COMMENT RESPONSE DOCUMENT (CRD) TO NOTICE OF PROPOSED AMENDMENT (NPA) 2011-05

for a DRAFT OPINION OF THE EUROPEAN AVIATION SAFETY AGENCY for a Commission Regulation establishing the Implementing Rules on Third Country Operators for Commercial Air Transport

and

a DRAFT DECISION OF THE EXECUTIVE DIRECTOR OF THE EUROPEAN AVIATION SAFETY AGENCY

on Acceptable Means of Compliance and Guidance Material related to the Implementing Rules on Third Country Operators

for Commercial Air Transport (CAT)

and

a DRAFT OPINION OF THE EUROPEAN AVIATION SAFETY AGENCY for a Commission Regulation establishing the Implementing Rules on the Agency for the authorisation of Third Country Operators

'Third Country Operators'

Executive Summary

This CRD provides updated draft rules for third country operators performing commercial air transport operations into, within or out of the EU (Part-TCO) as well as draft rules for the initial authorisation, continuous oversight and the follow-up of findings with regard to third country operators (Part-ART), following the comments received during the public consultation.

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

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

Based on the review of stakeholders' comments and the objectives to ensure a high level of safety as well as to create a distinctive and proportionate set of rules for third country operators, this CRD proposes to modify some provisions (e.g. application for an authorisation and changes thereof) as well as to delete the provisions on 'pre-flight inspections', 'in-flight fuel management' and 'flight crew compartment security for helicopters'.

This CRD also proposes a new Part-ART comprising provisions applicable to the Agency (Part-ART) that build on the provisions of Subpart AR.TCO, contained in NPA 2011-05 and the provisions of ARO.GEN Sections 1-3 established in Annex II of Opinion No 04/2011.

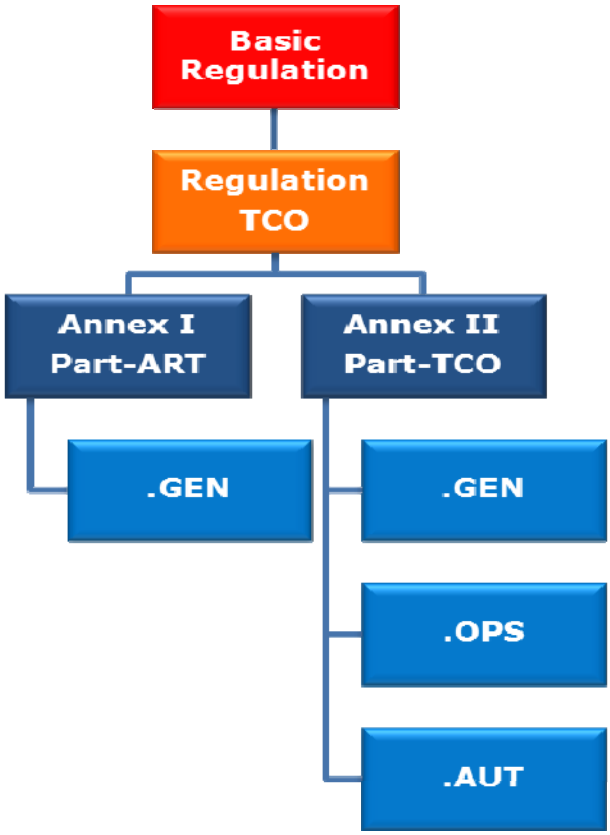
Explanatory Note

I. General

1. The purpose of the Notice of Proposed Amendment ('NPA') 2011-05 was to propose the measures the European Aviation Safety Agency (the 'Agency') considered the most appropriate for implementing the provisions of Regulation (EC) No 216/2008[1](hereafter referred to as the 'Basic Regulation') related to third country aircraft; such measures included a proposal for a Commission Regulation as well as the related Acceptable Means of Compliance ('AMC') and Guidance Material ('GM'). The scope of this rulemaking activity is outlined in the Terms of Reference ('ToR') OPS.004.

II. Rule structure

2. This CRD is based on the revised rule structure as proposed by the European Commission and the Agency in April 2011. The following figure provides an overview of the Annexes under the Regulation for Third Country Operators (TCO).



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

   This Part consists of three Subparts. Subpart II is further broken down into sections containing specific rules for third country operators:

   – Subpart A – General requirements,

[1] Regulation (EC) No 216/2008 of the European Parliament and the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ L 79, 19.3.2008, p.1).Regulation as last amended by Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009 (OJ L 309, 24.11.2009, p. 51).

– Subpart B – Air operations,

– Subpart C – Authorisation of third country operations.

4. NPA 2011-05 contained requirements for the Agency (in Subpart AR-TCO) setting out how it will process authorisations for third country operators and how it will oversee these operators. These requirements complemented the general requirements defined in Sections I to III of Part-ARO.GEN (as published in Opinion 04/2011[2]), which will also apply to the Agency when authorising and overseeing third country operators.

5. However, as mentioned above, in April 2011 the initially proposed rule structure was amended. As a consequence, a new Part-Authority Requirements for Third Country Operators (Part-ART) has been created, which is solely applicable to the Agency. This means that all relevant requirements for the authorisation and oversight of third country operators previously contained in Sections I to III in Part-AR.GEN and Subpart AR-TCO have been merged and transferred to the new Part-ART. Part-ART contains now all the requirements applicable to the Agency in the context of third country operations into, within or out of the EU.

This Part consists of one Subpart, which is further broken down into two sections:

– Section 1 – General,

– Section 2 – Authorisation, oversight and enforcement.

III. Consultation

6. NPA 2011-05 was published on the Agency's website (http://www.easa.europa.eu) on 1 April 2011 and the public consultation period finished on the 8th of July 2011.

By the closing date of 8 July 2011, the Agency had received 234 comments from 39 commentators, including national aviation authorities (NAAs), professional organisations and private companies.

IV. Publication of the CRD

7. All comments received have been acknowledged and incorporated into this Comment Response Document (CRD) with the responses of the Agency.

8. On responding to comments, standard terminology has been applied to attest the Agency's acceptance of the comment. This terminology is as follows:

- **accepted** – the comment is agreed by the Agency and any proposed amendment is wholly transferred to the revised text.
- **Partially accepted** – either the comment is only agreed in part by the Agency, or the comment is agreed by the Agency but any proposed amendment is partially transferred to the revised text.
- **noted** – the comment is acknowledged by the Agency but no change to the existing text is considered necessary.
- **not accepted** - the comment or proposed amendment is not shared by the Agency.

The resulting text highlights the changes as compared to the current rule.

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[2] Opinion 03/2011 Draft Commission Regulation (EU) No …/…. of … on Authority Requirements and Organisation Requirements. Available on the Agency website: http://easa.europa.eu/agency-measures/opinions.php.

9. The Agency's Opinion on Third Country Operators will be issued at least two months after the publication of this CRD to allow for any possible reactions of stakeholders regarding possible misunderstandings of the comments received and answers provided.

10. Such reactions should be received by the Agency not later than **26 March 2012** and should be submitted using the Comment Response Tool at http://hub.easa.europa.eu/crt.

V. Summary of responses provided to the main comments made

11. A significant number of the comments were made on the Explanatory Note.

Some commentators fear retaliation by host NAAs of the third country operators when fees are raised for their authorisation or that additional EU requirements to the applicable International Civil Aviation Organisation (ICAO) standards are imposed to such operators. In this context, some commentators consider that the assessment of third country operators as proposed is disproportionate and represents an undue burden for third country operators and should therefore be limited to a desktop review only. This desktop review should rely on the ICAO universal safety oversight audit programme (USOAP), the ICAO air operator certificate (AOC) global registry and the international operational safety audit (IOSA) program. Other comments indicated that Regulation (EC) No 2111/2005 already establishes the necessary legal instruments to protect the safety of EU citizens. A few commentators even suggested withdrawing NPA 2011-05 in its entirety.

12. The Agency understands the concerns regarding possible retaliation and has taken all expressed misgivings into careful consideration (the responses can be found in CRD 2011-05). In order to allay any concerns relating to retaliation, it should be reminded that, according to Annex 6, Part I, 4.2.2.2 and Part III, 2.2.2.2, Contracting States to the Chicago Convention have the obligation to establish a programme with procedures for the surveillance of the operation of foreign air carriers in their territory, and for taking appropriate action. The international legal framework was amended on 20 November 2008 in order to strengthen the oversight and requirements applicable to foreign operators. Many countries already have similar national regulations in place, e.g. the United States, Canada, China, the United Arab Emirates and Australia. Likewise, Article 9 of Regulation (EC) No 216/2008 mandates the European Commission to develop Implementing Rules for the authorisation of third country operators.

13. After an analysis of the national schemes in place in the EU Member States and three EASA Member States (Switzerland, Norway and Iceland) it can be concluded that the vast majority assesses operators to a lesser or greater extent . However, there are differences with regard to the level of scrutiny the States use to determine compliance with the applicable rules. Approximately 75% of the national schemes require third country operators to submit very basic documentation, e.g. a general declaration, passenger/cargo manifest, insurance details, security programme, noise certificate, AOC, operating licence, aircraft list. The national schemes also require third country aircraft to carry standard equipment as defined in Annexes 6 and 8, e.g. secondary surveillance radar (SSR), distance measuring equipment (DME), emergency locator transmitter (ELT), area navigation (RNAV) and reduced vertical separation minima (RVSM). Approximately 25% of the national schemes subject the operator to greater scrutiny by requesting it to complete a detailed questionnaire (three Member States) or by requiring it to submit more detailed information, e.g. regarding equipment used (ground proximity warning system GPWS, enhanced GPWS EGPWS), de-icing, maintenance programme, approvals for category (CAT) I, II, III approaches.

14. Part-TCO envisages a uniform assessment process of third country operators, aiming at harmonising the currently diverse national systems in the EU. In the future, a third country operator will apply only once for an authorisation, which will then be valid throughout the EU. There will be one uniform set of assessment criteria, which eliminates the risk that third country operators would be subject to conflicting requirements within

the EU. Finally, these assessment criteria will be applied by one authority, there by enhancing fairness and transparency.

15. Moreover, as explained below, the Agency will not at this point impose any additional requirements on third country operators beyond the ICAO standards. In this regard it must be underlined that the obligation to comply with internationally recognised ICAO standards should not have a considerable potential to trigger retaliatory measures by other contracting parties to the Chicago Convention.

16. As indicated in the NPA, the results of USOAP audits will play an important role in the framework of Part-TCO. However, it should be noted that, despite being a key accomplishment, the USOAP auditing programme remains limited to the assessment of states' oversight capabilities and is not suitable to monitor operators' safety records. Also the fact that the USOAP was conducted under a six-year cycle, a rather long time span to monitor potentially fast changing aviation safety matters, affects the usefulness of the current results further. However, the ICAO USOAP has evolved into the USOAP 'continuous monitoring approach' (CMA) which will improve the importance of the results considerably.

17. The establishment of a global centralised database like the ICAO international register of AOCs could, when operational, promote the standardisation of AOCs and operations specifications' formats. However, the international register of AOCs has not progressed as fast as expected. Furthermore, the details of its contents are not at this moment known in detail and it is not fully clear how ICAO envisages ensuring a uniform implementation that would provide reliable data. At this point in time the project has not advanced enough to allow complete reliance on it. Moreover, although such a register will be very useful for determining whether a third country operator actually holds a valid AOC, the Agency will assess the third country operator to verify the reliability of the originally certified information.

18. The Agency acknowledges the importance of the IOSA program. However, it will not fully rely on IOSA reports, as they are non-regulatory audits. IOSA audit organisations are private organisations accredited by IATA. The conducted audit focuses on an airline's operational procedures and documentation and includes the observation of a maintenance event, a ground handling event and a flight as observer in the cockpit. In addition, one simulator training session is observed. Furthermore, IOSA is limited to the assessment of operators and does not include the assessment of the State's capabilities on safety oversight.

19. Some commentators do not consider it acceptable under international conventions to oblige TCOs to comply with additional EU requirements that go beyond the ICAO standards. Others raised concerns about this issue in the light of possible retaliatory measures against EU operators. Some commentators believe that the additional requirements are not considered essential in terms of safety and, if necessary, such additional requirements should be negotiated when granting traffic rights. Others believe that additional requirements should be harmonised with existing regulations developed by other leading regulatory authorities, e.g. FAR 129.

20. The Agency has decided to delete all additional requirements contained in TCO.OPS.200 (in-flight fuel management), TCO.OPS.205 (pre-flight inspections) and TCO.OPS.400 (flight crew compartment security) after a review of the applicable rules for pre-flight inspections and flight crew compartment security for helicopters and due to changed circumstances related to in-flight fuel management. However, the general principle set out in Art. 9 (1) of the Basic Regulation is upheld, requiring aircraft used by third country operators to comply with the Essential Requirements set out in the Annexes to the Basic Regulation to the extent that there are no applicable ICAO standards. The importance of this general principle is reconfirmed by the aforementioned gap analysis as it detected a safety gap in respect to in-flight fuel management. The same safety gap was ascertained by ICAO's Air Navigation Commission, which now is considering a proposal to amend

Annex 6 to address in-flight fuel management. A more detailed explanation is provided in the response to comments related to additional requirements (in CRD 2011-05).

21. Although this is not currently planned, it may be necessary in the future to add additional requirements should new developments create a relevant safety gap between ICAO standards and the EU Essential Requirements. Such additional requirements would equally apply to EU operators. Therefore, the Agency reserves the right to propose additional requirements to Part-TCO if necessary in order to maintain a high level of safety.

22. As mentioned above, some commentators question whether the proposed assessment methodology observes the criteria set out in Article 9 of the Basic Regulation to assure that the authorisation process is simple, proportionate, cost-effective and efficient in all cases. Some commentators believe that the basic approach should be to only perform a desktop review for all third country operators, regardless of any doubts this review might raise regarding the operator or the State of the operator.

23. Part-TCO was drafted against the background of Article 9(5)(d) of the Basic Regulation, which prescribes that the process by which authorisations are obtained is simple, proportionate, cost-effective and efficient in all cases, allowing for requirements and compliance demonstrations proportionate to the complexity of operations and the risk involved. Part-TCO aims to find the right balance between minimising bureaucratic hurdles for international operators and ensuring a high level of safety within the EU. The Agency, therefore, foresees three different assessment categories to determine the level of scrutiny of investigation in the authorisation process. The categorisation will be based on internationally recognised safety audit reports such as ICAO USOAP, on ramp inspections and other recognised safety information. The combination of information sources and an appropriate and balanced weighing of the safety information obtained in the process will guarantee objectivity and proportionality to the greatest possible extent. The Agency agrees that the planned desktop review will clearly form the predominant element of the authorisation process. Nonetheless, the authorisation process should not become an empty shell. Its purpose is to ascertain a high level of safety in the EU. Cases may occur demanding a more detailed investigation, e.g. supply of insufficient or out-dated documentation that cannot be handled by a simple desktop review. In cases where the level of confidence cannot be established through documentation alone, consultation or on-site visits as an 'ultima ratio' might be inevitable. Article 23(1)(a) of the Basic Regulation explicitly specifies that the Agency shall conduct investigations or audits, either by itself or through national aviation authorities or qualified entities. Investigations and audits are therefore an appropriate means for the Agency to review operations by third country operators.

The assessment model would be applied as follows:

Eligible operators will be grouped into three different categories that correspond to the Agency's level of confidence into the State of Operator and the operator itself. The category provides guidance on the assessment methodology to be applied:

Assessment Category	**Level of confidence into applicant**	**Assessment methodology**
Category A	High	Simple desktop review of basic operator data (fast track)
Category B	Medium	Detailed assessment including sampling of ICAO compliance and consultation with the operator (video/phone conference, and / or interview in Cologne)

Category C	Low	Detailed assessment including sampling of ICAO compliance and on-site visit

The Agency will make use of a software enhanced assessment model in order to assign the assessment categories. The category will be based on the position of the operator in a two-dimensional matrix, in which the vertical axis represents the confidence that EASA puts into the oversight capability of the State of the Operator. The horizontal axis represents the confidence in the operator himself to contain and manage the risks evolving from his operation. In order to establish the position of the TCO in this matrix, the following numbers of weighted parameters are applied in both dimensions:

State of the Operator	**Operator:**
ICAO USOAP reports (lack of implementation); ICAO SSC (Significant Safety Concern); EU SAFA results (aggregated on State of the Operator level); FAA IASA State category Accident record (aggregated on the State of the Operator level)	EU SAFA ratio (if available); Accident history; Size, nature and complexity of the operation; Fleet data Adherence to industry standards

In addition and apart from the quantitative method to compute confidence into certificates issued by the State of the operator as determined in the model explained above, the following will be applied:

Where there is evidence that an applicant

- has an accident record justifying reasons for concern;
- has produced worrying SAFA results;
- is listed in Annex B of the Safety list (Regulation 2111/2005);
- is certified by a State who has certified at least one operator listed in Annex A of the Safety list (Regulation 2111/2005) and safety data indicate that the oversight capability of that State is impaired;
- is subject to consultations pursuant Article 3 of Regulation (EC) No 473/2006;or
- is subject to measures imposed by a Member State in accordance with Article 6 of Regulation (EC) No 2111/2005

that applicant will not qualify for category A (simple desktop review) but shall be categorised as B or C as appropriate.

Furthermore, an applicant who is certified by a State for which ICAO has issued a Significant Safety Concern (SSC) and/or who is listed in Annex A of the Safety List (Regulation 2111/2005) shall in any case be categorised as C.

Finally, the Agency will take into consideration and act in an appropriate manner on any other relevant sources of information.

24. Some commentators believe that with this NPA the Agency is *de facto* taking over oversight responsibilities from the State of the operator or the State of registry. Others indicate that safety oversight responsibilities should not be shifted from ICAO Contracting States towards the Agency.

25. The primary role in the safety oversight of any operator is that of the State of the operator that issued the AOC. The Agency will fully respect the responsibilities assigned to the State of the operator in the Chicago Convention and does not intend to take over

any of the above-mentioned responsibilities. The authorisation process for third country operators should rather be understood as a validation process that aims to verify the reliability of the originally certified information. This is necessary because evidence shows that not all States fulfil their oversight responsibilities as required under the ICAO system.

26. Some commentators believe that that the principle of mutual recognition of certificates is not sufficiently reflected in this NPA and that the Agency should recognise foreign AOCs as defined in ICAO Annex 6 Part I 4.2.2.1.

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

28. Several commentators indicate that Part-TCO and Regulation (EC) No 2111/2005[3] should be well articulated. Duplication of procedures must be avoided and therefore the two processes should be clearly differentiated. It was also indicated that on-site visits should only be performed in the framework of Regulation (EC) No 2111/2005. Some commentators believe that there should be coordination between consideration of lifting bans imposed under Regulation (EC) No 2111/2005 and the issue of TCO authorisations. It was held to be sensible for applications from airlines subject to an operating ban to be considered as part of the process for removing operating bans.

29. The Agency confirms that the interplay of Regulation (EC) No 2111/2005 and Part-TCO indeed needs to be coordinated accordingly. The processes will be aligned and synchronised in order to ensure a seamless integration avoiding contradictory measures and with clearly allocated competencies. For this purpose the Agency has made several modifications to the provisions in Part-TCO and Part-ART. A more detailed explanation is provided below. The European Commission and the Agency will continue to cooperate closely ensuring that both regulations will be well-coordinated and will not produce conflicting results.

30. Commentators fear in general that the fees intended to be raised by the Agency will result in third countries imposing reciprocal fees for the approval of EU operators, and that, therefore, Part-TCO will lead to increased costs for EU operators.

31. The issue of fees falls outside the scope of this CRD. However, the many concerns raised will be carefully considered and assessed in the course of the amendment of Commission

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

Regulation (EC) No 593/2007[4], the so-called 'Fees & Charges Regulation' in which all details will be defined.

32. Some commentators believe that the relation between provisions of existing Air Service Agreements (ASAs) and Part-TCO is not clearly defined.

33. Traditionally, international air services had always been governed by ASAs between states. In November 2002, the European Court of Justice found that if an ASA between a Member State and a third country permits designation only of companies owned and controlled by nationals of the signatory EU Member State, such designation is discriminatory and is in breach of EC law. As a result, every EU Member State is required to grant equal market access for routes to destinations outside the EU to any EU operator with an establishment on its territory. ASAs between the EU Member States and their bilateral partner States must be amended to reflect this. The so-called 'open skies' judgments also reflected the fact that some articles contained in bilateral air services agreements are of exclusive Community competence and, in consequence, should not be negotiated by the Member States on an autonomous basis. At the June 2003 Transport Council, the Commission and the Member States agreed on the modalities to solve the issues identified by the Court. Two methods were identified for amending the existing bilateral air services agreements: either bilateral negotiations between each Member State concerned and its partners, amending each bilateral ASA separately, or the negotiation of single 'horizontal' agreements, with the Commission acting on a mandate of the Member States of the EU. Each 'horizontal' agreement aims at amending relevant provisions of all existing bilateral ASAs in the context of a single negotiation with one third country.

The 'open skies' judgements marked thus the start of an EU external aviation policy as the EU Member States cannot act in isolation when negotiating ASAs.

The essential point in ASAs is the reciprocal exchange of traffic rights without the necessity of obtaining prior diplomatic permission from another State. The major provisions in ASAs are primarily based on political and economic considerations and traditionally relate to traffic rights, frequencies, capacity, routes, etc. This economic freedom is not identical to an absolute freedom to fly without regulation. The international ICAO standards as well as the national laws of the granting State have to be respected. This principle is also reflected in separate provisions incorporated in most bilateral agreements. The technical 'TCO authorisation' is therefore a prerequisite in the process of obtaining an operating authorisation from the respective EU Member State. The provisions that set the criteria for the operating authorisation and for its revocation/ suspension within the ASAs require the Contracting State to grant to the designated foreign operator the appropriate operating authorisation 'without delay' or 'with minimum procedural delay'. To this date the technical authorisation of foreign air operators has been handled by the respective EU Member State. Each Member State has used its own validation system, e.g. the issuance of questionnaires to a foreign operator as indicated in paragraph 13. When Part-TCO becomes applicable, the competence for this purely technical permission will be executed by the Agency in order to simplify and streamline the procedures of the various national systems within the EU. Furthermore, transition measures have been inserted into the proposal in order to ease the introduction of the new Regulation without delaying issuance of authorisations. A more detailed explanation is provided below in the response to comments related to Air Service Agreements.

VI. Changes compared to the NPA

34. As explained in paragraph 5, all relevant requirements for the authorisation and oversight of third country operators previously contained in Sections I to III of Part-AR.GEN and Subpart AR-TCO (as presented in NPA 2011-05) have been merged. Part-ART contains

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

now all the requirements applicable to the Agency for the initial assessment and continued oversight of third country operations into, within or out of the EU.

35. TCO.GEN.100 'Scope', TCO.GEN.105 'Definitions' and TCO.GEN.110 'Eligibility' have been transferred to the 'Cover Regulation'.

36. The Agency has decided to delete all additional requirements (beyond the ICAO standards) contained in TCO.OPS.200 (in-flight fuel management), TCO.OPS.205 (pre-flight inspections) and TCO.OPS.400 (flight crew compartment security) because of recent developments (see paragraph 20).

37. A new provision has been introduced ensuring that the Agency is timely informed of safety-relevant serious incidents and accidents involving aircraft used by operators authorised under Part-TCO, without prejudice to other occurrence reporting requirements. The background of this provision is described as a specific issue in paragraph 47 below.

38. Moreover, there were rules in the NPA version that are or will be covered by other Parts, e.g. Part-SERA (Standardised European Rules of the Air), and have therefore been removed.

39. For some rules, it was considered appropriate that the rule text is aligned with the rule in Part-ORO and Part-ARO (as presented in Opinion 04/2011). Such alignments are described as specific issues further below.

VII. TCO.GEN: Subpart I

40. This subpart contains general requirements for third country operators conducting Commercial Air Transport.

Most rules in this Subpart correspond to the former rules of NPA TCO.GEN.

Specific issues

TCO.GEN.105 Definitions (transferred to Cover Regulation)

41. For reasons of consistency the definition of principal place of business has been aligned with the definition established in Regulation (EC) No 1702/2003[5], Regulation (EC) No 2042/2003[6] and the Draft Regulation on Authority Requirements and Organisation Requirements[7].

TCO.GEN.110 Eligibility (transferred to Cover Regulation)

42. This provision has been amended for reasons of clarity. The intention of this provision is to make it possible for the Agency to reject an application without assessing the operator's compliance with the applicable rules. To reflect this intention, the wording 'be eligible for an authorisation' has been changed into 'not be admissible'.

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5 Commission Regulation (EC) No 1702/2003 of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations (Part-21) (OJ L 243, 27.9.2003, p. 6). Regulation as last amended by Regulation (EC) No 1194/2009 (OJ L 321, 8.12.2009, p. 5).

6 Commission Regulation (EC) 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks (OJ L 315, 28.11.2003, p. 1). Regulation as last amended by Regulation (EU) No 962/2010 of 26 October 2010 (OJ L 281, 27.10.2010, p. 78).

7 See under: http://www.easa.europa.eu/agency-measures/opinions.php.

The associated GM1 has been redrafted to cater for the ad-hoc nature of non-scheduled operations.

The modification to paragraph TCO.GEN.110 (a)(1) is reflecting the Agency's current position that it will assess applications of operators included on the EU Safety list (Regulation (EC) No 2111/2005) as a result of safety deficiencies on the part of the operator itself.

TCO.GEN.115 Means of compliance

43. This requirement was amended to align with ORO.GEN.120.

TCO.GEN.120 Access

44. In paragraph (b) the wording 'any person authorised' was added to align it with paragraph (a).

TCO.GEN.125 Findings

45. This provision has been amended to align with ORO.GEN.150.

The associated GM1 has been redrafted and contains a definition of 'corrective action'.

VIII. TCO.OPS: Subpart II

46. This subpart contains operational requirements for third country operators conducting Commercial Air Transport.

47. As mentioned above, all additional requirements contained in TCO.OPS.200 (in-flight fuel management), TCO.OPS.205 (pre-flight inspections) and TCO.OPS.400 (flight crew compartment security) have been removed after a review of the applicable rules for pre-flight inspections and flight crew compartment security for helicopters and due to changed circumstances related to in-flight fuel management.

TCO.OPS.100 General Requirements

48. After analysis of the various existing and officially available data sources, the Agency concludes that there is currently no single accessible central safety data repository holding, without undue time delay after serious incidents or accidents, validated data for the purpose of continuous oversight of third country operators and regardless of State of occurrence or State of design of the equipment involved. Therefore, a new paragraph (e) has been introduced ensuring that the Agency is timely informed on safety-relevant serious incidents and accidents involving aircraft used by operators authorised under Part-TCO, without prejudice to other occurrence reporting requirements. Such occurrences need to be evaluated by the Agency without delay in view of their relevance to the authorisation and the associated specifications it has issued.

49. A new GM1 TCO.OPS.100 has been introduced clarifying that a third country operator wet leasing-in aircraft of another third country operator should ensure that the latter also holds an authorisation issued in accordance with Part-TCO.

TCO.OPS.200 In-flight fuel management

50. The Agency has decided to delete TCO.OPS.200. In the future this requirement will be covered by a new ICAO Standard Annex 6, Part I, 4.3.7 'In-flight fuel management'. The proposal to amend Annex 6 will fully cover the scope of TCO.OPS.200 and is envisaged for applicability on 15 November 2012 (see ICAO Ref.: SP 59/4.1-11/8).

TCO.OPS.205 Pre-flight inspections

51. Pre-flight checks are not only considered common practice, but are based on ICAO Annex 6 Part I Standard 4.3.1 (a) and Part II Standard 2.2.3.1 for aeroplanes and Part III standards 2.3.1 (a) and 2.4 (a) for helicopters. The Agency interprets these ICAO standards as to implicitly include pre-flight checks and therefore deleted TCO.OPS.205.

TCO.OPS.210 Use of air traffic services

52. This provision has been deleted because it is already imbedded in the airspace classification as defined in Part-SERA-B and addressed in other parts of Part-SERA.

TCO.OPS.200 (TCO.OPS.300) Navigation, communication and surveillance equipment

53. This provision has been kept as it will remind third country operators to check the relevant provisions. It also provides for the necessary provisions for TCO to, when applying for an authorisation, also declare that they are equipped and, if applicable, hold the necessary operational approval as required by the SES interoperability rules (e.g. 8.33 kHz channel spacing, Data link, Mode S and ADS-B).

TCO.OPS.400 Security

54. Concerning fight crew compartment security for helicopters, the Agency has reviewed the gap analysis on this specific requirement and has consequently decided to delete provision TCO.OPS.400. The Essential Requirement 8.d.(i) is sufficiently covered by Annex 10(1)(a) of Regulation (EC) 300/2008[8] which is also applicable to third country operators.

TCO.OPS.205 (TCO.OPS.500) Documents, manuals and records to be carried

55. Paragraph (a)(2) has been deleted from this subpart as the Agency agrees with the comments received that alternative means of demonstrating a valid TCO authorisation including associated specifications should be acceptable under the condition that the documents can be produced without undue delay. The Agency will further investigate these alternative means when amending Subpart ARO.RAMP in the course of rulemaking task OPS.087.

IX. TCO.AUT: Subpart III – Authorisation of third country operators

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

[8] Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002.

TCO.AUT.100 Application for an authorisation

57. The obligation to submit an application 90 days in advance of the intended operation has been transferred from the related AMC1 to TCO.AUT.100. This to ensure that an operator submits an application timely enough, allowing the Agency to assess the operator in accordance with Part-TCO. The related AMC1 has been deleted. However, in case there are no significant safety concerns with regard to the State of the operator or the operator itself and the operator can demonstrate that there is an unexpected urgent operational need, the Agency may decide to process an application that is not submitted 90 days before the date of intended operation.

58. This provision contains also a new subparagraph (c)(2) obliging the operator to submit a completed questionnaire together with the application.

59. Paragraph (c)(4) has been slightly amended and transferred to paragraph (d) due to the comments received.

60. A new paragraph (c)(4) has been introduced containing a requirement for the third country operator to provide information on its registration. This information will be used by the Agency as evidence confirming the principal place of business of the operator.

TCO.AUT.110 Changes

61. This provision has been aligned with ORO.GEN.130. Paragraph (b) has been amended to ensure that an operator submits an application timely enough allowing the Agency to assess the operator in accordance with Part-TCO (see also paragraph 57). The obligation for the operator to establish procedures for the management of all changes not requiring prior approval has not been transferred to Part-TCO because this is considered an unnecessary interference with the responsibilities of the State of the operator. The related AMC1 has been deleted as it is considered to be redundant.

TCO.AUT.115 Continued validity

Paragraph (a)(6) has been amended for reasons of clarity.

X. Part-ART

62. As mentioned in paragraphs 5 and 34, all relevant requirements for the authorisation and oversight of third country operators previously contained in sections I to III in Part-AR.GEN and Subpart AR-TCO have been merged and transferred to a new Part (Part-ART).

63. Only the requirements of AR.GEN considered being relevant for the assessment of third country operators have been transferred to Part-ART. This means that ARO.GEN. 115 ‘Oversight Documentation’, ARO.GEN. 120(a), (b) and (c) ‘Means of Compliance’, ARO.GEN.125 ‘Information to the Agency’, ARO.GEN.135 ‘Immediate reaction of a safety problem’, ARO.GEN.200 ‘Management System’, ARO.GEN.205 ‘Allocation of tasks’, ARO.GEN.210 ‘Changes in the management system’ ARO.GEN.345 ‘Declaration-Organisation’ ARO.GEN.355 ‘Findings and enforcement measures – persons’ have not been incorporated in Part-ART.

64. Furthermore, as already stated in paragraph 25, the responsibilities assigned to the Agency in the Basic Regulation for third country operators cannot be considered the same as the ones assigned to the State of the operator in the Chicago Convention. The authorisation process for foreign operators should rather be understood as a validation process that aims to verify the reliability of the originally certified information. The requirements in AR.GEN were developed against a different background as they will be applicable to the competent authorities of EU Member States for the initial certification and continued oversight of organisations and persons under their responsibility. This means that not all elements of the requirements defined in ARO.GEN are appropriate for

the assessment of third country operators. For this purpose, the Agency has modified and tailored the requirements where necessary.

XI. Subpart ART.GEN

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

ART.GEN.100 Scope

66. This provision defines the general applicability of this Part.

ART.GEN.105 Means of compliance

67. This provision has been aligned with ARO.GEN.120.

ART.GEN.110 Information to the Commission and Member States

68. By including a reference to 'the Member State' in paragraph (b), it has been ensured that the competent authorities of the Member States will be fully informed on the status of third country operators operating in the EU.

69. A new paragraph has been added to reflect the change made in TCO.GEN.110 (transferred to Cover Regulation). As the Agency will assess applications made by operators banned from the EU or being subject to operational restrictions pursuant Regulation (EC) No 2111/2005 as a result of safety deficiencies on the part of the operator itself, it will inform the Commission and the Member States of the outcome of such an assessment. This is to allow the Commission and the Member States to take the appropriate measures in accordance with Regulation (EC) No 2111/2005.

ART.GEN.115 Record-keeping

70. Subparagraphs (1), (3) and (5) to (11) of ARO.GEN.220 are not relevant for Part-ART and, consequently, have not been transferred to Part-ART.

71. Furthermore, this provision has been modified to cater for keeping records related to initial authorisation, oversight and enforcement measures with regard to third country operators.

ART.GEN.200 Initial evaluation procedure

72. Some editorial modifications have been made, but the intent of the provision has been kept.

73. Paragraph (a)(2) has been removed as the identification of ICAO standards is already part of the assessment for determining whether or not to accept mitigating measures established by the State of the operator or registry in case of notified differences in accordance with Article 38 of the Chicago Convention.

74. A new paragraph (d)(2) has been added to reflect the change made in TCO.GEN.110 (transferred to Cover Regulation) 'eligibility'. In case an eligible applicant is subject to an operating ban, the Agency will conduct further investigations or an audit.

75. Subparagraph (d)(4) and (9) have been merged. The Agency will perform investigations or audits if there is evidence from investigations made in the context of Regulation (EC) No 2111/2005 or ICAO USOAP that the overseeing state does not perform adequate safety oversight.

76. The text ‘or other reliable sources’ has been added in subparagraph (d)(9) because an investigation or audit could also be triggered by information on findings from other validated sources.

77. The intention of the modification of subparagraph (d)(10) is to make it clearer that only serious incidents occurred in the 24 months previous to the date of application will be considered as safety relevant and that not all serious incidents warrant an investigation or audit.

ART.GEN.205 Issue of an authorisation

78. Paragraph (a)(5) has been modified in order to ensure that an authorisation will only be issued when there is no evidence of major systemic deficiencies in the oversight of the State of the operator that has a negative impact on the performance of the operator.

79. The NPA text of paragraph (a)(5) has been deleted as it is considered to be redundant.

80. Paragraph (c) has been deleted as well. The Agency shall state in the authorisation that its validity is without prejudice to any operational restriction taken pursuant to Regulation (EC) No 2111/2005.

ART.GEN.210 Oversight

81. This provision is a result of the merge between AR.GEN.300 and AR.TCO 210. As already indicated in paragraph 5,only the requirements of AR.GEN.300 considered being relevant or appropriate for the oversight of third country operators have been transferred to Part-ART. In addition, a new paragraph (b)(5) has been introduced to complete the assessment criteria for oversight of third country operators.

ART.GEN.215 Oversight programme

82. This provision is a result of the merge between AR.GEN.310 and AR.TCO.215. Only the requirements of AR.GEN.305 considered being relevant or appropriate for the oversight programme have been transferred to Part-ART.

ART.GEN.220 Changes

83. This provision has been aligned with ARO.GEN.330.

ART.GEN.225 Findings and corrective actions

84. This provision is a result of the merge between AR.GEN.350 and AR.TCO.225. Only the requirements of AR.GEN.350 considered being relevant or appropriate for findings and corrective actions have been transferred to Part-ART. Paragraph (b) contained in previous AR.TCO.225 has been deleted as this reference is considered to be redundant.

85. A new paragraph (b)(2) has been introduced making clear that a level 1 finding will be raised in case the Agency cannot assess the operators continuous compliance with the applicable requirements at the operator’s facilities, without compromising the security of its personnel. Paragraph (b)(3) has been modified to ensure that a level 1 finding will be raised when there is evidence of major systemic deficiencies in the oversight of the State of the operator that has a negative impact on the performance of the operator.

X. CRD table of comments and responses

(General comments)	-

comment	*2* comment by:*Lazeta - Croatian CAA* Althought ICAO Doc 8335 defines asessment of an Operator there is a good rationale behind accepting State System evaluation instead of the system where each operator is evaluated. Due to the fact that significant diference in level of implmentation of EASA IR's exists in different Third Countries (which can be confirmed by EASA Standardization audits performed in countries who have Working Arrangement with EASA, and which signed ECAA, or even closed Phase I of the ECAA, FAA Category,..etc.), provision for evaluation of specific Country as a first step in process should be enabled in this NPA, in order to avoid unnecessary additional Safety asessment of each Operator of that Country. That means if EASA Safety Asessment of the Country shows that the system in that Country ensures acceptable level of Safety (based on EASA Standardization results, ICAO USOAP, FAA IASA), then there is no need to perform Safety asessment of an Operator from that Country. This would simplify the process, decrease financial burden for operators, and would mean that EASA has confidence in ICAO's, NAA's, FAA's, and its own Standardization visits results.
response	*Not accepted* The European Common Aviation Area (ECAA) Agreement foresees a gradual integration of the ECAA Associated Parties into the European air transport market. The integration requires a full regulatory harmonisation through the implementation of EU aviation legislation (‘acquis’). The transition will be facilitated by being carried out in phases, each subject to assessment. Based on these assessments, the European Union formally decides that the Associated Party qualifies for full inclusion in the European Common Aviation Area, Art. 27 (4) of the ECAA Agreement. This decision would confirm that the concerned Party has adopted and applies Community Law in the field covered by Regulation (EC) No 216/2008 and its Implementing Rules, (Art. 66). The respective ECAA Party would consequently not be within the scope of Part-TCO anymore. In the meantime operators can apply for transition rights. Moreover, the results of inspections carried out in the context of Regulation (EC) No 736/2006 will be taken into account when allocating an assessment category to an operator of an ECAA country. The approach proposed in this comment does not reflect the high level of safety that is inherent in the authorisation process developed by the Agency. The cumulative assessment of the operator and the state of the operator guarantees a high level of safety in the European Union. Cases may occur in which the state of the operator issues an AOC to an operator with questionable safety records. Sudden changes may shake the Agency’s confidence in either the state or the operator. Considering both the state and the operator in the assessment process is realistic and will ensure a high level of safety.

comment	*22* comment by: *UK CAA* **Page No:** General **comment:** It is not clear what role, if any, Member State competent authorities will have in enforcing the requirement for a part TCO authorisation. Will competent authorities generally be expected to check whether operators using the Member State's airspace or landing at airports have a valid TCO authorisation? Is this to be checked under the requirements replacing SAFA provisions? The scope of subpart AR.TCO, according to AR.TCO.100, covers only administrative requirements to be followed by the Agency. **Justification:** Clarity on the relationship with other rules is desirable.
response	*Accepted* Subpart ARO.RAMP applies to all third country operators, including the ones authorised by the Agency, landing at aerodromes in the EU. There is a need to establish guidance material to Subpart ARO.RAMP on the role of Member States and SAFA inspectors providing guidance in case a third country operator engaging in commercial air transport does not hold a valid TCO authorisation. In addition, it is envisaged to publish on the Internet a list of authorised third country operators accessible for example to Member States and SAFA inspectors.

comment	*28* comment by: *AAPA* The Association of Asia Pacific Airlines (AAPA) appreciates this opportunity to submit comments on the EASA NPA consultation on proposals on establishing Implementing Rules (IR), Acceptable Means of Compliance (AMC), Guidance Material on Third Country Operators (TCO), with the stated main objective "To establish in the form of Essential Requirements, high level safety objectives to be achieved by regulating the operation of most aircraft flying in the airspace covered by the Treaty, including aircraft registered in third countries". The AAPA is the leading trade association for scheduled international air carriers based in the Asia Pacific region. Collectively, the region's airlines carry 620 million passengers and 18 million tonnes of cargo, representing one-quarter of global passenger traffic and two-fifths of global air cargo traffic respectively. Many major Asia Pacific carriers safely and successfully operate scheduled long haul services to European destinations.
response	*Noted*

comment	*93* comment by: *CAAC* **comments from CAAC on the Decisions related to Third Country Operators** With reference to the Notice of Proposed Amendment (NPA) No 2011-05, CAAC would like to bring up with a few points for consideration: 1. It is not reasonable to charge for eligibility check; 2. We understand that In Appendix 2, items 3.a.4 / 3.a.9 / 6.b / 8.d(i) exceed the corresponding ICAO standards, it might be necessary to allow

the transition period before fully meeting these requirements; how will EASA address these items during the transition period? Will any exemption or deviation be considered? Could we have the explanation on why EASA impose higher TCO requirements than ICAO standards?

3. The Item 7.b (ii) indicates that TCOs will be periodically assessed for medical fitness to safely exercise their assigned safety duties. Compliance must be shown by appropriate assessment based on aero-medical best practice. But we also noticed that there is the specific remarks mentioning the compliance with ICAO standards will be sufficient. Will EASA amend this item accordingly or provide any clarification over this item?

4. In the Annex 1 Section II (d), it is indicated that EASA shall conduct further investigations or an audit of the TCOs when other operators of the State of the operator are subject to an operating ban pursuant to Regulation (EC) No 2111/2005, CAAC thinks this item will likely bring unnecessary impact on other competent TCOs if they will be required to undergo investigation or audit as a result that other TCO in the country is against relevant regulations. It is recommended that EASA re-consider this item.

5. In Appendix 2, Item 8.d (i) indicates the security of the flight crew compartment which is less prescriptive but compatible with ICAO standards. But some Chinese cargo aircrafts are not equipped with flight crew compartment door which has been approved by CAAC for deviation. How EASA is going to address this type of issue?

6. It is recommended that the planned on-site inspection on TCO should be informed to and coordinated with the responsible CAA so as to avoid the duplicated inspection and possible burden which may impose on the TCO;

7. Given the envision on the potentially increased burden on TCO's documentation management resulting from the requirement on carriage TCO Authorization and Operations Specification on every airplane, it is suggested that TCO enjoy the right to opt the placement of TCO Authorization and Operations Specification (either on airplane or in the operational station office) as long as the two documents could be presented during the inspection;

8. Considering the TCO Authorization will be issued by EASA upon satisfaction on inspection while the Bilateral Agreement and Flight Schedule have been signed and approved by individual EC Member State, the necessary statements and/or clarifications on priority and relations should be considered and provided so as to address or avoid the conflicts between Bilateral Interests and TCO Authorization in the course of the new decision implementation.

9. Given the fact that EASA can only issue 850 TCO Authorizations in the first round, a transition plan has been accordingly developed: 8 April 2010 – 31 December 2012 is the Registration Phase; 1 January 2013 – 31 December 2014 will be the Technical Evaluation as well as TCO-AR Granting Phase; after that, the continuous oversight of all the TCOs has been planned. It is anticipated that there will be around 425 TCOs every year to apply for the TCO-AR during the initial phase (2013-2014), slow process on the TCO-AR application due to the tremendous workload is consequently foreseen. Plus the fact that the TCO can only operate within or over EU community after being granted with the TCO-AR, how to keep TCOs' operations to or within EU community without unreasonable impediments is the commonly shared concern.

We hope the above feedbacks/comments could be clarified, considered and addressed before the TCO regulation is being implemented.

Flight standards Department

Civil Aviation Administration of China

response

Noted

Response to comment 1): not accepted. The response to the present comment falls outside the scope of this CRD. Details related to fees will be discussed through an amendment of Commission Regulation (EC) No 593/2007, the so called 'Fees & Charges Regulation'. Although questions related to fees and charges will be discussed separately, it can already be anticipated that it is not foreseen to charge operators applying for a third country operator authorisation in the case of a negative outcome of the eligibility check.

Response to comment 2): partially accepted. The Essential Requirement 3.a.4, as Appendix 2 to the NPA 2011-05 shows, has not been translated into an additional requirement. NPA 2011-05 proposes the implementation of three additional requirements, which according to the gap analysis, were not covered by an applicable ICAO standard. The identified gaps concerned in-flight fuel management, pre-flight inspections and compartment security for helicopters. In the view of changing circumstances the Agency has reconsidered those three additional requirements:

- Concerning in-flight fuel management, the Agency has decided to delete TCO.OPS.200 without replacement. In the future this requirement will be covered by a new ICAO Standard: Annex 6, Part I, 4.3.7 'In-flight fuel management'. The proposal to amend Annex 6 will fully cover the scope of TCO.OPS.200 and is envisaged for applicability on 15 November 2012 (see ICAO Ref.: SP 59/4.1-11/8). The Agency welcomes the proposal, which at the same time reaffirms the Agency's assessment of the relevant safety gaps in the gap analysis as published in appendices 2 and 3 of NPA 2011-05.

- Concerning pre-flight inspections, the Agency reviewed the gap analysis conducted for Part-TCO and will consequently delete TCO.OPS.205. Pre-flight checks are not only considered common practice, but are based on ICAO Annex 6, for aeroplanes in Part I, 4.3.1 (a) and Part II 2.2.3.1 and for helicopters in Part III 2.3.1 (a) and 2.4 (a). The Agency interprets these ICAO standards as to implicitly include pre-flight checks.

- Concerning fight crew compartment security for helicopters, the Agency has reviewed the gap analysis on this specific requirement and has consequently decided to delete provision TCO.OPS.400. The Essential Requirement 8.d.(i) is sufficiently covered by Annex 10(1)(a) of Regulation (EC) 300/2008.

As stated above the decision to delete TCO.OPS.200, TCO.OPS.205 and TCO.OPS.400 is based on a review of the applicable rules for pre-flight inspections and flight crew compartment security for helicopters anddue to changed circumstances related to in-flight-fuel management.. The general principle set out in Art. 9 (1) of Regulation (EC) No 216/2008 is however upheld, requiring aircraft used by third country operators to comply with the Essential Requirements set out in the Annexes to the Regulation (EC) No 216/2008 to the extent that there are no applicable ICAO standards. The importance of this general principle is reconfirmed by the gap analysis conducted for Part-TCO. The gap analysis detected a safety gap in respect to in-flight fuel management. The same safety gap was ascertained by ICAO's Air Navigation Commission, which is now considering a proposal to amend Annex 6.

Although this is not currently planned, it may be necessary in the future to add additional requirements should new developments create a relevant safety gap between ICAO standards and the EU Essential Requirements. Such additional requirements would equally apply to EU operators. Therefore, the Agency reserves the right to propose additional requirements to Part-TCO if necessary, in order to maintain a high level of safety.

Response to comment 3): not accepted. Although Essential Requirement 7 (b) (ii) relating to medical assessment of cabin crew members is not fully covered by ICAO standards, the Agency decided not to impose an additional requirement on third country operators. Regulation (EC) No 216/2008 calls for a proportionate authorisation process and the Agency considers the adherence to internationally agreed ICAO standards by third country operators to be sufficient in this respect.

Response to comment 4): not accepted. Continuous safety oversight of an operator by the State of the operator is a vital part of the responsibility of that state to ensure that the required standard of operation is maintained. The requirement in question is based on the premise that an operator, which was listed on the 'Community List of air carriers subject to an operating ban within the Community', should not have received an AOC from the state of the operator in the first place or that the state of the operator should have withdrawn the AOC considering the given serious safety deficiencies. This order of events indicates that the state of the operator did not properly fulfil its safety oversight responsibilities. The inclusion of an operator in the Community list will, however, not *per se* impact on other operators of the same state. Therefore, the Agency will have to ensure that the minimum safety standards are complied with, leading to the recognition of the AOC and to an authorisation for operations by the third country operator.

Response to comment 5): See the response to comment # 2 of comment #93. The Agency has reviewed the gap analysis pertaining to fight crew compartment security for helicopters and has consequently decided to delete provision TCO.OPS.400. The Essential Requirement 8.d.(i) is covered by Annex 10(1)(a) of Regulation (EC) 300/2008).In case an ICAO contracting state has notified a difference to ICAO with regard to Annex 6, Part I, 13.2.2'Security of the flight crew compartment' the Agency may accept mitigating measures established by the State of the operator or the State of registry when these measures ensure an equivalent level of safety to that achieved by the standard to which differences have been notified to ICAO.

Response to comment 6): partially accepted. While it is planned to routinely notify the competent authority of an applicant in case of an on-site TCO inspection, a coordination of inspection activities with the competent authority is not foreseen. It is at the discretion of the competent authority of the applicant to dispatch an observer if so desired.

Response to comment 7): accepted. Alternative means of demonstrating a valid TCO authorisation including associated specifications should be acceptable under the condition that the documents can be produced during an inspection.

Response to comment 8): noted. Part-TCO envisages that the Agency will promptly inform Member States of applications it has rejected or Authorisations it has issued, limited, suspended or revoked.

Response to comment 9): noted. Transitional rights will allow operators to continue to operate without interruption and without an authorisation being issued until the end of the transition period as defined in the future Cover Regulation to Part-TCO.

comment *98* comment by:*CAA Finland*

CAA Finland would like to see the proposed concept/method for TCO authorisation reviewed from the perspective of;

- cost effectiveness

	- bureaucracy - additional safety value - proportionality. As a baseline, TCO authorisations should be only a “desk top exercise” based on submitted documentation and other available information (ICAO/USOAP, Ramp inspections,...) When it comes to requirements that go further than ICAO standards, CAA Finland underlines that extra requirements for third country operators should only be set in the rare cases where there are absolutely necessary safety reasons. Uniform rules are essential for international air transport. There is a great risk that third countries also start to apply reciprocally their own extra requirements to foreign (including European) carriers. Europe must protect the uniformity of the global air transport system where airlines can operate world-wide by applying ICAO standards. Whenever new requirements are needed, the ICAO SARPs machinery is the proper method for their introduction. Lastly, the issue of insurance coverage is not taken up in the NPA. Regulation 785/2004 designates the responsibility for the oversight of appropriate insurance coverage to the Member States affected. However, it might not be totally clear if the insurance issue is covered here under operations specifications related to the AOC. Therefore, the Opinion should be clarified in this respect.
response	The comment concerning the request to limit the authorisation process to a desktop review is not accepted. Art. 9 (5)(d) of Regulation (EC) No 216/2008 prescribes that the process by which authorisations are obtained is simple, proportionate, cost-effective and efficient in all cases, allowing for requirements and compliance demonstrations proportionate to the complexity of operations and the risk involved. Part-TCO was drafted against this background aiming to find the right balance between minimising bureaucratic hurdles for international operators and ensuring a high level of safety within the European Union. The proposal, therefore, foresees three different assessment categories to determine the level of scrutiny of investigation in the authorisation process. The categorisation will be based on internationally recognised safety audit reports such as ICAO USOAP, on ramp inspections and other recognised information on safety aspects. The combination of information sources and an appropriate and balanced weighing of the safety information obtained in the process will guarantee objectivity and proportionality to the greatest possible extent. The Agency agrees that the planned desktop review will clearly form the predominant part within the authorisation process. However, the authorisation process should not become an empty shell. Its purpose is to ascertain a high level of safety in the EU. Cases may occur demanding a more detailed investigation, e.g. cases with insufficient or out-dated documentation that cannot be handled by a simple desktop review. In cases where the level of confidence cannot be established through the documentation alone, consultations or on-site visits as an ‘*ultima ratio*’ might be inevitable. Article 23 (1) (a) of Regulation (EC) No 216/2008 explicitly specifies that the Agency shall conduct investigations or audits, either by itself or through national aviation authorities or qualified entities. Investigations and audits are therefore an appropriate means for the Agency to review operations by third country operators. The part of the comment relating to retaliation concerns is not accepted. The Agency understands the retaliation concerns voiced and has taken all

expressed misgivings into careful consideration. In order to allay any concerns relating to retaliation, it should be reminded that according to Annex 6 Part I 4.2.2.2 Contracting States to the Chicago Convention have an obligation to establish a programme with procedures for the surveillance of the operation of foreign air carriers in their territory, and for taking appropriate action. The international legal framework was amended on 20 November 2008 in order to strengthen the oversight of and requirements for foreign operators. Many other countries already have similar national regulations in place, e.g. the United States, Canada, China, the United Arab Emirates and Australia. Likewise Article 9 of Regulation (EC) No 216/2008 mandates the European Commission to develop Implementing Rules for the authorisation of third country operators. Moreover, all EU Member States have validation systems in place in order to maintain a high level of safety.

As explained in response to comment #93, the Agency will at this point not impose any additional requirements on top of ICAO standards on foreign operators. It must be underlined that the requirement to comply with internationally recognised ICAO standards has no considerable potential to trigger retaliation measures by other Contracting Parties to the Chicago Convention.

The part of the comment questioning the regulation of 'additional requirement' is partially accepted. Please see response to comment #93.

The part of the comment relating to insurance requirements is not accepted. Insurance requirements do not form part of the core safety tasks assigned to the Agency in Regulation (EC) No 216/2008. The competency for insurance questions will remain a Member State responsibility, as Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators determines and thus falls outside the remit of Regulation (EC) No 216/2008.

comment *110* comment by: *UK Department for Transport*

The Chicago Convention requires that there should be no discrimination between airlines operating on the same route. It could be argued that imposing a TCO to obtain an EASA safety permit before flying to the EU, especially while there is an added cost and time delay, is showing discrimination towards TCO's as EU airlines would not be required to obtain an EASA safety permit.

Article 22 of the Chicago Convention asks that contracting states adopt all practicable measures..... to prevent unnecessary delays ..... especially in the administartion of laws relating to .....clearance" It could be argued that the EASA TCO regulations were in breach of this.

Policing the scheme

Once the legislation is in place what will be the costs of policing the scheme? There is no impact assessment on the costs of policing, these cost implications should be quantified and included in the opinion.

response *Not accepted*

The Agency does not share the view that third country operators might be discriminated in comparison to EU operators, which are not required to obtain a third country operator authorisation for operating within the EU. Obviously, European operators are bound to much stricter rules than third country operators when operating in the EU territory. Part-TCO simplifies the process

for third country operators and requires only one application from one authority (the Agency) for the entire territory of the European Union. Transition rights will additionally ensure a continuous and smooth transition.

Article 22 of the Chicago Convention does not prevent a Contracting State from requiring third country operators to obtain prior approval for entry its territory. In fact, numerous non-EU ICAO Contracting States make use of such an approval scheme for foreign operators, e.g. China, Canada, Australia, and the United States. Also, the vast majority of EU Member States assess operators to a greater or lesser extent. Art. 22 of the Chicago Convention aims at facilitating international air traffic through the facilitation of formalities. Each Contracting State agrees to adopt all 'practicable measures' to 'facilitate and expedite navigation'. The ICAO Council approved as early as 5 June 1958 a statement by the Air Transport Committee on 'Aims and Objectives of ICAO in the Field of Facilitation' stating, that 'the principal means by which this aim can be accomplished are simplified and uniform procedures […]'. As explained above, the exact purpose of Part-TCO is to simplify and streamline the existing 27 differing systems applied by the EU Member States and to create one set of criteria that applies throughout the EU. Furthermore, according to ICAO Annex 6, Part I, 4.2.2.2 Contracting States to the Chicago Convention have an obligation to establish a programme with procedures for the surveillance of the operation of foreign air carriers in their territory, and for taking appropriate action. The international legal framework was amended on 20 November 2008 in order to strengthen the oversight and requirements of foreign operators. In this context, ICAO Doc 8335 was developed to provide Contracting States with global guidance when developing legislation regarding the inspection and the approval of foreign operators.

The costs for policing third country operators were not part of the Regulatory Impact Assessment (RIA) because the SAFA programme, which objective is to enforce ICAO standards, is already in place and will be used in the future as well. The SAFA directive and its implementing rules have been incorporated in Subpart ARO.RAMP, which has been subject to public consultation (Opinion 04/2011).

comment *111* comment by: *Federal Office of Civil Aviation (FOCA), Switzerland*

1. The principle of Art. 33 of the Chicago Convention should be respected. Therefore, the necessity of excessive investigation of valid certificates and licences issued and rendered valid by a third state, which is a member of ICAO, shall be limited. Further investigation should only be performed in cases, where it is obvious that third country certificates can not be accepted by way of simple recognition.

2. Is the proposed procedure in line with Art. 9.5, paragraph d.I of the Basic Regulation, which provides for a simple, proportionate and efficient procedure for authorisations? This question has to be further analysed.

3. FOCA supports the comments made by the authorities of the NL with regard to the risk of retaliation from the third countries. This risk has to be assessed by the European Commission. It is important for Switzerland as a non-EU Member State, as the possiblity of retaliation agains air carriers from Switzerland exists. This problem has to be solved carefully.

4. The interconnections between the TCO authorisation, the SAFA programme and the Community safety list established in Regulation 2111/2005 has carefully to be analysed and determined. Duplications in the different procedures should be avoided.

response

Noted

Response to comment 1): noted. Article 33 to the Convention provides that 'certificates of airworthiness and certificates of competency and licences issued, or rendered valid, by the State in which an aircraft is registered, shall be recognized by other States, provided that the requirements under which such certificates or licences were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to the Convention'. The Agency will respect Article 33 of the Chicago Convention with regard to certificates of airworthiness/competency and licenses throughout the application process for third country operator authorisations to the greatest extent possible. However, the recognition of air operator certificates is not addressed in this article or any other articles of the Chicago Convention. The requirement for recognition was extended to air operator certificates by Annex 6 Part I 4.2.2.1. Hereafter a foreign AOC shall only be recognised, 'provided that the requirements under which the certificate was issued are at least equal to the applicable standards specified in this Annex'. Part-TCO was drafted to ensure exactly this prerequisite. The authorisation process verifies that the requirements under which a foreign operator certificate was issued are at least equal to the applicable standards.

Response to comment 2): noted. The planned process and in particular the proposed risk-based approach with its three different assessment categories is designed to ensure these prerequisites stipulated in Article 9(5) of Regulation (EC) No 216/2008.

Response to comment 3): not accepted. Please see response to comment #98.

Response to comment 4): The Agency confirms that interplay of Regulation (EC) No 2111/2005 and Part-TCO indeed needs to be coordinated accordingly. The processes will be aligned and synchronised in order to ensure a seamless integration avoiding contradictory measures and with clearly allocated competencies. For this purpose the Agency has modified TCO.GEN.110 'Eligibility'. This provision now reflects the Agency position that it will assess applications of operators included on the EU Safety list (Regulation (EC) No 2111/2005) as a result of safety deficiencies on the part of the operator itself. As a consequence some provisions in Part-ART have been modified and brought in line with this change. The European Commission and the Agency will continue to cooperate closely in order to ensure that both regulations will be well-coordinated and will not produce conflicting results.

comment

147 comment by: *British Airways Flight Operations*

ICAO publishes standards and Recommended Practices which should be implemented by signatory states to the Chicago Convention (1944). The fact that some states do not fulfil their regulatory and oversight responsibilities correctly has lead to a proliferation of individual states issuing Operations Specifications to regulate air operations in their sovereign territory. Following the example of the USA, where such Ops Specs come under the authority of 14 CFR Part 129, they are colloquially called Part 129 oversight.

However, this situation – individual requirements imposed by individual states – is very far from ideal, creating a large, complex and expensive burden for operators. Furthermore, differing standards and procedures in different parts of the world is a situation which is not conducive to safety. Regrettably, with the proposals included in this NPA, EASA will only make the situation worse.

	Were the TCO regulations to be implemented, operators fear reprisals from host NAAs of the third-country operators: tit-for-tat implementation of Ops Specs on European carriers accompanied by large bills. Thus, the TCO proposals, if enacted, can only make the global situation worse. Partly in an attempt to rectify the variable quality of state oversight, ICAO has launched the USOAP (Universal Safety Oversight Audit Programme). The programme will assess the oversight capability of states to ensure that they will, at least, comply with ICAO requirements. The USOAP will also establish the ICAO AOC registry, currently under development by the Civil Aviation University of China. For operators, the internationally-recognised IATA Operational Safety Audit (IOSA) is the industry standard and provides independent safety assessment of the operational practices of individual airlines. Between USOAP and IOSA, international standards will be driven higher. But they will require time to be implemented. In the interim, the EU Blacklist will assure EU citizens that certain airlines may not fly in the EU. Therefore, to allow time for the introduction of USOAP and still wider acceptance of IOSA, this NPA should be withdrawn, or at least put on hold for a minimum period of 3 years.
response	*not accepted* Article 9 of Regulation (EC) No 216/2008 mandates the European Commission to develop Implementing Rules for the authorisation of third country operators. According to Art. 70 of that Regulation the European Commission has the obligation to implement Articles 5, 6, 7, 8, 9 and 10 to apply as from the dates specified in the respective Implementing Rules, but not later than 8 April 2012. It is therefore not possible to postpone the applicability of Part-TCO by three years. According to Annex 6, Part I, 4.2.2.2 Contracting States to the Chicago Convention have an international obligation to establish a programme with procedures for the surveillance of the operation of foreign air carriers in their territory, and for taking appropriate action. The international legal framework was amended on 20 November 2008 in order to strengthen the oversight and requirements of foreign operators. The Agency aims to achieve a high degree of harmonisation within the European Union. The proposal for a uniform authorisation of third country operators will harmonise the existing diverging national systems in the EU. Third country operators will not have to fear being subject to conflicting requirements when flying across state borders within Europe. One regulation with a uniform set of criteria applied by one authority enhances fairness and transparency. One application will avoid duplications and render the process more efficient. In the future it will also be possible to agree with other states through bilateral safety agreements on the mutual recognition of air operator certificates, e.g. through the inclusion of a separate annex in the EU-US Bilateral Air Safety Agreement. Such an agreement will streamline the authorisation process even more. The ICAO USOAP auditing programme was launched at the beginning of 1999 in response to widespread concerns regarding the apparent inability of some Contracting States to carry out their safety oversight functions. The Agency welcomes this approach and the results of the conducted USOAP audits will play an important role in the framework of Part-TCO. Although a key accomplishment, the USOAP auditing programme remains limited to the assessment of States' oversight capabilities and is not suitable for monitoring operators' safety records. The fact that the USOAP auditing programme is conducted under a 6-year cycle, a rather long timespan to monitor potentially

fast changing aviation safety matters, affects the usefulness of the results further. Following the ICAO Assembly Resolution A36-4, a new approach will be applied in the USOAP auditing programme beyond 2010 based on the concept of CMA This approach will improve the importance of the results considerably.

The establishment of a global centralised database like the ICAO international register of AOCs could, when operational, promote the standardisation of AOCs and operations specifications formats. However, the international register of AOCs has not progressed as fast as expected. An amendment of Annex 6 and a stable funding will be necessary to forward the project. Furthermore, the details of its contents are not clearly specified and it is not clear at the moment how ICAO envisages ensuring a uniform implementation providing reliable data. At this point in time the project has not advanced enough to completely rely on it. Moreover, although such a register will be very useful for determining whether a third country operator actually holds a valid AOC, the Agency will assess the third country operator to verify the reliability of the originally certified information.

As envisaged in ICAO Doc. 8335 VI-1-5, an audit of the standards maintained by an operator from another state, performed by an established commercial audit organisation, using one of the internationally recognised evaluation/audit systems may be acceptable as additional supporting information, at the discretion of the state. In 2003 the International Air Transport Association (IATA) established the IATA Operational Safety Audit (IOSA) Programme, an internationally recognised and accepted audit system for adherence to certain operational safety standards (ISARPS). The Agency acknowledges the importance of the ISOA program, but will not fully rely on IOSA reports, as they are non-regulatory audits. IOSA audit organisations are private organisations accredited by IATA. The conducted audit focuses on an airline's operational procedures and documentation and includes the observation of a maintenance event, a ground handling event and a flight as observer in the cockpit. In addition one simulator training session is observed. Furthermore, IOSA is limited to the assessment of operators and does not include the assessment of the state's capabilities on safety oversight.

As described above, the USOAP audit programme, the ICAO register of AOCs and IOSA are not sufficient to capture the entire picture and replace the proposal presented in NPA 2011-05. The Agency relies on the combination of several safety information sources that will supplement the USOAP reports. The approach chosen by the Agency will ensure the highest possible level of safety.

comment *154* comment by:*GiancarloBuono*

<u>IATA makes the following comments</u>

a. IATA supports ICAO's principles of mutual recognition in accordance with Annex 6. We recommend that EASA will recognize the ICAO AOC Registry when it becomes available to compliment the requirements of the NPA.

b. IATA questions the requirement for this NPA considering that Europe already has in place recognized programmes and regulations, such as SAFA and the Ban List of Foreign Operators. There is no clear relationship between the requirements of the NPA and the current existing processes. This is over-regulation

c. IOSA is the aviation industries globally recognized safety audit programme for operators. All IOSA registered operators shall be fast-tracked through

	the authorisation process. d. IATA opposes the burden of charges and fees. EASA's intention of charging fees for the TCO process is creating a new precedent in the name of safety. IATA is concerned that other regulators may also develop similar "safety" programmes constituting a serious imposition for operators; this is detrimental to the industry. e. Publication of this NPA is contrary to standardisation and harmonization of regulation as highlighted recently during the EASA/FAA Conference in Vienna.
response	Concerning mutual recognition: noted. The principle of mutual recognition of air operator certificates as set out by ICAO Annex 6, Part I, 4.2.2.1 is not envisaged without limitation. A foreign AOC shall only be recognised, 'provided that the requirements under which the certificate was issued are at least equal to the applicable standards specified in this Annex.' Part-TCO was drafted to ensure exactly this prerequisite. The authorisation process verifies that the requirements under which a foreign operator certificate was issued are at least equal to the applicable standards. See also response to comment #111. Concerning the ICAO register of AOCs and the IOSA auditing programme: not accepted. See response to comment #147. Concerning the relation with the SAFA programme and Regulation (EC) No 2111/2005: noted. The SAFA programme, which objective is to enforce ICAO standards, is already in place and will be used in the future as well. Ramp inspections performed by the Member States' competent authorities, are one of the most important parameters to be used for the oversight of third country operators. The SAFA directive and its implementing rules have been incorporated in Subpart ARO.RAMP, which has been subject to public consultation (Opinion 04/2011).The SAFA programme will seamlessly connect with Part-TCO. The Agency confirms that interplay of Regulation (EC) No 2111/2005 and Part-TCO indeed needs to be coordinated accordingly. The processes will be aligned and synchronised in order to ensure a seamless integration avoiding contradictory measures and with clearly allocated competencies. The European Commission and the Agency are closely cooperating to ensure that both regulations will be well-coordinated and will not produce conflicting results. See also response to comment #111. The Agency aims to achieve a high degree of harmonisation within the European Union. Part-TCO envisages a single procedure for third country operators compared to the current diverse situation. The proposal for a uniform authorisation of third country operators will harmonise the various national systems currently in the EU. Third country operators will not have to fear being subject to conflicting requirements when flying across European state borders. One regulation with a uniform set of criteria and with one authority being in charge of applying these criteria enhances transparency. It will further significantly simplify and streamline the process. One application will avoid duplications and render the process more efficient. Please see the response to comment #111. Concerning fees: noted. The responses to the fees fall outside the scope of this CRD. However, the many concerns raised will be carefully considered and assessed in the course of the amendment of Commission Regulation (EC) No 593/2007, the so-called 'Fees & Charges Regulation' in which all details will be defined.

comment 156 comment by: *Swiss International Airlines / Bruno Pfister*

SWISS Position on EASA NPA 2011-05 Third Country Operator

Background

ICAO has standards and Recommended Practices in place that are to be complied with by member states in order to provide safe and efficient air traffic all around the world. However, it has also to be recognized, that some states do not fulfil their oversight responsibilities as required and the ICAO system is therefore not in all cases beyond doubt.

This was the reason for the proliferation of national rules requesting special operational approvals (Operations Specifications) which have taken various forms and that are very different with regard to the width and depth of the required information and the processes to be followed to receive those approvals. These approvals by individual states had become a burden for the operators to comply with even before the TCO NPA came into being.

ICAO, in order to improve the above mentioned situation, has launched the USOAP (Universal Safety Oversight Audit Programme), which aims to assess the oversight capability and quality of states and to ensure ensures at least ICAO levels in those areas.

General comments:

Already now, European airlines face an increasing number of requests for operational approvals by various NAA's.

To make things worse, the EASA TCO NPA ads yet another layer of operational approvals for non EASA operators which will undoubtedly create retaliatory approval requirements from those non EASA countries which have so far not raised so called Operations Specifications.

SWISS fears that

- the affected non-EASA States will establish retaliatory Operational Specifications requirements in great numbers

- those retaliatory Operations Specifications will bind considerable resources and will therefore result in increased manpower and cost

- the fees intended to be raised by EASA for the TCO approvals will fall back on the EASA carriers in form of the same or higher fees being raised for the retaliatory Operations Specifications, thereby increasing the cash out.

SWISS strongly supports the

- ICAO USOAP program and its proposed AOC Registry and

- IATA Operational Safety Audit / IOSA which represents Industry Standard

SWISS considers these tools to be sufficient to achieve the goals of the EASA TCO NPA.

Conclusion

SWISS agrees that safety is a paramount element to be checked before allowing an airline to fly into national/supranational airspace.

However, this purpose can be achieved by the outlined ICAO USAOP and IATA IOSA and

SWISS therefore urges EASA to withdraw the NPA for Third country Operators

response

Concerning retaliation concerns: not accepted. Please see the response to comment #98.

Concerning fees: noted. Please see the response to comment #154.

As described in the response to comment #147, the USOAP audit programme, the ICAO register of AOCs and IOSA are not sufficient to capture the entire picture. The Agency relies on the combination of several safety information sources that will supplement the USOAP reports. The approach chosen by the Agency will ensure the highest possible level of safety.

comment *162* comment by:*AEA*

AEA comments - EASA NPA 2011-05

Third Country Operator

General comments

ICAO has put in place standards to be complied with by member states in order to provide safe and efficient air traffic all around the world with a maximum of certification (flight crew licence, Aircraft Operator Certificate, etc.).

It has to be recognized that some states do not properly fulfil their oversight obligations as requested by ICAO standards and therefore the ICAO system is not beyond any doubt at all times.

This was the reason for the proliferation of national rules requesting special operational approvals (Operations Specifications) which have taken various forms and that were very much different with regard to the width and depth of the required information and the processes to be followed to receive those approvals. This has now reached a point where it becomes a major burden for operators to comply.

ICAO, in order to recover from the above mentioned situation, decided to launch the USOAP (Universal Safety Oversight Audit Programme). This programme aims to check the oversight capability of states to be at least at ICAO requirements level and to assess their oversight capacity. The USOAP should also establish AOC registry which should contain safe airlines. This registry is in progress but not yet operational.

Europe has already put in place regulation 2111/2005, the so called Black List which provides a list of those airlines that are not authorised to fly within Europe. Such airlines may have their whole fleet banned or just specific tail numbers. It has also to be noted that a banned airline may operate a flight with a wet leased aircraft from a non-banned operator.

The EASA NPA 2011-05, called TCO, adds another heavy layer by requesting an operational approval.

response *Not accepted*

The Agency agrees that the ICAO USOAP auditing programme is a key achievement for aviation safety. Also the AOC registry, when operational, will be helpful to promote the standardisation of AOCs and operations specifications formats. Please see response to comment #147.

Regulation (EC) No 2111/2005 was a major step in enhancing aviation safety and has proven to be an effective tool for protecting EU citizens. However, as considered big steps forward, the legislator decided to improve the regulatory framework even more by mandating the European Commission to develop

implementing rules representing an additional ex-ante and continuous assessment of the safety of individual third country operators.

The Agency does not believe that Part-TCO will create an undue burden for third country operators. On the contrary, Part-TCO will harmonise the existing different approval systems now in place in the EU. In the future a third country operator will have to apply only once for an authorisation valid for the entire territory of the EU. This eliminates the risk for the operator to become subject to diverging or contradicting criteria. Part-TCO will promote harmonisation and will avoid duplications. Please also see response to comment #111.

comment *164* comment by:*AEA*

The TCO process is aimed <u>to show compliance of third country operators with</u>:

- National rules based on ICAO Annexes 1 (flight crew licence), Annex 2 (rules of the air), Annex 6 Part 1(Operation of aircraft for international commercial air transport by aeroplanes), Annex 6 part III (international air operation by helicopters), Annex 8 (airworthiness of aircraft) and Annex 18 (dangerous goods).
- If the state of the operator/registry has notified deviations to ICAO Annexes, the Agency may request full compliance with ICAO Annexes or mitigating measures provided by the operator's/registry's state.
- European Rules of the Air
- Part TCO additional requirements
  - o missing in the ICAO annexes :
  1. In flight fuel management requirement
  2. Pre flight inspections requirement
  - o Navigation, communication and surveillance equipment required in EASA airspace.

Operators subject to a ban as per regulation EC 2111/2005 cannot get a TCO approval.

The approval process is not totally defined in the NPA because it will be described in detail in the internal agency procedures yet to be published.

Nevertheless, the authorisation process is described in the explanatory notes (p13-14).

<u>General comment:</u>

We agree that safety is the first element to be checked by states for allowing a foreign airline to fly in their national airspace.

All European airlines have to comply with European regulations enforced by authorities and, in addition, with national requirements. Airlines face an increasing number of requests for operational approvals like the one proposed by this NPA.

The process, documents to be provided as well as delays in receiving the approval, vary very much. This creates an economical burden and may even delay the operational deployment of a known aircraft type to a given country. This fact is not to be underestimated.

AEA really fears that non EASA States will establish retaliatory Operational Specification requirements in great numbers and therefore strongly requests EASA to drop this NPA.

Furthermore, since the EASA TCO proposal will collect fees for the TCP approval, all the retaliatory Operations Specifications will likewise raise fees

with the obvious increase to airline operators not only on the manpower but also on the cost side.

Instead, AEA is in support of the USOAP process associated with the AOC registry as proposed by ICAO - and also supports strongly IOSA.

The IATA Operational Safety Audit is the industry standard and provides independent safety assessments of airlines operational practices.

Therefore AEA would like to highlight again the disagreement with this NPA bearing in mind the boomerang effect it will have as well as the additional costs EASA is establishing with it. AEA additionally holds the view that this is subject to ICAO and should therefore be transferred to them as already proposed above.

response

Concerning retaliation concerns: not accepted. Please see the response to comment #98.

The USOAP audit programme, the ICAO register of AOCs and IOSA are not sufficient to capture the entire picture. They are key elements that are considered in the assessment as described in NPA 2011-05. Please seethe response to comment #147.

comment *185* comment by: *Federal Ministry of Transport, Austria (BMVIT)*

General:

According to Art 9.5, paragraph (d) (i) of the Basic regulation the authorisation process for TCO operators should be simple, proportionate, cost-effective and efficient in all cases, allowing for requirements and compliance demonstrations proportionate to the complexity of operations **and the risk involved**.

This principle does not seem to be reflected in the NPA. The authorisation process described in art 29 of the explanatory note is very complex. Especially for operators who have been operating to the EU for many years having a satisfying safety record the procedures included in the NPA seem to be disproportionate.

The new NPA has also to be examined in relation to the Chicago convention. One of the principles laid down in Art 33 of the convention is the principle of mutual recognition of certificates issued by contracting states. Art 9.2. of the Basic Regulation refers to this provision but the principle does not seem to be adequately reflected in the NPA .The planned excessive investigation process during the authorisation procedure contravenes this fundamental element of the Chicago Convention.

According to the assessment categories and assessment methodologies included in art 29 of the explanatory note approximately 30% of the eligible operators have to undergo detailed assessment and for approximately 10% an on-site visit is envisaged. These numbers are not replicable!

The excessive investigation activities can also lead to an undesirable result namely shifting aviation safety oversight responsibilities and liabilities from ICAO Contracting States over aircrafts registered in their national register towards the Agency. It cannot be the role of EASA to substitute the competent authorities responsible for the oversight over operators applying for a TCO authorisation.

response

Regarding the assessment methodology: not accepted. The planned process and in particular the proposed risk-based approach with its three different assessment categories is designed to ensure the prerequisites stipulated in Art. 9.5 of Regulation (EC) No 216/2008. In particular for category A operators, the assessment process is proposed to be limited and short. However, the issue of any technical authorisation requires a certain minimum level of investigation and evaluation.

Regarding Article 33 of the Chicago Convention: noted, please see the response to comment #111.

Regarding the allocation of third country opertors in categories: noted. The proposed distribution is an initial assumption taking into consideration experiences gained from i.e. the European SAFA programme. It is anticipated that the distribution will be reviewed and where necessary adjusted after completion of one cycle (2 years).

Regarding the level of scrutiny: not accepted. The level of investigation is not considered excessive but in line with ICAO Doc 8335. It is not intended that the Agency will substitute the competent authorities responsible for the oversight of third country operators.

comment

196 comment by:*Embraer - Indústria Brasileira de Aeronáutica - S.A.*

The NPA proposes to allocate 33 months between the application deadline (effective date of Part TCO plus four months) and the deadline for final approval of all third country operators (December 31, 2014). EASA's estimate of the 850 applications to be processed means that EASA would have to approve approximately 26 applications per month (more than one per working day). Even though it is foreseen that 60% of the applications would require only a simple desktop review, Embraer does not believe that EASA is suitably staffed, even with member state support, to undertake such a workload, and suggests the final deadline should be extended to December 31, 2016.

response

Noted

The established staffing plan caters for the anticipated workload.

comment

197 comment by:*Embraer - Indústria Brasileira de Aeronáutica - S.A.*

While the NPA does not explicitly require that a safety management system (SMS) be implemented by the operator prior to receiving a third country operator authorisation, there are several parts of the NPA that indicate that lack of an SMS would imply a reduced level of confidence in the applicant. While Embraer agrees that implementation of SMS programs will be an important benefit, not all countries are going to implement SMS programs on the same schedule. A key part of successful implementation of SMS is the mutual recognition of local SMS program approvals. EASA should not "penalize" third country operator applicants during the interim period when SMS programs are being implemented worldwide, by either requiring a specific EASA-approved SMS as part of the third country operator authorisation or by requiring an additional level of EASA scrutiny of the application because the

operator's local authority has not completed the necessary rulemaking steps to implement SMS in that country.

response

Noted

The Agency is aware of the on-going efforts worldwide of operators to comply with ICAO SMS requirements. As the level of scrutiny during evaluation of a third country operator applicant will largely depend on the Agency's confidence in the AOC of the applicant, an operator that can demonstrate an advanced stage of SMS implementation will consequently be allocated a higher confidence level by the Agency.

comment

204 comment by:*Air Transport Association of America*

Attachment#1

Attached are the comments of the Air Transport Association of America responding to the above-noted consultation. We appreciate the opportunity to submit these comments.

response

The Agency welcomes the general support of NPA 2011-05. Concerning the recently implemented U.S.-EU Bilateral Air Safety Agreement EASA appreciates the possibility to include the mutual recognition of air operator certificates via a separate Annex in the future. The Agency further notes the remark pertaining to the gap analysis and will consider using gap analyses in future rulemaking tasks where appropriate.

Concerning fees and charges noted. Please see the response to comment #154.

Response to the part of the comment relating to paragraph 33 of NPA 2011-05:accepted. Alternative means of demonstrating a valid TCO authorisation including associated specifications should be acceptable under the condition that the documents can be produced during an inspection.

Response to the part of the comment relating to paragraph 48 of NPA 2011-05: noted. The established staffing plan caters for the anticipated workload.

comment

218 comment by:*Fédération Nationale de l'Aviation Marchande (FNAM)*

From a general point of view, FNAM welcomes the proposal from EASA establishing the Implementing Rules for the authorisation of Third Country Operators.

The technical and administrative requirements proposed in the NPA are proportional, and we welcome the fact that EASA gives an important role to industry best-practices such as IOSA certification.

However, the quality of the proposal could be improved, in terms of ease of use and understanding, because several requirements are already included in other applicable regulatory materials, or repeated in several articles of the NPA. The repetition of same requirements, with a slightly different formulation, may be very misleading.

Moreover, we think that the content of Part TCO could imply some wording changes to be provided to Part OPS.ORO, in order to reach a good consistency between the different Parts as this is reflected in our comments. This supports our feeling that a last global consultation round should be organized, preferably before but possibly after the publication of the texts, in order to provide quick modifications to ensure full consistency and optimum use of regulations.

Finally, we are also quite afraid by the fees that are intended to be raised by EASA. We fully understand the need to recover authorisations and surveillance costs, but we think that the political and international consequences should not be underestimated. Other countries, such as the United States of America, are not charging for such technical authorisations. We would like to warn EASA on that point, considering the several international actions, sometimes disproportionate, against the EU-ETS for instance. If this proposal is not accepted by TCO or their competent authorities, the negative consequences would certainly be passed on European operators willing to operate in Third Countries. In case EASA and the EC would decide to go on in this direction, the question of the level of fees is also not treated yet: would fees be different by categories (A, B, C) or dispatched over the whole expected number of TCO?

response

The Agency welcomes the general support of Part-TCO.

Concerning fees and charges: noted, please see the response to comment #154.

Concerning the fear of retaliation: not accepted. Please see the response to comment #164.

comment *239* comment by:*AFRAA*

Attachment#2

Attached please find comments of African Airlines association.

response

Response to the part of the comment titled “Extraterritorial Application”:

i) not accepted. The scope of Part-TCO is limited to third country operators conducting commercial air transport operations into, within or out of the territory subject to the provisions of the Treaty.

ii) not accepted. The Agency does not intend to take over any of the existing responsibilities of the state of the operator. The authorisation process established through Part-TCO should rather be understood as a validation process that verifies the content of the AOC. This is in line with ICAO Doc 8335 and not replacing or extending the AOC issued by the competent authority responsible for the oversight.

Response to the part of the comment titled “Essential Requirement- In Addition to the ICAO standards”: partially accepted. Please see the response to comment #93.

Response to the part of the comment titled “Relevant Sources of Information”:

noted. Please see also the response to comment # 147.

Response to the part of the comment titled “Regulation (EC) 2111/2005”: not accepted. Please see response to comment # 162.

Response to the part of the comment titled “SAFA Program”:noted. However, this comment is not considered relevant for the proposed implementing regulation of this NPA 2011-05. It is correct that results from ramp inspections are an important input for determining the appropriate assessment category.

Response to the part of the comment titled “IATA Operational Safety Audit (IOSA)”: not accepted. Please see the response to comment #147.

Response to the part of the comment titled “The Authorisation Process”:

a) partially accepted. TCO.GEN.110 ‘Eligibility’ has been modified and now reflects the Agency’s position that it will assess applications of operators included on the EU Safety list (Regulation (EC) No 2111/2005) as a result of safety deficiencies on the part of the operator itself. As a consequence some provisions in Part-ART have been modified and brought in line with this change. The European Commission and the Agency will continue to cooperate closely in order to ensure that both regulations will be well-coordinated and will not produce conflicting results..

b)not accepted. The criteria selected for the proposed categorisation of the assessment methodology are considered to be sources of credible, specific safety-relevant data. In addition, they are fully in line with Article 9.5.(d) of Regulation (EC) No 216/2008.

Response to the part of the comment titled ‘Bilateral Air Service Agreements (BASAs)’: not accepted. Traditionally, international air services had always been governed by ASAs between states. In November 2002, the European Court of Justice found that if an ASA between a Member State and a third country permits designation only of companies owned and controlled by nationals of the signatory EU Member State, such designation is discriminatory and is in breach of EC law. As a result, every EU Member State is required to grant equal market access for routes to destinations outside the EU to any EU operator with an establishment on its territory. ASAs between EU Member States and their bilateral partner States must be amended to reflect this. The so-called ‘open skies’ judgments also reflected the fact that some articles contained in bilateral air services agreements are of exclusive Community competence and in consequence should not be negotiated by the Member States on an autonomous basis. At the June 2003 Transport Council, the Commission and the Member States agreed on the modalities to solve the issues identified by the Court. Two methods were identified for amending the existing bilateral air services agreements: either bilateral negotiations between each Member State concerned and its partners, amending each bilateral ASA separately, or the negotiation of single ‘horizontal’ agreements, with the Commission acting on a mandate of the Member States of the EU. Each ‘horizontal’ Agreement aims at amending relevant provisions of all existing bilateral ASAs in the context of a single negotiation with one third country.

The ‘open skies’ judgements marked thus the start of an EU external aviation policy as EU Member States cannot act in isolation when negotiating ASAs. The essential point in Bilateral Air Service Agreements is the reciprocal exchange of traffic rights without the necessity of obtaining prior diplomatic permission from another state. The major provisions in Bilateral Air Service Agreements are primarily based on political and economic considerations and traditionally relate to traffic rights, frequencies, capacity, routes, etc. This economic freedom is not identical to an absolute freedom to fly without regulation. The international ICAO standards as well as the national laws of the granting state have to be respected. This principle is also reflected in separate provisions

incorporated in most bilateral agreements. The technical “TCO authorisation” is therefore a prerequisite in the process of obtaining an operating authorisation from the respective EU Member State. The provisions that set the criteria for the operating authorisation and for its revocation/ suspension within the Bilateral Air Service agreements require the Contracting State to grant to the designated foreign operator the appropriate operating authorisation “without delay” or “with minimum procedural delay”. To this day the technical authorisation of foreign air operators has been handled by the respective EU Member State. Each Member State has used its own validation system, e.g. the issuance of questionnaires to a foreign operator. Part-TCO will shift the competency for this purely technical permission to the Agency in order to simplify and streamline the procedures of the various national systems within the EU. Furthermore, transitions rights have been inserted into the proposal in order to ensure a smooth transition without delays. In more recent bilateral agreements a clause specifically dedicated to aviation safety was inserted according to the ICAO model clause of 2001 (see ICAO Doc. 8335 VI-Att A-2).

(The ICAO model safety clause states:

> “[…]2. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the standards established at that time pursuant to the Convention on International Civil Aviation (Doc 7300), the other Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO standards. The other Party shall then take appropriate corrective action within an agreed time period. […] 4. When urgent action is essential to ensure the safety of an airline operation, each Party reserves the right to immediately suspend or vary the operating authorisation of an airline or airlines of the other Party. […]”)

Neither the ICAO model clause itself nor safety provisions drafted based on this model, which might have slightly different phrasings, are in conflict with the proposed provisions of Part-TCO. The EU Member States are competent to issue, revoke or suspend an operating licence. In case the international safety standards are not met, they may refuse to issue an operating authorisation, revoke or suspend it. The compliance with international safety standards will be assessed and monitored by the Agency and the Member States will be informed of any change.

Finally, the possibility exists to mutually recognise Air Operator Certificates through the establishment of Bilateral Air Safety Agreements. As of today neither the European Union nor its Member States entered in an “AOC recognition agreement”. Such an agreement would have precedence over secondary EU law, hence over the Regulation (EC) No 216/2008 and its implementing regulations including Part-TCO. The mutual recognition would ease the TCO authorisation process for the Contracting Parties to a large extend.

Response to the part of the comment titled “Transitional Measures”: noted.

Response to the part of the comment titled “Cost concerns”: noted. Please see the response to comment # 154.

comment *241* comment by: *Singapore Airlines (SIA)*

"Although EASA stated that its Essential Requirement 8.a.3 (ii) is equivalent to the standard in Attachment G of ICAO Annex 6 Part 1, SIA cannot find the equivalence in Attachment G. Would EASA please point to us the equivalent

	standard in Attachment G?"
response	*Accepted* With regard to the Essential Requirements 8.a.3(i), 8.a.3(ii)and 8.a.3(iii) reference should have been made to Attachment F.

comment	*242* comment by:*DGAC France* Attachment#3 See attached the French comments on the NPA 2011-05 TCO.
response	The part of the comment relating to § 8 5th bullet of NPA 2011-05 is noted. The terms "certification", "authorisation" and "approval" are inconsistently used in international aviation. This is explicitly mentioned in ICAO Doc. 8335 VI, Chapters 1-3. The term "certification task" was used in the NPA as TCO "authorisations" fall within the wider European definition of "certification" as specified in Article 3(e) of Regulation (EC) No 216/2008. The term "authorisation" of a third country operator, although part of the definition of "certification", does not have the same implication as the "certification" of a national operator. The term "certification task" differs from the certification responsibilities of the state of the operator in relation to the national air operator certificate. The Agency will fully respect the responsibilities assigned to the state of the operator in the Chicago Convention and does not intend to take over any of the abovementioned responsibilities with regard to the issuance of AOCs. In the context of third country operators, the term "authorisation" comes closer to the meaning of "validation" of a foreign operator's AOC. The part of the comment relating to § 10 4th and5th bullet is noted. The issues addressed in this comment will form part of a separate rulemaking task at a later point in time (RMT.0419, 0420 / OPS.004c, OPS.004d). We kindly refer to paragraph 11 of the Explanatory Note of NPA 2011-05. The part of the comment relating to § 11 is noted. Commercial operations other than CAT will be addressed in a separate rulemaking task (RMT.0419, 0420 / OPS.004c, OPS.004d). The part of the comment relating to § 12 is noted. Ex-JAA states should conclude an agreement with the EU as the ECAA or EFTA states. The part of the comment relating to § 16 is not accepted. Part VI Chapter 1.4.4 of ICAO Doc 8335 states: "[...] The State may consider audits performed by other States, by internationally recognized audit organizations, as in 1.5, or by its CAA [...]" The part of the comment relating to § 20 is accepted. Part-TCO will be based on an assessment of compliance with applicable ICAO standards, which cover more than safety of passengers and cargo only. However, it must be underlined that the assessment performed by the Agency has not the same meaning as the certification process of the state of the operator. The Agency's authorisation process should in principle be understood as a validation process of the AOC and the associated operations specifications of the third country operator. The Agency shall by no means interfere with the responsibilities of

the state of the operator that issued the AOC. This means that the Agency will in principle examine the adherence with the applicable ICAO standards and the continuous validity of the operator's AOC. This includes the possibility that the Agency examines other areas e.g. environment (Annex 16).

The part of the comment relating to § 22 ispartially accepted. While the Agency agrees that it cannot substitute itself with the competent authorities of the concerned State of registry or State of the operator, it shall conduct, itself or through national aviation authorities or qualified entities, investigations and audits of the organisations it certifies and, where relevant, their personnel as per Article 23.1.(a) of Regulation (EC) No 216/2008.

The part of the comment relating to §23 is noted. Please see response to comment § 20

The part of the comment relating to §26 is partially accepted. With regard to comment related to Regulation (EC) No 2111/2005, please see the response to comment #111. In the context of authorising third country operators the Agency shall conduct, itself or through national aviation authorities or qualified entities, investigations and audits of the organisations it certifies and, where relevant, their personnel as per Article 23.1.(a) of Regulation (EC) No 216/2008. This will include an on-site visit if deemed necessary.

The part of the comment relating to §29: not accepted. The proposed distribution is an initial assumption taking into consideration experiences gained from i.e. the SAFA programme. It is anticipated that the distribution will be reviewed and where necessary adjusted after completion of one cycle (2 years). The level of investigation is not considered excessive but in line with the guidance provided in ICAO Doc 8335. It is not intended that the Agency will substitute the competent authorities responsible for the oversight of third country operators. While the Agency agrees that it cannot substitute itself to the competent authorities of the concerned state of registry or state or of operator, it shall conduct investigations and audits as per Article 23.1.(a) of Regulation (EC) No 216/2008.

Article 9.5.(d) of Regulation (EC) No 216/2008 requires the Agency to implement an authorisation process allowing for requirements and compliance demonstrations proportionate to the complexity of operations and the risk involved.

Response to comments 1) to 5): noted. See the response to comment #154

Response to comment 6): noted. The application form and related questionnaire will not be part of the Implementation Regulation (Part-TCO and Part-ART).

Response to comment 7): noted. Full compliance with all applicable ICAO standards relevant to an air operator is expected from applicants whose State of the operator or state of registry (if applicable) has not notified differences in accordance with Article 38 of the Chicago Convention. Only in case of notified differences, mitigating measures may be evaluated. The Agency takes due note of the French approach of having established a list of safety-critical standards that by experience have shown repetitive non-compliances. The proposal included in the NPA consists of a so-called "Basic Operator Data" questionnaire for all applicants which require compliance declarations for a selection of international safety standards that have proven to be not complied with by third country operators. However, it is always at the discretion of the Agency, for applicants of all assessment categories, to request evidence of compliance for any standard where the Agency is not fully satisfied.

Response to comment 8): noted. In accordance with the requirement of a proportionate, risk-based approach, evidence will routinely be gathered from category B and C operators. However, it is always at the discretion of the

Agency, for applicants of all assessment categories, to request for evidence of compliance with any standard where the Agency is not fully satisfied.

Response to comment 9): noted. Checklists are considered working-level documents which are not part of this NPA. When developing working-level documents, due consideration will be given to material already in use by Member States that have been consulted by the Agency in preparing for assuming the task of authorising third country operators.

Response to comment 10): not accepted. In the context of TCO authorisations, the Agency shall conduct [...] investigations and audits as per Article 23.1.(a) of Regulation (EC) No 216/2008.

Response to comment 11): partially accepted. See the response to comment #93.

Response to comment 12): partially accepted. See the response to comment #93.

Response to comment 13): partially accepted. See the response to comment #93.

Response to comment 14): noted. The TCO authorisation document is under development and will not follow the layout and content of an AOC but constitutes a technical permission issued by the Agency, referring to and valid only subject to the underlying AOC. Notwithstanding, contents and format of the specifications to a TCO authorisation will follow the layout of Appendix 6, paragraph 3 of ICAO Annex 6, Part 1.

Response to comment 15): accepted. The intention to operate to the EU is sufficiently substantiated when an operator can demonstrate a credible intention to conduct commercial operations into, within or out of the EU. GM 1-TCO.GEN.115(a)(2) has been amended accordingly.

Response to comment 16): not accepted. GM1-TCO.AUT.110 (g) provides for the addition of airframes to an already-authorised type of aircraft without prior authorisation (notwithstanding, changes not requiring prior authorisation as agreed in accordance with AR.TCO.205(d) shall be notified to the Agency). For a new type of aircraft with a different ICAO type designator, the application time frame of 30 days before the intended start date of operation is deemed appropriate.

comment

243 comment by:*CAA-NL*

Attachment#4

Please find attached a comment to NPA 2011-05.

response

Regarding the assessment methodology: not accepted. The planned process and in particular the proposed risk-based approach with its three different assessment categories is designed to ensure these prerequisites stipulated in Art. 9.5 of Regulation (EC) No 216/2008. In particular for category A operators, the assessment process is proposed to be limited and short. However, the issue of any technical authorisation requires a certain minimum level of investigation and evaluation.

Regarding the part of the comment addressing Regulation 2111/2005: noted. The interplay of Regulation No 2111/2005 and Part-TCO needs to be

coordinated accordingly. The processes will be aligned and synchronised in order to ensure a seamless integration avoiding contradictory measures and with clearly allocated competencies. For this purpose TCO.GEN.110 'Eligibility' has been modified and now reflects the Agency position that it will assess applications of operators included on the EU Safety list (Regulation (EC) No 2111/2005) as a result of safety deficiencies on the part of the operator itself. As a consequence the relevant provisions in Part-ART have been modified and brought in line with this change. The European Commission and the Agency will continue to cooperate closely in order to ensure that both regulations will be well-coordinated and will not produce conflicting results

Response to Attachment Part 1): not accepted. The authorisation of Part-TCO should be understood as a validation process. A validation is based on the original documents issued by the primary responsible authority in order to verify that the certified content will stand up to scrutiny. Concerning Art. 33 of the Chicago Convention please see the response to comment #111.

Response to Attachment Part 2): not accepted. In order to provide safe and efficient air traffic at a global level, ICAO Contracting States agreed to comply with the established standards. The primary role in the safety oversight of any operator is that of the state of the operator that issued the AOC. The Agency will fully respect the responsibilities assigned to the state of the operator in the Chicago Convention and does not intend to take over any of the abovementioned responsibilities. The authorisation process for third country operators should rather be understood as a validation process that aims to verify the reliability of the originally certified information. This is necessary as some states do not fulfil their oversight responsibilities as required under the ICAO system.

Response to Attachment Part 3): noted. Please see also the response to comment #239.

comment *244* comment by:*MemberState - United Kingdom*

Attachment#5

Please see attached the comments from the UK Representation to the EU Brussels.

response

Noted. A thematic AGNA meeting on this issue was held on 25 October 2011.

not accepted. The planned process and in particular the proposed risk-based approach with its three different assessment categories is designed to ensure these prerequisites stipulated in Art. 9.5 of Regulation (EC) No 216/2008. In particular for category A operators, the assessment process is proposed to be limited and short. However, the issue of any technical authorisation requires a certain minimum level of investigation and evaluation. With regard to working times spent by applicants for preparing the application, it is noteworthy to mention that one TCO authorisation will be valid in 27 Member States plus 4 EASA participating States and will replace the various different national schemes in existence today. See also the response to comment #147

Noted. The minimum application time of 90 days must take into account the average time needed to complete the technical evaluation of the highest assessment category (C). Notwithstanding, operators in lower assessment

categories, in particular category A operators, will be processed much faster. Applicants will not know their assessment categories beforehand. It will be in the interest of third-country operators to submit their application at the earliest convenience in order to ensure operational flexibility. However, in case there are no significant safety concerns with regard to the State of the operator or the operator itself and the operator can demonstrate that there is an unexpected urgent operational need, the Agency may decide to process an application submitted after the 90 days period.

With regard to retaliation concerns: not accepted. Please see response to comment #98.

comment

245 comment by:*CASSOA*

Attachment#6

Dear Sir

Find attached our comments on the NPA 2011-05. As you may recall during the Agency Board visit to EASA on 30th June and 1st July we indicated intention of submitting our comments on the proposed amendments to TCO authorisation and we thank that you granted a period up to the end of July. The EAC Partner States (comprising of Burundi, Kenya, Rwanda, Tanzania and Uganda) submits these joint comments for your consideration.

response

Response to comment 1): accepted. Part-TCO will include a requirement for the Agency to notify the competent authority of TCO applicants about findings [ART.GEN.225 (d)(4)].

Response to comment 2): noted. The minimum application time of 90 days must take into account the average time needed to complete the technical evaluation of the highest assessment category (C). Notwithstanding, operators in lower assessment categories, in particular category A operators, will be processed much faster. Applicants will not know their assessment categories beforehand. It will be in the interest of third country operators to submit their application at the earliest convenience in order to ensure operational flexibility. However, in case there are no significant safety concerns with regard to the State of the operator or the operator itself and the operator can demonstrate that there is an unexpected urgent operational need, the Agency may decide to process an application submitted after the 90 days period.

The intention to operate to the EU is sufficiently substantiated when an operator can demonstrate a credible intention to conduct commercial operations into, within or out of the EU. Various means of demonstrating a credible intention should be acceptable, in order to cater also for the ad-hoc nature of non-scheduled operations. However, GM 1-TCO.GEN.115(a)(2) will be reviewed accordingly.

Response to comment 3): partially accepted. Serious incidents must not be reported when more than 2 years have passed since the occurrence; accidents will no longer be considered after 8 years.

Response to comment 4):

Response related to comment under “First observation”: not accepted. The primary objective of granting transition rights is to ensure uninterrupted continuation of on-going operations of those third country operators into,

within or out of the EU. Due to the volatility and changes in this industry sector, third county operators not having operated to the EU for longer than 24 months are considered new applicants. This principle is already in force in several current approval schemes in the EU.

Response related to comment under “Second observation”: not accepted. The Agency is developing a comprehensive communications plan to timely inform all stakeholders about the new rules on authorising third country operators. The initial registration process for transition rights that will precede the actual TCO assessment will be simple and effortless. Therefore, the four months registration period is considered to be adequate.

Response related to comment under “Third observation”: not accepted. The established staffing plan caters for the workload to be expected.

Response to comment 5): noted. Please see the response to comment #154

TITLE PAGE p. 1

comment *238* comment by: *airberlin Group*

General AIRBERLIN conclusion:

Contrary to the outcome of the meeting between EASA and IACA on 18 February 2011, this NPA Part-TCO does not provide the framework for EU operators to dry lease-in aircraft registered in a third country. The scope of Part-TCO is limited to third country operators conducting themselves commercial air transport operations into, within, or out of the EU. The issue of dry leasing-in aircraft registered in a third country by EU operators will need to be addressed under NPA 2010-10 (Task MDM.047) on the requirements for non-EU registered aircraft used by EU operators/persons. AIRBERLIN supports that IACA will separately provide EASA a proposal for additional conditions for aircraft registered in a third country and dry leased on a Community operator’s AOC.

response *Noted*

The comments related to dry lease-in fall outside the scope of this CRD and will be assessed in the course of the CRD to NPA 2010-10.

A. EXPLANATORY NOTE - I. General p. 3

comment *59* comment by: *IACA International Air Carrier Association*

General comment:

IACA reviewed and comments this NPA Part-TCO with a specific interest: the dry lease-in of aircraft registered in a third country by EU operators.

IACA acknowledges that Part-TCO establishes the requirements to be followed by third country operators conducting commercial air transport operations into, within, or out of the EU; hence does not apply to EU operators. However,

during a meeting between EASA and IACA on 18 February 2011, EASA stated that as long as a third country operator has a TCO-approval, dry leasing-in by EU operators of aircraft registered in a third country of such third country operator would be possible. Consequently, IACA analysed the NPA Part-TCO to verify if the issue has been adequately addressed.

Unfortunately, it is not clear how in practice the proposed Part-TCO does permit the dry lease-in of aircraft registered in a third country by EU operators. See comments hereunder.

response *Noted*

The comments related to dry lease-in fall outside the scope of this CRD and will be assessed in the course of the CRD to NPA 2010-10.

comment *209* comment by:*airberlin Group*

General comments

AIRBERLIN reviewed and comments this NPA Part-TCO with a specific interest: the dry lease-in of aircraft registered in a third country by EU operators. AIRBERLIN acknowledges that Part-TCO establishes the requirements to be followed by third country operators conducting commercial air transport operations into, within, or out of the EU; hence does not apply to EU operators. However, during a meeting between EASA and AIRBERLIN on 18 February 2011, EASA stated that as long as a third country operator has a TCO-approval, dry leasing-in by EU operators of aircraft registered in a third country of such third country operator would be possible. Consequently, AIRBERLIN analysed the NPA Part-TCO to verify if the issue has been adequately addressed. Unfortunately, it is not clear how in practice the proposed Part-TCO does permit the dry lease-in of aircraft registered in a third country by EU operators. See comments hereunder

response *Noted*

Please see the response to comment #59.

A. EXPLANATORY NOTE - II. Consultation p. 3-4

comment *29* comment by:*AAPA*

Recognising that EASA is required to provide a consultation period of 3 months in accordance with Article 6(4) the AAPA believes this to be of insufficient time to engage with Third Country Operators on the proposed NPA. Taking note that prior to issuing the NPA EASA has a 6-24 month period to develop the draft opinion and draft decision of the Executive Director. During that time, no joint regulatory and industry working group was established to provide recommendations or assistance to EASA. Nevertheless. it is acknowledged that EASA has carried out a number of briefing sessions which is an important part of any consultation however AAPA believes for such an important issue and for such issues in the future EASA should consider establishing a joint working

group. As EASA is aware this is the practice of other leading regulators such as the FAA which establishes an Aviation Regulatory Committee (ARC) on key regulatory issues.

response *Noted*

The Agency understands the request for an extended discussion of the proposed NPA 2011-05. The entire rule-shaping process was designed to be as transparent as possible and to offer many possibilities for stakeholders to participate in the decision-making. In addition to the consultation period, in which stakeholders could place their comments for 3 months, there will be another timeframe of 2 months after the publication of this CRD to react to the Agency's responses. We invite all stakeholders to provide their input and considerations to Part-TCO during this phase. The Agency relies on the expertise and experiences of all stakeholders and will take all reactions into due consideration.

A. EXPLANATORY NOTE - III - comment Response Document p. 4

comment *30* comment by:*AAPA*

In para 8 we take note that the "high level safety objectives" are not defined within the NPA. We therefore request clarification on this point.

response *noted*

The term "high level safety objectives" refers to Regulation (EC) No 216/2008, in particular to Annexes I, III, IV, V b of that Regulation.

A. EXPLANATORY NOTE - IV. - Content of the draft Opinions and Decisions p. 4-7

comment *9* comment by: *EUROCOPTER*

It is written at the end of item 11 *'Non-commercial operations with CMPA and aircraft and crew not holding a standard ICAO CofA or licence will be addressed in a separate rulemaking task*'. Eurocopter suggests that this rulemaking task also addresses the particular case of pilots who are not obliged by their Country to have a Type Rating while having an ICAO license. This is the case for example in the USA where a Type rating is generally not mandated by the FAA for helicopters having a maximum certificated weight lower or equal to 12500 lbs (5670 kg). This could be a safety issue in the EU.

response *Noted*

The Agency notes the comment at hand and will take the remark into account during a future rulemaking process for a separate rulemaking task "Non-Commercial Operations with Complex Motor Powered Aircraft" into

consideration (RMT. 0419,0420/OPS.004c, OPS.004d).

comment

11 comment by: *new European Helicopter Association (EHA)*

Where stated at the end of item 11 *"Non commercial operations with CMPA and aircraft and crew not holding a standard ICAO CofA or licence will be addressed in a separate rulemaking task", EHA suggests that this rulemaking task takes also into account the particular case of pilots who are not obliged by their Country to have a Type Rating while having an ICAO licence. This happens for example in the US where a Type rating is generally not mandate by the FAA for helicopters having a maximum certificated weight lower or equal to 12500 lbs (5.670 Kg).*

response

Noted

Please see the response to comment #9.

comment

31 comment by:*AAPA*

Page 6, Para 10 - AAPA supports that the baseline regulation for TCO should be ICAO standards and Recommended Practices (SARPS). However where there are no standards, EASA should ensure any proposed requirements are harmonised with existing regulations already developed by other leading regulatory authorities such as the FAA FAR 129.

Page 6 - We take note that EASA will take account of results of the ICAO Universal Safety Oversight Audit Programme (USOAP) in its Part TCO initial and continuing authorisation processes of results of the ICAO.

AAPA believes that this contradicts the premise of the second bullet statement Page 5, paragraph 10 of the NPA which provides in part that Third country operators engaged in commercial operations shall be subject to an authorisation process in which they demonstrate their capability and means of discharging the responsibilities associated with their privileges.

AAPA also reminds EASA that the USOAP audit is an assessment of a States national aviation authority and not the airline(s) of that State. In cases where USOAP has found deficiencies concerning the oversight capability of a country this does not mean that the applicant air carrier does not have a robust safety culture and capability to ensure the protection of passengers and cargo carried by that air carrier

Page 6 - AAPA strongly agree that SAFA inspection results are an important consideration for Part-TCO authorisation, and for maintaining that authorisation. We believe that SAFA inspection results, together with EASA's own assessment of the operators, should be the only factors that should be considered for the Part TCO authorisation and for maintaining that authorisation.

response

Part-TCO will bring regulatory harmonisation within the EU. Please see the response to comment #111. Harmonisation on a worldwide scale is only possible to a limited extent. As different regulatory systems evolved worldwide,

regulations are tailor-made to fit into the respective legal framework. Authorities in these systems are subject to a different allocation and delimitation of competences and tasks. However, the Agency will continue to coordinate with the FAA on ways to improve the authorisation process, as appropriate.

Response to comment regarding “EASA's own assessment of the operators should be the only factors that should be considered for the Part TCO authorisation”: not accepted. Article 9.5(d) of Regulation (EC) No 216/2008 clearly establishes that the Agency shall consider also the safety oversight capability of the State of operator. USOAP cannot be neglected as the TCO authorisation is largely based on the Agency's confidence regarding the AOC issued by the competent authority.

comment

56 comment by:*Singapore Airlines (SIA)*

In general, Singapore Airlines (SIA) does not support the proposed rules on TCOs for the following reasons:

1. EASA already has the necessary tools to protect the safety of EU citizens by imposing a ban and blacklisting an airline which EASA considers as unable to conduct safe operations, or that the State of the operator cannot guarantee a sufficient level of on-going oversight;

2. Airlines are already subjected to oversight by their own competent authorities; and

3. This places an added burden on airlines, especially on those which have met or are capable of meeting IOSA standards, and whose States have met or are capable of meeting ICAO USOAP requirements.

response

Response to comment 1): not accepted. Art. 9 of Regulation (EC) No 216/2008 gives a clear mandate to the European Commission to develop implementing rules for the authorisation of third country operators.

Response to comment 2): not accepted. Although operators are subject to oversight by the respective state of the operator, experiences worldwide reveal that some countries do not fulfil their oversight responsibilities. The ICAO USOAP auditing programme was launched beginning of 1999 in response to widespread concerns on the apparent inability of some Contracting States to carry out their safety oversight functions. The Agency welcomes this approach and will take the results of the conducted USOAP audits into consideration, see Art 9(5)(d)(i) Regulation (EC) No 216/2008.The Agency does not intend to take over any responsibilities assigned to the state of the operator in the Chicago Convention. Part-TCO aims to validate the original AOC and aims to verify that the requirements under which the certificate was issued are at least equal to the applicable minimum safety standards.

Regulation (EC) No 2111/2005 and Part-TCO differ in their scope and will complement each other. Part-TCO will only be applicable if an operator intends to fly into, within or out of the EU. Both regulations will be aligned and coordinated accordingly. Please see also the response to comment #111.

Response to comment 3): not accepted. The Agency cannot see the alleged undue burden for operators that meet IOSA standards and whose states are capable of meeting ICAO USOAP requirements. On the contrary, especially the aforementioned operators will enjoy the benefits of Part-TCO. Most EU Member

States have their own authorisation system in place today. Part-TCO will harmonise these 27 diverging systems. In the future a third country operator will apply only once for an authorisation, which will then be valid throughout the EU. There will be one set of assessment criteria, which eliminates the risk that third country operators would be subject to conflicting requirements within the EU. Furthermore, those operators will most likely fall under category A, which indicates a high level of confidence in the applicant. The application process for operators allocated in category A will be a simple desktop review of the basic operator data. Accordingly, the fee for this fast track assessment will be reduced to a minimum.

comment *58* comment by: *Singapore Airlines (SIA)*

On page 6, para. 11 and page 25 on definition of CAT:

1. Will an airline holding a TCO authorisation need to apply for further authorisation for the first delivery of a new aircraft type out of the EU?

2. Does an airline without TCO authorisation need to apply for authorisation for a delivery or maintenance flight into and out of the EU?

response

Response to comment 1): noted. “Commercial air transport (CAT) operation” means any aircraft operation to transport passengers, cargo or mail for remuneration or other valuable consideration”. This definition is stated in TCO.GEN.110 and is in line with the definition provided in the draft Cover Regulation on Air Operations (available as Opinion 04/2011). The first delivery of a new aircraft will not fall within this definition as the aircraft is not operated to transport passenger, cargo or mail. An authorisation is therefore not needed under Part-TCO.

Response to comment 2): noted. Please see the response to comment #58(1). Delivery flights and maintenance flights do not fall under the definition of CAT. Hence, these operations will not require obtaining a third country operator authorisation under Part-TCO.

comment *84* comment by: *Singapore Airlines (SIA)*

On page 5, para. 10:

SIA supports applicable ICAO standards as fundamental regulations. Where there are no such standards, EASA should harmonise any proposed requirements with existing regulations of other leading regulators.

response *Noted*

Please see the response to comment #31.

comment *112* comment by: *Singapore Airlines Cargo*

In general, Singapore Airlines Cargo (SIAC) does not support the proposed rules on TCOs for the following reasons:

1. EASA already has the necessary tools to protect the safety of EU citizens by

imposing a ban and blacklisting an airline which EASA considers as unable to conduct safe operations, or that the State of the operator cannot guarantee a sufficient level of on-going oversight;

2. Airlines are already subjected to oversight by their own competent authorities; and

3. This places an added burden on airlines, especially on those which have met or are capable of meeting IOSA standards, and whose States have met or are capable of meeting ICAO USOAP requirements.

On page 6, para. 11 and page 25 on definition of CAT:

1. Will an airline holding a TCO authorisation need to apply for further authorisation for the first delivery of a new aircraft type out of the EU?

2. Does an airline without TCO authorisation need to apply for authorisation for a delivery or maintenance flight into and out of the EU?

On page 5, para. 10:

SIA Cargo supports applicable ICAO standards as fundamental regulations. Where there are no such standards, EASA should harmonise any proposed requirements with existing regulations of other leading regulators.

response

Concerning comments 1-3: not accepted. Please see the responses to comment#56.

Concerning the comment on the definition of CAT: noted. Please see the response to comment #58.

Concerning the comment regarding page 5, para.10: noted. Please see the response to comment #31.

comment

120 comment by: *Swedish Transport Agency, Civil Aviation Department (Transport styrelsen, Luftfartsavdelningen)*

IV Content of the draft Opinions and Decisions

10. A basic principle in the Chicago Convention is that Member States shall accept operations performed by airlines of other Member States as long as they comply with applicable ICAO standards. The Basic Regulation states that to the extent there are no such standards, these aircraft and their operations shall comply with the requirements set out in the Essential Requirements, “provided these requirements are not in conflict with the rights of third countries under international conventions”.

However, in this connection, what is important is not only what the EU States believe they have the right to do, but also what third countries believe the EU States have the right to do. Reciprocity is a key word within civil aviation. This principle should not be compromised with without very strong reasons. Therefore it is important not to take measures which third countries can question or retaliate against if there are not very strong arguments for this and where these arguments outweigh the counterarguments.

Sweden does not consider it acceptable under international conventions to demand from third country operators that they shall comply with EU rules which are not based on ICAO standards and strongly opposes the idea of introducing such demands.

We know that there are States which have introduced some additional requirements and we also understand that European carriers are not happy about the detailed ruling they are subjected to through so called Operations Specifications and the bureaucracy and practical problems that this entails. Moreover those requirements have a close connection with how traffic rights have been negotiated and where one party has used the open-skies regime to motivate stricter safety checks on the other party´s carries. The EASA proposal goes much further since it introduces similar measures without open skies when it comes to traffic rights.

response

Regarding additional requirements, partially accepted. Please see the response to comment #93. With regard to the “Open Skies” agreement: noted: see also the response to comment#239.

comment *240* comment by:*General Aviation Manufacturers Association / Hennig*

GAMA agrees with the prioritization by EASA and the EC with regard to commercial versus non-commercial flight activities and assumes that the agency will develop appropriate transition measures for non-commercial operators to ensure they have appropriate time available to develop the necessary procedures for operations into Europe.

As a placeholder, we would like to recall the meeting held by the agency in October 2009 (under the auspices of RM 21.039) with regard to manufacturer flight operations. One of the take-aways of the meeting was the existence of certain flight operations (such as, demonstration flights, test flights and other unique manufacturer activities) and the consensus that these flights *would not be considered "commercial".* GAMA recommends that the same philosophy be carried through to the TCO consultation.

GAMA looks forward to reviewing the NPA for non-commercial operations with CMPA and would encourage the agency to consider Article 5 of the ICAO Convention in its development as well as the limits in requirements established in Article 29 as to required documentation to carry as applicable.

response *Accepted*

Please see the response to comment #58. Demonstration flights and test flights will fall outside the definition of “commercial air transport (CAT)” and hence beyond the scope of NPA 2011-05.

A. EXPLANATORY NOTE - IV. - Content of the draft Opinions and Decisions - General p. 8-10

comment	*5* comment by:*H_MOTEMRI* 21. "third country operators must comply with certain applicable EU rules in addition to the applicable ICAO standards." seems contradictory to Annex 6 Part I 4.2.2.1 "Contracting States shall recognize as valid an air operator certificate issued by another Contracting State, provided that the requirements under which the certificate was issued are at least equal to the applicable standards specified in this Annex." EU should not ask for additional requirements to ICAO standards. In such a case EU should ensure that all EU operators are complying with the additional requirements. For the future additional requirements must be limited to some safety procedures implementation and not extra equipments installation which may not be fair if such equipements are only available in EU market.
response	Concerning Annex 6 Part I 4.2.2.1: noted. Please see the responses to comments #111. According to Annex 6, Part I, 4.2.2.1. a foreign AOC shall only be recognised “provided that the requirements under which the certificate was issued are at least equal to the applicable standards specified in this Annex.” Part-TCO aims to verify exactly this prerequisite. The authorisation process proves that the requirements under which a foreign air operator certificate was issued are at least equal to the applicable standards. Concerning additional EU requirements: partially accepted. Please see the response to comment #93.

comment	*32* comment by:*AAPA* Page 8 Para 16 - The NPA rationalizes the States' obligation to exercise safety oversight within its territory, and we couldn't agree more with the statements that as a minimum, an administrative review of the operator’s relevant documentation should be performed, and should be supplemented by safety-related information, if available, through ICAO or through safety programmes by States (such as ramp checks), and that States may consider audits performed by other States, by internationally recognised audit organisations or by its civil aviation authority (CAA). Noting the proposed Part TCO will provide for a comprehensive review of applicants may we request for clarification from EASA whether this will mean Part TCO will replace the Commissions practice of operational bans against air carriers (which effectively render them ineligible for Part TCO authorisation per Paragraph 29) which is based solely on the results of FAA IASA and/or ICAO USOAP assessment of the national authorities. Para 16 - AAPA notes that it is responsibility of States to develop procedures for the safety oversight of foreign operators and for the authorisation of such operators to operate within its territory. AAPA would strongly emphasise such procedures to be harmonised with other airworthiness authorities requirements for third country operators such as the FAA FAR 129 requirement. Para 16 - The following statement is made "An approval should be granted in the absence of any significant negative findings or major deficiencies". AAPA believes a more definitive statement must be made and the word "should" be replaced with "will".

Para 17 - AAPA argues that the proposed Part TCO and on the establishment of a Community List of air carriers subject to an operating ban within the Community is a duplication of regulation. AAPA believes that Regulation (EC) 2111/ 2005 is extra territorially imposing requirements on air carriers who provide no air services to European destinations and goes beyond a States obligations under the Convention on International Civil Aviation. Oversight of a States oversight capability is the responsibility and competence of ICAO. AAPA would therefore recommend once the Part TCO comes into force we would urge EASA as the competent safety authority to recommend to the Commission the withdrawal of Regulation (EC) 2111/2005.

Para 17 - EASA has indicated it has took account FAR 129. AAPA would request assurances that EASA will look to harmonise the PART TCO with FAR 129 and other equivalent requirements. Lack of harmonisation can only result in additional complexity to aviation operations resulting in additional risk and unnecessary cost.

Page 9

Para 20 - It is AAPA understanding that the objective of Part TCO is to ensure safety of passengers and cargo. We believe therefore environmental protection does fall under safety objectives and should be removed. We believe this isue is covered under different requirements which is currently under consultation in NPA 2011-08. However, in the event EASA decides to continue with this requirement the carriage of documentation attesting noise certificates in not a requirement under ICAO Annex 16. Furthermore, this point should be highlighted to SAFA inspectors who have cited air carriers in the past on this point when they are unable to produce on-site a noise certificate.

Para 23 - provides that in case the operator or its competent authority cannot provide evidence of compliance with the applicable standards, the Agency may decide to reject the application or limit, suspend or ultimately revoke existing authorisations, while Paragraph 24 provides that for the future authorisation of third country operators ICAO-USOAP results and the ICAO-CMA (continuous monitoring approach) data will be one of the most important sources of safety related information and will significantly influence the categorisation of TCO applicants/authorised operators and their assessment. This, together with the process outlined in Paragraph 29 provides a semblance of fairness to the Part TCO authorisation process, save for the reference to the competent authority. To reiterate, any semblance of fairness would be negated if the EU continues with its questionable process for operational bans against air carriers based on FAA IASA and/or ICAO USOAP assessment of the State regulator. The Part TCO authorisation process should be based on EASA's assessment of the operator's capability, and not on factors which the operators concerned have absolutely no control over.

Page 10

Para 25 - The SAFA programme will have an essential role to play within the Part TCO. EASA are requested to confim how they will ensure that the ramp inspections and associated reports are carried out and prepared in a consistent and harmonised manner. Where inconsistencies can be identified what process is available to air carriers to bring it to the attention of EASA.

response

Response to the part of the comment relating to audit programmes: noted

Response to the part of the comment suggesting withdrawing Reg. (EC) 2111/2005: noted. Please see the response to comment #111.

Response to the part of the comment relating to harmonisation: not accepted.

Please see the response to comment #31.

Response to the part of the comment relating to findings: noted.

Response to the part of the comment relating the authorisation process: not accepted. Please see the response to comment #31.

Response to the part of the comment relating to the SAFA programme: noted. The new SAFA database will provide for a tool for the operator to provide feedback to the NAA conducting the ramp inspection.

Response to the part of the comment relating noise certification: not accepted. Part-TCO will be based on an assessment of compliance with applicable ICAO standards which cover more than safety of passenger and cargo only. However, it must be underlined that the assessment performed by the Agency has not the same meaning as the certification process of the State of the operator. The Agency's authorisation process should in principle be understood as a validation process of the AOC and the associated operations specifications of the third country operator. The Agency shall by no means interfere with the responsibilities of the state of the operator that issued the AOC. This means that the Agency will in principle examine the adherence with the applicable ICAO standards for the issue or continuous validity of the operator's AOC. However, this will not exclude the possibility that the Agency examines other areas such as environment (Annex 16).The requirement to carry on board documentation attesting noise certification is a requirement of Annex 6 Part I, chapter 6.13 as well as of Annex 16 Chapter 1, Section 1.4.

comment *33* comment by: *Singapore Airlines (SIA)*

On page 9, para. 22:

1. Is this the same as SAFA inspection? Will there be additional inspection, on top of SAFA inspection?

2. There were previous concerns about calibration of inspectors and harmonization of such inspections. What initiatives are being taken by EASA to ensure such consistency of inspections and standards?

response

Response to Question 1):noted. Ramp inspections can be considered the same as SAFA inspections.

Response to Question 2): noted. A harmonised training programme has been established on the basis of Directive 2004/36/EC and the future Implementing Rules on ramp inspections (Part-ARO Subpart "Ramp Inspections as published in Opinion 04/2011).

comment *60* comment by: *IACA International Air Carrier Association*

P9 – General - paragraph 20:

Hereby the EU confirms to recognise certificates of airworthiness issued in accordance with ICAO standards (Annex 8), while Regulation 3922/91 (EU-OPS) 1.180(a)(1) requires the certificate of airworthiness for aircraft operated by EU operators to be issued in accordance with Part-21. This is the only issue blocking the dry lease-in of aircraft registered in a third country by EU operators. If for aircraft registered in a third country operated by third country

operators into EU it is satisfactory for the certificate of airworthiness to be issued in accordance with ICAO (Annex 8), this shall also be valid if such aircraft is operated by EU operators.

response

Noted

Please see the response to comment #59.

comment

113 comment by: *Singapore Airlines Cargo*

On page 9, para. 22:

1. Is this the same as SAFA inspection? Will there be additional inspection, on top of SAFA inspection?

2. There were previous concerns about calibration of inspectors and harmonization of such inspections. What initiatives are being taken by EASA to ensure such consistency of inspections and standards?

response

Noted

For both questions please see the responses to comment #33.

comment

121 comment by: *Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)*

22. EASA states: “However, taking into account the mutual recognition obligations contained in the Chicago Convention, the Agency’s role is not to substitute itself with the competent authorities of the concerned States of registry of States of operator. It shall only verify that the operators, their crew and the aircraft they use hold duly issued certificates and/or documents attesting compliance with these rules.” Sweden agrees with this approach.

23. EASA states: “To fulfil its oversight responsibilities, the Agency shall issue authorisations to third country operators engaged in commercial air transport operations. These authorisations ensure a common understanding between the third country operator and the Agency on what they are authorised to do in the territory subject to the provisions of the Treaty. They do not affect, or interfere, with the responsibilities of the State of the operator that issued an AOC to the third country operator. The State of the operator continues to maintain primary responsibility for certifying the operator and the on-going oversight of its operations in accordance with ICAO Annex 6.” Sweden agrees with this approach.

However, when comparing with what is written in points 29 (pages 14-15), 32 and 37, AR.TCO.200 (d) and other places, it seems the Agency is in fact taking over the responsibility of the competent authority by conducting on-site assessment visits, continuous safety assessment, oversights and audits with regard to third country operators conducting air transport operations into, within or out of the territory of an EU Member State. This creates an uncertainty as to who is responsible. Sweden questions whether EASA:s approach is simple, proportionate, cost-effective and efficient in all cases. In Sweden's view the basic approach should rather be a desktop review of the documentation. In case the documentation is not in order, or if there are

doubts about the safety of the operator, based on ICAO USOAP, ramp inspections or otherwise, then, as a starting point, no authorisation should be issued. And it should rather be up to the operator and the State of the Operator to demand from EASA to perform an audit in order for them to qualify for an authorisation.

response *Not accepted*

Please see the responses to comment #98. The Agency will not conduct an onsite visit when the operator rejects an audit request by the Agency. In such a case an authorisation cannot be granted, because it is not possible for the Agency to come to an informed conclusion.

comment *200* comment by: *General Aviation Manufacturers Association / Hennig*

The agency states that to "fulfil (sic) its oversight responsibilities, the Agency shall issue authorisations to third country operators engaged in commercial air transportation operations." (see page 9, paragraph 23.)

As the agency promulgates the specific regulations for these operators GAMA believes that consideration must be given to proportionality of the requirements for operators of different scales. We believe consideration should be given to the frequency of operation by a third country operator (TCO) into the European Community as well as the type of operation that is conducted.

A proportional approach to European authorisation of commercial TCO should consider 1) the frequency of flight conducted into Europe, 2) whether the commercial operator is conducting scheduled operator or non-scheduled (that is, on demand) operations), and 3) the size of the aircraft / number of passengers that the aircraft can carry.

We note, as an example, that United States Department of Transportation has established a threshold for European, and other non-U.S., operators who conduct fewer than ten flights per year as to the requirements placed on their operations, under commercial regulations, into the United States. GAMA believes that this threshold and its regulatory history should be considered by EASA as it develops a more proportional approach to the requirement, including the threshold for regulation, for commercial TCO flights into the European Community.

Finally, while we recognize that this consultation is with regard to the safety requirements placed on the operator, we feel it is appropriate to note that it is essential that proportionality consideration also be given to the frequency, type and size of operation when the agency engages with the European Commission (EC) in the development of fees and charges regulations for TCO authorisations. We look forward to future discussion with the agency and the EC about the topic of fees and charges for TCO.

response

With regard to the comment on the frequency of operation by a third country operator (TCO) into the EU: partially accepted. During the envisaged transitional period when establishing the time of assessment for each individual applicant with transition rights, one of the factors considered by the Agency is the risk exposure of EU citizens (both travelling public and on the ground) by the intended operations (in this context, the traffic volume into the EU).

However, apart from the envisaged transitional measures, a low frequency of flights by a third country operator into the EU does not justify lessening or waiving a safety assessment where safety information available to the Agency so warrants.

With regard to the comment whether the commercial operator is conducting scheduled or non-scheduled (that is, on demand) operations: not accepted. There is no evidence that non-scheduled operations are less exposed to safety risks than scheduled operations. Hence, the assessment methodology applied will not differentiate between specific commercial air transport modes.

With regard to the comment on the size of the aircraft/number of passengers that the aircraft can carry: not accepted. When evaluating the severity of a potential accident, one should not focus on the aircraft that causes the accident. Also the potential damage to people and property on the ground must be taken into consideration. In order to ensure a simple process, the size and mass of the aircraft will not be considered as a determining factor for the level of assessment applied.

With regard to the comment on the threshold of 10 flights. not accepted. As the Agency understands the Department of Transport under Part 375.70 permits operators to conduct up to 12 one-way round trip flights in a yearlong period between points in the United States and points not in the United States. Such operations are limited to “occasional planeload charters” by a non-US operator, only where those operations do not constitute an engagement in foreign air transportation within the meaning of Title 49 of the U.S. Code. The Agency understands that in practice the Department of Transport has limited such §375.42 operations to private carriage flights, where the transportation is not held out or sold to the general public, and is limited to single charterers (single entity charters). Part-TCO applies to third country operators performing commercial air transport operations and as it seems to be the case for commercial air transport operations performed by non-US operators in the United States such operators will not be exempted from being assessed against the applicable requirements.

Concerning fees and charges: noted. Please see the response to comment #154.

comment *210* comment by: *airberlin Group*

P9 – General - paragraph

Hereby the EU confirms to recognise certificates of airworthiness issued in accordance with ICAO standards (Annex 8), while Regulation 3922/91 (EU-OPS) 1.180(a)(1) requires the certificate of airworthiness for aircraft operated by EU operators to be issued in accordance with Part- 21. This is the only issue blocking the dry lease in of aircraft registered in a third country by EU operators. If for aircraft registered in a third country operated by third country operators into EU it is satisfactory for the certificate of airworthiness to be issued in accordance with ICAO (Annex 8), this shall also be valid if such aircraft is operated by EU operators.

response *Noted*

Please see the response to comment #59.

A. EXPLANATORY NOTE - IV. - Content of the draft Opinions and Decisions - Relevant sources of information p. 10-12

comment	*6* comment by:*H_MOTEMRI* 28. As Many airlines which caused accidents and identified as "dangerous" are IOSA certified and some IOSA certified Airlines are black listed, had EASA made any correlation between SAFA results and IOSA certification. EASA like any other authority have no oversight on IOSA program and should ask for some oversight in the program. As IOSA certification body and IATA have no accountability it's hardly understable to rely on IOSA results.
response	*Not accepted* The Agency has a permanent seat in the IOC. Furthermore, IOSA is considered as only one of a total of 19 parameters within the TCO assessment model.

comment	*34* comment by:*Singapore Airlines (SIA)* On page 10, para. 25: 1. As per my earlier comment on para. 22, page 9. While the EU SAFA programme is intended to harmonize the performance of ramp safety inspection by EU Member States on TCOs, auditing standards appear to differ across EU States. Therefore, for SAFA inspection programme to be formally admitted as a Consideration for TCO authorisation process, clearly-defined, applicable ICAO/EASA standards by which the airline is inspected must be put in place.
response	*Not accepted* Ramp inspections of third country operators are based on ICAO standards. The SAFA programme is harmonised via common qualification and training requirements for SAFA inspectors, detailed inspector guidance material and standardisation inspections performed by the Agency.

comment	*40* comment by:*Singapore Airlines (SIA)* On page 12, para. 29 "The authorisation process": 1. How does EASA assess new airlines when there are no safety records? Under which category will the new airline be assessed?
response	*Noted* For new operators, data of the State of the operator will be available and feed into the state dimension. Where no operator data are yet available, such

missing data will score neutral in the TCO assessment model (until such data become available). However, the Basic Operator Data form to be completed by every TCO applicant will contain data (by means of declarations) that will be used during the TCO assessment.

comment *41* comment by:*AAPA*

Page 11

Para 26 - AAPA reminds EASA that the USOAP audit is an assessment of the States capability to provide oversight of its air carriers in accordance with ICAO Annexes and Guidance. USOAP audits are not an assessment of a States air carriers. Consequently EASA should acknowledge that an air carrier may have robust safety processes and procedures, and culture even if their State oversight has been deemed deficient by the USOAP audit. AAPA therefore would argue that this should not prevent an air carrier from making a successful TCO application.

Para 26 - In order to prevent contradictory measures being introduced between Part TCO and Regulation (EC) No 2111/2005 AAPA would strongly urge EASA to recommend to the Commission to repeal Regulation (EC) No 2111/2005.

AAPA takes note that the proposed Part-TCO prevents third country operators from applying for TCO authorisation if the State is included in Annex A or the air carrier in Annex B of the EU safety list. AAPA would argue that the finally approved TCO authorisation process would be suffice for an air carrier to demonstrate that it has a robust safety system in place in compliance with ICAO and EU standards and requirements. Currently air carriers have received EU operational bans by association without even an audit or by an assessment based on transparent criteria. At least, the proposed Part-TCO would introduce a fairness, transparency, known criteria and maintain the safety objectives required by passengers and cargo.

Page 12

Para 27 - AAPA would urge EASA and the Commission to make greater efforts in alignment and harmonisation of their processes with the FAA IASA program. EASA should note that the IASA program is an assessment of the State in accordance with ICAO Annex 1, 6 and 8. In the event a State has been downgraded to Cat 2 by this process no punitive action is taken against the air carrier serving the US market other than restricting it from increasing its operations to the US. In the case of the Part-TCO it would appear if State is place on the EU Safety list its air carriers would lose traffic rights to operate to the EU. AAPA believes this to be unfair and requests EASA to reconsider this point in consultation with the Commission.

Para 28 - AAPA would request clarification on the status of the IOSA certification where air carriers have voluntarily agreed to be in compliance with a globally accepted set of standards and recommended practices, confirmed by regular audit. This program has definitely contributed in improving safety standards within the industry. However, it would appear EASA is only considering IOSA audit findings ignoring the fact that the air carrier must resolve any identified deficiencies if it wishes to achieve IOSA certification. AAPA is of the opinion that IOSA certified air carriers could simplify the authorisation process and they should automatically fall in assessment category A reducing EASA workload.

response

Response to the part of the comment relating to USOAP: not accepted. Please see the response to comment #147.

> Response to the part of the comment relating to Reg. (EC) 2111/2005:noted. As per TCO.GEN.110, any third country operator engaging in commercial air transport that can demonstrate the intention to operate into the EU or is subject to an operating ban pursuant to Regulation (EC) No 2111/2005as a result of safety deficiencies on the part of the operator itselfis eligible to apply for an authorization. The results of the assessment of the operator subject to an operating ban will be communicated to the European commission.

Response to the part of the comment relating to IASA: noted: Please see the response to comment #111.

Response to the part of the comment relating to IOSA: noted. Amongst the various parameters considered in the proposed TCO assessment model, a valid IOSA registration will be positively considered when establishing the applicants' assessment category. It is noted that a successful IOSA registration or renewal is conditional on the prior resolution of all identified audit findings. Please see the response to comment #147.

comment

61 comment by:*IACA International Air Carrier Association*

P10 – SAFA Programme – paragraph 25 :

IACA fully agrees with this wording and regrets that still too many EU aircraft are inspected in EU states under the SAFA programme.

response

Noted

The functioning of the EU SAFA programme is subject to a separate regulation which is beyond the scope of the envisaged Part-TCO. As Part-TCO applies to third country operators only (non-EU operators), SAFA data of EU aircraft will only be relevant during the TCO assessment if EU-registered aircraft are being used under a dry lease arrangement by a third country operator.

comment

85 comment by: *Singapore Airlines (SIA)*

On page 10, para. 24:

USOAP audit is an assessement of the State's capability, not the operator's. USOAP audit, whilst an important indicator, should not significantly influence categorisation of TCOs. We are of the view that airlines should be assessed based on their own capabilities. When an operator has acceptable safety processes and procedures, it should be categorised on its merit and assessed accordingly. It should not be prevented from making a successful application for authorisation.

response

Noted

USOAP cannot be neglected as the TCO authorisation is largely based on the

Agency's confidence in the AOC issued by the competent authority.The approach is already foreseen in Article 9 of Regulation (EC) No 216/2008.

comment *114* comment by: *Singapore Airlines Cargo*

On page 10, para. 25:

1. As per earlier comment on para. 22, page 9. While the EU SAFA programme is intended to harmonize the performance of ramp safety inspection by EU Member States on TCOs, auditing standards appear to differ across EU States. Therefore, for SAFA inspection programme to be formally admitted as a Consideration for TCO authorisation process, clearly-defined, applicable ICAO/EASA standards by which the airline is inspected must be put in place.

On page 12, para. 29 "The authorisation process":

1. How does EASA assess new airlines when there are no safety records? Under which category will the new airline be assessed?

On page 10, para. 24:

USOAP audit is an assessment of the State's capability, not the operator's. USOAP audit, whilst an important indicator, should not significantly influence categorisation of TCOs. We are of the view that airlines should be assessed based on their own capabilities. When an operator has acceptable safety processes and procedures, it should be categorised on its merit and assessed accordingly. It should not be prevented from making a successful application for authorisation.

response

Concerning the SAFA programme: noted. Please see also the responses to comments #34.

Concerning new operators: noted. Please see the response to comment #40.

Concerning the application for an authorisation: noted. Please see the response to comment #85.

comment *135* comment by: *Boeing*

Page: 14 of 175

Paragraph: *29*

Text states:

"Operators who have been grouped into categories B and C are required to provide additional information online including at least:

- *compliance statements with **a set of** selected ICAO SARPS, including references to the applicant's operations manual; …"*

We have concerns with use of the phrase *"… **a set of** selected ICAO SARPS…."*

Clarification is needed as to:

- what set of ICAO SARPS is used,
- who determines this set, and
- whether this is the same set for all operators.

JUSTIFICATION: Clarification would eliminate subjectivity; otherwise, this would be open to varying interpretation.

response | *Accepted*

The selected ICAO standards stem from those in Annexes 1, 6, 8 and 18 that are applicable to air operators. The Agency has determined the set of standards used for the purpose of TCO authorisations. The set of standards is identical for category B and C operators

comment | *148* comment by:*GiancarloBuono*

Relevant sources of information, Page 12

The ~~International~~*IATA* Operational Safety Audit (IOSA)

28. Also bodies from the private sector, such as the International Air Transport Association (IATA)24 have initiated audit programmes aimed at operators.

IATA established IOSA in 2003 to create a comprehensive, standardized and consistent audit scheme that can be applied worldwide, irrespective of specific regional or national legislative frameworks. IOSA uses a globally accepted set of standards and recommended practices (ISARPs) which include *ICAO SARPs contained in Annexes 1, 2, 6, 8, 17 and 18 that are applicable to operators*~~all ICAO SARPs plus industry best practices~~. IOSA is led by IATA in collaboration with industry experts seconded by IATA member airlines *under the oversight of the IOSA Operational Committee (IOC) which is composed of airlines and state regulators*.

Because of their standardised conduct, IOSA Audit Reports (IARs) are consistent and comparable sources of information regarding an air operator's conformity with all applicable ISARPs.

response | *Noted*

IOSA audit reports are used as a parameter in the TCO assessment model

comment | *211* comment by:*airberlin Group*

P10 – SAFA Programme – paragraph 25

AIRBERLIN fully agrees with this wording and regrets that still too many EU aircraft are inspected in EU states under the SAFA programme.

response | *noted*

noted. Please see the response to comment #61.

A. EXPLANATORY NOTE - IV. - Content of the draft Opinions and Decisions - The authorisation process p. 12-16

comment | *7* comment by:*H_MOTEMRI*

29.

- Will the NAA have access to the information introduced secured web-based software by its operators?
- Who should introduce the information from the operator side? Quality Post Holder? Safety Manager? Flight Operations Post Holder? ... Or anyone designated by NAA?

response *Noted*

The competent authority of the third country operator will not have access to the EASA TCO software application. An account will be assigned to an authorised representative of the applicant, as nominated by its management.

comment *35* comment by:*Singapore Airlines (SIA)*

On page 13, para. 29:

1. For operators grouped under Cat A, EASA's level of confidence is 'high' and it expects about 60% of operators to be in this category. We find this proportion puzzling as this is extremely low. It is surprising that EASA estimated that 40% of airlines operating in the EU requires more than desktop review for their authorisation. We need further clarification on the scope and deliverables for each category of assessment.

On page 14, para. 29, and Appendix 1, page 45, para. 4:

1. Is EASA's classification of accidents the same as ICAO Annex 13? How far back is 'accident history' to be declared?

response

Response to the part of the comment relating page 13, para.29: noted. The proposed distribution is an initial assumption taking into consideration experiences gained from i.e. the SAFA programme. It is considered to review and where necessary adjust the distribution after completion of one cycle (2 years). The assessment methodology for each assessment category, and the parameters used in the assessment mode applied, are presented in chapter 29 of the NPA.

Response to the part of the comment relating to page 14, para.29: noted. The classification of accidents used in the TCO authorisation process is the same as the one in Annex 13. Accidents will no longer be considered after 8 years after the event.

comment *43* comment by:*AAPA*

Page 13

Para 29 - AAPA reiterates that even though an air carrier may be listed in Annex A of the safety list this should not prevent them from submitting an application and having an evaluation. It must be recognised that any

submission shall demonstrate that the air carrier is in compliance with ICAO and EU standards which in principle should be able to satisfy the EU Air Safety Committee (ASC) which identified the lack of compliance.

The NPA provides a table on how air carriers currently approved to operate to EU States will be grouped based upon EASA's level of confidence with the air carrier. This determination by EASA raises some concerns as it would indicate that 40% of Third Country Operator operations EASA lacks confidence which implies a major problem in Europe for passengers and cargo. The NPA does not provide any basis for this determination. At the recent EASA/ FAA International Safety Forum in Vienna raised this point during a short briefing by EASA on TCO authorisations. AAPA were advised this determination was based upon 15 years of SAFA reports. AAPA questions this approach since during this time-frame SAFA inspections have not been performed or reported in a consistent manner, consequently any analysis would be problematic. AAPA would argue that the level of confidence should be much higher with a split at least of 85/10/5. Furthermore AAPA believes the scope, and any determination and assessment criteria used by EASA should have been included within the NPA.

EASA is requested to clarify what constitutes "proven evaluation criteria" no example has been provided within the NPA.

Page 14

EASA is requested to clarify the statement "adherence to industry standards" since the NPA clearly states that the basis for Part-TCO are ICAO and EC standards and Recommended Practices.

EASA is requested to clarify why the size, nature and complexity of the operation be a determining factor if the operation is able to demonstrate it meets the Part TCO safety objectives.

EASA is requested to define what constitutes an "accident" for the purpose of record keeping. Furthermore please define "worrying SAFA results".

Authorisation Phase:

AAPA questions the transparency of the authorisation panel's "own terms of reference and working conditions". How will an air carrier determine if it is being assessed fairly and in accordance with regulatory norms. AAPA recommends that transparency is key to effective regulation and a set criteria is needed by the Authorisation Panel

Risk Assessment

Air carriers are very familiar with risk assessments as part of their existing SMS however AAPA notes that EASA will employ a performance-based risk assessment methodology and therefore requests EASA to advise what guidances will be made available and when.

In addition what type of “state of the operator data” is required? What is the difference between this and “operator data” in category 2? What defines “worrying SAFA results?”

Page 16

What does the term “whistleblower” refer to in category 3? If it infers the admission of information received from a source other than the carrier or regulator, how will it be validated by EASA?

Ad-hoc Investigations

EASA is requested to clarify how it will define "deterioration of safety status" assuming it will be part of an ongoing assessment what will be the criteria and guidelines used.

Noting that EASA proposes ad-hoc investigations due to observed deterioration of the air carrier safety status. Will the air carrier be notified that it "no longer

	performs in accordance with Part-TCO"? Before any action is taken against the air carrier. Will the deficient air carrier be permitted to take immediate corrective action? If this the case where is it planned to be stated.
response	Response to the part of the comment relating to eligibility: partially accepted. The Agency has modified TCO.GEN.110 'Eligibility'. This provision now reflects the Agency position that it will assess applications of operators included on the EU Safety list (Regulation (EC) No 2111/2005) as a result of safety deficiencies on the part of the operator itself. As a consequence some provisions in Part-ART have been modified and brought in line with this change. The European Commission and the Agency will continue to cooperate closely in order to ensure that both regulations will be well-coordinated and will not produce conflicting results. Response to the part of the comment relating to the proportions of categories A, B and C: noted. The proposed distribution is an initial assumption taking into consideration experiences gained from i.e. the SAFA programme. It is considered to review and where necessary adjust the distribution after completion of one cycle (2 years). The assessment methodology for each assessment category, and the parameters used in the assessment model applied, are presented in chapter 29 of the NPA. Response to the part of the comment requesting clarification of the term "proven evaluation criteria":noted. The legal basis stems from Article 9.5.(d) of Regulation (EC) No 216/2008. Paragraph 29 of the Explanatory Note to NPA 2011-05 provides the details of the criteria used. Response to the part of the comment requesting clarification of the term "adherence to industry standards": noted. ICAO Doc 8335 VI 1.5 refers to "Audits performed by commercial audit organisations using an internationally recognized evaluation system may be acceptable as additional supporting information at the discretion of the State." To that end, adherence to industry standards (e.g. IOSA) should be considered as additional information in the TCO assessment model. Response to the part of the comment requesting clarification on size, nature and complexity of operations:not accepted. Article 9.5.(d) of Regulation (EC) No 216/2008 requires the Agency to implement an authorisation process allowing for requirements and compliance demonstrations proportionate to the complexity of operations and the risk involved. The Agency considers the nature and complexity of an operator as factors in determining the applicable international standards to be complied with for the intended operation to the EU. Response to the part of the comment requesting a definition of "accident": The Agency will use the term "accident" as defined in ICAO Annex 13. This is equivalent to the definition in Regulation (EC) No 996/2010. Response to the part of the comment requesting a definition of "worrying SAFA results": "Worrying SAFA results" are to be understood as those that give reason to the SAFA "In-depth analysis group" of experts to issue a recommendation to the Air Safety Committee and individual inspections that resulted in the grounding of an aircraft. Response to the part of the comment relating to transparency:noted. Transparent working methods of the Agency will be ensured with a dedicated EASA Management Board Decision from which detailed working procedures are being derived. The Management Board Decision will be published on the EASA

Internet pages. The internal authorisation panel will be established in order to ensure equal treatment of all applicants.

Response to the part of the comment requesting clarification on the term “performance-based risk assessment”: noted. Pursuant to Article 9.5 (d) of Regulation (EC) No 216/2008, EASA shall implement a process which, amongst other, shall be proportionate to the complexity of operations and the risk involved. The proposed assessment categories (A through C) are deemed to implement this principle. The performance-based risk assessment methodology of the TCO authorisation process should not be confused with the ICAO SMS requirements.

Response to the part of the comment seeking clarification on the term “state of the operator data”:

As stated in paragraph 29 of the Explanatory Note to NPA-2011-05, in principle, "state of the operator data" refers to safety-relevant data at the state level while "operator data" refers to safety-relevant data at the organisational (approval holder) level.

Response to the part of the comment requesting clarification on the term “whistleblower” and response to the part of the comment relating to “ad-hoc investigations”:noted. "Whistleblower" information received will be validated through an established Agency-wide Whistleblower Handling Procedure. The TCO assessment model will continuously monitor all parameters described in the NPA and record trends. In case of a significant deterioration an advance re-assessment of the TCO authorisation will be performed during which consultations with the operator, and with its competent authority where appropriate, will take place, requesting corrective action of deficient situations observed. Notwithstanding, the Agency may opt to immediately limit or suspend an authorisation until it is satisfied that effective corrective action has been implemented.

comment *46* comment by: *COSCAP-UEMOA*

Un "Audit blanc" est-il envisageable ?

Peut-on attendre une assistance de l'EASA dans la mise en oeuvre d'actions correctives ?

response *Not accepted*

In the context of TCO authorisations, the Agency cannot engage in consulting activities aimed at restoring ICAO compliance by developing corrective action plans for a specific air operator, as this would constitute a conflict of interest.

comment *62* comment by: *IACA International Air Carrier Association*

P13 – The authorisation process – paragraph 29 - Table:

IACA supports this risk based concept, and is confident that most current and potential third country operators (and their State) dry leasing-out aircraft registered in a third country to IACA carriers would fall into Category A.

response *Noted*

comment	*86* comment by: *Singapore Airlines (SIA)* On page 12, para. 28: We note that EASA is using IOSA Audit Reports (IARs) only as one of its "relevant sources of information". However, it is not clear how EASA is going to use IARs. EASA could do more with IARs as EASA has already stated that the conduct of IOSA is standardised and consistent. In this respect, EASA should should automatically classify IOSA-certified operators as Cat A.
response	*Not accepted* Article 9.5.(d) of Regulation (EC) No 216/2008 requires the Agency to take into particular account the results of the ICAO USOAP programme, information from ramp inspections and SAFA records and other recognised information on safety aspects with regard to the operator concerned. A single industry initiative like e.g. IOSA cannot fully substitute these.

comment	*88* comment by: *Singapore Airlines (SIA)* On pages 14 & 15, Evaluation and Authorisation: How can an operator determine and be assured that it is being assessed fairly and in accordance with regulatory norms? How can the evaluation and authorisation process be made more transparent?
response	*Noted* Several instruments are deemed to provide for mechanisms suitable to ensure fair and equal treatment of TCO applicants and the resolution of disagreements: 1) The TCO Section of EASA must adhere to and derive from an approved "EASA Management Board Decision" its detailed working procedures. 2) The EASA TCO Section and their working procedures, once operational, will be subject to the Agency's corporate quality system. This will include, amongst others, periodical internal audits, regular management reporting, definition of and continuous measurement of achievement of key performance indicators (KPI) against clearly-defined service level agreements (SLA) and routine client feedback evaluation, 3) provisions and declarations ensuring freedom of conflict of interest, 4) the use of teams of technical experts who will decide about TCO applications with a set of standing terms of procedure. 5) Pursuant to Article 44 of Regulation (EC) No 216/2008 and Commission Regulation (EC) No 104/2004, an appeal may be brought against decisions of the Agency, which will be processed in line with established Rules of Procedure

comment *115* comment by: *Singapore Airlines Cargo*

On page 13, para. 29:

1. For operators grouped under Cat A, EASA's level of confidence is 'high' and it expects about 60% of operators to be in this category. We find this proportion puzzling as this is extremely low. It is surprising that EASA estimated that 40%

of airlines operating in the EU requires more than desktop review for their authorisation. We need further clarification on the scope and deliverables for each category of assessment.

On page 14, para. 29, and Appendix 1, page 45, para. 4:

1. Is EASA's classification of accidents the same as ICAO Annex 13? How far back is 'accident history' to be declared?

On page 12, para. 28:

We note that EASA is using IOSA Audit Reports (IARs) only as one of its "relevant sources of information". However, it is not clear how EASA is going to use IARs. EASA could do more with IARs as EASA has already stated that the conduct of IOSA is standardised and consistent. In this respect, EASA should automatically classify IOSA-certified operators as Cat A.

On pages 14 & 15, Evaluation and Authorisation:

How can an operator determine and be assured that it is being assessed fairly and in accordance with regulatory norms? How can the evaluation and authorisation process be made more transparent?

response

Concerning Annex 13: noted. Please see the responses to comment #35.

Concerning the IOSA programme: not accepted. Please see the responses to comment #86.

Concerning transparency of the authorisation process: noted. Please see the responses to comments#88.

comment *134* comment by:*Boeing*

Page: 14 of 175

Paragraph: *29*

The text under “Application Phase” states:

“In addition, apart from the confidence into certificates issued by the State of the operator as determined in the model explained above, the following shall be applied: where there is evidence that an applicant has an accident record justifying reasons for concern, there are ***worrying SAFA results*** *and/or is listed in Annex B of the Safety list (Regulation 2111/2005) that applicant will not qualify for category A (simple desktop review) but shall be categorised as B or C as appropriate.”*

We have concerns with the phrase ***“worrying SAFA results.”*** We recommend that specific issues be addressed, rather than use of the generic term “worrying.”

JUSTIFICATION: The term is subjective and would be open to varying interpretation.

response *Noted*

"Worrying SAFA results" are to be understood as those that give reason to the SAFA "In-depth analysis group" of experts to issue a recommendation to the Air Safety Committee and individual inspections that resulted in the grounding of an aircraft.

comment	*136* comment by:*Boeing* Page: 16 of 175 Paragraph: *29 (last paragraph)* The text states: *"**Periodic re-assessment*** *Irrespective of and in addition to the continuous risk assessment and a potential ad-hoc investigation as described above, each authorised third-country operator will be periodically re-assessed by the Agency at intervals not exceeding 24 months."* The maximum interval for the re-assessment is specified as 24 months; however, we note that no minimum interval is specified. We recommend that a minimum interval be included. Without a minimum interval, operators could be "over-inspected," with additional costs and operational burdens that it would entail. **JUSTIFICATION:** Clarification of inspection intervals would provide cost and operational certainty for operators.
response	*Not accepted* Ad-hoc re-assessments are event-driven and are initiated as often as justified by significant non-compliances with applicable international standards. Therefore, the Agency cannot limit its re-assessment activities to comply with a minimum cycle.

comment	*145* comment by:*EL AL Israel Airlines Ltd.* According to Article 29 of the NPA, eligible operators will be grouped into three different categories that correspond to the Agency's Level of Confidence into the State of the Operator and the operator itself. Given the fact that the NPA deals with operators directly, our opinion is that the Agency's Level of Confidence should be mainly influenced by the specific operator's data. As stated in Article 28 of the NPA, the IATA led IOSA audit is a credible and comprehensive source of information, based on in-depth, on site analysis of the TCO. Furthermore - worldwide flight safety statistical data show significantly lower accident rates among IATA member airlines, registered by IOSA, compared to the industry. Therefore we recommend that a strong emphasis should be put on IOSA audit results as a factor determining the applicant Level of Confidence per Article 29 of the NPA.
response	*Not accepted* Article 9.5.(d) of Regulation (EC) No 216/2008 requires the Agency to take into particular account the results of the ICAO USOAP programme, information from ramp inspections and SAFA records and other recognised information on safety aspects with regard to the operator concerned. A single industry initiative like e.g. IOSA cannot fully substitute these.

comment 149 comment by: GiancarloBuono

The authorisation process, Pages 13-14

29. The third country authorisation process will consist of the following phases:

- Application phase
- Evaluation phase
- Authorisation phase
- Monitoring phase

Application phase

The operator shall register with the Agency and submit an application form. The Agency will then perform an eligibility check on the applicant. Those eligible for authorisation are all third country operators who are not listed in Annex A of the EU Safety list and are able to demonstrate their intention to perform flights into, within or out of the EU.

An Agency case handler will be allocated to each applicant, who will be responsible for steering the authorisation process and coordination with the applicant. The applicant will be granted access to a secured web-based software solution which allows the applicant to submit all necessary information online. The application process will contain an interactive online questionnaire.

All applicants will be requested to complete basic operator data, including:

- general operator information, contact details;
- type of operation, AOC and Operations Specifications;
- fleet data;
- other basic safety information;
- *audits or inspections conducted under programs such as those listed in the relevant source of information (e.g. SAFA inspections, IASA or IOSA audits).*

Eligible operators will then be grouped into three different categories that correspond to the Agency's level of confidence into the State of Operator and the operator itself *based on the assessment made from the basic data provided by the operator as listed above.*

The category provides guidance on the assessment methodology to be applied:

Assessment Category	**Level of confidence into applicant**	**Expected Distribution**	**Assessment methodology**
Category A	High	Standard case approx. 60%	Simple desktop review of basic operator data (fast track)
Category B	Medium	approx. - 30%	Detailed assessment including sampling of ICAO compliance and consultation with the operator (video/phone conference, and / or interview in Cologne)

Category C	Low	approx. 10%	Detailed assessment including sampling of ICAO compliance and on-site visit

The Agency will assign the categories based on the following proven evaluation criteria with a strong emphasis on the ICAO USOAP performance of the state of the operator.

State of the Operator:

- ICAO USOAP reports (lack of implementation);
- ICAO SSC (Significant Safety Concern);
- EU SAFA results (aggregated on State of the Operator level25);
- consultations pursuant Article 3 of Regulation (EC) No 473/2006;
- measures imposed by a Member State in accordance with Article 6 of Regulation (EC) No 2111/2005;
- accident data (aggregated on State of the Operator level);
- FAAIASAState category.

Operator:

- Accident history;
- EU SAFA ratio (if available);
- Size, nature and complexity of the operation;
- Adherence to industry standards, *such as being listed on the IOSA registry*

response *Noted*

comment *186* comment by: *Federal Ministry of Transport, Austria (BMVIT)*

According to Art 9.5, paragraph (d) (i) of the Basic regulation the authorisation process for TCO operators should be simple, proportionate, cost-effective and efficient in all cases, allowing for requirements and compliance demonstrations proportionate to the complexity of operations **and the risk involved**.

This principle does not seem to be reflected in the NPA. The authorisation process described in art 29 of the explanatory note is very complex. Especially for operators who have been operating to the EU for many years having a satisfying safety record the procedures included in the NPA seem to be disproportionate.

The new NPA has also to be examined in relation to the Chicago convention. One of the principles laid down in Art 33 of the convention is the principle of mutual recognition of certificates issued by contracting states. Art 9.2. of the Basic Regulation refers to this provision but the principle does not seem to be adequately reflected in the NPA .The planned excessive investigation process during the authorisation procedure contravenes this fundamental element of the Chicago Convention.

According to the assessment categories and assessment methodologies included in art 29 of the explanatory note approximately 30% of the eligible operators have to undergo detailed assessment and for approximately 10% an on-site visit is envisaged. These numbers are not replicable!

The excessive investigation activities can also lead to an undesirable result namely shifting aviation safety oversight responsibilities and liabilities from ICAO Contracting States over aircrafts registered in their national register

towards the Agency. It cannot be the role of EASA to substitute the competent authorities responsible for the oversight over operators applying for a TCO authorisation.

response

Noted

The proposed distribution is an initial assumption taking into consideration experiences gained from i.e. the SAFA programme. It is considered to review and where necessary adjust the distribution after completion of one cycle (2 years). The level of investigation is not considered excessive but in line with ICAO Doc 8335 provisions. It is not intended that the Agency will substitute the competent authorities responsible for the oversight of third-country operators. While the Agency agrees that it cannot substitute itself with the competent authorities of the concerned State of registry or State or of operator, it shall conduct investigations and audits as per Article 23.1.(a) of Regulation (EC) No 216/2008.

With regard to the comment on Article 33; noted. Please see the response to comment #111.

comment

212 comment by:*airberlin Group*

P13 – The authorisation process – paragraph 29 - Table:

AIRBERLIN supports this risk based concept, and is confident that most current and potential third country operators (and their State) dry leasing out aircraft registered in a third country to AIRBERLIN would fall into Category A.

response

Noted

Please see the response to comment #62.

comment

219 comment by:*Fédération Nationale de l'Aviation Marchande (FNAM)*

Reference text :

"Simple desktop review of basic operator data (fast track)"

comment :

In case of category A operators, EASA proposes to proceed to a simple desktop review of basic operator data. The term is not so clear, as stakeholders are not all familiar with ICAO Doc 8335.

Proposal:

We would suggest EASA to clarify the meaning of basic operator data in an AMC or a GM.

response

Not accepted

However, the Agency intends to publish instructions on the use of the envisaged "Basic Operator Data" questionnaire.

A. EXPLANATORY NOTE - IV. - Content of the draft Opinions and Decisions - Notified Differences - Article 38 of the Chicago Convention p. 16-17

comment *10* comment by:*EUROCOPTER*

Eurocopter would like to react on the following text: *'The Agency shall analyse and identify the standards for which the State of the operator applying for an authorisation or, if applicable the State of Registry has notified a difference. If the Agency considers that the standard concerned would have a significant negative impact on safety within the EU if not fully complied with (e.g. standards...) the Agency MAY oblige the operator to meet that standard, despite any difference notified to ICAO by the State concerned. Also, the Agency MAY decide that compliance with a standard could be achieved by mitigating measures established by the State of the operator or the State of registry ensuring an equivalent level of safety to that achieved by the standard concerned.'*

comment: in principle, as written in the Basic regulation, all TCOs have to be sumitted to the applicable ICAO standards. The fact that EASA may or may not oblige a TCO to meet notified differences, totally or partially, as well as the possible mitigating measures accepted by EASA for compliance, can be a source of non equity of treatment among TCOs and a source of unfair competition as compared to EU operators which are all regulated under the same Part OPS. This is the reason why Eurocopter considers that the 'Authorisation Basis' for a given TCO, defined in accordance with requirement AR.TCO.200(a)(2), should be published on the EASA website in order to be available to all stakeholders. In other words Eurocopter proposes that EASA makes available on its website a 'TCO authorisation Data Basis' (TADB) which would list, for each TCO, those ICAO requirements defined in accordance with AR.TCO.200(a)(2) which the TCO has to comply. This would ensure transparency.

response *Not accepted*

It is not the intent of Article 9 of Regulation EC) No 216/2008 to determine and publish, for each individual TCO, an exhaustive list of applicable ICAO standards. As a general principle, an applicant for a TCO authorisation is expected to comply with all those ICAO standards that are relevant for the intended operation, except where the State of the operator has notified to ICAO a difference for which mitigating measures implemented by the operator ensuring that an equivalent level of safety are determined acceptable for operation to the EU.

comment *12* comment by: *new European Helicopter Association (EHA)*

Where stated towards the end of item 30 "The Agency shall analyse and identify the standards for which the State of the operator applying for an authorisation.....the Agency MAY oblige the operator.....Also the Agency MAY decide that compliance with a standard could be achieved.....", EHA would like to comment that in principle, as written in the Basic regulation, all TCOs have to be submitted to the applicable ICAO standards. The fact that EASA **may or may not oblige** a TCO to meet notified differences, totally or partially, as well

	as the possible mitigating measures accepted by EASA for compliance, can be a source of non equity of treatment among TCOs and a source of unfair competition as compared to EU operators who are all regulated under the same Part OPS. EHA would like to suggest that EASA makes available on its website a TCO authorisation Data Basis (TADB) with the list, for each TCO, of those ICAO requirements defined in accordance with AR.TCO.200(a)(2) which the TCO has to comply.
response	*Not accepted* Please see the response to comment #10.

comment	*44* comment by:*AAPA*
response	*Noted*

comment	*157* comment by:*FAA* Paragraph 29; page 16. Periodic Assessment: Please provide details on procedures to be used in the periodic re-assessment phase. Will the procedures that were defined in the application phase (page 13) be used in the periodic re-assessment monitoring phase (Page 16)? Also, will EASA assess fees for the re-assessment?
response	*Noted* It is proposed that the routine (periodic) re-assessment methodology applied will follow that of the appropriate assessment category. As regards fees: noted. Please see the response to comment #154.

comment	*201* comment by: *General Aviation Manufacturers Association / Hennig* GAMA appreciates the points made by the agency in regard to countries that elect to file differences to ICAO. We do believe, however, that the agency should also lay out the situation where EASA elects to promulgate regulatory requirements that exceed those established through the Chicago Convention and whether the agency would see itself having the discretion to force those additional requirements, equipage or other, onto TCO operator conducting commercial, or as we expect to be laid out in a future consultation, non-commercial.
response	*Partially accepted* Please see the response to comment #93.

A. EXPLANATORY NOTE - IV. - Content of the draft Opinions and Decisions - Notified Differences - Bilateral agreements p. 17-18

comment *45* comment by:*AAPA*

Page 18

AAPA is unaware of any Agency that is levying fees for the authorisation of Third Country Operators. Probably the most well known TCO authorisation is the FAA FAR 129 requirement. For this authorisation air carriers are not required to pay any fees. On this issue of fees EASA should be aware that there is the potential for retaliatory measures against EU carriers under the guise of achieving a level playing field. Regrettably it is the air carriers who will feel the impact of the proliferation and patchwork TCO authorisation fees and the additional resources needed to respond.

EASA is requested to provide a schedule for the proposed fees.

response *Noted*

Please see the response to comment #154.

comment *63* comment by:*IACA International Air Carrier Association*

P17 – Bilateral agreements – paragraph 31:

When dry leasing-in aircraft registered in a third country, IACA carriers generally lease-in from third country operators registered in the US or Canada. Hence, IACA is looking forward to the extension of these bilateral agreements to the mutual recognition of not only air operator certification, but also of the aircraft certificate of airworthiness.

response *Noted*

The Agency welcomes the proposal of a new Annex to the U.S.-EU Bilateral Air Safety Agreement in order to mutually recognise air operator certificates.

comment *103* comment by:*CAA Finland*

Fees (Explanatory note paragraph 32)

CAA Finland is strongly in favor of not levying any fees for TCO authorisations. “No fees for Operations Specifications” is common, global practice. Setting a fee for these operations might prove very counterproductive, if / when third countries, “in a spirit of reciprocity”, start charging EU air carriers for similar authorisations. Third country operators only need one authorisation valid for all EU countries, whereas EU operators, flying into several third countries, would need a separate authorisation for each third country.

It must also be kept in mind that often a swift handling of an application is in the interest of an EU air carrier, e.g. wet-leasing from a third country operator in order to cover for unexpected difficulties. The issue of fees must not become an additional obstacle when EU air carriers try to solve unforeseen operational

difficulties in the best interest of their passengers.

In addition, the transfer of money is not as simple from all third countries, which might lead in practice to discriminatory treatment between third country operators.

Taking into account all these considerations, CAA Finland would urge to look for other modes for financing this activity than fees.

response *Noted*

Please see the response to comment #154.

comment *150* comment by:*GiancarloBuono*

Page 18**4. ~~Fees~~**

~~32. It is evident that there are administrative and operational costs involved for the authorisation of third country operators. These costs would be funded by fees. It is understood that some States levy costs for the authorisation of TCOs and others do not. Levying of fees related to the issuance by the Agency of an authorisation is not, as such, incompatible with the Chicago Convention (e.g. Article 15). The Chicago Convention does not prevent contracting States from levying charges under their right to make operations into, transit over, or departure from their territories subject to prior approval, provided that such charges are not levied solely in respect of such entry into, transit over, or departure. This condition would be fully met in the case of fees/charges levied by the Agency with respect to third country operators. Such fees/charges would not be connected with any concept of prior approval for, entry or departure but only with the mandated initial and continuous safety assessment as a precondition for the entry and departure, which would be applied indiscriminately. The only purpose of the charges levied on third country operators would be to recover costs incurred by the Agency in verifying compliance with the applicable requirements contained in Part-TCO.~~

response *Noted*

Please see the response to comment #154.

comment *158* comment by:*FAA*

Paragraph 30; page 17 Notified Differences - Article 38 of the Chicago Covention

Please provide details regarding the list of standards that the TCOs will be required to meet. If European operators are not required to comply with an ICAO standard, will the TCO holders be granted the same privilege?

response *Noted*

The Agency will assess on a case by case basis whether a TCO is required to comply with an ICAO standard for which EU Member States have notified a difference.

comment	*159* comment by:*FAA* Paragraph 32; page 18. Fees The text indicates that the purpose of charges levied on TCOs will be to recover costs incurred by the Agency in verifying compliance with the applicable requirements contained in Part-TCO. Does this mean that a Category A applicant will have a lower fee than a Category B or Category C applicant?
response	*Noted* Please see the response to comment #154.

comment	*163* comment by:*UK Department for Transport* Page 17 Paragraph 31 This paragraph neglects to mention the hundreds of Air Service Agreements that the Member States have with other foreign States outside of the EU and how this Draft Opinion could impact on these. Bilaterals and Multilaterals are as much about traffic rights as they are about the standardisation of practices including safety of operations and airlines. This seems to have been neglected in this paragraph concentrating only on safety. Page 18 Paragraph 32 The conclusions of this paragraph that the charges would not be in breach of Article 15 of the Chicago Convention would need to be tested legally before such a conclusion could be proved to be correct. It could just as easily be argued that charging a TCO to obtain an EASA safety permit before entry into the EU was in breach of this Article.
response	*Noted* Response to the part of the comment relating to Bilateral Air Service Agreements: noted. Please see the response to comment #239. Response to the part of the comment relating to Art. 15 of the Chicago Convention: not accepted. Part-TCO is in line with Art. 15 of the Chicago Convention as it will not levy any charges. Fees and charges will be subject to an amendment of the so called “Fees and Charges Regulation”. For further details please see the response to comment #154. Furthermore, also the envisaged charge for the assessment of the third country operator authorisation application will not be in breach of Article 15 of the Chicago Convention as it will neither regulate a charge for airports or its facilities nor will it be a charge solely for the right of transit, entry or exit.

comment	*202* comment by:*General Aviation Manufacturers Association / Hennig* GAMA is pleased to see the agency specifically recognize the opportunity that exists within the recently effective bilateral agreements with the United States and Canada as well as other regions and look forward to work with the agency to fully leverage these agreements to enhance safety and achieve efficiencies

for TCO operators and the agency.

response *Noted*

comment *203* comment by: *General Aviation Manufacturers Association / Hennig*

With regard to the establishment of fees for TCO initial and continuous safety assessment, as previously stated, GAMA believes it is essential that the agency take consideration of the frequency, type and size of the operator and the specific operation when introducing the fees structure for commercial TCO authorisations as well as what we expect to be the submission of declarations for non-commercial operators of complex aircraft.

GAMA looks forward to working with the agency to fully vet the topic of fees and charges for authorisations with the affected operators.

response *Noted*

Please see the response to comment #154.

comment *213* comment by: *airberlin Group*

P17 – Bilateral agreements – paragraph 31:

When dry leasing-in aircraft registered in a third country, AIRBERLIN generally lease-in from third country operators registered in the US or Canada. Hence, AIRBERLIN is looking forward to the extension of these bilateral agreements to the mutual recognition of not only air operator certification, but also of the aircraft certificate of airworthiness.

response *Noted*

Please see the response to comment #63.

comment *228* comment by: *Fédération Nationale de l'Aviation Marchande (FNAM)*

Fees

FNAM is concerned by the fees that are intended to be raised by EASA.

We fully understand the need to recover surveillance costs, but we think that the political and international consequences should not be underestimated. Other countries, such as the United States of America, are not charging for such technical authorisations.

We would like to warn EASA on that point, considering the several international actions, sometimes disproportionate, against the EU-ETS for instance. If this proposal is not accepted by TCO or their competent authorities, the negative consequences would certainly be passed on European operators willing to operate in Third Countries.

In case EASA and the EC would decide to go on in this direction, the question

	of the level of fees is not treated yet: would fees be different by categories (A, B, C) or dispatched over the whole expected number of TCO?
response	*Noted* Please see the response to comment #154.

A. EXPLANATORY NOTE - IV. - Content of the draft Opinions and Decisions - Notified Differences - Provisions of Part-TCO p. 18-19

comment	*36* comment by:*Singapore Airlines (SIA)* On page 18, para. 32 and page 50, para. 6.3: 1. Schedule of fees is not known at this stage. We would like EASA to provide an indication of amount chargeable under each category of assessment.
response	*Noted* Please see the response to comment #154.

comment	*47* comment by:*AAPA* Page 19 Para 34 - Section V on manuals, logs and records contains the requiremnt for operators to carry, in addition to the documents defined by ICAO, the authorisation issued by the Agency on board the aircraft (TCO.OPS.500). AAPA would urge EASA to provide flexibility in this area since many air carriers have or are introducing E-Flight Bag which removes much of the traditional hard copy documentation from the aircraft.
response	*Accepted* Alternative means of demonstrating a valid TCO authorisation including associated specifications should be acceptable under the condition that the documents can be produced during an inspection without undue delay.

comment	*64* comment by:*IACA International Air Carrier Association* **P19 – Subpart II Air Operations – paragraph 34** ... The outcome of this (EASA) assessment revealed that EU-OPS and Part-CAT contains provisions imposed on EU operators in addition to applicable ICAO standards in the areas mentioned above. However, the Agency does not consider it necessary to impose requirements to third country operators in addition to the ICAO standards. **comment:** It is not clear why requirements in addition to ICAO standards are imposed on

EU operators. More specifically, why certificates of airworthiness of aircraft operated by EU operators need to be issued in accordance with Part-21, while it is satisfactory that these are issued in accordance with ICAO standards (Annex 8) when the aircraft is operated by third country operators. This is the only issue blocking the dry lease-in of aircraft registered in a third country by EU operators. If for aircraft registered in a third country operated by third country operators into EU it is satisfactory for the certificate of airworthiness to be issued in accordance with ICAO (Annex 8), this shall also be valid if such aircraft is operated by EU operators.

response

not accepted. The additional requirements contained in NPA 2011-05 would have been imposed on TCOs. Obviously, such requirements will apply to EU-operators as well. Please see the response to comment#93 on “additional requirements”

With regard to dry lease-in of aircraft registered outside the EU: noted.Please see the response to comment #59.

comment *116* comment by:*Singapore Airlines Cargo*

On page 18, para. 32 and page 50, para. 6.3:

1. Schedule of fees is not known at this stage. We would like EASA to provide an indication of amount chargeable under each category of assessment.

response *Noted*

Please see the response to comment #154.

comment *122* comment by:*Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)*

Fees

32. The proposal to introduce a fee for the authorisation of third country operators can turn out to be counter productive. Third country operators would pay one fee for an authorisation to enter the EU market. If some or all of the third countries concerned start levying authorisation fees for our EU airlines to enter their markets, as a kind of retaliation, the EU airlines will be exposed to a number of fees in a number of countries. Sweden would support an application of the more or less global practice that this type of permissions for third country operators are free of charge.

response *Noted*

Please see the response to comment #154.

comment *123* comment by:*Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)*

Subpart II Air Operations

34. See remark under point 10. Sweden considers it to be in conflict with international conventions to demand from third country operators that they must in addition to the ICAO standards comply with EU safety rules in some fields. According to ICAO Annex 6, 4.2.2.1 “Contracting States shall recognize as valid an air operator certificate issued by another Contracting State, provided that the requirements under which the certificate was issued are at least equal to the applicable standards specified in this Annex.” This means that if the EU Member States demand from third country operators that they comply with additional EU rules, the EU Member States would in any case have to file a difference to this part of the Annex.

If every country in the world would start to set their own special requirements whenever they want, it would endanger the whole idea why we develop harmonized ICAO standards. We can understand that States MAY have extra requirements if there is an absolutely necessary safety reason. But these EU additional requirements are not necessary. They are useful but not essential from the point of view of the real safety. It is much more valuable to protect the uniform global system where airlines can operate world-wide by using ICAO standards.

response *Partially accepted*

Please see the response to comment #93.

comment *214* comment by: *airberlin Group*

P19 – Subpart II Air Operations – paragraph 34

The outcome of this (EASA) assessment revealed that EU-OPS and Part-CAT contains provisions imposed on EU operators in addition to applicable ICAO standards in the areas mentioned above. However, the Agency does not consider it necessary to impose requirements to third country operators in addition to the ICAO standards.

comment: It is not clear why requirements in addition to ICAO standards are imposed on EU operators. More specifically, why certificates of airworthiness of aircraft operated by EU operators need to be issued in accordance with Part-21, while it is satisfactory that these are issued in accordance with ICAO standards (Annex 8) when the aircraft is operated by third country operators. This is the only issue blocking the dry lease-in of aircraft registered in a third country by EU operators. If for aircraft registered in a third country operated by third country operators into EU it is satisfactory for the certificate of airworthiness to be issued in accordance with ICAO (Annex 8), this shall also be valid if such aircraft is operated by EU operators.

response

not accepted. Please see the response to comment #64.

Regarding dry lease-in of aircraft registered outside the EU: noted. Please see the response to comment #59

A. EXPLANATORY NOTE - IV. - Content of the draft Opinions and Decisions - p. 20-21

Notified Differences - Authority Requirements (Part-AR.TCO and Part-AR-GEN)

comment	*48*	comment by:*AAPA*
response	*Noted*	

comment	*137*	comment by:*Boeing*
	Page: 21 of 175 Paragraph: *47* This paragraph discusses the EASA Management Board's (MB) input to the process and the AMC material; however, no provision is afforded for collecting stakeholder input on the MB's proposal. We recommend that the MB inputs be reviewed via a public process with the opportunity for stakeholders to comment. **JUSTIFICATION:** Our recommendation would ensure transparency and stakeholder input on rulemaking items.	
response	*Not accepted* Stakeholders are welcome to place their comments during the consultation period to the NPA. Moreover, they have the possibility to react to the responses provided by the Agency in the CRD. Management Board decisions however are not reviewed via public process with the opportunity for stakeholders to comment. The Management Board created the EASA Advisory Board (EAB), which is composed of airspaces users' associations, staff associations, manufacturing industry and airports. The EAB provides the Management Board with advice and opinions of interested parties.	

A. EXPLANATORY NOTE - IV. - Content of the draft Opinions and Decisions - Notified Differences - Transitional measures p. 21-23

comment	*49*	comment by:*AAPA*
	Page 22 AAPA reserves it comments on the transition measures until they are published as part of the CRD. AAPA supports the EASA to continue to allow third country operators already operating to the EU to continue.	
response	*Noted*	

comment	*65* comment by: *IACA International Air Carrier Association* **P22 – Table – Date of Part-TCO becomes applicable - 2. 3rd bullet 3rd white bullet:** It is not clear why requirements in addition to ICAO standards are imposed on EU operators. More specifically, why certificates of airworthiness of aircraft operated by EU operators need to be issued in accordance with Part-21, while it is satisfactory that these are issued in accordance with ICAO standards (Annex 8) when the aircraft is operated by third country operators. This is the only issue blocking the dry lease-in of aircraft registered in a third country by EU operators. If for aircraft registered in a third country operated by third country operators into EU it is satisfactory for the certificate of airworthiness to be issued in accordance with ICAO (Annex 8), this shall also be valid if such aircraft is operated by EU operators.
response	not accepted. Please the response to comment #64. Regarding dry lease-in of aircraft registered outside the EU: noted. Please see the response to comment #59

comment	*66* comment by: *IACA International Air Carrier Association* **P23 – Table - Four months after Part-TCO becomes applicable:** Potential (US, Canadian...) lessor who never flew and will never fly into the EU, likely will not have applied for Part-TCO approval within 4 months, hence will not be eligible for transition rights.
response	*Noted* Please see the response to comment #59.

comment	*87* comment by: *UK Department for Transport* **Page No**: 22 **Paragraph No**: 48 of Explanatory Note **comment**: This paragraph states that Once Part TCO becomes applicable on 8 April 2012 member states shall no longer perform technical assessments and applications for technical permission should be forwarded to EASA. We assume that Member States will still be free to carry out documentation checks (eg AOC and CofAs) as part of their economic approval process. **Page No**: 22 **Paragraph No**: 48 of Explanatory Note **comment**: This paragraph states that TCOs who have operated to the EU in the 2 years prior to Part TCO becoming applicable will be considered to be approved in accordance with Part TCO provided that they have completed a web based questionnaire based notification and provided a written declaration. TCO's will need to have the opportunity to complete the web based questionnaire well in advance of Part TCO becoming applicable if they intend to operate on the day that Part TCO becomes applicable..

Page No: 22 **Paragraph No**: 48 of Explanatory Note

comment: It is stated that the transitional approvals will be subject to limitations or restrictions currently imposed by individual MS.

It is not clear what type of limitations are envisaged or whether such limitations will only apply in the Member State that imposed them. It seems unlikely that Member States will have any safety related restrictions which will be relevant as these should have been subject to review in accordance with Regulation 2011/2005

response

Response to part to the comment relating to the role of the Member States: not accepted. After entry into force of Part-TCO, Member States shall, without further technical investigation, accept the TCO authorisation and the associated specifications issued by the Agency. The operational authorisation issued by Member States shall be based on the TCO authorisation and the associated specifications issued by the Agency. Insofar, document checks undertaken on a Member State level should be limited to the verification of non-safety related issues.

Response to part to the comment relating to the transition period: noted. Transitional rights will allow operators to continue to operate without interruption and without an authorisation being issued until the end of the transition period as defined in the Cover Regulation. The so-called "registration period" of 4 months within the transition period is intended to be the period during which applicants claiming for transition rights will need to apply for a TCO authorisation and submit the Basic Operator Data questionnaire in order to exercise transition rights and not be considered a new applicant.

Response to part to the comment relating to limitations of transitional approvals: noted. Approvals, including any safety related limitation or restriction, issued by an individual Member State will only apply in that Member State.

comment

124 comment by: *Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)*

48. Point 2 on page 22 in the frame concerning the structuring of the transition period says that a third country operator must “submit a written statement to the Agency declaring that the operations will be performed in accordance with Part-TCO”. “Part TCO” should be replaced by “ICAO standards”.

response

Not accepted

Please see the response to comment #93 related to additional EU requirements.

comment

138 comment by:*Boeing*

Page: 22 of 175

Paragraph: *Table, Item 2, first bullet*

The text states:

"…Operators intending to continue to operate into the EU after Part-TCO becomes applicable must meet the following conditions:

- *·register themselves using a form made available on the EASA website; …"*

We have the following concerns about this requirement:

- How will operators know to register on the EASA website? How will this be communicated to these operators?
- When will these applications be required – immediately, or when the 24 month re-assessment period comes to an end?

We recommend that EASA allow operators to register and continue their operations until a specific time prior to the 24 month re-assessment of the approval, and then apply to EASA.

JUSTIFICATION: Clarification of the communication process and timeline for the affected operators is needed. If the application is required immediately after Part TCO comes into effect, all operators will suddenly have to be re-assessed.

Additionally, we suggest there be a provision so that operators will not be adversely affected in case EASA is unable to complete the application processing in time.

response *Noted*

A comprehensive TCO communications plan is under development. Applications of operators claiming for transition rights have to be submitted in the 4-months registration period. Operators with confirmed transition rights would then continue to operate until a point of time within the transition period when the Agency will conduct the technical assessment for the purpose of issuing the TCO authorisation. The issue date of the TCO authorisation will then become the anniversary date of the 2-year cycle. In doing so, it is ensured that the workload will balance out.

comment *160* comment by: *FAA*

Paragraph 48; page 23 Table:

Transition Measures. The FAA believes that four months may be insufficient for existing operators and EASA to complete the transition steps.

Suggested change: increase the transition period to six months.

response *Noted*

However, the transition period is not only 4 months but until the end of 2014 after entry into force of Part-TCO.

comment *215* comment by: *airberlin Group*

P22 – Table – Date of Part-TCO becomes applicable - 2. 3rd bullet 3rd white bullet:

It is not clear why requirements in addition to ICAO standards are imposed on

EU operators. More specifically, why certificates of airworthiness of aircraft operated by EU operators need to be issued in accordance with Part-21, while it is satisfactory that these are issued in accordance with ICAO standards (Annex 8) when the aircraft is operated by third country operators. This is the only issue blocking the dry lease-in of aircraft registered in a third country by EU operators. If for aircraft registered in a third country operated by third country operators into EU it is satisfactory for the certificate of airworthiness to be issued in accordance with ICAO (Annex 8), this shall also be valid if such aircraft is operated by EU operators.

response

Not accepted. Please see the response to comment #64.

Regarding dry lease-in of aircraft registered outside the EU: noted. Please see the response to comment #59

comment *216* comment by:*airberlin Group*

P23 – Table - Four months after Part-TCO becomes applicable:

Potential (US, Canadian...) lessor who never flew and will never fly into the EU, likely will not have applied for Part-TCO approval within 4 months, hence will not be eligible for transition rights.

response *Noted*

Please see the response to comment #59.

comment *220* comment by:*Fédération Nationale de l'Aviation Marchande (FNAM)*

Reference text :

"Four months after Part-TCO becomes applicable: At this date operators eligible for transition rights must have been registered, submitted the questionnaire and sent a statement. All operators that have not met these conditions after this date will be considered as a new applicant and can only continue operations into, within or out of the EU once they have obtained an authorisation from the Agency."

and

Note 36: "[36] Applications submitted after the applicability date of Part-TCO will be considered as new applications."

comment :

The table suggests that operators eligible for transition rights will have 4 months from the applicability date of Part TCO to apply for an authorisation, afterwards they will be considered as new applicants, whereas the note 36 explicitly says that "Applications submitted after the applicability date of Part-TCO will be considered as new applications". The two statements are contradictory.

Proposal:

Taking into account the fact that EASA proposals will have to pass through the comittology process, and that several other proposal are already waiting to be

validated, it would be wise to allow eligible operators to apply for the 6 months following the applicability of Part TCO.

response *Accepted*

Your statement is correct. Thank you for bringing this editorial error in Note 36 to our attention.

A. EXPLANATORY NOTE - V. Regulatory Impact Assessment p. 23-24

comment *67* comment by: *IACA International Air Carrier Association*

P24 – Regulatory Impact Assessment – paragraph 49 – white bullet:

IACA supports the risk based assessment (option 2), and is confident that most current and potential third country operators (and their State) dry leasing-out aircraft registered in a third country to IACA carriers would fall into Category A.

response *Noted*

comment *217* comment by: *airberlin Group*

24 **P24 – Regulatory Impact Assessment – paragraph 49 – white bullet:**

AIRBERLIN supports the risk based assessment (option 2), and is confident that most current and potential third country operators (and their State) dry leasing-out aircraft registered in a third country to AIRBERLIN would fall into Category A.

response *Noted*

B. DRAFT OPINION PART THIRD COUNTRY OPERATORS (PART-TCO) - Subpart 1 – General requirements p. 25-26

comment *1* comment by: *KLM*

This regulation should not materialise and will bring repercussions to European operators by requiring a foreign OPSPEC by third countries. This has already happened and is unnecessary as it costs high amounts of money.

This will bring an adverse action by third countries.

EASA should acknowledge an AOC issued by a third country and leave the

auditing of oversight to ICAO. There is an audit programme for that.

response *Not accepted*

Please see the response to comment #98.

comment *3* comment by:*Lazeta - Croatian CAA*

Definition of the Third Country Operator should be reconsidered for two reasons:

1. Is not clear from definition which countries are third countries, because term "third country" has wider meaning. For the purpose of this NPA more suitable term shoul be found. This can be applied to the name of the NPA too.

2. There are 31 EASA MS, and 27 EU MS, PART TCO should be applicable only for non EASA MS, rationale for this is that EASA MS do comply with EASA rules and therefore certain confidence in reliability of the EASA MS national systems could be taken into account.

response *Noted*

Regulation (EC) No 216/2008 applies to the EU Member States. The application can further be extended by bilateral agreements between the EU and third countries, Article 66 of Regulation (EC) No 216/2008. For the specific case of the ECAA Agreement please see the response to comment #2.

comment *20* comment by:*Luftfahrt-Bundesamt*

TCO.GEN.101 Scope (together with Explanatory note No. 11)

Although it is explicitely defined that the NPA is only valid for commercial air transport and that non-commercial operations with CMPA etc will be part of an own rulemaking process there is nothing said about commercial operations other than CAT. What about commercial operation or special operation e.g. for the purpose of aerial work, etc. Will they also be part of an extra rulemaking process?

response *Noted*

Commercial operations other than commercial air transport will be addressed in a separate rulemaking task [RMT.0419,0420/OPS.004 (c)(d)]

comment *23* comment by:*UK CAA*

Page No:25

Paragraph No:TCO.GEN.110 Definitions

comment: The principal place of business definition is different from the definition proposed in the draft Commission Regulation laying down requirements and administrative procedures related to Air Operations pursuant

to Regulation (EC) No 216/2008 of the European Parliament and of the Council. The same definition should be used.

Justification: Common definitions aid clarity. Different definitions lead to confusion.

Proposed Text: Same as finally adopted in above mentioned regulation.

response *Accepted*

TCO.GEN.110 has been amended accordingly.

comment *26* comment by: *UK CAA*

Page Nos: 25, 30 and 31

Paragraph Nos: TCO.GEN.120 Means of Compliance: AMC1-TCO.GEN.120(a); AMC1-TCO.OPS.500; AMC1-TCO.AUT.100; AMC1-TCO.AUT.110

comment: The requirements on alternative means of compliance do not seem to amount to a coherent and sensible set of provisions. Operators are allowed to use alternative means of compliance to those adopted by the Agency and required to follow a heavy procedure to do so. The Agency AMCs proposed in this NPA however are not of any substance. AMC1-TCO.GEN.120(a) requires a risk assessment that demonstrates an equivalent level of safety to that established by the AMCs adopted by the Agency. The only other AMCs on page 31 are about documents etc. to be carried and application time frames, none of which establish levels of safety. It is not understood how a TCO could establish risk assessments about levels of safety in relation to alternatives to these administrative AMCs.

Justification: Clarity is required as to the Agency's intention, which should not impose unreasonable burdens on operators.

response *Not accepted*

It is understood that the AMCs proposed in the NPA are mostly of an administrative nature. However, in case it is necessary to impose an airspace requirement on third country operators operating in the EU for which no corresponding ICAO standard exist and safety relevant AMC(s) are established for this requirement, third country operators, as it is the case for EU operators, will have the possibility to propose alternative means of compliance.

comment *50* comment by: *AAPA*

Page 25

TCO.GEN.115 Eligibility

(a) (1) AAPA is of the opinion that that no TCO should be prevented from making an application for TCO authorisation even if it is subject to an operating ban.

Page 26

TCO.GEN.125 Access

Para (a)EASA should note that many carriers have introduced on their flight

deck EFB which reduces the amount of hard copy documentation. AAPA recommends to EASA to ensure it takes into account the change in flight deck documentation.

response

Response to part to the comment relating to TCO.GEN.110: partially accepted. Text has been amended. Operators subject to an operating ban as a result of safety deficiencies on the part of the operator itself are eligible to apply for an authorisation. See also response to comment #111.

Response to part to the comment relating to TCO.GEN.125: accepted. Alternative means of demonstrating a valid TCO authorisation including associated specifications should be acceptable under the condition that the documents can be produced during an inspection.

comment *68* comment by: *IACA International Air Carrier Association*

P25 – TCO.GEN.101 Scope:

IACA notes that Part-TCO establishes the requirements for third country operators conducting commercial air transport operations into, within, or out of the EU, hence does not cover the (IACA) case of EU operators dry leasing-in aircraft registered in a third country to manage seasonal effects on a yearly basis.

response *Noted*

Part-TCO only applies to third country operators. See also the response to comment#59

comment *69* comment by: *IACA International Air Carrier Association*

P25 - TCO.GEN.115 Eligibility – (a)(2):

This provision would exclude the case of a third country operators applying for Part-TCO approval for the purpose of leasing out to EU operators, but never flying themselves into the EU.

response *Noted*

See the response to comment #68.

comment *89* comment by: *UK Department for Transport*

Page No: 25 **Paragraph No**: TCO.GEN.110

comment: The definition of Principal place of business is different from the definition proposed in the draft Commission Regulation laying down requirements and administrative procedures related to Air Operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the

Council. The same definition should be used.

Justification: The definitions should be consitent.

Proposed Text: Amend to repeat text finally adopted in the Regulation referred to above.

Page No: 25 **Paragraph No**: TCO.GEN.115(a)

comment: The text suggests that if a CO meets the requirements of the two sub-parts it is eligible for an authorisation. However as AR.TCO.200 & 205 shows there are other issues to be considered. We believe the intent may be to set the eligibility criteria to apply for an authorisation. It is not we it is necessary to set criteria for applications given the requirements of AR.TCO.200 & 205.

Justification: clarification

Proposed Text: Delete or amend to: A third country operator shall be eligible [to apply for][be considered for] an authorisation under this part if:

Page No: 25 **Paragraph No**: TCO.GEN.115(a)(1)

comment: There needs to be coordination between consideration of lifting bans imposed under Regulation (EC) 2111/2005 and the issue of Part TCO authorisations. It would be sensible for applications from airlines subject to operating ban to be considered as part of the process for removing operating bans.

Justification: Coordination with action under Regulation 2111/2005.

Proposed Text: Delete sub-paragraph.

Page No: 25 **Paragraph No**: TCO.GEN.115(a)(2)

comment: Application for a Part TCO should be sufficient to demonstrate intention to operate to the EU. It is not clear why there is a need for additional evidence. Ad hoc charters, executive aviation flights etc are normally arranged at short notice and are unlikely to be able to provide evidence of a contract much in advance of the proposed flight. The cost of the application should be enough to deter applications from operators with no realistic prospect of obtaining a contract. This sub paragraph should be deleted.

Justification: The requirement is unnecessary and will make it difficult for certain types of operator to apply for an approval.

Proposed Text: Delete sub paragraph.

Page No: 25 **Paragraph No**: TCO.GEN.120

comment: The purpose of this paragraph is unclear. The AMCs proposed in the NPA are limited and this procedure does not seem relevant to any of them. Given the proposed content of Part-TCO it seems unlikely that other AMCs will be adopted.

Justification: This paragraph is unnecessary.

Proposed Text: Delete.

Page No: 26 **Paragraph No**: TCO.OPS.100(a)(1)

comment: As there will always be applicable rules of the State of the Operator in case of CAT operations it is inappropriate to include the words “if relevant” in respect of such requirements.

Justification: Accuracy.

Proposed Text: (1) the applicable rules of the State of the registry and ~~if relevant~~ the state of the operator……..

Page No: 26 **Paragraph No**: TCO.OPS.100(a)(4)

comment: The applicable EU rules of the air will themselves be an implementing rules. It is not necessary for Part TCO to require compliance

with another implementing rule for which compliance is already obligatory.

Justification: The Rule is unnecessary as compliance with the EU Rules of the Air will be required by the Rules of the Air themselves.

Proposed Text: delete TCO.OPS.100(a)(4)

response

Response to part to the comment relating to TCO.GEN.110: accepted. Please see the response to comment #23.

Response to part to the comment relating to TCO.GEN.115: not accepted. The wording “not subject to an operating ban” did indeed aim to include Annex A. Annex B of Community List is a “list of air carriers of which operations are subject to operational restrictions within the EU”. These restricted operations are not banned like operations in Annex A and are therefore not included.

Response to part to the comment relating to TCO.GEN.115 (a) (1): noted. Please see the response to comment #111.

Response to part to the comment relating to TCO.GEN.115 (a) (2):not accepted. The intent of this provision was to ensure that only TCO with genuine intentions to operate to the EU will apply for a TCO authorisation. The intention to operate to the EU is sufficiently substantiated when an operator can demonstrate a credible intention to conduct commercial operations into, within or out of the EU. Various means of demonstrating a credible intention should be acceptable, in order to cater also for the ad-hoc nature of non-scheduled operations. GM 1-TCO.GEN.115(a)(2) has been amended accordingly.

Response to part to the comment relating to TCO.GEN.120:not accepted. Please see response to comment #26.

Response to part to the comment relating to TCO.OPS.100 (a) (1): accepted. The Agency will delete the words if relevant from the text of Part-TCO.

Response to part to the comment relating to TCO.OPS.100 (a) (4): not accepted. Although the Agency appreciates the comment, the Agency has decided to keep this paragraph as it will remind third country operators to check the relevant provisions. It also provides for the necessary provisions for TCO when applying for an authorisation to also declare they are equipped and if applicable hold the necessary operational approval as required by the SES interoperability rules, (eg 8.33, Data link, Mode S and ADS-B).

comment

94 comment by:*Federal Office of Civil Aviation (FOCA), Switzerland*

TCO.GEN.115 Eligibility:

Paragraph (a)(1): It shall be clarified and therefore added in the text itself, that air carriers which are listed on Annex B of the "Community list of air carriers which are subject to an operating ban within the Community" are eligible to apply for a TCO authorisation. Only air carriers listed in Annex A of this list are not eligible to apply for such an authorisation.

response

Noted

The wording “not subject to an operating ban” did indeed aim to include Annex A. Annex B of Community List is a “list of air carriers of which operations are subject to operational restrictions within the EU”. These restricted operations are not banned like operations in Annex A and are therefore not included. However, as the Agency has taken the position to process applications of third country operators included in Annex A as a result of safety deficiencies on the part of the operator itself.TCO.GEN.110(a)(1) has been amended to reflect this change.

comment

104 comment by:*CAA Finland*

TCO.GEN.125 Access

Paragraph (b): does this paragraph refer to facilities within the ”EU territory” or is it intended to give access rights to the agency with regard to facilities situated in a third country? If the latter is the case, third country authorities would probably soon start to apply similar requirements for European air carriers on the basis of reciprocity.

response

Not accepted

Concerning retaliation concerns please see the response to comment #98.

TCO.GEN.125(b) also applies to facilities outside the EU**.**

comment

125 comment by:*Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)*

TCO.GEN.110 Definitions: “Principal Place of Business” should, if used, have the same definition as for EU operators.

However, Sweden believes that it would be more accurate to refer to the State of the Operator than referring to the principal place of business. ICAO:s definition of the State of the Operator is: “The State in which the operator’s principal place of business is located or, if there is no such place of business, the operator’s permanent residence.”

The same goes for the definition of “third country operator”. The definition should rather read: “third country operator” means any natural person residing in a third country or a legal person *where the State of the Operator is not an EU Member State*.

response

Concerning the definition of “principal place of business: accepted. Please see the response to comment #23.

Concerning the definition of “third country operators”: not accepted. Proposal does not make the definition clearer. See also the response to comment # 3.

comment	*126* comment by: *Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)* **TCO.GEN.115 Eligibility:** An addition should be made stating that a third country operator wishing to conduct commercial air transport operations into, within, or out of the territory subject to the provisions of the Lisbon Treaty needs to be in the possession of an authorisation issued by the Agency.
response	*Not accepted* TCO.GEN.101 makes clear that Part-TCO applies to third country operators intending to perform CAT operations into, within, or out of the territory subject to the provisions of the Treaty. TCO.AUT.100 makes clear that a TCO need to hold an authorisation issued by the Agency.

comment	*139* comment by: *Boeing* Page: 26 of 175 Paragraph: *TCO.GEN.125 Access, (a)* Change *"… aircraft **is** landed …"* to *"… aircraft ~~is~~ **has** landed …"* **JUSTIFICATION**: Editorial suggestion only – for better clarity.
response	*Accepted* Draft Proposal has been amended accordingly and reads now "has landed".

comment	*140* comment by: *Boeing* Page: 26 of 175 Paragraph: TCO.GEN.130 Findings, (a) The text states: *"**TCO.GEN.130 Findings*** *After receipt of a notification of findings raised by the Agency, the third country operator shall* *(a) define and agree with the Agency the corrective action to be taken, including short-term remedial action; and …"* We note that the NPA does not provide the operator with a course of action in case of a disagreement. We recommend including a provision for recourse for operators when disagreement occurs. **JUSTIFICATION:** Clarification/instruction is needed.
response	*Noted* Several instruments are deemed to provide for mechanisms suitable to ensure fair and equal treatment of TCO applicants and the resolution of disagreements: 1) The TCO Section of EASA must adhere to and derive from an approved "EASA Management Board Decision" its detailed working

procedures. 2) The EASA TCO Section and their working procedures, once operational, will be subject to the Agency's corporate quality system which will include, amongst others, periodical internal audits, regular management reporting, definition of and continuous measurement of achievement of key performance indicators (KPI) against clearly-defined service level agreements (SLA) and routine client feedback evaluation, 3) provisions and declarations ensuring freedom of conflict of interest, 4) the use of so-called "Authorisation Panels" of technical experts who will decide about TCO applications with a set of standing terms of procedure. 5) Pursuant to Article 44 of Regulation (EC) No 216/2008 and Commission Regulation (EC) No 104/2004, ultimately an appeal may be brought against decisions of the Agency which will be processed in line with established rules of procedure.

comment *165* comment by:*AEA*

TCO.OPS.100 General Requirements

(a) The third country operator shall comply with:

(1) the applicable rules of the State of registry of the aircraft and if relevant the State of the operator that give effect to 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) and 18 (Dangerous Goods);

(2) the ICAO standards identified in accordance with AR.TCO.200(a)(2) or the mitigating measures accepted by the Agency in accordance with AR.TCO.200(b);

(3) the relevant requirements of this Part; and

(4) the applicable EU rules of the air.

(b) The third country operator shall ensure that the aircraft operated into, within or out of the EU is operated in accordance with;

(1) its air operator certificate (AOC) and associated operations specifications, if applicable; and

(2) the authorisation issued in accordance with this Part and the scope and privileges defined in the specifications attached to it.

(c) The third country operator shall ensure that the aircraft operated into, within or out of the EU have a certificate of airworthiness (CofA) issued or validated 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 83of the Convention on International Civil Aviation that covers the aircraft.

(d) The third country operator shall upon request provide the Agency with any information relevant for verifying compliance with this part.

AEA comment:

AEA would like to make EASA aware of the issue of having different levels of ICAO standards implemented in the member states. In some states some ICAO requirements may not be applicable. In this context the initial requirement for data link recording within Annex 6 has to be mentioned as an example. This requirement asks for compliance dates totally unrealistic as no aircraft

	architecture nor equipments were available by those dates. Therefore mitigating measures should be allowed as provided by states or by the operator. The SAFA programme should take into account the mitigation measures agreed by the Agency.
response	*Noted*

comment	*176* comment by:*CAA-NL* **TCO.GEN.110 Definitions** The Netherlands suggests for Third Country Operators to use the ICAO definition of CAT. The definition in the NPA may create incompatibility or misunderstandings when not in line with the definition used by third countries to define a CAT operator.
response	*Not accepted* The definition of commercial air transport applied to EU operators must also be applied to TCO to ensure a level playing field.

comment	*178* comment by:*CAA-NL* **TCO.GEN.120 AMC** Our further comments will lead to no additional requirements on top of the ICAO standards. Although we understand the argument of non discrimination for TC-Operators in relation with EU operators, we cannot see the need for this article.
response	*Not accepted* Please see the response to comment #26.

comment	*195* comment by:*Federal Ministry of Transport, Austria (BMVIT)* **TCO.GEN.130:** Add to (a)…the corrective action plan shall be approved by the responsible oversight authority Add to (b) …the corrective action plan implementation shall be confirmed by the responsible oversight authority Justification: It is a fundamental principle of ICAO that the Contracting states are responsible for the oversight over aircrafts registered in their register. Therefore the competent authorities of these states have to be involved by the Agency in the whole finding and corrective action process. They are at first hand responsible for their operators and have to take the liability for their operators applying for a TCO authorisation. The Agency should not take over their role!

response

Partially accepted

While the Agency agrees that it will not assume, wholly or partially, oversight responsibilities that must be discharged by the State of the operator or state of registry (if applicable), Article 9.2. of Regulation (EC) No 216/2008 requires the operators engaged in commercial operations using aircraft referred to in paragraph 1 to demonstrate [to the Agency for the purpose of authorisation] their capability and means of complying with the requirements. Consequently, in case non-compliances with international standards are determined by the Agency during the authorisation process, it is the operators' responsibility to rectify such findings in accordance with TCO.GEN.130.

comment

221 comment by:*Fédération Nationale de l'Aviation Marchande (FNAM)*

TCO.GEN.130 Findings

Reference text :

"After receipt of a notification of findings raised by the Agency, the third country operator shall:"

comment :

According to Part AR Section IV taking back the provisions of the SAFA Directive, Member States competent authorities are also entitled to raise findings over Third Country Operators.

Proposal:

We suggest to add "or by a Member State's competent authority" after "the Agency".

response

Not accepted

The follow-up of findings raised during ramp inspections is independent from the process of findings raised under the TCO investigation.

comment

222 comment by:*Fédération Nationale de l'Aviation Marchande (FNAM)*

TCO.GEN.130 Findings

Reference text :

"After receipt of a notification of findings raised by the Agency, the third country operator shall:

*(a**) define and agree with the Agency the corrective action to be taken**, including short-term remedial action; and*

*(b) demonstrate remedial and corrective action implementation **within a period agreed with the Agency** as defined in AR.GEN.350(d)."*

comment :

AR.GEN.350 specifies that coordination has to be made between the competent authority that raised the finding (here, the Agency – but should be alos a MS Competent Authority according to our previous comment) and the competent authority that issued the certificate or received the declaration (here, the Agency too, through the TCO authorisation). However, the state of registry has only to be informed (no coordination), if applicable. The state of the operator is

nor informed, but more important, neither consulted regarding the corrective action to be taken. This may lead to potential contradictions between EASA requirements and the ones of the state of the operator or registry (potential burden for the operator), or create political consequences.

Proposal:

We believe that any corrective actions should be required in accordance, or consultation (to be determined), with the concerned Third Country competent authorities.

response *Partially accepted*

While the Agency agrees that it will not assume, wholly or partially, oversight responsibilities that must be discharged by the State of the operator or State of registry (if applicable), Article 9.2. of Regulation (EC) No 216/2008 requires the operators engaged in commercial operations using aircraft referred to in paragraph 1 to demonstrate [to the Agency for the purpose of authorisation] their capability and means of complying with the requirements. Consequently, in case non-compliances with international standards are determined by the Agency during the authorisation process, it is the operators'' responsibility to rectify such findings in accordance with TCO.GEN.130.

comment *229* comment by: *airberlin Group*

P25 – TCO.GEN.101 Scope:

AIRBERLIN notes that Part-TCO establishes the requirements for third country operators conducting commercial air transport operations into, within, or out of the EU, hence does not cover the case of EU operators dry leasing -in aircraft registered in a third country to manage seasonal effects on a yearly basis.

response *Noted*

Please see the response to comment #68.

comment *230* comment by: *airberlin Group*

P25 - TCO.GEN.115 Eligibility – (a)(2):

This provision would exclude the case of a third country operators applying for Part-TCO approval for the purpose of leasing out to EU operators, but never flying themselves into the EU.

response *Noted*

Please see the response to comment #68.

B. DRAFT OPINION PART THIRD COUNTRY OPERATORS (PART-TCO) - Subpart 2 - Air operations p. 26-28

comment	*8* comment by: *Quality Manager* Would you please explain the term "If installed" in the § TCO.OPS.400. If it is an option to install the crew compartment door, is there any recommandations or requirements to install it? Thank you.
response	*Noted* Please see the response to comment # 93.

comment	*24* comment by: *UK CAA* **Page No:** 28 **Paragraph No:** TCO.OPS.505 **comment:** TCO.OPS.505 – "manuals and records required to be carried on board". **Justification:** Clarity
response	*Accepted* The word "required" has been included in the provision.

comment	*51* comment by: *AAPA*
response	*Noted*

comment	*71* comment by: *IACA International Air Carrier Association* **P26 - TCO.OPS.100 General Requirements – (b)(1):** This provision would exclude the case for third country operators to dry lease-out to EU operators, since the aircraft registered in a third country will not be listed on their AOC.
response	*Noted* Aircraft from a third country operator dry leased-in by an EU operator will not be subject to Part-TCO. Please see also the response to comment #68.

comment	*72* comment by: *IACA International Air Carrier Association*

P26 - TCO.OPS.100 General Requirements – (c):

This permits cases which are currently not permitted per EU-OPS to EU operators, who need to have a CofAi. a.w. Part-21. Previous cases of dry lease-in of aircraft registered in a third country were indeed subject to an agreement under ICAO article 83bis between the state of the EU operator and the third country concerned.

response *Noted*

Please see the response to comment #71.

comment *79* comment by:*Luftfahrt-Bundesamt*

TCO.OPS.100 General Requirements

In our opinion, it is necessary to observe the national requirements of the country flying to. Therefore, we would like to add another point.

Proposal:

TCO.OPS.100 General Requirements

(a) The third country operator shall comply with:

... **(5) the national requirements of the country flying to (published in the AIP**).

response *Not accepted*

It is not considered necessary to refer to applicable national legislation not covered by Part-TCO, as it will apply to third country operators anyway.

comment *80* comment by:*Luftfahrt-Bundesamt*

TCO.OPS.200 In-flight fuel management

TCO.OPS.200(b) should include an information referring to the fuel planning for an alternate.

Proposal:

TCO.OPS.200 In-flight fuel management

(b) The pilot-in-command shall ensure that the amount of usable fuel remaining in flight is not less than the fuel required to proceed to an aerodrome/operating site **or an alternate** where a safe landing can be made, with final reserve fuel remaining.

response *Partially accepted*

Please see the response to comment # 93.

comment *81* comment by:*Luftfahrt-Bundesamt*

TCO.OPS.400- Flight crew compartment security- helicopters

We assume that „If installed" means that this requirement only applies for large helicopters (Super Puma, S61 Sikorsky, Mi 14 etc.).

response *Partially accepted*

Please see the response to comment # 93.

comment *82* comment by: *Luftfahrt-Bundesamt*

TCO.OPS.500 Documents, manuals and records to be carried

As already mentioned under item 1., there is no reference to national documents such as entry permissions, special authorisations etc.

Proposal:

TCO.OPS.500 Documents, manuals and records to be carried

(a) The third country operator shall ensure that:

(1) all documents that are required to be carried on board are valid, current and up to date;

(2) the authorisation and associated specifications issued by the Agency **and/or NAA** are carried on each flight, as originals or copies.

response *Not accepted*

Entry permissions granting traffic rights fall outside the scope of Regulation (EC) No 216/2008 and the carriage of such documents should be regulated on the national level.

comment *90* comment by: *UK Department for Transport*

Page No: 26 **Paragraph No**: TCO.OPS.100(a)(1)

comment: As there will always be applicable rules of the State of the Operator in case of CAT operations it is inappropriate to include the words “if relevant” in respect of such requirements.

Justification: Accuracy.

Proposed Text: (1) the applicable rules of the State of the registry and ~~if relevant~~ the state of the operator……..

Page No: 26 **Paragraph No**: TCO.OPS.100(a)(4)

comment: The applicable EU rules of the air will themselves be an implementing rules. It is not necessary for Part TCO to require compliance with another implementing rule for which compliance is already obligatory.

Justification: The Rule is unnecessary as compliance with the EU Rules of the Air will be required by the Rules of the Air themselves.

Proposed Text: delete TCO.OPS.100(a)(4)

Page No: 27 **Paragraph No**: TCO.OPS.100(c)(2)

comment: A number Article 83bis agreements covering a large number of aircraft do not transfer responsibility for the issue of the CofA.

Justification: Clarification.

Proposed Text: (2) the State of the operator, provided that the state of the

operator and the State of registry have entered in an agreement under Article 83bis of the Convention on International Civil Aviation that transfers responsibility for the issue of the CofA~~covers~~ the aircraft

Page No: 27 **Paragraph No**: TCO.OPS.205

comment: Although Annex 6 paragraph 4.3.1 does not specifically refer to pre flight checks it does require the pilot to certify that the aeroplane is airworthy. As the pilot is already required to be satisfied that the aircraft is airworthy the requirement to carry out a pre flight check does not appear to add an additional level of safety. The ICAO standard, while not as specific, meets the intent of the Essential Requirement that the aircraft must be assessed as fit for flight.

Justification: Unnecessary as the ICAO standard meets the intent of the IR

Proposed Text: Delete TCO.OPS.205

Page No: 27 **Paragraph No**: TCO.OPS.210

comment: The legal basis for this requirement is unclear. It is not justified by the gap analysis of Annex 6 against the operations Essential Requirements and will not be covered by the Essential Requirements for airworthiness or pilot licensing. Sub paragraph (b)(1) states that notwithstanding (a) the use of ATS in not required unless mandated by airspace requirements. If the use of ATS is only required where it is mandated by airspace requirements then there is no need to repeat the airspace requirements in Part-TCO

Justification: The paragraph appears to be ultra vires and is unnecessary as it repeats airspace requirements.

Proposed Text: Delete paragraph.

Page No: 27 **Paragraph No**: TCO.OPS.300

comment: This paragraph adds nothing as it refers to equipment that third country operators are already required have and use in EU airspace.

Justification: Repeats existing legislation.

Proposed Text: Delete.

TCO.OPS.200 In-flight fuel management - *Can we require compliance with the essential criteria (ie beyond ICAO standards) for the whole of the flight or just while it is within the EU. Should we be setting requirements which really fall within the responsibility of the State of the Operator. Who will be responsible for approving procedures which presumably will be in the TCO's operations manual? The relevant ER identified in Appendix 2 (ER 3.a.9) states that "the applicable in flight fuel management procedures must be use, when relevant". I am not sure that this is a can be used as a justification for requiring a TCO to develop procedure, just to use the ones they have. However, ER 2.a.7 does say that procedure of in flight fuel management must be established when relevant.*

response

Response to part to the comment relating to TCO.OPS.100 (a) (1): accepted. Please see the response to comment #89.

Response to part to the comment relating to TCO.OPS.100 (a) (4): not accepted. Please see the response to comment #89.

Response to part to the comment relating to TCO.OPS.100 (c) (2): accepted. The text has been amended accordingly.

Response to part to the comment relating to TCO.OPS.205: partially accepted. Please see the response to comment # 93

Response to part to the comment relating to TCO.OPS.210: accepted. This

provision has been deleted because it is already imbedded in the airspace classification as defined in Part SERA-B and addressed in other parts of Part-SERA.

Response to the part to the comment relating to TCO.OPS.300: not accepted. Although the Agency appreciates the comment the Agency has decided to keep this paragraph as it will remind third country operators to check the relevant provisions. It also provides for the necessary provisions for TCO when applying for an authorisation to also declare they are equipped and if applicable hold the necessary operational approval as required by the SES interoperability rules, (eg 8.33, Data link, Mode S and ADS-B).

Response to the part to the comment relating to TCO.OPS.200: partially accepted. Please see the response to comment # 93.

comment *106* comment by:*CAA Finland*

TCO.OPS.200 In-flight fuel management

An ICAO Standard on this issue is in the final phases of its preparation and a State Letter on the subject is to be expected shortly. The estimated entry into force of the Standard is November 2012. CAA Finland would propose the deletion of this paragraph,

a) as the matter will be taken care of by an ICAO Standard; and

b)to avoid any possible inconsistencies with the future ICAO Standard.

As stated in the general comments, CAA Finland is against requiring third country operators compliance with European requirements which exceed ICAO standards.

TCO.OPS.205 Pre-flight inspections

Although this requirement has not been confirmed as a ICAO Standard, it is common practice and, as such, seems unwarranted in this context. In our view “additional” requirements should be based on a true and imminent safety need. As stated in our general comments, CAA Finland is against requiring third country operators compliance with European requirements which exceed ICAO standards.

TCO.OPS.400 Flight crew compartment security – helicopters

This is not an ICAO Standard. As the provision only applies if there is a flight crew compartment door installed, the safety value of the provision does not seem so high and, therefore, its inclusion in PART-TCO does not seem imperative. As stated in our general comments, CAA Finland is against requiring third country operators compliance with European requirements which exceed ICAO standards.

response *Partially accepted*

Please see the response to comment # 93

comment *141* comment by:*Boeing*

Page: 27 of 175

Paragraph: *TCO.OPS.205 Pre-flight inspections*

The last sentence of the paragraph states:

" … This inspection must be carried out by the pilot in command, the co-pilot or another qualified person."

We recommend changing this text to read as follows:

*" … This inspection must be carried out by ~~the pilot in command, the co-pilot~~ **a pilot** or another qualified person."*

JUSTIFICATION: Our suggested change would eliminate the need to address pilots-in-command, co-pilots, first officers, second officers, cruise relief pilots, etc. Specific mentioning of the pilot-in-command and co-pilot, as in the NPA, is unnecessary.

response *Partially accepted*

Please see the response to comment # 93.

comment *142* comment by: *Boeing*

Page: 27 of 175

Paragraph: *TCO.OPS.210 Use of Air Traffic Services, (b)(1)*

The text states:

"(b) Notwithstanding (a), the use of ATS is not required unless mandated by air space requirements for:

(1) visual flight rules (VFR) day operations of other-than-complex motor-powered aeroplanes; …"

We request clarification as to whether there is there any operator who flies these operations who will need TCO approval.

JUSTIFICATION: Clarification is requested.

response *Accepted*

Please see the response to comment#90 on TCO.OPS.210.

comment *143* comment by: *Boeing*

Page: 28 of 175

Paragraph: *TCO.OPS.505 Production of documentation, manuals and records (2nd line)*

Change *"… aircraft **is** landed …"* to *"… aircraft ~~is~~ **has** landed …"*

JUSTIFICATION: Editorial suggestion only – for better clarity.

response *Accepted*

The text has been modified accordingly.

comment *146* comment by: *Swedish Transport Agency, Civil Aviation Department*

(Transportstyrelsen, Luftfartsavdelningen)

SECTION II OPERATIONAL PROCEDURES

As has been mentioned earlier, Sweden does not support the idea of demanding from third country operators that they shall comply with rules which are not ICAO standards.

response *Partially accepted*

Please see the response to comment #93.

comment *166* comment by:*AEA*

TCO.OPS.200 In-flight fuel management

(a) The operator shall establish a procedure to ensure that in-flight fuel checks and fuel management are carried out.

(b) The pilot-in-command shall ensure that the amount of usable fuel remaining in flight is not less than the fuel required to proceed to an aerodrome/operating site where a safe landing can be made, with final reserve fuel remaining.

(c) The pilot-in-command shall declare an emergency when the actual usable fuel on board is less than final reserve fuel.

AEA comment

AEA requests for correction of Paragraph (b) as follows:

The pilot-in-command shall ensure that the amount of usable fuel remaining in flight is not less than the fuel required to proceed to an adequate aerodrome/operating site where a safe landing can be made, with final reserve fuel remaining.

This ensures alignment with EU OPS 1.375 In flight fuel management.

Secondly AEA asks for correction of Paragraph (c). With this wording the pilot-in-command shall only declare an emergency when the final reserve fuel will just be used. EU OPS 1.375 however intended to declare an emergency already at earlier stage: when an in-flight fuel check has been carried out and the FC is aware already well in advance that he will have to go under his final reserve fuel. Therefore AEA requests to the EU OPS wording in order to remain safety! The wording is to be used is the following:

“The commander shall declare an emergency when calculated usable fuel on landing, at the nearest adequate aerodrome where a safe landing can be performed, is less than final reserve fuel.”

response *Partially accepted*

Please see the response to comment #93.

comment *167* comment by:*AEA*

TCO.OPS.500 Documents, manuals and records to be carried

(a) The third country operator shall ensure that:

(1) all documents that are required to be carried on board are valid, current and up to date;

(2) the authorisation and associated specifications issued by the Agency are carried on each flight, as originals or copies.

AEA COMMENT

TCO.OPS.500 a) (2) requests the operator to have on each aircraft the TCO authorisation and the related operational specifications. This requirement is not realistic and should be dropped. Following EASA's example, non EASA States will require their retaliatory Operations Specifications/approvals to be carried on board as well. It would become a non-manageable task to keep the fleet up to date with the latest revision. It should be taken into account that no country issuing an Operations Specification/Approval requires the respective operator to have such an approval on board.

response *Accepted*

Alternative means of demonstrating a valid TCO authorisation including associated specifications should be acceptable under the condition that the documents can be produced (without undue delay).

comment *173* comment by:*CAA-NL*

TCO.OPS.200 In flight fuel management

The Netherlands suggests to delete this paragraph for the following reasons:

In Appendix 2, comparing Essential Requirements 2.a.7, which calls for 'in-flight fuel management procedures' with ICAO Annex 6, Part 1, Standard 4.3.6.1/4, EASA draws the conclusion that although the standards are less prescriptive, they have the same intent. There is no need for an additional requirement in Part TCO. We agree with this conclusion. We are furthermore of the opinion that the ICAO standards don't require 'in-flight management procedures' to be stored in the desk of the chief pilot, but the standards are there to be used in-flight. Therefore ER 3.a.9 is also covered. Concequently there is no need for TCO.OPS.200, and TCO.OPS.200(a) specifically.

Further TCO.OPS.200(b)/(c) are requirements that go beyond the text of ER 3.a.9 and can therefore not be asked from the TCO.

Similar reasoning can be followed for ICAO Annex 6 Part III, Section II, although the reverences to the standards are of a different number.

response *Partially accepted*

Please see the response to comment #93.

comment *174* comment by:*CAA-NL*

TCO.OPS.205 Pre-flight inspections

The Netherlands suggests to delete this paragraph for the following reasons:

In Appendix 2, comparing Essential Requirements 6.b, which calls for 'pre-flight inspections' with ICAO Annex 6, Part 1, Standard 4.3.1, EASA draws the

conclusion that the pre-flight inspection is missing. We do not agree with this conclusion.

are of the opinion that the ICAO standard requires the PIC to sign that he is satisfied that the aircraft is airworthy. The PIC will not accept an aircraft as airworthy when he does not perform a pre-flight inspection to satisfy him of the airworthiness of the aircraft. The current SAFA checklist also confirms this position, item 24 relates to the pre-flight inspection which could not be on the SAFA inspection check list if not thought to be covered by ICAO standards. So ER 6.b is covered. There is no need for TCO.OPS.205.

Similar reasoning can be followed for ICAO Annex 6 Part III, Section II, although the reverences to the standards are of a different number.

response *Partially accepted*

Please see the response to comment #93.

comment *175* comment by:*CAA-NL*

TCO.OPS.210 Use of air traffic services.

The Netherlands suggests to delete this paragraph as this is covered by ICAO Annex 2, Chapters 3.6 and 5.27, in combination with Annex 11 ATS.

response *Accepted*

Please see the response to comment #90 on TCO.OPS.210.

comment *179* comment by:*CAA-NL*

TCO.OPS.100.a.1

The Netherlands questions the need for the requirement for a TC-Operator to fulfil alternative requirements for those items were the State of Operator has filed differences by ICAO. At this moment we are not aware of any ban of operators flying into EU territory just on the basis of current differences filed by the state op operator.

response *Noted*

ICAO standards should be the minimum safety standards all Contracting Parties agreed on this level of safety. Enforcement of those minimum safety standards should be in the interest of all Contracting States.

Please see also the response to item 7 in comment # 242

comment *187* comment by:*Federal Ministry of Transport, Austria (BMVIT)*

TCO.OPS.205 Preflight inspections:

Is this provision really required?

Justification: According to Annex 6-II-4.4.1 a preflight check shall be

performed noting all obvious defects. The provision is part of the general requirements the third country operator has to apply with. The wording of the ICAO standard provision differentiates from the relevant EU regulation but implies the same action namely a preflight check before flight.

response *Partially accepted*

Please see the response to comment # 93.

comment *198* comment by:*Embraer - Indústria Brasileira de Aeronáutica - S.A.*

TCO.OPS.200 (b)

There should be a definition within Part TCO for “final reserve fuel” as there is in EU OPS.

response *Partially accepted*

Please see the response to comment # 93.

comment *223* comment by:*Fédération Nationale de l'Aviation Marchande (FNAM)*

TCO.OPS.100 General requirements

Reference text :

“(a) The third country operator shall comply with:

(1) the applicable rules of the State of registry of the aircraft and if relevant the State of the operator that give effect to 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) and 18 (Dangerous Goods);”

comment :

Is a European Regulation relevant to impose these requirements upon Third Country Operators? Aren’t they already committed to do so by their national regulations if their States has signed the Chicago Convention? The point seems to be more relevant for non ICAO States.

Proposal:

Assess if this paragraph is necessary / relevant?

response *Noted*

Not all ICAO Contracting States have fully implemented the ICAO standards in their national legislation. Other states have implemented all standards, but are not enforcing them. Furthermore, countries exist that are not ICAO Contracting States at all. By obliging these states in the EU legislation to comply with ICAO standards, it will be possible for the Agency to enforce these standards if not met. Part-TCO will verify if the air operator certificate was issued according to the standards.

comment 224 comment by: *Fédération Nationale de l'Aviation Marchande (FNAM)*

TCO.OPS.100 General requirements

Reference text :

"(a) The third country operator shall comply with:

[…]

(4) the applicable EU rules of the air."

comment :

Chicago convention and its annexes already include many requirements in its Articles 11 and 12 requiring that aircraft flying in, out, or within the territory of contracting state comply with applicable regulations, including rules of the air. Moreover, the scope of the draft SERA includes in its scope of applicability "airspace users and aircraft engaged in general air traffic operating into, within or out of the Union".

Isn't this requirement already existing? Is point (4) necessary?

response *Not accepted*

Please see the response to comment #89 on TCO.OPS.100(a)(4).

comment 225 comment by: *Fédération Nationale de l'Aviation Marchande (FNAM)*

TCO.OPS.100 General requirements

Reference text :

"(d) The third country operator shall upon request provide the Agency with any information relevant for verifying compliance with this part."

comment :

This point is a repetition of TCO.GEN.125 Access point (b) : "The third country operator shall ensure that the Agency is granted access to any of its facilities or documents related to its activities, including any subcontracted activities, to determine compliance with this Part."

Proposal :

Assess the added value of the two requirements and keep only one of these requirements if possible.

response *Not accepted*

TCO.GEN.125 on access is related to on-site visits and TCO.OPS.100 (d) is necessary for the Agency if it needs certain relevant safety information from the operator without performing an on-site visit.

comment 226 comment by: *Fédération Nationale de l'Aviation Marchande (FNAM)*

TCO.OPS.505 Production of documentation, manuals and records

Reference text :

"Within a reasonable time of being requested to do so by a person authorised

by the Agency or the competent authority of a MemberState where the aircraft is landed, the pilot-in-command shall produce to that person the documentation, manuals and records to be carried on board."

comment :

This point is also in some aspects a repetition of TCO.OPS.100 (d) and TCO.GEN.125 (b).

Proposal :

Keep only one of these requirements into a common one, for ease of use and understanding.

response *Not accepted*

TCO.OPS.505 ensures that documents will be produced within a reasonable time during a ramp inspection. Please see the response to comment #225.

comment *231* comment by:*airberlin Group*

P26 - TCO.OPS.100 General Requirements – (b)(1):

This provision would exclude the case for third country operators to dry lease-out to EU operators, since the aircraft registered in a third country will not be listed on their AOC.

response *Noted*

Please see the response to comment #71.

comment *232* comment by:*airberlin Group*

P26 - TCO.OPS.100 General Requirements – (c):

This permits cases which are currently not permitted per EU-OPS to EU operators, who need to have a CofAi. a.w. Part-21. Previous cases of dry lease-in of aircraft registered in a third country were indeed subject to an agreement under ICAO article 83bis between the state of the EU operator and the third country concerned.

response *Noted*

Please see the response to comment #71.

B. DRAFT OPINION PART THIRD COUNTRY OPERATORS (PART-TCO) - Subpart 3 - Authorisation of third country operators p. 28-29

comment *21* comment by:*Luftfahrt-Bundesamt*

TCO.AUT.115(a)(6):

What happens to operators that have not entered the EU for more than 2 years? Do they have to apply for initial approval again? Including the full fee?

response *Noted*

It is proposed that TCO authorisations expire after 24 months if not used by the operator. A new application would be necessary in order to renew the TCO authorisation. However, the Agency proposals include a re-assessment of each authorisation no later than every 24 months in accordance with Article 23.1.(b) of Reg. (EC) No 216/2008.

comment *25* comment by: *UK CAA*

Page No: 28

Paragraph No: TCO.AUT.100(a)

comment: Reference should be to commercial air transport operations. Presumably also it means prior to commencing commercial air transport operations into the EU. Will this be specified in the cover regulation?

Justification: Clarity

response *Accepted*

References should indeed be made to commercial air transport operations. TCO.AUT.100 was amended accordingly. Furthermore, the scope will be specified in the Cover Regulation stating that a prior approval needs to be obtained before operating into, within or out of the EU.

comment *37* comment by: *Singapore Airlines (SIA)*

On page 29, sub-para (7):

1. We wish to seek clarification on the requirement for written statement that mandatory safety information issued by State of registry, including airworthiness directives, have been complied with. Who is to make such declaration? The airline or its State regulator?

response *Noted*

As stated in TCO.AUT.100 (c), the information shall be provided by the applicant, i.e. the operator.

comment *73* comment by: *IACA International Air Carrier Association*

P29 - TCO.AUT.100 Application for an authorisation-operator - (d):

This is one of the appearances of the term “leasing”. This should also apply to EU operators wishing to dry lease-in aircraft registered in a third country to manage seasonal effects on a yearly basis.

response

Noted

Please seethe response to comment #59

comment

91 comment by: *UK Department for Transport*

Page No: 28 **Paragraph No**: TCO.AUT.100(c)

comment: Sub paragraph (c)(3) provides that the information to be provided shall include any additional information requested by the Agency. The words "at least" at the end of (c) are therefore unnecessary.

Justification: Clarity

Proposed Text: Such information shall include~~, at least~~ :

Page No: 29 **Paragraph No**: TCO.AUT.100(c)(6)

comment: As written (c)(6) suggest that there will always have been mitigating measures that have to be complied with.

Justification: Clarity

Proposed Text: (6) a written statement that compliance with ~~the~~any mitigating measures…….

Page No: 29 **Paragraph No**: TCO.AUT.100(d)(2)

comment: The scope of Article 83bis agreements can vary. Does EASA needs to know the extent of the scope of the transfer of responsibilities. If so the statement will need to cover the scope of the agreement rather than just confirming that there is one.

Justification: Accuracy

Proposed Text: If applicable, a statement that the State of the operator and the State of registry have entered into an agreement pursuant to Article 83bis of the Convention on International Civil Aviation that covers the aircraft, and details of the responsibilities transferred under the agreement.

Page No: 29 **Paragraph No**: TCO.AUT.110(b)

comment: There is TCO.AUT.300. We assume that the reference should be to TCO.AUT.100.

Justification: Accuracy.

Proposed Text: "……..the information referred to in TCO.AUT.100

Page No: 29 **Paragraph No**: TCO.AUT.115 (a)(6)

comment: It is not clear why authorisation should lose its validity simply because an operator has not operated to the EU for two years. The lack of operations to the EU should not affect the safety of the operator if it comes from a state with an effective regualtor. If there were any material changes in the operator's circumstances between operations this will have to be notified in accordance with TCO.AUT.110. This will constrain smaller airlines ability to pick up occasional ad hoc contracts to operate to the EU. Will EASA have a process for monitoring the dates of airlines operations to the EU determining when an authorisation is invalidated by this requirement?

Justification: Proportionality

Proposed Text: delete TCO.AUT.115 (a)(6)

response

Response to the part of the comment relating to TCO.AUT.100 (c): accepted. The wording “at least” has been deleted from the original text proposal.

Response to the part of the comment relating to TCO.AUT.100 (c) (6): accepted. The original text proposal Part-TCO has been amended accordingly.

Response to the part of the comment relating to TCO.AUT.100 (d) (2): accepted. The original text proposal has been amended accordingly.

Response to the part of the comment relating to TCO.AUT.110 (b): accepted. The typing error has been corrected.

Response to the part of the comment relating to TCO.AUT.115 (a) (6):not accepted. While the Agency in principle agrees that the lack of operations into the EU does not constitute a safety concern, the Agency should dedicate its limited TCO assessment and oversight resources to those third country operators that actually make use of the privilege of their TCO authorisation by actively operating into the EU. Therefore, a mechanism is needed to reduce the proportion of non-scheduled TCO not using their authorisation.

comment

117 comment by:*Singapore Airlines Cargo*

On page 29, sub-para (7):

1. We wish to seek clarification on the requirement for written statement that mandatory safety information issued by State of registry, including airworthiness directives, have been complied with. Who is to make such declaration? The airline or its State regulator?

response

Noted

Please see the response to comment #37.

comment

127 comment by:*Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)*

TCO.AUT.100 Application for an authorisation-operator

The following addition should be made in (a): “Prior to commencing commercial air operations *into, within, or out of the territory subject to the provisions of the Lisbon Treaty* the operator shall apply for and obtain an authorisation issued by the Agency.”

response

Not accepted

Provision TCO.GEN.101 defines the scope of Part-TCO sufficiently.

comment

128 comment by:*Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)*

TCO.AUT.110 Changes

Should the reference to TCO.AUT.300 in (b) be a reference to TCO.AUT.100?

(d) says that failure to comply with the requirements in (a) *shall* result in

suspension, limitation or revocation of the authorisation. Depending on the situation Sweden considers that *shall* should be replaced by *may.*

response *Accepted*

The typing error has been corrected.

comment *168* comment by:*AEA*

TCO.AUT.100 Application for an authorisation-operator

(a) Prior to commencing commercial air operations the operator shall apply for and obtain an authorisation issued by the Agency.

(b) An application for an authorisation or an amendment thereof shall be made in a form and manner established by the Agency.

(c) Without prejudice to applicable bilateral agreements, the applicant shall provide the Agency with any information needed to verify that the intended operation will be conducted in accordance with the applicable requirements. Such information shall include, at least:

(1) the official name, business name, address, and mailing address of the applicant;

(2) a copy of the operator's AOC and related operations specifications, or equivalent document, issued by the State of the operator that attests the capability of the holder to conduct the intended operations;

(3) if requested by the Agency, any other additional relevant flight documentation, manuals and specific approvals issued or approved by the State of the operator or State of registry as the case may be;

(4) a description of the organisation, proposed start date of operation, type and geographic areas of operation;

(5) a written statement that every flight will be conducted in accordance with the provisions of the operator's Operations Manual;

(6) a written statement that compliance with the mitigating measures accepted by the Agency in accordance with AR.TCO.200(b) will be ensured.

(7) a written statement that any mandatory safety information issued by the State of the operator or the State of registry, including applicable airworthiness directives have been complied with.

(d) For those aircraft not registered in the State of the operator and intended to be operated in the EU, the Agency may request:

(1) details of the lease agreement for each aircraft so operated; and

(2) if applicable, a statement that the State of the operator and the State of registry have entered into an agreement pursuant to Article 83 of the Convention on International Civil Aviation that covers the aircraft.

AEA COMMENT

AEA suggests to change the wording of (c) 7) into the following: "a written statement that any safety directive issued by the State of the operator or the State of registry, including applicable airworthiness directives have been complied with." Safety Information has no binding character whereas a Safety Directive is clearly binding.

response | *Not accepted*

Using the word "mandatory" explicitly emphasises the binding character.

comment | *169* comment by:*AEA*

TCO.AUT.110 Changes

(a) Any change affecting the terms of an authorisation issued under Subpart AR.TCO.205 shall require prior authorisation by the Agency.

(b) The operator shall provide the Agency with the information referred to in TCO.AUT.300, restricted to the extent of the change.

During such a change the operator shall operate under the conditions prescribed by the Agency, as applicable.

(c) All changes not requiring prior authorisation as agreed in accordance with AR.TCO.205(d) shall be notified to the Agency.

(d) Without prejudice to any additional enforcement measures, failure to comply with the requirements in (a) shall result in suspension, limitation or revocation of the authorisation.

AEA comment

In Paragraph (b) a reference about TCO.AUT.300 is given. This does not exist through the entire NPA. AEA therefore requests for correction of this reference. The requirement in Paragraph (c) is unclear and may lead to tremendous complexity. Either the data are required for approval or they are not. They should not be provided unless a specific request is made by the Agency. The TCO is already quite complex, such request would increase the administrative burden. AEA therefore proposes to delete this requirement.

response

Accepted with regard to the wrong reference TCO AUT 300.Not accepted to delete (c) Basic operator data needs to be updated in respect of the changes to the operator affecting the oversight.

comment | *172* comment by:*CAA-NL*

TCO.AUT.110(b)

Typo reference should be TCO.AUT.100

response | *Accepted*

Typo was corrected and reference was changed accordingly in the proposal.

comment | *180* comment by:*CAA-NL*

TCO.AUT.100.c

The Netherlands does not see the need for the statements required by item (5), (6) and (7) from every applicant as these are under the control of the

state of the operator and have to be fulfilled under the standards of ICAO through the original OAC.

The Netherlands suggest to relocate 'the organisation' from item (4) to item (3).

The Netherlands is of the opinion that the additional information requested by the agency (3) may only be requested when there is an identified safety concern.

response

The first comment: accepted. Items (5) and (7) are sufficiently covered in the applicable ICAO standards. Item (6) is covered in TCO.OPS.100 (2).

Second comment: accepted. Description of organisation allocated from _3) to 4).

Last sentence not accepted. The Agency shall be entitled to request additional documentation if needed for verification of compliance with Part TCO.

comment *188* comment by:*Federal Ministry of Transport, Austria (BMVIT)*

TCO.AUT.110 Changes:

In subparagraph (b) a wrong reference has been cited. Instead of TCO.AUT.300 TCO.AUT.100 has to be included.

Justification: Wrong reference

Subparagraph (d) should be shifted to AR.TCO.225 (a).

Justification: This provision describes enforcement measures of the agency in the case of non-compliance of the TCO operator with provisions of the NPA. Therefore it should be included in Subpart AR.TCO dealing with Authority requirements.

response

Response to the part of the comment related to TCO.AUT.100 (b): accepted. The typing error has been corrected and replaced by the reference to TCO.AUT.100.

Response to the part of the comment related to TCO.AUT.100 (d): not accepted. The provision defines the consequences when an operator fails to inform the Agency on changes affecting the terms of the authorisation.

comment *189* comment by:*Federal Ministry of Transport, Austria (BMVIT)*

TCO.AUT.115 Continuous validity:

(a)(1): The wording of the second sentence stating:" the provisions related to the handling of findings….shall also be taken into account" is very general.

The GM does not give any guidance either. Therefore the rule or at least the GM should specify under which circumstances the handling of findings can affect the validity of the authorisation.

Justification: The holder of a TCO authorisation should have the right to know to what extend the handling of findings can affect the validity of the

	authorisation.
response	*Accepted* The rule text of TCO.GEN.125 and related GM1 has been amended.

comment	*199* comment by:*Embraer - Indústria Brasileira de Aeronáutica - S.A.* **TCO.AUT.110 (d)** While EASA should have the authority to take action against any third country operator that fails to obtain authorisation from the Agency for changes, as required by TCO.AUT.110 (a), the requirement in TCO.AUT.110 (d) that requires such action, i.e., "…**shall** result in suspension, limitation or revocation of the authorisation" (emphasis added), does not leave adequate flexibility to the Agency in the event of inadvertent noncompliance. The text of TCO.AUT.110 (d) should be revised to say "… **may** result in suspension, limitation or revocation of the authorisation."
response	*Partially accepted* Paragraph (d) has been transferred to ART.GEN.220, because it is considered to be a requirement for the Agency. In addition, the text has been amended to make it clearer that only in case the operator has implemented changes requiring prior authorisation, without a formal approval of the Agency, the authorisation will be suspended, limited or revoked. The implementation of changes without the prior authorisation of the Agency is considered as a safety risk, which needs to be followed up with an enforcement measure. The enforcement measures available offer sufficient flexibility for the Agency.

comment	*205* comment by:*YahiaBataineh* Dear Sir, Under the international standards, member States to the Convention on International Civil Aviation undertake: — Development of international civil aviation in a safe and orderly manner; — Conducting all civil aviation operations under internationally accepted standards, procedures, and practices; — Cooperation with other States in order to achieve standardization and harmonization in regulations, rules, standards, procedures and practices. — Adoption of the Annexes, to the Convention. — Ensure the consistency of the rules and regulations with the Annexes' provisions. — Employ a safety oversight system for supervision and control of all of its aviation activities. — Establish a system for both the certification and the continued surveillance of the operator to ensure that the required standards are maintained, and — Many other similar obligations

In this context, the convention established the following requirements for international recognition of the certificates, licenses, authorisations …etc issued by States:

- *Contracting States shall recognize as valid an AOC issued by another Contracting State, provided that the requirements under which the certificate was issued are at least equal to the applicable standards specified in Annex 6, Part I, and Part III.*
- *Certificates of airworthiness and certificates of competency and licences issued, or rendered valid, by the State in which an aircraft is registered, shall be recognized by other States, provided that the requirements under which such certificates or licences were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to the Convention.*

The essential element for the recognition is that the requirements under which such certificates or licences were issued or rendered valid are equal to or above the minimum international standards.

In the introduced NPA, TCO authorisation process (Application phase, Evaluation phase, Authorization phase and Monitoring phase) is a process for recertification of a Third Country AOC holder.

In addition, the assessment scope includes Desktop Review of the air operator application and documentations, Consultation by Telephone/video conference, or meeting, and may be an On-site visit

In my opinion and even if countries involved are implementing the same regulations, this is going to:

- *Duplicate the work already done by the OriginalState of the Operator,*
- *Put an economic burden on the Air Operator,*
- *State of the Operator to take the same measures concerning the European Air Operators flying to the State.*

In conclusion, I am with the objective of promoting the international air transport safety by applying such measures; however, the State of Operator is to be involved on the process by means of MOU that defines equal rights of States (EASA/EU Countries and the other state) to authorize and conduct safety oversight on the Air Operators from each other country.

Therefore I recommend adding a new paragraph in Subpart-III "Authorisation of Third Country Operator" establishing the requirements for MOU between EASA and the State of the TCO.

Best regards,

YahiaBataineh

response

Not accepted

The Agency is not empowered to conclude bilateral agreements with third countries.

comment

206 comment by: *Zoltán PÁVEL*

Paragraph TCO.AUT.110(b) refers to TCO.AUT.300 not existing in the regulatory proposal. This reference shall be corrected. Possibly it should refer to TCO.AUT.100(1) thru(4).

response | *Accepted*

The reference was corrected and reads now TCO.AUT.100.

comment | *227* comment by:*Fédération Nationale de l'Aviation Marchande (FNAM)*

AR.TCO.200 Initial evaluation procedure

Reference text :

"(b) Except for the standards referred to in (a)(2), the Agency may accept mitigating measures ***established by the State of the operator or the State of registry*** *ensuring an equivalent level of safety to that achieved by the standard to which differences have been notified to ICAO by the State of the operator or the State of registry"*

comment :

It should be allowed that the operator proposes itself the mitigating measures to be complied with. Indeed, reliance on the willingness and the potential delays of an authority may be burdensome for operators.

Proposal :

Add "or the operator" after "the State of registry".

response | *Accepted*

comment | *233* comment by:*airberlin Group*

P29 - TCO.AUT.100 Application for an authorisation-operator - (d):

This is one of the appearances of the term "leasing". This should also apply to EU operators wishing to dry lease-in aircraft registered in a third country to manage seasonal effects on a yearly basis.

response | *Noted*

Please see the response to comment #59.

C. Draft Decision AMC and GM for Part Third Country Operators requirements (PART-TCO) - Subpart I – General Requirements p. 30

comment | *92* comment by:*UK Department for Transport*

Page No: 30 **Paragraph No**: GM1- TCO.OPS.100(b)(2)

comment: This GM describes special authorisation but the IR does not refer to special authorisations.

Justification: Relevance

	Proposed Text: Delete GM1- TCO.OPS.100(b)(2)
response	*Not accepted* Article 9.2. of Regulation (EC) No 216/2008 requires the Agency to issue an authorisation. The privileges granted to the operator and the scope of the operations shall be specified in that authorisation. The Agency will issue specifications associated with the authorisation in the new format set out in ICAO Annex 6. In case the TCO authorisation would only refer to the operations specifications associated to the AOC and issued by the State of operator, any changes thereto would be automatically endorsed under the TCO authorisation issued by the Agency, without any evaluation by the Agency.

comment	*99* comment by:*Federal Office of Civil Aviation (FOCA), Switzerland* GM1-TCO.GEN.115(a)(2) Eligibility In the case of scheduled operators, it is justified to request from the operator to substantiate its planned operation. With regard to the non-scheduled and business operators, FOCA does not see the necessity to submit already a substantiated request. They should have the possibility to apply for a "basic" authorisation to be able to perform in the future ad-hoc flights on a short term basis. The flight schedule will have to be submitted to the respective National Aviation Authority with the application for entry permission.
response	*Accepted* The intention to operate to the EU is sufficiently substantiated when an operator can demonstrate a credible intention to conduct commercial operations into, within or out of the EU. GM 1-TCO.GEN.115(a)(2) has been changed accordingly.

comment	*109* comment by:*Federal Office of Civil Aviation (FOCA), Switzerland* AMC1-TCO.GEN.120(a) Means of compliance Alternative means of compliance to those adopted by the Agency may be used by a third country operator to establish compliance with Regulation (EC) No 216/2008 and its Implementing Rules. When an operator subject to an authorisation wishes to use an alternative means of compliance to that adopted by the Agency to establish compliance with Regulation (EC) No 216/2008 and its Implementing Rules, it shall, prior to implementing it, provide 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 notification by the Agency, as prescribed in AR.GEN.120(c).
response	*Noted*

comment	*129* comment by: *Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)* **AMC1-TCO.GEN.120(a) Means of compliance** Sweden considers that this ruling is beyond the mandate of the Agency. Third Country Operators are not under the obligation to meet all implementing rules of the Basic Regulation.
response	*Not accepted* Third country operators do not have to meet all Implementing Rules to Regulation (EC) No 216/2008, but have to meet the requirements in Part-TCO.

comment	*130* comment by: *Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)* **GM1-TCO.OPS.100(b)(2) General requirements** Sweden suggests that the paragraph starts with the following wording: “For certain operations a special authorisation is required.”.
response	*Accepted* The proposed text will be added to improve readability of the GM in the context of the underlying rule text.

comment	*190* comment by: *Federal Ministry of Transport, Austria (BMVIT)* **AMC1-TCO.GEN.120(a) Means of compliance:** In the first sentence the words “by the operator” should be included. The sentence would then read as follows: ”In order to demonstrate that the Implementing Rules are met, a risk assessment should be completed and documented by the operator.” Justification: The proposal was made to make clear that the risk assessment has to be done by the operator not the agency.
response	*Accepted* Text changed accordingly.

C. Draft Decision AMC and GM for Part Third Country Operators requirements (PART-TCO) - Subpart II Air Operations p. 30-31

comment	*52* comment by: *AAPA*

Page 30

GM1-TCO.OPS>100 (b) (2) General requiremnts

AAPA believes where air carriers have already obtained special operational authorisations they should be extended automatically for all operations within the EU.

Page 31

AMC1-TCO.OPS 500 - This section implies documentation need not be provided in hard copy. However, in service experience has demonstrated there is a need to ensure that SAFA inspectors are aware that the necessary documentation can be accessed from the aircrafts EFB.

response

Comment to GM1-TCO.OPS.100 (b)(2): not accepted. Article 9.2. of Regulation (EC) No 216/2008 requires the Agency to issue an authorisation. The privileges granted to the operator and the scope of the operations shall be specified in that authorisation. The Agency will issue specifications associated to the authorisation in the new format set out in ICAO Annex 6. In case the TCO authorisation would only refer to the operations specifications associated to the AOC and issued by the State of operator, any changes thereto would be automatically endorsed under the TCO authorisation issued by the Agency, without any evaluation by the Agency.

Comment to AMC1-TCO.OPS.500: noted. SAFA is a separate domain that is not addressed in this NPA. However, this comment will be noted and considered in RMT.0385, 0435, 0441/ OPS.087 ‘SAFA and SACA’.

C. Draft Decision AMC and GM for Part Third Country Operators requirements (PART-TCO) - Subpart III – Authorisation of third country operators p. 31

comment *53* comment by:*AAPA*

Page 31

AMC1-TCO.OPS 500 - This section implies documentation need not be provided in hard copy. However, inservice experience has demonstrated there is a need to ensure that SAFA inspectors are aware that the necessary documentation can be accessed from the aircrafts EFB.

response *Noted*

Duplication of comment #52.

comment *83* comment by:*Luftfahrt-Bundesamt*

AMC1-TCO.AUT.100 Application for an authorisation APPLICATION TIME FRAMES

We assume that, due to the „AMC“ status and the expression „should“, exemptions for short-term charter flights or humanitarian use are also

possible. Unfortunately, TCO.AUT does not include an exemption. In Germany, the rule applies that the documents have to be submitted, but up to three entries are permitted without an evaluation of the OPQ (Operating Permit Questionnaire).

response

Not accepted

The Regulation (EC) No 216/2008 does not foresee any exemptions. It has to be assessed on a case-by-case basis if a humanitarian flight falls within or beyond the scope of Art. 1 (2) Regulation (EC) No 216/2008 and thus falls within or beyond the scope of Part-TCO. With regard to charter flight: not accepted. There is no evidence that non-scheduled operations are less exposed to safety risks than scheduled operations. Hence, the assessment methodology applied will not differentiate between specific commercial air transport modes. However, in case there are no significant safety concerns with regard to the State of the operator or the operator itself and there is evidence of an unexpected urgent operational need, the Agency may decide to process an application that is not submitted at least 90 days before the date of intended operation.

comment

95 comment by:*UK Department for Transport*

Page No: 31 **Paragraph No**: AMC1-TCO.Aut.100

comment: It is not clear why EASA need to have the application 90 days in advance, especially in the case of “low risk” applications. Many charters, especially for cargo and executive passenger services are arranged at very short notice. The 90 day application period will make it difficult for new charter operators to commence their first service to the EU

Justification: Proportionality

Proposed Text: The application for initial authorisation for scheduled services should be submitted at least 30 days in advance. In the case of a one off or series of charter flights the application should be submitted as soon as practicable.

Page No: 31 **Paragraph No**: AMC1-TCO.AUT.110(a)

comment: It is not clear why EASA need to have changes to an authorisation 30 days in advance, especially in the case of “low risk” applications. This timeframe seems unreasonable for "low risk" cases but acceptable in more "high risk" cases such as the operator changing their principal place of business.

Justification: Proportionality

Proposed Text: (a) The application to amend an authorisation should be submitted as soon as practicable.

Page No: 31 **Paragraph No**: GM1-TCO.AUT.110(a)

comment: The revocation of an AOC is not a change initiated by the operator and it they are unlikely to be able to seek prior authorisation from EASA! The Part-TCO authorisation will become invalid under TCO.AUT.115(a)(2) if the AOC is revoked

Justification: Relevance

Proposed Text: (a) temporary or permanent cessation of operations ~~or revocation of the air operator certificate (AOC)~~;

response

Response to part to the comment relating to AMC1-TCO.AUT.100: noted. The minimum application time of 90 days must take into account the average time needed to complete the technical evaluation of the highest assessment category (C). Notwithstanding, operators in lower assessment categories, in particular category A operators, will be processed much faster. Applicants will not know their assessment categories beforehand. It will be in the interest of third country operators to submit their application at the earliest convenience in order to ensure operational flexibility.However, in case there are no significant safety concerns with regard to the State of the operator or the operator itself and there is evidence of an unexpected urgent operational need, the Agency may decide to process an application that is not submitted at least 90 days before the date of intended operation.

Response to part to the comment relating to AMC1-TCO.AUT.110 (a): noted. The minimum application time of 30 days must take into account the average time needed to complete the technical evaluation of the highest assessment category (C). Notwithstanding, operators in lower assessment categories, in particular category A operators, will be processed much faster. Applicants will not know their assessment categories beforehand. It will be in the interest of third-country operators to submit their application at the earliest convenience in order to ensure operational flexibility However, in case there are no significant safety concerns with regard to the State of the operator or the operator itself and there is evidence of an unexpected urgent operational need, the Agency may decide to process an application that is not submitted at least 30 days before the date of intended change. Response to part to the comment relating to GM1-TCO.AUT.110 (a): accepted. The text proposal has been amended accordingly.

comment

97 comment by:*Federal Office of Civil Aviation (FOCA), Switzerland*

AMC1-TCO.AUT.100 Application for an authorisation

It is proposed to change the 90 days for the submission of the application into 30 days.

We have experienced, that 30 days are in general enough to analyse an initial application for an authorisation.

It should also be made the difference regarding the type of operation (scheduled, non-scheduled, business operators etc).

Therefore FOCA proposes that the 30 days-period shall be applied for scheduled operation and for chains of non-scheduled flights only.

For single non-scheduled operation (ad-hoc charter, business operations, etc.) the period shall be reduced to 3 days.

Furthermore, FOCA proposes for such operations to allow third country operators to perform up to 3 to 6 flights per year without applying for a TCO authorisation. This is a common practice today.

response

Noted

The minimum application time of 90 days must take into account the average time needed to complete the technical evaluation of the highest assessment category (C). Notwithstanding, operators in lower assessment categories, in particular category A operators, will be processed much faster. Applicants will

not know their assessment categories beforehand. It will be in the interest of third country operators to submit their application at the earliest convenience in order to ensure operational flexibility. However, in case there are no significant safety concerns with regard to the State of the operator or the operator itself and there is evidence of an unexpected urgent operational need, the Agency may decide to process an application that is not submitted at least 90 days before the date of intended operation. Last sentence: Article 9 of Regulation (EC) No 216/2008 does not generally foresee a waiver of technical assessment for third country operators performing only a small number of flights to the EU per annum. However, the size and complexity of operations is reflected in the TCO assessment model pursuant to Article 9.5.(d). Please see also response to comment#83

comment

131 comment by:*Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)*

GM1-TCO.AUT.110 Changes

Sweden fails to see why a change of the operator's principal place of business would normally affect the authorisation. An important change would rather be a change of the State of the Operator.

response

Not accepted

While the Agency agrees that a mere change of the principal place of business (assumed it remains within the same State of operator) itself will not normally constitute a safety concern, such change of general data would require certain administrative action, e.g. issuing a revised TCO authorisation document.

comment

170 comment by:*AEA*

AMC1-TCO.AUT.110 Changes

APPLICATION TIME FRAMES

(a) The appl**ic**ation to amend an authorisation should be submitted at least 30 days before the date of intended change.

(b) Unforeseen changes should be notified at the earliest opportunity, in order to enable the Agency to determine continued compliance with this Part and to amend, if necessary, the authorisation and related specifications.

AEA comment

Referring to Paragraph (a) AEA likes to state that 30 days may be acceptable as a maximum time frame if it is understood that for simple amendments, less than 30 days may be achieved. For example we have tremendous problems to provide aircraft certificates 30 days in advance of the aircraft delivery due to the administrative process to get all those certificates. We note in the associated GM that EASA is considering the aircraft type and not the registration which will greatly simplify the process.

Amendment provided less than 30 days before the expected date should not automatically be rejected and best effort should be made by the Agency to process the requested amendment.

EASA should notice that due to the increasing number of States Ops approval for foreign airline, flexibility is of the utmost importance when it may be

provided.

response *Noted*

In case there are no significant safety concerns with regard to the State of the operator or the operator itself and there is evidence of an unexpected urgent operational need, the Agency may decide to process an application not submitted at least 30 days before the date of intended change.

D. Draft Opinion Part Authority Requirements (PART-AR) p. 32-34

comment *38* comment by: *Singapore Airlines (SIA)*

On page 33, sub-para (d) (3):

1. Operating procedures, safety management, maintenance capability, airline management etc differ among airlines even in the same country. There is no basis for subjecting another airline to further investigation or audit just because one operator from the same country is subjected to an operating ban by EASA. Furthermore, the TCO authorisation is granted on the merits of the airline and not other airlines within the same State. Therefore, we strongly disagree with this statement in the NPA.

response *Not accepted*

Please see the response to item 4 of comment # 93

comment *54* comment by: *AAPA*

Page 32

(c)(2) TCO safety performance is proposed to be judged on ramp inspections and recent serious incidents or accidents. It should be noted that ramp inspections carried out on air carriers throughout the globe although inline with ICAO requirements they tend to be non standard and not fully comparable.

With regard to ramp inspections AAPA requests clarification on the source of this data and the criteria to be used for analysis since a first time application could not be based on SAFA data as none would be available, whereas if it is an application for an existing TCO serving Europe existing SAFA data would be available.

More importantly how will EASA analyse third country ramp inspections as they are not comparable to SAFA ramp inspections .

With regard to serious incidents and accidents what definitions and source data will EASA use since already such data is inconsistent. An example of this is accident data which is presented as either hull loss or major accidents. The definitions for each of these differ.

Page 33

(d) (9) AAPA requests EASA to clarify which "recognised industry programs" will be used to identify significant items. We assume that one possibility would be IOSA. In addition EASA is requested to clarify what constitutes a "significant

finding" and how it would be used in the EASA analysis. It is assumed that EASA will only be looking for the corrective action that has been taken to address such "significant findings"

(d)(10) What constitutes a "serious incident or accident"

AR.TCO.205 Issue of authorisation

(a) (5) The fact that an TCO is subject to an operating ban should not prevent the TCO making an application for TCO authorisation. The Commission and EASA should coordinate this process enabling a TCO to be removed from the operating ban by achieving TCO authorisation. This would provide a more structured and transparent approach than is the case today with the existing process to lift any operating ban.

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AR.TCO.210 Continuous oversight

(b)(2) "Verification of compliance shall be based on previous investigations or audits, if carried out" EASA is requested to clarify who will have carried out these investigations. If it is EASA and/or European NAA then (b)(2) should state that.

AR.TCO.225 Limitation, suspension and revocation of authorisations

(d) EASA is requested define "systemic deficiencies"

response

Response to the part of the comment relating to SAFA inspections: noted. Only ramp inspection results of the participating states of the EU SAFA programme will be considered in the TCO assessment model, if available.

Response to the part of the comment requesting clarification of the term “recognised industry programmes”: noted. Currently, IOSA is considered as the only recognised industry programme in the context of TCO, as described in paragraph 28 of the Explanatory Note to the NPA.

Response to the part of the comment requesting clarification of the term “serious incident or accident”: the term “serious incident or accident” is defined in 996/2010 and ICAO Annex 13.

Response to the part of the comment relating to “significant findings”: noted, “Significant finding” is a finding of any significant non-compliance with the applicable requirements which lowers safety or seriously hazards flight safety.

Response to the part of the comment relating to AR.TCO.205: Please see the responses to comments #43 and#111.

Response to the part of the comment relating to AR.TCO.210: accepted. The text proposal has been amended accordingly.

Response to the part of the comment relating to AR.TCO.225: not accepted. The term “systematic deficiencies” should be understood in the standard dictionary sense. They pertain to a system and could mean for example a deficiency affecting the maintenance activities of an operator or the training of pilots. If the systemic deficiency is not solved, the risk remains of repetition of accidents or serious incidents.

comment *96* comment by:*UK Department for Transport*

Page No: 32 **Paragraph No**: AR.TCO.105

comment: If there is to be a connection between issuance of safety and

economic authorisations Member States need access constantly updated list of approvals and their scope. Member States also need to know immediately when an approval has been changed, suspended or revoked so that they ensure that operations to their territory comply with the requirements of Part TCO.

Justification: Time dissemination of crucial information.

Proposed Text: (a) ensure an updated list is available to the Member States at all times containing the ……; and

(b) immediately inform the Commission and Member States when it:

Page No: 32 **Paragraph No**: AR.TCO.200(a)(2)

comment: As drafted the requirement suggests that there will always be that standards to be complied with.

Justification: Clarity

Proposed Text: (2) indentify any ~~the~~ ICAO standard to be complied with by the third country operator notwithstanding that a difference has been notified to ICAO in respect of that standard by the State of the operator or the State of registry.

Page No: 32-33 **Paragraph No**: AR.TCO.200(c) and (d)

comment: This needs to greater reflect the mutual recognition of certificates should be the default position.

Justification: Proportionality

Proposed Text: (c) The verification shall be based on documentation provided by the operator. Certificates issued by the State of the operator or State of registry shall be taken as evidence of compliance with the relevant ICAO requirements except in the following circumstances where the Agency shall conduct further investigations or an audit of the third country operator:

[as (d)(2) to (d)(10)]

Page No: 33 **Paragraph No**: AR.TCO.200 (d)(6)

comment: Many AOCs will have restrictions (eg geographical, aircraft type) which should not necessitate further investigations by the EASA.

Justification: Clarity

Proposed Text: (6) where the State of the operator has imposed non standard safety related limitations on the operator's air operator certificate.

Page No: 34 **Paragraph No**: AR.TCO.210(a)

comment: The oversight requirements in ARO.GEN.300 are designed for oversight of organisations for which Member States and/or EASA are the certifying authority. They seem excessive for oversight of TCOs which will be subject to similar oversight regimes from their home states. For example, under ARO.GEN.300(b)(3) verification of compliance would have to be based on audits and inspections of the TCO. We need to ensure that we are not taking on or duplicating State of the operator/registry functions.

Justification: Proportionality

Proposed Text: Delete AR.TCO.210(a)

Page No: 34 **Paragraph No**: AR.TCO.210(b)

comment: The requirements for the oversight programme in ARO.GEN.300 are designed for oversight of organisations for which Member States and/or EASA are the certifying authority. They seem excessive for oversight of TCOs which will be subject to similar oversight regimes from their home states. For example, under ARO.GEN.300(b)(3) verification of compliance would have to be based on audits and inspections of the TCO. We need to ensure that EASA is not taking on or duplicating State of the operator/registry functions.

Justification: Proportionality.

Proposed Text: ~~In addition to (a)~~ (a)The verification of compliance with the applicable requirements shall be based on existing information, including that available from:

(1) on-going investigations etc;

(2) previous investigations etc;~~ and~~

(3) audits performed under etc; and

(4) ramp inspections.

(b) Where existing information does not verify compliance with the applicable requirements the Agency shall conduct such audits and inspections as it deems necessary.

Page No: 34 **Paragraph No**: AR.TCO.215

comment: The oversight requirements in ARO.GEN.305 are designed for oversight of organisations for which Member States and/or EASA are the certifying authority. They seem excessive for oversight of TCOs which will be subject to similar oversight regimes from their home states. For example, under ARO.GEN.300(b)(3) verification of compliance would have to be based on audits and inspections of the TCO. It is not clear what oversight activities that EASA will be undertaking every 24 months. While it is right that EASA should keep information such as that listed in AR.TCO.210 under review, EASA should not routinely be conducting biennial audits etc of TCOs. We need to ensure that EASA is not taking on or duplicating State of the operator/registry functions.

Justification: Proportionality

Proposed Text: Delete AR.TCO.215

Page No: 34 **Paragraph No**: AR.TCO.225(d)

comment: Under AR.TCO.225(d) authorisations shall be limited or suspended if the operator no longer complies with the applicable requirements of Part TCO. It is not clear why there is a need to single out ongoing accident/incident investigations as a source of evidence of non compliance. In the light of the requirements of Annex 13 to the Chicago Convention and Regulation 966/2010 this will be a sensitive issue.

Justification: Unnecessary

Proposed Text: Delete AR.TCO.225(d)

response

Response to the part to the comment relating to AR.TCO.105: accepted. It is intended to provide real-time, web-based access for Member States to the latest version of a list containing the authorisations, including associated specifications, limitations, changes, suspensions and revocations.

Response to the part to the comment relating to AR.TCO.200 (a)(2): accepted. However, AR.TCO.200(a)(2) has been deleted. Please see paragraph 72 of the Explanatory Note.

Response to the part to the comment relating to AR.TCO.200 (c) and (d): not accepted. Article 9.2. of Regulation (EC) No 216/2008 already clearly sets out that requirements may be satisfied by acceptance of certificates issued by or on behalf of a third country. Category A of the proposed assessment model limits the assessment's scope to reviewing basic operator data and accepting as valid certificates issued by the State of the operator and/or State of registry. The text as proposed in this comment would oblige the Agency to accept as valid without any further investigation any certificate produced by

any applicant (i.e., assessment categories B and C) that appears to be compliant with ICAO standards. This would contradict to the principle established in Article 9 of Regulation (EC) No 216/2008.

Response to the part to the comment relating to AR.TCO.200 (d)(6): partially accepted. Text has been modified.

Response to the part to the comment relating to AR.TCO.210 (a):partially accepted. The relevant provisions in Part ARO.GEN Sections 1 to 3 have been merged with AR.TCO. The parts relevant for overseeing third country operators in ARO.GEN.300 have been transferred to ART.GEN.210(a) which now provide for adequate and proportionate oversight of third country operators authorised by the Agency in accordance with Part-TCO.

Response to part to the comment relating to AR.TCO.210 (b): accepted. However, the word "inspections" in the last paragraph of the proposed text is replaced by "investigations",

Response to part to the comment relating to AR.TCO.215:partially accepted. The Agency agrees to change the reference made to AR.GEN.300 as this indeed pertains to the full oversight function of the State of the operator which is not the intent of Part-TCO. Nevertheless, while the TCO authorisation will remain valid without an imprinted expiration date subject to meeting the conditions set out in TCO.AUT.115, Regulation (EC) No 216/2008 requires the Agency to review an authorisation after a certain interval in accordance with approved procedures. Such review may not always be satisfied by means of a desktop review but may indeed warrant a continuation audit on site (in the case of category C operators).

Response to part to the comment relating to AR.TCO.225 (d): accepted AR.TCO.225(d) has been deleted.

comment *101* comment by:*Federal Office of Civil Aviation (FOCA), Switzerland*

AR.TCO.105 Exchange of information

(a): add, that the Agency shall inform the Member States about rejected applications.

This information is interesting for the National Aviation Authorities, in order to have a clear picture, which application had been rejected by the Agency.

response *Accepted*

Text changed in (b).

comment *102* comment by:*Federal Office of Civil Aviation (FOCA), Switzerland*

AR.TCO.200 Initial evaluation procedure

(d) (2): only applies to operators which are listed in Annex B of the "Community list of air carriers which are subject to an operating ban within the Community". Operators listed in Annex A of this list are not eligible to apply for a TCO (see TCO.GEN.115 Eligibilty).

For clarification, FOCA suggests that the reference to Annex B should be made in the sentence.

response	*Partially accepted* The text has been modified accordingly.

comment	*105* comment by:*Federal Office of Civil Aviation (FOCA), Switzerland* AR.TCO.205 Issue of an authorisation (a)(5): only applies to operators which are listed in Annex A of the "Community list of air carriers which are subject to an operating ban within the Community". For clarification, FOCA suggests that the reference to Annex A should be made in the sentence.
response	*Noted* AR.TCO.205(a)(5) has been deleted. Please see paragraph 78 of the explanatory note.

comment	*107* comment by:*Federal Office of Civil Aviation (FOCA), Switzerland* AR.TCO.205 Issue of an authorisation (c): only applies for aircraft of an operator listed on Annex B of the "Community list of air carriers which are subject to an operating ban within the Community". Operators listed in Annex A of this list are not eligible to apply for a TCO (see TCO.GEN.115 Eligibilty). For clarification, FOCA suggests that the reference to Annex B should be made in the sentence.
response	*Partially accepted* AR.TCO.205(c) has been deleted, Please see paragraph 79 of the explanatory note.

comment	*108* comment by:*Federal Office of Civil Aviation (FOCA), Switzerland* AR.TCO.225 Limitation, suspension and revocation of authorisations (b): only applies to operators which are listed in Annex A of the "Community list of air carriers which are subject to an operating ban within the Community". For clarification, FOCA suggests that the reference to Annex A should be added in the sentence.
response	*Noted* Paragraph (b) has been deleted as it is considered to be redundant.

comment	*118* comment by: *Singapore Airlines Cargo* On page 33, sub-para (d) (3): 1. Operating procedures, safety management, maintenance capability, airline management etc differ among airlines even in the same country. There is no basis for subjecting another airline to further investigation or audit just because one operator from the same country is subjected to an operating ban by EASA. Furthermore, the TCO authorisation is granted on the merits of the airline and not other airlines within the same State. Therefore, we strongly disagree with this statement in the NPA.
response	*Not accepted* Please see the response to comment #38.

comment	*132* comment by: *Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)* **AR.TCO.200 Initial evaluation procedure** **(**a2) “The Agency shall identify the ICAO standards to be complied with by the third country operator despite the difference notified to ICAO by the State of the operator or State of registry”. Every ICAO Member State has the right to file differences to standards and recommendations. Some of the differences filed are positive or neutral. The differences filed would have to be assessed on a case by case basis and cannot automatically lead to the operator in question not receiving an authorisation. (d) “The Agency shall conduct further investigations or an audit of the third country operator”. See remark under point 23 above.
response	noted. The future handling of differences to ICAO standards notified by contracting States, in the context of TCO authorisations, is currently being elaborated by the Agency. With regard to Item (d): not accepted. Please see the response to comment # 121

comment	*133* comment by: *Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)* **AR.TCO.210 Continuous oversight** See remark under point 23 above. **AR.TCO.215 Oversight programme** See remark under point 23 above. (b) The Agency shall conduct oversight activities at intervals which shall not exceed 24 months. Sweden fails to see how this shall be combined with the SAFA programme and Regulation (EC) No 2111/2005 (operating bans). There

is a risk of overlapping activities.

response

With regard to AR.TCO.210 and 215: not accepted. Please see the response to # 121.

With regard to the SAFA programme and Regulation (EC) No 2111/2005: noted. One of the most important parameters to be used for the oversight of third country operators are ramp inspections performed by the Member States' competent authorities. The SAFA programme will thus seamlessly connect with Part-TCO.

As regards coordination between Regulation (EC) No 2111/2005 and Part-TCO. Please see the response to comment #111.

comment *144* comment by:*Boeing*

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Paragraph*: AR.TCO.105 Exchange of information, (a)*

The text states:

"AR.TCO.105 Exchange of information

The Agency shall:

(a) regularly make available to the Member States an updated list containing the authorisations it has issued, limited, changed, suspended or revoked; and …"

The phrase *"regularly make available…."* does not identify a specific interval when the lists could be expected. "Regularly" could mean once a month, once a year, or any other period. We recommend that a specific time interval be stated, such as *"monthly"* or an applicable term.

JUSTIFICATION: Clarification of the word *"regularly"* is needed.

response *Noted*

It is intended to provide real-time, web-based access for Member States to the latest version of a list containing the authorisations, including associated specifications, limitations, changes, suspensions and revocations.

comment *151* comment by:*GiancarloBuono*

Section 1 – General, P.32

AR.TCO.200 Initial evaluation procedure

(a) Upon receiving an application for an authorisation, the Agency shall:

(1) verify the operator's compliance with the applicable requirements;

(2) identify the ICAO standards to be complied with by the third country operator despite the difference notified to ICAO by the State of the operator or State of registry.

(b) Except for the standards referred to in (a)(2), the Agency may accept mitigating measures established by the State of the operator or the State of registry ensuring an equivalent level of safety to that achieved by the standard

to which differences have been notified to ICAO by the State of the operator or the State of registry

(c) The verification shall be based on:

(1) documentation provided by the operator;

(2) relevant information on the safety performance of the operator, e.g. ramp inspections or *industry recognized audits* conducted and recent serious incidents or accidents, as applicable; and

(3) relevant information on the oversight capabilities of the State of the operator or State of registry, as applicable.

response *Accepted*

The text has been changed accordingly.

comment *161* comment by:*FAA*

AR.TCO.205; Page 33 Issue of an authorisation

Issue of an authorisation (a): Please provide details regarding the specifications the agency will issue. Will each of the member states issue separate specifications and will the specifications conform to ICAO standards?

response *Noted*

It is intended that the Agency (not individual Member States) will issue a TCO authorisation with associated specifications. Contents and format of the specifications to a TCO authorisation will follow the layout of Appendix 6, paragraph 3 of ICAO Annex 6, Part 1.

comment *171* comment by:*AEA*

AR.TCO.200 Initial evaluation procedure

(a) Upon receiving an application for an authorisation, the Agency shall:

(1) verify the operator's compliance with the applicable requirements;

(2) identify the ICAO standards to be complied with by the third country operator despite the difference notified to ICAO by the State of the operator or State of registry.

(b) Except for the standards referred to in (a)(2), the Agency may accept mitigating measures established by the State of the operator or the State of registry ensuring an equivalent level of safety to that achieved by the standard to which differences have been notified to ICAO by the State of the operator or the State of registry

(c) The verification shall be based on:

(1) documentation provided by the operator;

(2) relevant information on the safety performance of the operator, e.g. ramp inspections conducted and recent serious incidents or accidents, as applicable; and

(3) relevant information on the oversight capabilities of the State of the operator or State of registry, as applicable.

(d) The Agency shall conduct further investigations or an audit of the third country operator :

(1) where a review of the operator's documentation does not satisfy the Agency that compliance with the applicable requirements is ensured;

(2) when one or more aircraft of the operator are subject to an operating ban pursuant to Regulation (EC) No 2111/2005;

(3) when other operators of the State of the operator are subject to an operating ban pursuant to Regulation (EC) No 2111/2005;

(4) when the operator is subject to a measure pursuant to Article 6 of Regulation (EC) No 2111/2005;

(5) when the Commission and Member States have started joint consultation with the authority of the State of the operator pursuant to Article 3 of Regulation (EC) No 473/2006;

(6) when the State of the operator has imposed limitation on the operator's air operator certificate (AOC);

(7) when non-compliance known from ramp inspections indicate systemic deficiencies on operational procedures and practices of the operator;

(8) where evidence of significant deficiencies in the oversight capabilities of the State of the operator or State of registry exists from audits carried out under international conventions or State safety assessment programmes;

(9) where the Agency is aware of the existence of significant findings on the operator from recognised industry programmes; or

(10) in case of known recent serious incidents or accidents involving any of the operator's aircraft.

AEA comment:

With regards to Paragraph (b) AEA likes to state that the mitigating procedure may be also proposed by the operator.

For a IOSA registered airline, the IOSA standard for instance may be more demanding on some matter than the state of registry requirements! It is proposed to add "or the operator"

Furthermore EASA should take into account that the transition phase of these rules (refer to p. 22 of the Explanatory Note) may be unclear to foreign operators. The already authorised operators must sign a written statement stating that they are compliant with part TCO.

How can the deviations to ICAO standards may have been processed by EASA before that date?

response *Accepted*

An operator operating under transition rights has not yet undergone a TCO assessment and therefore does not yet hold a TCO authorisation.

The future handling of differences to ICAO standards notified by Contracting States, in the context of TCO authorisations, is currently being elaborated by the Agency.

comment *177* comment by: *CAA-NL*

AR.TCO.105

The Netherlands would like to see the agency to keep a current list on the EASA website.

response *Noted*

It is intended to provide real-time, web-based access for Member States to the latest version of a list containing the authorisations, including associated specifications, limitations, changes, suspensions and revocations.

comment *181* comment by:*CAA-NL*

AR.TCO.105

The Netherlands would like to see the agency to keep a current list on the EASA website.

response *Noted*

Please see the response to comment #177..

comment *182* comment by:*CAA-NL*

AR.TCO.200

The Netherlands questions the need for the requirement for a TC-Operator to fulfil alternative requirements for those items were the State of Operator has filed differences by ICAO. At this moment we are not aware of any ban of operators flying into EU territory just on the basis of current differences filed by the state op operator.

The Netherlands is of the opinion that the additional information on top of the basic information of TCO.AUT.100.c.1/2/4, may only be requested by the agency when there is an identified safety concern. We would like to see this specified in this article under item (c) as a first step to be made before there is the possibility to investigate under item (d)

response

Concerning notified differences: noted. Please see the response to comment #158

Concerning the second item: partially accepted. TCO.AUT.100 paragraph (a)(3) of TCO.AUT.100 has been moved to (d)

comment *183* comment by:*CAA-NL*

AR.TCO.205

The Netherlands is of the opinion that in principle EASA should recognise the TC-operator AOC as is made possible in article 9 of the BR and thus on the Authorisation refer to the OPS SPEC of the original AOC and not issue

associated operational specifications itself. With this construction the administrative burden related to changes of the original OPS SPEC is minimized.

Further to our proposal to delete Article **TCO.OPS.300,** we suggest to delete item (a)(2).

response *Not accepted*

Article 9.2. of Regulation (EC) No 216/2008 requires the Agency to issue an authorisation. The privileges granted to the operator and the scope of the operations shall be specified in that authorisation. The Agency will issue specifications associated to the authorisation in the new format set out in ICAO Annex 6. In case the TCO authorisation would only refer to the operations specifications associated to the AOC and issued by the State of operator, any changes thereto would be automatically endorsed under the TCO authorisation issued by the Agency, without any evaluation by the Agency.

comment *184* comment by:*CAA-NL*

AR.TCO.215

The Netherlands suggest to add to item (a) 'for those operators where thru SAFA inspections, the procedures of EC 2111/2005, the results of the ICAO USOAP programme or other information a safety concern has been identified.

The Netherlands is of the opinion that the agency, for the majority of the TC-operators should rely on the oversight of the state of the operator, while only the risks identified thru the above mentioned information may require additional oversight activities. There should not be an oversight program with activities for every TC-operator every 24 months. The program should if clearly necessary should be risk based.

response

With regard to the text proposal: not accepted. ART.GEN.210 already establishes that when assessing an operator due account shall be taken of the results of ramp inspections, if available, USOAP results and other reliable sources of information. Furthermore, the relevant provisions in Part ARO.GEN Sections 1 to 3 have been merged with AR.TCO. The parts relevant for the establishment of an oversight program in ARO.GEN.305 and AR.TCO.215 have been transferred to ART.GEN.215.Nevertheless, while the TCO authorisation will remain valid without an imprinted expiration date subject to meeting the conditions set out in TCO.AUT.115, Regulation (EC) No 216/2008 requires the Agency to review an authorisation after a certain interval in accordance with approved procedures. Such review may not always be satisfied by means of a desktop review but may indeed warrant a continuation audit on site (in the case of category C operators).

comment *191* comment by: *Federal Ministry of Transport, Austria (BMVIT)*

AR.TCO.105 Exchange of information:

(b): After Commission the words "and the Member states" should be included.

Justification: The information in relation to the suspension, limitation or revocation of an authorisation is also essential in many ways for the MS where the respective carrier operates to. Therefore the Agency shall be as transparent as possible in relation to its decision and share this information not only with the commission but with the MS as well.

response *Accepted*

The text proposal has been changed accordingly.

comment *192* comment by: *Federal Ministry of Transport, Austria (BMVIT)*

AR.TCO.210 Continuous Oversight:

According to subparagraph (a) the oversight of the third country operator shall follow the provisions laid down in AR.GEN.300.

The application of this article would result in shifting of oversight responsibilities and liabilities from the responsible oversight authority of the TCO authorisation holder towards the agency. This cannot be the aim! The principle should be to follow a risk based approach!

response *Noted*

The relevant provisions in Part ARO.GEN Sections 1 to 3 have been merged with AR.TCO. The parts relevant for overseeing third country operators in ARO.GEN.300 and AR.TCO.210(a) have been transferred to ART.GEN.210 which now provide for adequate and proportionate oversight of third country operators authorised by the Agency in accordance with Part-TCO.

comment *193* comment by: *Federal Ministry of Transport, Austria (BMVIT)*

AR.TCO.215 Oversight programme:

The application of this article would result in shifting of oversight responsibilities and liabilities from the responsible oversight authority of the TCO authorisation holder towards the agency. This cannot be the aim! The principle should be to follow a risk based approach!

response *Noted*

Please see the response to comment #192.

comment *194* comment by: *Federal Ministry of Transport, Austria (BMVIT)*

AR.TCO.225 Limitation, suspension and revocation of authorisations:

The circumstance described in subparagraph (a) (3) especially the phrase “fraudulent use of the authorisation” has to be more specified.

Justification: As this article comprises the enforcement measures of the Agency the circumstances that will lead to a limitation, suspension or revocation of an authorisation have to be clearly defined in the implementing rule.

response	*Not accepted* The dictionary meaning of the wording “fraudulent” is clear enough and means intended to deceive people in an illegal way ’obtained, done by, or involving deception, especially criminal deception’ (Oxford English Dictionary).

comment	*207* comment by:*Zoltán PÁVEL* In may opinion paragraph AR.TCO.205 (and/or AMC or GM to this paragraph) shall give definition of the form of the Authorisation issued by EASA. This may be a standard EASA Form or at least some standard wording a free form document. Justification: This seems essential for TCO and oversight authorities to have clear understanding of an acceptable document they shall hold or investigate. Furthermore, it may be usful information for public customers intended to check compliance of the operator before using its services.
response	*Not accepted* Contents and format of the specifications to a TCO authorisation will follow the layout of Appendix 6, paragraph 3 of ICAO Annex 6, Part 1. Contrary to a number of other EASA Forms, the Agency will be the sole body for issuing TCO authorisations and associated specifications. Furthermore, stakeholders can verify the authenticity of TCO authorisations and associated specifications produced by authorisation holders by comparison with those published on the Agency website.

comment	*208* comment by:*Zoltán PÁVEL* General notice to AR.TCO: Implementing of an AMC or GM for ensuring EASA publishes current information on authorisation status of TCOs on its web site would be highly appreciated. This information should contain at least reference number of the Authorisation, its issue date and current status "Valid" or "Suspended" or "Revoked" with date of suspenion or revokation. Justification: Quick access to information on current authorisation status of TOCs is essential for customers intended to use services of a particular operator. The necessary information is ultimately handled by EASA anyway. Moreover, publicity of this data also motivates TOC to be in compliance with EU regulation any time.
response	*Noted* The Agency intends to provide real-time, web-based information to the public about authorised third country operators.

Appendix 1 - Regulatory Impact Assessment p. 35-59

comment	*55* comment by:*AAPA* Page 37 1.1 AAPA is supportive of EASA efforts to establish a set of uniform and harmonised rules for Third Country Operators for operations in the European Union. However, harmonisation is not limited to the the National Airworthiness Authorities within the European Union but needs to go beyond the borders of the EU due to the global nature of the aviation industry. Page 38 2.1 European Legislation applicable to Third Country Operators AAPA believes that the Regulation (EC) No 2111/2005 and the proposed TCO requirements are a duplication in regulation. AAPA would recommend that Regulation (EC) No 2111/2005 be repealed. Page 44 Table 1:Options for the TCO authorisation process Option 2 provides a risk based approach for the authorisation. However the NPA and RIA does not provide any methodology, criteria, data or process on how the determination on EASA's level of confidence in the applicant is carried out. In the interest of transparency and fairness this needs to be included within the regulation.
response	Response to part to the comment relating to page 44: not accepted The assessment methodology for each assessment category, and the parameters used in the assessment model applied, are comprehensively presented in paragraph 23 of the Explanatory Note. Response to part to the comment relating to page 37: noted. Response to part to the comment relating to page 38: not accepted. Please see the response to comment #56 on Regulation (EC) No 2111/2005.

comment	*74* comment by:*IACA International Air Carrier Association* **P38 – 2.1 EU legislation applicable to TCO - The Basic Regulation – 1st sentence:** An aircraft registered in a third country operated into, within or out of the territory of the EU shall comply with the applicable ICAO standards when operated by third country operators, while when the same aircraft is operated by EU operators it shall have a CofAi. a.w. Part-21. It is discriminating that when operating the same aircraft in the same environment, EU operators are assessed against EU safety rules, while for third country operators it is satisfactory to be assessed against ICAO rules and its annexes.
response	*Noted* Please see the response to comment #59.

comment	*75* comment by:*IACA International Air Carrier Association*

P40 – 2.3 Bilateral agreements

...These bilateral agreements (Comprehensive Agreements such as with US, Canada, Brazil) include provisions which enable the possibility to extend the agreement into areas such as air operations,...which could ultimately result in the mutual recognition of EU and third country air operator certification.

comment:

When dry leasing-in aircraft registered in a third country, IACA carriers generally lease-in from third country operators registered in the US or Canada. Hence, IACA is looking forward to the extension of these bilateral agreements to the mutual recognition of not only air operator certification, but also of the aircraft certificate of airworthiness. Either a CofA issued i.a.w. ICAO and/or issued by either FAA or TCCA should be acceptable for dry lease-in of third country registered aircraft by EU operators. If it is good enough for flying into, in or out of EU, it should be good enough for a dry lease-in, especially from US or Canada.

response *Noted*

Please see the response to comment #59.

comment *76* comment by: *IACA International Air Carrier Association*

P44 – 4. Identification of options - Table 2:

IACA supports this risk based concept, and is confident that most current and potential third country operators (and their State) dry leasing-out aircraft registered in a third country to IACA carriers would fall into Category A.

response *Noted*

comment *77* comment by: *IACA International Air Carrier Association*

P57 - 7. Conclusions and summary of preferred options:

IACA agrees with EASA's recommendation that the risk-based option (option 2) is preferred.

response *Noted*

comment *78* comment by: *IACA International Air Carrier Association*

General IACA conclusion:

Contrary to the outcome of the meeting between EASA and IACA on 18 February 2011, this NPA Part-TCO does not provide the framework for EU operators to dry lease-in aircraft registered in a third country. The scope of Part-TCO is limited to third country operators conducting themselves commercial air transport operations into, within, or out of the EU.

The issue of dry leasing-in aircraft registered in a third country by EU operators will need to be addressed under NPA 2010-10 (Task MDM.047) on the

requirements for non-EU registered aircraft used by EU operators/persons. IACA will separately provide EASA a proposal for additional conditions for aircraft registered in a third country and dry leased on a Community operator's AOC.

response *Noted*

Please see the response to comment #238.

comment *100* comment by:*UK Department for Transport*

Page No: 50/51 **Paragraph No**: 6.3 Economic impact

comment: Imposing a cost on a TCO could be considered to be discrimination between TCO and EU operators which could be a breach of the Chicago Convention. Article 15 of the Chicago Convention states "No fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon."

It could be argued that charging a TCO to obtain an EASA safety permit before entry into the EU was in breach of this Article.

This will be a sensitive issue.

Page 50/51 Economic Impact

The cost implications of this scheme have not been fully quantified, only suggested in number of working hours. It is obvious that their will be an annual cost to run this scheme. It is almost certain that charging the TCO's will not be able to bare the full cost implications especially once the majority of TCO applications have been fully processed (and administration costs remunerated) then the number of applications will dwindle to such an extent that there will almost certainly not be enough annual income to fund the scheme.

response

Part of the comment relating to Art. 15 Chicago Convention: not accepted. Please seethe response to comment #163.

Rest of the comment: noted. TCO authorisations will remain valid without an imprinted expiration date subject to meeting the conditions set out in TCO.AUT.115. Regulation (EC) No 216/2008 requires the Agency to review an authorisation after a certain interval in accordance with approved procedures. Such review may not always be satisfied by means of a desktop review but may indeed warrant a continuation audit on site (in the case of category C operators).

comment *152* comment by:*GiancarloBuono*

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Appendix 1 - Regulatory Impact Assessment

Table of contents

1. INTRODUCTION AND SCOPE.....37

response *noted*

comment *153* comment by: *GiancarloBuono*

P. 42

***Internationally ~~information~~ recognised** audit programs**on safety aspects with regard to operators** (IOSA)*

The Agency may be able to obtain information on an operator through access to reports of audits of the operator in question, conducted by independent internationally recognised aviation audit organisations (IRAO) and/or by other air operators, such as code-sharing partners. An audit of the standards maintained by an operator from a third country, performed by an IRAO, using one of the internationally recognised evaluation systems, ~~may~~ *will be acceptable* as ~~an additional~~*relevant*source for the authorisation process*****. For example, an operator listed on the IATA Operational Safety Audit (IOSA) registry has ~~satisfactorily~~ undergone an IOSA audit in the last 24 months,*a result that*~~may~~*will be*~~taken into account~~*used as a relevant source of information*. As mentioned above, such non-regulatory audits ~~should~~*will be used*to complement other information such as results from the ICAO USOAP or SAFA inspection results as described above to evaluate the operator.

NOTE: In addition to Industry best practices IOSA covers ICAO SARPs contained in Annexes 1, 2, 6, 8, 17 and 18 that are applicable to operators. Therefore it constitutes an additional means of verifying compliance with these standards.

response *Noted*

comment *234* comment by:*airberlin Group*

P38 – 2.1 EU legislation applicable to TCO - The Basic Regulation – 1st sentence:

An aircraft registered in a third country operated into, within or out of the territory of the EU shall comply with the applicable ICAO standards when operated by third country operators, while when the same aircraft is operated by EU operators it shall have a CofAi. a.w. Part-21. It is discriminating that when operating the same aircraft in the same environment, EU operators are assessed against EU safety rules, while for third country operators it is satisfactory to be assessed against ICAO rules and its annexes.

response *Noted*

Please see the response to comment #59.

comment *235* comment by:*airberlin Group*

P40 – 2.3 Bilateral agreements

These bilateral agreements (Comprehensive Agreements such as with US, Canada, Brazil) include provisions which enable the possibility to extend the agreement into areas such as air operations,...which could ultimately result in the mutual recognition of EU and third country air operator certification.

comment: When dry leasing-in aircraft registered in a third country, AIRBERLIN generally lease-in from third country operators registered in the US or Canada. Hence, AIRBERLIN is looking forward to the extension of these bilateral agreements to the mutual recognition of not only air operator certification, but also of the aircraft certificate of airworthiness. Either a CofA

	issued i.a.w. ICAO and/or issued by either FAA or TCCA should be acceptable for dry lease-in of third country registered aircraft by EU operators. If it is good enough for flying into, in or out of EU, it should be good enough for a dry lease-in, especially from US or Canada.
response	*Noted* Please see the response to comment #59.

comment	*236* comment by:*airberlin Group* **P44 – 4. Identification of options - Table 2:** AIRBERLIN supports this risk based concept, and is confident that most current and potential third country operators (and their State) dry leasingout aircraft registered in a third country to AIRBERLIN carriers would fall into Category A.
response	*Noted*

comment	*237* comment by:*airberlin Group* **P57 - 7. Conclusions and summary of preferred options:** AIRBERLIN agrees with EASA's recommendation that the risk-based option (option 2) is preferred.
response	*Noted*

Appendix 2 – Comparison table Essential Requirements and ICAO Annex 6 Part I p. 60-119

comment	*42* comment by:*Singapore Airlines (SIA)* On page 74, Text ER of Essential Requirement 3.a.4: 1. Separation from other aircraft is mainly ATC's function through radar vectors and speed control, and by different altitudes. To expect operators to ensure adequate separation from other aircraft on their own is therefore unreasonable as it could lead to conflict with ATC instructions.
response	*Not accepted* The gap analysis reveals that the Essential Requirement 3.a.4 is covered by ICAO Annex 6, Part 1,4.2.7.2. Therefore, it is not applicable to third country

operators.

comment 57 comment by: *Singapore Airlines (SIA)*

On page 100, EASA remarks on Essential Requirement 7(b)(ii):

The remarks from EASA contradicts the ER. Does the operator need to adhere to EASA's ER?

If the operator is required to adhere to this ER, then we view this as unnecessary because:

1. Whilst the Cabin crew are responsible for the safe evacuation of passengers, they do not impact the overall safe operations of the aircraft.

2. We carry more than the minimum number of Cabin crew required by regulations, and the risk of a flight operating at the minimum number of Cabin crew is low, let alone operating below the minimum number of cabin crew.

3. The Cabin crew are required to undergo periodic assessment on their safety and emergency procedures, to assess if they are able to perform this aspect of their duties.

response *Not accepted*

Essential Requirement 7(b)(ii) will not be applicable for reason of proportionality as stated in the remark (last column) in Appendix 2 of the NPA.

comment 119 comment by: *Singapore Airlines Cargo*

On page 74, Text ER of Essential Requirement 3.a.4:

1. Separation from other aircraft is mainly ATC's function through radar vectors and speed control, and by different altitudes. To expect operators to ensure adequate separation from other aircraft on their own is therefore unreasonable as it could lead to conflict with ATC instructions.

response *Not accepted*

Please see the response to comment #42.

comment 155 comment by: *MarkoMArkovic*

What is the rationale behind categorization of the ICAO SMS provisions and provisions of ER to 216/2008 as ***No Difference*** **instead** of ***ICAO Category B Difference*** (***Different or Other Means of Compliance***)?

response *Not accepted*

The gap analyses in Appendices 2 and 3 indicates that the Essential Requirements of Regulation (EC) No 216/2008 do not exceed ICAO SMS standards. Hence, no SMS requirements exceeding the corresponding ICAO

standards are applicable to TCO.

A. DRAFT COMMISSION REGULATION ON THIRD COUNTRY OPERATORS (PART-TCO)

COMMISSION REGULATION (EU) No …/..

of XXX

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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the functioning of the European Union,

Having regard to Regulation (EC) No 216/2008[9] of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC, and in particular Article 9(4) thereof,

Whereas:

(1) Third country operators involved in commercial air transport operations of aircraft have to comply with the relevant ICAO standards.

(2) To the extent that there are no such standards, third country operators have to comply with the relevant essential requirements set out in AnnexesI, III, IV and, if applicable, Annex Vb to Regulation (EC) No 216/2008, provided that these requirements are not in conflict with the rights of third countries under international conventions.

(3) Regulation (EC) 216/2008 requires that the Agency issue authorisations and continuously oversee authorisations that it has issued.

(4) For the purpose of initial authorisations and continuous oversight, the Agency shall conduct assessments and/or investigations or audits and shall take any measure to prevent the continuation of an infringement.

(5) The process of the authorisation of third country operators should be simple, proportionate, cost effective, efficient and take account of the result of the ICAO Universal Safety Oversight Audit Programme, ramp inspections and other recognised information on safety aspects with regard to third country operators.

(6) In accordance with Regulation (EC) No 216/2008 the Commission should adopt the necessary implementing rules for establishing the conditions for the safe operation of aircraft.

In order to ensure a smooth transition and a high level of civil aviation safety in the European Union, implementing measures should consider the recommended practices and guidance documents agreed under the auspices of the International Civil Aviation Organisation (hereafter 'ICAO').

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[9] OJ L 79, 13.3.2008, p.1.

(7) It is necessary to provide sufficient time for the aeronautical industry and the Agency's administration to adapt to the new regulatory framework and to recognise under certain conditions rights established and/or permits issued by a Member State to operate into, within or out of its territory before this Regulation applies.

(8) [The European Aviation Safety Agency prepared draft implementing rules and submitted them as an opinion to the Commission in accordance with Article 19(1) of Regulation (EC) No 216/2008.]

(9) [The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 65 of Regulation (EC) No 216/2008.]

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down detailed rules for operators of aircraft referred to in Article 4(1)(d) of Regulation (EC) No 216/2008 engaged in commercial air transport operations into, within or out of the territory subject to the provisions of the Treaty, 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.
2. This Regulation shall not apply to commercial air transport operations within the scope of Article 1(2)(a) of Regulation (EC) No 216/2008.

Article2

Definitions

For the purposes of this Regulation:

1. 'Commercial air transport (CAT) operation' means an aircraft operation to transport passengers, cargo or mail for remuneration or other valuable consideration.
2. 'Principal place of business' means the head office or registered office of the organisation within which the principal financial functions and operational control of the activities referred to in this Regulation are exercised.
3. 'Third country operator' means any natural person residing in a third country or a legal person whose principal place of business, if any, is in a third country.

Article 3

Air operations

1. Third country operators shall only operate an aircraft for the purpose of commercial air transport operation within, into or out of the territory subject to the provisions of the Treaty when they hold an authorisation issued by the Agency.

2. The authorisations shall be issued when they comply with the requirements of Annex 1 to this Regulation.

Article 4

Eligibility

1. An application for an authorisation under this Regulation shall not be admissible if the third country operator:

   (a) is subject to an operating ban pursuant to Regulation (EC) No 2111/2005 due to the State of the operator not performing adequate oversight;

   (b) cannot demonstrate the intention to operate into the EU with aircraft under its operational control.

Article 5

Authorisations

1. Rights and/or permits granted to a third country operator by a Member State to operate into, within or out of its territory,in accordance with Member States' national law, within the 24 months prior to the entry into force of this Regulation, shall be deemed to have been issued in accordance with this Regulation and remain valid until their expiry date or for a maximum period of 30 months, whichever is the shortest.

2. For this purpose, the third country operator shall notify the Agency of the rights and/or permits granted by a Member State no later than [6 months after the entry into force of this Regulation].

3. In order to obtain an authorisation issued by the Agency in accordance with Annex 1 to the Regulation, the third country operator shall apply to the Agency 90 days before the expiry of the period referred to in (1).

Article 6

Entry into force

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, […]

For the Commission

The President

B. DRAFT OPINION PART THIRD COUNTRY OPERATORS (PART-TCO)

ANNEX 1 TO IMPLEMENTING REGULATION
PART THIRD COUNTRY OPERATORS

Subpart A – General requirements

TCO.GEN.115 Means of compliance

(a) Alternative means of compliance to those adopted by the Agency may be used by a third country operator to establish compliance with Regulation (EC) No 216/2008[10] and Part-TCO.

(b) When an operator subject to an authorisation wishes to use an alternative means of compliance to the Acceptable Means of Compliance (AMC) adopted by the Agency to establish compliance with Regulation (EC) No 216/2008 and Part-TCO, it shall, prior to implementing it, provide 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.GEN.105.

TCO.GEN.120 Access

(a) The third country operator shall ensure that any person authorised by the Agency or the Member State in whose territory one of its aircraft has landed, will be permitted to board such an aircraft, at any time, with or without prior notice to:

(1) inspect the documents and manuals to be carried on board and to perform inspections to ensure compliance with this Part; or

(2) carry out a ramp inspection as referred to in Annex II to Commission Regulation (EU) No …/…of XXX.

(b) The third country operator shall ensure that any person authorised by the Agency is granted access to any of its facilities or documents related to its activities, including any subcontracted activities, to determine compliance with this Part.

TCO.GEN.125 Findings

After receipt of a notification of findings raised by the Agency, the third country operator shall:

(a) identify the root cause of the non-compliance;

(b) define and agree with the Agency the corrective action plan and the time period to implement this plan; and

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[10] Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC. *OJ L 79, 19.3.2008, p.1.*Regulation as last amended by Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009 (OJ L 309, 24.11.2009, p. 51).

(c) demonstrate corrective action implementation to the satisfaction of the Agency within the period agreed with the Agency as defined in ART.GEN.225(d).

Subpart B — Air operations

Section I — General

TCO.OPS.100 General requirements

(a) The third country operator shall comply with:

(1) the applicable rules of the State of the operator and the State of registry of the aircraft that give effect to the applicable standards contained in the 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) and 18 (Dangerous Goods);

(2) the mitigating measures accepted by the Agency in accordance with ART.GEN.200(b);

(3) the relevant requirements of this Part; and

(4) the applicable EU rules of the air.

(b) The third country operator shall ensure that the aircraft operated into, within or out of the territory subject to the provisions of the Treaty is operated in accordance with:

(1) its air operator certificate (AOC) and associated operations specifications, if applicable; and

(2) the authorisation issued in accordance with this Part and the scope and privileges defined in the specifications attached to it.

(c) The third country operator shall ensure that the aircraft operated into, within or out of the EU have a certificate of airworthiness (CofA) issued or validated 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 83*bis* of the Convention on International Civil Aviation that transfers the responsibility for the issue of the certificate of airworthiness of the aircraft (CofA).

(d) The third country operator shall, upon request, provide the Agency with any information relevant for verifying compliance with this Part.

(e) Without prejudice to Regulation (EU) No 996/2010[11], the third country operator shall without undue delay report to the Agency serious incidents and accidents as defined in ICAO Annex 13 involving aircraft used under its AOC.

[11] 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.*

Section II— Equipment, manuals, and records

TCO.OPS.200 Navigation, communication and surveillance equipment

The third country operator shall equip its aircraft with and operate such navigation, communication and surveillance equipment as required in EU airspace.

TCO.OPS.205 Documents, manuals and records to be carried

The third country operator shall ensure that all documents that are required to be carried on board are valid, current and-up-to-date.

TCO.OPS.210 Production of documentation, manuals and records

Within a reasonable time of being requested to do so by a person authorised by the Agency or the competent authority of a 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.

Subpart C — Authorisation of third country operators

TCO.AUT.100 Application for an authorisation

(a) Prior to commencing commercial air transport operations under this Part the operator shall apply for and obtain an authorisation issued by the Agency.

(b) An application for an authorisation shall be:

(1) submitted at least 90 days before the intended starting date of operation; and

(2) made in a form and manner established by the Agency.

(c) Without prejudice to applicable bilateral agreements, the applicant shall provide the Agency with any information needed to assess whether the intended operation will be conducted in accordance with the applicable requirements. Such information shall include:

(1) the official name, business name, address, and mailing address of the applicant;

(2) the questionnaire issued by the Agency and duly completed;

(3) a copy of the operator's AOC and associated operations specifications, or equivalent document, issued by the State of the operator that attests the capability of the holder to conduct the intended operations;

(4) the operator's current certificate of incorporation or business registration or similar document issued by the Registrar of Companies in the country of the principal place of business;

(5) the proposed start date of operation, type and geographic areas of operation;

(d) When necessary, the Agency may request any other additional relevant documentation, manuals, or specific approvals issued or approved by the State of the operator or State of registry.

(e) For those aircraft not registered in the State of the operator and intended to be operated in the EU, the Agency may request:

(1) details of the lease agreement for each aircraft so operated; and

(2) if applicable, a statement that the State of the operator and the State of registry have entered into an agreement pursuant to Article 83*bis* of the Convention on International Civil Aviation that covers the aircraft and details of the responsibilities transferred under the agreement.

TCO.AUT.105 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.AUT.110 Changes

(a) Except if agreed under ART.GEN.205, any change to the operator affecting the terms of an authorisation or associated specifications shall require prior authorisation by the Agency.

(b) The application for prior authorisation by the Agency shall be submitted by the operator at least 30 days before the date of intended change in order to amend, if necessary, the authorisation and associated specifications.

The operator shall provide the Agency with the information referred to in TCO.AUT.100, restricted to the extent of the change.

During such a change the operator shall operate under the conditions prescribed by the Agency.

(c) All changes not requiring prior authorisation, as agreed in accordance with ART.GEN.205(c), shall be notified to the Agency.

TCO.AUT.115 Continued validity

(a) The authorisation shall remain valid subject to:

(1) the operator remaining in compliance with the relevant requirements of this Part. The provisions related to the handling of findings as specified under TCO.GEN.125 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 operator as specified in TCO.GEN.120;

(4) the operator not being subject to an operating ban pursuant to Regulation (EC) No 2111/2005;

(5) the authorisation not being surrendered, suspended or revoked; and

(6) the 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.

(b) Upon surrender or revocation, the authorisation shall be returned to the Agency.

C. Draft Decision AMC and GM for Part Third Country Operators requirements (PART-TCO)

Subpart A— General requirements

GM1-TCO.GEN.110(a)(2) Eligibility

The intention to operate to the European Union is sufficiently substantiated when an operator can demonstrate a credible intention to conduct commercial operations into, within or out of the EU. The operator may substantiate its intention to operate into the EU e.g. by submitting its planned schedule for commercial air transport operations or, in the case of unscheduled commercial air transport operations e.g., by submitting its planned operation and/or a copy of its application(s) for entry permission sent to the Member State(s) into which the third country operator intends to operate. However, other means of demonstrating a credible intention should be acceptable.

AMC1-TCO.GEN.115(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 adopted by the Agency is accomplished.

GM1-TCO.GEN125 Findings

GENERAL

Corrective action is the action to eliminate or mitigate the root cause(s) and prevent recurrence of an existing detected non-compliance or other undesirable condition or situation.

Proper determination of the root cause is crucial for defining effective corrective actions.

Subpart B — Air operations

Section I

GM1-TCO.OPS.100(b)(2) General requirements

For certain operations a special authorisation is required. Special authorisations are those including, but not limited to, the carriage of dangerous goods, low visibility operations (LVO), reduced vertical separation minima (RVSM), extended range operations with two-engined aeroplanes (ETOPS), navigation specifications for performance-based navigation operations (PBN), special approach authorisation and minimum navigation performance specifications (MNPS).

Section II— Equipment, manuals, and records

AMC1-TCO.OPS.205 Documents, manuals and records to be carried

GENERAL

The documents, manuals and information may be available in a form other than on printed paper. Accessibility, usability and reliability should be assured.

Subpart C— Authorisation of third country operators

GM1-TCO.AUT.100 Application for an authorisation

In case of wet lease-in of an aircraft from another third country operator, the lessee should ensure that the lessor is authorised under this Part for the intended operations.

GM1-TCO.AUT.110 Changes

GENERAL

Typical examples of changes that may affect the authorisation or associated specifications 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.

D. Draft Opinion Part Authority Requirements (PART-ART)

ANNEX 2 TO IMPLEMENTING REGULATION

PART AUTHORITY REQUIREMENTS

PART ART – THIRD COUNTRY OPERATORS

Subpart A – General requirements

Section I - General

ART.GEN.100 Scope

This Subpart establishes administrative requirements to be followed by the Agency, specifically regarding:

(a) the issuance, maintenance, change, limitation, suspension or revocation of authorisations of third country operators conducting commercial air transport operations; and

(b) the oversight of these operators.

ART.GEN.105 Means of compliance

The Agency shall evaluate all alternative means of compliance proposed by third country operators in accordance with TCO.GEN.115(b) by analysing the documentation provided and, if considered necessary, conducting an inspection of the organisation.

When the Agency finds that the alternative means of compliance are in accordance with the Implementing Rules, 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.GEN.110 Information to the Commission and Member States

The Agency shall:

(a) inform the Commission and the Member States:

(1) when it rejects an application for an authorisation;

(2) when it suspends, limits or revokes an authorisation;

(3) on the results of the assessment of an application from an operator subject to:

(i) an operating ban pursuant to Regulation (EC) No 2111/2005; or

(ii) operational restrictions imposed in accordance with Regulation (EC) No 2111/2005.

(b) regularly make available to the Member States an updated list containing the authorisations it has issued, limited, changed, suspended or revoked.

ART.GEN.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) authorisation processes and continuing oversight of authorised third country operators;

(3) findings, agreed corrective actions and date of action closure;

(4) enforcement measures taken, including fines requested by the Agency in accordance with Regulation (EC) No 216/2008[12];

(5) the implementation of corrective actions mandated by the Agency in accordance with Article 22(1) of Regulation (EC) No 216/2008; and

(6) the use of flexibility provisions in accordance with Article 18(d) of Regulation (EC) No 216/2008.

(b) The Agency shall record all third country operator authorisations issued.

(c) All records shall be kept for a minimum period of 5 years, subject to applicable data protection law.

Section II –Authorisation, oversight and enforcement

ART.GEN.200 Initial evaluation procedure

(a) Upon receiving an application for an authorisation, the Agency shall

(1) verify if the operator is eligible; and

(2) assess the third country operator's compliance with applicable requirements.

(b) The Agency may accept mitigating measures established by the State of the operator, the State of registry or the operator ensuring an equivalent level of safety to that achieved by the standard to which differences have been notified to ICAO by the State of the operator or the State of registry.

(c) The assessment shall be based on:

(1) documentation and data provided by the operator;

(2) relevant information on the safety performance of the operator, e.g. ramp inspections conducted, recognised industry standards and recent serious incidents or accidents, as applicable; and

(3) relevant information on the oversight capabilities of the State of the operator or State of registry, as applicable.

(d) The Agency shall conduct further investigations or an audit of a third country operator:

(1) where a review of the operator's documentation does not satisfy the Agency that compliance with the applicable requirements is ensured;

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[12] Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC. *OJ L 79, 19.3.2008, p.1.*

(2) when the operator is subject to an operating ban pursuant to Regulation (EC) No 2111/2005;

(3) when operational restrictions are imposed on the operator in accordance with Regulation (EC) No 2111/2005;

(4) where evidence of significant deficiencies in the oversight capabilities of the State of the operator or State of registry exists from:

(i) investigations performed pursuant to Regulation (EC) No 2111/2005; or

(ii) audits carried out under international conventions or State safety assessment programmes;

(5) when the operator is subject to a measure pursuant to Article 6 of Regulation (EC) No 2111/2005;

(6) when the Commission and Member States have started joint consultation with the authority of the State of the operator pursuant to Article 3 of Regulation (EC) No 473/2006;

(7) when the State of the operator has imposed safety-related limitations on the operator's air operator certificate (AOC);

(8) when non-compliances known from ramp inspections indicate systemic deficiencies on operational procedures and practices of the operator;

(9) where the Agency is aware of the existence of significant findings on the operator from recognised industry standards or other reliable sources; or

(10) when serious incidents, occurred during the 24 calendar months previous to the date of application, or accidents involving any of the operator's aircraft indicate that systemic deficiencies on operational procedures and practices of the operator exist.

ART.GEN.205 Issue of an authorisation

(a) The Agency shall issue the authorisation, including the associated specifications when it is satisfied that:

(1) the operator holds a valid AOC or equivalent document and associated operations specifications issued by the State of the operator, if applicable;

(2) the operator is authorised by the State of the operator to conduct operations into the EU;

(3) the aircraft used are adequately equipped to conduct the operations described in the associated operations specifications;

(4) the operator has demonstrated compliance with the applicable requirements of Part-TCO;

(5) there is no evidence of major systemic deficiencies in the oversight of that operator by the State of the operator or the State of registry having a negative impact on the performance of the operator;

(b) The authorisation shall be issued for an unlimited duration. The privileges and the scope of the activities that the operator is authorised to conduct shall be specified in the specifications attached to the authorisation.

(c) The Agency shall agree with the operator the scope of changes to the operator not requiring prior authorisation.

ART.GEN.210 Oversight

(a) The Agency shall assess:

(1) continued compliance with applicable requirements of third country operators it has authorised;

(2) if applicable, the implementation of corrective actions mandated by the Agency in accordance with Article 22(1) of Regulation (EC) No 216/2008.

(b) This assessment shall:

(1) take into account on-going investigations pursuant to Regulation (EC) No 2111/2005 or joint consultations with the overseeing authority of the state of the operator pursuant to Regulation (EC) No 473/2006;

(2) take into account previous investigations or audits, if carried out;

(3) take into account audits performed under international conventions, State safety assessment programmes or recognised industry programmes;

(4) take into account ramp inspections;

(5) take into account available documentation and data concerning the third country operator; and

(5) provide the Agency with the evidence needed in case further action is required, including the measures foreseen by ART.GEN.225.

(c) Where available information does not allow assessing compliance with applicable requirements, the Agency shall conduct audits and investigations as it deems necessary.

(d) The scope of oversight defined in (a) and (b) shall be determined on the basis of the results of past oversight activities.

(e) The Agency shall collect and process any information deemed useful for oversight.

ART.GEN.215 Oversight programme

(a) The Agency shall establish and maintain an oversight programme covering the oversight activities required by ART.GEN.210 and, if applicable, by ARO.RAMP.

(b) The oversight programme shall be developed taking into account the specific nature of the third country operator, the complexity of its activities and the results of past authorisation and/or oversight activities. It shall include within each oversight planning cycle investigations and/or audits.

(c) An oversight planning cycle not exceeding 24 months shall be applied.

The oversight planning cycle may be reduced if there are indications that the safety performance of the third country operator has decreased.

(d) The oversight programme shall include records of the dates when audits, inspections and meetings are due and when such audits, inspections and meetings have been carried out.

ART.GEN.220 Changes

(a) Upon receiving an application for a change that requires prior approved, the Agency shall apply the relevant procedure in ART.GEN.200, restricted to the extent of the change.

(b) The Agency shall prescribe the conditions under which the operator may operate within the scope of its authorisation during the change, unless the Agency determines that the authorisation needs to be suspended.

(c) Without prejudice to any additional enforcement measures, when the third country operator implements changes requiring prior authorisation without having received an authorisation as defined in ART.GEN.200(a), the Agency shall suspend, limit or revoke the authorisation.

(d) For changes not requiring prior authorisation, the Agency shall assess the information provided in the notification sent by the third country operator in accordance with TCO.AUT.110 to verify compliance with the applicable requirements. In case of any non-compliance, the Agency shall:

(1) notify the third country operator about the non-compliance and request a revised proposal to achieve compliance; and

(2) in case of level 1 or level 2 findings, act in accordance with ART.GEN.225.

ART.GEN.225 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 (EC) No 216/2008 and Part-TCO, with the organisation's procedures and manuals 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.GEN.120(b) during normal operating hours and after a written request;

(2) the Agency not being able to assess the operator's continuous compliance with the applicable requirements at the operator's facilities without the risk of compromising the security of its personnel;

(3) evidence of major systemic deficiencies in the oversight of the third country operator by the State of the operator or State of registry having a negative impact on the performance of the operator;

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

(5) evidence of malpractice or fraudulent use of the authorisation.

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

(d) When a finding is detected during oversight or by any other means, the Agency shall, without prejudice to any additional action required by Regulation (EC) No 216/2008 and its Implementing 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. In addition:

(1) in the case of level 1 findings, the Agency shall take action to revoke the authorisation or to limit or suspend it in whole or in part, depending upon the extent of the level 1 finding, until successful corrective action has been taken by the third country operator.

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

(i) grant the third country operator a corrective action implementation period appropriate to the nature of the finding that in any case initially shall not be longer than 3 months. At the end of this period, and subject to the nature of the finding, the Agency may extend the 3-month period subject to a satisfactory corrective action plan agreed by the Agency; and

(ii) assess the corrective action 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), accept the corrective action plan.

(3) Where a third country operator fails to submit an acceptable corrective action plan 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 taken as laid down in (d)(1).

(4) The Agency shall record and notify the State of the operator or, if applicable, the State in which the aircraft is registered, of all findings it has raised.

Appendix A - Attachments

NOTICE OF PROPOSED AMENDMENT.PDF
Attachment #1 to comment #204

AFRAA.pdf

Attachment #2 to comment #239

F comments NPA 2011-05 (2).pdf

Attachment #3 to comment #242

MINVENW - comments to NPA 2011-05.pdf

Attachment #4 to comment #243

UK Representation to EU - Letter to EASA.pdf

Attachment #5 to comment #244

EAC Response on EU NPA 2011-5.pdf

Attachment #6 to comment #245