



Explanatory Note to ED Decision 2023/006/R

in accordance with Article 4(2) of MB Decision 01-2022

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

RMT.0736

EXECUTIVE SUMMARY

Commission Delegated Regulation (EU) 2023/659 amended Commission Regulation (EU) No 452/2014 (the TCO Regulation) to foster a risk-based approach in the authorisation process of third-country operators and improve the efficiency of the European Union Aviation Safety Agency (EASA) as the authority being responsible for the implementation of the TCO Regulation. Commission Regulation (EU) 2023/659 also clarified existing provisions, removed some inconsistencies, and improved the coherence of the TCO Regulation with the EU Air Safety List. This ED Decision amends the acceptable means of compliance and guidance material to the TCO Regulation to facilitate the implementation of the new Regulation.

REGULATION(S) TO BE AMENDED/ISSUED

N/A

ED DECISIONS AMENDED/ISSUED

— ED Decision 2014/023/R – AMC & GM to Part-TCO

AFFECTED STAKEHOLDERS

Third-country operators

WORKING METHOD(S)

Development

— By EASA

Impact assessment(s)

Light

Consultation

Focused:

- affected parties – Webinar
- EASA Advisory Bodies - NPA

Related documents / information

- Final report of EVT.008 — Analysis of the lessons learnt from the implementation of Commission Regulation (EU) No 452/2014 related to air operations of third-country operators (and of the associated soft law and EASA Management Board Decision)¹
- ToR RMT.0736, issued on 14 July 2021²
- NPA 2022-101, consulted with the EASA Advisory Bodies on 1 February 2022
- Opinion No 02/2022, published on 25 April 2022³

PLANNING MILESTONES: Refer to the latest edition of the EPAS Volume II.

¹ <https://www.easa.europa.eu/downloads/128393/en>

² <https://www.easa.europa.eu/en/document-library/terms-of-reference-and-group-compositions/tor-rmt0736>

³ <https://www.easa.europa.eu/en/document-library/opinions/opinion-no-022022>



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1. About this Decision

1.1. How this regulatory material was developed

The European Union Aviation Safety Agency (EASA) identified the need to amend the regulatory framework applicable to the authorisation of third-country operators (TCO) following an evaluation (EVT.008) of Regulation (EU) No 452/2014 and of the related acceptable means of compliance and guidance material, based on the experience gained and lessons learnt by EASA with its implementation.

This rulemaking activity is included in Volume II of the European Plan for Aviation Safety (EPAS) for [2023–2025](#) under Rulemaking Task (RMT).0736.

EASA developed the regulatory material in question in line with Regulation (EU) 2018/1139⁴ (the Basic Regulation) and the Rulemaking Procedure⁵, as well as in accordance with the objectives and working methods described in the Terms of Reference (ToR) for this RMT⁶.

The draft regulatory material was consulted in accordance with the ToR for this RMT with affected stakeholders and the EASA Advisory Bodies. Comments were received from affected and interested parties, including industry and national competent authorities (NCAs).

EASA reviewed the comments received and duly considered them.

EASA published Opinion No 02/2022 on 25 April 2022, proposing amendments to Regulation (EU) No 452/2014, based on which the European Commission adopted Regulation (EU) 2023/659⁷ on 2 December 2022 amending that Regulation.

Following adoption of the Regulation, EASA finalised the draft acceptable means of compliance (AMC) and guidance material (GM).

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=1535612134845&uri=CELEX:32018R1139>).

⁵ EASA is bound to follow a structured rulemaking process as required by Article 115(1) of Regulation (EU) 2018/1139. Such a process has been adopted by the EASA Management Board (MB) and is referred to as the 'Rulemaking Procedure'. See MB Decision No 01-2022 of 2 May 2022 on the procedure to be applied by EASA for the issuing of opinions, certification specifications and other detailed specifications, acceptable means of compliance and guidance material ('Rulemaking Procedure'), and repealing Management Board Decision No 18-2015 (<https://www.easa.europa.eu/the-agency/management-board/decisions/easa-mb-decision-01-2022-rulemaking-procedure-repealing-mb>).

⁶ <https://www.easa.europa.eu/en/document-library/terms-of-reference-and-group-compositions/tor-rmt0736>

⁷ Commission Delegated Regulation (EU) 2023/659 of 2 December 2022 amending Regulation (EU) No 452/2014 as regards the technical requirements and administrative procedures related to air operations of third country operators (OJ L 83, 22.3.2023, p. 38) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R0659>).

2. In summary — why and what

2.1. Why we need to act — issue/rationale

In 2020, EASA performed an evaluation (EVT.008) of the TCO Regulation and the related soft law, based on the experience gained and lessons learnt by EASA with its implementation.

The objective of the evaluation was to assess the efficiency and effectiveness of the TCO Regulation and related AMC & GM 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 considered the results of the evaluation of Regulation (EC) No 2111/2005 (the Safety List Regulation)⁸.

The result of EVT.008 was a report⁹ proposing several improvements to the TCO rules, covering five main topics: efficiency, enforcement, flexibility, articulation with the Safety List Regulation and clarification/guidance. The recommendations included an assessment of their expected impacts.

Considering the nature of the recommendations from EVT.008, EASA concluded that rulemaking intervention was necessary to fully address them.

2.2. Description of the issue

The implementation of most of the recommendations from EVT.008 required changes to the TCO Regulation. EASA Opinion No 02/2022 proposed amendments to the TCO Regulation to implement these recommendations. The proposals contained in the Opinion were adopted by Commission Regulation (EU) 2023/659. It is now necessary to amend the AMC and GM to the TCO Regulation to facilitate the implementation of the amendments introduced.

In addition, some of the recommendations coming from EVT.008 referred directly to AMC and GM to Part-TCO, and their implementation requires a change to those AMC and GM.

2.3. Assessment of the issue

It is necessary to amend the AMC and GM to Part-TCO to facilitate the implementation of Commission Regulation (EU) 2023/659 and to fully implement the recommendations from EVT.008, some of which referred to AMC and GM to Part-TCO.

2.4. Who is affected by the issue

Third-country operators, EASA and Member States' NCAs.

2.5. How could the issue evolve

If the AMC and GM to Part-TCO are not amended, this may negatively impact the implementation of the changes to the TCO Regulation introduced by Commission Regulation (EU) 2023/659, and some of the recommendations from EVT.0018 will not be implemented.

⁸ 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 May 2019

(<https://op.europa.eu/en/publication-detail/-/publication/17ff74cf-7076-11e9-9f05-01aa75ed71a1>)

⁹ Analysis of the lessons learnt from the implementation of Commission Regulation (EU) No 452/2014 related to air operations of third-country operators (and of the associated soft law and EASA Management Board Decision) (<https://www.easa.europa.eu/downloads/128393/en>)

2.6. What we want to achieve — objectives

The objectives of this Decision are to facilitate the implementation of Commission Regulation (EU) 2023/659 and to implement some recommendations from EVT.008.

2.7. How we want to achieve it — overview of the amendments

Following some recommendations coming from EVT.008, the new GM1 TCO.100 has been added, introducing explanations to the scope of Part-TCO, covering several items that were the subject of frequently asked questions from stakeholders. The GM provides examples of operations that do not fall under the scope of Part-TCO¹⁰ and provides additional guidance on lease agreements¹¹. Following comments received from Finland during the consultation of NPA 2022-101, some editorial changes were made to the text of this GM, but no changes to the content were made.

Commission Regulation (EU) 2023/659 deleted the provisions related to means of compliance (former point TCO.105). The related AMC1 TCO.105(a) and GM1 TCO.105(a) have been therefore also deleted by this Decision.

Commission Regulation (EU) 2023/659 also deleted the provisions related to mitigating measures (former point TCO.110). GM1 TCO.110 has been therefore also deleted by this Decision. During the focused consultation, some stakeholders, including IATA, expressed the concern that deleting TCO.110 would create the perception that ICAO differences are no longer relevant and suggested that the text would be reformulated to advise operators that they can make use of the flexibility provisions of the Basic Regulation. After considering the comments provided, EASA agrees that information to third-country operators on the use of flexibility provisions may be helpful, especially as the TCO Regulation applies to non-EU operators that may not be familiar with the Basic Regulation. For this purpose, the new GM1 TCO.200(a) has been introduced by this Decision.

The changes introduced to AMC1 TCO.200(b) and GM1 TCO.200(b) are editorial and reflect the removal of references to the specifications associated with the TCO authorisation from TCO.200, made by Commission Regulation (EU) 2023/659. The text of GM1 TCO.200(b) has been slightly adapted following the NPA consultation, to reflect some editorial changes to TCO.200 introduced during the adoption process of the Regulation.

GM1 TCO.200(c) has been deleted as a reference to ICAO Annex 8 has been included in TCO.200(c) by Commission Regulation (EU) 2023/659.

AMC1 TCO.200(e) has been deleted as its content has been included in TCO.200(e) by Commission Regulation (EU) 2023/659.

Only a minor editorial improvement has been introduced to GM1 TCO.300(a).

This Decision significantly revises the text of GM1 TCO.300(b) to improve clarity on the sequence of actions following an application.

The new GM1 TCO.300(d) has been introduced to clarify that EASA may request translations into English of some documents provided by the applicant, as recommended by EVT.008¹².

¹⁰ Point 5.3.2 of the report.

¹¹ Point 5.3.7 of the report.

¹² Point 5.1.8 of the report.

The change introduced to GM1 TCO.300(e)(2) is purely editorial.

The new AMC1 TCO.305 has been added to give an overview of what documents should be provided when applying for a one-off notification flight, to increase clarity for applicants, as recommended by EVT.008¹³.

GM1 TCO.315 has been amended to improve clarity, as recommended by EVT.008¹⁴.

AMC1 TCO.320 has been deleted for consistency with the changes introduced to TCO.320(a)(6) by Commission Regulation (EU) 2023/659.

2.8. What are the stakeholders' views

EASA conducted a focused consultation with the affected stakeholders through a webinar that took place on 24 November 2021. The webinar was attended by over 200 participants, representing EU Member States, the European Commission, third-country regulators, industry associations and over 130 third-country operators, from 45 different States. Stakeholders were also offered the possibility to provide feedback in writing to EASA after the webinar.

The feedback received was mostly positive. Some stakeholders provided EASA with detailed proposed changes, mostly of an editorial nature, which were considered in the drafting. Some substantive comments were also received, which led, in some cases, to amending the initial proposals. More details on these comments and the resulting changes are given in Section 2.7 above.

NPA 2022-101 was submitted to the EASA ABs for consultation on 1 February 2022. The NPA already considered all the comments received during and after the webinar.

Comments to the NPA were received only from five NCAs — Finland, France, the Netherlands, Sweden, and Switzerland. All comments received were positive and supported the proposals. No substantial comments were made, but some editorial suggestions were taken on board by EASA, after review of the comments. More details on this are included in Section 2.7 above.

¹³ Point 5.3.9 of the report.

¹⁴ Point 5.3.6 of the report.



3. What are the expected benefits and drawbacks of the regulatory material

Rulemaking intervention was considered necessary to address the recommendations from EVT.008.

The changes introduced with this Decision will have positive effects, by introducing further clarity and supporting the implementation of Commission Regulation (EU) 2023/659. In addition, in the case of the new GM1 TCO.100, some small efficiency gains are expected for operators and EASA, coming from the additional clarifications provided. A positive impact on EASA's efficiency is also expected from the new GM1 TCO.300(d), while the new AMC1 TCO.305 is expected to have a positive impact on operators. No negative impacts are expected from the changes introduced, except for a minor economic impact on operators in the case of the new GM1 TCO.300(d). Therefore, the positive benefits of the changes introduced by this Decision clearly outweigh any drawbacks.

The expected impacts of all the changes introduced by this Decision were further described in NPA 2022-101, and the assessment made then is still valid.



4. Monitoring and evaluation

No specific monitoring or evaluation of the amendments made by this Decision is foreseen, besides the already existing exchanges between EASA, third-country operators and EASA Member States, which should identify any emerging issues.



5. Proposed actions to support implementation

No specific actions are planned to support and facilitate the implementation of the proposed changes beyond the already regular communication with affected stakeholders.



6. References

6.1. Affected EU regulations

N/A

6.2. Affected EASA decisions

- ED Decision 2014/023/R of the Executive Director of the Agency 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 ‘AMC and GM to Part-TCO — Initial Issue’

6.3. Other references

- 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
- Commission Delegated Regulation (EU) 2023/659 of 2 December 2022 amending Regulation (EU) No 452/2014 as regards the technical requirements and administrative procedures related to air operations of third country operators (OJ L 83, 22.3.2023, p. 38)
- EASA Management Board Decision 01-2014, adopting the Third Country Operators Authorisation Procedures
- 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 May 2019
- ICAO Doc 8335, Manual of Procedures for Operations Inspection, Certification and Continued Surveillance

