

European Aviation Safety Agency

ADVISORY GROUP OF NATIONAL AUTHORITIES

MINUTES OF 3RD MEETING 2008

25-26 NOVEMBER 2008

Introduction and adoption of the agenda

Mr Kneepkens, the meeting Chair, welcomed all participants to the meeting. He asked individuals to introduce themselves.

The draft agenda was agreed with the addition of one AOB item, proposed by UK CAA concerning a UK Aircraft Accident Investigation Board (AAIB) Safety Recommendation.

Adoption of minutes of the previous meeting and actions arising – WP00

The minutes of the previous meeting, held on 25-26 June 2008, were agreed without change.

The action table was displayed and a verbal debriefing was given on each open item. The table has been amended accordingly.

1. General Introduction

Information Paper 01: Final recommendations in relation to rulemaking

The Chair explained that the Agency was active in the review of the rulemaking process following the article 51 recommendations. It had been decided that it would be most productive to have a thorough subject debate within the advisory bodies and hence IP01 had been sent to AGNA members for review. It was planned to discuss the proposals of the Agency at a thematic meeting on 14 January 2009.

The Chair went on to say that the assistance of NAA and industry representatives experienced in the rulemaking discipline would be appreciated by the Agency. In addition, it was hoped that NAA and industry support would also be provided on technical subjects. He cited NPAs as an example where a dedicated workshop of informed individuals would be most beneficial.

A 'tour de table' was conducted to enable members to provide some initial views on the matter. Responses were as follows:

- Norway: No comments were raised at this stage.
- The Netherlands: Expressed support of Agency's proposal to involve NAAs and industry in the rulemaking process.
- UK: Welcomed the opportunity to help. Would like to see better visibility as to how tasks were progressing, or not, as the case might be. AGNA workload was a concern for a single participant and suggested the creation of sub-AGNA for the various technical domains.
- Switzerland: Difficult role for a single member; Favoured an extension of AGNA to bring in more expertise (more experts or sub-groups).
- Sweden: Suggested a methodology to help prioritising rulemaking; Rulemaking procedure should be such so as to allow for urgent projects; Involve NAA and Industry more than before in rulemaking groups.

- Portugal: Supported the UK and Swiss view that more representatives were needed for the different technical areas, possibly in the form of assistants. Subject should be discussed further at next meeting.
- Poland: Agreed the need for change of the working methods.
- Luxemburg: More extensive expertise needed to address the regulation of ATM and aerodromes.
- Latvia: Supported the UK/Swiss views.
- Italy: Generally supported the need for change.
- Ireland: Considered that the main challenge was the extension of scope. Need to consider fundamental changes to the AGNA way of operation/meeting structure. Didn't consider appropriate the future use of sub-groups as this may lead to hierarchical issues.
- Greece: Experience on the airworthiness side shows the need to change methods. However the approach needs to be standardised in some way.
- Germany: EASA workload is obviously too high. Prioritisation, together with the establishment of rulemaking groups will help to reduce the pressure on the Agency. Groups should be better balanced with increased NAA participation.
- France: Definition of AGNA TORs needs improvement and alignment to the final product. RIA needs improvement, too, and needs to be done before NPA process. Standard reply "noted" in Comment Response Documents needs to be reconsidered and that feedback on NPA comments warrant better explanation. ARAC approach favoured; proposed to have a debate with US on the subject.
- Finland: Initial reaction was to support the sub-group approach, but there was an associated risk of losing the big picture.
- Denmark: Supported the use of sub-groups to cover specific subjects in support of core groups. Missed having an organisation to monitor developments in aviation.
- Czech: Supported the views of UK/SE/PO. Wanted to see a better balance in the composition of groups.
- Bulgaria: Felt that the Rulemaking Directorate should plan tasks better (past performance in this respect was not good). This aspect should be considered when defining tasks for the 1st extension.
- Belgium: Agreed with other colleagues, but wanted more time to comment. NPAs should be handled according to size. Rely on industry for rules of a technical nature.

The Chair said that the comments made by members were appreciated. It wanted the opportunity to discuss the organisation of AGNA in context with the new disciplines to be covered (Air Operations, Airports, ATC, etc.) The use of sub-groups needs to be considered, but the efficient use of time was very important. The SSCC model was a possibility, where the sub-groups reported to the main group.

Further inputs on the paper were welcome up to the end of 5 December. The Agency proposal on how to address the recommendations would be sent out on 19 December in preparation for the meeting with AGNA on 14 January.

Finally, the Chair asked members to provide the Agency with information (by e-mail) of their top 3 most irritating items in rulemaking and he (the Chair) would respond individually on each point.

Extension of the EASA system to aerodromes and ATM/ANS: The Group was informed that the French Presidency is keen to move the subject forward and has put it on the agenda of the 9th December Transport Council meeting. European Parliament has produced some 67 amendments

and plans to hold a plenary discussion in January 2009. Early 2009 adoption is expected, under the Czech residency.

Community Safety Programme: The relevant ICAO requirements were reviewed and it was explained that the move from prescriptive to performance based requirements was a real challenge. The Agency is working on a Community Safety Programme (CSP), with collaboration between the European Commission and Member States. The elements are being drafted by an informal group, the result (draft CSP Manual) would be available by Q2 2009 and this draft could be presented to the Member States during the Q3 or Q4 2009. Concerns were expressed by some members about the potential effects of the CSP at a State level. It was explained that the CSP would support Member States compliance with ICAO, as they would be unable to comply alone.

NPA on Essential Requirements for environment and related issues: It was reported that close to 1000 comments had been received concerning the document and it was planned to form an internal group to address them. The opinion is likely to be sought in early 2010.

EU-US BASA agreement: There is still a fees and charges issue to be resolved; however further discussions are planned on the subject. It is anticipated that the agreement may be signed in about 18 months.

EU-Canadian BASA agreement: Canada has agreed to sign, after the translation of the agreement. It is anticipated that the agreement will be signed early in 2009.

JAA Transition: It is anticipated that working arrangements will be signed with the non-EASA JAA member States (Georgia, Monaco and Turkey, etc.) early next year. This should permit the JAA Liaison office to be disbanded in June 2009.

Action required:

1. Final comments on IP01 invited from AGNA members by 5 December, in preparation for 14 January thematic meeting.
2. AGNA members to provide information by e-mail of their top 3 most irritating items in rulemaking.

2. 2008 and 2009 Rulemaking Programmes

Information Paper 02: State of implementation of the reduced 2008 Rulemaking Programme

Information Paper 03(a),(b),(c): Explanatory note + 2009 Rulemaking Programme appendix 1 + 2009 Rulemaking Programme appendix 2

The Chair introduced IP02 and explained that at the September 2008 meeting, the Management Board had endorsed the reduction of the 2008 rulemaking programme. Further, it had been agreed that the 2009 programme, as shown in IP03(b), would also be significantly reduced to reflect priorities and resources. The resulting tasks to be delivered in subsequent years are as included in IP03(c).

The French member asked about the 2008 and 2009 rulemaking intentions and the design of the new programme. The Agency explained that a complete inventory was needed, including prioritisation in the 4 year plan to address workload concerns. The 4 year plan will be provided in writing and will include the previous advance planning tasks.

The French member expressed concerns about task M.025 regarding the way foreign CAMO conduct the oversight of aircraft governed by foreign rules. The task was meant to include the AMC development. The Agency was encouraged to develop the material quickly, if possible before September 2009. The Agency clarified that it would not wait the outcome of this task to grant approvals to foreign CAMOs.

Action required:

3. The Agency to develop AMC material to address task M.025 – foreign CAMO issues.

3. Preparation of the 4-year rulemaking programme

Working Paper 01: Agency paper on “approach with vertical guidance”

Working Paper 02: Agency paper on “ADS-B”

The Agency presented the two papers about vertical guidance and ADS-B, clarifying that the approach with Vertical Guidance task had been withdrawn from the 2009 rulemaking programme as explained above. However, an NPA will shortly become available for an AMC for airworthiness approval of localizer performance with vertical guidance (LPV) and it is proposed to issue it as soon as possible to meet the deadlines envisaged by the Commission mandate (M408). A new Agency task should therefore be included in the 2009 rulemaking programme to address this.

With regard to ETSO for TCAS 11, recent studies have shown that there are two important safety improvements that can be made to the TCAS 11 logic. The original planning of the Agency was to adopt the revised MOPS ED-143 standard as a revision to ETSO C-119b, as part of the task scheduled for completion in 2010. However a recent meeting with EUROCONTROL has indicated that the initiative is not commensurate with the perceived risk. It is also therefore proposed to revise the ETSO as a high priority item and to include it in the 2009 rulemaking programme. In addition the Agency is also considering an action on the existing fleet to require retrofit of the new ETSO standard.

The papers had been presented to the SSCC during the previous week meeting and had received good support. The Agency therefore proposed to include both ADS-B (other than NRA) and Data Link in the 4 year rulemaking programme..

AGNA members also confirmed their agreement with the Agency’s proposed way forward.

Working Paper 03: Working approach for the production of “maintenance AMC for de-icing”

De-icing/anti-icing paper was presented. The Agency explained that due to the subject’s importance and in order to prevent duplication of effort the advice of both AGNA and SSCC was being sought concerning the possibility of issuing the changes to the AMC without an NPA, as the strict application of rulemaking procedure would normally require. The matter was high priority in nature and the SSCC recommended issuing an NPA at their meeting, the week before. AGNA members also confirmed their wish for an NPA.

Proposals for the addition or deletion of tasks (AGNA members)

The Chair announced that the 4-year programme would be published early January and that the finish date for feedback would be during the thematic meeting. He invited other comments regarding the preparation of the 4-year rulemaking programme and the need for inclusion of specific tasks.

The Swedish member recommended the following “missing” tasks to be included:

- MDM.030: UAV further regulation
- OPS-009: runway incursions.
- OPS-049: Single engine piston helicopter operations over hostile environment

In another domain, the UK member raised the subject of Electronic Flight Bags (EFB) and expressed concerns by the apparent lack of progress. France had similar concerns about the delay. Germany reported that work within ICAO is completed and that this will result to a change of Annex 6 to include EFB. The Agency agreed to review the matter and to report back.

Finally, the Agency reported on the timescales for the publication of the remaining NPAs in the field of air operations and flight crew licensing and third country aircraft oversight:

- OPS NPA will be published in January due to some outstanding legal issues which need to be resolved.
- OSC NPA publication delayed until January.
- The comment period of the newly published NPA will be extended by 3 to 4 months.
- Workshops will be postponed accordingly.
- Closure dates of already published NPAs will be extended to provide for sufficient overlap;

AGNA will be informed in written of the timescales.

Action required:

4. The Agency to include tasks on “approach with vertical guidance” and “TCAS-ETSO” in the programme for deliverables in 2009
5. The Agency to determine whether retrofit of new ETSO standard to existing fleet is warranted.
6. The Agency to issue an NPA on de-icing.
7. The Agency to check EFB rulemaking situation and report back.
8. AGNA members to provide any additional comments on tasks to be included in the 4-year rulemaking programme within 2 weeks.
9. The Agency to communicate the publication dates of the NPA on OPS/FCL.

4. Policy Issues

Information Paper 04: Agency paper on “Transfer of JAR-26 into the EU regulatory framework: Safety Directives”

The Agency presented IP04 about JAR-26 and how it might be transposed into the EU regulatory framework. This was necessary to address the extension of the scope of the EASA system to Air Operations. A supporting informal paper was presented dealing specifically with Safety Directives. This included a flow chart covering how to react to safety problems, together with restoring safety of the Operational Suitability Certificate (OSC).

A general discussion of the subject took place with the following points being made:

- The Irish member commented that the paper showed a very creative solution to a difficult problem, however a longer term solution would be needed as the number of Safety Directives will increase with time. The Agency responded that the number may not be so large in practice.
- The German member thought that JAR-26 should be in OPS rule. He also asked why there was no hook in Part-M to address the need for a JAR-26 requirement. Also in practice how would operators obtain data for a modification and how would it be approved? The Agency explained that the Type Certificate (TC) holder needed to produce a design solution in a specific case. In addition, it was difficult in JAR-OPS to refer to a CS which is non-binding. Moreover, operators can apply for a Supplemental TC (STC) or apply an existing STC in case of modification.
- The member from the Netherlands had difficulty comprehending the proposal and the consequences of the OSC package on the existing EASA system. The Agency accepted that clear instructions would be needed in this respect.

The Chair thanked AGNA members for their helpful comments.

AMC policy: “A combined need for uniform regulations and sufficient flexibility”

The Agency made a presentation on the subject of alternative Means of Compliance. In the past regulation and implementation was carried out individually by each Member State. With the introduction of the EASA system and its associated legal basis the situation has changed. Regulation is done on a central level, via 3 levels of regulatory material – The Basic Regulation and Essential Requirements; Implementing Rules; and non-binding standards (CS and AMC/GM).

As the implementing rules are binding, they are not “minimum standards, nor recommended practices”. Therefore, they need to be less prescriptive to provide flexibility. Acceptable means of compliance are thus used to create non-binding standards: when used, they provide a presumption of compliance with the rules. When alternatives are used, then compliance with the rules needs to be demonstrated. The Agency has proposed a common system to regulate this demonstration.

In conclusion, it was explained that the system proposed by EASA gives flexibility and at the same time ensures harmonisation, through the use of both ‘hard’ and ‘soft’ law. It also permits ‘tailored’ solutions.

A general discussion followed, this was opened by the Belgium member, who raised a number of points, as covered in its paper submitted to AGNA.

The Agency clarified that NAAs can also issue Alternative Means of Compliance on their own initiative. This is explained in the NPA on Authority Requirements that details the procedure. A deadline for EASA’s review of the alternative means of compliance approved by authorities is not currently defined, but could be considered. It was also clarified that it is not necessary to wait for the rulemaking process to be undertaken in order to sue an alternative means of compliance that has been approved by an authority. As for the consequences on certificates issued in accordance with an alternative means of compliance that is later on considered non-compliant by EASA, they would be the same as any other ‘findings’.

With regard to intellectual property issues, raised by the Netherlands, the Agency explained that AMCs will not get as detailed as describing the internal procedures of the company bringing an innovative product to the market, and therefore the publication of alternative means of compliance will probably not represent a problem.

The workload involved for NAA, raised by German member, if a large number of applicants request a specific alternative AMC (e.g. fuel policy) is no different from today, apart from needing to liaise with the Agency. In addition, the language issue (translation of AMCs) may become a problem in case of litigation. The Agency clarified that the only change from the current system is the obligation of NAAs to notify alternative means of compliance that they approve to the Agency.

The German member asked about the need to produce AMCs on Flight Time Limitations schemes. The Agency clarified that FTL schemes will be included in certification specifications, and that the Basic Regulation establishes the procedure to deal with them.

The Irish member generally supported the increased use of AMC but queried about the criteria used for inclusion of requirements in the implementing rules or the AMCs. The Agency replied that for the FCL and OPS rules it had made a detailed analysis on the basis of a number of criteria.

The Swedish member asked if there were any examples of similar procedures being used for non-binding requirements in other sectors within the EU. The Agency replied that the EASA system is one of the most detailed and advanced. Indeed, the matter was not restricted purely to aviation and that Council Resolution of 7 May 1985 on a new approach to technical harmonization and standards (85/C 136/01) suggests the use of non-binding rules for the certification of technical products.

The Portuguese member was not in support of the one month timescale for authorities to approve alternative means of compliance. The Agency commented this provision had been inserted at the

suggestion of the experts in the rulemaking group. In any case, the text is still open for public consultation, and can still be changed.

The French member asked whether the proposal is going to apply for the airworthiness rules. The Agency responded that initially the system will only apply to OPS and FCL, but that the intention is to extend it to all the areas of EASA competence in the future.

The Chair brought the discussion to a close, saying that the comments made by AGNA were welcomed and that the Agency would analyse feedback and produce a report to be discussed at a next or dedicated meeting.

Translation working group

The Agency reported on the work of the working group that held meetings in September/October and that a wrap-up meeting was planned for December. Additionally, the Agency informed that not a great deal of feedback had been received so far on the survey (only 12 responses). Furthermore, the Agency continued work on the development of a 200 term glossary in the field of airworthiness. AGNA would be kept informed on progress and would receive the working group report.

The member from the Netherlands commented that the current translation standards for rulemaking opinions were poor.

5. AOB

Information Paper 05: Future meetings

The Chair led a discussion on planning for future meetings. This took into account the events calendar in IP05. The Chair asked about AGNA meeting duration. He felt that a single day, rather than two, was adequate. The UK member favoured retaining two days, as the meeting had been rather hurried. Also, it had not been possible to review the rulemaking proposals in any real depth. The member from France thought that a paper to formalise the rulemaking programme (2009 and the 4 year progression), more clearly would help. The Agency accepted this but said that it would welcome any views about improving meetings for the future. It was agreed to retain two day meetings for the time-being and the following dates were chosen:

- thematic meeting on the review of the rulemaking process on 14 January;
- 18/19 March
- 24/25 June
- 25/26 November

Information Paper 06: Update on 2007 and 2008 rulemaking studies

The paper IP06 was introduced by the AGNA Secretary. The following points were made:

- FTL study is due for completion in January 2009.
- UAS contract signed. Involves co-operation with European Defence Agency and EUROCONTROL.
- The contractor for the study concerning passengers with reduced mobility is currently being negotiated.
- The Belgium member asked to be kept informed concerning short term studies and associated costs. The Agency agreed to provide this.

V-model presentation

The Agency made a presentation concerning the “V-Model” applied to NPA development.

It was explained that the V-Model was a product development process that had been used in the manufacturing and software industries for at least 30 years. The paper concluded that the use of the concept effectively permitted better identification of the different phases of NPA development, together with the level of involvement of stakeholders. It also permitted the necessary separation of “concept” development and legal drafting, as well as the endorsement steps and consultation needs. Finally it addressed the necessity to conduct the RIA in parallel with the concept development.

The paper was generally well received by AGNA. The Agency will give further consideration to the concept, when reviewing the rulemaking process.

Possible ways on how to demonstrate that NAAs employ sufficient staff

The Czech member raised this subject which had apparently come out of audits performed by both ICAO and the Agency. He asked if there should be some quantitative reference information; for example numbers of AOCs. The Danish member supported the proposal, saying that his authority had never cancelled a flight test, as an example. The Austrian member commented that it was necessary to be very careful as to what criteria were used to define the required workforce. He added one measure might be a management system. An extract of the relevant finding follows:

“For the further assessment of the necessary numbers of employees in Sections, where the NAA performs the task of Competent Authority, AGNA has been asked to elaborate an advisory document indicating standardised numbers corresponding to the number of supervised organizations and aircraft in operation.”

AGNA agreed that the topic should be discussed in more depth at the next meeting.

UK AAIB Safety Recommendation 2008-51

The UK member explained that the Aircraft Accident Investigation Board (AAIB) had made a Recommendation following an accident to a Piper aircraft, on take-off, when all on-board were killed. Analysis indicated that the aircraft should have been able to get airborne and AAIB are worried about ageing aircraft performance levels and are asking the Agency to amend the regulation dealing with continued airworthiness to introduce regular performance tests. UK-CAA offered to assist the Agency in the matter. The Agency agreed to consider the matter, but reserved its position in the meantime. It noted UK-CAA’s offer to help.

Organisation approvals

Concerning the action point recorded in the minutes of the last meeting, the Agency said that it did not intend to publish an NAA list of approved organisations. However it would issue a list of NAA focal points where such information might be accessed.

Action required:

10. The Agency to invite AGNA to provide a list of NAA focal points through which national Approved Organisation names and addresses may be obtained.
11. The Agency to include the subject of “demonstrate that NAAs employ sufficient staff” on agenda of the next meeting.

The meeting was closed at 1230 hours on 26 November 2008

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Actions table

Action #	What	Who	When	Status	Comments
1-42-06	Send a letter to DG Trade on the “FAA requirements on imported parts” and the problems faced by European equipment manufacturers.	Agency		C	BASA scheduled to be signed on 30 June by FAA Acting Administrator and the Commissioner for Transport, Mr Tajani. Fees and Charges issue still needs to be addressed. The French member, who raised this point, confirmed that the issue can be considered as handled and closed
2-09-07	To consider adding a task to the 2008 advance plan on UAVs after holding the workshop.	Agency		C	The Agency briefed members on the outcome of the workshop, the main point being that the Agency had not yet received enough inputs to decide on the way forward on the issue at stake. Given this fact, it proposed to keep that action item open. It also informed members about its participation to the upcoming ICAO UAV panel meeting. The Agency confirmed that a task is included in the inventory
3-10-07	Produce a position paper on the 2nd working method proposed by UK CAA & DGAC FR with respect the voluntary drafting of NPAs.	Agency		C	Potential agenda item for a next AGNA meeting, taking into account a possible review of the rulemaking process. The Agency communicated that this point will be considered as part of the article 51 evaluation – review of the rulemaking process
3-13-07	Inquire within their NAA for the responsible individuals with respect to organisations approvals and to provide the contact details to the Agency.	Members		C	The Agency letter on the subject was shortly to be sent to AGNA. Point addressed under AOB of today’s meeting
1-2-08	Communicate the date and place of the workshop on additional airworthiness specifications for a given type of aircraft and type of operation (Task 21.039).	Agency		C	Central workshop envisaged after publication of NPA.
1-15-08	Invite AGNA to indicate interest and topics for regional workshops.	Agency		C	Linked to 3-9-07. Point handled under AOB item.

Action #	What	Who	When	Status	Comments
2-1-08	Extension of the comment period for the NPA on Essential Requirements for environment and related issues.	Agency	ASAP	C	Extended until 15 November.
2-2-08	Delete the sentence “additional security needs shall be investigated at the same time and incorporated in CS 25 as appropriate” in the description field of task 25.057.	Agency	ASAP	C	The reference has been deleted.
2-3-08	Consider holding a policy debate on the future of JAR 26.	Agency and Members	Next meeting	C	Part of the agenda.
2-4-08	Align the description field of E.009 to the objectives of the related terms of reference.	Agency	ASAP	C	Updated.
2-5-08	Nominate individuals to participate to the translation working group.	Members	Before end of June	C	No additional nomination received.
3-1-08	Final comments on IP01 invited in preparation for 14 January thematic meeting.	AGNA	5 December	O	
3-2-08	Provide information by e-mail of their top 3 most irritating items in rulemaking.	AGNA	ASAP	O	
3-3-08	Develop AMC material to address task M.025 – foreign CAMO issues.	Agency	ASAP	O	
3-4-08	Include tasks on “approach with vertical guidance” and “TCAS-ETSO” in the programme for deliverables in 2009	Agency	ASAP	O	
3-6-08	Determine whether retrofit of new ETSO standard to existing fleet is warranted.	Agency	ASAP	O	
3-7-08	Issue an NPA on de-icing.	Agency	In line with programme timeframes	O	
3-8-08	Check EFB rulemaking situation and report back.	Agency	Next meeting	O	
3-9-08	Provide any additional comments on tasks to be included in the 4-year rulemaking programme	AGNA	Within two weeks time	O	
3-10-08	Communicate the publication dates of the NPA on OPS/FCL	Agency	Early December	O	
3-11-08	Invite AGNA to provide a list of NAA focal points through which national Approved Organisation names and addresses may be obtained.	Agency	ASAP	O	
3-12-08	Include the subject of “demonstrate that NAAs employ sufficient staff” on agenda of the next meeting	Agency	Next meeting	O	

Legend & codes:

O: Open

C: Closed (The items indicated as closed will disappear from table in the next minutes)

~: continuous task

WP: Working Paper

IP: Information Paper

X-X-200X: meeting reference – item - year

Participants in AGNA meeting

EASA Member States

(Members)

Simon Kaiser
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Sotirakis Stamou
Greece

Edgars Gindra
Latvia

Ari Vahtera
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Ingrid Linden
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Graham Weightman
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Non-EASA Member States

(Observers)

Nikola Tasev
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