

**Proposal for a**  
**COMMISSION REGULATION (EC) No .../...**

of [...]

**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 provide for the continued operation of some aircraft registered in Member States**

**(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency<sup>1</sup> ("the Basic Regulation"), and in particular Article 2, 5 and 6 thereof,

Having regard 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 organisations<sup>2</sup> (the Commission Regulation), and in particular its Article 2 and paragraph 21A.173(b)(2) and 21A.184 of its annex (Part 21),

Whereas:

- (1) Aircraft subject to the provisions of the Basic Regulation must all be issued an airworthiness certificate or permit to fly in accordance with the Commission Regulation before 28 March 2007; such date is the ultimate one specified by Article 56 of the Basic Regulation beyond which no design activities, which are an Agency responsibility, can be exercised by Member States; in the absence of such a certificate or permit to fly they are not entitled to be used any more by Community operators in the territory of Member States;
- (2) The Commission Regulation required the European Aviation Safety Agency (the Agency) to determine before 28 March 2007 the approved design necessary to issue the airworthiness certificates or permits to fly of a number of aircraft registered in Member States at the time of entry into force of the Commission Regulation, which had not been eligible to the provisions of its Article 2.3(a); such determination could not be done by lack of support from the designers of these products;

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<sup>1</sup> OJ L 240, 7.9.2002, p. 1. Regulation as last amended by Commission Regulation (EC) 1701/2003 of 24 September 2003 (OJ L 243, 27.9.2003, p. 5).

<sup>2</sup> OJ L 243, 27.9.2003, p. 6. Regulation as last amended by Commission Regulation (EC) No 706/2006 of 8 May 2006 (OJ L 122, 9.5.2006, p. 16).

- (3) While permanent airworthiness certificates should only be issued when the Agency has been able to approve their design following a technical evaluation of the product, restricted certificates of airworthiness could be issued for a limited period of time to allow the continued operation of many of these aircraft and the Agency to review their design; such restricted certificates of airworthiness are to be issued on the basis of specific airworthiness specifications as required by the provisions of Articles 5.3(b) and 15(1)(b) of the Basic Regulation and of Part 21A.184 of the Commission regulation; the adoption of such specifications by the Agency is no more possible before 28 March 2007:
- (4) As this was done for most aircraft holding a type certificate issued by a Member State before 28 September 2003, it is possible to determine an approved design by reference to that of the State of design; such a determination shall only be done for aircraft to which Member States issued certificates of airworthiness as defined by the Commission Regulation, excluding restricted certificates of airworthiness and permits to fly; it is necessary also to ensure that only aircraft for which the representative authority of the State of design accepts through a working arrangement to assist the Agency in ensuring the continued oversight of the so determined approved design;
- (5) The determination of the approved design requires an amendment of Article 2 of the Commission regulation; such an amendment would make the Article difficult to understand; a re-organisation of that article is necessary;
- (6) Article 2.3(a) of the Commission Regulation only refers to aircraft that were issued a type-certificate; a number of aircraft that should be eligible for the grandfathering measure specified in this Article have never been issued a type-certificate because such documents were not required by ICAO Standards applicable at the time they were designed and certificated; clarification is needed to ensure that such aircraft can continue to be issued a certificate of airworthiness;
- (7) The review of the present case revealed an editorial mistake in Part 21A.173(b)(2) and Part 21A.184, which refer to “specific certification specification” instead of “specific airworthiness specification” as specified in Articles 5.3(b) and 15(1)(b) of the Basic Regulation; the text should be modified to avoid confusion and legal uncertainty;
- (8) The measures provided by this Regulation are based on the opinion issued by the Agency<sup>3</sup> in accordance with Articles 12(2)(b) and 14(1) of the Basic Regulation;
- (9) The measures provided for in this Regulation are in accordance with the opinion<sup>4</sup> of the European Aviation Safety Agency Committee established by Article 54(3) of the Basic Regulation;
- (10) The Commission Regulation (EC) No 1702/2003 should therefore be amended accordingly;

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<sup>3</sup> Opinion 5/2005

<sup>4</sup> [to be issued]

HAS ADOPTED THIS REGULATION:

*Article 1*

Article 2 of Commission Regulation (EC) No 1702/2003 is replaced by the following articles:

*Article 2*

*Products, parts and appliances certification*

1. Products, parts and appliances shall be issued certificates as specified in Part 21.
2. By way of derogation from paragraph 1, aircraft, including any installed product, part and appliance, which are not registered in a Member State shall be exempted from the provisions of Subparts H and I of Part 21.
3. Where reference is made in Part 21 to apply and/or to comply with the provisions of Part M and Part M is not in force, the relevant national rules shall apply instead.

*Article 2a*

*Continued validity of type-certificates, supplemental type-certificates and the related certificates of airworthiness*

1. With regard to a product that had a type-certificate, or a document allowing the issuing of a certificate of airworthiness, 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 issued in accordance with this Regulation when:
    - (i) its type-certification basis was:
      - the JAA type-certification basis, for products that have been certificated under JAA procedures, as defined in their JAA data sheet; or
      - for other products, the type-certification basis as defined in the type-certificate data sheet of the State of design, if that State of design was:
        - a Member State, unless the Agency determines, taking into account, in particular, airworthiness codes used and service experience, that such type-certification basis does not provide for a level of safety equivalent to that required by the Basic Regulation and this Regulation; or
        - a State with which a Member State had concluded a bilateral airworthiness agreement or similar arrangement under which such products have been certificated on the basis of that State of design airworthiness codes, unless the Agency determines that such airworthiness codes or service experience or the safety system of

that State of design do not provide for a level of safety equivalent to that required by the Basic Regulation and this Regulation;

- The Agency shall make a first evaluation of the implication of these two above provisions in view of producing an opinion to the Commission including possible amendments to the present Regulation.
    - (ii) the environmental protection requirements were those laid down in Annex 16 to the Chicago Convention, as applicable to the product;
    - (iii) the applicable airworthiness directives were those of the State of design.
  - (b) The design of an individual aircraft, which was 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 was part of a type-certificate referred to in paragraph (a);
    - (ii) all changes to this basic type design, which were not under the responsibility of the type-certificate holder, had been approved; and
    - (iii) the airworthiness directives issued or adopted by the Member State of registry before 28 September 2003 were complied with, including any variations to the airworthiness directives of the State of design agreed by the Member State of registry.
  - (c) The Agency shall determine the type-certificate of the products not meeting paragraph (a) before 28 March 2007.
  - (d) The Agency shall determine the type-certificate data sheet for noise for all products covered by paragraph (a) before 28 March 2007. Until such determination, Member States may continue to issue noise certificates in accordance with applicable national regulations.
2. With regard to supplemental type-certificates issued by a Member State under JAA procedures or applicable national procedures and with regard to 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 change, was valid on 28 September 2003, the supplemental type-certificate, or change, shall be deemed to have been issued under this Regulation.
3. With regard to products for which a type-certification process was proceeding through the JAA or a Member State on 28 September 2003:
- (a) if a product is under certification by several Member States, the most advanced project shall be used as the reference;
  - (b) 21A.15(a), (b) and (c) of Part 21 shall not apply;
  - (c) by way of derogation from 21A.17(a) of Part 21, the type-certification basis shall be that established by the JAA or, where applicable, the Member State at the date of application for the approval;

- (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 Part 21;
4. 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 was not finalised at the time when the type-certificate is determined in accordance with this Regulation:
    - (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;
    - (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 Part 21.
  5. With regard to supplemental type-certificates for which a certification process was 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 was being carried out by a Member State on 28 September 2003 under applicable national procedures:
    - (a) if a certification process was 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;
    - (d) 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 Part 21.
  6. With regard to products that had a national type-certificate, or equivalent, and for which the approval process of a major repair design carried out by a Member State was not finalised at the time when the type-certificate is determined 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 Part 21.
  7. A certificate of airworthiness issued by a Member State attesting conformity with a type-certificate determined in accordance with paragraph 1 shall be deemed to comply with this Regulation.

## *Article 2b*

### *Continued operation of some aircraft registered by Member States*

1. With regard to an aircraft that is not eligible to the provisions of Article 2a and that has been issued a certificate of airworthiness before 1 July 2006 by a Member State, and which was on its register on that date, specific airworthiness specifications are deemed to have been issued in accordance with this Regulation under the following conditions:

(a) the applicable specific airworthiness specifications, are the type-certificate data sheet and type-certificate data sheet for noise, or equivalent documents, of the State of design, provided that State of design has concluded a working arrangement with the Agency covering the continued airworthiness of the design of such an aircraft.

(b) the environmental protection requirements are those laid down in Annex 16 to the Chicago Convention, as applicable to such an aircraft.

(c) the applicable airworthiness directives are the mandatory continuing airworthiness information of the State of design.

2. The specific airworthiness specifications referred to in paragraph 1 shall allow the continuation of the type of operations the aircraft is currently entitled to and are valid until 28 March 2012 unless superseded by a design and environmental approval issued by the Agency in accordance with this Regulation.

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## *Article 2c*

### *Continued validity of parts and appliances certificates*

1. Approvals of parts and appliances issued by a Member State and valid on 28 September 2003 shall be deemed to have been issued in accordance with this Regulation.

2. With regard to parts and appliances for which an approval or authorisation process was being carried out by a Member State on 28 September 2003:

(a) if an authorisation process was 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, at the date of application for the approval or authorisation;

(d) compliance findings made by the relevant Member State shall be deemed to have been made by the Agency for the purpose of complying with 21A.606(b) of Part 21.

## *Article 2*

The words “specific certification specifications” in Part 21A.173(2)(b) and Part 21A.184 are replaced by the words “specific airworthiness specifications”.

*Article 3*

*Entry into force*

This Regulation shall enter into force on 28 March 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*Member of the Commission*