

European Aviation Safety Agency

DECISION OF THE MANAGEMENT BOARD ON GUIDELINES FOR THE ALLOCATION OF CERTIFICATION TASKS TO NATIONAL AVIATION AUTHORITIES AND QUALIFIED ENTITIES¹

The Management Board,

Having regard to Regulation (EC) No 216/2008² 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, as amended, hereinafter referred to as the "Basic Regulation", and in particular to Article 33(2)(d) thereof,

Whereas:

- Articles 20(1)(e) and (2)(a), 21(1)(a) and (2)(a), 22a(a), 22b(a), and 23(1)(a) and (2)(b) require the Agency to conduct itself or through national aviation authorities or qualified entities the certification tasks incumbent upon it;
- Article 55 gives the Agency or national aviation authorities or qualified entities acting on its behalf the necessary investigation and audit powers to execute such certification tasks;
- The need to ensure a smooth transition in the transfer of certification tasks from national aviation authorities to the Agency requires that the best use of existing human resources and expertise in the aviation safety system is made by the Agency without disturbing the current functioning of the aviation regulatory system;
- Use of the certification system of third countries should be made as much as possible to facilitate the continuous flow of products and services with these countries;
- Certification tasks should only be allocated to national aviation authorities and qualified entities that are fit and able to execute them; for this purpose an accreditation procedure has been established;

¹ Adopted at MB 01/2011 on 15 March 2011;

² OJ L 79, 19.03.2008, p.1 as last amended by Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009, Official Journal L 309, 24.11.2009.

- Flexibility should be provided to allow the Agency in limited cases during a transitional period to allocate certification tasks to National Aviation Authorities in domains where they have a demonstrated capability without imposing a regular accreditation;
- For the outsourcing of certification tasks the Agency is committed to following the applicable EU financial legal framework;
- Detailed procedures and arrangements should be developed and concluded by the Executive Director for the implementation of this decision, specifying in particular the legal arrangements between the Agency and the service provider, including the allocation of responsibilities, liabilities and the detailed charging and payment arrangements;
- Article 33(2)(d) of the Basic Regulation instructs the Management Board to adopt guidelines for the allocation of certification tasks to national aviation authorities and qualified entities in agreement with the Commission;

Has adopted the annexed decision in agreement with the European Commission.

Done at Cologne,

[Signed]

Michael Smethers
Chair of the Management Board

Article 1 - Objective

1. The objective of this decision is to establish the guidelines in the framework of which the Executive Director may allocate certification tasks to national aviation authorities and qualified entities.
2. Without prejudice to bilateral agreements concluded by Member States or the European Union with such countries, certification tasks may be allocated to third countries' national aviation authorities, subject to appropriate co-ordination with the Commission to ensure consistency with EU external policies.

Article 2 - Definitions

For the purpose of this decision:

- "NAA" shall mean a National Aviation Authority;
- "QE" shall mean a Qualified Entity";
- "Accreditation" shall mean the qualification process of an NAA or a QE for the provision of certification tasks to the Agency;
- "Allocation" shall mean the assignment by the Agency of the performance of certification tasks and related services to an NAA or a QE, with or without the performance of the technical management function;
- "Bilateral agreement" shall mean an international treaty as specified in article 12 of the Basic Regulation;
- "pan-European Working Arrangements" shall mean the working arrangements signed by the Agency and the former JAA non EU Member States in order to maintain a pan European safety system after the closure of JAA;
- "Certification tasks" means all or part of the investigations and audits necessary for the issuing and maintenance of certificates or approvals as specified by the Basic Regulation and its implementing rules.

Section 1 - Outsourcing principles

Article 3 - Allocation of certification tasks

Certification tasks may only be allocated to NAAs and QEs that are accredited for such tasks in accordance with this decision and any further implementing measures.

Article 4 - Main aspects for establishing outsourcing criteria

1. When the Agency allocates certification tasks, it should aim at maintaining the high level of the aviation safety system and the creation of a stable outsourcing structure.

The allocation process shall comply with the Agency's financial rules, in particular related to procurement and equality of treatment. It should include the following steps:

- a. Pre-selection of candidate service providers for particular technical domains,
- b. Invitation to tender, selection of candidates on the basis of their technical and financial offers using the flexibility of the procurement rules to give a clear priority to technical aspects over financial ones, accreditation and conclusion of framework service contracts,
- c. Allocation by the Agency of certification tasks and related services on a day to day basis, following pre-defined criteria with aviation safety as the paramount objective and decisive factor. The following core values shall be duly observed, in order of importance:
 - Safety of products, their operation and of organisations:
 - Qualification and experience in the subject field of activity including the technical, personal, organisational and procedural prerequisites to accomplish the allocated task;
 - High quality of services and operational certainty to ensure safety of products and organisations.
 - Accreditation and scope of accreditation:
 - Accreditation with a clearly defined scope as a prerequisite for allocation of tasks by the Agency.
 - Reliability and stability of the outsourcing system:

- Availability and ability of the NAA or QE to perform the task in the required time frame and at the required technical/quality/professional level;
 - Willingness and ability to enter into long term relationship with the Agency and to become a reliable partner within the EU aviation safety system;
 - Long term business experience;
 - Financial stability.
- Interface to the Agency:
 - Ability, competence and resources to manage the contractual arrangements;
 - Confidence in the provision of the required documents and reports.
 - Interface to the applicant:
 - Proximity needs;
 - Ability and competence to efficiently communicate with the applicant.
 - Cost-efficiency.

2. When allocating a task to a QE, the Agency shall ensure that they respect Annex V to the Basic Regulation criteria, and in particular the non-conflict of interests and financial independence requirements.

*Article 5 - Relations between the Agency and the
National Aviation Authority or Qualified Entity*

1. When executing allocated certification tasks, an NAA or a QE is accountable to the Executive Director who shall make the final decisions in relation to the issuing, modification, suspension or revocation of certificates.

2. Allocated tasks shall be executed in accordance with the Agency's rules, policies and procedures adopted in accordance with article 53 of the Basic Regulation, as well as any task-specific instruction issued by the Agency.

3. The allocation of certification tasks shall be subject to the establishment of appropriate legal arrangements in accordance with the applicable regulations, specifying in particular:

- the exact scope of allocated tasks,
- the responsibilities, accountability and liability,
- the charging and reporting arrangements, and
- any agreed training arrangements.

4. In order for the Agency to establish a stable and reliable outsourcing system, which is based on the necessary contractual and technical trust and confidence in the competence of its service providers, as well as to allow those service providers to build up and maintain the required administrative and technical competence and resources, where possible and necessary, the legal arrangements mentioned under paragraph 3 above should have a normal duration of 5 years. Any renewal thereof should be subject to a new tender procedure.

5. In compliance with the implementation of existing pan European working arrangements signed between the Agency and former JAA countries, the Agency might allocate certain certification tasks to the local authorities of these countries. The accreditation requirements as described in Section 2 shall also apply in these cases.

Section 2 - Accreditation principles

Article 6 - Objective

The objective of the accreditation of NAAs and QEs by the Agency is to ensure that these organisations have the necessary capabilities, management systems and expertise to execute the allocated certification tasks in accordance with the applicable certification procedures.

Article 7 - Accreditation System

1. The Agency shall establish and maintain a system for accreditation of NAAs and QEs. The system shall comprise in particular:

- initial accreditation,
- continued oversight and surveillance,
- amendment of scope,
- suspension, withdrawal and revocation of accreditation, in whole or in parts, and
- dispute resolution mechanisms.

2. The Executive Director shall appoint an audit team that shall conduct an accreditation audit of the NAA or QE in question. The audit team shall consist of experienced independent experts competent in the scope for which acceptance can be granted.

The audit team shall evaluate the NAA or QE regarding its competence and expertise to perform certification tasks on behalf of the Agency.

3. Subsequent to the audit of the NAA or QE, an audit report shall be issued by the audit team.

The audit report shall:

- contain the findings raised during the audit,
- propose compensating measures if necessary, and
- identify the scope of tasks for which accreditation could be given.

The NAA or QE shall be requested for its endorsement of the accreditation audit report. Any disagreement shall be referred to the Executive Director.

4. On acceptance of the accreditation audit report, the Executive Director shall notify in writing the NAA or QE of its accredited scope and related conditions. The list of accredited NAAs and QEs shall be published in the official publication of the Agency.

5. In case an accreditation is not awarded the candidate shall be notified of the reasons thereof and of the available legal remedies.

Article 8 - Changes to the scope of accreditation

1. An accredited NAA or QE shall without undue delay notify the Executive Director of any change in its organisation, procedures and personnel which is likely to affect its accreditation status.

2. The Agency shall evaluate the impact of the notified change on the scope of accreditation and shall decide whether to organise, as appropriate, a subsequent audit of the accredited entity. Such audit shall be done in accordance with the procedure as prescribed in article 11.

3. The Agency may adjust the scope of accreditation according to the significance of the change and, if applicable, the results of the audit.

4. If the Agency at any time finds that the conditions for accreditation are no longer fulfilled, or if the accredited entity has violated the scope of accreditation, then the Agency shall have the right to limit, suspend or revoke the accreditation. Such decision shall be duly justified and shall contain all the relevant information about the available legal remedies.

5. An accredited NAA or QE which is aware that it does not any longer fulfil the conditions for a granted accreditation shall without delay inform the

Executive Director and shall refrain from working on tasks related to the scope of such accreditation.

6. Due to the link between accreditation and awarded contracts, extensions of the scope of accreditation shall take due regard of the corresponding procurement.

Article 9 - Surveillance of accredited NAAs or QEs

1. Surveillance audits are conducted to ensure that the competence, expertise and procedures of an accredited NAA or QE remain at the level required for the scope of accreditation.

2. The Agency shall establish an annual program of surveillance audits of all the accredited NAAs and QEs. The frequency of surveillance audits of a specific accredited entity shall be based on a risk evaluation process performed by the Agency.

3. The scope of the surveillance audit shall address the full scope for which the NAA or QE has been accredited. The depth of the surveillance audit shall be appropriate to ensure that allocated certification tasks are performed as expected and that the accredited entity fully complies with EASA working procedures.

The audit team shall in particular assess:

- any organisational changes,
- any changes to staff, technical and administrative expertise,
- summaries on activities performed since last Audit Team visit, and
- any novelties or difficulties experienced in the execution of allocated certification tasks.

Article 10 – Recording

EASA shall retain a complete file for each accredited entity, in line with its established working instruction for accreditation records management.

Section 3 - Final provisions

Article 11 - Implementing measures

1. The Executive Director shall ensure that the guidelines prescribed in this Decision are applied when certification tasks are allocated to NAA's or QE's.

2. The Executive Director shall establish the necessary internal procedures for the implementation of this Decision, in particular with regard to articles 5, 7, 8 and 9 thereof.

Such procedures shall detail in particular:

- the initial accreditation and surveillance processes, including checklists, formats for report, guidance on scope and depth of evaluation and guidance on the establishment of compensating factors or corrective actions,
- the EASA dedicated procurement process, and
- the process for the establishment of framework contracts with the selected service providers.

Article 12 - Transitional Measures

By way of derogation from the requirements of Article 3 and Section 2, the Agency may, as a transitional measure and for a limited period until the Agency is able to perform regular accreditation, allocate certification tasks to an NAA and a QE not previously accredited, by issuing provisional accreditations, provided the following criteria are satisfied:

- a. the Agency is unable to perform the certification task in question within the required timeframe either by using internal resources or external resources under valid framework service contracts,
- b. the NAA or QE has demonstrated sufficient safety standards in previous cooperations with the Agency, and
- c. the QE meets all requirements laid down in Annex V of the Basic Regulation.

Prior to any decision for allocation, for each task or groups of similar tasks the knowledge, experience and competence of the not regularly accredited NAA or QE shall be evaluated by the Agency through a technical assessment and determined by the issuance of a provisional accreditation. A provisional accreditation shall be limited in time and may be subject to renewal only if the Agency is not able to perform regular accreditation for the relevant task(s). A provisional accreditation may be limited, suspended or revoked by the Agency in analogy with Section 2.

The Agency shall pre-determine the types of certification tasks that may be allocated according to this article, taking into account the overall risk exposure for the Agency, the planned duration of the tasks, the required resources for performing the tasks and the availability of suitable service providers for such tasks.

Article 13 - Review

The Management Board shall review the functioning of this decision two years after its entry into force on the basis of a report to be presented by the Executive Director, and adjust its provisions as appropriate.

Article 14 - Entry into force

This decision enters into force from the date of its adoption. It shall be published in the official publication of the Agency.

Article 15 - Accreditations under MB Decision 04-2009

1. The scope, terms and conditions for an accreditation granted by the Agency before the date of entry into force of this decision shall continue to be valid for the duration of the framework service contract between the Agency and a contractor existing at that date, provided that the contractor continues to comply with the terms and conditions which were valid for that accreditation.
2. Accreditations valid under paragraph 1 shall be maintained and processed according to the relevant principles of MB Decision 04-2009.

Article 16 - Repeal

1. Management Board Decision 04-2009 of 10 February 2009 on the guidelines for the allocation of certification tasks to National Aviation Authorities or qualified entities is hereby repealed.
2. Notwithstanding paragraph 1, the principles of Management Board Decision 04-2009 shall continue to apply for services provided, i.e. task allocations or secondments of staff, under a framework service contract between the Agency and a contractor existing at the date of entry into force of this Decision.