



Explanatory Note to Decision 2014/023/R

AMC/GM to Annex I Part TCO of Regulation (EU) No 452/2014

RELATED NPA/CRD 2011-05 — OPINION No 05/2012 — RMT.0291(OPS.004(b)) — 6.5.2014

EXECUTIVE SUMMARY

This Decision addresses a regulatory issue related to Third Country Operators (TCO).

This Decision contains the AMC/GM to complement Commission Regulation (EU) No 452/2014, which establishes a new Part-TCO and requires all commercial air transport third country operators to be subject to an authorisation issued by the Agency on the basis of common rules. The privileges granted to an operator and the scope of operations are specified in the TCO authorisation.

Commission Regulation (EU) No 452/2014 contains requirements for third country operators in Annex 1 and authority requirements to be followed by Member States and the Agency in Annex 2. This Decision only contains AMC (Acceptable Means of Compliance) and GM (Guidance Material) to Annex 1 applying to third country operators engaged in commercial air transport operations into, within or out of the European Union. The AMC/GM contained in the Decision clarifies certain requirements and provides additional guidance. Further acceptable means to Part-ART (authority requirements) will be developed by means of Agency working instructions via a Management Board Decision, since most of Part ART applies to the Agency directly.

Today, there is no harmonisation with regard to checking safety standards of TCOs engaged in commercial air transport operations in the territory of the Member States. Some Member States have established an approval scheme for third country operators by requiring these operators to fill in a detailed questionnaire on its operations, crew training and maintenance of the aircraft while some Member States are satisfied with copies of the relevant certificates and statements on the carriage of certain equipment.

This lack of harmonisation means that TCOs operating in more than one Member State have to submit multiple applications for technical authorisations to the competent authority of the Member States concerned. On their turn, Member States apply their national rules with regard to third country operations, which differ from Member State to Member State. The result of this repetitive administrative exercise is a fragmented authorisation and oversight system. This is detrimental to the objective of uniform rules to ensure effective protection of public safety on the ground and on board of these aircrafts and the functioning of the internal market. The development of the rules on third country operators was based on the following objectives:

- ensure a high level of safety;
- create a distinctive and proportionate set of rules for third country operators; and
- guarantee flexibility and efficiency for third country operators and the Agency.

Applicability		Process map	
Affected regulations and decisions:	Commission Regulation (EU) No 452/2014	Terms of Reference:	05.05.2007
Affected stakeholders:	Third country operators engaging in commercial air transport operations into the European Union.	Concept Paper:	No
Driver/origin:	Regulation (EC) No 216/2008	Rulemaking group:	No
Reference:	n/a	RIA type:	Full
		Technical consultation during NPA drafting:	Yes
		Publication date of the NPA:	2011/Q2
		Duration of NPA consultation:	3 months
		Review group:	No
		Focussed consultation:	Yes
		Publication date of the Opinion:	2012/Q4

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1. Procedural information

1.1. The rule development procedure

The European Aviation Safety Agency (hereinafter referred to as the 'Agency') developed ED Decision 2014/023/R in line with Regulation (EC) No 216/2008¹ and the Rulemaking Procedure².

This rulemaking activity is included in the Agency's [4-year Rulemaking Programme](#) under RMT.0291 (OPS.004(b))³. The scope and timescale of the task were defined in the related Terms of Reference (see process map on the title page).

The draft text of this Decision has been developed by the Agency. All interested parties were consulted through NPA 2011-05⁴ of 1 April 2011. 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.

The Agency has reviewed the comments received on the NPA. The comments received and the Agency's responses are presented in the Comment-Response Document (CRD) 2011-05⁵.

The final text of this Decision with the Acceptable Means of Compliance (AMC)/Guidance Material (GM) has been developed by the Agency.

The process map on the title page summarises the major milestones of this rulemaking activity.

1.2. Structure of the related documents

Chapter 1 contains the procedural information related to this task. Chapter 2 explains the core technical content. The text of the AMC/GM is annexed to the ED Decision.

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), as last amended by Commission Regulation (EU) No 6/2013 of 8 January 2013 (OJ L 4, 9.1.2013, p. 34).

² The Agency is bound to follow a structured rulemaking process as required by Article 52(1) of the Basic Regulation. Such process has been adopted by the Agency's Management Board and is referred to as the 'Rulemaking Procedure'. See Management Board Decision concerning the procedure to be applied by the Agency for the issuing of opinions, certification specifications and guidance material (Rulemaking Procedure), EASA MB Decision No 01-2012 of 13 March 2012.

³ <http://easa.europa.eu/rulemaking/r-archives.php#npa>.

⁴ In accordance with Article 52 of the Basic Regulation and Articles 5(3) and 6 of the Rulemaking Procedure.

⁵ <http://easa.europa.eu/rulemaking/r-archives.php#crd>.

2. Explanatory Note

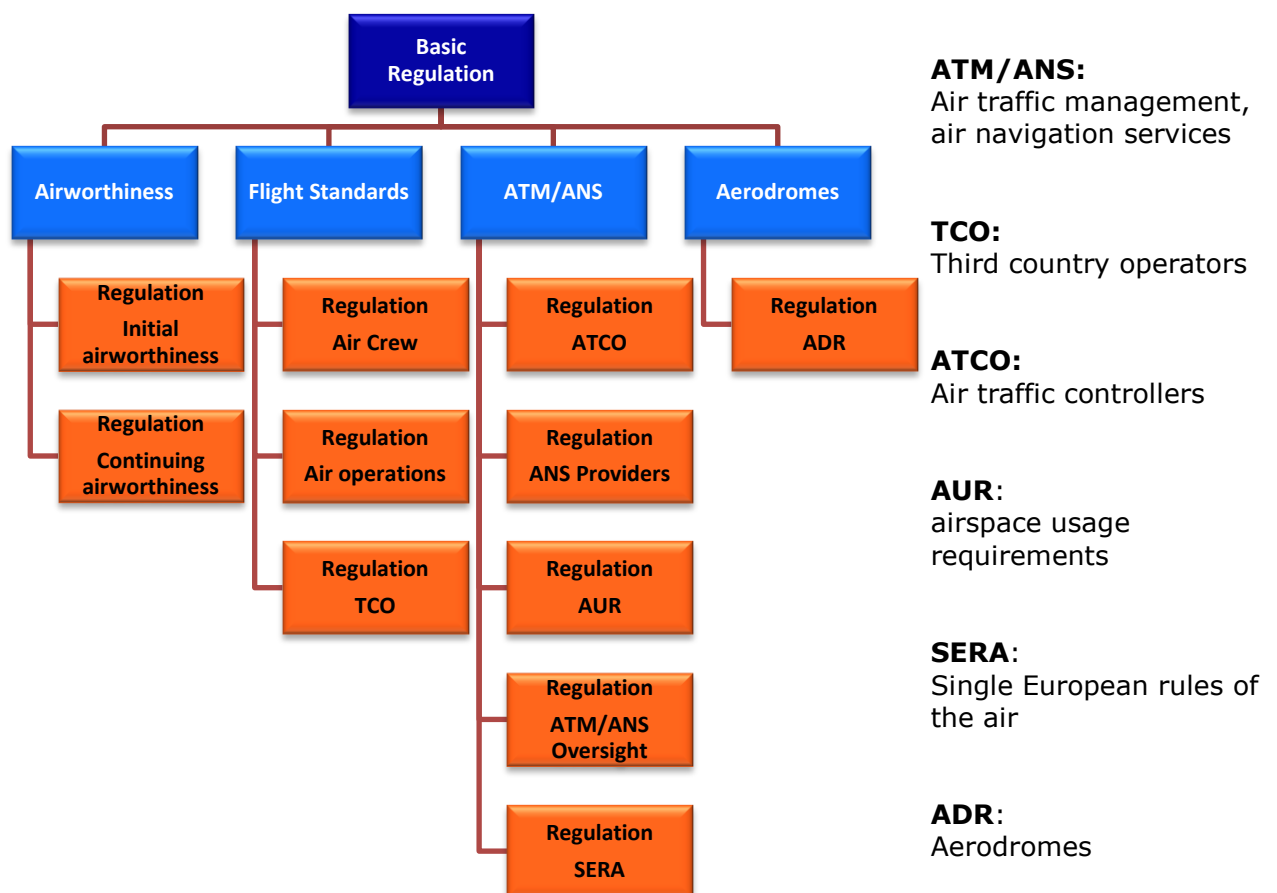
This Decision establishes AMC/GM to Commission Regulation (EU) No 452/2014, which establishes technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) 216/2008 of the European Parliament and of the Council.

2.1. Overview of the issues to be addressed

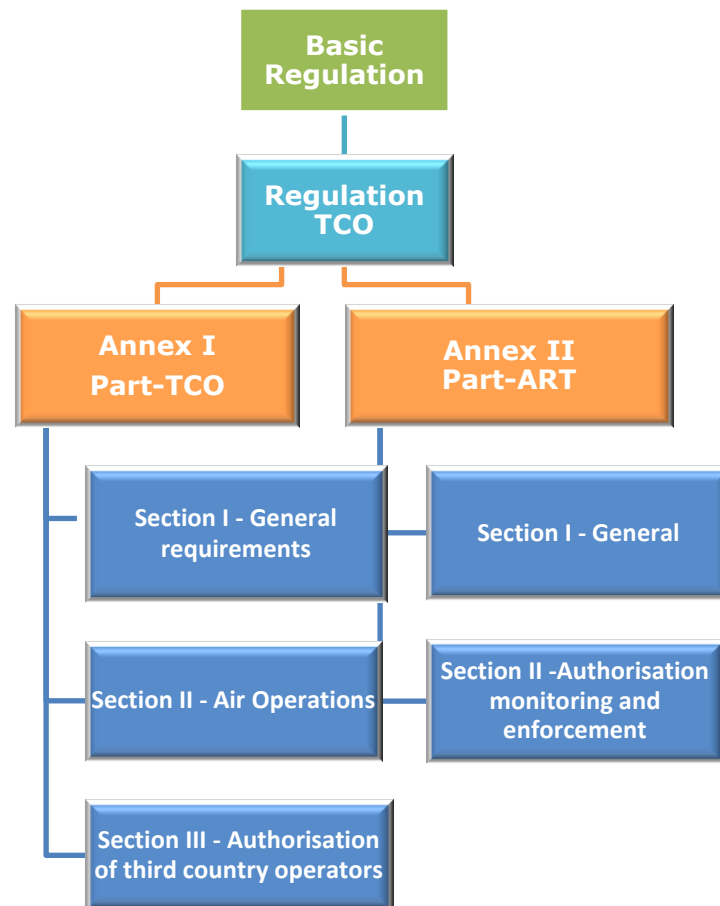
The Agency has determined the need to adopt Acceptable Means of Compliance to accompany Commission Regulation (EU) No 452/2014 to enable third country operators to better understand the intention of the rule and the requirements to be followed by a third country operator engaged in commercial air transport operations into, within or out of the territory of the European Union.

2.2. Objectives

The overall objectives of the EASA system are defined in Article 2 of the Basic Regulation. This proposal will contribute to the achievement of the overall objectives by addressing the issues outlined in Chapter 2. The specific objective of this proposal is, therefore, to include additional AMC/GM for third country operators.



The following figure provides an overview of the Annexes under the Regulation for Third Country Operators.

Figure 1: Annexes of the Regulation on Third Country Operators

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

Annex II Part-ART contains all the requirements, applicable to the Agency when authorising and monitoring third country operators flying into, within or out of the European Union.

2.3. Overview of the amendments

The following changes have been proposed as opposed to the draft Decision that was published with the CRD.

- Section I General requirements: This section contains general requirements for third country operators conducting commercial air transport.
 - Most rules in this section correspond to the initially proposed rules of the CRD contained in TCO.GEN.
 - Specific issues
 - A new GM1 TCO.105(a) is introduced to explain that alternative means of compliance cannot be used to establish compliance with ICAO standards.
 - A new GM1 TCO.110 on mitigating measures in case of notified differences to ICAO standards.

- Section II Air operations: This section contains operational requirements for third country operators conducting commercial air transport.
 - Specific issues
 - AMC1 TCO.200(b) establishes that whenever there is a difference between the operations specifications and the TCO authorisation, the more limiting specifications should apply.
 - A new GM1 TCO.200(c) General requirements explaining the meaning of a certificate of airworthiness to be issued in accordance with ICAO Annex 8.
 - A new AMC1 TCO.200(e) General requirements on reporting of accidents explains that the third country operator should report to the Agency all accidents involving aircraft used under its AOC, including aircraft that are not intended to be flown into within or out of the territory subject to the provisions of the Treaty.
 - A new GM1 TCO.210 Documents, manuals and records to be carried, explains that the documents, manuals and information may be available in a form other than on printed paper.
- Section III – Authorisation of third country operators: This subpart contains requirements for the authorisation of third country operators conducting Commercial Air Transport.
 - Specific issues
 - A new GM1.TCO.300(a) Application for an authorisation explains how the operator substantiates its intention to fly into, within or out of the territory of the European Union.
 - A new GM1 TCO.300(b) on the application for an authorisation explains that the application is considered to be submitted when the complete set of information required under TCO.300(c) has been received.
 - A new GM1.TCO.300(e)(1) on lease-in of aircraft not registered in the state of the operator.
 - A new GM1 TCO.315 on changes requiring prior approval
 - A new AMC1 TCO.320 on the need to re-submit the application, if an operator has not carried out a flight into within or out of the territory subject to the provisions of the Treaty within the last 24 months, the operator should resubmit an application for a TCO authorisation prior to recommencing operations to Europe.
 - A new AMC1 TCO.325 on how to deal with root causes of non-compliances.

3. References

3.1. Related regulations

Commission Regulation (EU) No 452/2014.

Regulation (EC) No 2111/2005

Regulation (EC) No 2111/2005⁶

3.2. Affected decisions

N/A.

3.3. Reference documents

ICAO Annex 6.

ICAO standards. Annex 6 Part I and Part III, Section II, respectively paragraph 4.2.2.2 and 2.2.2.2.

Convention on International Civil Aviation, Dec. 7, 1944, 61 Stat. 1180, 15 U.N.T.S. 295.

Guidance on the surveillance of such operators can found in the Manual of Procedures for Operations Inspection, Certification and Continued Surveillance (Doc 8335).

Regulation (EC) No 216/2008 requires third country operators flying into, within or out of the territory subject to the provisions of the Treaty, to comply with the applicable ICAO standards, in particular the following Annexes to the Chicago Convention:

Annex 1 - Personnel Licensing

Annex 2 - Rules of the Air

Annex 6 - Operation of Aircraft

Annex 8 - Airworthiness of Aircraft

Annex 18 - The Safe Transport of Dangerous Goods by Air

⁶ 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 (*OJ L 344, 27.12.2005, p. 15-22*)