



OPINION No 03/2009

OF THE EUROPEAN AVIATION SAFETY AGENCY

of 07 December 2009

for a Commission Regulation amending 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

'Restricted type-certificates and restricted certificates of airworthiness'

I. General

1. The purpose of this opinion is to suggest the Commission to amend Commission Regulation (EC) No 1702/2003¹ and its Annex (hereinafter Part-21) by including elaborated and improved requirements for issuing restricted type certificates (R-TC) and restricted certificates of airworthiness (R-CoA).
2. The opinion has been adopted, following the procedure specified by the European Aviation Safety Agency's (the Agency) Management Board², in accordance with the provisions of Article 19 of Regulation (EC) No 216/2008³ (hereinafter referred to as the Basic Regulation).

II. Consultation

3. Notice of Proposed Amendment (NPA) 2008-06⁴ that contained the draft opinion for a Commission Regulation amending Regulation (EC) No 1702/2003 was published on the Agency website on 10 April 2008.
4. By the closing date of 10 July 2008, the Agency had received 120 comments from 24 national authorities, professional organisations and private companies.
5. All comments received have been acknowledged and incorporated into a Comment Response Document (CRD), which was published on the Agency's web site on 21 August 2009. This CRD contains a list of all persons and/or organisations that have provided comments and the answers of the Agency.
6. The main intent of the NPA 2008-06 was to elaborate and improve the requirements for issuing R-TCs and R-CoAs. The NPA describes all cases when an R-CoA can be issued. This includes cases for which in the recent past permanent permits to fly in accordance with Part 21A.701(15) were issued. This option in Part-21 was seen as a transitional measure until the rules for R-CoA would be improved such that they could also be applied to this category of aircraft. Therefore the NPA envisaged to discontinue the provision of Part 21A.701(15).
7. Numerous adverse comments were made on the deletion of the permit to fly option of 21A.701(15) by the community of owners of aircraft that are currently flying on a permanent permit to fly and also by national aviation authorities.
8. The Agency acknowledges that the impact of the proposed measure cannot be fully assessed without having the final results of the NPA 2008-07 ("ELA process"; "Standard Changes and Repairs" and "Certification Specifications for Light Sport Aeroplanes") and that deletion of the permanent permit to fly option could lead to grounding of aircraft.

Therefore, the Agency has decided to withdraw from this NPA the proposed changes to paragraphs 21A.701, 21A.703, 21A.719, 21A.723, 21B.325 and the related changes in AMC and GM to Part-21.

9. Notwithstanding the above, the Agency continues to be of the opinion that the permit to fly is not the appropriate airworthiness certificate for aircraft that operate

¹ 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 (OJ L 243, 27.9.2003, p. 6).

² Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of Opinions, Certifications Specifications and Guidance Material (Rulemaking Procedure). EASA MB 08-2007, 13.06.2007.

³ Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ L 79, 19.03.2008, p. 1)

⁴ See Rulemaking Archives at http://www.easa.europa.eu/ws_prod/r/r_archives.php.

permanently in basically the same configuration and circumstances as explained in the explanatory note to the NPA.

10. Therefore the Agency intends to initiate a new rulemaking task dedicated to the initial and continuing airworthiness requirements and the appropriate certificates for the aircraft concerned. Such rulemaking task can take due account of the new regulatory situation after the implementation of NPA 2008-07 and of the particular problems of aircraft that are currently operating on a permanent permit to fly.
11. As a response to other comments the Agency has introduced new provisions in the draft amendment that allow for an easy transfer of aircraft from a normal CoA to an R-CoA in case the type becomes 'orphan'. This however will not solve the continuing airworthiness problems as described by many comment providers, such as the availability of properly certified spare parts.
12. The above decisions were all reflected in the CRD which was published together with the rule texts resulting from incorporating the comments.
13. By 8 June 2009 four reactions from three commentators were received to the CRD. None of these reactions have led the Agency to make additional changes in its proposals.

III. Content of the Opinion of the Agency

14. This opinion proposes to amend Part-21, in particular the provisions related to the the issuance of R-TCs and R-CoAs. The concept of R-CoA is incorporated in the Basic Regulation for dealing with aircraft that cannot comply with all the applicable airworthiness requirements but for which adequate safety can nevertheless be ensured through restrictions, limitations and other mitigating measures. This concept is also included in Part-21, but due to a lack of time, no detailed and comprehensive set of requirements and AMC/GM were developed. In the mean time the R-CoA is used for dealing with aircraft for which there is no more active type-certificate (TC) holder and for aircraft within the scope of the Agency that have not (yet) received an Agency TC. The practice developed for these aircraft needs to be codified in Part-21.
15. The current rule already describes two ways to obtain an R-CoA. These are further defined and elaborated in this opinion:
 - *R-CoA based on a R-TC:*
This is intended for aircraft that cannot comply with all applicable airworthiness requirements because they are specifically designed for a special purpose such as crop spraying, weather control, etc.
 - *R-CoA based on a design approval attesting compliance with specific airworthiness specifications (SAS) issued by the Agency for the specific case:*
This is intended for individual aircraft that for various reasons cannot comply with the applicable airworthiness requirements but for which adequate safety can nevertheless be ensured through restrictions, limitations and other mitigating measures. The examples for which this option is used today are aircraft without active TC holder ('orphan' aircraft) and aircraft designed in the former Soviet Union for which the Agency has not (yet) issued a TC. New provisions are proposed allowing for an easy transfer of aircraft from a normal CoA to an R-CoA in case the type becomes 'orphan'.

This opinion envisages adding a third option:

- *R-CoA based on a TC and a restricted supplemental type-certificate (R-STC):*
This is intended for aircraft that already have a normal certificate of airworthiness (CoA) based on a normal TC, but which are modified for a special purpose as in the above first case. Without this new option the only way for modifiers of aircraft for special purposes to obtain approval would be to apply for

a whole new R-TC. The associated responsibility for the entire aircraft design would usually go beyond the capability of the modifier and it would not be consistent with the way that "normal" modifications to aircraft are treated under Subpart E.

IV. Regulatory Impact Assessment

16. The amendment is expected to have a moderate positive impact on safety, taking into account that the main purpose of the regulatory action is to reflect in the requirements the current practice of the Agency and previous practice in Member States.
For orphan aircraft the responsibilities of the various actors will be more clearly defined allowing more efficient oversight of the continued airworthiness. This is expected to contribute to improved safety.
For the ex-Soviet Union aircraft the conditions to issue specific airworthiness specifications by the Agency will assure a basic and consistent level of safety. Only the aircraft types that will pass the test of compliance with those SAS can continue operation under an R-CoA. This is also expected to contribute to improved safety.
17. The overall economic impact of the amendment is expected to positive.
All the aircraft concerned need some form of airworthiness certificate and in all cases a design approval by the Agency is needed followed by a determination of conformity by the Member State of Registry. This means that fees and charges linked to the authority involvement will be similar for the various options.
The automatic and nearly automatic change from airworthiness certificate category for orphan aircraft will take away certain administrative burden and will thus have a positive economic impact. The change in the category of airworthiness certificate for orphan and ex-Soviet Union aircraft and the possible change in the allowed operations for these aircraft is the consequence of requirements that already exist and is not affected by the amendment.
The proposed measures to avoid aircraft types from becoming orphan will have a positive economic impact because TC holders will be able to maintain their TC with relatively simple means; thus allowing the most vulnerable of these TC holders to remain in business.
The new possibility of R-STC is expected to have a moderate positive economic impact. It will allow the modifiers of aircraft to limit their compliance efforts to only the changed design in stead of having to apply for a complete new R-TC, with the need to show compliance for the entire aircraft with the latest requirements.
18. Equity and fairness in terms of distribution of positive and negative impacts among concerned sectors: Most of the impacts will affect only a relatively small sector of the aviation community. However, this is a logical consequence of the subject that is being addressed by this NPA: R-CoAs are issued only to special purpose aircraft or to aircraft that cannot meet all the airworthiness requirements for other reasons. It is therefore unavoidable that only a limited number of entities will benefit from the amendment.

Cologne, 07 December 2009

P. GOUDOU
Executive Director