hereinafter referred to as the 'Basic Regulation') as amended by Regulation (EC) No 1108/2009[2] establishes an appropriate and comprehensive framework for the definition and implementation of common technical requirements and administrative procedures in the field of civil aviation.
2. The purpose of this Opinion is to assist the European Commission in laying down Implementing Rules for third country operators.
3. The Opinion has been adopted, following the procedure specified by the European Aviation Safety Agency's (hereafter referred as 'the Agency') Management Board[3], in accordance with the provisions of Article 19 of the Basic Regulation.

II. Scope of the Opinion

4. This Opinion consists of the following documents:
   - Cover Regulation on TCO,
   - Annex 1 – Part-TCO, Requirements for third country operators,
   - Annex 2 – Part-ART, Authority requirements for the authorisation of third country operators.

III. Rule structure

5. The following figure provides an overview of the Annexes under the Regulation for Third Country Operators.

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1 Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC. *OJ L 79, 19.03.2008, p. 1-49.*

2 Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services and repealing Directive 2006/33/EC. *OJ L 309, 24.11.2009, pp. 51-70.*

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 (Rulemaking Procedure). *EASA MB 01-2012, 13.03.2012.*

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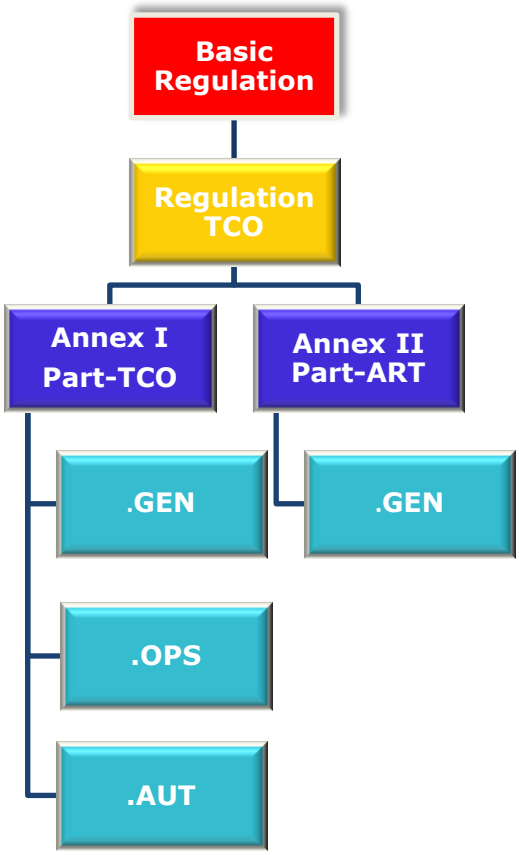
Figure 1: Annexes of the Regulation on Third Country Operators



6. Part-TCO contains the requirements for third country operators conducting commercial air transport into, within or out of the European Union.

7. This Part consists of three sections.:

   - Section I – General requirements,
   - Section II – Air operations,
   - Section III – Authorisation of third country operations.

8. NPA 2011-05 contained requirements for the Agency (in Subpart AR-TCO) setting out how it will process authorisations for third country operators and how it will oversee these operators. These requirements complemented the general requirements defined in Sections I to III of Part-ARO.GEN (as published in Opinion 04/2011[4)], which would also apply to the Agency when authorising and overseeing third country operators.

9. Part-ART contains all the requirements, including the relevant requirements contained in Sections I to II of Part-ARO.GEN, applicable to the Agency when authorising and monitoring third country operators flying into, within or out of the EU.

10. This Part consists of two sections:

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[4] Opinion 04/2011 Draft Commission Regulation (EU) No …/…. of … on Authority Requirements and Organisation Requirements. Available on the Agency website: http://easa.europa.eu/agency-measures/opinions.php.

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- Section 1 – General,
- Section 2 – Authorisation, oversight and enforcement.

IV. Consultation

11. This Opinion is based on NPA 2011-05 containing draft proposals for Implementing Rules (IR) and related Acceptable Means of Compliance (AMC) and Guidance Material (GM) for the Agency and third country operators.
12. The NPA was published on the Agency's website (www.easa.europa.eu) on 1 April 2011 and the public consultation period finished on the 8th of July 2011. The Agency received 234 comments from 39 commentators, including national aviation authorities (NAAs), professional organisations and private companies.
13. The Agency also convened and participated in several meetings with Member States and industry representatives who advised the Agency on specific issues, e.g. the proportionality of the assessment methodology and the relation with Regulation (EC) No 2111/2005[5].
14. Based on extensive consultations with authorities, associations and operators, the Agency published the CRD on 26 January 2012. The reaction period ended on 26 March 2012. The Agency received 29 reactions from 11 NAAs, professional and private companies.

[5] 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. 15–22.*

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Cover Regulation on Third Country Operators

I. Scope

15. The Cover Regulation defines the general applicability of the Parts it covers and proposes transition measures.

II. Overview of reactions

16. Reactions received on the Cover Regulation focussed on the eligibility criteria for third country operators, the transitional measures and the entry into force provision.

III. Explanations

17. The Cover Regulation published in this Opinion contains, in accordance with Article 4.1(d) and 9 of the Basic Regulation, the requirements for third country operators using third country registered aircraft.

18. Article 2 contains definitions of terms used in the Cover Regulation and in the Annexes 1 and 2 to this Regulation. The definition of commercial air transport (CAT) operations is derived from ICAO Annex 6 and slightly amended to take into account the definition of 'commercial operation' contained in Article 3(i) of the Basic Regulation. It is the same definition as used in Commission Regulation (EU) No 965/2012 of 5 October 2012. The definition of 'Principal place of business' is aligned with the definition used in Annex I to Commission Regulation (EU No 965/2012. The definition of 'alternative means of compliance has been added in order to align with Annex VI to Commission Regulation (EU) No 290/2012 amending Commission Regulation (EU) No 1178/2011 and Annex II to Commission Regulation (EU) No 965/2012. The definition of 'flight' has been added in the context of the newly introduced approach for non-scheduled flights. This definition is also used in Regulation (EC) No 1008/2008.

19. Article 3 contains the requirement that third country operators must hold an authorisation issued by the Agency in accordance with Annex 2 of this Regulation.

20. Article 4 'Eligibility' has been deleted.

21. Article 4 contains the entry into force provisions. Paragraph 2 specifies that Member States' competent authorities shall continue to issue and renew operating permits or equivalent documents under Member States' national law until 30 months after entry into force of this Regulation or until the date the Agency has taken a decision in accordance with Annex 2 of this Regulation. This approach was chosen to ensure the continuation of existing operations of third country operators into the EU as Member States have different approvals schemes in place and apply different validity periods when granting operational permits. A transition period of 30 months is proposed to allow the Agency to adequately prepare for the issue of authorisations and the monitoring of third country operators. When a Member State does not issue any operating permits, the third country operator should apply for an authorisation to the Agency after entry into force of this Regulation. The Agency will assess the application in accordance with Annex 2 of this Regulation. The operator must apply for an authorisation not later than 6 months after entry

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into force of this Regulation. Applications received after this period might not be processed before the end of the 30 months period meaning that operations to the EU might have to be stopped until the Agency has issued an authorisation.

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Annex 1 – Part-TCO

I. General

22. Part-TCO, as proposed with this Opinion, is composed of three sections:
    - Section I – General requirements,
    - Section II – Air operations,
    - Section III – Authorisation of third country operations.
23. The text proposed in the Opinion reflects the changes made to the initial proposals of the Agency (as published in NPA 2011-05) as a result of public consultation, as well as further changes made following the analysis and assessment of the reactions made to the CRD.

II. Overview of reactions

24. As the comments to NPA 2011-05 already indicated, the reactions to the CRD focussed on the possibility of retaliation by host NAAs of the third country operators by imposing reciprocal fees, when fees are raised for their authorisation. Moreover, as the Agency is not the certifying and overseeing authority the raising of fees is considered inappropriate.
25. As already stated in the CRD, the Agency considers that the issue of fees falls outside the scope of this Opinion. All the concerns raised will be carefully considered and assessed in the course of the amendment of Commission Regulation (EC) No 593/20076, the so-called 'Fees & Charges Regulation', in which all details will be defined.
26. Reservations to the proposed assessment methodology of third country operators were also reiterated as the proposal in the CRD is still considered to be disproportionate, too complex, too exhaustive in relation to the principle of the mutual recognition of certificates under the Chicago Convention and representing an undue burden for third country operators. The assessment of third country operators should therefore be simplified and limited to a desktop review only. This desktop review should rely on the ICAO universal safety oversight audit programme (USOAP), the ICAO air operator certificate (AOC) global registry and the international operational safety audit (IOSA) program.
27. It was also pointed out that Regulation (EC) No 2111/2005 already establishes the necessary legal instruments to protect the safety of EU citizens and that audits on-site should be performed under Regulation (EC) No 2111/2005.
28. Finally, it appears to some stakeholders that with this proposal the Agency is de facto taking over oversight responsibilities from the State of the operator or the State of registry. It was indicated that safety oversight responsibilities should not be shifted from ICAO Contracting States towards the Agency.
29. Indeed, the primary role in the safety oversight of any operator is that of the State of the operator that issued the AOC. The Agency fully respects the responsibilities assigned to the State of the operator in the Chicago Convention and does not

[6] Commission Regulation (EC) No 593/2007 of 31 May 2007 on the fees and charges levied by the European Aviation Safety Agency.

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intend to take over any of the above-mentioned responsibilities. The authorisation process for third country operators should rather be understood as a validation process that aims to verify the reliability of the originally certified information.

30. Furthermore, the Agency understands from the reactions received that the way in which the assessment method is presented in its initial proposal and the explanation provided in the NPA and the CRD might have given rise to the idea that the assessment method is rather strict and stretching the Agency's mandate given by the legislator. As mentioned above, it has never been the Agency's intention to take over the role of the overseeing state or apply a rigid assessment methodology.

31. In order to adequately reflect this intention and to avoid any ambiguity regarding the Agency's role, the provisions in Part-ART related to the assessment methodology for the initial and monitoring phase have been modified. A more detailed explanation will be provided in paragraphs 39-50.

32. In some reactions it was reiterated that the principle of mutual recognition of certificates is not sufficiently reflected in this NPA and that the Agency should recognise foreign AOCs as defined in ICAO Annex 6 Part I 4.2.2.1.

33. As already indicated in the CRD, Article 33 to the Chicago Convention provides that 'certificates of airworthiness and certificates of competency and licences issued, or rendered valid, by the State in which an aircraft is registered, shall be recognised by other States, provided that the requirements under which such certificates or licences were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to the Convention'. The Agency will respect Article 33 of the Chicago Convention with regard to certificates of airworthiness/competency and licenses throughout the application process for third country operator authorisations to the greatest extent possible. However, the recognition of AOCs is not addressed in this article or in any other article of the Chicago Convention. The requirement for recognition was extended to AOCs by Annex 6 Part I 4.2.2.1. The principle of mutual recognition of AOCs as set out by ICAO Annex 6 Part I 4.2.2.1 is not envisaged without limitation. A foreign AOC shall only be recognised, 'provided that the requirements under which the certificate was issued are at least equal to the applicable standards specified in this Annex'. Part-TCO was drafted to ensure exactly this prerequisite. The authorisation process verifies that the requirements under which a foreign AOC was issued are at least equal to the applicable standards.

34. The reactions regarding the relation between Part-TCO and **Regulation (EC) No 2111/2005** underlined again the importance of both regulations being well articulated. Duplication of procedures should be avoided and therefore the two processes should be clearly differentiated. It was also indicated that a revocation of an authorisation should only take place after the decision has taken to include the operator on the EU Safety list. It was held to be sensible for applications from operators subject to an operating ban to be also considered as part of the process for removing operating bans. However, some reactions were contradicting. In one reaction the principle of allowing banned operators to apply for an authorisation was rejected as it could result in conflicting decisions while in another reaction the approach taken in the initial proposal was welcomed. The principle, reflected in the initial proposal, to only allow operators who are banned from the EU due to poor

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performance of the operator itself was questioned as it would be discriminatory towards operators banned due to inadequate oversight of its overseeing state.

35. The Agency confirms that the interplay of Regulation (EC) No 2111/2005 and Part-TCO indeed needs to be coordinated. Therefore, the Agency has aligned and synchronised Part-TCO in close cooperation with the Commission to ensure a seamless integration avoiding contradictory measures and clearly allocated competencies. For this purpose the Agency has made additional modifications to the provisions in the Cover Regulation and Part-ART. A major difference between the initial proposal and the Opinion is that all banned third country operators are now eligible to apply. A more detailed explanation of how the Agency intends to achieve the interplay with Regulation (EC) No 2111/2005 will be provided in paragraphs 51-60.

36. Concerns were also raised regarding the timeframe for submitting an application. It was recommended to reduce the period for submitting an application for scheduled or a chain of non-scheduled air services to 30 days. It was also considered important that the rules explicitly specify that in case of unexpected urgent operational needs (ad-hoc flights) applications could be submitted shortly before the intended starting date of operation. Some proposed to reduce the timeframe for ad-hoc flights considerably (3 to 7 days) or to exempt operators from holding an authorisation when performing 3 to 6 flights only.

37. Following the reactions the Agency concluded that the timeframe for submitting applications could be reduced to 30 days for scheduled air services or a programme of non-scheduled air services. In case of an urgent operational need the timeframe for submitting an application has been reduced to 7 days before the intended starting date of the operation. However, the authorisation of such flights is limited to a maximum of 4 flights within a maximum of 12 consecutive months. Moreover, the operator can only obtain such an authorisation once every calendar year.

38. Finally, the obligation to process on application in the aforementioned timeframe has been shifted to the Agency and has therefore been transferred to ART.200(b).

III. Explanations

Assessment methodology

39. As indicated earlier, in this Opinion all banned third country operators are eligible to apply for an authorisation. As a consequence, a distinction has been made between the assessment process for banned and non-banned operators in terms of scrutiny.

40. For **non- banned operators** the desktop review will form the predominant element of the authorisation process. It will be based on internationally recognised safety audit reports such as ICAO USOAP, ramp inspections and other recognised safety information, e.g. IOSA results. The combination of information sources and an appropriate and balanced weighing of the safety information obtained in the process will guarantee objectivity and proportionality to the greatest possible extent.

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41. Only in cases demanding a more detailed assessment that cannot be handled by a simple review, e.g. supply of insufficient or out-dated documentation or in case of suspected safety concerns, the Agency shall conduct a more in-depth assessment. However, such further assessment shall be limited to the extent necessary to establish confidence. No audits are foreseen in the initial phase for non-banned operators.

42. The assessment method applied to **banned operators** will be more comprehensive in terms of scrutiny compared to the assessment applied to non-banned operators as the Agency will in addition perform audits on-site the operator's premises under the following conditions defined in ART.205(c).

    - the outcome of assessments performed, including information from consultations/investigations under Regulation (EC) No 2111/2005, indicates that there is a possibility that the audit will have a positive result;
    - the audit can be performed at the operator's facilities without the risk of compromising the security of its personnel; and
    - the operator agrees to be audited.

    The audit may include an assessment of the oversight conducted by the State of operator on the applicant. A more detailed explanation regarding the interplay with Regulation (EC) No 2111/2005 will be provided in paragraphs 51-60.

43. In case no confidence can be established, i.e. the operator cannot demonstrate compliance or it is clear that the State of the operator fails to ensure proper oversight, e.g. established in an USAOP audit, the Agency shall not issue an authorisation as it will not substitute itself as the overseeing authority of that particular operator.

44. In the monitoring phase the desktop review will also be the leading method. The scope of the monitoring will be determined on the basis of past authorisation and/or monitoring activities.

45. In the initial proposal a review of the operator's performance would take place at intervals not exceeding 24 months. In the current proposal this 24-month interval can be extended to a maximum of 48 months on the following conditions defined in ART.220:

    - the state of the operators performs adequate oversight;
    - the operator has reported changes timely;
    - no level 1 findings have been issued; and
    - all corrective actions have been implemented timely and adequately.

46. Noticeably, the interval can be reduced if there are indications that the safety performance of the operator and/or the State is deteriorating.

47. A new provision on enforcement measures has been introduced. A separate process will be applied for respectively the 'suspension' and the 'revocation' of an authorisation. The Agency will in first instance only suspend an authorisation. By suspending an authorisation the Agency has actually contained the risk as the operator is not allowed to operate in the EU anymore. A suspension will be followed by a revocation if during 6(+3) months the operator (under Part-TCO) or the State of the operator (under Regulation (EC) No 2111/2005) was not able to demonstrate that successful corrective action has been taken or when the operator is included in the EU Safety list in accordance with Regulation (EC) No 2111/2005.

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48. The Agency may perform an audit of the operator only following a suspension. Such an audit will be performed under the same conditions as for banned operators in the initial phase.

49. In conclusion, the Opinion has been developed against the background of Article 9(5)(d) of the Basic Regulation, which prescribes that the process by which authorisations are obtained is simple, proportionate, cost-effective and efficient in all cases, allowing for requirements and compliance demonstrations proportionate to the complexity of operations and the risk involved. Its purpose is to ensure the right balance between minimising bureaucratic hurdles for international operators and ensuring a high level of safety within the EU. The combination of information sources and an appropriate and balanced weighing of the safety information obtained in the process will guarantee objectivity and proportionality to the greatest possible extent. The planned desktop review will clearly form the predominant element of the authorisation process. Nonetheless, the authorisation process should not become an empty shell. Its purpose is to ascertain a high level of safety in the EU. Therefore, the Opinion caters for cases demanding further assessment. Audits are only foreseen in the initial phase for operators banned pursuant to Regulation (EC) No 2111/2005 or following a suspension of an existing authorisation.

50. Part-TCO envisages a uniform assessment process of third country operators, aiming at harmonising the currently diverse national systems in the EU. In the future, a third country operator will apply only once for an authorisation, which will then be valid throughout the EU. There will be one uniform set of assessment criteria (ICAO standards), which eliminates the risk that third country operators would be subject to conflicting requirements within the EU. Finally, these assessment criteria will be applied by one authority, thereby enhancing fairness and transparency.

Relation Part-TCO and Regulation (EC) No 2111/2005

51. In the previous proposal (CRD to NPA 2011-05) the Agency would only consider applications of operators included in the EU Safety list due to poor performance of the operator itself.

52. However, after assessing the option to allow all banned operators to apply for an authorisation, proposed in several reactions to the CRD, the Agency concluded it would considerably enhance the synchronisation of the processes applied under both Part-TCO and Regulation (EC) No 2111/2005. Therefore, the Opinion now allows all banned operators to apply for an authorisation. Furthermore, as mentioned earlier, the Agency has made efforts to articulate the assessment process in such a way that it becomes fully consistent with the mechanism provided for in Regulation (EC) No 2111/2005.

53. The Agency will process the application according to the following sequence. Once the Agency has received an application from a banned operator it will in first instance follow the relevant assessment procedure as applied to non-banned operators and determine if the operator is banned due to poor performance of the operator itself or due to inadequate oversight of the State of the operator. If the

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latter is the case the Agency will inform the Commission [ART.205(b)] and awaits the Commission's decision if an investigation of the State concerned under Regulation (EC) No 2111/2005 would be appropriate. When the outcome of the initial assessment under Part-TCO and a possible investigation under Regulation (EC) No 2111/2005 is positive, the Agency will further process the application and perform an on-side audit of the operator. Such an audit may include an assessment of the oversight conducted by the State of the operator on the operator concerned when there is evidence of major deficiencies in the oversight on the operator.

54. The outcome of the audit will be notified to the Commission [ART.205(e)]. This will allow the Commission to prepare for possible decision making in the Air Safety Committee. In case of a negative outcome, no further action is required under Regulation (EC) No 2111/2005 and the Agency will refuse the application (ART.210). In case of a positive outcome, the Commission may take the initiative to remove the applicant and if it deems necessary, all other operators from that State, from the EU Safety list. Once the operator is removed from the EU Safety list, the Agency will grant an authorisation (ART.210).

55. In case the operator is banned due to safety concerns on the operator itself, the Agency will start the process immediately after receipt of the application, as an investigation of the State of the operator under Regulation (EC) No 2111/2005 will not be necessary. When the outcome of the Agency's assessment is positive, the Commission may take the initiative to make arrangements to remove the operator from the EU Safety List.

56. Part-TCO also provides consistency with Regulation (EC) No 2111/2005 regarding non-banned operators. In case the Agency decides to refuse an authorisation, it will notify the Commission thereof [ART.110]. The Commission on its turn may consider to include the operator in the EU Safety list.

57. When the refusal is due the State of the operator not performing adequate oversight on a particular operator, the Commission could consider to ban all operators under the oversight of that State. In such a case the Agency will refuse applications from other operators of the State concerned, if any.

58. Finally, this Opinion ensures also consistency with Regulation (EC) No 2111/2005 regarding enforcement measures taken by the Agency. The Agency will in the first instance only limit or suspend an authorisation. By doing so, the immediate risk is fully contained on the one hand as the practical result is equivalent to an operating ban and, on the other hand, it allows the Commission to discharge its responsibilities by considering to include the operator on the Safety list.

59. When the Agency limits or suspends an authorisation, it shall notify the Commission [ART.110(a)(2)]. If the limitation or suspension is caused by a significant safety concern on the State of the operator, the Commission could decide to start joint consultation under Regulation (EC) No 2111/2005 with the State concerned. When the outcome of such consultation is negative, the Commission will include the operator (and all operators of that State) on the EU Safety list and the Agency will convert the suspension into a revocation once the operator is included in Annex A (full ban). In case the operator is included in Annex B (operational limitation), the Agency will maintain the limitation [ART.235].

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60. Finally, Member States have the possibility to impose an individual ban in respect of its own territory in case of urgency in reaction to an unforeseen safety problem [Article 6 of Regulation (EC) No 2111/2005]. In order to avoid contradicting measures, the Member State concerned should immediately notify the Agency of its intention [ART.110(c)]. The Agency on its turn will take action to limit or suspend the authorisation [ART.235(a)(3)].

IV. Economic and administrative impact of the changes compared to the CRD

61. A proactive approach and a strengthening of monitoring of third country operators, as given by the Basic Regulation, has of course a financial impact. The revised methodology is aiming at further minimising the associated cost by abstaining from regular audits and by processing the applications with a set of questionnaires and desktop reviews. Furthermore, the proposed process will ensure the appropriate deployment of Agency resources in order to focus on the assessment of operators for which the Agency has a decreased level of confidence.
62. A direct impact of the changed approach is the omission of labour cost and mission costs for expensive and complex missions, including the involvement of qualified entities, whereas under the initial proposal such cost would have been a considerable burden on industry. Furthermore, applicants are not affected with their own administrative and economic burden of arranging for a local inspection by an EASA team.
63. On the Agency side it is envisaged that the revised methods for the initial assessment and the monitoring will reduce the previously estimated staff by one-third. The calculation of resources is limited to tasks which are performed directly with applicants and where the resulting cost can be allocated accordingly. The efficiency of the process and the resources largely depends on the existence of a tailored software tool for gathering and storing TCO information and for communicating with applicants, authorisation holders, Member States and the Commission.
64. Uncertainty remains on the impact of banned operators applying for an authorisation. Currently, approximately 300 operators are included on the Safety list and in case they all apply the number of expected application processes would drastically increase, which will have a significant impact on the resource needs.

V. Part-TCO

VI. Changes compared to the CRD

65. As explained earlier, several provisions in Part-ART related to the assessment methodology for the initial and monitoring phase have been amended to ensure that the criteria, as defined in Article 9(5) paragraph (d) of the Basic Regulation, are met.
66. Furthermore, additional modifications have been made to ensure consistency with Regulation (EC) No 2111/2005.

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VII. Section I General requirements

67. This section contains general requirements for third country operators conducting Commercial Air Transport.
68. Most rules in this section correspond to the initially proposed rules of CRD TCO.GEN.

Specific issues

TCO.100 Scope

69. This provision is newly introduced and defines the scope of Part-TCO.

TCO.110 Notified differences to ICAO

70. This provision has been introduced for reasons of clarity. It mirrors the requirement in ART.200(d) that obliges the Agency to identify those ICAO standards for which it can accept mitigating measures when the State of the operator or registry has notified a difference to an ICAO standard.

Section II Air operations

71. This section contains operational requirements for third country operators conducting Commercial Air Transport.

Specific issues

TCO.200 General requirements

72. The reference in paragraph (a) to the applicable rules of the State of the operator and the State of registry of the aircraft that give effect to the applicable standards contained in the ICAO Annexes have been deleted to avoid that it will be interpreted as the Agency intends to assess the third country operator against third country national rules. As mentioned earlier it is clearly not the intention of the Agency to take over the role of overseeing competent authority.
73. The reference to 'serious incidents' in paragraph (e) has been deleted, because it is considered too burdensome on the third country operators and the Agency. If necessary, the Agency will use other relevant sources of information to retrieve such data.

Section IV – Authorisation of third country operators

74. This subpart contains requirements for authorisation of third country operators conducting Commercial Air Transport.

Specific issues

TCO.300 Application for an authorisation

75. As indicated before the obligation to submit an application 90 days in advance of the intended operation has been reduced to 30 days for scheduled air services or a

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programme of non-scheduled air services and 7 days for non-scheduled flights. The authorisation of non-scheduled flights is limited to a maximum of 4 flight within a maximum of 12 consecutive months and a third country operator can only obtain such an authorisation once every calendar year. However, when there are no significant safety concerns with regard to the State of the operator or the operator itself and the operator can demonstrate that there is an unexpected urgent operational need, the Agency may decide to process an application that is not submitted 7 days before the date of intended operation.

TCO.315 Continued validity

76. The notion that authorisations for non-scheduled flights will be issued for a limited duration has been reflected in paragraph (a)(4).

VIII. Part-ART

77. As indicated earlier, it has never been the Agency's intention to take over the responsibilities of the overseeing state or apply a rigid assessment methodology. After reassessing the methodology, it has been decided to make the Agency's intentions clearer and therefore a number of provisions in Part-ART related to the assessment methodology for the initial and monitoring phase have been amended e.g. by changing the term 'oversight' into 'monitoring', limiting audits to banned operators or after a suspension of an authorisation and allow for a risk-based approach when authorising and monitoring the third country operator.
78. Furthermore, additional modifications have been made to ensure that the process under Part-TCO is aligned with the process under Regulation (EC) No 2111/2005.

IX. Section I - General

79. This section contains the requirements applicable to the Agency in the context of third country operations into, within or out of the EU.

Specific issues

ART.110 Exchange of information

80. By including the wording 'due to safety concerns' in paragraph (a)(2), it has been ensured that only safety-related limitations relevant in the context of Regulation (EC) No 2111/2005 will be notified by the Agency.
81. A new paragraph (c) has been added to ensure that Member States will inform the Agency of their intention to impose an individual operating ban on a third country operator in respect of its own territory under the conditions specified in Article 6 of Regulation (EC) No 2111/2005. The Agency on its turn will start making arrangements to limit or suspend the authorisation.

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ART.200 Initial evaluation procedure-general

82. Paragraph (c) has been redrafted to reflect the foreseen proportionate assessment methodology and to ensure that enforcement measures taken by a third country regarding the applicant will be taken into account as well. The reference to audits has been deleted as the Agency will not audit third country operators that are not included on the EU Safety list in the initial phase. Paragraph (e) has been redrafted to reflect the risk-based approach applied by the Agency in a better way. It also gives a basis to refuse an application when it is evident that a further assessment is futile.
83. Paragraph (d) has been amended to ensure that the Agency only focusses on those ICAO standards for which it can accept mitigating measures established by the State of the operator, State of registry or the operator in case of notified differences in accordance with Article 38 of the Chicago Convention.

ART.205 Initial evaluation procedure — third country operators subject to an operating ban

84. This is an entirely new provision reflecting the notion of all banned operators being eligible to apply for an authorisation. Also a better alignment has been established with Regulation (EC) No 2111/2005. For reasons of clarity, the Agency proposes a separate provision for banned operators as enshrined in this provision. As mentioned earlier, the assessment of a banned operator may include an on-site audit.

ART.210 Issue of an authorisation

85. A comparison has been made between the criteria established in the Annex to Regulation (EC) No 2111/2005 and the criteria defined in this Opinion for issuing an authorisation. Some of the criteria in the aforementioned Annex have not been adequately reflected in Part-TCO and are therefore introduced in subparagraphs (a)(3) and (4). In addition subparagraph (a)(4) has been modified to ensure that an authorisation will only be issued when there is no evidence of major systemic deficiencies in the oversight of the State of the operator having a negative impact on the performance of that operator. Subparagraph (a)(5) has been introduced to ensure that an authorisation will only be issued to operators that are not subject to an operating ban.
86. Paragraph (b) has been redrafted to reflect the newly introduced notion of non-scheduled flights (see paragraph 37).

ART.215 Monitoring

87. This provision has been aligned with ART.200 to ensure that the Agency applies the same criteria in both the initial and monitoring phase.

ART.220 Monitoring programme

88. The criteria 'the specific nature of the operator and the complexity of the operator's activities' to be taken into account when developing a monitoring programme have been deleted. Although such criteria are appropriate for the safety oversight performed by the State of the operator, it is considered disproportionate for the

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assessment of third country operators by the Agency. Paragraph (c) has been modified and includes the notion that the interval of 24 months can be reduced in case of indications that the oversight capabilities of the State of the operator has been decreased. The possibility of extending the interval to a maximum of 48 months under certain conditions has been newly introduced.

ART.230 Findings and corrective actions

89. As audits are only foreseen for banned operators or following a suspension of an existing authorisation, paragraph (b)(2) has become redundant and is therefore deleted. References to 'operator's procedures and manuals' have been removed from paragraph (c) as the Agency will not scrutinise the third country operators in such detail. In order to provide more flexibility to the Agency and the operator for the implementation of a corrective action, the reference to 3 months in subparagraph (e)(2) has been deleted.

ART.235 Limitation, suspension and revocation of authorisations

90. This is an entirely new enforcement provision. It builds on the enforcement provision initially presented in the NPA. As already mentioned before, the main change to the initial proposal is that separate processes will be applied for respectively the 'suspension' and the 'revocation' of an authorisation. In first instance the Agency will only suspend an authorisation. In order to lift the suspension, the Agency may audit the operator if the conditions defined in ART.205(c) have been met. This suspension will be followed by a revocation if during 6(+3) months the operator (under Part-TCO) or the State of the operator (under Regulation (EC) No 2111/2005) was not able to demonstrate that a successful corrective action has been taken or when the operator is included in the EU Safety list in accordance with Regulation (EC) No 2111/2005. Paragraph (f) has been introduced to ensure alignment with Regulation (EC) No 2111/2005.

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