European Union Aviation Safety Agency

Opinion No 05/2022

Regular update of air operation rules

Postponement of the requirements for locating an aircraft in distress

RELATED NPA 2022-104 — RMT.0392

EXECUTIVE SUMMARY

The objective of this Opinion is to ensure a smooth implementation of means to locate large aeroplanes when they are in distress.

This Opinion proposes to amend the applicability dates of point CAT.GEN.MPA.210 'Location of an aircraft in distress — Aeroplanes' of Annex IV (Part-CAT) to Regulation (EU) No 965/2012 ('Air OPS Regulation'), following the postponement of the applicability dates of the related Standards and Recommended Practices (SARPs) in International Civil Aviation Organization (ICAO) Annex 6, Part I.

The proposed amendment will incorporate the related ICAO SARPs and is expected to reduce regulatory burden and to bring economic benefits to European commercial air transport (CAT) operators.

Domain:	CAT operations
Related rules:	Part-CAT of the Air OPS Regulation
Affected stakeholders:	Aircraft operators; aircraft manufacturers; national competent authorities (NCAs)
Driver:	Efficiency/proportionality
Impact assessment:	Yes (light)
Rulemaking group:	No

EASA rulemaking procedure milestones

Start Terms of Reference	**Communication to the Advisory Bodies**	**Proposal to the Commission** Opinion	**Adoption by Commission** Implementing act	**Decision** Certification Specifications, Acceptable Means of Compliance, Guidance Material
7.10.2020	7.7.2022	1.9.2022	2022 Q/4	N/a
	Advisory Body Consultation			
	10.8.2022			

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1. About this Opinion

1.1. How this Opinion was developed

The European Union Aviation Safety Agency (EASA) developed this Opinion in line with Regulation (EU) 2018/1139[1] ('Basic Regulation') and the Rulemaking Procedure[2].

This Rulemaking Task (RMT).0392 is included in Volume II of the European Plan for Aviation Safety (EPAS) 2022-2026. The scope and timescales of the task were defined in the related Terms of Reference (ToR)[3].

On 7 July 2022, EASA informed the EASA Advisory Bodies (ABs) in writing of its intent to prepare a proposal to postpone the applicability dates of point CAT.GEN.MPA.210 'Location of an aircraft in distress — Aeroplanes' of Annex IV (Part-CAT) to Regulation (EU) No 965/2012 ('Air OPS Regulation')[4], following the new applicability dates adopted for Standard 6.18.1 of International Civil Aviation Organization (ICAO) Annex 6, Part I. Germany, Netherlands, France, Spain, Italy, and Ireland were in agreement on this EASA plan. There were no disagreements, nor any significant comments were received from stakeholders.

EASA developed the *draft* text of this Opinion and consulted it with the EASA ABs through NPA 2022-104, in accordance with Article 6(2) of the Rulemaking Procedure. Only 5 comments were received: 1 from the Aerospace Industries Association (AIA) and 4 from national competent authorities (NCAs), specifically Denmark, France, Germany, and Luxembourg. All comments received during consultation supported the proposals in the NPA.

EASA developed the *final* text of this Opinion and the draft regulation considering the input received during the consultation. The draft regulation is published on the Official Publication of EASA[5].

The major milestones of this RMT are presented on the cover page.

1.2. The next steps

This Opinion contains the proposed amendments to the Air OPS Regulation and their potential impact. It is submitted to the European Commission, which will decide whether to amend that Regulation based on the Opinion.

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1 Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1) (https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1535612134845&uri=CELEX:32018R1139).

2 EASA is bound to follow a structured rulemaking process as required by Article 115(1) of Regulation (EU) 2018/1139. Such a process has been adopted by the EASA Management Board (MB) and is referred to as the 'Rulemaking Procedure'. See MB Decision No 01-2022 of 2 May 2022 replacing Decision No 18-2015 of 15 December 2015 concerning the procedure to be applied by EASA for the issuing of opinions, certification specifications and guidance material (https://www.easa.europa.eu/the-agency/management-board/decisions/easa-mb-decision-no-01-2022-rulemaking-procedure-repealing-mb).

3 https://www.easa.europa.eu/document-library/terms-of-reference-and-group-compositions/tor-rmt0392

4 Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0965&qid=1659702992582).

5 http://easa.europa.eu/document-library/opinions

2. In summary — why and what

2.1. Why we need to amend the rules — issue/rationale

Current requirements

Standard 6.18.1 of ICAO Annex 6, Part I, Chapter 6 (hereinafter 'Standard 6.18.1') requires that all aeroplanes of a maximum certified take-off mass (MCTOM) of over 27 000 kg for which the individual certificate of airworthiness is first issued on or after 1 January 2023 shall autonomously transmit information based on which a position can be determined by the operator at least once every minute, when in distress. More detailed requirements are contained in Appendix 9 to ICAO Annex 6, Part I.

The objective of Standard 6.18.1 is to determine the location of an accident site[6] wherever it occurs, and to assist search-and-rescue (SAR) authorities and safety investigation authorities in their respective missions.

Standard 6.18.1 was incorporated into point CAT.GEN.MPA.210 of the Air OPS Regulation, which requires the following:

'The following aeroplanes shall be equipped with robust and automatic means to accurately determine, following an accident during which the aeroplane is severely damaged, the location of the point of end of flight:

(a) all aeroplanes with an MCTOM of more than 27 000 kg, with an MOPSC of more than 19 and first issued with an individual CofA[7] on or after 1 January 2023; and

(b) all aeroplanes with an MCTOM of more than 45 500 kg and first issued with an individual CofA on or after 1 January 2023.'

In practice, all aircraft manufacturers concerned elected to install an emergency locator transmitter of a distress tracking type (ELT(DT))[8], ensuring compliance with both point CAT.GEN.MPA.210 and Standard 6.18.1.

Implementation issues faced by industry

In March 2022, the International Coordination Council of Aerospace Industry Associations (ICCAIA), on behalf of all aircraft manufacturers concerned, requested that ICAO postpones the applicability of Standard 6.18.1. At the same time, Airbus requested EASA to postpone the applicability of point CAT.GEN.MPA.210.

To fully assess the situation, EASA asked for additional information from ICCAIA, Airbus, as well as the Secretariat of the International COSPAS-SARSAT Programme, through letters sent in April 2022. In addition, EASA discussed this issue with EASA Member States (MSs) and industry at meetings of its ABs, namely the Air Operations Technical Body (Air OPS TeB) and the Certification Committee (C.COM). EASA also had several coordination meetings with the ICAO Secretariat on the issue.

6 Please refer to the first note of Appendix 9 to ICAO Annex 6, Part I.

7 Certificate of airworthiness.

8 An ELT(DT) is a specific type of ELT that is designed to be activated upon automatic detection of conditions indicative of a distress situation. Usually, an automatic triggering function monitors aircraft parameters throughout the flight and automatically triggers the ELT(DT) when it detects certain conditions. The flight crew can also manually activate the ELT(DT), when in distress.

The intelligence gathered through those meetings and discussions revealed that aircraft manufacturers are facing significant delays in certification due to the time needed to fit the aeroplanes concerned with the necessary equipment.

The COVID-19 pandemic affected the planned delivery in 2022 of 700–1000 aeroplanes with an MCTOM of more than 27 000 kg, which had been designed and manufactured without the equipment needed to comply with point CAT.GEN.MPA.210 and Standard 6.18.1. Those aircraft which have been in long-term storage until their planned operators take delivery of them, will now be delivered after 1 January 2023. Among those aircraft, many are destined for EU operators.

The detailed acceptable means of compliance (AMC) to point CAT.GEN.MPA.210, which were adopted by EASA in its Executive Director (ED) Decision 2021/008/R (issued in May 2021) and went further than specified in Appendix 9 to ICAO Annex 6, Part I, contributed to those delays. More precisely, the conditions adopted by EASA in the related AMC contain performance objectives[9] to ensure that the level of service to SAR points of contact of States will not be lower than that provided today by an automatic emergency locator transmitter (ELT)[10]. Aircraft manufacturers aim at fitting their aircraft with equipment that meets both the conditions of Appendix 9 to ICAO Annex 6, Part I, and the ones adopted by EASA, so that those aircraft can be operated in the European Union and worldwide without modifications or restrictions. However, this also means a significantly higher amount of work needed to design and certify that equipment.

Furthermore, the International COSPAS/SARSAT Programme has been facing some delays in setting up the communication infrastructure that is necessary to process and transmit ELT(DT) signals to the SAR points of contact of States. This may also affect the implementation of point CAT.GEN.MPA.210 (and indirectly of Standard 6.18.1). In addition, even when the communication infrastructure will be ready to transmit ELT(DT) messages, time will be needed by rescue coordination centres (RCCs) to adapt their procedures for handling information that stems from an active ELT(DT). This is because, unlike other types of ELT, an ELT(DT) is designed to transmit in flight, before a crash impact or an emergency landing. Several months may be needed to get RCCs fully ready to manage messages from an ELT(DT).

ICAO response to the issue

The issue was discussed by the ICAO Air Navigation Commission, which proposed the following amendment to Standard 6.18.1:

‘6.18.1 As of 1 January 2025, ~~A~~all aeroplanes of a maximum certificated take-off mass of over 27 000 kg for which the individual certificate of airworthiness is first issued on or after 1 January 202~~3~~4, shall autonomously transmit information from which a position can be determined by the operator at least once every minute, when in distress, in accordance with Appendix 9.’

[9] The conditions applicable to airborne equipment are contained in Subpart E, Section 3 of the EASA Certification Specifications for Airborne Communications, Navigation and Surveillance (CS-ACNS).

[10] According to point CAT.IDE.A.280 of the Air OPS Regulation, an automatic ELT must be installed on every aeroplane operated for CAT and with an MOPSC of more than 19. According to that point, the automatic ELT may be replaced by another means that meets the requirements of point CAT.GEN.MPA.210 of the Air OPS Regulation.

The ICAO Council adopted this amendment during the 16th Meeting of its 226th Session on 18 July 2022[11], with the agreement of the EU MSs[12].

2.2. What we want to achieve — objectives

The overall objectives of the EASA system are defined in Article 1 of the Basic Regulation. The proposed amendment will contribute to achieving the overall objectives by addressing the issue described in Section 2.1.

The specific objectives of this proposed amendment are to ensure the effective implementation of point CAT.GEN.MPA.210, while maintaining the cost for, as well as the human resources involved in, that implementation commensurate with the expected safety benefit.

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

This Opinion proposes to amend point CAT.GEN.MPA.210 to align its applicability dates with the new applicability dates adopted for Standard 6.18.1, by extending the equipage installation deadline from 1 January 2023 to 1 January 2024, with 1 January 2025 as the new applicability date.

2.4. What are the stakeholders' views — outcome of the consultation

All 5 comments that were received during the consultation of the related NPA 2022-104 (AIA, DK, FR, DE, LU) supported the proposals.

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

The comments received during consultation did not affect the impact assessment (IA) included in NPA 2022-104.

That IA concluded that it was necessary to amend point CAT.GEN.MPA.210 of the Air OPS Regulation to postpone the applicability date of the equipage requirement, given the certification delays and the lack of viable options for managing this without changing that date.

Maintaining the applicability date of 1 January 2023 in point CAT.GEN.MPA.210 would probably lead many EU aircraft operators to request temporary exemptions from the requirement for aeroplanes delivered in 2023 and to perform very expensive equipment retrofits (estimated at about EUR 100 000 to several million per individual aeroplane). The management of these exemptions would create a significant administrative burden for NCAs of EASA MSs.

The economic burden generated by not amending point CAT.GEN.MPA.210 would have to be borne only by EU operators, as according to Commission Regulation (EU) 452/2014[13], third-country operators operating within, into or out of the European Union would only need to comply with the

[11] The effective date of the amendment is 24 October 2022, its applicability date is 1 December 2022.

[12] Council Decision (EU) 2022/1256 of 15 July 2022 on the position to be taken on behalf of the European Union at the 226th session of the Council of the International Civil Aviation Organization as regards the proposed adoption of Amendment 48 to Annex 6, Part I, to the Convention on International Civil Aviation (OJ L 191, 20.7.2022, p. 61) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022D1256&qid=1661762274465).

[13] Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 133, 6.5.2014, p. 12) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0965&qid=1659702992582).

relevant ICAO SARPs. Hence, maintaining the applicability date of 1 January 2023 in point CAT.GEN.MPA.210 would result in a competitive disadvantage for EU operators.

When considering the postponement of the applicability, two main options were looked at: extending the equipage installation deadline to 2025, or extending the equipage installation deadline to 1 January 2024, with 1 January 2025 as the new applicability date.

The first option was rejected since it could potentially reduce the number of aircraft that would ultimately be equipped with an autonomous distress tracking (ADT) system below the 2023 baseline figures. This was not considered acceptable.

The second option was found to be the best one as it would keep the number of ADT-system-equipped aircraft largely at the 2023 baseline figures, while still providing industry with the two-year deadline extension that it requested. Option 2 provides an additional one-year buffer to States and industry to complete certification and validation for all affected aircraft.

Impact on safety

The safety impact of the proposed amendment to point CAT.GEN.MPA.210 is expected to be slightly negative, because it will result in taking aeroplanes first issued with an individual CofA in 2023 out of the scope of point CAT.GEN.MPA.210, and in delaying the applicability of that point to 1 January 2025. However, EASA considered the following points:

— Point CAT.GEN.MPA.210 will anyway bring significant benefits for only a small proportion of accidents with large aeroplanes. In most cases, such accidents take place at or in the vicinity of an airfield and the accident site can be easily located thanks to witnesses and/or radar data. Accidents with large aeroplanes over oceanic or remote areas are rare.

— All aeroplanes excluded from the scope of point CAT.GEN.MPA.210 by the proposed amendment must be covered by the aircraft tracking system of the operator (according to point CAT.GEN.MPA.205), and they must carry two ELTs, one of which being an automatic ELT (according to point CAT.IDE.A.280). Therefore, if one of those aeroplanes has an accident over an oceanic or remote area, information on the location of the accident could be obtained from the aircraft tracking system of the operator or from the ELTs or from both. However, the aircraft tracking system and the ELTs that are installed on currently operated aeroplanes cannot be considered acceptable alternatives to implementing point CAT.GEN.MPA.210, since the information they provide is less reliable, less accurate, and less timely than the information provided by means compliant with point CAT.GEN.MPA.210. Nevertheless, the fact that aeroplanes excluded from the scope of point CAT.GEN.MPA.210 are already equipped with some locating capabilities is relevant for assessing the impact of the proposed postponement.

— The negative safety effect of postponing the applicability to 1 January 2025 is temporary. It will disappear once this date is passed.

Economic impact

The proposed amendment will significantly reduce the number of aeroplanes that would have to be retrofitted under the current requirements. Therefore, the economic impact on industry is expected to be moderately positive.

With the proposed amendment, no temporary exemptions from the requirement will be needed for allowing the operation of aeroplanes that were initially planned to be delivered in 2022 and will finally be delivered in 2023. A much smaller number of aeroplanes that fall within the scope of point CAT.GEN.MPA.210 are expected to be delivered in 2024 without the necessary equipment to comply with that point, and those aeroplanes could be retrofitted with the required equipment until 31 December 2024 without requiring a temporary exemption. In addition, with the proposed amendment, if the operational approval of an ELT(DT) model that is installed on aeroplanes delivered after 1 January 2023 is delayed beyond that date, the operators of those aeroplanes will not have to request a temporary exemption. Therefore, the proposed amendment is expected to reduce the administrative burden for NCAs, making its economic impact on EASA MSs moderately positive.

Impact on proportionality

The aeroplanes that fall within the scope of point CAT.GEN.MPA.210 are operated for commercial air transport (CAT) and have an MCTOM of more than 27 000 kg; therefore, the proposed amendment has no impact on General Aviation (GA).

Social and environmental impacts

EASA is not aware of any social or environmental impacts that could result from the proposed amendment.

3. How we monitor and evaluate the proposed amendments

No specific monitoring or evaluation of the proposed amendments is planned apart from the already ongoing standardisation activities and exchanges between EASA and relevant stakeholders, through which any emerging issues could be identified.

Cologne, 31 August 2022

For the European Union Aviation Safety Agency

The Executive Director

Patrick KY

4. References

4.1. Related EU regulations

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

4.2. Related EASA decisions

N/a

4.3. Other references

— Amendment 48 to ICAO Annex 6 'Operation of Aircraft', Part I 'International Commercial Air transport – Aeroplanes', adopted by the ICAO Council at the 16th Meeting of its 226th Session, 18 July 2022 (ICAO SL AN 11/1.3.35-22/75, 29 July 2022)

— Council Decision (EU) 2022/1256 of 15 July 2022 on the position to be taken on behalf of the European Union at the 226th session of the Council of the International Civil Aviation Organization as regards the proposed adoption of Amendment 48 to Annex 6, Part I, to the Convention on International Civil Aviation (OJ L 191, 20.7.2022, p. 61).