

Note 3

Consequences of the entry into force of the Commission Regulation on the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations, on foreign organisations

1. A significant number of comments address the consequence of the entry into force of the Commission Regulation on third country organisations.

This note aims at clarifying the situation.

I. General provisions

2. As a general principle foreign organisations willing to provide services in the Community or to be recognised certain privileges in the design or manufacture of products subject to the Community certification requirements, shall comply with the same requirements than organisations established in Member States. The draft Regulation is therefore applicable as such.
3. This regulation provides for grandfathering provisions which ensure that existing valid approvals are validated provided they have been “endorsed” by Member States as showing compliance with JAA requirements. Articles 3(3) and 4(3) specify that:

“approvals issued or recognised by a Member State in accordance with the JAA requirements and procedures and valid before 28 September 2003 shall be deemed to comply with this Regulation”.

Provisions of Articles 3(6) and 4(6) establish equivalent grand-fathering rights.

Such “endorsement” can derive from the issuing of a certificate or the formal recognition of a foreign certificate on the basis of the JAA arrangements or of a bilateral agreement.

4. The continued validity of these “grand-fathered” approvals implies however that the relevant requirements in the Parts are fulfilled, except for those slight differences between JARs and Parts that are considered to be “level two findings” which have to be rectified within one year. As Parts have been devised to be as similar to JARs as possible, current approvals can be deemed to show compliance with Parts and there should be no discontinuity.
5. The verification of continued compliance becomes from 28 September 2003 a responsibility of the Agency which can be discharged by several means:
 - either the Agency does the check itself or through “national administrations of Member States” (lead authorities),

- or it relies on third countries national authorities using working arrangements (article 18(2) of the Basic Regulation) or bilateral agreements (article 9 of the Basic Regulation). In that context the accession of the Agency to the Cyprus Arrangement can be seen as a way to conclude with other JAA/non EU States such working arrangements.

Work is currently being done to ensure continuity using either means as appropriate.

II. States that will join the EU on 1st May 2004

6. At the Copenhagen European Council of December 2002, accession negotiations were concluded with Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia (the “10 acceding countries”). The Accession Treaty was signed on 16 April 2003 in Athens and, following ratification, enlargement will take place on 1st May 2004.
7. Upon their official membership - as defined by the Copenhagen criteria - the new Member States are obliged to apply the “*acquis communautaire*”. This concept includes all legal rules and principles constituting the Community law. The concept of “*acquis communautaire*” implies that the acceding country must accept all acts adopted by the Institutions prior to the time when its accession takes effect. Only in this way it is possible to avoid discontinuity in the Community legal system (see Judgement of the ECJ C-39/81 of 16.02.1982, Halyvourgiki/Commission, Rec. 1982, p. 593). No exemption for the concerned area has been foreseen in the Treaty of Accession.
8. At that time the current approvals of the 10 accession countries shall be recognised by the Member States of the EU only if they were issued in accordance with the Basic Regulation and its implementing rules as specified by Article 8 of the Basic Regulation. Before such time the general provisions described above apply.