Nr	Paragraph	Comment	Response
		General	
147	General	The deadline for sending comments on Part 21 is 18 July 2003, which corresponds to a very short comment period (6 weeks) for such an important and complex regulation. The difficulty in preparation of comments has even been increased by the late availability (8 July 2003) of related acceptable means of compliance and guidance material, which are necessary to fully understand and assess all possible consequences of the proposed regulation. The review of the acceptable means of compliance and guidance material, for which the deadline is 20 August 2003, may result in additional requests for modification to the proposed Part 21. We request consideration of those comments, even though they are sent after the 18 July deadline.	Noted. However, the procedure is consistent with Article 15 Decision of 17 June 2003 of the Management Board on Rulemaking procedure.
073	General	In consequence, [we are] of the opinion that the scope of Regulation 1592 is not entirely appropriate and it contains some inappropriate and unnecessary regulations, as they will affect the air sports community through the EU.	Deferred. Regulation 1592/2002 (the "Basic Regulation") is Community law since 2002. Its scope may be subject to further review by the Commission in view of these and other considerations.
054	General	The […] highly recommends to develop regulations for the issuance of Export Certificates of Airworthiness, to be included in part 21, Section A and Section B. Justification: The most important justification for the development of regulations for the issuance of Export Certificates of Airworthiness is stated in the Commission Regulation on certification itself: Introduction it is stated that: "(6) The need to ensure uniformity in the application of common airworthiness and environmental requirements for aeronautical products, parts and appliances calls for a common approach and measures to be followed by the competent authorities of the Member States […]."	Disagreed. As there is no legal basis for the issuance of export airworthiness certificates in the Basic regulation, the Commission cannot be advised to legislate beyond the scope of powers conferred upon it by the legislator. Related actions should be addressed under bilateral agreements.

		This is highly supported for Export CoA as it is the important document given to the competent authority of a non-EU country demonstrating the responsibility of the Member State through the application of the basic regulation (Regulation (EC) No 1592/2002) and its implementing rules.	
108	General	We fully recognise the need to publish sufficient regulatory material to allow EASA to start its operation on 28 September. For that reason we are prepared to accept the proposal for Part 21 with some changes that are detailed in our enclosed comments. This acceptance must, however, be made with a certain reservation pending receipt of the documents in their Swedish version.	Noted. The draft Regulation and Part 21 will be submitted to the "European Aviation Safety Agency Committee" of Article 54 of the Basic Regulation in all official languages, including Swedish. Once adopted, the implementing rules will be published in the Official Journal of the European Union in all the official languages.
108	General	- We wish to stress the necessity of ensuring continuity during transition from the current system to EASA. In general, we think that the additional transition period of 42 months according to Article 56 of the EASA regulation should be used in full to achieve a smooth transition. In other case, we run the risk of facing serious safety problems and disruption of on-going acitivities. - The time aspect is a general problem that has to be addressed. The time given for consultation have been too short considering the extensive material and the proposed implementing rules need more review before they can be considered ready for adoption. - The entry into force dates in general does not allow neither authorities nor the market enough time to adjust. This can have serious effects on the market and certain activities may have to shut down. We cannot accept this to happen because enough time is not allowed and this could definitely not have been the purpose.	Noted. Further insight on the meaning and intent of Article 56 in the light of transition provisions is to be found in the final Opinion of the Agency submitted to the Commission. Noted. The period for consultation (6 weeks) is consistent with Article 15 of the Decision of the EASA Management Board of 17 June 2003 concerning the "rulemaking procedure". The proposed entry into force on 28 September 2003 is consistent with Article 56. It does not triggers off an "automatic changeover" from national rules to common rules but opens up a transitional period during which both industry and regulators are given reasonable time to adapt.

		We therefore recommend that the 42 month transition period is used to give everyone involved reasonable time to adjust and prepare.	
108	General	We expect different situations that can be difficult or impossible to handle if national regulations does not apply. In order to avoid such situations we suggest that national regulations is applicable during a transition period and that grandfather rights generally applies in all areas.	Noted. The applicability of national rules and the transition periods are subject to the limitations of Arts 56 and 8(2) of the Basic Regulation. When developing these provisions all concerns and situations have been discussed.
077	General	We are aware of the requirements of the implementing EU legislation and that some aircraft are exempted from the full certification requirements by 'Annex II'. However, we have not been consulted by anyone in the assessment process and we have no idea which of the aircraft for which we are the TC holder will be allocated to Annex II and those which will be subject to the EASA requirements. Nor have we been able to ascertain what form of appeals process there is if we believe that an aircraft type has been wrongly attributed in the assessment process. Our overall belief is that the requirements of IR Part 21 (and IR Part M) as applied to the aircraft within our responsibility are over-zealous and totally inappropriate to the design origins of the aircraft, many of which date back to the years long before the Second World War. The new requirements seem more appropriate to the airlines and commercial air transport rather than the needs of historic light aircraft. It is our belief that all aircraft which are the responsibility of […] should be attributed to Annex II and operated under the ongoing requirements of BCAR; these are framed more appropriately for the needs of the aircraft types concerned. AMC At present it seems that the Acceptable Means of Compliance	Noted. The Basic Regulation including Annex II was adopted by the Community, including the Member States, in 2002. Annex II is sufficiently clear, precise and unambiguous. National courts are competent to adjudicate on its interpretation, subject to Community law. The European Court of Justice is ultimately responsible for ensuring that in the application of the Basic Regulation and its implementing rules the law is observed. Moreover, the Commission will soon propose an informal appeal process against "decisions" of the Agency taken under Article 44 of the Basic Regulation. Any decision of the Agency which is of direct and individual concern to a person may be challenged in accordance with the procedures to be established pursuant to arts 31, 32, 35 and 44 thereof. Due process is already a fundamental tenet of the Agency. Noted. The AMC and GM to Part 21 were published on 8 July 2003 for a consultation period of 6 weeks

		and Implementation (ACJ) for Part 21 has not been published. It is in this material that the actual requirements for implementation of Part 21 will be determined. The ACJ material will have a greater direct impact on companies seeking approval than the aspirations in the Part 21 itself. Care will therefore be needed to ensure that the ACJ material is consulted and made available before any applications are required to be submitted in accordance with Part 21; ie, on 28th September 2003. Definitions We have been unable to determine if any form of 'Definition of Terms' has been published to support the EASA-proposed Part 21. The previous JAA definitions were published as JAR 1, which is now long out of date having been last issued in 1996. Thus, it is difficult to make an assessment of the whole requirement of some elements of the proposed Part 21 because the precise definition of what is meant by some of the terms is not available. Any comments from de Havilland Support Ltd on the proposed Part 21 are therefore likely to require updating once ACJ material and a Definition of Terms is published.	(until 20 August). Reasoned acknowledgement of these comments will be provided in due time. Noted. Apart from the definitions contained in the Basic Regulation, these are also contained in airworthiness codes. In addition the Agency has proposed a definitions-code (AMC-1) containing terminology and abbreviations. Moreover, Part 21, under 21.1, legally defines "Competent Authority". The AMC and GM to Part 21 (published for consultation) provides definitions in its memorandum, point IV, and important terms are explained for information purposes to facilitate assessment by industry and authorities alike.
146	General	[Representative body] members certainly regret that the request from ABIP for an extension of the limit date (18 July 2003) for comments has been rejected by the EASA Management Board. Although […] fully understand the tight timescales in which EASA establishment must be conducted, the potentially strong interactions and interferences between the comments and texts of the IRs and those of the corresponding AMC and Guidance Material (for which the limit date is 20th August) will necessitate a joint review and therefore could have had the same limit date for comment.	Noted. This is however consistent with Article 15 of the EASA Management Board's Decision on the "rulemaking procedure" of 17 June 2003.

		Due to the above time constraints, combined with the current holiday period in Industry, [the representative body] has not been in a position to gather and formulate a completely consolidated version of manufacturers' comments. Having regards to the above unusual circumstances, I am hereby requesting that comments formulated by individual [representative body] member companies or national trade associations (whether attached to this message or transmitted directly by relevant commenters) , which could not be incorporated and consolidated into a comprehensive [the representative body] input due to the restricted timeframe, be given due recognition and be considered with equal importance in the disposition process.	Noted.
044	International relations - Article 9 Basic Reg.	Type Validation Procedures There is no discussion on the use of Type Validation Procedures for validating US products within Europe. We would like to continue using this process and it may therefore be worthwhile putting some language in to define this. Continue to use the process with EASA that is being used with the JAA.	Deferred. This is an issue being currently discussed by the Commission and FAA and related to the development of bilateral arrangements. The results of this discussion have to be awaited before the Agency can consider any provisions.
082	International relations	Switzerland participated in the JAA. However Switzerland is not member of the European Community. Other European states have a similar status. To which extent will the EASA rules become applicable for these states and when?	Noted. See full response in the final Opinion submitted to the Commission. Neither the Basic Regulation nor Commision Regulations are directly applicable to non-EU Member States. However under international, bilateral or multilateral arrangements, pursuant to Articles 9, 55 or 18(2) of the Basic Regulation, third countries may opt for applying EASA rules.

			In addition, certain non EU legal subjects – persons or organisations, may be subject to the Basic Regulation and related rules. Article 4 of the Basic Regulation determines which aircraft fall inside the scope of the Regulation.
073	General	Scope of the impact of proposed IRs …The number of different type certificates in the fifteen Member States for air sports aircraft has not been counted yet, but will exceed thousands or more. The communication and administration required for a central handling of type certification, registration, Air Directives, maintenance etc. in the languages required will lead to a hugely and unnecessarily complicated system which will not add improved safety. The user must be able to accept and understand the needs of the administrative burden… Consultation …This consultation has been for a period of less than six weeks (and in practice only five weeks due to publication delay). This is a totally inadequate consultation period, bearing in mind the complexity of the rules and the fact that in the case of rules for maintenance there is no pre-existing material in the form of JARs….	Noted. Part 21 derives directly from existing JAR 21 and JAA material which are well-known to industry and authorities alike. Although of a different status, the proposed common rules are intended to remain in line with existing obligations and standards. Noted. However, this process is consistent with article 15 of the Decision of the Management Board on "rulemaking process" (17 June 2003).
073	General	**(a) Recommendation** **The implementing rules for airworthiness and continuing airworthiness of aircraft up to 2000 kgs MTOW and balloons should be separated from those applicable to aircraft above 2000 kgs MTOW and simplified. The implementing rules should be delegated entirely to national competent authorities which can adopt the best practices already employed by the various National Aero Clubs and air sport governing bodies**. (b) Comment	Disagreed. The adoption of common safety rules is necessary to ensure a high and uniform level of safety in the Community. A single specialised expert body (EASA) must be established to carry out certain tasks currently performed by national administrations, including qualified entities. The recommended delegation of regulatory activities as envisaged would require an amendment of the Basic Regulation. A fundamental discussion would be needed first.

		Whilst the Part 21 framework of rules contains a great deal that is sensible, providing its application has a degree of flexibility to cater for aircraft without existing type certificates, and for aircraft in the future that are partly home built but not qualifying under the Annex II (1592) exemption, Part M is written in the context of large aircraft maintenance. Rather than having all maintenance for aircraft ranging from an Airbus aircraft to the smallest light aircraft under the same set of rules, it would be far more sensible to have a separate set of rules applicable to light aircraft, gliders and balloons. This would accord with the intent expressed in draft paragraph 5 of the introduction to the Regulations for airworthiness certification (21), and with paragraph (8) in the preamble to Regulation 1592/2002. […] believes this would be the most practical and effective means of achieving the aims of increasing safety through a common approach at Community level, whilst at the same time as minimising the risks inherent in change. **(1) <u>Gliders (JAR22 definitions)</u>** **(a) Recommendation** **Exemption from draft IRs should be granted for gliders that conform to the definitions in the JAR22 code, and for balloons.** **Grandfather rights for older gliders (pre JAR22) should be managed at national level, and gliders post JAR22 that do not conform should be covered under a Permit to Fly system**. (b) Comment The vast majority of gliders have for many years been	Noted. Annex II to the Basic Regulation may be subject to review by the Commission, if and when deemed necessary. The term “aircraft” under article 4(1) and Annex II to the Basic Regulation is to be construed extensively. The Regulation does not draw the distinction between certification and maintenance activities. It is submitted that the effects of any possible change would be minimised under the present draft. Noted. However, certain categories of “gliders” under Annex II of the Basic Regulation, point (f) are already exempted.

		developed in accordance with the JAR22 code, which itself was developed with expert input from glider designers, manufacturers and individual technical experts from the national gliding governing bodies. The draft regulations and IRs, particularly for maintenance, are overly prescriptive and bureaucratic for such aircraft (and balloons). (There is a danger that the application of such a framework would significantly reduce the currently available technical expertise that supports these aircraft on a <u>volunteer</u> basis. The maintenance of gliders in all EU countries is conducted by a mixture of very small commercial maintenance organisations and appropriately qualified and supervised individuals, under the control of the National Aero Clubs or the national gliding federations or governing bodies, usually but not exclusively under delegation from the NAA. The added burden of processes and procedures prescribed in the draft regulations and IRs, particularly for maintenance, would impose an intolerable burden on such organisations and individuals, with almost certainly no increase in safety, and quite possibly a reduction in safety. The safety record in this sector, in terms of accidents caused by airworthiness or maintenance failures, is extremely good, and should not be replaced by a system as set out in the drafts, and certainly not without a detailed and objective Regulatory Impact Assessment.) **(2) <u>Vintage and Orphan Aircraft</u>** **(a) Recommendation** **It must be recognised that it will be impractical to operate vintage and orphan factory-built aircraft under the maintenance requirements of IR M.**	Noted. Annex II of the Basic Regulation lists those aircraft which fall outside the remit of the Regulation and its implementing rules and which remain subject to applicable national regulations. JAR 22 was not taken into consideration at the time of adopting the Regulation. Subpart H of Part 21 when read in conjunction with Article 5(1); 2 (c) and 3 identifies the conditions for the issuance of either a CoA or a permit to fly as appropriate. Noted. If permit to fly does not apply, these aircraft are not necessarily excluded by Annex II and will have to comply fully with Part 21 and Part M. Part 21 includes Permit to fly concept, for which implementation is left to NAAs during the transition period. The Agency will use this period to further refine the concept. JAA Form One will be required anyway.

		Issues at stake are lack of type design support, lack of spare parts availability with IR Form-One documentation and the lack of familiarity of certifying staff. It is therefore essential to create a separate certification and maintenance route for factory-built vintage and orphan aircraft used for recreational purposes. (b) Comment Various Member States have airworthiness systems in place to cater for the operation of factory-built vintage and orphan aircraft types. The types of aircraft involved range from those dating from the dawn of flight, through to 'warbirds' and also recreational light aircraft types that were certificated prior to a particular date. In the UK, for example, a large number of such machines operate on Permits to Fly issued by the NAA. Many of these aircraft types will not be exempt from EASA control by Annex II of the basic regulation. EAS considers that the requirements contained in Part M as applied to the factory built vintage and orphan aircraft are over-zealous and inappropriate to the design origins of the aircraft. It is understood that for aircraft currently operating on airworthiness certificates such as Permits to Fly, grandfather rights are in place to protect the airworthiness status of these aircraft. However, it is not clear how a newly registered vintage or orphan aircraft would comply with the requirements of IR M. Creation of a dedicated airworthiness system, overseen by self-interest groups, NGBs and NACs would give clear advantages to owners and operators of these aircraft, because of the specialist expertise and total familiarity with the design and airworthiness.	

		Simpler spare-part approval system is appropriate for alternative materials, reducing the temptation to fit illegal or worn-out parts. Continuous maintenance ethos is prevalent on vintage aircraft, and the number of defects being deferred to scheduled maintenance periods is therefore minimized. The Agency benefits from devolution of responsibility for the applicable aircraft to approved organisations, with the associated reduction in regulatory costs. The airworthiness system should allow the aircraft to be used for normal recreational purposes and not overly restrict their operation. Striving for a European standard for vintage aircraft maintenance would allow freedom to over fly all Member States. **(3) <u>Balloons</u>** **(a) Recommendation** **Exemption from draft IRs regarding maintenance should be granted for all balloons.** (b) Comment It must be recognised that it will be impractical to operate balloons (and airships) under the maintenance requirements of IR-M. There is a danger that the application of such a framework would significantly reduce the currently available technical expertise that supports these aircraft on a volunteer basis. The maintenance of balloons is a specialist activity that is normally carried out by maintenance personnel with long experience in this field, acting under the auspices of a NAC	Noted. The EASA rule is drafted in such a way that common rules must be defined for certification and maintenance for all products not excluded by Annex II. Therefore Part M will apply at a basic level or higher if operating rules apply.

		or specialist organisation. Neither the conventional aircraft maintenance organisations nor the certifying NAAs have experience as regards continued airworthiness, maintenance schedules, replacement parts or repair schemes for balloons. The added burden of processes and procedures prescribed in the draft regulations and IRs, particularly for maintenance, would impose an intolerable burden on such organisations and individuals, with almost certainly no increase in safety, and quite possibly a reduction in safety. The safety record in this sector, in terms of accidents caused by airworthiness or maintenance failures, is extremely good, and should not be replaced by a system as set out in the drafts, and certainly not without a detailed and objective Regulatory Impact Assessment. In the absence of appropriate international maintenance requirements for balloons it is essential that these can continue to be maintained under the existing national arrangements **Regulatory Impact Assessments (RIA)** **(a) Recommendation** **The Commission should ensure that a full and objective RIA is carried out for** **(1) Draft regulation 21, for aircraft that have until now not been subject to JAR21** **(2) Draft regulation M for maintenance as there is no fully developed parent code in JARs and that such RIAs should be carried out in conjunction with more extensive consultation with "industry" including end-user representative organisations such as EAS, IAOPA and GAMA before an opinion is**	Noted. However, the adoption process is in accordance with the decision of the Agency's Management Board on rulemaking, Art. 15. The Commission may not change the content of the draft submitted by the Agency without prior coordination as this is not a requirement of the Basic Regulation (Art. 12).

		forwarded by the Executive Director of EASA to the Commission. (b) Comment The requirement for RIAs is part of the initial Regulation (1592) and whilst the expedited procedure may be reasonable for those draft regulations which are very largely based on existing JARs, it is not equitable or appropriate for draft regulations to be applied which are without mature parent JARs, or are to be applied to aircraft not previously subject to JAA regulations.. **Safety aspects** **(a) Recommendation** **In the absence of any general exclusion from applicability as set out in the attached proposals, [we] hope that the EC will look favourably on member States' applications for derogation, as set out in Article 5 (5) of Regulation 1592** (b) Comment [We] support the overall aim of increasing aviation safety. The fundamental question is whether the means proposed, for airworthiness and environmental certification, and maintenance, will achieve the goal in the light / recreational / private aviation sector, including air sports. In the opinion of […], it is extremely important, in the interests of safety, that best practise that has been developed over then last 50+ years in the member countries should be incorporated into the draft regulation and implementing rules. This would accord with the principles set out in the draft Commission regulation (IR21) paragraph (5) page 2 which states, in echoing Article 5(5) of Regulation 1592, that "the Commission must take care that	Noted. However, Article 10 of the Basic Regulation sets out very clearly the burden of proof, the limitations and procedures brought to bear upon Member States when granting exemptions to the substantive requirements of the Basic Regulation. The intent of the lawmaker is to apply safety requirements to a total range of aviation products covered by the Basic Regulation in a fair and equitable manner. Noted. To achieve state of the art and best practices, the proposed drafts derive directly from mature and widely recognised international practice (JARs, ICAO and industry practice). In addition the concerns here are noted but no specific situations are mentioned that would illustrate the concerns.

		they reflect the state of the art and the best practices, take into account worldwide aircraft experience and scientific and technical progress and allow for immediate reaction (to established causes of accidents and serious incidents)." Nor should such experience be superseded with rules that have not been subjected to thorough objective assessment as to their impact and effectiveness in achieving the desired outcome. […] is very genuinely concerned as to whether such new rules would lead to a reduction rather than an increase in safety, bearing in mind that the historic evidence shows there is only a small margin remaining to achieve an optimum safety result from airworthiness and maintenance activities In several member states there is, and has been for many years, effective formal delegation of responsibility for airworthiness of air sports aircraft by NAAs to NACs or the member associations or federations. Further, the vast experience, knowledge and expertise, organisational structures, processes and procedures built up by air sport governing bodies, NACs and by individuals over the last 50+ years should not be excluded from informing the way forward just because those facets are not embodied necessarily in an existing JAA code. […] is concerned that in the way the "grandfather rights" are embodied in the various draft IRs, unless existing modus operandi are national approved based on JAA cores they would not automatically become EASA practices. ***Legal aspects*** **(a) Recommendation** **In view of the suspected flaws in the legal basis or at least uncertainties it is proposed that the legal basis is further**	Noted. Noted. The Basic Regulation already establishes an information network between the Commission, the Agency and national administrations. Noted. As stated in the draft regulation, the empowering provisions are to be found in Article 5 and 6 of the Basic Regulation. Article 5(4) and 6(3) instructs the Commission to adopt the related implementing

		clarified. (b) Comments There is also the question of whether the EC's process is lawful. The deficiencies in the process risk opening up any decision to adopt the implementing rules to a legal challenge. Consultation paper 1/2003-06-02 on the Commission's EASA website "Draft opinion of the European Aviation Safety Agency" purports to be an EASA opinion. "The Agency herewith submits for consultation...the attached draft opinion....." (para 4). Article 29(a) of the EASA regulation states that the Executive Director (ED) must approve the issue of opinions addressed to the Commission (Article 13 & Article 14). Clearly, since the ED has only just been appointed, this has not been done, as yet. As the ED is taking up his position on 1st September can it reasonably be expected that he can master, with total objectivity and without pressure, all the issues to be able to issue his (independent) opinion to meet the ambitious timescale for adoption of the regulations and implementing rules by 28 September? Article 29 also requires the Agency, managed by the ED, to be completely independent and not to take instructions from any other body, especially the EC and the Management Board (except insofar as they have a remit). In issuing this opinion, the Agency has not acted independently, but has taken instructions from a JAA group. It was the EC that published this as an opinion from the Agency. It is difficult to see that Article 12, concerning the Agency's functions, has been complied with for similar reasons. There also seems to have been a breach to Article 43 since the Management Board has not yet, and probably cannot, adopt transparent processes to be used for adopting opinions. Dispensations apply only if there is a pressing safety need (Article 43c) or in the case of operations and licensing where	rules. Noted. However, it is not clear in the comment which EC process is meant. It is understood that the Executive Director in person does not have to be the master of all technical aviation disciplines. It is expected that in future when developing technical rules the Executive Director may rely on internal and external expertise. In doing so its independency is not at stake. The purpose of consultation is to obtain views of others than those experts directly involved in the development of the rules, in accordance with general principles of good governance. Disagreed. Articles 12(b), 13, 14 and 29(1) are fully complied with. Since the Agency will only formally commence its operations on 28 September 2003, it has currently limited resources and technical expertise (see attachment 2 on transfer policy, paragraph 2 on resources and means). In assisting the Commission, the Agency prepares and publishes drafts which will become Agency measures. The necessary arrangements have been made to fulfill the objectives of Article 5(5) of the Basic Regulation. The Executive Director shall submit and publish its own independent opinion on behalf of the Agency. Disagreed. The decision on rulemaking process (Article 43) was adopted by the Management Board on 17 June 2003. It is available on the EASA/Commission website.

		work can be delegated to the JAA (under Article 56 s3). Neither of which apply here. Article 54 requires the Comitology Committee to adopt its own rules of procedure. EAS has not seen these. One would expect that these procedures would allow adoption of IR's into Community law only if the EASA regulation has been complied with. Concluding remarks It is essential that the new EASA framework is based on the needs of safety and proportionality and is free from political interference. This is at risk of being compromised simply because of the six-month delay in appointing an Executive Director and setting up the Agency as a working body which is totally beyond the responsibility of the aviation industry (and General Aviation and Air Sports community). *The burden of still meeting the legal commitments is now placed on the end-users in the chain of the process*. We strongly recommend that the Commission be advised to find legal ways to allow sufficient time and adequate means to evaluate the concerns stated in these documents in consultation with […] and other organizations involved.	The EASA Committee reviewed its draft rules of procedure on 17 July. The Committee will adopt them formally, together with the Agency's implementing rules, in September. Noted. However, the proposed regulatory framework is congruent with existing obligations and affords reasonable time for adaptation under Article 56(2) of the Basic Regulation. Thus there will be no "automatic changeover" from one system (of national rules) to the other (of common rules) on 28 September 2003. Some issues have been identified that need further Agency work in due time. The Agency passes this and other recommendations to the Commission services.
073	General	We note that two major subjects are absent in the consultation process towards EASA implementation. Firstly, there is no reference to so-called Grandfather Rights. Usually existing privileges remain valid and allow the European citizen to exercise that privilege for a reasonable period. We ask for a detailed rule concerning Grandfather Rights <u>for the existing fleet and currently authorized staff in the sports and</u>	Noted. The recognition of efforts made by Member States in fulfilling their JAA commitments is a cornerstone of the transfer policy. The bedrock of such "grand-fathering" or continuity of acquired rights is to be found in the following paragraphs of the initial opinion submitted for consultation:

		recreational aviation community. Secondly, the intended use of the working language causes concern for our branch of aviation. It is acknowledged that the working language in commercial aviation is English, which, however, is not true for the practitioners in sports and recreational aviation. Should the standard EU languages not become the basis for aviation regulations and legislation in this sector of aviation, unpredictable complications could evolve which could be beyond the control of the air sports and recreational aviation organizations. Therefore we strongly ask to address the language issue suitable to the needs of the European citizen who wants to practice his sport in aviation.	- para. 17 on transition measures; and - para. 1.3 of attachment 1 on transitional measures and transfer policy. It has to be recalled that: - common rules on flight crew licensing and air operations are being prepared and will be submitted in due time by the Commission; - Annex II of the Basic Regulation, in particular point (c), exempt certain aircraft from the scope of the Basic Regulation and its implementing rules. Disagreed. The implementing rules will be published in all official languages of the Community.
073	General - Consultation	The consultation period is inadequate, particularly considering that many of the air sport National Governing Bodies (NGBs) to which many of the rules may soon apply are currently either deregulated, or operating to a specialist set of requirements. Therefore, these organisations will not be familiar with the current JAR regulations, either in format or content. General comments on requirements Following on from the previous paragraph, it must be noted that air sport NGBs will have their own systems in place to regulate each sport to ensure a satisfactory level of safety. Regulation might be by the NAAs or by self-regulation. Full consideration to the systems currently in place for air sport regulation must be given to ensure that there is no overall reduction in safety standards due to the diffusion of specialist requirements, tailored to individual sports, with generic rules	Disagreed. This process is consistent with article 15 of the Decision of the Management Board on “rulemaking process” and the general objective of ensuring a high and uniform level of civil aviation safety, when the proposed measures derive from JAA material.

		and regulations more appropriate to large commercial aircraft.	
073	Acceptable Means of Compliance	At present it seems that the Acceptable Means of Compliance (AMC) and Implementation (ACJ) for Part 21 has not been published on the EASA web-site. It is in this material that the actual mechanisms for implementation of Part 21 will be determined. The ACJ material will have greater direct impact on companies seeking approval than much of the main text of Part 21. Therefore, it is important that the ACJ material is distributed for consultation prior to adoption of any implementing rules	Deferred. The consultation on AMC and GM to Part 21 is being dealt with separately for reasons of efficiency.
178 (& 128)	General - Extension of Comment Period	Virgin Atlantic note that Explanatory Memorandum "Paragraph 11. Consultation" states that "...the agency will rely on existing official channels and consultation practice currently applied by the JAA to disseminate the draft opinion to its widest audience...." Since the Virgin Atlantic Airways Design Organisation became aware of the existance of consultation document by chance on visiting the JAA Website and have had insufficient time to adequately review prior to expiry of the consultation period we do not feel that the means of distribution to the widest audience has proved effective in this case. Consequently an extension to the comment period is requested. Due to the importance of the issues, the seasonal staff shortages during holiday periods and high workload an extension of at least 3 months is requested.	Noted. However, the period for consultation (6 weeks) is consistent with Article 15 of the Decision of the EASA Management Board concerning the “rulemaking procedure”.
167	General - Extension of Comment Period	[…] remains concerned over concern the continued pace at which the European authorities are trying to finalize certification, maintenance and continuing airworthiness regulations. Given the tremendous volume of materials requested for comment, the detail contained within these requirements, and their importance, we do not believe adequate time was available to provide as thorough a review and comment as necessary. We continue to request an extension of the closing of the comment period from July 18 to	Disagreed. This is consistent with Article 15 of the Decision on the “rulemaking procedure” that was adopted by the Agency’s Management Board on 17 June.

		allow submission of additional comments until August 31.	
167	General	While we are not providing detailed comment on the specific contents of the EASA Certification Specifications at this time, we do wish to offer an important general comment. In reviewing CS-25, CS-27, CS-29, CS-E, etc., we noted many instances in which technical changes were included that had not been subject to prior public notice and comment through the JAA NPA process. Given the lack of prior notice and especially considering the compressed comment timeframe, […] believes it is inappropriate to include these revised requirements in the initial release of the certification specifications. Instead, the initial release should be solely limited to the editorial changes required to place the existing JAR requirements in the EASA format, with no changes in technical content. All technical changes to these requirements should be subsequently subject to a full, open public comment process, with specific cost-benefit information provided in appropriately constructed public notices	Deferred. The consultation on CS is being dealt with separately for reasons of efficiency. Comments on the CS will be reviewed and responded to in due time.
160	General - Reservation	Considering the very short delay, unfortunately, we did not always have the time to prepare a tangible proposal and sometimes we were only able to point out the problem or to send a copy of French texts. We also did not have sufficient time to correct all the inconsistencies between the certification draft and the maintenance draft (we consider that a real harmonisation work is necessary between the two regulations, especially concerning administrative procedures of section B) or between the different parts of the maintenance draft. In order to facilitate the processing of our detailed comments by re-reading groups, we have decided to write one comment form for each article of the regulation or each paragraph, even if we had to repeat the same comment on more than one form. In the same way, we have decided to provide our comments in English without being able to validate them with a jurilinguist, and without prejudging which language should be used in the following Agency consultations	Noted.

		In these conditions, we would be grateful if you consider our comments as fully mature when the addressed requirement has already been adopted and harmonised. Nevertheless when the proposals address new concepts or new requirements, it is felt helpful that the consultation is achieved with no urgency. In such cases we may consider our comments as a scrutiny reservation for a detailed impact assessment to be achieved and the commission to provide more justifications.	
160	General	Experience gained in the last 35 years with the JAA shows it would be over optimistic to consider that implementation if new rules will be quite smooth and easy. It is therefore very important that the Agency is very rapidly structured to assist Authorities and Industry to implement the rules, and to propose solutions to emergent problems.	Noted.
160	General - Structure of the texts	Concerning the general structure of these texts, we believe that the two drafts under consultation could be re–grouped in a single regulation which could be named *Implementing rules concerning safety and environmental certification of civil aviation* and which would gather in appendix the proposed parts : Part 21, M (to numbered ?), 66, 145 and 147 which, in due time, could be completed by parts related to crew licensing or operations. This would permit, in the absence of a European codification system, to group all the texts related to safety and environmental protection. This would also facilitate cross references (for example between Part 21 and Part M) and would avoid duplication of forms in different regulations (with the risk of deviation). In the same way, we believe that general requirements for authorities (organisation, staff qualification and training, exchange of information, audit procedures) would be simplified by being re-grouped in a single text rather than being repeated in different parts.	Noted. This point has been discussed and it was decided to facilitate the process by having two regulations with a view to establish for each main area a complete framework. The same is likely to apply to licensing and operations. Also it is envisaged to incorporate and publish for each main area Volumes that contain the complete rules and related material. This option can certainly be reviewed in the future, if it were to create the inconsistencies mentioned by the comment provider.
160	General –	One must be aware of the various degree of implementation of	Noted.

	Implementation and transition period	the JAR in force, differing from one JAR to another and from one authority to another (it is obvious when reading the JAR transposition table available on the JAA web site). In the same way,. the non yet adopted NPA or the TGL which have been introduced in the proposed requirements have not been supported by an impact assessment, and finally as mentioned above some significant novelties might be introduced, if our position is not shared by other authorities. For all these reasons, and from our experience when introducing new regulations, the required delay of transition of one year or two, according to the cases, seems practically unrealistic for achieving the industry to comply and for the national authority to adapt the resources accordingly. We consider that the full extent of the transition period scheduled in regulation 1592 (42 month1s) should be used to reach harmonisation.	This issue (including the Agency's position) will be highlighted in the Agency's final Opinion to the Commission. Comments received on that subject have shown the need to provide for longer periods for adaptation and the text has been revised where appropriate.
167	General - Transition period	The transition from JAA to EASA requires a substantial effort for all organizations involved. We would particularly like to highlight the issue for maintenance organizations, particularly those in non-member countries, to come into compliance and to be audited to confirm that compliance. The lack of a sufficient transition period is both impractical and impossible, particularly for those in non-member countries where bilateral issues will also present challenges. We again reiterate the need for the maximum 42-month transition period.	Noted. This issue (including the Agency's position) will be highlighted in the Agency's Opinion to the Commission. Comments received on that subject have shown the need to provide for longer period for adaptation and the text has been revised where appropriate.
167	General - Grandfather rights	The transition from JAA to EASA requires a substantial "grandfathering" of many items. In some areas, such as the use of maintenance material, the issue is addressed for JAA approved organizations but not for accepted organizations. Used aircraft component release certificates issued by appropriately approved and accepted organizations before the entry into force of EASA must remain valid. This subject must be specifically addressed to prevent any confusion or inconsistent interpretations.	Noted. Please refer to the draft Regulation, Arts 2(13) and 4(5).
160	General	The consultation period is very short, and proposed texts are not supported by adequate justification and impact assessment.	Noted.

		This is considered acceptable only for those texts derived from JAA texts mature enough, having already been submitted to substantial discussion and consultation periods, and which are absolutely necessary for the Agency beginning to work. We consider this to be the case for IR 21 and IR 145, but not for IR M and IR 66/147. These texts introduce substantial new concepts, and are not necessary for the Agency to take as from September 28 the decisions listed in article 15 of regulation 1592. We strongly request that these texts might be subject to a further large concertation process before their adoption, after the present consultation procedure.	
163	General	[…] is a German SME approved under JAR 21 as a Design Organization (LBA.NSD.001), as a Production Organization (LBA.G.0022) and as a Aeronautical Workshop (II-A 267). We are – typical for this branche – a small, family owned company, working without public support or money. We support the ideas of the EASA and see a large amount of advantages. However for us it is literally vital that the establishment of the EASA doesn´t increase costs or workload and that current and future projects won´t be delayed. We can only afford a very limited non-productive personnel for certification tasks. The possibility of goal orientated work with competent and cooperative partners, leaving a considerable amount of self-responsibility should be taken in consideration while introducing EASA related procedures. The […] has worked out several comments to enable proceeding this way. As a member of this Organization we are fully in conformity with all these comments.	Noted. Any organisation that meets the requirements is entitled to the desired production organisation approval. Only the status of existing obligations will be changed. Noted. This objective with regard to cost-efficiency, and the transition arrangements is reflected in the Preamble to the Basic Regulation, recital 21.
159	General	The […] has reviewed the resulting response from [representative body] on the draft EASA Implementing Rules and we whole-heartedly support the comments, recommendations and proposals contained in it.	Noted. The comments submitted by this representative body have been duly taken into consideration as reflecting also the views of the comment provider.

		We ask that you give detailed consideration to the points raised in the [representative body] paper, otherwise we foresee major problems in the UK for light aircraft, vintage aircraft, gliders, balloons and airships.	
120	General	Being a SME we are currently certified under JAR21.13(b) using alternative procedures for the development of simple design products, i.e. sailplanes, powered sailplanes (incl. their propellers and modifications of their engines). Being a member of the [representative body] we fully support the comment proposed by this association. It is literally vital for us that the introduction of the EASA will be cost-neutral, that it can be done without delay of our current projects, and that the future co-operation with EASA will not cause additional bureaucratic costs or workload for DO-, PO- or product-certification. Regarding the current economical situation, especially of SMEs, our potential to invest in non-productive DO- or PO-certification work is very limited. This must thoroughly be taken into consideration during he establishment of EASA-related procedures. Please consider that SMEs have different structures, different potentials and different needs compared to the large scale industry. They consequently need different treatment and ways of co-operation with the authority, but without being patronized and taken away their self-responsibility.	Noted. Any organisation that meets the requirements is entitled to a the desired production or design organisation approval. Only the status of existing obligations will be changed.
124	General	We strongly hope, that we will be treated, like in the past, as a production organisation with embedded design capabilities. What has proven to work well in relation to safety (first of all) and cost effectiveness, should not been overruled by regulations tailored to suit the needs of large scale transportation aircraft.	Noted. Any organisation that meets the requirements is entitled to the desired production organisation approval. Only the status of existing obligations will be changed. This objective of cost-efficiency and the transition arrangements are reflected in the

		Being a member of the […] we fully support the comment proposed by this association. It is literally vital for us that the introduction of the EASA (The Agency) will be cost-neutral, that it can be done without delay of our current projects, and that the future cooperation with EASA will not cause additional bureaucratic costs or workload. Regarding the current economical situation, especially of SMEs, our potential to invest in non-productive DO- or PO-certification work is very limited. This must thoroughly be taken into consideration during he establishment of EASA-related procedures. Please consider that SME's have different structures, dfferent potentials and different needs compared to the large scale industry. They consequently need different treatment and ways of co-operation with the authority, but without being patronized and taken away their self-responsibility.	Preamble to the Basic Regulation, recital 21. Noted.
		Draft Agency Opinion	
		Explanatory Memorandum	
175	Section V, point c)	We had hoped that the commission could level the patchwork of fee structures across the EU. These differences in fee structures make the cost of doing business in each country varied, and in the new European regulatory system where NAAs are performing the same task using the same rule, an established fee seems appropriate. We believe EASA should consider publishing a recommended fee schedule for certificates of airworthiness, production organisation approvals, etc. that NAAs would use for reference.	Noted. The issue of harmonising national fees and charges structures fall outside the remit of the Basic Regulation. There is no legal basis neither for the Commission nor the Agency to regulate this element of national law. Deferred. The Agency may very well consider this request as guidance, i.e., advisory material to be published at a later stage to respond to such a legitimate need.
146	Section V, point c)	1) The Basic Regulation does not provide a legal basis for either regulating or not regulating national fees and charges. To our knowledge, the European Commission has not determined yet whether the fee system mut also be harmonised in the various European countries for tasks that are under national	Noted. No legal basis. This issue is outside the remit of the Agency, because under the subsidiarity principle this is a matter for the individual Member State to regulate.

		responsibility but derive from EU regulation and implementing rules. This might be dictated by other, more general, community legislation and principles beyond aviation safety context. 2) Consistency of fee system appears particularly necessary fo applications where both NAAs and EASA Agency are responsible (e.g. POA or MOA for European and foreign organisations respectively). 3) The fees and charging regulation will not be decided by the Agency itself as it must be adopted by the European Commission (ref. Basic regulation). Interested parties general positions on these matters will be expressed by ABIP and discussed with EASA Management Board and European Commission.	Deferred. Agency is aware of the need for consistency. Noted. The Agency is directly involved in the development of the fees and charges scheme in accordance with Art 53(1) in conjunction with Article 14(1) Basic Regulation.
032	Section V, point d)	With reference to EASA Consultation-paper 2/203-06-05 we strongly recommend: * Section V, d): A new paragraph is added: "Present procedures for National Approvals of modifications of products, parts and appliances will be in effect for a transition period of 2 years in order to facilitate a smooth transition and provide sufficient time for the aeronautical industry and Member State administrations to adapt to this new framework."	Noted. Art. 3(5) of the draft Regulation permits a 12 months transitional period during which Community law and national law are both applicable. It is believed that 12 months or 24 months maximum is a reasonable period to adapt to this requirement. Thus in view of comments received the draft Regulation has been changed and the reference to one year in the initial opinion, Section V, point d), line 10, is deemed to read now "two year transition".
164	Section III, para. 7	Article 7.1 of the Management Board decision on Rulemaking must be adhered to.	Disagreed. Article 7 is not applicable under Article 15 of the decision (transitional arrangements prevail in this case).
146	Attachmen t 1, 2.2.5	To take into account Article 5(d) of the Basic Regulation on recognition of capability of organisations, Subpart JA and JB are replaced by a single Subpart J which considers Design	Deferred. JAR-21 Subpart JB concept of design organisation approval for parts and appliances has not been

		Organisation Approvals (DOA) only in relation to activities performed by applicant/holders of design approvals (type-certificate, supplemental type-certificate, changes, repairs, APU).Some existing JB approvals would not be eligible under the revised rules. However, If a design approval "privilege" is required, e.g. approval of minor changes for part modification action some of the existing JB organisations will be eligible for DOA a Design Organisation is eligible for a DOA. Acknowledging that other Design Organisations than applicant/holders of design approvals, such as partners or subcontractors for applicant/holders of design approval, can be recognised also their capability, and can require "privilege", e.g. issuance of information or instruction containing an approval statement, provided this is compatible with the dispositions of the DOA of the Design Organisation that they assist, and that this could only be beneficial to safety and will enhance the design/maintenance links, these organisations which were eligible for a DOA under Subpart JB, are also eligible to a DOA under Part 21. […] learned that several currently JB approved Design Organisations regret the disappearance of this official recognition of their capability. They predict that they will be submitted to more potentially inhomogeneous requirements, monitoring and auditing from the TC holders, and will loose "one element of assurance" which their customers appreciate, and which required considerable effort and cost to achieve. […] has found nothing in the Basic Regulation Article 5(d) that leads necessarily to this disappearance. Though the TC holder has the responsibility of the product definition, it is normally not under his competence to cover	retained for Part 21, because it is not immediately related to design approval certificates and therefore it has been considered outside of the scope of the Basic Regulation, Article 5(2)(d). Full response is provided in the final Opinion submitted to the Commission.

		detailed appliance design. It is up to an appliance designer organisation to cover this detailed design, then test the appliance to show that the TC holder specifications are met. The TC holder has to show that, once installed in the product, the appliance performs its intended functions under foreseeable operating and environmental conditions and in liaison with other appliances and systems. Offering DOA eligibility for appliance designers particularly, and for any Design Organisation assisting TC holders more generally, can only enhance the safety of the designs. As all DOAs will now be managed by a single Agency, the Authority is now better placed to ensure that the procedures applied by various Design Organisations working together for the same product are consistent altogether. It should thus be possible to apply privileges, particularly the "issuance of information and instruction with an approval statement" one, at the most suitable level. Having more approval statements within information and instructions, following procedures agreed with the Agency and consistent with the DOA of the TC holders, will allow to improve the formal design/maintenance links, which are considered currently as "not yet sufficiently mature". This assessment about these links was one of the output from the JAA/FAA/Transport Canada effort related to the improvement of the Common Release Certificate guidance material, see TGM/POA/11 from the JAA. Note : this proposed change in the explanatory memorandum is associated with a separate, but consistent, proposal of improvement to Part 21 paragraphs 21A.233 and 21A.239.	
080	Attachment 1, 2.2.6	Even if the Council Regulation 1592/2002, differently from the acceptance of third-country approval (see Article 9), doesn't have explicit provisions for the exporting of products to third-	Noted. Article 2 of the Basic Regulation purports to establish and maintain a high uniform level of

		country, it is matter of fact that the agreements referred to in article 9 of the Council Regulation normally deal with this topic because of reciprocity criteria therein. However the affected document paragraph 2.2.6 should clarify that the exporting of product shall be managed according to the existing agreement between the Member State and the third-country and/or according to the national procedures, until the Community has defined common rules or stipulated appropriate agreement with the third–country. The benefit is that at least there will be a guideline for the national Authorities after the deletion of JAR 21 subpart L taken as reference by them till today.	safety and *inter alia* to facilitate the free movement of goods in Europe. Whereas the importation of third-country approvals is largely safety-motivated, the issuance of export airworthiness approvals is primarily a matter of common commercial policy. Where so provided under an Article 9 recognition agreement, reciprocity clauses may cover the fulfillment of the above objectives outside the Community. In the absence of Community action in the field of export airworthiness approvals, and of an applicable Article 9 agreement, Subpart L of national rules (i.e., JAR 21) shall remain applicable, pursuant to Article 8(2) of the Basic Regulation.
146	Attachment 1, 2.2.6	Point 2.2.6 is not understood. 1) An export certificate of airworthiness is a tool for the facilitation of exchange of products, similar to authorised airworthiness release certificates. It does not authorise the operation of the aircraft concerned. Such a "tool" or procedure is not at the level of, and therefore quite naturally does not appear in, the Basic Regulation. Export certificate of airworthiness issuance will be absolutely needed to export European aircraft. 2) Inconsistency with text of draft Commission Regulation (Article 4, paragraph 2) which mentions the possibility for the agency to accept export certificates of airworthiness for foreign aircraft being imported in Europe (therefore implicitly admitting, by reciprocity, that foreign authorities might require such certificates for European products being imported in their country). 3) Export certificates of airworthiness will have to be issued by, or on behalf of, EASA Agency, at least in all situations where a	1) Noted. Indeed Articles 9 and 18 apply in the context of international relations. Thus there is no legal basis neither for the Commission nor for the Agency to issue export airworthiness certificates. Whereas the importation of third-country approvals is largely safety-motivated, the issuance of export airworthiness approvals is primarily a matter of common commercial policy. 2) Disagreed. Article 4 (2) should be read in full and no conclusion may be drawn from such a provision in the field of export certificates. The purpose and effect of Art. 4(2) is to import certificates which are recognized under bilateral agreements, not to prejudge the export policy of the Agency or the Community as a whole.

		bilateral aviation safety agreement (or equivalent recognition agreement) is concluded between the Agency and the foreign authority concerned.	
099	Attachment 1, 2.2.9	According the CAA-NL paragraph 2.2.9. last part, second sentence, should refer to the tasks & functions related to the design/TC/change witch are now transferred to the agency, not the formal ICAO responsibilities, since these stay with the State of Design, the State of Manufacturing, or the State of Registry (Article 12.2.(e) of the EASA (basic) regulation).	Noted. Revised paragraph now reads: "responsibility is now exercised by EASA".
099	Attachment 1, 3.1	The subpart identification in section A and B are directly related, unfortunately this is not so for the paragraph numbering. CAA-NL suggests related paragraph numbering between section A and B, for easy cross reverence this is a must.	Noted. Paragraph numbering relates to JAR-21 from which Part 21 derives directly. Under article 5(5) of the Basic Regulation, there is an obligation on the Commission "to reflect the state of the art" practices in the field of airworthiness, i.e., namely JAR-21.
147	Attachment 1, p. 12	The proposed Part 21 is based on JAR-21 Amendment 4, plus consideration of additional NPAs, listed in paragraph 4, page 12 in the consultation paper. Some of those NPAs have progressed up to adoption by the JAA Committee, or even final publication in JAR-21 Amendment 5. However, NPAs 21-3, 21-23 and 21-33 are at the stage of "NPA comments to the sponsor", which means that there has not yet been an agreement on the final text in the JAA system, and that the comment-response document is unavailable. Without knowing all reasons why the proposed Part 21 text has been drafted as it is, interested parties may have difficulties in preparing meaningful comments, especially in the short time frame allowed. As a result, there may be a need to reopen some subjects, shortly after adoption of the initial Part 21. We request that EASA positively take consideration of possible industry requests to this aim.	Noted. NPAs relating to "Noise/Emissions", "Alternative Procedures" and "Manuals" were all considered "mature" when passed to the Core Group for consideration and inclusion in Part 21. All had been through the formal JAA consultation process at least once and comments received were given due consideration prior to incorporation in Part 21. NPA 21-3 ("Noise/Emissions") had in fact already received several consultation round. For information, NPA 21-33 ("Manuals) only affects ACJ material, not Part 21.

164	Attachment 1, para. 4	The list of TGM considered and included/not included should also be presented, with proper justification for those not included.	Noted. The full list of TGM may be provided. However, both Part 21 and TGMs have been published and are easily comparable.
Transfer Policy paper			
090	Attachment 2	2) The mentioned responsibility of the agency for "some large European production organisations" is not in line with Part 21, Subpart G (21A, 134 & 135). Who will decide if the agency is the competent authority for approval of a large Production Organisation? (see Part 21, 21.1)	Noted. Draft Part 21 does not reflect that the Agency can be the competent authority for a European production organisation. This was considered to be reasonable in view of the obligations of the Agency in the short terms, and consistent with the optional approach described in article 15(2)(b)(ii) of the Basic Regulation. The text may need to be expanded at a later stage when the Agency is ready to take over the related responsibility. For the time being, 21.1 applies.
001	Attachment 2, 1.1	Regarding Attachment 2, "Transfer Policy," to the Consultation-Paper 2/2003-06-05, Section 1.1, letter D is ambiguious. It refers to a section a(i)-(footnote 2). Can you please clarify which statement this is referring to?	Noted. Does it refer to footnote 11? Text changed accordingly.
099	Attachment 2, para. 1.3-1.4	Applications in process (started with a NAA before 28/9/2003) are not dealt with. CAA-NL suggests they could be finalised by the NAA before transfer to the Agency.	Noted. New provisions in the draft Regulation on ongoing applications for DOAs (new article 3(6)) are now included in the draft. Approval of parts and appliances are already governed by article 2(13) and 2(8). See Section below on Draft Regulation.
Draft implementing Regulation			
General			
164	General	There is nothing in the Regulation regarding what will happen with the so called "public domain" type certificates (i.e., those type certificates where the TC Holder has gone out of business).	Noted. Determination by the Agency under Art. 44 is required due to the complexity of the matter.

099	General – "EASA Reg."	CAA-NL suggests to replace "The Basic regulation" with "The EASA regulation" as in the regulation on Continuing Airworthiness, for uniformity purpose.	Noted. Both drafts will be harmonized in this respect. Reference to "Basic Regulation" is consistent with current Community practice (including other Agencies). Nothing prevents practice to refer as EASA Regulation (Management Board). Ultimately, it will be incumbent upon the Agency to define its own linguistic arrangements.
108	General – "EASA Reg."	In the beginning of the preamble of the Maintenance Regulation, the expression "EASA Regulation" is framed. It would be advisable to maintain that concept in all EASA related Commission Regulations, i.e. also in the Certification Regulation. At the moment, in the Certification Regulation, the concept used for the EASA Regulation is "Basic Regulation". Proposed actions: 1) Use the same beginning of the preamble as in the Certification Regulation. This will introduce the expression "EASA Regulation" in both Regulations. 2) Make subsequent changes in the rest of the text (whenever the text refers to the EASA Regulation).	Noted. Both drafts will be harmonized in this respect. However, reference to "Basic Regulation" is consistent with current Community practice (including other Agencies). Nothing prevents practice to refer to EASA Regulation (Management Board). Ultimately, it will be incumbent upon the Agency to define its own linguistic arrangements.
108	General - definitions	In the EASA Regulation, Art. 3, "Product" is defined as "aircraft, engine or propeller". "Parts and appliances" is defined as "any instrument, equipment, mechanism, part, apparatus, appurtenance or accessory, including communications equipment, that is used or intended to be used in operating or controlling an aircraft in flight and is installed in or attached to the aircraft. It includes parts of an airframe, engine or propeller;". The references made in the draft Certification Regulation to "product" and "parts" and "appliances" are somewhat different and should be verified to ensure that the paragraphs really regulate what is intended.	Noted. Particular care has been taken to keep the spirit of the Basic Regulation and to ensure full conformity with the definitions under Article 3 thereof.

029	General - transition	We would like to emphasise our general impression that the transition and implementation periods, when fixed to only one or two years respectively, are too short. Authorities and industry as well need sufficient time to adapt their respective procedures to the new regulations. This aspect seems not to be reflected appropriately enough in the drafts. In addition the "grand-fathering" and mutual recognition procedures with respect to JAA Non-EU Member States are not clear enough and there is in our view a risk of negative impact on industry if the procedures are not clear and stringent for all the authorities involved after the 28. September. For reasons of clarification we would also prefer if in the implementing rules, where reference is made to "Member States", the reference would be amended to "EASA Member States", as also Non-EU Member States may join the Agency on the basis of Article 55 of the basic regulation.	Disagreed. The implementation period or entry into force provision of 28 September 2003 is consistent with Article 56(1) of the Basic Regulation. There is no "automatic changeover" from one system (national rules) to the other (common rules) as this would be too burdensome to industry and authorities alike. The necessary transitional provisions are provided for under the implementing rules, pursuant to Article 56(2), to allow reasonable time for adaptation. Disagreed. Article 249 of the Treaty establishing the European Community ("EC Treaty") states that: "A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States". Article 299 EC Treaty establishes its own territorial scope of application, hence that of any regulation, which is limited to the Member States of the Community (para. 1). The issue of the treatment given to non-member (or third) countries is afforded under article 9 and 18 of the Basic Regulation, and in the final Opinion submitted to the Commission.

090	General - transition - ICAO	Transition period for transition from JAR21 and national requirements to Part 21 is too short because a number of member states have to amend their legal systems. Transition period shall be not less than 36 month to allow a smooth transition and to establish the required resources and processes. Type certification by EASA for EC is not in line with ICAO obligations because EC is no state and therefore no member of ICAO and can not be the "State of Design". "State of Design" needs to be identified.	Disagreed. It is submitted that the draft implementing rules generally afford reasonable time for adaptation. Noted. In applying the concept of "State of Design", a functional approach has to be followed in accordance with Article 15(1) of the Basic Regulation ("The Agency shall…carry out the functions and tasks of the State of design…"). Full response on the issue of "ICAO State of Design" is provided for in the final Opinion of the Agency submitted to the Commission.
032	General - transition	For an already approved design organisation according to JAR 21 the new regulations are manageable. But for the rest of the industry working with modifications under National Regulations the requirement to adopt Part 21 in three months is impossible. The Regulation (EC) No 1592/2002, Article 56, paragraph 2 opens up for a 42 months transition period. The recital (7) in the draft Commission Regulation also states that "it is necessary to provide sufficient time for the aeronautical industry and Member State administrations to adopt to this new framework". But none of these intentions are fulfilled in the draft implementation rules regarding modifications presently performed under National Regulations. With the new Part 21 in effect already 28 September this modification process comes to a halt. To be able to fulfil our commitments and support the Government Agencies that are our customers [we] need to be able to continue to design modifications and apply for additional modification approvals according to National Regulation until we are ready to be approved in accordance with JAR-21/Part-	Noted. The Basic Regulation which lays down the 28 September deadline entered into force in 2002. Art. 3(5) of the draft Regulation permits a further 12 months period to allow for the gaining of DOAs in association with STCs. It is believed that 12 months or 24 months maximum is a reasonable period to adapt to this requirement. The draft Regulation and Opinion will be changed accordingly.

		21. We understand the situation to be the same for many other companies to. We expect a reasonable time frame for such a process to be 2 years. The necessary time frame, in our view, will be decided more by the time needed for the Authority to handle all applications than the time needed for each company to comply with the new rules. Implementation of Part 21 on 28 September this year would be an undue burden for [us] and a number of the European aeronautical industries. Without a reasonable time for implementation a number of us will have to face the risk of being forced to close down. The good intention to harmonise regulations within Europe must be coupled with a reasonable transition period. The industry must be given the opportunity to adapt instead of stopped. Giving the industry time to adapt also means a more competitive industry. The more industries that can meet the requirements the better competition and also a Europe not loosing ground to the US. The new Part M does have an implementation time of 2 years for aircraft not used for commercial transport i.e. Aircraft operated under National Regulations. The same principle ought to be applied for the transition from National Regulations to Part 21.	Noted. Noted. Final determination of transition measures will be made by the EASA Committee, taking into account the comments received.
112	General - transition	Section A, Subparts F, G, H, I There should be a transition period established at least for those subparts. This will allow the Member State authorities properly transfer existing certificates to EASA certificates. The end of such period should be defined. During transitional period both type of certificates should remain valid.	Noted. The draft Regulation provides reasonable time for transition and has been amended in view of other comments received.

		Our experience shows that adopting new requirements without reasonable transition period worsen the situation. In most cases the situation remains as was before.	
090	General - transfer	There is no clear process for transfer of products certified prior to implementation of JAR21 and later under national requirements and procedures. It is unclear and an undue burden to require certification of all "old" products under this part and will cause a serious dissatisfaction to the people in the EC faced to such a burden which is no way will increase the level of safety in aviation.	Disagreed. Under the present transfer policy and draft implementing rules, provisions are made for "grand-fathering" acquired rights. There is a legal presumption that existing certificates and approvals issued under applicable JAA and national procedures are safe and will remain so after 28 September 2003. Therefore there is no requirement to re-submit an application for certification of an already certificated product, part or appliance.
161	General – transfer	It is pity that most airworthiness type certificates are transferred immediately to EASA while noise approval will remain under national administrations until 28 March 2007. This will result in a complex situation where most Certificate of Airworthiness will be issued under EU rules, allowing free circulation, while noise certificates will remain national. The same logic as for airworthiness should have been followed : adopt provisionally the ICAO data (noise levels etc.) approved by the state of design or JAA for JAA certificated products and review a posteriori national additional requirements.	Noted. Article 2(3)(a)(ii) of the draft Regulation specifies that a product that has a type-certificate issued before 28 September 2003 by a Member State shall be deemed to have a type-certificate issued in accordance with the Certification Regulation when amongst other things the environmental protection requirements are those laid down in Annex 16. It follows that noise certificates will be issued under EU rules (according to a procedure and in a format laid down in Part 21). However unlike findings of compliance with the airworthiness requirements where a product is deemed to be either "safe" or "unsafe" compliance with the noise and emission requirements also involves approval of specific noise and emission levels. It is known that national authorities, even those of the EASA states, have not always approved the same noise

			and emission levels. There are no bilateral environmental agreements that would allow the TC basis to be determined by the State of Design. Also there are known to be significant historical differences between a State of design's requirements for environmental protection and those of ICAO Annex 16. It has therefore been decided that whereas EASA should adopt into EASA TCs the environmental protection requirements of ICAO Annex 16 the policy to be followed for the transfer of the "correct" certified noise levels to be entered into the type certificate data sheet for noise shall be determined by EASA during the transition period. Until such determination has been made Member States shall issue noise certificates in accordance with Part 21 but making reference to the certificated noise levels as determined by themselves.
108	General – legal (Preamble, Articles 2.3 (a), 2.3 (b), 2.4 (d), 2.4 (c), 2.6 (b), 2.7, 2.8 (c), 2.9, 2.13, etc.)	It can be questioned if the "automatic recognition" of approvals, licences and certificates envisaged in the [above stated preamble and Articles] is completely within the scope of "automatic recognition" as prescribed by Article 57 of the EASA Regulation… Article 57 of the EASA Regulation denotes that "The provisions of Article 8 shall apply to products, parts and appliances, organisations and persons that have been certified in accordance with the provisions referred to in paragraph 1 of this Article." Paragraph 1, in turn, refers to *inter alia* Regulation (EEC) No 3922/91. Now, to take an example from the Certification Regulation,	Noted. Full response to the issue of "automatic recognition" is provided for in the final Opinion of the Agency submitted to the Commission.

		Article 2.3, we see that the reference to “previous regulation” as regards “automatic recognition” of a product in the Article arguably goes further than what is contained – or allowed – within Regulation (EEC) No 3922/91: (a) Such a product shall be deemed to have a type-certificate issued in accordance with this Regulation when: (i) its type-certification basis is: - the JAA type-certification basis, for products that have been certified under JAA procedures, as defined in their JAA datasheet; or - for other products, the type-certification basis as defined in the type-certificate datasheet of the State of design, if that State of design is: - a Member State; or - a State with which a Member State has concluded a bilateral airworthiness agreement under which such products have been certified on the basis of that State of design airworthiness codes; As can be seen, the article refers to other “previous regulation” than only what is included in 3922/91. To take another example we can look at Article 2.13 from the Certification Regulation: Approvals of parts and appliances issued by a Member State and valid at the time of entry into force of this Regulation shall be deemed to have been issued in accordance with this Regulation. Here, no reference at all is made to what kind of “previous regulation” the approvals should have been made in accordance with in order to qualify for “automatic recognition”. It is probable that some of the approvals of parts and appliances that the article is aiming for may have been made – or at least modified - according to other national regulation than those regulations contained in Regulation 3922/92.	

		This pattern appears several times in the draft Regulations. This is the reason why it can be questioned if the "automatic recognition" of approvals, licences and certificates envisaged in the some of the articles is completely within the scope of the "automatic recognition" as prescribed by Article 57 of the EASA Regulation…This is not the place to propose an answer, nor solution, but it may be wise to look into this issue before releasing the Regulations since the risk is that some of the "automatic recognition" paragraphs may be constitutionally illegal (i.e. decided outside what is allowed under Article 57 of the EASA Regulation). Reason (s) for proposed text or comment: Constitutionality, legality, rule of law	
108	General - editorial	Documents in general are in need of an editorial review in regard of language and consistency.	Noted.
108	General - Forms	The forms published in the appendix generally needs to be reviewed in regard of content and consistency. We also suggest that forms are deleted from the implementing rules and published elsewhere.	Noted. The Forms have been harmonized and updated as much as possible. It is recognized that this is also a task for the Agency once it is fully operational to further improve consistency between all Forms. Mandatory Forms, that is, those included in Part 21, are necessary for standardisation and uniformity purposes.
Draft Reg. Preamble			
073	Preamble	Footnote 2 indicates proposed change to Article 6 of Regulation 1592/2002. Require sight of this proposal in order to be able to comment.	Noted. The EASA Committee will review the Commission proposal for the implementation of article 6(1) of the Basic Regulation in September.
161	Preamble, (2)	Amend the second visa of the Preamble of the draft Certification Regulation as follows:	Noted. The necessary text changes will be made in view of other comments received.

		THE COMMISSION OF THE EUROPEAN COMMUNITIES, […] Having regard to the Opinion of the "European Aviation Safety Agency" [3] , (hereinafter the "Agency"); In the rest of the draft Regulation, including its Annex Part 21, the “European Aviation Safety Agency” is referred to as the “Agency”. It has to be clarified somewhere that the Agency is the EASA, the best place being in the proposed section of the preamble, as it is drafted in the draft Maintenance regulation.	
090	Preamble, (3)	Delete all words of last sentence after “obligations”. The requirements and procedures shall always be consistent with ICAO obligations because otherwise the certified products and components may not be acceptable for use in non EC member, ICAO member states.	Carried.
164	Preamble, (3)	Regulation 1592/2002 is currently not applicable to aircraft not registered in a Member State. Future amendment to dealt with them requested in Whereas clause (2) of 1592/2002 Proposal: remove reference to aircraft not registered in a Member State	Disagreed with the first contention. Article 4(1) applies to both registered and non EU registered aircraft (para.c). Exclusion list of aircraft is to be found in Annex II to the Basic Regulation. However, suggestion to amend recital (3) is carried in view of other comments received.
073	Preamble, (5)	The intention of this text, as it applies to both current and future knowledge and experience in the light aircraft / air sports, should apply equally to Part M, and where affecting aircraft under 5700 kgs, to Parts 66, and 147.	Noted. Preamble 5 derives from Article 5(5) of Basic Regulation.
073	Preamble, (5)	“the state of the art and the best practices, take account world-wide aircraft experience and scientific progress and allow for immediate reaction to established causes of accidents and serious incidents”	Carried.
073	Preamble,	Require clarification of the composition of the Regulatory	Disagreed.

	(8)	Committee	The composition of the Regulatory Committee in general can be found in the Decisions referred to in Article 54 of the Basic Regulation. In addition the EASA Committee reviewed its draft rules of procedure on 17 July and will adopt them formally, together with the Agency's implementing rules, in September. A clarification in the Preamble, as requested, is not necessary. Standard procedural text now reads as follows: "The measures provided for in this Regulation are in accordance with the opinion of the European Aviation Safety Agency Committee established by Article 54 of the Basic Regulation". Articles 5 and 7 of Decision 1999/468/EC are applicable throughout the adoption process of rules delegated to the Commission and Member States, i.e., to the EASA Committee. The EASA Committee is a regulatory committee chaired by the Commission where each Member State is represented and has a right to change propose amendments to the implementing rules. The Committee is responsible for issuing an opinion to control the exercise of delegated powers conferred upon the Commission in implementing the Basic Regulation.
080	General - Definition	There is no definition of the term "Basic Regulation". To make the reference to the Council Regulation N°1592/2002 certain and unequivocal it is proposed to include a definition to identify the "Basic Regulation" or to change "Basic Regulation" with	Noted. "Basic Regulation" stands for "Council Regulation 1592/2002". This is now made clear in the preamble to the draft Regulation.

		"Council Regulation N° 1592/2002" at every place where "Basic Regulation" appears.	
098	Articles 2, 3, 4	The deadlines mentioned in Articles 2,3 & 4 should be extended until end of March 2007.	Disagreed. The present draft implementing rules generally afford a reasonable time to adapt.
090	Articles 3, 3., 4 and 5 and Article 4(3) and 4	Transition period of one year or as mentioned is too short because the applicable regulations are not available early enough and AMC's are completely missing. Training of the personal involved and change of the related processes need to come in parallel to the daily business and therefore a transition period off not less than 36 month seems to be appropriate as a minimum.	Noted. The draft implementing rules were published on 6 June 2003, whereas the draft AMC and GM to Part 21 were published on 8 July 2003. The present drafts generally afford a reasonable transitional period for adaptation.
108	Articles 3(3) and 4(3)	According to these Articles an organisation will be "deemed to comply to this Regulation" under certain circumstances. The need for this "automatic recognition" is practical. However, it may be wise to envisage a procedure by which such an organisation needs to show that it lives up to the relevant parts of the Regulation and its Annex within a certain time period anyway. Reason (s) for proposed text or comment: For the reason of fairness and to know that the organisation fully understands and complies with the new legal material prescribed by the Regulation and the Annex.	Noted. Continued surveillance activities are provided for in Part 21, Subparts G and J. Adjustments to new requirements will be covered with the level two findings introduced in Arts 3(3) and 4(3) during first year.
052	Article 3(4) to (5)	Due to the fact that PART 21 makes design organizations for minor changes and minor/major repairs possible, the number of approved design organizations will significantly increase. Therefore the transition periods under Article 3, para 4. to 5. should be extended.	Disagreed. The Agency believes that for TCs to obtain a DOA within two years is reasonable. However, it is proposed to extend Art. 3(5) up until 28 September 2005 in line with Art. 3(4) to relieve industry from undue burden.
052		Moreover under Article 56, para 2. of the Regulation 1592/2002	Disagreed.

		a transition period of 42 months starting with 28 September 2003 is stated. We propose to amend the text in line with Regulation 1592/2002 as follows: - under 4. amend to “before 28 March 2007” - under 5. amend to “before 28 March 2007”	The entry into force on 28 September 2003 is consistent with Article 56(1). An extra two year period is now granted under new paragraphs 4 and 5 to allow sufficient time to adapt and demonstrate capability, hence the extension up until 28 September 2005.
Articles			
161	Art. 1	Before Annex 2, §(e) of Regulation 1592/2002 is modified, or IR 21 is adapted to ultra-light autogyros and ultra-light airships (see definition below), or a different IR is developed for those UL aircraft, we consider **that Article 1 – Scope should be amended to clarify that the Certification regulation does not apply to ultra-light autogyros and ultra-light airships, for which the national regulations shall apply.** Such ultra-lights should be defined clearly, for instance: ☞ **ultra-light autogyros**: no more than two seats with: • a maximum continuous power rated at no more than: • 60 kW for a single seater, or • 80 kW for two seater; • a maximum take-off mass (MTOM) of no more than: • 300 Kg for a single seater, or • 450 Kg for a two-seater; • a rotor loading at MTOM comprised between 4,5 and 12 Kg per square meter. ☞ **ultra-light airships** : no more than two seats with • a maximum continuous power rated at no more than • 60 kW or less for a single seater, or • 80 kW for a two-seater; • a maximum permissible volume of the envelope of no more than; • 900 m^3 if the lifting gas is helium, or • 2000 m^3 or less for hot air airships	Noted. The term “aeroplanes” in Annex II (e) has been poorly translated into “aéronef” instead of “avion”. This means that these airships and autogyros under the French version of the Basic Regulation are left outside the scope of exclusion. The Agency is responsible for these aircraft as they fall under the remit of the Basic Regulation. As a result of this translation slip, the Agency may decide in due time to issue an Opinion to the Commission suggesting to adjust and update the Basic Regulation, Annex II.

		Impracticable: As written, Annex 2, §(e) of Regulation 1592/2002 does not exclude ultra-light autogyros and ultra-light airships (see definition above), which means that, as long as Annex 2 is not amended, the Agency is in charge of such aircraft. However, one must admit that the proposed implementation rules for certification are not adapted to these two categories of aircraft, all the more as there is no Certification Specification available (no JAR Airworthiness code has ever been developed). By the way, one can wonder whether the intent of the lawmaker when writing the Basic Regulation 1592/2002, was not actually to include those ultra-light aircraft in paragraph (e) of Annex 2 (thus excluding them from the scope of the Basic Regulation) and that the use of the wording "aeroplane" instead of "aircraft" was not intentional but merely the result of an editorial mistake. As a matter of fact, in the French version of the Basic Regulation, aeroplane has been translated "*aéronef*", which is the French for "aircraft"! As a consequence, in all French speaking Member States, any non aeroplane aircraft could meet (e) and thus not be covered by the Commission Regulation on Certification, no matter how much it weighs… This also has to be clarified.	Noted. The intent was to include those ultra-light aircraft.
164	Art. 1(b)	Add after airworthiness certificates "including restricted airworthiness certificates and permits to fly" For the sake of completeness and consistency with Article 1 (a).	Noted. Paragraph now reads as follows: "(b) the issue of certificates of airworthiness, restricted certificates of airworthiness, permits to fly and certificates formally releasing products, parts or appliances;"
161	Art. 1(b)	• Amend (b) as follows: (b) the issue of titles of airworthiness of one of the following three categories: individual certificates of airworthiness, restricted certificate of airworthiness and permits	Noted. Text changed accordingly in view of other comments received.

		to fly, and the issue of authorised release certificates; • Amend the rest of the text accordingly, replacing "airworthiness certificates" by "title of airworthiness", all over the Certification Regulation and its Annex Part 21. Editorial: There is no notion of "airworthiness certificates" in the Basic Regulation which only identifies individual certificates of airworthiness, restricted certificates of airworthiness and permits to fly. Yet as it is actually more convenient to have a generic term in some articles for those three titles, we suggest that "airworthiness certificate" be replaced by "title of airworthiness" (or "airworthiness title"), in order to avoid the confusion between "airworthiness certificate" and "certificate of airworthiness" which would lead to one single wording after being translated in some languages (e.g.: "*certificat de navigabilité*" in French).	Deferred. Comment is fair but after considering the problem of translation, it appears that it can make problems in other languages. It needs further consideration and text is left as it is in English.
035	Art. 1(e)	[Change to read] "the issue of a noise certificate;"	Carried. Also in Subpart I, 21A.201 will be changed accordingly ("individual" is now deleted).
122	Art. 1(e)	the issue of individual noise certificates" delete the word "individual"	Carried in view of other comments received.
146	Article 2	3. With regard to a product that has a type certificate or supplemental type certificate issued before 28 September 2003 by a Member State, the following provisions shall apply : (a) Such a product shall be deemed to have a type-certificate or supplemental type-certificate issued in accordance with this regulation when: (i) its type-certification or supplemental type-certification basis is :	Noted. This issue has been omitted. The draft Regulation must be adjusted to allow for the transfer of existing supplemental type-certificates, either under Article 2(3), which would pose a serious burden on the Agency for determination under 3(c) and (d), or under a new para. in Article 2. Thus, after much thought, a new proposed Article 2(14) is produced to read as follows:

		- the JAA type-certification or supplemental type-certification basis, for products that have been certified under JAA procedures, as defined in their JAA datasheet; or - for other products, the type-certification or supplemental type-certification basis as defined in the type-certificate or supplemental type-certificate datasheet of the State of design, if that State (…) (ii) (unchanged) (b) A product type design approved under a type-certificate or supplemental type-certificate referred to in paragraph (a) shall be deemed to include all changes approved, and the airworthiness directives issued by the Member States before 28 September 2003. (c) The Agency shall determine the type-certificate and supplemental type-certificates of the products not meeting paragraph (a) before 28 March 2007. (d) The Agency shall determine the type certificate or supplemental type-certificate data sheets for noise for all products covered by this paragraph before 28 March 2007. (…) 4. With regard to products for which a type certification or supplemental type certification process is proceeding through the JAA or a Member State on 28 September 2003: (a) (unchanged) (b) (unchanged) (c) by way of derogation from 21A.17; paragraph (a) of the Annex to this Regulation, the type certification or supplemental type certification basis shall be established by the JAA or, where applicable, the Member State; (d) (unchanged) 5. With regard to products that have a national type-certificate, or supplemental type-certificate, or equivalent, and for which the approval process of a change carried out by a Member State is not finalised at the time when the type-	"With regard to supplemental type-certificates issued by a Member State under JAA procedures or applicable national procedures and with regard to major changes to products proposed by persons other than the type-certificate holder of the product, approved by a Member State under applicable national procedures, where the supplemental type-certificate, or major change, is valid on 28 September, the supplemental-type certificate, or major change, shall be deemed to have been issued under this Regulation." It should be mentioned that there is no such thing as a supplementary type certificate data sheet for noise.

		certificate or supplemental type-certificate is issued in accordance with this Regulation: (a) (unchanged) (b) (unchanged) (c) (unchanged) 6. With regard to supplemental type-certificates for which a certification process is being carried out by a Member State on 28 September 2003 under applicable JAA supplemental type-certificate procedures; and with regard to major changes to products, proposed by persons other than the type-certificate holder of the product, for which a certification process is carried out by a Member State under applicable national procedures : (a) (unchanged) (b) (unchanged) 7. With regard to products that have a national type-certificate, or supplemental type-certificate, or equivalent, and for which the approval process of a major repair design carried out by a Member State is not finalised at the time when the type-certificate or supplemental type-certificate is issued in accordance with this Regulation, compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.433(a) of the Annex to this Regulation. Reason(s) for proposed text/comment The proposed Article 2 is clear for type-certificates. It may be believed that the type-certificates rules apply also for supplemental type-certificates, which are type-certificates that, in addition, are being qualified of “supplemental”. Nevertheless, paragraph 6 specifically addresses supplemental type-certificates, but only a limited population of them : the ones for which a certification process is being carried out by a	

		Member State on 28 September 2003. Thus, what will happen on 28 September 2003 to all the other existing supplemental type-certificates, i.e. all these that have been certified prior to 28 September 2003, is not so clear. Knowing what will happen when transition to EASA takes place is an obvious need for all the Industry, be it owners or operators of aircraft that embody design changes covered by supplemental type-certificates, or holders of such supplemental type-certificates. Taking into consideration that the rules for type-certificates and the ones for supplemental type-certificates, are, and had been, essentially similar under JAA and probably Member States procedures, the proposal is that the supplemental type-certificates be handled during the transition to EASA essentially the same way than the non-supplemental type-certificates. We have not found any principle arguments against this approach.	New proposed Article 2(14) reads as follows: "With regard to supplemental type-certificates issued by a Member State under JAA procedures or applicable national procedures and with regard to major changes to products proposed by persons other than the type-certificate holder of the product, approved by a Member State under applicable national procedures, where the supplemental type-certificate, or major change, is valid on 28 September 2003, the supplemental-type certificate, or major change, shall be deemed to have been issued under this Regulation."
161	Art. 2, new para.	• Add a new paragraph (xx) to Article 2 as follows: "xx. An engine or propeller installed on an aircraft that has a type-certificate issued in accordance with paragraph 3 and listed by the Agency in according with the provisions of (e) of paragraph 3 shall be deemed have a type-certificate issued in accordance with this Regulation. In such case, the data sheet shall be the relevant information contained in the data sheet of the aircraft" • **General comment:** Some Member States issue "national labels" which could be identified later on by the Agency and used as a basis to draw "European labels". The Regulation should recognise the existence of such "national labels". France will continue to issue such labels until the Agency takes over. Reason(s) for proposed text/comment	Noted. Art. 2(3) as such covers products, therefore engine and propellers. The Agency may decide to expand the scope of existing POA or DOA approvals. Already, material manufactured has been introduced in Part 21.

		Implementation problem • *new paragraph (xx):* Consistent with transfer Policy • *general comment:* France issues several labels (e.g. :Raw materials, Fire testing laboratories). These labels are produced by the applicant instead of having to show its capability by a new demonstration in the area covered by the label, during the Demonstration of Capability for Production .	
032	Art. 2	With reference to draft "Commission Regulation laying down implementing rules for airworthiness …." we strongly recommend: A new paragraph stating "By way of derogation from paragraph 1 Member State may issue certificates according to National Regulations for products, parts and appliances until 28 September 2005."	Noted. Article 56(2) provides for a maximum transition period of 42 months subject to the applicable provisions of the implementing rules. The proposed paragraph cannot be carried in full but will be reflected in arts 3(5) and 4(4) to open up a transitional period of two years (until 28 September 2005), as requested.
108	Art. 2	In the transfer policy paper paragraph 1.1.3(c) it is suggested that: " it is advisable that the EASA conduct an evaluation of all products, in order to determine if the reference type certificate need to be updated for safety reason". It is furthermore stated that consideration should be given for mandating such process in IR-21. […] is of the opinion that it should be mandated. Proposed text: Insert a new paragraph in Article 2 that mandates the evaluation within two years.	Deferred. The Agency is aware of the need to carry out this task and will develop the necessary procedures in due time.
164	Art. 2(2)	Whilst derogation for a/c registered in a 3rd.country (Art. 4.1.c) of 1592) is understood, derogation for a/c designed or manufactured in a Member State (Art. 4.1.a) of 1592) is not understood (we don't want somebody having an Airbus registered to claim for that derogation; also permits to fly under Subpart H will be needed for production flight tests of aircraft coming out of the assembly line)	Noted. Revised Article 2(2) now reads as follows: "By way of derogation from paragraph 1, aircraft, including any installed product, part or appliance which are not registered in a

			Member State shall be exempted from the provisions of Subparts H and I of Part 21."
108	Art. 2(2)	Article 2.2 should read: "By way of derogation from paragraph 1, aircraft, including any installed product, part or appliance…."	Disagreed. Article 4(1) applies.
078	Art. 2(2)	Article 2 paragraph 2 should read: "...Article 4 paragraph 1 item (a) and item (c**) of Council Regulation 1592/2002**..." Reference to Article 4 paragraph 1 item (a) and item (c) is misleading. Reason for change: To avoid that the reference might be mixed up with the drafted Commission regulation	Noted. "Basic Regulation" stands for "Council Regulation 1592/2002". This is now made clear in the preamble to the draft Regulation.
175	Art. 2(2)	We understand that part 21 subparts H and I will not be applicable to aircraft, including any installed product, part or appliance, which are designed or manufactured by an organisation for which the Agency of a Member State ensures safety oversight or which are registered in a third country and used by an operator for which any Member State ensures oversight of operations. We understand why subparts H and I don't apply to aircraft, including any installed product, part or appliance registered in a third country. Our question is what are the requirements for the issue of airworthiness and noise certificate in the case where the aircraft, including any installed product, part or appliance are designed or manufactured by an organisation for which the Agency of a Member State ensures safety oversight? This should be clarified in the regulation.	Noted. Derogation should only apply to aircraft specified in Article 4(1)(c) of Basic Regulation. Article 2 of draft Regulation on Certification is amended accordingly.
099	Art. 2(3)	The first sentence speaks of Type certificates where the transfer policy paper in para 2.3. first sentence reveres to already certified products, witch also coffers products for witch only CofA's are issued without a TC. With the current wording these aircraft seem not to be included.	Noted. A determination shall be made by the Agency under paragraph (3)(c).

161	Art. 2(3)	Amend paragraph 3 of article 2 as follows: "3. With regard to a product that has a type-certificate issued, or that has been approved in compliance with equivalent former existing procedures if type certification was not entered into force at the time of the approval, before 28 September 2003 by a then Member State, the following provisions shall apply: (a) Such a product shall be deemed to have a type-certificate issued in accordance with this Regulation when: (i) it has been certified under JAA procedures, or (ii) the State of design is a member state, or (iii) the State of design has concluded a bilateral agreement with one Member State and the product has been approved by this Member State on the basis of the State of design airworthiness code. (b) The certification basis for products meeting paragraph (a) shall be: (i) for products certified under JAA procedure, the JAA certification basis as defined in the JAA data sheet or, for other products, the State of design certification basis; (ii) the airworthiness directives of the State of design , including any deviation accepted by one member state before 28 September 2003; (iii) the environmental protection requirements are those laid down in Annex 16 to the Chicago Convention, as applicable to the product. and the type design shall include all changes approved by the Member States before 28 September 2003. […] (e) Before 28 September 2003, the Agency shall draw up a list of all products meeting paragraph (a). This list shall be updated	Noted. The present draft is deemed safe and consistent with the remainder of the draft Regulation.

		whenever a product has been determined a type-certificate by the Agency according to (c) " Reason(s) for proposed text/comment: <u>Implementation problem</u> • Current text limits the transferred products to those holding a Type Certificate. Type certification was not in place in all member states several years ago, and several old products may not hold a TC. The proposed text extends the scope to products that were accepted by EU Member Sates before 28/9/03, in compliance with equivalent former existing procedures if type certification was not entered into force at the time of the issuance, which is the real intent. • **(a) & (b)** Current § (a) mixes the criteria for the selection of products to be transferred and the definition of the certification basis. Furthermore, the certification basis as defined does not refer to the AD's of the state of design, which is inconsistent with what was agreed in the Transfer policy. Proposed text aims at (a) defines the criteria for selection and (b) establishes the EASA certification basis and type design. • **(e)** It is essential to have a list of products deemed to have a type certificate according to §(3)(a) before 28 September 2003, in order for National authorities to be able to issue airworthiness certificates on or after 28 September 2003. That list shall be enriched with all products for which the Agency will have determined the TC between 28 September 2003 and 28 March 2007.	
108	Art. 2(3)	JAA should be defined.	Noted. This is now included in the draft Regulation.
108	Art. 2(3)	This article sets the conditions for certification basis for aircraft that have a TC on September 28 2003. It does not include those aircraft that have been type certificated nationally by Member States before TC were introduced in their regulations. This was done in full compliance with ICAO Annex 8 which only recently has introduced the TC concept.	Noted. A determination shall be made by the Agency under paragraph (3)(c).

		This matter was brought up during the transitional meetings and it was consensus that such aircraft should also be included in the reference TC . Proposed text: Change the Article 2(b) lead-in paragraph to: "With regard to a product that has a type-certificate issued before 28 September 2003 or was type certificated without a formal TC document by a then Member State, the following provisions shall apply:"	Following further discussions with the Commission, it was deemed that aircraft without a type-certificate were too be determined by the Agency under paragraph (3)(c).
164	Art. 2(3)	"With regard to a product that has a type certificate or equivalent document issued or accepted before 28 September 2003 by a then Member State, the following provisions shall apply" Reason: in past (or even present) times, some Member States were not issuing Type Certificates, but documents with a different name or even only letters of acceptance. Further in the past, some Member States were just automatically accepting the State of design Type Certificate, without issuing any document.	Noted. However, Article 2(3)(c) applies.
099	Art. 2(3)(a)	For clarification a statement of AD of the relevant state of design are included if the reverence Type design should be included.	Noted. A new art. 2(3)(b) has been incorporated to address this issue.
172	Art. 2.3(a)(i)	The meaning of the phrase "such products have been certified on the basis of that State of design airworthiness codes" is not clear. What is the precise meaning of this phrase? Does it mean that the EASA State has accepted the FAR TC basis without further showing or does it mean that the EASA State has only to reference the FAR TC basis on the TCDS? Does it allow the EASA State to apply additional conditions without invalidating the basic concept of the FAR TC basis becoming the EASA basis? What happens to the additional conditions that have been part of the validation process: are they just regarded as approved modifications?	Noted. This phrase means that the product has been certificated on the basis of the State of design airworthiness code without additions.
076	Art. 2(3)(a)(i)	Not all EU Member States (in particular- new member States) has not concluded bilateral airworthiness agreements, even with	Disagreed. Aircraft will be transferred if the criteria in a

		states which airworthiness codes are well known (US, Canada). This will cause the situation that the same aircraft Type in one country will comply with this Regulation and not in other country. (For example: Latvia has not concluded bilateral with US, and it means that for Latvia B-737-500 does not comply with this paragraph, but in most European countries which have bilateral with US, this type complies with. May be it is easier to use the same approach as JAR-21 Appendix D, defining the types covered by this paragraph. For all other types the EASA Certification Basis shall be determined iaw paragraph 3 (c).	recognition agreement (bilateral airworthiness agreement) between a Member State and a third country are fulfilled.
029	Art. 2(3)(a)(ii)	Article 2 para. 3 (a)(ii) should be amended as follows (in order to be compliant with the wording in ICAO Annex 16): "...the environmental protection requirements are <u>at least</u> those laid down in Annex 16..."	Disagreed. Under Article 6 of the Basic Regulation, the environmental protection requirements are those contained in Annex 16.
083	Art. 2(3)(a)(ii)	(ii) the environmental protection requirements are those laid down in Annex 16 to the Chicago Convention, as applicable to the product. The EASA transfer policy does not appear to explicitly state the Annex 16 applicability for issuance of a type certificate for a transferred product. FAA believes that the Annex 16 requirements (including noise certification policies and equivalent procedures) applied to a transferred product should be those in effect when the product was originally certificated by the Member State. The FAA believes that this point should be explicitly stated in Article 2-3(a)(ii).	Disagreed. Annex 16 adequately defines what is effective for any given product. The Agency, by reference to Annex 16, is automatically aligned with whatever is effective. Annex 16 is a mature international text which is self-contained. There is no need to restate if any potential conflict in the future is to be avoided. In addition the Basic Regulation explicitly states in Article 6 which version of Annex 16 is applicable and a Commission proposal under article 6(2) will be reviewed by the EASA Committee in September for adoption.
146	Art. 2(3) (b)	Commission regulation letter – Article 2 – Paragraph 3 (b) Proposal is to update the text as follow Text should read as: (b) A product type design approved under a type-certificate	Disagreed. However, the language of Article 2(3) (b) will be improved for the sake of legal certainty as follows: (b) The design of an individual aircraft, which is on

		referred to in paragraph (a) shall be deemed to include all changes approved and airworthiness directives under the responsibility of the type-certificate holder, issued by the Member States before 28 September 2003. Reason(s) for proposed text/comment This paragraph state that for existing type certificate prior to EASA creation, the EASA type certificate determination will include all design change approved and airworthiness directives existing at that time. Of course the credit of design change is limited to the changes controlled by the type-certificate holder, and will not cover parts, design changes or repairs developed by a third part.	the register of a Member State before the 28 September 2003, shall be deemed to have been approved in accordance with this Regulation when (i) its basic type design is part of a type certificate referred to in paragraph (a) (ii) all changes to this basic type design, which are not under the responsibility of the type certificate holder, have been approved, and (iii) the airworthiness directives issued or adopted by the Member State of registry before 28 September 2003 are complied with.
044	Article 2(3)(b)	GEAE also believes a clarification should be added to the proposed language for Article 2.3(b) of the proposed Commission Regulations. Specifically, no TC holder can assume technical or financial responsibility for changes in type design (such as Supplemental Type Certificates or even replacement parts) approved without its knowledge, approval or assistance. To make certain this is clear, GEAE recommends that Article 2.3(b) be changed to read as follows: "…include all changes submitted by the type certificate holder and approved…".	Noted. Other comments were received. New article reads thus as follows : (b) The design of an individual aircraft, which is on the register of a Member State before the 28 September 2003, shall be deemed to have been approved in accordance with this Regulation when (i) its basic type design is part of a type certificate referred to in paragraph (a) (ii) all changes to this basic type design, which are not under the responsibility of the type certificate holder, have been approved, and (iii) the airworthiness directives issued or adopted by the Member State of registry before 28 September 2003 are complied with.

108	Art. 2(3)(b)	The second part of the sentence is not clear "..and the airworthiness directives issued by the Member States before 28 September 2003." a) Airworthiness directives that are issued by a foreign State of Design and <u>adopted</u> by a Member State should also be included in the product type design approval. b) The text does not make it sufficiently clear which set of airworthiness directives should apply for individual aircraft in meeting the draft Regulation for continued airworthiness, ref. Annex I Subpart C, M.A.301(5) with regard to "..any applicable airworthiness directives…" in case of C of A first issuance or continued validity. This must be made very clear in the regulation. Proposed actions/wording: For a) add wording "..and the airworthiness directive issued <u>or adopted</u> by a member state…" For b) 1) In the Transfer policy paper it was declared that the EASA reference Type certificate should include the airworthiness directives of the State of Design. 2) For transfer of aircraft after 28 September 2003 also see IR-21 core group proposal as originally submitted to EU but rejected. (Attachment to this comment form). ASA still maintains the position that the proposed transfer policy as expressed in that document with regard to applicability of airworthiness directives (item no 1 and 6) when aircraft are changing register should be applied. The other recommendations may be disregarded.	Noted. Other comments were received. New article reads thus as follows : (b) The design of an individual aircraft, which is on the register of a Member State before the 28 September 2003, shall be deemed to have been approved in accordance with this Regulation when (i) its basic type design is part of a type certificate referred to in paragraph (a) (ii) all changes to this basic type design, which are not under the responsibility of the type certificate holder, have been approved, and (iii) the airworthiness directives issued or adopted by the Member State of registry before 28 September 2003 are complied with. Noted.
164	Art. 2(3)(b)	- "…and the airworthiness directives issued <u>or accepted</u> by the Member States…" <u>Reason:</u> some Member States don't issue AD's for foreign	- Noted. "Issued or adopted" by the State of registry is proposed below.

		products, but adopt or accept those issued by the State of design. - Given that Airworthiness Directives are issued to correct unsafe conditions, the subject of acceptable / applicable AD's should be clarified, in line with the transfer policy paper.	- Noted. Revised paragraph (b) now reads as follows: (b) The design of an individual aircraft, which is on the register of a Member State before the 28 September 2003, shall be deemed to have been approved in accordance with this Regulation when (i) its basic type design is part of a type certificate referred to in paragraph (a) (ii) all changes and repairs to this basic type design, which are not under the responsibility of the type-certificate holder, have been approved, and (iii) the airworthiness directives issued or adopted by the Member State of registry before 28 September 2003 are complied with.
090	Art. 2(3)(b)	If this imposes, that the TC holder will become responsible for all changes and AD's to his product, this paragraph is unacceptable because the TC holder may not be aware off all changes and it puts on him an undue burden.	Noted. Revised text now reads as follows: (b) The design of an individual aircraft, which is on the register of a Member State before the 28 September 2003, shall be deemed to have been approved in accordance with this Regulation when (i) its basic type design is part of a type certificate referred to in paragraph (a) (ii) all changes and repairs to this basic type design, which are not under the responsibility of the type certificate

			holder, have been approved, and (iii) the airworthiness directives issued or adopted by the Member State of registry before 28 September 2003 are complied with.
078	Article 2(3)(b)	- Add the following wording after ".. airworthiness directives issued **or adopted..."** A product type design approved under a type certificate referred to in Article 2 paragraph 3 item (b) has to include all airworthiness directives set in force by the MS before 28.9.2003. Reason for change: This could create a problem because several MS, as well as Austria, have adopted AD`s of the State of design. - Add the following wording after ".. airworthiness directives issued **or adopted..."** A product type design approved under a type certificate referred to in Article 2 paragraph 3 item (b) has to include all airworthiness directives set in force by the MS before 28.9.2003. This could create a problem because several MS, as well as Austria, have adopted AD`s of the State of design.	Carried. Revised text now integrates this element: (b) The design of an individual aircraft, which is on the register of a Member State before the 28 September 2003, shall be deemed to have been approved in accordance with this Regulation when (i) its basic type design is part of a type certificate referred to in paragraph (a) (ii) all changes and repairs to this basic type design, which are not under the responsibility of the type-certificate holder, have been approved, and (iii) the airworthiness directives issued or adopted by the Member State of registry before 28 September 2003 are complied with.
080	Art. 2(3)(b)	To be consistent with the draft of the EASA Opinion on Certification (Transfer Policy) the paragraph (b) should be modified to make clear that the Airworthiness Directives are those of the State of Design and that the existing configurations approved under the former national type certificates (i.e. changes approved by the Member States) should be compatible with the type certification basis recognised under the paragraph (a) of the same article 2 .	Disagreed. The introduction of a "compatibility" requirement is deemed to bring unnecessary complexity. (b) The design of an individual aircraft, which is on the register of a Member State before the 28 September 2003, shall be deemed to have been

		In addition the paragraph (b) should include the "repairs". This makes it also in line with the paragraph 7 of the same article 2. It is proposed to modify the paragraph 3(b) as follows: "(b) A product type design approved under a type-certificate referred to in paragraph (a) shall be deemed to include all changes and repairs approved by the Member States and compatible with the type certification basis recognised under the paragraph (a) above, and the airworthiness directives issued by the State of Design before 28 September 2003 ."	approved in accordance with this Regulation when (i) its basic type design is part of a type certificate referred to in paragraph (a) (ii) all changes and repairs to this basic type design, which are not under the responsibility of the type-certificate holder, have been approved, and (iii) the airworthiness directives issued or adopted by the Member State of registry before 28 September 2003 are complied with.
108	Art. 2(3)(b)	Clarification needed. What applies with regard to recognition of STCs and changes that have been approved by Member States before 28 September 2003 not meeting the requirements of Regulation 3922/91? Article 57(2) and Article 8 of the Basic Regulation implies that only certificates issued in accordance with the regulation and meeting Regulation 3922/91 should be recognised without further technical requirements or evaluation.	Noted. There is no essential requirement in Regulation 1991.
157	Art. 2(3)(b)	(1) In case of change of registry within EU, as a minimum the State of Design ADs should be required. (2) NAA ADs without origin in a State of Design AD should remain in force until EASA decides otherwise. Reason: To avoid potential safety gaps and confusion.	Disagreed. According to the draft Regulation, all existing ADs will be accepted.
175	Art. 2.3(b)	The transfer policy states, "a- There shall be an EASA reference type certificate including – (iii) the airworthiness directives of the State of Design, and (iv) all existing configurations of individual aircraft of the concerned type that have been approved under former national	Noted. New paragraph 2(3)(b) incorporated. All existing ADs issued or adopted by a Member State will remain acceptable.

		type certificates." The language in the regulation does not agree with the language of the transfer policy. We are concerned that commitments were changed. As written, EASA could include conflicting ADs, if Member States have imposed different inspection methods, etc. The language should be changed to reflect the agreed transfer policy or a rationale provided. The new language should read as follows: A product type design approved under a type-certificate referred to in paragraph (a) shall be deemed to include all changes approved, and the airworthiness directives issued by the State of Design before 28 September 2003. If the terminology "Member States" (plural) remains, the FAA will interpret its import obligation as limited to meeting the importing countries' ADs only. It will create an enormous burden for industry to be mindful of <u>all</u> Member States ADs.	The principle rationale is that aircraft considered airworthy today will remain airworthy on and after 28 September 2003.
099	Art. 2(3)(c)	This paragraph is the Regulations equivalent of the Transfer Policy paper paragraph 1.1.3.b. Transfer Policy Paper paragraph 1.1.3.c. is not incorporated into the Regulation and therefore possible not implemented. CAA-NL strongly recommend the inclusion of this paragraph 1.1.3.b.in the Regulation, possible as an preamble and thus as a task to be done by the agency.	Deferred. The Agency is aware of the need to carry out this task and will develop the necessary procedures in due time.
108	Art. 2(3)(c)	It is the type certification basis that shall be determined, not the type certificate Proposed text: "The Agency shall determine the type certification basis of the products…" Reason (s) for proposed text or comment: Consistency with	Disagreed. When Article 2(3)(a) does not apply, the Agency shall determine the type certificate which shall include the type-certification basis.

		Article 2(3)(a)(i)	
073	Art. 2(3)(c)	This implies that all existing aircraft without a type certificate will, after 28 March 2007, have to have, for example, a noise certificate. This may not be possible, particularly for older aircraft and is not applicable to gliders. We therefore expect the Agency to adopt a pragmatic approach, based on CS36 and ICAO Annex 16, but without causing an adverse economic impact on owners of aircraft thereby affected.	Noted. Requirements for noise certificate are as defined in Annex 16, Volume I. As such aircraft not required to have a noise certificate by the Annex 16 will not be required to have one by EASA. See also Annex II of Basic Regulation.
146	Art. 2(3)(d)	Draft Commission Regulation : Article 2.3. (d) "The Agency shall determine the applicable requirements for noise for all products .....". PART 21 : paragraph 21A.41 " The Type Certificate is considered to include the type design, the operating limitations, the type certificate data sheet, the applicable type-certification basis and environmental protection requirements with which the Authority records compliance, and any other conditions or limitations prescribed for the product in the airworthiness codes and environmental protection requirements." (last sentence deleted) Reason(s) for proposed text/comment: Proposed texts for above mentioned articles of draft Commission Regulation and Part 21 are implying to have two different type-certificate data sheet : one TC data sheet for airworthiness and emissions and one TC data sheet for noise. AECMA disagrees with the above proposal which has no logic, no justification, and entails unnecessary additional paperwork and bureaucracy which are contrary to fundamental objectives of Basic Regulation. The type-certificate attests compliance with both the airworthiness codes (plus any special conditions) and	Disagreed. The TC data sheet for noise is more accurate than applicable requirements in that it contains actual recorded noise levels. TCDS for noise is considered to be the most efficient manner to record certified noise levels against which NAs will issue individual noise certificates. Note that the noise type certification basis itself is recorded in the TC. Also in view of other comments received, 21A.41 has been revised. Proposed opening sentence of 21A.41 is the following: "The type-certificate or restricted type-certificate…." Proposed closing sentence of 21A.41 is the following: "The engine type-certificate data sheet includes the record of emission compliance."

		environmental protection requirements (ref 21A.21, 21A.41). There must be only one type-certificate data sheet, which must logically reflect all aspects covered by the type-certificate. Nota : See other AECMA comments replacement of "certifications specifications" by "airworthiness codes". Note : See also AECMA comments for proposed definition of Type Certification basis (see AECMA comment on Part 21, paragraph 21A.17 and 21A.18), which is not taken into account in the above mentioned proposed formulation of paragraph 21A.41. Note : See also AECMA comment on Subpart I : Noise Certificates.	
161	Art. 2(4)	Amend paragraph 4 of article 2 as follows: "4. With regard to products for which a type certification process is proceeding through the JAA or a Member State on 28 September 2003: (a) if a product is under certification by several Member States, a project shall be selected by the Agency and used as the reference; (b) 21A.15(a), (b) and (c) of the Annex to this Regulation shall not apply; (c) by way of derogation from 21A.17, paragraph (a) of the Annex to this Regulation, the type certification basis shall be that established by the JAA or, where applicable, the Member State; (d) compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.20(a) and (b) of the Annex to this Regulation, subject to review by the Agency;" Reason(s) for proposed text/comment <u>Implementation problem:</u> The draft opinion contains in more than one place a statement	Noted. However, the criteria of the "most advanced project" has been agreed within the Transfer Policy Working Group. Disagreed with suggested paragraph (d) as it would put too much emphasis on that review. In the transfer policy, this idea is explained in a note, not in the text itself, to reflect principal intent not to restart work. As the Agency will finish the work and issue a type-certificate (see 21A.21), the power to review is already given to the Agency, if found needed. It must not be repeated in the draft Regulation.

		indicating that some Member States have not been able to implement fully JAR-21. The draft commission regulation creating IR 21, in item (6) of the recital, indicate a lack of uniformity among States. • **(a):** The words "most advanced project" are subjective. If understood as the closest to issuance of TC, this may result in selection of the project where the member state is performing the lowest level of activity. • **(d)**: "subject to review by the Agency", To introduce the possibility for the Agency to review the work done by a Member State to make sure it is done in accordance with the state of the art, thus reflecting the spirit of footnote number 10 (flexibility) of Attachment 3 (Transfer Policy), §1.1.2: *Nevertheless, the Agency shall have flexibility, depending on the credit that can be given to previous work. Activities performed in accordance with the "state of the art" shall be acceptable. If work done is questionable, the Agency shall make the necessary review before issuing a type certificate*.	
108	Art. 2(4)(a)	The Article reads: "if a product is under certification by several Member States, the most advanced project shall be used as the reference; It may be appropriate to point out the body deciding which project is the most advanced and the criterias and procedures for the selection process.	Noted. Article 2(4) has been revised in view of other comments received. It is not needed to refer to a specific body. It follows from the Basic Regulation that the Agency is the certificating Authority.
099	Article 2(4)(c)	[…] suggests to ad "at the date of application for the approval" to the sentence for clarification and uniformity with article 2.5.(b)	Carried.
099	Article 2(5)	The reverence to "the time of the issue of a type certificate" is not quite correct here, "the time of transfer of the type design from the NAA to the Agency" is the correct reference as per Transfer Policy paper 1.2.2. […] suggests to change the wording as above.	Noted. Article 2(5) will be changed accordingly: "is issued" to "is determined".

161	Art. 2(5)	Amend paragraph 5 of article 2 as follows: "5. With regard to products that have a national type-certificate, or equivalent, and for which the approval process of a change carried out by a Member State is not finalised at the time when the type-certificate is issued in accordance with this Regulation: (a) if an approval process is carried out by several Member States, a project shall be selected by the Agency and used as the reference; (b) 21A.93 of the Annex to this Regulation shall not apply; (c) the applicable certification basis shall be those established by the JAA or, where applicable, the Member State at the date of application for the approval of change; (d) compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.103(a)(2) and (b) of the Annex to this Regulation, subject to review by the Agency." Reason(s) for proposed text/comment <u>Implementation problem:</u> **New (a) :** There should be a provision, as in paragraph 4, to cover the case of several approval processes carried out. **Current (b):** Editorial **Current (c)**: "subject to review by the Agency" To introduce the possibility for the Agency to review the work done by a Member State to make sure it is done in accordance with the state of the art, thus reflecting the spirit of footnote number 10 (flexibility) of Attachment 3 (Transfer Policy), §1.1.2)	Noted. However, the criteria of the "most advanced project" has been agreed within the Transfer Policy Working Group. Revised text now reads as follows: (a) if an approval process is being carried out by several Member States, the most advanced project shall be used as the reference; (b) 21A.93 of Part 21 shall not apply; (c) the applicable type-certification basis shall be that established by the JAA or, where applicable, the Member State at the date of application for the approval of change; Disagreed with suggested paragraph (d) as it would put too much emphasis on that review. In the transfer policy, this idea is explained in a note, not in the text itself, to reflect principal intent not to restart work. As the Agency will finish the work and issue a type-certificate (see 21A.21), the power to review is already given to the Agency, if found needed. It must not be repeated in the draft Regulation.
164	Articles 2(5) and (7)	If it refers to approval process of changes to nationally certified or *accepted* aircraft in progress on 28 September 2003, since under Article 2.3.(a) the Agency will not actually issue a TC to them , it should say:	Noted. The term "or equivalent" is to be construed extensively.

		"With regard to products that have a national type certificate or equivalent or that were nationally accepted and for which the approval process of a change carried out by a MS is not finalised at the time when the type certificate will be deemed to have been issued in accordance with this Regulation:"	
147	Art. 2(5)(b)	(b) the applicable ~~certification specifications~~ ***airworthiness code and special conditions*** shall be those established by the JAA or, where applicable, the Member State ***under the procedural requirements in force*** at the date of application for the approval of change; **Reason(s) for proposed text/comment** The "Changed Product Rule" was introduced into JAR-21, effective 10 June 2003. Depending on whether the approval of the change was applied for before or after this date, the applicable requirements are designated in a different manner. But, in both cases, they may be those effective at the date of application, or earlier ones, or a mix thereof. Paragraph 5(b) of Article 2 has to be reworded as above, in order to clearly reflect the intent of accepting the applicable requirements established by the JAA or the Member State.	Noted. First proposed change is carried, but the addition of procedural requirements is deemed superfluous.
146	Art. 2(5)(b)	Replace the words "certifications specifications" by "airworthiness codes" or "type-certification basis ", as appropriate , in above mentioned article of Commission regulation and in many paragraphs of Part 21. Reason(s) for proposed text/comment Certification Specifications comprise two series of documents	Noted. Part 21 has been amended accordingly for the sake of consistency with the Basic Regulation and to achieve overall legal certainty.

		called respectively "airworthiness codes" and "acceptable means of compliance" (AMC). By definition, an AMC document describes an acceptable means of compliance, but that means is not compulsory and may not be the only acceptable means of compliance. By definition, evaluation of product conformity can only be made against the requirements contained in the "airworthiness code" documents, not with AMC which are only examples of acceptable means. The above has been confirmed : > by definition provided by EASA Management Board decision on future EASA rulemaking procedures,and > by definition of "Type Certification basis" (airworthiness code and special conditions) contained in Basic Regulation (article 15.1.a). This remark has already been made by […] during the drafting stage. Although apparently corrected in some of the paragraphs, the inappropriate and inconsistent use of the words "certification specifications" remains widely spread throughout many articles of the proposed text. As a general principle, the words "certification specifications" should not appear in Part 21 which deals with certification of products and therefore can only refer to "applicable airworthiness codes" (or, for conformity of a given product design, to its "type certification basis" composed of "applicable airworthiness code" and possible "special conditions"). The complete draft Part 21 text has to be reviewed and corrected in accordance with above mentioned referenced definitions.	

078	Art. 2(6)	Add to Article 2 in paragraph 6 a new item c: "c. the STC type design approved under a supplemental type certificate referred to in paragraph 6 shall be deemed to include the airworthiness directives issued or adopted by the Member State before 28 September 2003 ". Transition measures for STC`s are unclear. This should clarify that STC`s issued for this STC has to be taken ADs into consideration as part of the type design.	Disagreed. Article is related to ongoing certification process. Therefore no ADs are applicable in this case. Noted. However, it is recognized that a provision on the continued validity of existing STCs is missing. A new paragraph 14 has been incorporated.
161	Art. 2(6)	Amend paragraph 6 of article 2 as follows: "6. With regard to supplemental type-certificates for which a certification process is being carried out by a Member State on 28 September 2003 under applicable JAA supplemental type-certificate procedures; and with regard to major changes to products, proposed by persons other than the type-certificate holder of the product, for which a certification process is being carried out by a Member State under applicable national procedures: (a) if an certification process is carried out by several Member States, a project shall be selected by the Agency and used as the reference; (b) 21A.113 (a) and (b) of the Annex to this Regulation shall not apply. (c) for major changes to products, proposed by persons other than the type-certificate holder of the product, for which the certification is processed under national procedures, 21A.115(b) of the Annex to this Regulation shall not apply. (d) the applicable certification basis shall be those established by the JAA or, where applicable, the Member State at the date of application for the supplemental type-certificate or the major change approval; (e) the compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.115(a) of the	Noted. However, the criteria of the "most advanced project" has been agreed within the Transfer Policy Working Group. With regard to paragraph (c), Art. 3(5) applies (in view of other comments received, the period has been extended from 28 September 2004 to 28 September 2005). By way of interpretation the major changes become an STC for which the applicant will have to demonstrate capability before 28 September 2005. Disagreed with suggested paragraph (d) as it would put too much emphasis on that review. In the transfer policy, this idea is explained in a note, not in the text itself, to reflect principal intent not to restart work. As the Agency will finish the work and issue a type-certificate (see 21A.21), the power to review is already given to the Agency, if found needed. It must not be repeated in the draft Regulation. Suggested paragraph (e) is carried to reflect transfer policy. Revised text now reads as follows:

		Annex to this Regulation, subject to review by the Agency." Reason(s) for proposed text/comment: <u>Implementation problem</u> **New (a) :** There should be a provision, as in paragraph 4, to cover the case of several approval processes carried out. **New (c):** DGAC national procedures do not currently require the "STC" applicant to demonstrate its capability. A temporary exemption to JAR 21.112 is granted to applicants for a DGAC STC until Decembers 31, 2004. Proposed additional paragraph (c) allows the on going national "STC" projects (i.e. : "*major changes to products, proposed by persons other than the type-certificate holder of the product, for which a certification process is being carried out by a Member State under applicable national procedures*") to be completed without this demonstration. **New (d):** There should be a provision, as in paragraph 5 and former, regarding the applicable certification basis **Current (b)**: "subject to review by the Agency", To introduce the possibility for the Agency to review the work done by a Member State to make sure it is done in accordance with the state of the art, thus reflecting the spirit of footnote number 10 (flexibility) of Attachment 3 (Transfer Policy), §1.1.2.	"6. With regard to supplemental type-certificates for which a certification process is being carried out by a Member State on 28 September 2003 under applicable JAA supplemental type-certificate procedures; and with regard to major changes to products, proposed by persons other than the type-certificate holder of the product, for which a certification process is being carried out by a Member State under applicable national procedures: (a) if a certification process is being carried out by several Member States, the most advanced project shall be used as the reference; (b) 21A.113 (a) and (b) of Part 21 shall not apply. (c) the applicable certification basis shall be that established by the JAA or, where applicable, the Member State at the date of application for the supplemental type-certificate or the major change approval;
161	Art. 2(7)	Amend paragraph 7 of article 2 as follows: "7. With regard to products that have a national type-certificate, or equivalent, and for which the approval process of a major repair design carried out by a Member State is not finalised at the time when the type-certificate is issued in	Noted. However, the criteria of the "most advanced project" has been agreed within the Transfer Policy Working Group. With regard to paragraphs (a) and (b), it is felt that

		accordance with this Regulation: (a) if an approval process is carried out by several Member States, a project shall be selected by the Agency and used as the reference; (b) the applicable certification basis shall be those established by the JAA or, where applicable, the Member State at the date of application for the approval of change; (c) compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.433(a) of the Annex to this Regulation, subject to review by the Agency." Reason(s) for proposed text/comment: <u>Implementation problem:</u> Consistency with paragraph 4 as amended, and the proposed amendments of paragraph 5 and 6. **New (a) :** There should be a provision to cover the case of several approval processes carried out. **New (b):** There should be a provision, regarding the applicable certification basis **Current (c)**: "subject to review by the Agency", To introduce the possibility for the Agency to review the work done by a Member State to make sure it is done in accordance with the state of the art, thus reflecting the spirit of footnote number 10 (flexibility) of Attachment 3 (Transfer Policy), §1.1.2.	there is no need to regulation in such detail. Disagreed with suggested paragraph (c) as it would put too much emphasis on that review. In the transfer policy, this idea is explained in a note, not in the text itself, to reflect principal intent not to restart work. As the Agency will finish the work and issue a type-certificate (see 21A.21), the power to review is already given to the Agency, if found needed. It must not be repeated in the draft Regulation.
161	Art. 2(8)	Amend paragraph 8 of article 2 as follows: "8. With regard to parts and appliances for which an authorisation process is being carried out by a Member State under applicable JAA or national procedures on 28 September 2003: (a) if an certification process is carried out by several Member States, a project shall be selected by the Agency and used as the reference; (b) 21A.603 of the Annex to this Regulation shall not apply;	Disagreed with introduction of "national procedures". Continuity of the process equivalent to ETSO must be ensured. Therefore, the paragraph only relates to JTSO activities under JAA procedures. Suggested paragraph (a) is noted. However, the criteria of the "most advanced project" has been agreed within the Transfer Policy Working Group. Original paragraph (c) remains.

		(c) the applicable data requirements under 21A.605 of the Annex to this Regulation shall be those established by the relevant Member State in accordance with JAA procedures, at the date of application for the authorisation approval; (d) compliance findings made under JAA or national procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.606(b) of the Annex to this Regulation, subject to review by the Agency." Reason(s) for proposed text/comment: <u>Implementation problem</u> **General comment:** There is no provision on authorisation processes being carried out by a Member State under national procedures. What is the reason ?(*Note :* §13 of art.2 is accepting those already approved under national procedures)? If "*or national*" is added as proposed in this comment, current (c) has to be modified in accordance. Consistency with paragraph 4 and followings as amended, (see Comments): **New (a) :** There should be a provision to cover the case of several approval processes carried out. **Current (c)**: -"*or national*: see "General comment" above. *"subject to review by the Agency*", To introduce the possibility for the Agency to review the work done by a Member State to make sure it is done in accordance with the state of the art, thus reflecting the spirit of footnote number 10 (flexibility) of Attachment 3 (Transfer Policy), §1.1.2.	Disagreed with suggested paragraph (d) as it would put too much emphasis on that review. In the transfer policy, this idea is explained in a note, not in the text itself, to reflect principal intent not to restart work. As the Agency will finish the work and issue a type-certificate (see 21A.21), the power to review is already given to the Agency, if found needed. It must not be repeated in the draft Regulation. Thus revised text now reads as follows: (a) if an authorization process is being carried out by several Member States, the most advanced project shall be used as the reference; (b) 21A.603 of Part 21 shall not apply; (c) the applicable data requirements under 21A.605 of Part 21 shall be those established by the relevant Member State in accordance with JAA procedures, at the date of application for the authorisation approval; (d) compliance findings made under JAA procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.606(b) of Part 21."
108	Art. 2(8)	This paragraph deals only with ongoing authorisation processes using JAA procedures by a member State. There is	Disagreed with introduction of "national procedures".

		also a need to cover such ongoing authorisations using national procedures. Proposed text: Insert "or national procedures" after "JAA procedures"	Continuity of the process equivalent to ETSO must be ensured. Therefore, the paragraph only relates to JTSO activities under JAA procedures.
164	Article 2(8)(b) and (c)	Add after "JAA procedures" "or national procedures" . There is no reason not to transfer the approval processes of parts and appliances the same way that STC processes.	Disagreed. Continuity of the process equivalent to ETSO must be ensured. Therefore, only relates to JTSO activities under JAA procedures.
052	Article 2(8) and in particular (c)	Clarification about acceptable procedures and standards for ongoing authorisation processes: "With regard to parts and appliances for which an authorisation process is being carried out by a Member State under applicable JAA or Member State procedures on 28 September 2003: "(c) compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.606(b) of the Annex to this Regulation or with the design airworthiness code of a third country with which a Member State has concluded a bilateral airworthiness agreement." Justification: In paragraph 8 (c) the only possible option to show compliance is against the published ETSO [reference to Part 21A.606(b)]. This would exclude the possibility to accept standards from third countries as it is possible for products under paragraph 3 (a) (i) or by national procedures as it is accepted in paragraph 4 (d). The current approach is not consistent with the one for products. In addition as not for all FAA TSOs an equivalent ETSO exists yet, this policy would prevent the issuance of an authorization for such equipment, even though it might enhance safety.	Disagreed. The only formal means of approval for parts, and appliances is one of the criteria in Subpart K, either TC, STC, ETSO or standard part. Therefore, Art. 2(8) can only apply to items being processed for a JTSO and leading to an ETSO. Moreover, bilateral recognition agreements are covered by Article 9 of the Basic Regulation. "With regard to parts and appliances for which an Joint Technical Standard Order authorisation process is being carried out by a Member State under applicable JAA procedures on 28 September 2003: c) unchanged
164	Art. 2(9)	"A certificate of airworthiness issued by a Member State attesting conformity with a type certificate or equivalent	Disagreed. Equivalent TCs will be dealt with under 2(3)(c).

		document issued or accepted, in accordance with paragraph 3…" Reason: in past (or even present) times, some Member States were not issuing Type Certificates, but documents with a different name or even only letters of acceptance. Further in the past, some Member States were just automatically accepting the State of design Type Certificate, without issuing any document. Alternatively, depending on the meaning the drafter had on mind "…with a type-certificate deemed to have been issued in accordance with paragraph 3…"	There will always be an EASA TC against a certificate of airworthiness. In the interim national regulations continue to apply.
073	Article 2(9)	A certificate of airworthiness issued by a member state, or in the case of member states in which a certificate of airworthiness has been issued by a bona-fide self-regulating air sport governing body, attesting conformity with a type-certificate In certain EU countries (e.g. UK and Belgium (?)) glider certificates of airworthiness have always been controlled and issued by the governing body for the sport, in the vast majority of cases in conformity with the JAR22 code since that came into existence. The C of A is not a state issued one, but is the equivalent. Gliders with a current C of A, but built prior to the creation of JAR22, need to be considered.	Noted. Part 21 already provides in 21B.325 that "the competent authority of the Member State of registry shall, as applicable, issue, or amend" such certificate. This is a discretionary power left to the Member State to designate the competent authority as it thinks fit.
108	Art. 2(9)	*The reason and need for this declaration that C of A "shall be deemed to comply with this Regulation is questioned. It will only create confusion for aircraft owners and NAAs.* Proposed text: The whole paragraph in Article 2 (9) should be deleted Reason (s) for proposed text or comment: The issuance and renewal of C of A is a NAA responsibility. It follows todays national legislation and procedures. On September 29 2003 and thereafter C of A:s are due for renewal and this can only be done under national procedures	Disagreed. Rationale of this article is to grand-father those existing C of As. Article 2(12) is a safety-net to ensure that in case that Part M has not entered into force on 28 September 2003 national regulations continue to apply in the interim period.

		since the concept of Part M with Airworthiness Review Certificates and approved Continuing Airworthiness Management Organisations is not in place. Furthermore, for non-commercial air transport, Part M enter into force on 28 September 2005. Article 2(12) is not sufficient as derogation paragraph. Part M as a whole is in force on 28 September 2003 with regard to commercial aircraft.	
161	Art. 2(9)	Amend § 9 of article 2 as follows : "9. A certificate of airworthiness issued by a Member State attesting conformity with a type-certificate issued in accordance with paragraph 3 and listed by the Agency according to the provisions of paragraph 3(e) shall be deemed to comply with this Regulation." Reason(s) for proposed text/comment Implementation problem: List as introduced in Comment to article 2, § 3 which emphasise on the fact that it is essential to have a list of products deemed to have a type certificate according to §(3)(a) before 28 September 2003, in order for National authorities to be able to issue airworthiness certificates on or after 28 September 2003. That list shall be enriched with all products for which the Agency will have determined the TC between 28 September 2003 and 28 March 2007.)	Noted. However, the present draft is deemed safe and consistent with the remainder of the draft Regulation.
161	Art. 2(10)	Amend § 10 of article 2 as follows : "10. Airworthiness titles issued by a Member State before 28 September 2003 and which cannot be deemed to comply with this regulation under article 2 §9 shall remain under the direct responsibility of the Member State of Registry under applicable national regulations."	Disagreed. "Airworthiness titles" is ambiguous and unknown to the Basic Regulation. "Titles" are for all purposes "certificates under the Basic Regulation, Article 3. Text will be improved for the sake of legal certainty by way of referring explicitly to certificate of airworthiness, restricted certificate of airworthiness or permit to fly, where applicable.

		Reason(s) for proposed text/comment: Implementation problem To clarify the intent of the text and improve the wording. Current text mixes individual airworthiness certificates and type certificates.	
073	Article 2(10)	Aircraft which have been issued an airworthiness certificate by a Member State, or in the case of member states in which a certificate of airworthiness has been issued by a bona-fide self-regulating air sport governing body, before 28 September 2003 and which cannot be issued a type certificate in accordance with paragraph 3 shall remain under the responsibility of the Member State of Registry under applicable national regulations. What criteria would be applied to the determination of whether a type certificate can be issued after 28 September 2003? Will the criteria be limited to design / manufacture , or will the maintenance history of the aircraft be taken into consideration? […] would consider that the maintenance history is relevant and that factory-built aircraft currently maintained and operating on Permits to Fly should not be grounded by having to be raised to Type Certificated standards, in terms of maintenance, modification state, etc. The same comment as above (re Article 2(9)) applies.	Deferred. This is an issue to be determined by the Agency as soon as possible, but in any case before 28 March 2007 in accordance with Art. 56(2) of the Basic Regulation.
090	Art. 2(10)	For aircraft which remain under the responsibility of the member state of registry, this state needs to maintain a set of national regulations and an administration to execute these regulations what is against the intend of this regulation. Further what is to be arranged when the member of state of registry is not the state of design? This leads into a completely unclear and therefore unacceptable situation.	Full response on the issue of ICAO State of Design is provided for in the final Opinion of the Agency submitted to the Commission. The intent of the draft Regulation, as stated in its preamble, recital (6), is to ensure regulatory uniformity in the application of airworthiness and environmental requirements.
164	Art. 2(10)	"…before 28 September 2003 and which cannot be deemed to have a type certificate issued in accordance with…"	Noted. Revised text will now read:

		Reason: it is not expected type certificates will actually be issued for nationally certified aircraft.	"Pending determination under paragraph 3(c), aircraft which…".
076	Art. 2(10)	It is not clear to which aircraft this applies. There should be a misunderstanding between proposed text in Regulation and text in Attachment 1, "Detailed explanatory memorandum to Part 21". Para 1.3. of this Attachment states that products which cannot be issued a type certificate through that process or have no type certificates, will have to remain under national responsibility using existing national rules until the Agency can make a determination on the conditions under which they would be transferred (as specified in Art.2 Para 3 (c), until 28 March 2007). Regulation itself (Para 10 Article 2) does not contain any time limitation for such aircraft. The question is: Does this paragraph applies to aircraft which cannot be transferred even considering paragraph 3 (c), or only to aircraft which do not comply with paragraph 3 (a) but are capable to meet the paragraph 3 (c). Proposed text: " Aircraft which have been issued an airworthiness certificate by a Member State before 28 September 2003 and which cannot be issued a type certificate in accordance with paragraph 3 (a) shall remain under the responsibility of the Member State of Registry under applicable national regulation until the Agency determines the type certification of such products ''. If the meaning is different, it should be clarified.	Noted. By 28 March 2007 all aircraft covered under Article 4(1) of the Basic Regulation must be type-certificated. On 28 September 2003 aircraft under Art. 3(a) will be deemed to hold an EASA type-certificate. All the remaining aircraft must be subject to determination by the Agency before the end of the transitional period (28 March 2007). The intent and effect of Art. 2(10) is to allow Member States to continue to issue Airworthiness certificates under national regulations, subject to Article 2(3)(c).
161	Art. 2(11)	Amend § 11 of article 2 as follows : "11. Before 28 March 2007, Member States shall review the airworthiness titles issued before 28 September 2003 that cannot be deemed to comply with this regulation under paragraph 9. Depending on the review, Member States shall issue: - either a restricted certificate of airworthiness, - or a permit to fly.	Disagreed. This paragraph only applies to permits to fly.

		” Reason(s) for proposed text/comment <u>Implementation problem</u> Current § 11 is unclear. It is understood as addressing the airworthiness certificates other than those which are deemed to comply with the regulation under §9. It however seems to restrict the solution to issuance of a permit to fly whereas all cases are possible: 1. a restricted C of A may be issued if the aircraft is not in conformity with EASA TC or if there is no EASA TC 2. finally a permit to fly may be issued if the aircraft cannot obtain a C of A or a restricted C of A.	
140	Art. 2(11)	The estimated permission of traffic should be valid on the whole sphere of the EASA.	Noted. The permit to fly is issued by the Member State of registry and the limitation cannot go beyond the airspace of that State. After the transitional period, when the Agency fully takes over, the scope may be broadened to cover EASA.
161	Art. 2(12)	• Amend § 12 of article 2 as follows : “12. In the absence of applicable implementing rules on the continuing airworthiness of aircraft and aeronautical products, parts and appliances: (a) 21A.179 and duration conditions of 21A.181 of the Annex to this Regulation shall not apply and the relevant national rules shall apply instead, and (b) 21B.325(b) and (c) of the Annex to this Regulation shall not apply and the relevant national forms shall be used instead.” • Check the entire text and wherever a reference is made to Part M, replace “Part M” with “the applicable continuing airworthiness requirements”. Reason(s) for proposed text/comment	Disagreed. The requirements for the continuing airworthiness of aircraft not used for commercial air transport and of components intended for fitment thereto must be adopted under arts 5 and 6 of the Basic Regulation. The implementing Regulation as drafted covers the situation where Part M is not in force. It is clear that national regulations and procedures shall continue to apply until such moment.

		Impracticable: • The wording of § 12 only covers the case where Part M is approved but not entered into force. What if Part M is not adopted ? What if Part M is finally introduced through another name or through another regulation (in IR 21 or back to IR OPS) ? One should consider all the probable other cases. It should be made clear that national regulations and procedures shall remain into force. • 21A.179 *Transferability and reissuance within Member States*: Until Part M is in effect (especially the provisions on airworthiness reviews), Member States will have to rely on existing procedures to assess the airworthiness of imported aircraft (such as Export Cof A). • Duration conditions of 21A.181 : As long as ariworthiness certificates validity conditions (Part M) are not entered into force, Member Stetes rules shall apply, in particular those pertaining to airworthiness certificates renewal. • 21B.325(b) (*airworthiness certificates forms*) and (c) (*initial airworthiness review certificate*): Existing forms are based on unlimited CofA accompanied by limited ARC, thus they can only be used once Part M airworthiness review system is in place.	
161	Art. 2(13)	Amend paragraph 13 of article 2 as follows: "13. Approvals of parts and appliances issued by a Member State and valid at the time of entry into force of this Regulation shall be deemed to have been issued in accordance with this Regulation. Until the Agency has determined the new applicable ETSO, Member States may continue to issue such approvals in accordance with national procedures and such approvals shall be valid and deemed to have been issued in accordance with this Regulation." Reason(s) for proposed text/comment Implementation problem The Agency shall identify existing approvals for parts and appliances that are not covered by an existing JTSO. For parts	Disagreed. The purpose of this paragraph is to recognise existing approvals. It is not found necessary to maintain national part approvals because this matter falls outside the scope of Subpart K.

		and appliances for which only one Member State has issued an approval, such approval should be considered as the basis for the applicable ETSO. For parts and appliances for which several Member States have issued an approval, such approvals should remain valid until the Agency has determined the new applicable ETSO. As an example, DGAC has established a national approval system of parts and appliances complementing the JTSO, for instance when there is no JTSO corresponding to a FAA TSO, in which case DGAC issues a so called French Civil Aviation Qualification (QAC) which is then validated by FAA under DGAC/FAA IPA.	
108	Art. 2(13)	This paragraph makes no distinction between approvals issued with reference to Regulation 3922/91 and other national approvals. In the Explanatory memorandum paragraph 17 it is stated that certificates and approvals issued in accordance with Regulation 3922/91 should be grandfathered. For other products an easy transfer wherever possible should be provided. Article 2(13) as proposed means that everything approved by Member States since the beginning of regulated aviation is declared to have been issued under this Regulation and therefore meeting all essential requirements included in Regulation 1592/2002. This is of course not a true fact. The transfer policy described in Article 2(13) stands in great contrast to Regulation 1592/2002 “whereas” (7) which aimed at freedom of movement of “..parts and appliances..certified in accordance with the Regulation and its implementing rules”. Article 2(13) will be formally correct but it will mean a false statement of the real airworthiness.	Noted. This Article reflects the legal presumption that existing parts and appliances on 28 September 2003 conform to the essential requirements. However, they may depart from the essential airworthiness requirements of the Basic Regulation. There is no contradiction between the objectives of the Basic Regulation as stated in its preamble and Article 2(13) on grand-fathering of existing rights and obligations. The principle of mutual recognition is fully recognized by the Basic Regulation and the implementing rules.
133	Art. 2(13)	Paragraph 13 specifies that approvals for Parts and Appliances issued by a Member State and valid at the time of entry into force of the Regulation shall be deemed to have been issued in accordance with the Regulation. This is a sensible and	Disagreed. Transfer of approval will only work if processes are identical, e.g., there is a JTSO standard available existing at the time of transfer.

		pragmatic approach that recognises the experience of Member States in approving parts and appliances over many years. Member States have used a variety of National procedures for Parts and Appliance approval and these procedures have resulted in sound and valid approvals. However, with respect to Parts and Appliance approvals in work at 28 September 2003, Paragraph 8 only gives validity to those being conducted under applicable JAA procedures. This seems to exclude ongoing approvals using members States' National procedures, and as such is inconsistent with Paragraph 13. It seems unreasonable to differentiate between an approval that is completed on 27 September 2003 and an on-going approval using the exact same procedures and specifications but which is not completed until 29 September 2003. To avoid this problem it is proposed that Article 2, para 8 of the Regulation is amended as follows: 8. With regard to parts and appliances for which an approval process is being carried out by a Member State on 28 September 2003: (a) 21A.603 of the Annex to this Regulation shall not apply; (b) the applicable data requirements under 21A.605 of the Annex to this Regulation shall be those established by the relevant Member State, at the date of application for the approval; (c) compliance findings <u>made by the relevant Member State</u> shall be deemed to have been made by the Agency for the purpose of complying with 21A.606(b) of the Annex to this Regulation.	
161	Art. 3, new para. (6)	Add a new paragraph (xx) to Article 3 as follows: "xx. With regard to design organisations for which a demonstration of capability is proceeding through a Member	Carried. New paragraph (6) incorporated.

		State on 28 September 2003 under applicable JAA procedures, (1) paragraph 21A.234 shall not apply; (2) compliance findings made under JAA procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.245 of this Regulation, subject to review by the Agency;" Reason(s) for proposed text/comment <u>Implementation problem</u> There is some provision missing in Article 3 (Design organisation) with regard to organisations for which a demonstration of capability is proceeding through a Member State on 28 September 2003 under applicable JAA procedures. Something equivalent to the provisions of article 2, § 4, 5, 6, 7 & 8 has to be added stating that Application paragraphs do not apply and to take into account the work that has already been done, "subject to review by the Agency" as proposed in the proposed amendment to those paragraphs.	Revised paragraph reads as follows: "6. With regard to design organisations for which a design organisation approval ~~demonstration of capability~~ is proceeding through a Member State on 28 September 2003 under applicable JAA procedures, (a) paragraph 21A.234 shall not apply; (b) compliance findings made under JAA procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.245 of this Regulation, subject to review by the Agency;"
099	Art. 3	This article deals with section B, rules and procedures for the competent authority. Nor here nor in the Regulation or Part 21, implementation periods are defined for the member state to amend there National Legislation concerning application procedures and there internal work procedures or National forms used. CAA-NL suggests a transition period of 24 months for existing certificates and a maximal 42 months for new certificates should be incorporated in both regulations.	Noted. However, the regulation becomes part of the national legal order without the need of transposition by Member States. Where existing national rules and procedures are in conflict with this Regulation the Regulation shall prevail.
090	Art. 3	To comply with ICAO obligations, the "state of design" has to be defined with the TC process because EASA does not represent a state.	Noted. Full response on the issue of ICAO State of Design is provided for in the final Opinion of the Agency submitted to the Commission. In applying the concept of "State of Design", a

			functional approach has to be followed in accordance with Article 15 of the Basic Regulation, paragraph 1 ("The Agency shall…carry out the functions and tasks of the State of design…").
122	Article 3	Article 3 and 4 "all transitional periods should be the same length and dates"	Disagreed. Transitional periods are tailor-made to the needs of the specific sectors of the industry.
146	Article 3	Article 3 : Design organisation, Article 3 Design organisation 1. (unchanged) 2. (unchanged) 3. Design organisation approvals issued under applicable JAA procedures before 28 September 2003 shall be deemed to comply with this Regulation. In such case, the period of level two findings, referred to in Subpart J of the Annex to this Regulation, shall be one year. 4. (unchanged) 5. (unchanged). Reason(s) for proposed text/comment: It is acknowledged that Article (5) paragraph 4.f) of the Basic Regulation identifies that "the Commission shall adopt, (…) the rules for the implementation of this Article, specifying in particular: (…) conditions to issue, maintain, amend, suspend or revoke organisation approvals required (…)". Nevertheless : - JAR 21 amendment 5 does not include any "Findings" paragraph, neither in Subpart G, nor in Subpart J - neither could one be found in any JAA official document having had the opportunity to be formally commented upon by the interested parties : it was not in any previously issued JAA NPA	Disagreed. Deletion "for closure" is unjustified since it is the purpose of this article to regulate closure action within a defined time limit. Disagreed. The concept of findings was previously contained in JIPs with which NAAs had to comply with and may not have been directly visible to industry but nevertheless was applied.

		- it was neither in any POA nor DOA related TGM, through which experience could have formally be gained - it is explained nowhere within the detailed explanatory memorandum. Therefore, it is judged that Part 21 proposed "Findings" paragraphs are not mature, nor substantiated enough, to be included right away within issue 1 of Part 21. Within the little time available between its discovery in the project and the comment date, the AECMA established that its contents, notably the immediate suspension of the design organisation approval in case of level one finding : 21A.258(b)(1), is a considerable change. It would effectively, would the case happen, immediately halt the industrial production, with no mechanism formally identified to allow discussions to take place between the holder of the approval and the Agency before the suspension occurs. These discussions, though it is acknowledged that they should be rapid, in order not to let stay a situation where safety of aircraft could be compromised, are felt necessary to ensure : - that the supposed failing holder understands what the finding is, and can confirm that the finding represents a true situation, not an erroneous assessment - that, when the finding is confirmed, the holder can identify and mandate emergency corrective actions, to the satisfaction of the Agency, before industrial output had to be suspended as a likely consequence of the suspension of the design organisation approval. Such a process where the holder and the Agency would actively work together to find a suitable agreement would be consistent with paragraph 21A.3 way of managing situations where the level of safety of the product may be found to be	Noted. On the issue of immediate suspension, 21A.258(b)(1) exactly mirrors the process already in place under JAR 21 POA and carried forward to Part 21. Suspension always occurs on grounds of safety and is therefore duly justified. Experience has shown that this measure may be lifted very rapidly. The suspension will impact upon one or more privileges of the DOA and may or may not affect an associated production activity, dependent upon the nature and severity of the factors leading to the finding(s).

		temporarily compromised. As currently written, it is judged that proposed 21.A258 cannot be accepted, as it can be interpreted that it introduces requirements that are more severe than these from JAR 39, or JAR 21.A3. This in turn would introduce unequal treatment between European holders of certificates or approvals, and their competitors abroad. Therefore, the […] recommends that paragraphs 21A.125B (Subpart F), 21A.158 (Subpart G) and 21A.258 be not a part of issue 1 of Part 21. It is suggested instead to launch regulatory work through the applicable procedure of the Agency, such as the best procedures could be identified, discussed, assessed, justified and eventually entered into Part 21. Consequently, it is proposed not to mention "Findings" within the "(EC) No …/.. 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" articles.	Deferred. Recommendation noted. It will be incumbent upon the Agency to implement subsequent discussions on potential amendments.
080	Art. 3	The affected article does not consider cases of design organisation approval processes managed according to JAA procedures and still in progress at the date of 28 September 2003. It should be allowed to those organisation to complete the process of approval according to JAR 21, if it takes place before the time limit established by the paragraph 4 of article 3 (28 September 2005).	Noted. Text under arts 3(5) and 4(4) will be changed accordingly in view of other comments received.
164	Art. 3(1)	Demonstration of capability as design organisation for parts and appliances (except APU's) go beyond the current JAR-21 requirements (albeit it is recognized it is in Article 5.2.d of 1592). Furthermore, there are no requirements in the Annex for those	Noted. The matter falls under 21A.602B. JAR-21 Subpart JB concept of design organisation

		(even the Subpart JB from JAR-21 has been suppressed).	approval for parts and appliances has not been retained for Part 21, because it is not immediately related to design approval certificates and therefore it has been considered outside of the scope of the Basic Regulation, Article 5(2)(d). Full response is provided in the final Opinion submitted to the Commission.
099	Art. 3(1)	Talks about organizations responsible for the design of products, parts and appliances, as there is no reverence made to the design of modifications or repairs, confusion could arise. According the […] for clarity "modifications and repairs" should be incorporated in this paragraph.	Noted in view of another comment received. Revised paragraph now reads "or for changes or repairs thereto".
161	Art. 3(1)	The wording of paragraph 1 and 2 of article 3 should make clear that this applies not only to the design of "products, parts and appliances" but also of "major changes and major repairs thereof"	Noted in view of another comment received. Revised paragraph now reads "or for changes or repairs thereto".
161	Art. 3(2)	Amend paragraph 2 of article 3 as follows: "2. By way of derogation from paragraph 1, an organisation whose principal place of business is located outside the territory of the Member States may demonstrate its capability by holding a design certificate for the product, part and appliance for which it applies issued by the State in which it is located, provided: (a) that State is the State of design; and (b) the Agency has determined that the system of that State includes the same independent level of checking of compliance as provided by this Regulation, either through an equivalent system of approvals of organisations or through direct involvement of the competent authority of that State. (c) such determination by the Agency shall be recognised by	Disagreed. Paragraph (c) is not carried. Article 9 of the Basic Regulation prevails in case of conflict with paragraph (2).

		28 March 2007 through a memorandum of understanding between the Agency and the competent authority of that State or through a bilateral agreement between the European Union and that State. Reason(s) for proposed text/comment <u>Editorial</u> • The current wording is confusing. Not any certificate would fit (such as a production approval). It has to be a certificate/approval related to the design of the concerned product, part or appliance. <u>Impracticable</u> As the recognition is based on an established system of independent checks, it is essential that the Agency gets a minimum commitment from the other party. A MOU or Bilateral agreement provides the Agency with some assurance that the Competent authority/State will fulfil its engagements. (Consistent with proposed amendment on article 3, §2). It is however understood that the Agency will not be able to "determine" in one day on 28 September 2003. The proposed amendment allows for a transition period.	
080	Art. 3(2)	According to the Article 9 of the Council Regulation 1592/2002, the criteria contained in the affected paragraph (2) should be addressed to an Airworthiness Agreement. So this paragraph should be deleted or made consistent with the Council Regulation by specifying that the criteria therein should be implemented when an Airworthiness Agreement is stipulated between the Agency and the third-country pertinent Authority or satisfied by the existing Airworthiness Agreements.	Noted. Art. 3(2) and 4(2) stipulate how demonstration of capability is to be performed by third country organizations, independently of Art. 9 of the Basic Regulation.
175	Art. 3(2)(a)	In order to be consistent with ICAO terminology, and to prevent any misinterpretation of the meaning of State of design, please capitalize State of Design in this Article. Suggest the following editorial change:	Disagreed. The Basic Regulation already determines the writing convention for State of design, registry and manufacture which is now consistently applied in this implementing regulation.

		Capitalize the word “Design” when it is used in the context of “State of Design.”	
175	Art. 3(2)(b)	The FAA is concerned that due to the lack of a determination that the U.S. system meets this provision, U.S. design approval holders may be required to comply with Article 3 in total. We expect recognition for JAA’s determination that the U.S. system has the same independent level of checking of compliance. If this is not possible, then revision is necessary. If JAA recognition of the U.S. system is not possible, the following new subparagraph should be added: (c) That State shall be considered to meet the requirements of subparagraph (b) provided that State has concluded a bilateral airworthiness agreement with a Member State prior to 28 September 2003. This subparagraph is applicable until: - An agreement between the Community and that State supercedes the bilateral airworthiness agreement, or (ii) 28 March 2007.	Noted. This is a bilateral issue that will be addressed with the Community.
099	Article 3(3)	A transfer period of 1 year for a JAR 21-JB-DOA to a full Part 21-J-DOA is to short, 2 years is more realistic.	There is no transition from JB to J. Therefore, a new application for a Subpart J DOA can be processed indefinitely. A one year period for closure action is deemed reasonable.
029	Art. 3(3)	Due to the number of organisations involved and the resources required to conduct investigations, it is suggested to extend the period of compliance for organisations involved in STC and major repair approvals to a <u>period of 2 years</u> (instead of 1).	Disagreed. It is submitted that one year for the specific closure action is reasonable time to adapt.
078	Article 3(3)	- Change in the last sentence of Article 3 paragraph 3 "one year" to **“two years”.**	Disagreed. One year is deemed reasonable.

		The timeframe of one year is to short. Transition period should be extended to 28.9.2005. This gives the NAA the possibility to transfer all approvals within the two year surveillance period. No additional activities between the period required. - Add the following sentence: **"Applications processed by a Member State before 28 September 2003 may be finalised according to the JAR regulations applicable before that date.**" The process of continuation of applications filed before 28.9.2003 should be clarified. Applications filed before 28. September 2003 should be processed according the law in force at the date of application. "**legal security**".	Noted. To allow the continuation of applications under JAA procedures and ensure legal certainty, a new para. 6 is incorporated. Proposal from comment is not possible, as Part 21 applies exclusively.
164	Art. 3(3)	Neither approvals issued under national procedures nor ongoing approval processes are included. They should be.	Noted. Approvals issued under national procedures fall outside this paragraph. For ongoing procedures there is a new paragraph 6 added. Revised paragraph 6 reads as follows: "6. With regard to design organisations for which a design organisation approval ~~demonstration of capability~~ is proceeding through a Member State on 28 September 2003 under applicable JAA procedures, (a) paragraph 21A.234 shall not apply; (b) compliance findings made under JAA procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.245 of this Regulation, subject to review by the Agency;"

113	Art. 3(3)	The length of the period for closure of level two findings, referred to in Subpart J of the Annex, stated in the Draft Commission Regulation on Certification, is in contradiction with 21A.258. This discrepancy should be eliminated.	Noted. A change is proposed to differentiate usual level two findings from findings related to differences with previous JAR. It is proposed to add, in article 3(3), at the end of the paragraph: "when findings are related to differences with previous JAR".
113	Art. 3(3)	"3. Design organisation approvals issued by the standardised JAA full member State under applicable JAA procedures before 28 September 2003 shall be deemed to comply with this Regulation. In such case, the period for closure of level two findings, referred to in Subpart J of the Annex to this Regulation, shall be one year." The CAA CZ proposes to add " by the standardised JAA full member State" to the original wording of the paragraph to assure that the paragraph would be applicable also for other than EU Member States, proceeding in accordance with applicable JAA procedures. The new wording is consistent with all other related changes proposed by the CAA CZ.	Disagreed. Proposed modification is not possible, as this Regulation cannot give automatic rights to non EU States. The problem mentioned must be handled under the Basic Regulation, Articles 9 or 18.
052	Art. 3(3)	LBA proposes to delete in Article 3, para 3 the second sentence starting with "In such case , the period ..." Justification: This sentence will cause severe conflicts with the ongoing surveillance activities for those approvals issued under applicable JAA-procedures before 28 September 2003 as level two findings identified before that date will unintentionally receive a new prolonged corrective action period of one year by a.m. sentence.	Noted. A change is proposed to differentiate usual level two findings from findings related to differences with previous JAR. It is proposed to add, in article 4(3), at the end of the paragraph: "when findings are related to differences with previous JAR".
120	Art. 3(4)	Article 3 item 4. / Article 3 item 5 / Article 4 item 4.	Disagreed. Certain transition periods under Arts 2, 3 and 4

		Introduce consisting dates for the transition periods. All the corresponding dates should be changed to 28.03.2007. Justification: There is no necessity to shorten the given transition period of 42 months set forth by article 56 item 2 of the European Parliament and Council Regulation (EC) No 1592/2002 of 15/07/2002. Under the current general commercial situation, and in particular for smaller organisations, it is a big problem to divert their limited resources from productive design-/production-work to non-productive DO-/PO-certification work (especially when the DO-/PO-approval is not due in principal). To limit the commercial disadvantages of this process it is absolutely necessary for us to be able to choose when to divert our resources to the DO-/PO-certification work. Different from other bigger companies we usually don't have a separate certification department taking care of DOA and POA while the design and production department is still working undisturbed. In our companies this work must be done by the same people and as long as they sit on the certification stuff we do not have the smallest progress in other projects.	have been extended in view of comments received. In this case, extension up until 2007 is deemed unreasonable. Further insight on the meaning and intent of Article 56 in the light of transition provisions is provided for in the final Opinion submitted to the Commission.
069	Art. 3(4)	"A type-certificate holder who does not hold … before 28 March 2007" Comment: - An extension of period of time is necessary to find a suitable agreement between the Agency, the competent Authority of the State and the applicant to settle alternative procedures as mentioned in 21 A 14 b) - The EC Regulation 1592, paragraph 56, 2 allows to do so. - Commonly: All other deadlines mentioned in the articles 2, 3 and 4 should be the extended to 28 March 2007.	Disagreed. A 2 year period for TC holders is considered to be reasonable, taking into account the number of TC holders that do not have currently a JAR-21 DOA. All transitional periods under Articles 3(5) and 4(4) are now extended until 28 September 2005. The EASA Committee is the final instance.
164	Articles 3(4) and (5)	The need for a TC or STC holder that have no longer design activity to get a DOA is questionable.	Noted. As long as the TC ort STS remains valid, the DOA remains required for continued airworthiness

			purposes.
164	Art. 3(5)	There are no DOA requirements in Part 21 for parts designers Further, the number of organizations falling under 3.5 may be too high to be processed for DOA approval in just 1 year.	Noted. Provisions are made under Subpart O for design-related activities. The Agency may decide to further develop parts related design approvals. In view of comments received and in anticipation of the number of approvals required, it is recommended to extend the transitional period of Article 3(5) up until 28 September 2005. The EASA Committee is the final instance.
078	Article 3(5)	Change in the last sentence of Article 3 paragraph 5 : 28. September 2004 to **"28.September 2005"** The timeframe of one year is to short. Transition period should be extended to 28.9.2005. This gives the NAA the possibility to review all organisations where some do not hold a DOA approval.	Carried in view of other comments received. It is recommended to extend the transitional period up until 28 September 2005. The EASA Committee is the final instance.
080	Art. 3(5)	The transition period of 1 year, established by the article 3/paragraph (5) is considered not enough for the design organizations in charge of a supplemental type-certificate, major repair design etc. Having as reference the current national programme for completing the implementation of the JAR 21, it follows that the minimum transition period of 2 years (28 September 2005) is necessary for complying with the Commission Regulation (Part 21) .	Carried in view of other comments received. It is recommended to extend the transitional period up until 28 September 2005. The EASA Committee is the final instance.
099	Art. 3(5)	A transfer period of 1 year for a STC-holder, or other design approval holders to a full Part 21-J-DOA is to short, 2 years is more realistic.	Carried.
157	Art. 3(5)	(1) The text *"A design organisation in charge of.."* is not clear. Propose to replace *"in charge of "* by *"applying for"*. It is	(1) Noted. Revised text now reads as follows in view of other

		unreasonable to require holders of old approvals to obtain DOA. (2) The time to adapt is too short in case of a member state which has not yet started DOA standardization. Propose to change the date to demonstrate capability to 28 September 2005 also for design organizations applying for STC, major repair approval or parts approval.	comments received: "A design organisation <u>being the applicant for, or holder of,…</u>" Applicants on 28 September 2003 must be included, as the additional time to comply is also given to them. (2) Carried. It is recommended to extend the transitional period up until 28 September 2005. The EASA Committee is the final instance.
161	Art. 3(5)	Amend paragraph 5 of article 3 as follows: "5. A design organisation applying for a supplemental type-certificate, major repair design or parts and appliances approval after 28 September 2003 which does not hold on 28 September 2003 an appropriate design organisation approval issued under applicable JAA procedures shall demonstrate its capability before 28 March 2007 in accordance with 21A.112, 21A.432B, or 21A.602B of the Annex to this Regulation respectively." Reason(s) for proposed text/comment <u>Impracticable</u> • The words "*in charge of a STC* " are unclear and can be understood as a retroactive application of the obligation to demonstrate capability to STC, major repair design and parts and appliances approval holders. It is inappropriate and impractical to retroactively request these holders to demonstrate their capability: there are thousands of them and many do not have any design activity any longer. Continued airworthiness has been fulfilled until now without this demonstration. The demonstration of capability should only be required for new applications. This may be justified for TC holders but not for STC, repair and parts	Noted. Ambiguity lifted. As long as the STC is valid, the design holder will continue to be responsible for any continued airworthiness activity which requires a DOA, failing of which the DOA will become invalid. Revised text now reads as follows: "5. A design organisation <u>being the applicant for, or holder of,</u> a supplemental type-certificate, major repair design or parts and appliances approval after 28 September 2003 which does not hold on 28 September 2003 an appropriate design organisation approval issued under applicable JAA procedures shall demonstrate its capability before 28 September 2005 in accordance with 21A.112, 21A.432B, or 21A.602B of Part 21 respectively."

		and appliances approval holders. • A delay of more than one year should be left to the new applicants, as this requirement is recent or new: - Subpart M requiring capability demonstration was recently adopted in JAR 21 - Design capability demonstration for organisation applying for parts and appliances approval is new (this is coming from NPA 21-23 not adopted in JAR 21). - Subpart E of JAR 21 has not been until now generally applied in most Member States. For instance, design capability demonstration requirement is not implemented yet in France for DGAC STC and major repair design approval applicants (a temporary exemption was granted by DGAC until December 31, 2004). Considering the number of French organisations which are potential applicants for STC's, major repair design approvals or parts and appliances approvals, a 1 year delay is unreasonable, both for the industry and for DGAC (there are currently around 30 organisations holding JTSO in France, none of them having complied with 21A.602B, since it was not required under JAR 21, + 20 potential applicants for STC & Major Repair approval). Furthermore, until EU has concluded bilateral agreements with non Member States, this requirement is also applicable to non EU design organisations. **A 42 months delay is therefore necessary**, otherwise thousands of modifications might have to be dismounted as being no more valid, for the validity conditions of an STC (as proposed) is "subject to the holder remaining in compliance with this Part" (including demonstration of capability), which is not reasonable.	Applicants on 28 September 2003 must be included, as the additional time to comply is also given to them. Addressed by new article 2(14). In addition, period for corrective action under article 3(5) has been extended from one year to two.
120	Art. 3(5)	Article 3 item 4. / Article 3 item 5 / Article 4 item 4. Introduce consisting dates for the transition periods. All the corresponding dates should be changed to 28.03.2007.	Disagreed. However, certain transition periods under Arts 2, 3 and 4 have been extended in view of comments received. In this case, extension up until 2007 is

		Justification: There is no necessity to shorten the given transition period of 42 months set forth by article 56 item 2. of the European Parliament and Council Regulation (EC) No 1592/2002 of 15/07/2002. Under the current general commercial situation, and in particular for smaller organisations, it is a big problem to divert their limited resources from productive design-/production-work to non-productive DO-/PO-certification work (especially when the DO-/PO-approval is not due in principal). To limit the commercial disadvantages of this process it is absolutely necessary for us to be able to choose when to divert our resources to the DO-/PO-certification work. Different from other bigger companies we usually don't have a separate certification department taking care of DOA and POA while the design and production department is still working undisturbed. In our companies this work must be done by the same people and as long as they sit on the certification stuff we do not have the smallest progress in other projects.	deemed unreasonable. Further insight on the meaning and intent of Article 56 in the light of transition provisions is provided for in the final Opinion submitted to the Commission.
108	Art. 3(5)	"In charge of… approvals" is ambiguous. The derogation regarding demonstration of capability before 28 September 2004 shall apply to new applicants to enable smooth transition from national change approval systems to the EASA system and not to stop normal design activities in Member States. In addition there is no need to require demonstration of capability for STC holders that have no ongoing design activities. Proposed text: Change the beginning of the sentence to: "A design organisation applying for a supplemental type certificate, major repair…etc"	Noted. Ambiguity lifted in view of other comments received: "A design organisation <u>being the applicant for, or holder of,</u> …" As long as the STC is valid, the design holder will continue to be responsible for any continued airworthiness activity which requires a DOA, failing of which the DOA will become invalid.
146	Art. 3(5)	5. A design organisation <u>in charge</u> holder of a supplemental type-certificate, major repair design or parts and appliances approval which does not hold on 28 September 2003 an appropriate design organisation approval issued under	Noted. Ambiguity lifted on the basis of other comments received:

		applicable JAA procedures shall demonstrate its capability before 28 September 2004 2006 in accordance with 21A.112, 21A.432B, or 21A.602B of the Annex to this Regulation respectively. Reason(s) for proposed text/comment "Organisation in charge of …" does not fit with the rest of Part 21 wording. "Holder of …" is proposed instead. The vast majority of the existing supplemental type-certificates, major repair design and parts and appliances approval date before JAR 21 or National regulations imposed a DOA, and therefore are currently not covered by a DOA. It is believed that they are very numerous. Their holders are probably numerous also. It is felt that the Agency will need some time to instruct the DOAs from these numerous holders. As the Agency is just organising itself, it is very unlikely that the Agency can manage the resulting work in only one year. In consequence, the one year period is proposed to be replaced by a more workable three year period. Note : for clarification of the EASA status of existing supplemental type-certificates, a separate comment is raised. It is related to Article 2.	"A design organisation <u>being the applicant for, or holder of,</u> …" Applicants on 28 September 2003 must be included, as the additional time to comply is also given to them. Noted. One year for granting DOAs to supplemental type-certificate holders is insufficient. The period has now been extended to 28 September 2005.
122	Art. 4	Article 3 and 4 "all transitional periods should be the same length and dates"	Noted. Certain transition periods under Arts 2, 3 and 4 have been extended in view of comments received to make them more consistent.
119	Art. 4	The current JAR 21.1(e) is missing and covered by neither the Basic Regulation nor the Commision Regulation. JAR 21.1(e) is key requirement to control activity subcontracted outside the EU countries and ensure the associated Authority	JAR 21.1(e) is deemed inappropriate as limited to JAA Member States. In the context of EASA, this limitation no longer applies.

		investigation/surveillance, particularly in the global production sector. Add the applicable JAR 21.1e) material somewhere in the Commission Regulation (eg Article 4) or in its Annex, Sect A. : A proposal for such applicable material may be the following text in italic: *When any of the facilities of the organisation or any of his partners or subcontractors are located outside a EU country, the competent Authority does not issue an approval unless-* *(1) The organisation has submitted information regarding the procedures for coordination with those facilities, including the relationship between the organisation and the foreign facility; and* *(2) These procedures and relationships are acceptable to the competent Authority to enable it to make all the inspections and tests necessary to find compliance with the applicable provisions of the Annex to this Regulation.*	International relations are addressed in the Basic Regulation under Arts 9 and 18.
119	Art. 4	Article 4.2 contains nonsense sentences. Articles 4.3 and 4.5 should be extended to Subpart F. Change articles 4.2, 4.3 and 4.5 by adding the following *italic* underlined texts: *Production organisation* *1. An organisation responsible for the manufacture of products……* *2. By way of derogation from paragraph 1, a manufacturer whose principal place of business is located outside the territory of the Member States, may demonstrate its capability by holding a certificate issued by the State in which it is located for the product, part and appliance for which it applies, provided:* *(a) that State is the State of manufacture; and* *(b) the Agency has determined that ……..*	Carried for 4(2), as the proposed text clarifies the purpose of paragraph. Disagreed with change in 4(3), as Subpart F is not an approval. Carried for 4(5), as Subpart F is a way to demonstrate capability.

		3. Production organisation approvals issued by a Member States under applicable JAA procedures before 28 September 2003 shall be deemed to comply with this Regulation. In such case, the period for closure of level two findings, referred to in Subparts F and G of the Annex to this Regulation, shall be one year. *4. A production organisation shall demonstrate its ….* *5. Until a production organisation has demonstrated its capability under Subparts F and G of the Annex to this Regulation, statements ……*	
146	Art. 4	Article 4 Production organisation 1. (unchanged) 2. (unchanged) 3. Production organisation approvals issued by a Member States under applicable JAA procedures before 28 September 2003 shall be deemed to comply with this Regulation. In such case, the period of level two findings, referred to in Subparts G of the Annex to this Regulation, shall be one year. 4. (unchanged) 5. (unchanged). Reason(s) for proposed text/comment: It is acknowledged that Article (5) paragraph 4.f) of the Basic Regulation identifies that "the Commission shall adopt, (…) the rules for the implementation of this Article, specifying in particular: (…) conditions to issue, maintain, amend, suspend or revoke organisation approvals required (…)". Nevertheless : - JAR 21 amendment 5 does not include any "Findings" paragraph, neither in Subpart G, nor in Subpart J	Disagreed. Deletion "for closure" is unjustified since it is the purpose of this article to regulate closure action within a defined time limit. Disagreed. The concept of findings was previously contained in JIPs with which NAAs had to comply with and may not have been directly visible to industry but nevertheless was applied.

		- neither could one be found in any JAA official document having had the opportunity to be formally commented upon by the interested parties : it was not in any previously issued JAA NPA - it was neither in any POA nor DOA related TGM, through which experience could have formally be gained - it is explained nowhere within the detailed explanatory memorandum. Therefore, it is judged that Part 21 proposed "Findings" paragraphs are not mature, nor substantiated enough, to be included right away within issue 1 of Part 21. Within the little time available between its discovery in the project and the comment date, the AECMA established that its contents, notably the immediate suspension of the design organisation approval in case of level one finding : 21A.258(b)(1), is a considerable change. It would effectively, would the case happen, immediately halt the industrial production, with no mechanism formally identified to allow discussions to take place between the holder of the approval and the Agency before the suspension occurs. These discussions, though it is acknowledged that they should be rapid, in order not to let stay a situation where safety of aircraft could be compromised, are felt necessary to ensure : - that the supposed failing holder understands what the finding is, and can confirm that the finding represents a true situation, not an erroneous assessment - that, when the finding is confirmed, the holder can identify and mandate emergency corrective actions, to the satisfaction of the Agency, before industrial output had to be suspended as a likely consequence of the suspension of the design organisation approval.	

		Such a process where the holder and the Agency would actively work together to find a suitable agreement would be consistent with paragraph 21A.3 way of managing situations where the level of safety of the product may be found to be temporarily compromised. As currently written, it is judged that proposed 21.A258 cannot be accepted, as it can be interpreted that it introduces requirements that are more severe than these from JAR 39, or JAR 21.A3. This in turn would introduce unequal treatment between European holders of certificates or approvals, and their competitors abroad. Therefore, the […] recommends that paragraphs 21A.125B (Subpart F), 21A.158 (Subpart G) and 21A.258 be not a part of issue 1 of Part 21. It is suggested instead to launch regulatory work through the applicable procedure of the Agency, such as the best procedures could be identified, discussed, assessed, justified and eventually entered into Part 21. Consequently, it is proposed not to mention "Findings" within the "(EC) No …/.. 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" articles.	
161	Art. 4, new para. (6)	Add a new paragraph (xx) to Article 4 as follows: " xx. With regard to production organisations for which a demonstration of capability is proceeding through a Member State on 28 September 2003 under applicable JAA procedures, (1) paragraph 21A124 or 21A134, as applicable, shall not apply; (2) compliance findings made under JAA procedures shall be deemed to have been made by the	New paragraph (6) is incorporated to address the issue of ongoing POAs: "6. With regard to organisations for which a production organisation approval is proceeding through a Member State on 28 September 2003 under applicable JAA procedures: (a) 21A.134 of Part 21 shall not apply;

		Agency for the purpose of complying with 21A.125 or 21A.145 of this Regulation as applicable, subject to review by the Agency; " Reason(s) for proposed text/comment <u>Implementation problem</u> There is some provision missing in Article 4 (Production Organisations) with regard to organisations for which a demonstration of capability is proceeding through a Member State on 28 September 2003 under applicable JAA procedures. Something equivalent to the provisions of article 2, § 4, 5, 6, 7 & 8 has to be added stating that Application paragraphs do not apply and to take into account the work that has already been done, "subject to review by the Agency" as proposed in the proposed amendment to those paragraphs.	(b) compliance findings made under JAA procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.145 of Part 21."
161	Art. 4(2)	Amend paragraph 2 of article 4 as follows: "2. By way of derogation from paragraph 1, a manufacturer whose principal place of business is located outside the territory of the Member States, may demonstrate its capability by fulfilling the conditions for issuing or obtaining a certificate of airworthiness for export or an authorised release certificate for the product, part and appliance for which it applies, in the State in which it is located, provided the Agency has determined that the system of that State includes the same independent level of checking of compliance as provided by this Regulation, either through an equivalent system of approvals of organisations or through direct involvement of the competent authority of that State." (c) such determination by the Agency shall be recognised by 28 March 2007 through a memorandum of understanding between the Agency and the competent authority of that State or through a bilateral agreement between the European Union and that State. Reason(s) for proposed text/comment <u>Editorial</u> • Consistent with the wording of Article 3.2. It has to	Disagreed. Paragraph (c) is not carried. Article 9 of the Basic Regulation prevails in case of conflict with paragraph (2).

		be clear that the demonstration of capability does not go beyond the scope of what the manufacturer is entitled to in the State in which it is located. • (a) is redundant. <u>Impracticable</u> As the recognition is based on an established system of independent checks, it is essential that the Agency gets a minimum commitment from the other party. A MOU or Bilateral agreement provides the Agency with some assurance that the Competent authority/State will fulfil its engagements. (Consistent with proposed amendment on article 3, §2). It is however understood that the Agency will not be able to "determine" in one day on 28 September 2003. The proposed amendment allows for a transition period.	
175	Art. 4(2)(b)	The FAA is concerned that due to the lack of a determination that the U.S. system meets this provision, U.S. production approval holders may be required to comply with Article 4 in total. We expect recognition for JAA's determination that the U.S. system has the same independent level of checking of compliance. If this is not possible, then revision is necessary. If JAA recognition of the U.S. system is not possible, the following new subparagraph should be added: (c) That State shall be considered to meet the requirements of subparagraph (b) provided that State has concluded a bilateral airworthiness agreement with a Member State prior to 28 September 2003. This subparagraph is applicable until: - An agreement between the Community and that State supercedes the bilateral airworthiness agreement, or (ii) 28 March 2007.	Noted. This is a bilateral issue that will be addressed with the Community.
164	Art. 4(3)	The Regulation should include what happens to ongoing approval processes the 28 September.	Noted. Article 4 has been amended to incorporate a specific provision on ongoing production approval

			processes (new art. 4(6)).
078	Art. 4(3)	- Change in the last sentence of Article 3 "one year" to **"two years".** The timeframe of one year is to short. Transition period should be extended to 28.9.2005. This gives the NAA the possibility to transfer all approvals within the two year national standardized surveillance period. No additional activities between the period required. - Add the following sentence to Article 4 paragraph 3: "**Applications processed by a Member State before 28. September 2003 may be finalised according to the JAR regulations applicable before that date.**" The process of continuation of applications filed before 28.9.2003 should be clarified. Applications filed before 28 September 2003 should be processed according the law in force at the date of application. "**legal security**"	- One year is deemed reasonable time to adapt. - New article 4(6) incorporated to allow continuation of applications under JAA procedures.
052	Art. 4(3)	LBA proposes to delete in Article 4, para 3 the second sentence starting with "In such case, the period …." Justification: This sentence will cause severe conflicts with the ongoing surveillance activities for those approvals issued under applicable JAA procedures before 28.September 2003 as level two findings identified before that date will unintentionally receive a new prolonged corrective action period of one year by a.m. sentence.	Noted. A change is proposed to differentiate usual level 2 findings from findings related to differences with previous JAR. It is proposed to add, in article 4(3), at the end of the paragraph: "when findings are related to differences with previous JAR".
113	Art. 4(3)	Depending on various interpretations of 21B.245, the length of the period for closure of level two findings stated in the Draft Commission Regulation on Certification and referred to in Subpart G of the Annex could be in contradiction with 21B.245. This discrepancy should be eliminated.	Noted. Proposed to change article 4(3) to add at the end of the paragraph: "when findings are related to differences with previous JAR".

113	Art. 4(3)	3. Production organisation approvals issued by the standardised JAA full member State under applicable JAA procedures before 28 September 2003 shall be deemed to comply with this Regulation. In such case, the period for closure of level two findings, referred to in Subpart G of the Annex to this Regulation, shall be one year." The CAA CZ proposes to leave out "by a Member States" from the original wording of the paragraph and to add "by the standardised JAA full member State", so that the paragraph would be applicable also for other than EU Member States, proceeding in accordance with applicable JAA procedures. The new wording is consistent with all other related changes proposed by the CAA CZ. Since the Czech Republic is currently a non-EU State and shall not be a Member State before 28 September 2003, the Production Organisation Approvals issued by the CAA CZ, as a full Member of JAA, would not be automatically recognised by Member States.	Disagreed. Proposed modification is not possible, as this Regulation cannot give automatic rights to non EU States. The problem mentioned must be handled under Basic Regulation, article 9 or 18. See full response on this issue in the final Opinion submitted to the Commission.
120	Art. 4(4)	Article 3 item 4. / Article 3 item 5 / Article 4 item 4. Introduce consisting dates for the transition periods. All the corresponding dates should be changed to 28.03.2007. <u>Justification:</u> There is no necessity to shorten the given transition period of 42 months set forth by article 56 item 2. of the European Parliament and Council Regulation (EC) No 1592/2002 of 15/07/2002. Under the current general commercial situation, and in particular for smaller organisations, it is a big problem to divert their limited resources from productive design-/production-work to non-productive DO-/PO-certification work (especially when the DO-/PO-approval is not due in principal). To limit the commercial disadvantages of this process it is	Disagreed. However, certain transition periods under Arts 2, 3 and 4 have been extended in view of comments received. In this case, extension up until 2007 is deemed unreasonable.

		absolutely necessary for us to be able to choose when to divert our resources to the DO-/PO-certification work. Different from other bigger companies we usually don't have a separate certification department taking care of DOA and POA while the design and production department is still working undisturbed. In our companies this work must be done by the same people and as long as they sit on the certification stuff we do not have the smallest progress in other projects.	
052	Art. 4(4)	Change Art. 4, para 4 as follows: …before 28 March 2007. Justification: Under Article 56, para 2. of the regulation 1592/2002 a transition period of 42 months starting with 28 September 2003 is stated.	Disagreed. The entry into force on 28 September 2003 is consistent with Article 56(1). An extra two years is granted under paragraph 4 to allow sufficient time for production organisations to adapt and demonstrate capability. Further insight on the meaning and intent of Article 56 in the light of transition provisions is provided for in the final Opinion submitted to the Commission.
108	Art. 4(4)	Only one year is allowed for production organisations to demonstrate their capability under the Regulation in accordance with Part 21. ASA is of the opinion that this time is not sufficient. Reason (s) for proposed text or comment: When JAR-21 Subpart G was introduced in the Swedish national regulations, one year prior notice was given that JAR-21 was going to be mandatory for new applications for production organisations. Organisations that were holding national Production Certificates were given the time up to 1 January 2006 to show compliance with JAR-21. The time allowed to demonstrate capability should be 42 months in accordance with Article 56 of Regulation 1592/2002.	Noted. EASA Committee is the final instance. Now the proposal is an extension up to two years (Arts 3 and 4) which is deemed a reasonable period for adaptation.

164	Art. 4(4)	1 year will probably be too short for the authorities to process all POAs.	Noted. In anticipation of the number of approvals required, it is recommended to extend the transitional period of article 4(4) up until 28 September 2005. The EASA Committee remains the final instance.
078	Art. 4(4)	Change in the last sentence of Article 4 paragraph 4 : 28. September 2004 to **"28.September 2005"** The timeframe of one year is to short. Transition period should be extended to 28.9.2005. This gives the NAA the possibility to review all organisations not holding a POA approval appropriately - due to reduced workload.	Carried in view of other comments received.
080	Art. 4(4)	The transition period of 1 year, established by the article 4/paragraph (4) is considered not enough for the production organisations. Having as reference the current national programme for completing the implementation of the JAR 21 Subparts F/G, it follows that the minimum transition period of 2 years (28 September 2005) is necessary for complying with the Commission Regulation (Part 21) .	Carried in view of other comments received.
157	Art. 4(4)	The time to adapt is too short in case of a member state which has not yet started POA standardization. Propose to change the date to demonstrate capability to 28 September 2005.	Carried. It is recommended in view of other comments to extend the transitional period up until 28 September 2005. The EASA Committee is the final instance.
161	Art. 4(4)	Amend paragraph 4 of article 4 as follows: "4. A production organisation who does not hold on 28 September 2003 an appropriate production organisation approval issued under applicable JAA procedures shall demonstrate its capability under the conditions laid down in Subpart F or G of the Annex to this Regulation before 28 September 2004."	Carried. However, in view of other comments received, the closing date for adaptation is now 28 September 2005.

		Reason(s) for proposed text/comment: Editorial • Consistent with the wording of paragraph 4 of Article 3 which is more explicit.	
161	Art. 5	Move the transition provisions of 21A.804 of the Annex into article 5 of the Regulation by amending article 5 as follows: "This Regulation shall enter into force on 28 September 2003 except for the provisions of paragraph 21A.804(a)(3) (EPA marking) which shall enter into force on 28 March 2004. This Regulation shall be binding […] " Reason(s) for proposed text/comment Implementation problem Consistent with Transfer Policy. Time should be given to the manufacturer in order to implement the provision on his tools. EPA marking is new as it was not included in JAR 21. This provision already exists in §21A804. It should be moved as Part 21 is not supposed to include any transition provision	Noted. Revised Article 5 now reads as follows: "This Regulation shall enter into force on 28 September 2003, except for 21A.804, subparagraph (a)(3) of Part 21 which shall enter into force on 28 March 2004. …"
108	Art. 5	It is unlikely that Agency guidance material and procedures for all aspects of these new regulations will be available on 28 September 2003, therefore it is suggested that following general text is introduced in both regulations : "For the application of this regulation, in the absence of guidance material and procedures published by the Agency, corresponding guidance material and procedures published by the JAA or a Member State applies."	Noted. Procedures of the Agency need to be defined by the Management Board under Article 44 of the Basic Regulation. Agency measures, such as guidance material, are currently being submitted for consultation prior to adoption in September.