

OPINION No 01/2006

OF THE EUROPEAN AVIATION SAFETY AGENCY

for a Commission Regulation amending Regulation (EC) No 1592/2002 of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Aviation Safety Agency

AND

for a Commission Regulation amending Commission Regulation (EC) No 1702/2003 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

to implement the changes resulting from Amendments 8 of Volume I and amendment 5 of Volume II of Annex 16 of the Convention on international civil aviation concluded in Chicago on 7 December 1944.

I. General

1. In its sixth meeting the International Civil Aviation Organisation (ICAO) Committee on Aviation Environmental Protection (CAEP/6) agreed on changes of the International Standards and Recommended Practices - Environmental Protection on Aircraft Noise and Aircraft Engine Emissions, Annex 16 to the Convention on International Civil Aviation ("Annex 16"). After processing through the ICAO system these changes were adopted as formal amendments of Annex 16 to the Convention on international civil aviation, called the Chicago Convention, and became applicable on the 24th of November 2005. Environmental requirements included in Annex 16 are the essential requirements for environmental protection according to Article 6.1 of the Regulation (EC) No 1592/2002 of the European parliament and of the Council on common rules in the field of civil aviation and establishing a European Aviation Safety Agency¹ ("the Basic Regulation"). Any change in Annex 16 requires therefore that the Community decides whether it wants to adjust its own requirements accordingly and, if so, amend the reference in Article 6 to keep it up-to-date with ICAO developments. Eventually such amendment may trigger further change of the rules adopted by the Commission to implement Article 6, as required by paragraph 3 of this article. Such is the purpose of this Agency opinion.
2. In order to update the above mentioned European regulations and keep them in line with the latest version of Annex 16 two changes are needed. These are:
 - an amendment of Article 6 of the Basic Regulation to update the reference to the latest edition; and
 - an amendment to the Annex to Commission Regulation (EC) No 1702/2003 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 organisations² ("Part 21").

This opinion is aimed at these two points.

When such changes are adopted it will be necessary to also update rules issued by the Agency in accordance with Article 14 of the Basic Regulation to facilitate the implementation of Community law. These are:

- the Executive Director's Decision 2003/4/RM on Certification Specifications providing for acceptable means of compliance for aircraft noise ("CS-36"); and
- the Executive Director's Decision 2003/1/RM on acceptable means of compliance and guidance material 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 ("AMC and GM to Part 21").

These additional changes cannot be initiated until the amendments as described in this opinion have been made.

¹ OJ L 240 / 7.9.2002, p. 1..

² OJ L 243, 27.9.2003, p. 6.

3. This Opinion has been adopted, following the procedure specified by the Agency's Management Board³, in accordance with the provisions of Article 14 of the Basic Regulation.

II. Consultation

4. The draft Opinion for a Commission Regulation amending the Basic Regulation, Part 21 and related draft Executive Director Decisions were published for comment on the Agency website (www.easa.eu.int) on 14 July 2005.
5. By the closing date of 14 October 2005, the Agency had received 22 comments from national authorities or private companies.
6. All comments received have been acknowledged and incorporated into the attached Comment Response Document (CRD). All comments received support the incorporation of ICAO Amendments 5 and 8 into Community law and the related adjustment of Article 6 and Part 21.
7. Several commenters however indicated concerns with part of the Agency's intentions as regards the transposition of the provisions of Amendment 8 related to the noise certification documentation that operators must keep on board their aircraft. They had expected that the Member States would be given the choice between the three different options accepted by ICAO. This seems incompatible though with the provisions of the Basic Regulation, which requires common standards across the whole community. It would therefore not be possible to leave to the Member States to decide what option they prefer. Such a choice has to be done at Community level and be implemented to all Community operators without discrimination.
8. The option included in the agency's NPA merely builds on the content of Part 21 as it was adopted in September 2003. This Regulation requires competent authorities to issue noise certificates in conformity with EASA Form 45, This was done at the time by anticipation of the results of CAEP work, which was well known already, and reflected what seemed to be a majority position of European members of this group as regards the best scheme for noise certification documentation. No comment was indeed made on this point when the draft implementing rule was circulated for comments in 2003. Changing to another administrative system can be considered, but as this would be a significant deviation from what is currently Community law and was not part of the consultation launched through NPA 15-2005, there is a need to go through a separate rulemaking process clarifying the pro and cons of such change and asking interested parties to comment on it. The Agency intends therefore to issue an advanced notice of proposed amendment (A-NPA) requesting opinions on this issue and preferences for one or another option. If the outcome of this consultation shows sufficient support for a change, the Agency will initiate on this basis a rulemaking task to amend the administrative system for issuing noise documents. In order to expedite this and in order to minimize the delay in the implementation

³ Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of opinions, certifications specifications and guidance material ("rulemaking Procedure") EASA MB/7/03 of 27.06.2003.

of the CAEP/6 amendments, as there is a need to comply with ICAO Standards, this opinion and the CRD are published at the same time to close the on-going rulemaking task.

III. Content of the Opinion of the Agency

9. This opinion is aimed at amending Article 6 of the Basic Regulation, to update the reference to the latest edition of Annex 16, and at making the related amendments to Part 21. The content of these amendments is explained here below.
10. Amendment 8 to Annex 16, Volume I on Aircraft Noise was adopted by the Council of the International Civil Aviation Organisation (“ICAO”) at the fifth meeting of its 174th Session on 23 February 2005. It became applicable on the 24th of November 2005. It further minimizes the effects of aviation on the environment by enhancing measures related to reduction of aircraft noise at the source. The amendment clarifies applicability language including changes in applicability to allow for the re-certification of Chapter 5 aeroplanes to the more stringent requirements of Chapter 4. Further, clarification is provided for situations that do not require demonstration of compliance with noise provisions. It also introduces clarification on the administration of noise documentation and adds a new Attachment G with further guidelines for the administration of noise certification documentation and a new Attachment H providing guidelines for obtaining helicopter noise data for land use planning purposes.
11. Amendment 5 to Annex 16, Volume II on Aircraft Engine Emission and Fuel Venting was also adopted by the ICAO Council at the fifth meeting of its 174th Session and became applicable on 24 November 2005. It further minimizes the effects of aviation on the environment by enhancing measures related to the reduction of aircraft engine emissions. A new standard for Oxides of Nitrogen (NOx) that is 12 per cent below the previous standard is included.
12. The changes to Part 21 aim at deleting the obligation to include noise information in the flight manual. This is to bring Part 21 in line with the deletion of the same requirement from Annex 16, Volume I. Note that it is still allowed to include the information in the flight manual, but as the information is also listed in the Noise Certificate, which was made mandatory for aircraft registered in the European Union by Part 21, this would lead to unnecessary duplication of information. Further, the aim is to make some changes of an editorial nature to EASA Form 45 to bring it fully in line with the format as recommended by ICAO Annex 16.

IV. Next EASA rules changes

13. Annex 16, Volume I was extended with a new Attachment G, giving guidelines for the administration of noise certification documentation. It is the intention to implement these by amending Decision No. 2003/1/RM of the Executive Director of the Agency of 17 October 2003 on acceptable means of compliance and guidance material 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 (“AMC and GM to Part 21”).

14. In conjunction with the changes to Annex 16, Volume I, changes were also made to ICAO Document Environmental Technical Manual on the Use of Procedures in the Noise Certification of Aircraft, ICAO Doc 9501 AN/929. It is the intention to incorporate these by amending Decision No. 2003/4/RM of the Executive Director of the Agency of 17 October 2003 on the certification specifications providing for acceptable means of compliance for aircraft noise (“CS-36”).

V. Regulatory Impact Assessment

15. Safety

No safety impacts are expected from these measures.

16. Economic

Economic impacts are expected to be positive. By adhering to standards adopted by ICAO, aircraft registered in the European Union will be more easily accepted in different parts of the world. The associated reduction in administrative burden to the industry and clarification of administration of noise documents is expected to have a positive economic effect.

17. Environmental

The changes are expected to improve and enhance the provisions for environmental protection.

18. Social

No social impacts are expected from the options other than the indirect effect of the mitigation of negative environmental effects of aviation on the environment.

Cologne, 15 May 2006

P. GOUDOU