



Notice of Proposed Amendment 2022-101

in accordance with

Article 16 'Accelerated procedure' of MB Decision No 18-2015

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

RMT.0736

EXECUTIVE SUMMARY

The objective of the proposals in this Notice of Proposed Amendment (NPA) is 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. In addition, the proposals in this NPA intend to clarify existing provisions, remove inconsistencies, and improve the coherence of the TCO Regulation with the EU Air Safety List.

The proposed amendments are expected to mostly maintain the level of safety, with some expected to provide a positive impact. In terms of impacts on operators, the proposed changes are mostly neutral. The main benefit expected from the proposed changes is in terms of the cost-effectiveness of the TCO authorisation process, with a positive impact on EASA's efficiency.

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

EASA rulemaking procedure milestones

Start Terms of Reference	Focused consultation NPA 202X-101 (draft Opinion and Decision)	Proposal to the Commission EASA Opinion	Adoption by the Commission Implementing/Delegated acts	Decision Acceptable Means of Compliance, Guidance Material
14.7.2021	24.11.2021 (Webinar)	2022/Q3	2023/Q3	2023/Q3
	Advisory Body Consultation			
	1.2.2022			



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1. About this NPA

1.1. How this NPA was developed

EASA developed this NPA in line with Regulation (EU) 2018/1139¹ (the ‘Basic Regulation’) and the Rulemaking Procedure². This rulemaking task (RMT).0736 is included in Volume II of the European Plan for Aviation Safety (EPAS) 2022–2026³. The scope and timescales of the task were defined in the related Terms of Reference (ToR)⁴.

The NPA shall be consulted with the EASA Advisory Bodies (ABs) in accordance with Article 16 ‘Special rulemaking procedure: accelerated procedure’ of MB Decision No 18-2015. EASA took the decision to follow the procedure laid down in said Article as the proposals in this NPA are expected to have a negligible impact and affects a limited group of stakeholders.

Prior to the AB consultation, EASA conducted a focused consultation on this NPA 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. 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 2.3 below.

In addition, a general comment was received from IATA requesting EASA to consider including provisions allowing the recognition of third-country certificates. IATA highlighted that there are several different TCO-type regulations worldwide, requiring operators to obtain multiple approvals from different States. IATA stated that this creates a significant administrative burden for its members, while providing only limited safety benefits. IATA therefore suggested that dedicated provisions are included in the TCO Regulation or that the recognition of foreign certificates is included in bilateral aviation safety agreements between the EU and foreign countries. EASA took note of the comment but is not proposing the inclusion of any provisions on recognition of foreign certificates into the TCO Regulation. Further to the ToR, this topic is beyond the scope of this task, and EASA considers that further reflection is needed before a decision on how to proceed is taken.

¹ 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>).

² EASA is bound to follow a structured rulemaking process 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 18-2015 of 15 December 2015 replacing Decision 01/2012 concerning the procedure to be applied by EASA for the issuing of opinions, certification specifications and guidance material (<http://www.easa.europa.eu/the-agency/management-board/decisions/easa-mb-decision-18-2015-rulemaking-procedure>).

³ <https://www.easa.europa.eu/document-library/general-publications/european-plan-aviation-safety-2022-2026>

⁴ <https://www.easa.europa.eu/document-library/terms-of-reference-and-group-compositions/tor-rmt0736>

EASA would like to highlight, however, that while it recognises that the existence of multiple approvals worldwide does create some administrative burden for operators, it does not agree with IATA's statement that TCO-like schemes have only limited safety benefits. In fact, experience has shown that the EASA TCO system is well balanced and beneficial to flight safety.

In addition, it should be noted that the balanced risk approach that is the cornerstone of the EASA TCO system significantly reduces the potential administrative burden on operators. In fact, while third-country certificates are not formally recognised, EASA considers the oversight performed by foreign competent authorities in its authorisation and oversight process. As a result of the risk-based approach taken, less than 5 % of the third-country operators applying for a TCO authorisation undergo a technical meeting or an on-site audit before the authorisation is issued, and more than 80 % of the operators do not need to submit any manuals to EASA, and only documents and approvals issued by the State of registry and the State of the operator must be attached to the online questionnaire.

In addition, the EASA TCO authorisations are recognised in 31 EASA Member States that use the TCO Web-Interface as a main source of information. The information received by EASA for the TCO system is also used by SAFA inspectors in those States as a source of information. So, it is clear that the administrative requirements made under the TCO system are well justified and provide added value also for operators.

1.2. How to comment on this NPA

Please submit your comments via email to TCO@easa.europa.eu.

The deadline for submission of comments is **dd Month 201X**.

1.3. The next steps

Based on the comments received, EASA will revise, if necessary, the proposed amendments to the TCO Regulation⁵ and issue an opinion. A summary of the comments received will be provided in the Explanatory Note to the opinion.

The opinion will be submitted to the European Commission, which will decide whether to amend the TCO Regulation based on the opinion.

If the European Commission decides to amend the TCO Regulation based on the opinion, EASA will publish a decision to amend the related acceptable means of compliance (AMC) and guidance material (GM) to support the application of the amendments to the Regulation. In addition, EASA will consider the need to propose amendments to MB Decision 01-2014, which contains internal procedures for EASA when authorising and overseeing third-country operators, supporting the implementation of Part-ART.

⁵ 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=CELEX%3A32014R0452&qid=1642597156633>).

2. In summary — why and what

2.1. Why we need to change the rules — 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 learned 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 (altogether 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 evaluation of Regulation (EC) No 2111/2005 (the Safety List Regulation)⁶.

The result of EVT.008 was a report⁷ 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.

Related safety issues

The purpose of this NPA is to propose amendments to the TCO rules to foster a risk-based approach and gain regulatory efficiencies. The TCO rules mainly address administrative aspects; the technical standards are laid down in International Civil Aviation Organization (ICAO) standards or other applicable EU regulations, such as Commission Implementing Regulation (EU) No 923/2012⁸ (the standardised European rules of the air (SERA) Regulation). Accordingly, no relevant safety risks linked to the implementation of the TCO Regulation have been identified, as well as no related safety recommendations (SRs).

In addition, neither exemptions issued in accordance with Article 76(4) of the Basic Regulation nor any alternative means of compliance (AltMoC) are pertinent to the scope of this RMT.

ICAO references relevant to the content of this RMT

ICAO standards — in particular those in ICAO Annexes 1 (Personnel licensing), 2 (Rules of the Air), 6 (Operation of Aircraft), 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 this NPA and ICAO standards.

⁶ 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>)

⁷ 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>)

⁸ Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010 (OJ L 281, 13.10.2012, p. 1) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0923&qid=1642611875056>).

2.2. What we want to achieve — objectives

The overall objectives of the EASA system are defined in Article 1 of the Basic Regulation. This proposal will contribute to the achievement of the overall objectives by addressing the issues outlined in Section 2.1.

The specific objectives of the amendments proposed in this NPA 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;
- improve the articulation between the TCO rules and the Safety List Regulation.

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

The amendments proposed in this NPA focus on addressing the recommendations from EVT.008⁹. In addition, some changes were added to improve the link with Regulation (EC) No 2111/2005¹⁰ (the ‘Air Safety List Regulation’) and to address other consistency or editorial issues.

Changes to the Cover Regulation

Only a limited number of changes are proposed to the Cover Regulation.

In [Article 1](#), an update of the legal references to the Basic Regulation¹¹ and editorial adjustments are proposed.

In [Article 2](#), it is proposed to delete the definition of alternative means of compliance, for consistency with the deletion of TCO.105 and ART.105. It is also proposed to delete the definition of commercial air transport, since it is already covered by Article 3(24) of the Basic Regulation. Finally, it is proposed to amend the definition of third-country operator, to improve consistency with the terminology used in the Basic Regulation¹². It is also proposed that this definition specifically refers to EASA as competent authority for an operator, following the provisions of Articles 64 and 65 of the Basic Regulation.

In [Article 3](#), only editorial adjustments are proposed.

In [Article 4](#), it is proposed to delete the transition provisions for the TCO Regulation, since they are no longer relevant¹³.

No impacts have been identified for any of the changes proposed to the Cover Regulation.

Changes to Part-TCO and the associated soft law

The only change proposed to [TCO.100](#) is editorial.

⁹ Further details can be found in Section 5 of the report.

¹⁰ 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 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32005R2111&qid=1642611815950>).

¹¹ Point 5.3.1 of the report.

¹² Related to point 5.1.9 of the report.

¹³ Point 5.4.1 of the report.

A new GM1 TCO.100 is proposed, introducing explanations to the scope of Part-TCO, covering several items that were the subject of frequently asked questions from stakeholders. The proposed GM provides examples of operations that do not fall under the scope of Part-TCO¹⁴ and provides additional guidance on lease agreements¹⁵. No impacts have been identified for these changes, besides some small efficiency gains for operators and EASA coming from the additional clarifications provided.

This NPA proposes to delete TCO.105 and all associated AMC and GM. This provision was included in the TCO Regulation for consistency with other regulations in the EASA system. However, in the case of the TCO rules, where the requirements are largely of an administrative nature, with the technical requirements included in other regulations, the provision is not relevant, and has never been used. Its inclusion in the TCO Regulation created confusion for stakeholders; EASA has therefore decided to propose its deletion. No impacts have been identified for these changes, since, as stated above, the provision has never been used.

This NPA also proposes to delete TCO.110, which contains a possibility for the third-country operator to propose mitigating measures to establish compliance with Part-TCO in case non-compliances identified by EASA have been covered by differences notified to ICAO by the State of the operator or the State of registry¹⁶. This process has never been used by any operator. Experience has shown that it is too cumbersome for operators, as they must demonstrate an equivalent level of safety to EASA, on one hand, and, on the other, does not allow any additional flexibility for EASA where it might be needed (such as to react to extraordinary situations, like COVID-19, or market unavailability of mandatory equipment). EASA considers that the flexibility provisions in the Basic Regulation, particularly the exemptions that EASA may issue under Article 76(4), already cover all the needs that this provision initially intended to address. Therefore, its deletion is proposed.

During the focused consultation, some stakeholders, including IATA, expressed the concern that deleting this provision 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. However, EASA considers that the appropriate place for this reference is in GM. Therefore, a new GM1 TCO.200(a) is proposed by this NPA.

No impacts have been identified for these changes, since the provisions of TCO.110 have never been used, and flexibility for operators in the case of ICAO differences is still possible.

Several changes are proposed to TCO.200.

In point (a)(1), references to specific Parts of ICAO Annex 6 are proposed to be deleted, in anticipation of the future Annex 6 Part VI. No impacts have been identified for this change.

In point (a)(2), it is proposed to delete the reference to ART.200(d), following the proposed deletion of TCO.110, and to add a reference to safety directives¹⁷. Third-country operators are subject to compliance with safety directives issued by EASA under Article 76(6) of the Basic Regulation. However,

¹⁴ Point 5.3.2 of the report.

¹⁵ Point 5.3.7 of the report.

¹⁶ Point 5.4.2 of the report.

¹⁷ Point 5.1.5 of the report.

safety directives are currently not referred to in the TCO Regulation; this change is proposed to address this inconsistency. This change will have no impact since it only implements and clarifies an existing legal requirement.

In point (b)(2), the reference to the specifications attached to the TCO authorisation is proposed to be deleted¹⁸. EASA has digitalised the TCO process to a very large extent, and currently all information that was originally to be included in these specifications can be found in the TCO Web-Interface, where it is available to all affected parties (the operators, EASA and Member States, as well as the operator's competent authority, upon their request). Therefore, these specifications have become obsolete and only generate more workload for EASA, with no real benefit for any party. Several other points throughout the text are also proposed to be amended for the same reason (such as AMC1 TCO.200(b), GM1 TCO200(b), TCO.310, TCO.315 and ART.210). No impacts have been identified for these changes.

The remaining changes proposed to TCO.200 are editorial, and no impact has been identified for them.

The changes proposed 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, as explained above. No impact has been identified for these changes.

GM1 TCO.200(c) is proposed to be deleted, as a reference to ICAO Annex 8 is proposed to be included in TCO.200(c). No impact has been identified for this change.

AMC1 TCO.200(e) is proposed to be deleted, as its content is proposed to be included in TCO.200(e). No impact has been identified for this change.

In TCO.205, only a minor editorial improvement is proposed. No impact has been identified for this change.

The text of TCO.215 is proposed to be amended to improve clarity. No impact has been identified for this change.

Only a minor editorial improvement is proposed to GM1 TCO.300(a). No impact has been identified for this change.

This NPA proposes to significantly revise the text of GM1 TCO.300(b), to improve clarity on the sequence of actions following an application. No impact has been identified for this change.

A new GM1 TCO.300(d) is proposed to be introduced, to clarify that EASA may request translations into English of some documents provided by the applicant¹⁹. It is expected that this change will have a positive impact on EASA's efficiency, with no negative impact on safety and only minor economic impact for the operators.

The changes proposed to GM1 TCO.300(a) and GM1 TCO.300(e)(2) are purely editorial. No impact has been identified for these changes.

Several changes are proposed in relation to TCO.305, to clarify and improve the requirements. This includes a change to the title of the point itself, now more appropriately referring to 'one-off notification flights' (instead of the previous 'non-scheduled flights – one-off notification', which created the false impression that the provision had a wider scope than what it indeed had).

¹⁸ Point 5.4.5 of the report.

¹⁹ Point 5.1.8 of the report.

The changes proposed to point (a) are intended to better define which flights are covered by the provision²⁰. It is expected that a clear scope for the provision will reduce the number of invalid applications, and thereby have a positive impact on the Agency's efficiency. No negative impacts have been identified for the operators, since the proposed provision increases legal certainty and reflects what is already the current practice.

The newly introduced points (b)(3) and (b)(4) are intended to exclude operators whose authorisation has been suspended or revoked, or whose application has been rejected, from performing such flights²¹. It is expected that this proposal will contribute to enhancing the level of safety, which offsets the negative economic impact on operators that are excluded. A small positive impact on EASA's efficiency is also expected.

The change proposed to point (b)(5) is part of an overall change made to the Regulation to remove references to 'working days' — that were confusing for third-country operators that were not necessarily aware of which days are working days for the EASA — and replace them with references to calendar days²². This change is accompanied with appropriate increases to the relevant timelines. Similar changes are also proposed to ART.110. No impacts have been identified for these changes.

The changes proposed to point (c) extend the period within which flights may be performed. This proposal is expected to have a positive impact both on operators' and on EASA's efficiency, without any negative impact on safety.

The remaining changes proposed to TCO.305 are editorial. No impacts have been identified for these changes.

A new AMC1 TCO.305 is proposed to be added, to give an overview of what documents should be provided when applying for a one-off notification flight, to increase clarity for applicants²³. It is expected that this change will have a positive impact on operators.

The changes proposed to TCO.310 and TCO.315 reflect the removal of references to the specifications associated with the TCO authorisation, as explained above. In addition, it is proposed to use the term 'approval' in relation to changes to the TCO authorisation, for better readability and consistency with other regulations. No impact has been identified for these changes.

GM1 TCO.315 is proposed to be amended to improve clarity²⁴. No impact has been identified for this change.

Several changes are proposed to TCO.320.

In point (a)(6), it is proposed to delete the existing text, since experience has shown that it was very difficult to implement due to lack of accurate data. It is proposed to replace this with new text that requires operators to substantiate their intention to continue to operate²⁵. This covers the initial intention of the provision and is expected to be easier to implement, with no negative impacts.

²⁰ Point 5.3.8 of the report.

²¹ Point 5.1.6 of the report.

²² Point 5.3.10 of the report.

²³ Point 5.3.9 of the report.

²⁴ Point 5.3.6 of the report.

²⁵ Point 5.4.3 of the report.

A new point (a)(7) is proposed to render an authorisation invalid when there are no aircraft registered on the authorisation²⁶. This proposal is expected to have a positive impact on the efficiency of EASA, with no negative impact on the operators.

In point (b), the requirement to return the authorisation to the Agency is proposed to be removed, since the TCO authorisation is issued digitally²⁷. New text is proposed, to clarify how the operator can ask for a renewal of its authorisation. No negative impacts have been identified for these proposals, and especially the former is expected to have a positive impact on the efficiency of EASA.

AMC1_TCO.320 is proposed to be deleted, for consistency with the changes proposed to TCO.320(a)(6). No impact has been identified for this proposal.

Changes to Part-ART

ART.105 is proposed to be deleted, following the proposed deletion of TCO.105, as explained above.

The change proposed to point (b) of ART.110 follows the intention to remove references to 'working days' from the Regulation, as explained above. In this case, however, and as was also highlighted by some stakeholders during the focused consultation, due to the official working regime of EASA, it is not possible to find an amount of calendar days that would adequately replace the reference to 'one working day'²⁸. Therefore, this NPA proposes a more general wording that still covers the original intention of the provision. No impacts have been identified for this proposal.

The changes proposed to ART.115 are merely editorial, to update the legal references to the Basic Regulation. No impacts have been identified for these proposals.

This NPA proposes a new point ART.120, clarifying which actions EASA shall take when receiving an application for one-off notification flights. The proposed text mirrors the changes proposed to TCO.305 and explained above. No impacts have been identified for this proposal.

Several changes are proposed to ART.200.

Point (b) is amended to clarify that EASA's assessment shall only start after all relevant documents have been received²⁹. This change is expected to have a positive impact on EASA's efficiency by reducing workload related to communication with unresponsive operators. A negative impact on operators could be felt, when the submission of documents is delayed.

In point (d), it is proposed to delete the current text for consistency with the deletion of TCO.110, as explained above. New text is proposed to clarify that EASA may decide to suspend the assessment in case the applicant becomes unresponsive and uncooperative³⁰. This change is expected to bring a positive impact on EASA's efficiency, with no negative impact on operators.

The change proposed to point (e)(1) is merely editorial³¹. No impacts have been identified for this proposal.

²⁶ Point 5.1.7 of the report.

²⁷ Point 5.4.4 of the report.

²⁸ For example, the Agency does not work on Saturdays and Sundays, so replacing 'one working day' with one or even two calendar days could result in a notification obligation falling on either of those days.

²⁹ Point 5.3.4 of the report.

³⁰ Point 5.1.10 of the report.

³¹ Point 5.3.11 of the report.

A new point (f) is proposed, to introduce a 'cool-down' period of 9 months before operators whose authorisation has been revoked or rejected can apply for a new authorisation³². This should encourage operators to address the issues that caused the revocation or rejection before they re-apply, thereby increasing the likelihood of a successful application. This change is expected to have a positive impact on EASA's efficiency. No negative impacts on safety have been identified. Regarding impact on the operators, a limited negative impact may be felt. However, it is expected that the time of the 'cool-down' period will be, at least partly, compensated by the positive impact on the duration of the upcoming application process.

In [ART.205](#), a change to point (a) is proposed to clarify the link with the Air Safety Regulation. In point (c)(3), it is proposed to add a reference to 'safety' in addition to 'security' as prerequisites for an on-site audit, mainly to cover cases when the audit location cannot be reached by safe means of transport. The remaining changes to ART.205 are editorial. No impacts have been identified for any of the proposed changes to ART.205.

Several changes are proposed to [ART.210](#).

A small change to point (a) is proposed to reflect the deletion of references to specifications associated with a TCO authorisation, as explained above.

An additional point (a)(6) is added to clarify that an initial authorisation can only be awarded when all findings, regardless of their level, are closed³³. No impacts have been identified for this proposal, which will formalise an already existing practice, providing more legal certainty.

The change proposed to point (c) requires EASA to consider the size, type and complexity of the operation in the definition of which changes to a TCO authorisation require prior approval³⁴. The purpose is to allow potential alleviations in the TCO authorisation process for business aviation operators. The proposed change should have a beneficial impact on business operators, and on EASA's efficiency. No negative impacts have been identified.

The remaining changes to ART.210 are editorial, and no impacts have been identified for them.

In [ART.215](#), changes are proposed to point (a)(2) to update the regulatory references to the Basic Regulation. In addition, changes to point (d) are proposed to allow EASA to submit third-country operators to intensified surveillance, whenever the safety performance of the third-country operator or of the State of the operator are suspected to have decreased below the applicable ICAO standards³⁵. This change should have a beneficial impact on safety.

In [ART.220](#), it is proposed to introduce a requirement for EASA to consider the size, type and complexity of the operation in the definition of the review interval in the monitoring programme.³⁶ The purpose is to allow potential alleviations in the TCO authorisation process for business aviation. The proposed change should have a beneficial impact on business operators, and on EASA's efficiency. No negative impacts have been identified.

³² Point 5.1.4 of the report.

³³ Point 5.3.3 of the report.

³⁴ Point 5.1.1. of the report.

³⁵ Point 5.1.2 of the report.

³⁶ Point 5.1.1. of the report.

In ART.230, editorial changes to amend the legal references to the Basic Regulation are proposed to points (b), (c) and (d). In addition, a new point (b)(5) is introduced to clarify that a level 1 finding may be issued when a combination of many level 2 findings indicates a systemic deficiency that lowers or significantly hazards flight safety.

During the focused consultation, IATA stated that it did not consider the proposed change necessary, as the existing text already provides sufficient means to raise a level 1 finding if the situation so imposes. It further raised the issue that issuing a level 1 finding in addition to the level 2 findings would be disproportionate. Finally, IATA raised the concern that having this provision in the TCO Regulation, when there is no direct equivalent in the Air OPS Regulation³⁷ for EU operators, would create issues of level playing field. Therefore, IATA requested that this new point (b)(5) be deleted.

EASA assessed the arguments brought forward by IATA carefully and has decided to maintain this proposal. As IATA itself recognised, this proposal does not extend the concept or scope of level 1 findings, but merely clarifies something that is already possible under the current rules. Therefore, it has no negative impact on operators; rather, it increases clarity and legal certainty, which is particularly important in the case of third-country operators, which are not necessarily familiar with the EU legal system. Furthermore, the purpose is not to have a duplication of findings — the intention is that EASA would open only one level 1 finding where the multiple non-compliances, which individually may not be so significant, but jointly significantly impact safety, would be grouped.

In addition, during the focused consultation some stakeholders asked to clarify that this provision would only apply in case the multiple level 2 findings leading to a level 1 finding would be identified during a single assessment. This suggestion has been accepted and is reflected in the proposed text.

It is expected that the introduction of point (b)(5) in ART.230 will have a positive impact on safety and on efficiency, without any negative impacts.

In ART.235, several changes are proposed to increase clarity and efficiency.

Firstly, it is proposed to delete the current point (b), and renumber points (c) and (d), accordingly, as (b) and (c). The current text creates uncertainty as to the options available to EASA at the end of a first suspension period, creating the impression that only extending the suspension is possible, which is not the case. In addition, the 6 plus 3 months allowed for the suspension are not sufficient in some cases where the nature of the findings requires more time to achieve compliance³⁸. Extending this period will give more time for the operators to address their safety deficiencies and give more flexibility to EASA to conduct the necessary assessments when considering lifting the suspension.

Secondly, it is proposed to delete the current point (e)(1), which obliges EASA to revoke the TCO authorisation whenever the suspension period is over without all findings being closed³⁹. Experience has shown that this is not always a proportionate solution, and that it would be better to allow EASA more technical discretion in taking the decision to revoke.

³⁷ Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (<https://eur-lex.europa.eu/eli/reg/2012/965/2014-02-17>), in particular point ARO.GEN.350.

³⁸ Point 5.2.3 of the report.

³⁹ Related to point 5.2.1 of the report. It is important to note that in this respect this NPA does not follow the recommendation of EVT.008. The recommendation coming from the evaluation was to maintain the mandatory revocation at the end of the suspension period, and to even reinforce it by making it automatic. During the development of this NPA, EASA concluded that this would not be the best way forward and decided to propose a different, more flexible and proportionate approach.

Instead, a new point (d) is proposed, which states that EASA may revoke the TCO authorisation following a suspension when successful corrective action has not been taken to address the findings within a maximum period of 12 months. This new text addresses all the issues raised above: on one hand, it does not include an indicative period for the duration of the suspension, but at the same time indicates that 12 months is a reasonable period within which corrective action should be taken and by which EASA should re-assess the situation; on the other hand, it does not mandate revocation of the TCO authorisation at the end of the initial suspension period, but does clarify that that is one of the actions that EASA may take, and clarifies the criterion to be taken into account when making that decision. These changes are expected to have a positive impact on operators and the efficiency of EASA, with no negative impact on safety.

In addition, it is proposed to add a reference to the State of registry to point (b), for reasons of completeness. No impacts have been identified for this change, which reflects already existing legal requirements and current practice.

Finally, it is proposed to amend the text of point (c) to provide for more flexibility to EASA when deciding which type of assessment is needed when considering lifting a suspension⁴⁰. The current text mandates an on-site audit, which experience has shown is not always necessary. This change is expected to have a positive impact on EASA's efficiency and on the operators, with no negative impact on safety.

A new ART.240 is proposed, which clarifies the actions taken by EASA when a TCO authorisation loses validity, as well as when EASA receives an application for renewal of a TCO authorisation. These changes mirror the changes made to TCO.320, in particular the proposed new point (a)(7). No impacts have been identified for this change, which merely reflects already existing practices, thereby creating additional legal certainty.

2.4. What are the expected benefits and drawbacks of the proposed amendments

Achieving the objectives of this task, as mentioned in Section 2.2 above, required amending the TCO Regulation. Therefore, rulemaking was the only available option. When developing this task, EASA considered that the limited nature of the impacts expected from the proposed amendments, as well as the fact that the proposed changes largely follow the recommendations made by EVT.008, which already contained an assessment of impacts, did not require the development of a detailed, quantitative impact assessment. Nevertheless, the expected benefits and drawbacks of each of the proposed changes were assessed and are mentioned in more detail in Section 2.3 above.

Overall, it can be said that the changes proposed by this NPA are positive.

It is in terms of efficiency, in particular EASA's efficiency, that most of the changes proposed are expected to bring benefits. Efficiency is the main driver for this task and was also the main focus of the recommendations of EVT.008. Almost all the proposals in this NPA are expected to bring positive impacts in terms of EASA's efficiency, and many are also expected to benefit operators.

Regarding operators, most of the changes proposed have a neutral impact or may bring small positive impacts, linked to the additional clarity that is provided to the applicable legal requirements and processes. A few of the proposed changes may have a small negative impact, specifically those

⁴⁰ Point 5.2.2. of the report.

proposed to TCO.305 (b)(3) and (b)(4) (which is offset by the positive safety impact) and ART.200(b). It should be highlighted that the changes proposed to ART.235 (c) and (d) and to ART.210(c) and ART.220 are expected to have a positive impact on operators, in particular business operators in the case of the two latter proposals.

In terms of safety, most of the proposed changes have a neutral impact, but a few are expected to bring benefits, namely those proposed to TCO.305 (b)(3) and (b)(4) and ART.215.



3. Proposed amendments

The text of the amendment is arranged to show deleted, new or amended, and unchanged text as follows:

- deleted text is ~~struck through~~;
- new or amended text is highlighted in blue;
- an ellipsis '[...]' indicates that the rest of the text is unchanged.

Draft text for the Cover Regulation

Article 1 - Subject matter and scope

This Regulation lays down detailed rules for third-country operators of aircraft referred to in Article ~~4(1)(d)~~2(1)(c) of Regulation ~~(EC) No 216/2008~~ (EU) 2018/1139 engaged in commercial air transport operations into, within or out of the territory subject to the provisions of the ~~Treaty~~ Treaties, including conditions for issuing, maintaining, amending, limiting, suspending or revoking their authorisations, the privileges and responsibilities of the holders of authorisations as well as conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety.

Article 2 - Definitions

For the purposes of this Regulation:

- ~~1. 'Alternative means of compliance' are those that propose an alternative to an existing Acceptable Means of Compliance (AMC) or those that propose new means to establish compliance with Regulation (EC) No 216/2008 and its Implementing Rules for which no associated AMC have been adopted by the Agency.~~
- ~~2. 'Commercial air transport (CAT) operation' means an aircraft operation to transport passengers, cargo or mail for remuneration or other valuable consideration.~~
1. 'Flight' means a departure from a specified aerodrome towards a specified destination aerodrome.
2. 'Third-country operator' means any operator in respect of which the functions and duties of the State of the operator are not carried out by a Member State or the Agency ~~holding an air operator certificate issued by a third country.~~

Article 3 - Authorisations

Third-country operators shall only engage in commercial air transport operations into, within, ~~into~~ or out of the territory subject to the provisions of the ~~Treaty~~ Treaties if they comply with the



requirements of Annex 1 and hold an authorisation issued by the Agency in accordance with Annex 2 to this Regulation.

Article 4 - Entry into force

1. This Regulation shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.

It shall apply from the 20th day following that of its publication in the Official Journal of the European Union.

- ~~2. By way of derogation from the second subparagraph of paragraph 1, Member States that at the date of entry into force of this Regulation are issuing operating permits or equivalent documents to third country operators in accordance with their national law shall continue to do so. The third country operators shall comply with the scope and privileges defined in the permit or equivalent document granted by the Member State until the Agency has taken a decision in accordance with Annex 2 of this Regulation. Member States shall inform the Agency of the issue of such operating permits or equivalent documents.~~

~~After the date the Agency has taken a decision for the relevant third country operator, or after a maximum period of 30 months after entry into force of this Regulation, whichever comes sooner, the Member State shall no longer perform a safety assessment of that third country operator in accordance with their national law when issuing operating permits.~~

- ~~3. Third country operators that at the date of entry into force hold an operating permit or equivalent document, shall submit an application for an authorisation to the Agency no later than 6 months after entry into force of this Regulation. The application shall contain information about any operating permits granted by a Member State.~~

- ~~4. Upon receiving an application, the Agency shall assess the third country operator's compliance with the applicable requirements. The assessment shall be completed no later than 30 months after entry into force of this Regulation.~~

[...]



Draft text for Annex 1 — Third-country operators (Part-TCO) and related AMC & GM

ANNEX 1

PART-TCO

THIRD-COUNTRY OPERATORS

SECTION I – GENERAL REQUIREMENTS

TCO.100 Scope

This Annex (hereafter referred to as 'Part-TCO') establishes requirements to be followed by a third-country operator engaged in commercial air transport operations into, within or out of the territory subject to the provisions of the ~~Treaty~~ **Treaties**.

GM1 TCO.100 Scope

TECHNICAL LANDING

The intended use of an aerodrome located in the territory subject to the provisions of the **Treaties** as a technical stop (e.g. for the purpose of refueling or crew change) as part of a CAT operation falls within the scope of TCO.100 and requires a TCO authorisation.

ALTERNATE AERODROMES

The selection and use of an aerodrome located in the territory subject to the provisions of the **Treaties** as an alternate aerodrome for the case of an in-flight diversion should not be considered as falling within the scope of TCO.100 and does not require a TCO authorisation.

CODE-SHARE AGREEMENTS

An aircraft used by a third-country operator under a so-called code-share agreement with a Member State operator only falls within the scope of TCO.100 and is required to hold a TCO authorisation if the aircraft is used to perform commercial air transport to the territory subject to the provisions of the **Treaties**.

WET-LEASE AGREEMENTS

A third-country operator that leases out aircraft under a wet-lease agreement falls within the scope of TCO.100 and is required to hold a TCO authorisation for aircraft under its air operator certificate (AOC) that are used to fly to the territory subject to the provisions of the **Treaties**.

Third-country operators currently not holding a valid TCO authorisation may wet-lease-in aircraft from other authorised third-country operators or from Member State operators for the purpose of flights to the territory subject to the provisions of the **Treaties**.



DRY-LEASE AGREEMENTS

A third-country operator that leases out aircraft under a dry-lease agreement does not fall within the scope of TCO.100 and does not need a TCO authorisation. The requirement to hold a TCO authorisation for aircraft used to fly to the territory subject to the provisions of the Treaties rests with the operator that has dry-leased-in the aircraft and is responsible for the operation and airworthiness under its AOC.

USE OF WET-LEASE AIRCRAFT BY OPERATORS NOT HOLDING A VALID TCO AUTHORISATION

Operators not holding a valid TCO authorisation may wet-lease-in aircraft from either authorised third-country operators or Member State operators.

OTHER TYPES OF OPERATION

The following types of operations do not fall within the scope of TCO.100 and do not require a TCO authorisation:

- Operations conducted by third-country operators that are excluded from the scope of Regulation (EU) 2018/1139, such as flights referred to in Article 2(3)(a) of that Regulation (e.g. military, customs, police, search and rescue, firefighting),
- General Aviation operations,
- Flights arranged by means of diplomatic clearances,
- Any other type of operations that do not fall under the definition of commercial air transport (e.g. ferry flights to a maintenance basis or delivery flights).

Specialised operations (e.g. hoist, photographic or surveillance operations) do not fall within the scope of TCO.100 and do not require a TCO authorisation but may require an approval from the Member State(s) concerned.

TCO.105 Means of compliance

~~(a) — Alternative means of compliance to the AMC adopted by the Agency may be used by a third country operator to establish compliance with Regulation (EC) No 216/2008 and Part TCO.~~

~~(b) — When a third country operator subject to an authorisation wishes to use an alternative means of compliance to the AMC adopted by the Agency to establish compliance with Regulation (EC) No 216/2008 and Part TCO, it shall, prior to implementing it, notify it to the Agency with a full description of the alternative means of compliance. The description shall include any revisions to manuals or procedures that may be relevant, as well as an assessment demonstrating that the Implementing Rules are met.~~

~~The third country operator may implement these alternative means of compliance subject to prior approval by the Agency and upon receipt of the notification as prescribed in ART.105 in Annex 2 (hereafter referred to as 'Part ART').~~



~~AMC1-TCO.105(a) Means of compliance~~

~~DEMONSTRATION OF COMPLIANCE~~

~~In order to demonstrate that the Implementing Rules are met, a risk assessment should be completed and documented by the operator. The result of this risk assessment should demonstrate that an equivalent level of safety to that established by the Acceptable Means of Compliance (AMC) adopted by the Agency is accomplished.~~

~~GM1-TCO.105(a) Means of compliance~~

~~DEMONSTRATION OF COMPLIANCE~~

~~Alternative means of compliance cannot be used to establish compliance with ICAO standards. TCO.105(a) refers to alternatives to the Acceptable Means of Compliance (AMC) adopted by the Agency, which detail how compliance with Regulation (EC) No 216/2008 and Part TCO may be established.~~

~~TCO.110 Mitigating measures~~

- ~~(a) When the State of operator or the State of registry have notified differences to ICAO standards that have been identified by the Agency in accordance with ART.200(d) in Part ART, the third country operator may propose mitigating measures to establish compliance with Part TCO.~~
- ~~(b) The third country operator shall demonstrate to the Agency that these measures ensure an equivalent level of safety to that achieved by the standard to which differences have been notified.~~

~~GM1-TCO.110 Mitigating measures~~

~~NOTIFIED DIFFERENCES TO ICAO STANDARDS~~

- ~~(a) In case of notified differences to ICAO standards, the Agency will rely on the ICAO EFOD (Electronic Filing of Differences) database.~~
- ~~(b) If the operator can demonstrate that it operates in compliance with the ICAO standard, despite a difference to ICAO standards notified by the State of operator or the State of registry, the operator is not required to propose mitigating measures to establish compliance with Part TCO.~~

[...]



SECTION II – AIR OPERATIONS

TCO.200 General requirements

- (a) The third-country operator shall comply with:
- (1) the applicable standards contained in the Annexes to the Convention on International Civil Aviation, in particular 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);
 - (2) ~~the mitigating measures accepted by the Agency in accordance with ART.200(d);~~ the applicable safety directives issued by the Agency in accordance with Article 76(6) of Regulation (EU) 2018/1139;
 - (3) the relevant requirements of Part-TCO; and
 - (4) the applicable standardised European rules of the air (SERA) ~~Union rules of the air.~~
- (b) The third-country operator shall ensure that an aircraft operated into, within or out of the territory subject to the provisions of the ~~Treaty~~ Treaties is operated in accordance with:
- (1) its air operator certificate (AOC) and associated operations specifications in accordance with ICAO Annex 6; and
 - (2) the TCO authorisation issued in accordance with this Regulation and the scope and privileges contained therein ~~defined in the specifications attached to it.~~
- (c) The third-country operator shall ensure that an aircraft operated into, within or out of the ~~Union territory subject to the provisions of the Treaty~~ has a certificate of airworthiness (CofA) ~~(CofA)~~ issued or validated in accordance with ICAO Annex 8 by:
- (1) the State of registry; or
 - (2) the State of the operator, provided that the State of the operator and the State of registry have entered into an agreement under Article 83bis of the Convention on International Civil Aviation that transfers the responsibility for the issue of the CofA.
- (d) The third-country operator shall, upon request, provide the Agency with any information relevant for verifying compliance with Part-TCO.
- (e) Without prejudice to Regulation (EU) No 996/2010⁴¹, the third-country operator shall without undue delay report to the Agency any accident as defined in ICAO Annex 13, involving aircraft used under its AOC, including those aircraft that are not intended to be flown into, within or out of the territory subject to the provisions of the Treaties.

[...]

⁴¹ Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC. *OJ L 295, 12.11.2010, p. 35.*



GM1 TCO.200(a) General requirements

When the State of the operator or the State of registry have notified differences to ICAO standards that have been identified by the Agency in accordance with ART.200(d), the exemptions referred to in Article 76(4) of Regulation (EU) 2018/1139 (the EASA Basic Regulation) may be used to grant an authorisation, provided that the conditions and criteria established therein are met.

AMC1 TCO.200(b) General requirements

DIFFERENCE BETWEEN OPERATIONS SPECIFICATIONS AND TCO AUTHORISATION

Whenever there is a difference between the operations specifications associated with the Air Operator Certificate (AOC) and the specification associated to scope and privileges granted in the TCO authorisation, the more limiting specification one should apply.

GM1 TCO.200(b) General requirements

The scope and the privileges defined by the Agency include the list of aircraft that can be used under the TCO authorisation as well as any limitation to the TCO authorisation.

SPECIAL AUTHORISATION

The operator may benefit from all approvals granted by its competent authority unless the Agency has imposed a limitation.

Those approvals may include, but are not limited to, the carriage of dangerous goods, low-visibility Low-Visibility Operations (LVO), Reduced Vertical Separation Minima (RVSM), Extended Diversion Time Operations (EDTO), navigation specifications for Performance-Based Navigation operations (PBN), special approach authorisation and Minimum Navigation Performance Specifications (MNPS).

GM1 TCO.200(c) General requirements

CERTIFICATE OF AIRWORTHINESS

Certificate of Airworthiness of the Aircraft (CofA) means a Certificate of Airworthiness (CofA) issued in accordance with ICAO Annex 8.

AMC1 TCO.200(e) General requirements

REPORTING OF ACCIDENTS

The third country operator should report to the Agency all accidents involving aircraft used under its AOC, including aircraft that are not intended to be flown into, within or out of the territory subject to the provisions of the Treaty.



TCO.205 Navigation, communication and surveillance equipment

When undertaking operations within the airspace above the territory to which the ~~Treaty applies~~ **Treaties apply**, the third-country operator shall equip its aircraft with and operate such navigation, communication and surveillance equipment as required in that airspace.

[...]

TCO.215 Production of documentation, manuals and records

Upon request by a person authorised by the Agency or the competent authority of the Member State where the aircraft has landed, the pilot-in-command shall, without undue delay, present any documentation, manuals or records required to be carried on board. ~~Within a reasonable time of being requested to do so by a person authorised by the Agency or the competent authority of the Member State where the aircraft has landed, the pilot in command shall produce to that person the documentation, manuals and records required to be carried on board.~~



SECTION III – AUTHORISATION OF THIRD-COUNTRY OPERATORS

[...]

GM1 TCO.300(a) Application for an authorisation

DEMONSTRATION OF INTENTION TO OPERATE

The intention to operate is sufficiently substantiated when an operator can demonstrate a credible intention to conduct commercial operations into, within or out of the territory subject to the provisions of the ~~Treaties Treaty of the European Union~~. The operator may substantiate its intention by submitting its planned schedule for commercial air transport operations where this is possible or, by having aircraft available for intended flights in the case of unscheduled commercial air transport operations, or Europe being a geographical part of the operations specifications, or a statement from senior management that operations to the European Union are planned. However, other means of demonstrating a credible intention may be used.

GM1 TCO.300(b) Application for an authorisation

SUBMISSION OF APPLICATION FOR AN AUTHORISATION

When the third-country operator submits an application for an authorisation, the Agency will follow the process established in ART.200 to ART.210. The first step of the process is for EASA to evaluate the eligibility of the operator and verify the completeness of the information received. The operator should be aware that, in accordance with ART.200(b), the application is only considered to be submitted, and the timeframe for EASA's assessment will only start, once the complete set of information required under TCO.300(c) has been received.

Once the application is considered submitted, EASA will register the operator in its dedicated TCO web-application and will request the operator to fill in an electronic questionnaire. EASA will complete its assessment within the timeframes stipulated in ART.200 (b).

~~The application is considered to be submitted when the complete set of information required under TCO.300(c) has been received.~~

GM1 TCO.300(d) Application for an authorisation

TRANSLATION OF DOCUMENTS

The Agency may request a courtesy translation of certain (parts of) documents that are written in a language other than English.

Operators should preferably submit documents in a format that is electronically searchable and translatable by use of online tools.

[...]



GM1 TCO.300(e)(2) Application for an authorisation

DOCUMENTS FOR AIRCRAFT NOT REGISTERED IN THE STATE OF THE OPERATOR

Any agreement on the transfer of certain functions and duties between the State of registry and the State of operator that ~~reliefs~~ **relieves** the State of registry of responsibility in respect of the functions and duties transferred, should be made available upon request.

TCO.305 ~~Non-scheduled Flights~~ **One-off notification flights**

- (a) By way of derogation ~~of~~ **from** TCO.300(a) a third-country operator may **carry out flights into, within or out of the territory subject to the provisions of the Treaties without first obtaining an authorisation in the following cases** ~~perform air ambulance flights or a non-scheduled flight or a series of non-scheduled flights to overcome an unforeseen, immediate and urgent operational need without first obtaining an authorisation, provided that the operator:~~
- (1) **flights that are performed in the public interest, to address an urgent need, such as humanitarian missions and disaster relief operations;**
 - (2) **air ambulance flights that are performed to move sick or injured patients between healthcare facilities or deliver patient medical care.**
- (b) The provisions of (a) shall only apply provided that the operator:
- (1) notifies the Agency prior to **the** intended date of the first flight in a form and manner established by the Agency;
 - (2) is not ~~being~~ subject to an operating ban pursuant to Regulation (EC) No 2111/2005; ~~and~~
 - (3) **is not subject to a suspension or revocation pursuant to ART.235;**
 - (4) **has not been subject to rejection of an application for TCO authorisation pursuant to ART.200(e)(1); and**
 - ~~(3)~~(5) applies for an authorisation **pursuant to TCO.300** within ~~10 working~~ **14** days after the date of notification to the Agency pursuant to TCO.300.
- ~~(b)~~(c) The flight(s) specified in the notification prescribed in (a) ~~(1)~~ may be performed for **the period requested by the operator, but no longer than for** a maximum ~~period of six~~ **12** consecutive weeks after the date of notification or until the Agency has taken a decision on the application in accordance with Part-ART, whichever comes sooner.
- ~~(c)~~(d) A notification may be filed only once every 24 months by an operator.

AMC1 TCO.305 One-off notification flights

DOCUMENTS TO BE PROVIDED WHEN NOTIFYING EASA OF THE INTENTION TO PERFORM FLIGHTS IN ACCORDANCE WITH TCO.305

The application for a one-off notification flight should include:

- (a) a valid AOC and the associated operations specifications;



- (b) a valid CofA for the aircraft intended to be operated;
- (c) information about the character and purpose of the operation; and
- (d) information about planned destinations.

TCO.310 Privileges of an authorisation holder

The privileges of the operator shall be listed in the ~~specifications to the~~ authorisation and not exceed the privileges granted by the State of the operator.

TCO.315 Changes

- (a) Any change, other than those agreed under ART.210(c), affecting the terms of an authorisation ~~or associated specifications~~ shall require prior ~~authorisation~~ approval by the Agency.
- (b) The application for prior ~~authorisation~~ approval by the Agency shall be submitted by the third-country operator at least 30 days before the date of implementation of the intended change.

The third-country operator shall provide the Agency with the information referred to in TCO.300, restricted to the extent of the change.

After submission of an application for a change, the third-country operator shall operate under the conditions prescribed by the Agency pursuant to ART.225(b).
- (c) All changes not requiring prior ~~authorisation~~ approval, as agreed in accordance with ART.210(c), shall be notified to the Agency before the change takes place.

GM1 TCO.315 Changes

CHANGES REQUIRING PRIOR APPROVAL

Typical examples of changes that require a prior approval by the Agency pursuant to TCO.315(b) are:

- (a) the addition of a new type of aircraft (defined as an aircraft with different ICAO type designator) to the TCO authorisation, unless agreed otherwise under ART.210(c);
- (b) the operator's principal place of business, when the operator relocates to a different State; and
- (c) any takeover, merger, consolidation or other structural change to the operator's organisation that could result in a change to the conditions and approvals as defined in the AOC or equivalent.

CHANGES NOT REQUIRING PRIOR APPROVAL

Typical examples of changes that do not require a prior approval, but which have to be notified to the Agency pursuant to TCO.315(c) are:

- (a) temporary or permanent cessation of operations;
- (b) the name of the operator;
- (c) the operator's principal place of business within the same State;



- (d) the number of the AOC or that of the equivalent document;
- (e) enforcement measures imposed by a civil aviation authority, including limitations and suspension; and
- (f) the operator's scope of activities, e.g. extensions of privileges granted or restrictions imposed in the operations specifications to the AOC.

~~Typical examples of changes that require a prior approval and affect the TCO authorisation or associated specification are listed below:~~

- ~~(a) temporary or permanent cessation of operations;~~
- ~~(b) the name of the operator;~~
- ~~(c) the operator's principal place of business;~~
- ~~(d) the operator's scope of activities, e.g. extensions of privileges granted or restrictions imposed in the operations specifications to the AOC;~~
- ~~(e) enforcement measures imposed by a civil aviation authority, including limitations and suspension;~~
- ~~(f) new type of aircraft different ICAO type designator included in the fleet;~~
- ~~(g) any takeover, merger, consolidation or other structural change to the operator's organisation that could result in a change to the conditions and approvals as defined in the AOC or equivalent document.~~

TCO.320 Continued validity

- (a) The authorisation shall remain valid subject to:
 - (1) the third-country operator remaining in compliance with the relevant requirements of Part-TCO. The provisions related to the handling of findings, as specified under TCO.325, shall also be taken into account;
 - (2) the validity of the AOC or equivalent document issued by the State of the operator and the related operations specifications, if applicable;
 - (3) the Agency being granted access to the third-country operator as specified in TCO.115;
 - (4) the third-country operator not being subject to an operating ban pursuant to Regulation (EC) No 2111/2005;
 - (5) the authorisation not being surrendered, suspended or revoked;
 - (6) the operator being able to substantiate, upon request by the Agency, its intention to continue to conduct operations under its TCO authorisation; ~~the third country operator having carried out at least one flight every 24 calendar months, into, within or out of the territory subject to the provisions of the Treaty under the authorisation.~~
 - (7) the third-country operator operating at least one aircraft under its TCO authorisation.
- (b) ~~Upon surrender or revocation, the authorisation shall be returned to the Agency. If an~~ authorisation has become invalid, the third-country operator shall apply for and obtain a



renewal of its authorisation by the Agency, prior to recommencing operations into, within or out of the territory subject to the provisions of the Treaties. The application shall be made in a form and manner established by the Agency and shall be accompanied by any document necessary to determine that the reasons for the authorisation to become invalid are no longer present, and that the operator complies with the requirements to obtain an authorisation under Part-TCO.

AMC1 TCO.320 Continued validity

RE-SUBMITTANCE OF APPLICATION

~~If an operator has not carried out a flight into within or out of the territory subject to the provisions of the Treaty within the last 24 months, the operator should resubmit an application for a TCO authorisation prior to recommencing operations to Europe.~~

[...]



Draft text for Annex 2 — Authority requirements regarding the authorisation of third-country operators (Part-ART)

ANNEX 2

PART-ART

AUTHORITY REQUIREMENTS REGARDING THE AUTHORISATION OF THIRD-COUNTRY OPERATORS

SECTION I – GENERAL

[...]

~~ART.105 Alternative means of compliance~~

~~The Agency shall evaluate all alternative means of compliance proposed by third country operators in accordance with TCO.105(b) by analysing the documentation provided and, if considered necessary, conducting an inspection of the third country operator.~~

~~When the Agency finds that the alternative means of compliance are in accordance with Part TCO it shall without undue delay notify the applicant that the alternative means of compliance may be implemented and, if applicable, amend the authorisation of the applicant accordingly.~~

ART.110 Exchange of information

- (a) The Agency shall inform the Commission and the Member States when it:
 - (1) rejects an application for an authorisation;
 - (2) imposes a limitation due to safety concerns, suspends or revokes an authorisation.
- (b) The Agency shall inform the Member States of the notifications it has received in accordance with TCO.305 **without any undue delay** ~~within one working day after receipt of the notification.~~
- (c) The Agency shall regularly make available to the Member States an updated list containing the authorisations it has issued, limited, changed, suspended or revoked.
- (d) Member States shall inform the Agency when they intend to take a measure pursuant to Article 6(1) of Regulation (EC) No 2111/2005.



ART.115 Record-keeping

- (a) The Agency shall establish a system of record-keeping providing for adequate storage, accessibility and reliable traceability of:
- (1) training, qualification and authorisation of its personnel;
 - (2) third-country operator authorisations issued or notifications received;
 - (3) authorisation processes and continuing monitoring of authorised third-country operators;
 - (4) findings, agreed corrective actions and date of action closure;
 - (5) enforcement measures taken, including fines requested by the Agency in accordance with Regulation (EU) 2018/1139 ~~(EC) No 216/2008~~;
 - (6) the implementation of corrective actions mandated by the Agency in accordance with Article ~~22(1)~~76(6) of Regulation (EU) 2018/1139 ~~(EC) No 216/2008~~; and
 - (7) the use of flexibility provisions in accordance with Article ~~71 18(d)~~ of Regulation (EU) 2018/1139 ~~(EC) No 216/2008~~.
- (b) All records shall be kept for a minimum period of 5 years, subject to applicable data protection law.

ART.120 One-off notification flights

Upon receiving a notification from an operator pursuant to TCO.305, the Agency shall, without undue delay, assess whether the conditions established in TCO.305 have been met.

When the Agency finds that the conditions established in TCO.305 have not been met, the Agency shall inform the operator and the affected Member State(s) thereof.



SECTION II – AUTHORISATION, MONITORING AND ENFORCEMENT

ART.200 Initial evaluation procedure – general

- (a) Upon receiving an application for an authorisation in accordance with TCO.300, the Agency shall assess the third-country operator's compliance with the applicable requirements in Part-TCO.
- (b) The initial assessment shall be completed within 30 days after receipt of all required documents pursuant to TCO.300 (c) and (d). ~~the application or 30 days before the intended starting date of operation, whichever is the later.~~

When the initial assessment requires a further assessment or an audit, the assessment period shall be extended for the duration of the further assessment or the audit, as appropriate.

- (c) The initial assessment shall be based on:
- (1) documentation and data provided by the third-country operator;
 - (2) relevant information on the safety performance of the third-country operator, including ramp inspection reports, information reported in accordance with ARO.RAMP.145(c)⁴², recognised industry standards, accidents records and enforcement measures taken by a third country;
 - (3) relevant information on the oversight capabilities of the State of the operator or State of registry, as applicable, including the outcome of audits carried out under international conventions or State safety assessment programmes; and
 - (4) decisions, investigations pursuant to Regulation (EC) No 2111/2005 or joint consultations pursuant to Regulation (EC) No 473/2006.
- (d) ~~The Agency shall, in consultation with the Member States, identify those ICAO standards for which it may accept mitigating measures in case the State of the operator or the State of registry has notified a difference to ICAO. The Agency shall accept the mitigating measure when it is satisfied that these measures ensure an equivalent level of safety to that achieved by the standard to which differences have been notified.~~ When an operator does not provide the information required for the assessment in accordance with TCO.300 (c) and (d) within the timeline established by the Agency, the Agency may decide to suspend the assessment of the application until the information is provided. In this case, the Agency shall inform the operator of its decision.
- (e) When the Agency cannot establish a sufficient level of confidence in the third-country operator and/or the State of the operator during the initial assessment, it shall:
- (1) ~~reject~~ ~~refuse~~ the application when the outcome of the assessment indicates that further assessment will not result in the issue of an authorisation; or
 - (2) conduct further assessments to the extent necessary to establish that the intended operation will be conducted in compliance with the applicable requirements of Part-TCO.

⁴² Regulation (EU) No 965/2012 of the European Parliament and of the Council of 5 October 2012 on laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council. *OL L 296, 25.10.2012, p. 1.*



- (f) The Agency may decide not to start processing a new application from an operator whose authorisation has been revoked or whose application has been rejected, before 9 months after the date of revocation or rejection.

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

- (a) Upon receiving an application for an authorisation from an operator subject to an operating ban or an operational restriction pursuant to Regulation (EC) No 2111/2005, the Agency shall take into account the scope of the ban in order to define the relevant assessment procedure, as described in ART.200. When the operator is subject to an operating ban covering the entire scope of its operations, the assessment shall include an audit of the operator ~~apply the relevant assessment procedure as described in ART.200.~~
- (b) When the operator is subject to an operating ban due to the State of the operator not performing adequate oversight, the Agency shall inform the Commission for further assessment of the operator and the State of ~~operator~~ under Regulation (EC) No 2111/2005.
- (c) The Agency shall **only** perform an audit when:
- (1) the third-country operator agrees to be audited;
 - (2) the outcome of the **initial evaluation procedure referred to in ART.200** ~~assessments referred to in (a) and (b)~~ indicates that there is a possibility that the audit will have a positive result; and
 - (3) the audit can be performed at the third-country operator's facilities without the risk of compromising the **safety and** security of the Agency's personnel.
- (d) The audit of the third-country operator may include an assessment of the oversight conducted by the State of the operator when there is evidence of major deficiencies in the oversight of the applicant.
- (e) The Agency shall inform the Commission of the results of the audit.

ART.210 Issue of an authorisation

- (a) The Agency shall issue the authorisation, ~~including the associated specifications~~, when:
- (1) it is satisfied that the third-country operator holds a valid AOC or equivalent document and associated operations specifications issued by the State of the operator;
 - (2) it is satisfied that the third-country operator is authorised by the State of the operator to conduct operations into the EU;
 - (3) it is satisfied that the third-country operator has established:
 - (i) compliance with the applicable requirements of Part-TCO;
 - (ii) transparent, adequate and timely communication in response to a further assessment and/or an audit of the Agency, if applicable; and



- (iii) a timely and successful corrective action submitted in response to an identified non-compliance, if any;
 - (4) there is no evidence of major deficiencies in the ability of the State of the operator or the State of registry, as applicable, to certify and oversee the operator and/or aircraft in accordance with the applicable ICAO standards; ~~and~~
 - (5) the applicant ~~is~~ not ~~being~~ subject to an operating ban pursuant to Regulation (EC) No 2111/2005; ~~and~~
 - (6) any non-compliance finding raised during the assessment has been closed.
- (b) The authorisation shall be issued for an unlimited duration.
- The privileges and the scope of the activities that the third-country operator is authorised to conduct shall be specified by the Agency. ~~in the specifications attached to the authorisation.~~
- (c) The Agency shall agree with the third-country operator the scope of changes to the third-country operator not requiring prior approval ~~authorization~~ taking into consideration the size, type and complexity of the operation.

ART.215 Monitoring

- (a) The Agency shall assess:
- (1) continued compliance of third-country operators it has authorised with the applicable requirements of Part-TCO;
 - (2) if applicable, the implementation of corrective actions mandated by the Agency in accordance with Article ~~76(6)~~ ~~22(1)~~ of Regulation ~~(EU) 2018/1139~~ ~~(EC) No 216/2008~~.
- (b) This assessment shall:
- (1) take into account safety relevant documentation and data provided by the third-country operator;
 - (2) take into account relevant information on the safety performance of the third-country operator, including ramp inspection reports, information reported in accordance with ARO.RAMP.145(c), recognised industry standards, accidents records and enforcement measures taken by a third country;
 - (3) take into account relevant information on the oversight capabilities of the State of the operator or State of registry, as applicable, including the outcome of audits carried out under international conventions or State safety assessment programmes;
 - (4) take into account decisions and investigations pursuant to Regulation (EC) No 2111/2005 or joint consultations pursuant to Regulation (EC) No 473/2006;
 - (5) take into account previous assessments or audits, if carried out; and
 - (6) provide the Agency with the evidence needed in case further action is required, including the measures foreseen by ART.235.



- (c) The scope of monitoring defined in (a) and (b) shall be determined on the basis of the results of past authorisation and/or monitoring activities.
- (d) Where, based on available information, the safety performance of the third-country operator and/or the oversight capabilities of the State of the operator are suspected to have decreased below the applicable standards contained in the Annexes to the Convention on International Civil Aviation, the Agency shall submit the affected third-country operator to intensified surveillance. The Agency shall take any necessary measures to ensure ~~conduct further assessments to the extent necessary to establish~~ that the intended operation will be conducted in compliance with the applicable requirements of Part-TCO. These measures may include:
- (1) an audit of the third-country operator in accordance with ART.205(d);
 - (2) a requirement for the operator to submit reports or tailored technical information to the Agency at regular intervals;
 - (3) a temporary limitation of the operation to the operator's current fleet and/or scope of commercial air transport operations into, within or out of the territory subject to the provisions of the Treaties.
- (e) The Agency shall collect and process any safety information deemed relevant for monitoring.

ART.220 Monitoring programme

- (a) The Agency shall establish and maintain a monitoring programme covering the activities required by ART.215 and, if applicable, by Subpart ARO.RAMP.
- (b) The monitoring programme shall be developed taking into account the results of past authorisation and/or monitoring activities.
- (c) The Agency shall perform a review of third-country operators at intervals not exceeding 24 months.

The interval may be reduced if there are indications that the safety performance of the third-country operator and/or the oversight capabilities of the State of the operator may have decreased below the applicable standards contained in the Annexes to the Convention on International Civil Aviation.

The Agency may extend the interval to a maximum of 48 months if it has established that, during the previous monitoring period:

- (1) there are no indications that the overseeing authority of the State of the operator fails to perform effective oversight on operators under its oversight responsibility;
- (2) the third-country operator has continuously and timely reported changes referred to in TCO.315;
- (3) no level 1 findings, referred to in ART.230(b), have been issued; and
- (4) all corrective actions have been implemented within the time period accepted or extended by the Agency as defined in ART.230(e)(1).



(d) The monitoring programme shall include records of the dates of monitoring activities, including meetings.

(e) When determining the review interval, the Agency shall take into consideration the size, type and complexity of the operation, available information on the number of flights performed under the TCO authorisation, and the relevant elements referred to in ART.200(c).

[...]

ART.230 Findings and corrective actions

(a) The Agency shall have a system to analyse findings for their safety significance.

(b) A level 1 finding shall be issued by the Agency when any significant non-compliance is detected with the applicable requirements of Regulation (EU) 2018/1139 ~~(EC) No 216/2008~~ and Part-TCO, or with the terms of the authorisation that lowers safety or seriously hazards flight safety.

The level 1 findings shall include, but are not limited to:

(1) failure to give the Agency access to the third-country operator's facilities as defined in TCO.115(b) during normal operating hours and after a written request;

(2) implementing changes requiring prior ~~authorisation~~ approval without having received an ~~authorisation~~ approval as defined in ART.210;

(3) obtaining or maintaining the validity of the authorisation by falsification of documentary evidence;

(4) evidence of malpractice or fraudulent use of the authorisation;

(5) presence of multiple level 2 findings raised during an assessment, indicating a systemic weakness that lowers safety or seriously hazards flight safety.

(c) A level 2 finding shall be issued by the Agency when any non-compliance is detected with the applicable requirements of Regulation (EU) 2018/1139 ~~(EC) No 216/2008~~ and Part-TCO, or with the terms of the authorisation which could lower safety or hazard flight safety.

(d) When a finding is detected during monitoring, the Agency shall, without prejudice to any additional action required by Regulation (EU) 2018/1139 ~~(EC) No 216/2008~~ and its ~~delegated and implementing acts~~ Rules, communicate the finding to the third-country operator in writing and request corrective action to eliminate or mitigate the root cause in order to prevent recurrence of the non-compliance(s) identified.

(e) In the case of level 2 findings, the Agency shall:

(1) grant the third-country operator a corrective action implementation period appropriate to the nature of the finding. At the end of the period, and subject to the nature of the finding, the Agency may extend the period subject to a second satisfactory corrective action plan agreed by the Agency; and



- (2) assess the corrective action and implementation plan proposed by the third-country operator. If the assessment concludes that it contains root cause(s) analysis and course(s) of action to effectively eliminate or mitigate the root cause(s) to prevent recurrence of the non-compliance(s), the corrective action and implementation plan shall be accepted.

Where a third-country operator fails to submit an acceptable corrective action plan, as referred to in ART.230(e)(1), or to perform the corrective action within the time period accepted or extended by the Agency, the finding shall be raised to a level 1 finding and action shall be taken as laid down in ART.235(a).

- (f) The Agency shall record and notify the State of the operator or the State of registry, as applicable, of all findings it has raised.

ART.235 Limitation, suspension and revocation of authorisations

- (a) Without prejudice to any additional enforcement measures, the Agency shall take action to limit or suspend the authorisation in case of:

- (1) a level 1 finding;
- (2) verifiable evidence that the State of operator or State of registry, as applicable, is not capable ~~to~~ of certifying and overseeing the operator and/or aircraft in accordance with the applicable ICAO standard; or
- (3) the third-country operator being subject to a measure pursuant to Article 6(1)(2) of Regulation (EC) No 2111/2005.

~~(b) — An authorisation shall be suspended for a maximum period of 6 months. At the end of the 6-month period the Agency may extend the suspension period for an additional 3 months.~~

~~(b)~~(e) The limitation or suspension shall be lifted when the Agency is satisfied that successful corrective action has been taken by the third-country operator and/or the State of the operator or State of registry, as applicable.

~~(c)~~(d) In considering the lifting of a suspension, the Agency shall consider conducting ~~conduct~~ an audit of the third-country operator when the conditions in ART.205(c) are met. In case the suspension is due to major deficiencies in the oversight of the applicant by the State of the operator or State of registry, as applicable, the audit may include an assessment with the aim of ~~to~~ verifying if these oversight deficiencies have been corrected.

(d) The Agency may revoke the authorisation when, following a suspension, the operator and/or the State of the operator or State of registry, as applicable, have not taken successful corrective action within a maximum period of 12 months.

- (e) The Agency shall revoke the authorisation when:

~~(1) — the period referred to in (b) has expired; or~~

~~(2) — the third-country operator becomes subject to an operating ban pursuant to Regulation (EC) No 2111/2005.~~



- (f) If, following a limitation as referred to in (a), an operational restriction is imposed on the third-country operator in accordance with Regulation (EC) No 2111/2005, the Agency shall maintain such limitation until the operational restriction has been withdrawn.

ART.240 Validity of the authorisation

- (a) When the holder of a TCO authorisation no longer complies with the requirements for continued validity of TCO.320, the Agency shall inform the operator and the Member States concerned that the TCO authorisation has lost its validity.
- (b) When receiving an application for renewal of an invalid authorisation, the Agency shall perform an assessment as necessary to ensure that the intended operation will be conducted in compliance with the applicable requirements of Part-TCO.



4. Impact assessment (IA)

The main expected benefits and drawbacks of each of the proposed changes are described in Sections 2.3 and 2.4 above.

A detailed, quantitative impact assessment is not needed, due to the limited nature of the impacts expected from the proposals, as well as due to the fact that the proposed changes largely follow the recommendations made by EVT.008, which already contained an assessment of impacts.



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 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

6.2. Related decisions

- EASA Management Board Decision 01-2014, adopting the Third Country Operators Authorisation Procedures
- 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 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 May 2019.
- ICAO Doc 8335, Manual of Procedures for Operations Inspection, Certification and Continued Surveillance.



7. Appendix

N/A



8. Quality of the NPA

To continuously improve the quality of its documents, EASA welcomes your feedback on the quality of this NPA with regard to the following aspects:

8.1. The regulatory proposal is of technically good/high quality

Please choose one of the options below and place it as a comment in CRT; if you disagree or strongly disagree, please provide a brief justification.

Fully agree / Agree / Neutral / Disagree / Strongly disagree

8.2. The text is clear, readable and understandable

Please choose one of the options below and place it as a comment in CRT; if you disagree or strongly disagree, please provide a brief justification.

Fully agree / Agree / Neutral / Disagree / Strongly disagree

8.3. The regulatory proposal is well substantiated

Please choose one of the options below and place it as a comment in CRT; if you disagree or strongly disagree, please provide a brief justification.

Fully agree / Agree / Neutral / Disagree / Strongly disagree

8.4. The regulatory proposal is fit for purpose (capable of achieving the objectives set)

Please choose one of the options below and place it as a comment in CRT; if you disagree or strongly disagree, please provide a brief justification.

Fully agree / Agree / Neutral / Disagree / Strongly disagree

8.5. The regulatory proposal applies the 'better regulation' principles^[1]

Please choose one of the options below and place it as a comment in CRT; if you disagree or strongly disagree, please provide a brief justification.

Fully agree / Agree / Neutral / Disagree / Strongly disagree

8.6. Any other comments on the quality of this NPA (please specify)

Note: Your comments on Chapter 8 will be considered for internal quality assurance and management purposes only and will not be published in the related CRD.

^[1] For information and guidance, see:

- https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en
- https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en
- https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox/better-regulation-toolbox_en