



# Update of Commission Regulation (EU) No 452/2014 (Third-Country Operator (TCO) Regulation)

RELATED NPA 2022-101 — RMT.0736

## EXECUTIVE SUMMARY

The objective of the proposals in this Opinion is to foster a risk-based approach in the authorisation process of third-country operators and improve the efficiency of the European Union Aviation Safety Agency (EASA) as the authority being responsible for the implementation of the TCO Regulation. In addition, the proposals in this Opinion intend to clarify existing provisions, remove inconsistencies, and improve the coherence of the TCO Regulation with the EU Air Safety List.

The proposed amendments are expected to mostly maintain the level of safety, with some expected to provide a positive impact. In terms of impacts on operators, the proposed changes are mostly neutral. The main benefit expected from the proposed changes is in terms of the cost-effectiveness of the TCO authorisation process, with a positive impact on EASA's efficiency.

<b>Domain:</b>	CAT & NCC operations		
<b>Related rules:</b>	Commission Regulation (EU) No 452/2014 (TCO Regulation)		
<b>Affected stakeholders:</b>	Third-country operators		
<b>Driver:</b>	Efficiency/proportionality	<b>Rulemaking group:</b>	No
<b>Impact assessment:</b>	No	<b>Rulemaking Procedure:</b>	Accelerated

## EASA rulemaking procedure milestones

Start Terms of Reference	Focused Consultation NPA 2022-101	Proposal to the Commission Opinion	Adoption by Commission Delegated act	Decision Acceptable Means of Compliance, Guidance Material
14.7.2021	24.11.2021 (Webinar)	25.4.2022	2023/Q3	2023/Q3
	<b>Advisory Body Consultation</b>			
	1.2.2022			



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## 1. About this Opinion

### 1.1. How this Opinion was developed

The European Union Aviation Safety Agency (EASA) developed this Opinion in line with Regulation (EU) 2018/1139<sup>1</sup> ('Basic Regulation') and the Rulemaking Procedure<sup>2</sup>.

This rulemaking task (RMT).0736 is included in Volume II of the European Plan for Aviation Safety (EPAS) 2022–2026<sup>3</sup>. The scope and timescales of the task were defined in the related Terms of Reference (ToR)<sup>4</sup>.

EASA developed the *draft* text of this Opinion. All interested parties were consulted through a webinar that took place in November 2021 and Notice of Proposed Amendment (NPA) 2022-101<sup>5</sup> which was submitted to the EASA Advisory Bodies (ABs) for consultation on 1 February 2022.

EASA developed the *final* text of this Opinion and the draft regulation based on the input of the focused and AB consultation. The draft regulation is published on the Official Publication of EASA<sup>6</sup>.

The major milestones of this RMT are presented on the cover page.

### 1.2. The next steps

This Opinion contains the proposed amendments to Commission Regulation (EU) No 452/2014<sup>7</sup> (the TCO Regulation) and their potential impact. It is submitted to the European Commission, which will decide whether to amend that Regulation based on the Opinion.

EASA will publish the decision that amends the related acceptable means of compliance (AMC) and guidance material (GM) when the European Commission adopts the Regulation.

<sup>1</sup> Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1535612134845&uri=CELEX:32018R1139>).

<sup>2</sup> EASA is bound to follow a structured rulemaking process as required by Article 115(1) of Regulation (EU) 2018/1139. Such a process has been adopted by the EASA Management Board (MB) and is referred to as the 'Rulemaking Procedure'. See MB Decision No 18-2015 of 15 December 2015 replacing Decision 01/2012 concerning the procedure to be applied by EASA for the issuing of opinions, certification specifications and guidance material (<http://www.easa.europa.eu/the-agency/management-board/decisions/easa-mb-decision-18-2015-rulemaking-procedure>).

<sup>3</sup> <https://www.easa.europa.eu/document-library/general-publications/european-plan-aviation-safety-2022-2026>

<sup>4</sup> <https://www.easa.europa.eu/document-library/terms-of-reference-and-group-compositions/tor-rmt0736>

<sup>5</sup> In accordance with Article 16 'Special rulemaking procedure: accelerated procedure' of MB Decision No 18 -2015.

<sup>6</sup> <http://easa.europa.eu/document-library/opinions>

<sup>7</sup> Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 133, 6.5.2014, p.12) ([https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL\\_2014\\_133\\_R\\_0002](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2014_133_R_0002)).



## 2. In summary — why and what

### 2.1. Why we need to amend the rules — issue/rationale

In 2020, EASA performed an evaluation (EVT.008) of the TCO Regulation and the related soft law, based on the experience gained and lessons learned by EASA with its implementation.

The objective of the evaluation was to assess the efficiency and effectiveness of the TCO Regulation and related AMC & GM (altogether hereinafter referred to as ‘TCO rules’) as well as of the related EASA internal procedures, and to suggest improvements to foster a risk-based approach and hence gain regulatory efficiencies. The evaluation considered the results of the evaluation of Regulation (EC) No 2111/2005 (the Safety List Regulation)<sup>8</sup>.

The result of EVT.008 was a report<sup>9</sup> proposing several improvements to the TCO rules, covering five main topics: efficiency, enforcement, flexibility, articulation with the Safety List Regulation and clarification/guidance. The recommendations included an assessment of their expected impacts.

The purpose of this Opinion is to propose amendments to the TCO Regulation to foster a risk-based approach and gain regulatory efficiencies, considering the recommendations of EVT.008.

### 2.2. What we want to achieve — objectives

The overall objectives of the EASA system are defined in Article 1 of the Basic Regulation. This proposal will contribute to the achievement of the overall objectives by addressing the issues outlined in Section 2.1.

The specific objectives of the amendments proposed in this Opinion are to:

- foster a risk-based approach in the processing and assessment of the compliance of third-country operators, thereby improving the efficiency of EASA as the competent authority for the implementation of the Regulation;
- improve the articulation between the TCO Regulation and the Safety List Regulation.

### 2.3. How we want to achieve it — overview of the proposed amendments

The amendments proposed in this Opinion focus on addressing the recommendations from EVT.008<sup>10</sup>. In addition, some changes were added to improve the link with Regulation (EC) No 2111/2005<sup>11</sup> (the ‘Air Safety List Regulation’) and to address other consistency or editorial issues.

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<sup>8</sup> Final report of the Evaluation of Regulation (EC) No 2111/2005 on the establishment of a Community list of air carriers subject to an operating ban in the Community, published on 6 May 2019

(<https://op.europa.eu/en/publication-detail/-/publication/17ff74cf-7076-11e9-9f05-01aa75ed71a1>)

<sup>9</sup> Analysis of the lessons learnt from the implementation of Commission Regulation (EU) No 452/2014 related to air operations of third-country operators (and of the associated soft law and EASA Management Board Decision) (<https://www.easa.europa.eu/downloads/128393/en>)

<sup>10</sup> Further details can be found in Section 5 of the report.

<sup>11</sup> Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC (OJ L 344, 27.12.2005, p.15) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32005R2111&qid=1642611815950>).

## Changes to the Cover Regulation

Only a limited number of changes are proposed to the Cover Regulation.

In [Article 1](#), an update of the legal references to the Basic Regulation<sup>12</sup> and editorial adjustments are proposed.

In [Article 2](#), it is proposed to delete the definition of alternative means of compliance, for consistency with the deletion of TCO.105 and ART.105. It is also proposed to delete the definition of commercial air transport, since it is already covered by Article 3(24) of the Basic Regulation. Finally, it is proposed to amend the definition of third-country operator, to improve consistency with the terminology used in the Basic Regulation<sup>13</sup>. It is also proposed that this definition specifically refers to EASA as competent authority for an operator, following the provisions of Articles 64 and 65 of the Basic Regulation.

In [Article 3](#), only editorial adjustments are proposed.

In [Article 4](#), it is proposed to delete the transition provisions for the TCO Regulation, since they are no longer relevant<sup>14</sup>.

No impacts have been identified for any of the changes proposed to the Cover Regulation.

## Changes to Part-TCO

The only change proposed to [TCO.100](#) is editorial.

This Opinion proposes to delete [TCO.105](#). This provision was included in the TCO Regulation for consistency with other regulations in the EASA system. However, in the case of the TCO Regulation, where the requirements are largely of an administrative nature, with the technical requirements included in other regulations, the provision is not relevant, and has never been used. Its inclusion in the TCO Regulation created confusion for stakeholders; EASA has therefore decided to propose its deletion. No impacts have been identified for this change, since, as stated above, the provision has never been used.

This Opinion also proposes to delete [TCO.110](#), which contains a possibility for the third-country operator to propose mitigating measures to establish compliance with Part-TCO in case non-compliances identified by EASA have been covered by differences notified to the International Civil Aviation Organization (ICAO) by the State of the operator or the State of registry<sup>15</sup>. This process has never been used by any operator. Experience has shown that it is too cumbersome for operators, as they must demonstrate an equivalent level of safety to EASA, on one hand, and, on the other, does not allow any additional flexibility for EASA where it might be needed (such as to react to extraordinary situations, like COVID-19, or market unavailability of mandatory equipment). EASA considers that the flexibility provisions in the Basic Regulation, particularly the exemptions that EASA may issue under Article 76(4), already cover all the needs that this provision initially intended to address. Therefore, its deletion is proposed.

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<sup>12</sup> Point 5.3.1 of the report.

<sup>13</sup> Related to point 5.1.9 of the report.

<sup>14</sup> Point 5.4.1 of the report.

<sup>15</sup> Point 5.4.2 of the report.

During the focused consultation, some stakeholders, including the International Air Transport Association (IATA), expressed the concern that deleting this provision would create the perception that ICAO differences are no longer relevant, and suggested that the text would be reformulated to advise operators that they can make use of the flexibility provisions of the Basic Regulation. After considering the comments provided, EASA agrees that information to third-country operators on the use of flexibility provisions may be helpful, especially as the TCO Regulation applies to non-EU operators that may not be familiar with the Basic Regulation. However, EASA considers that the appropriate place for this reference is in GM, which will be adopted by EASA once this change has been made at the level of the TCO Regulation.

No impacts have been identified for this change, since the provisions of TCO.110 have never been used, and flexibility for operators in the case of ICAO differences is still possible.

Several changes are proposed to TCO.200.

In point (a)(1), references to specific Parts of ICAO Annex 6 are proposed to be deleted, in anticipation of the future Annex 6 Part VI. No impacts have been identified for this change.

In point (a)(2), it is proposed to delete the reference to ART.200(d), following the proposed deletion of TCO.110, and to add a reference to safety directives<sup>16</sup>. Third-country operators are subject to compliance with safety directives issued by EASA under Article 76(6) of the Basic Regulation. However, safety directives are currently not referred to in the TCO Regulation; this change is proposed to address this inconsistency. This change will have no impact since it only implements and clarifies an existing legal requirement.

In point (b)(2), the reference to the specifications attached to the TCO authorisation is proposed to be deleted<sup>17</sup>. EASA has digitalised the TCO process to a very large extent, and currently all information that was originally to be included in these specifications can be found in the TCO Web-Interface, where it is available to all affected parties (the operators, EASA and Member States, as well as the operator's competent authority, upon their request). Therefore, these specifications have become obsolete and only generate more workload for EASA, with no real benefit for any party. Several other points throughout the text are also proposed to be amended for the same reason (such as TCO.310, TCO.315 and ART.210). No impacts have been identified for these changes.

The remaining changes proposed to TCO.200 are editorial, and no impact has been identified for them.

In TCO.205, only a minor editorial improvement is proposed. No impact has been identified for this change.

The text of TCO.215 is proposed to be amended to improve clarity. No impact has been identified for this change.

Several changes are proposed in relation to TCO.305, to clarify and improve the requirements. This includes a change to the title of the point itself, now more appropriately referring to 'one-off notification flights' (instead of the previous 'non-scheduled flights – one-off notification', which created the false impression that the provision had a wider scope than what it indeed had).

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<sup>16</sup> Point 5.1.5 of the report.

<sup>17</sup> Point 5.4.5 of the report.

The changes proposed to point (a) are intended to better define which flights are covered by the provision<sup>18</sup>. It is expected that a clear scope for the provision will reduce the number of invalid applications, and thereby have a positive impact on EASA's efficiency. No negative impacts have been identified for the operators, since the proposed provision increases legal certainty and reflects what is already the current practice.

The newly introduced points (b)(3) and (b)(4) are intended to exclude operators whose authorisation has been suspended or revoked, or whose application has been rejected, from performing such flights<sup>19</sup>. It is expected that this proposal will contribute to enhancing the level of safety, which offsets the negative economic impact on operators that are excluded. A small positive impact on EASA's efficiency is also expected.

The change proposed to point (b)(5) is part of an overall change made to the Regulation to remove references to 'working days' — that were confusing for third-country operators that were not necessarily aware of which days are working days for the EASA — and replace them with references to calendar days<sup>20</sup>. This change is accompanied with appropriate increases to the relevant timelines. Similar changes are also proposed to ART.110. No impacts have been identified for these changes.

The change proposed to point (c) extend the period within which flights may be performed. This proposal is expected to have a positive impact both on operators' and on EASA's efficiency, without any negative impact on safety.

The remaining changes proposed to TCO.305 are editorial. No impacts have been identified for these changes.

The changes proposed to TCO.310 and TCO.315 reflect the removal of references to the specifications associated with the TCO authorisation, as explained above. In addition, it is proposed to use the term 'approval' in relation to changes to the TCO authorisation, for better readability and consistency with other regulations. No impact has been identified for these changes.

Several changes are proposed to TCO.320.

In point (a)(6), it is proposed to delete the existing text, since experience has shown that it was very difficult to implement due to lack of accurate data. It is proposed to replace this with new text that requires operators to substantiate their intention to continue to operate<sup>21</sup>. This covers the initial intention of the provision and is expected to be easier to implement, with no negative impacts.

A new point (a)(7) is proposed to render an authorisation invalid when there are no aircraft registered on the authorisation<sup>22</sup>. This proposal is expected to have a positive impact on the efficiency of EASA, with no negative impact on the operators.

In point (b), the requirement to return the authorisation to the Agency is proposed to be removed, since the TCO authorisation is issued digitally<sup>23</sup>. New text is proposed, to clarify how the operator can

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<sup>18</sup> Point 5.3.8 of the report.

<sup>19</sup> Point 5.1.6 of the report.

<sup>20</sup> Point 5.3.10 of the report.

<sup>21</sup> Point 5.4.3 of the report.

<sup>22</sup> Point 5.1.7 of the report.

<sup>23</sup> Point 5.4.4 of the report.

ask for a renewal of its authorisation. No negative impacts have been identified for these proposals, and especially the former is expected to have a positive impact on the efficiency of EASA.

### Changes to Part-ART

ART.105 is proposed to be deleted, following the proposed deletion of TCO.105, as explained above.

The change proposed to point (b) of ART.110 follows the intention to remove references to ‘working days’ from the Regulation, as explained above. In this case, however, and as was also highlighted by some stakeholders during the focused consultation, due to the official working regime of EASA, it is not possible to find an amount of calendar days that would adequately replace the reference to ‘one working day’<sup>24</sup>. Therefore, this Opinion proposes a more general wording that still covers the original intention of the provision. No impacts have been identified for this proposal.

The changes proposed to ART.115 are merely editorial, to update the legal references to the Basic Regulation. No impacts have been identified for these proposals.

This Opinion proposes a new point ART.120, clarifying which actions EASA shall take when receiving an application for one-off notification flights. The proposed text mirrors the changes proposed to TCO.305 and explained above. No impacts have been identified for this proposal.

Several changes are proposed to ART.200.

Point (b) is proposed to be amended to clarify that EASA’s assessment shall only start after all relevant documents have been received<sup>25</sup>. This change is expected to have a positive impact on EASA’s efficiency by reducing workload related to communication with unresponsive operators. A negative impact on operators could be felt when the submission of documents is delayed.

In point (d), it is proposed to delete the current text for consistency with the deletion of TCO.110, as explained above. New text is proposed to clarify that EASA may decide to suspend the assessment in case the applicant becomes unresponsive and uncooperative<sup>26</sup>. This change is expected to bring a positive impact on EASA’s efficiency, with no negative impact on operators.

The change proposed to point (e)(1) is merely editorial<sup>27</sup>. No impacts have been identified for this proposal.

A new point (f) is proposed, to introduce a ‘cool-down’ period of 9 months before operators whose authorisation has been revoked or rejected can apply for a new authorisation<sup>28</sup>. This should encourage operators to address the issues that caused the revocation or rejection before they re-apply, thereby increasing the likelihood of a successful application. This change is expected to have a positive impact on EASA’s efficiency. No negative impacts on safety have been identified. Regarding impact on the operators, a limited negative impact may be felt. However, it is expected that the time of the ‘cool-down’ period will be, at least partly, compensated by the positive impact on the duration of the upcoming application process.

<sup>24</sup> For example, the Agency does not work on Saturdays and Sundays, so replacing ‘one working day’ with one or even two calendar days could result in a notification obligation falling on either of those days.

<sup>25</sup> Point 5.3.4 of the report.

<sup>26</sup> Point 5.1.10 of the report.

<sup>27</sup> Point 5.3.11 of the report.

<sup>28</sup> Point 5.1.4 of the report.

In [ART.205](#), a change to point (a) is proposed to clarify the link with the Air Safety Regulation. In point (c)(3), it is proposed to add a reference to ‘safety’ in addition to ‘security’ as prerequisites for an on-site audit, mainly to cover cases when the audit location cannot be reached by safe means of transport. The remaining changes to ART.205 are editorial. No impacts have been identified for any of the proposed changes to ART.205.

Several changes are proposed to [ART.210](#).

A small change to point (a) is proposed to reflect the deletion of references to specifications associated with a TCO authorisation, as explained above.

An new point (a)(6) is added to clarify that an initial authorisation can only be awarded when all findings, regardless of their level, are closed<sup>29</sup>. No impacts have been identified for this proposal, which will formalise an already existing practice, providing more legal certainty.

The change proposed to point (c) requires EASA to consider the size, type, and complexity of the operation in the definition of which changes to a TCO authorisation require prior approval<sup>30</sup>. The purpose is to allow potential alleviations in the TCO authorisation process for business aviation operators. The proposed change should have a beneficial impact on business operators, and on EASA’s efficiency. No negative impacts have been identified.

The remaining changes to ART.210 are editorial, and no impacts have been identified for them.

In [ART.215](#), changes are proposed to point (a)(2) to update the legal references to the Basic Regulation. In addition, changes to point (d) are proposed to allow EASA to submit third-country operators to intensified surveillance, whenever the safety performance of the third-country operator or of the State of the operator are suspected to have decreased below the applicable ICAO standards<sup>31</sup>. This change should have a beneficial impact on safety.

The remaining changes to ART.215 are editorial, and no impacts have been identified for them.

In [ART.220](#), it is proposed to introduce a requirement for EASA to consider the size, type and complexity of the operation in the definition of the review interval in the monitoring programme.<sup>32</sup> The purpose is to allow potential alleviations in the TCO authorisation process for business aviation. The proposed change should have a beneficial impact on business operators, and on EASA’s efficiency. No negative impacts have been identified.

In [ART.230](#), editorial changes to amend the legal references to the Basic Regulation are proposed to points (b), (c) and (d).

In addition, a new point (b)(5) is introduced to clarify that a level 1 finding may be issued when a combination of many level 2 findings indicates a systemic deficiency that lowers or significantly hazards flight safety. During the focused consultation, IATA stated that it did not consider this change necessary, as the existing text already provides sufficient means to raise a level 1 finding if the situation so imposes. It further raised the issue that issuing a level 1 finding in addition to the level 2 findings would be disproportionate. Finally, IATA raised the concern that having this provision in the TCO

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<sup>29</sup> Point 5.3.3 of the report.

<sup>30</sup> Point 5.1.1. of the report.

<sup>31</sup> Point 5.1.2 of the report.

<sup>32</sup> Point 5.1.1. of the report.

Regulation, when there is no direct equivalent in the Air OPS Regulation<sup>33</sup> for EU operators, would create issues of level playing field. Therefore, IATA requested that this new point (b)(5) be deleted.

EASA carefully assessed the arguments brought forward by IATA and has decided to maintain this proposal. As IATA itself acknowledged, this proposal does not extend the concept or scope of level 1 findings, but merely clarifies something that is already possible under the current rules. Therefore, it has no negative impact on operators; rather, it increases clarity and legal certainty, which is particularly important in the case of third-country operators that are not necessarily familiar with the EU regulatory framework. Furthermore, the purpose is not to have a duplication of findings — the intention is that EASA would open only one level 1 finding where the multiple non-compliances, which individually may not be so significant, but jointly significantly impact safety, would be grouped.

In addition, during the focused consultation some stakeholders asked to clarify that this provision would only apply in case the multiple level 2 findings leading to a level 1 finding would be identified during a single assessment. This suggestion has been accepted and is reflected in the proposed text.

It is expected that the introduction of point (b)(5) in ART.230 will have a positive impact on safety and on efficiency, without any negative impacts.

In ART.235, several changes are proposed to increase clarity and efficiency.

Firstly, it is proposed to delete the current point (b), and renumber points (c) and (d), accordingly, as (b) and (c). The current text creates uncertainty as to the options available to EASA at the end of a first suspension period, creating the impression that only extending the suspension is possible, which is not the case. In addition, the 6 plus 3 months allowed for the suspension are not sufficient in some cases where the nature of the findings requires more time to achieve compliance<sup>34</sup>. Extending this period will give more time for the operators to address their safety deficiencies and give more flexibility to EASA to conduct the necessary assessments when considering lifting the suspension.

Secondly, it is proposed to delete the current point (e)(1), which obliges EASA to revoke the TCO authorisation whenever the suspension period is over without all findings being closed<sup>35</sup>. Experience has shown that this is not always a proportionate solution, and that it would be better to allow EASA more technical discretion in taking the decision to revoke.

Instead, a new point (d) is proposed, which states that EASA may revoke the TCO authorisation following a suspension when successful corrective action has not been taken to address the findings within a maximum period of 12 months. This new text addresses all the issues raised above: on one hand, it does not include an indicative period for the duration of the suspension, but at the same time indicates that 12 months is a reasonable period within which corrective action should be taken and by which EASA should re-assess the situation; on the other hand, it does not mandate revocation of the

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<sup>33</sup> Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1) (<https://eur-lex.europa.eu/search.html?scope=EURLEX&text=965%2F2012&lang=en&type=quick&qid=1649062031940>), in particular point ARO.GEN.350.

<sup>34</sup> Point 5.2.3 of the report.

<sup>35</sup> Related to point 5.2.1 of the report. It is important to note that in this respect this NPA does not follow the recommendation of EVT.008. The recommendation coming from the evaluation was to maintain the mandatory revocation at the end of the suspension period, and to even reinforce it by making it automatic. During the development of this NPA, EASA concluded that this would not be the best way forward and decided to propose a different, more flexible and proportionate approach.

TCO authorisation at the end of the initial suspension period, but does clarify that that is one of the actions that EASA may take, and clarifies how to make that decision. These changes are expected to have a positive impact on operators and the efficiency of EASA, with no negative impact on safety.

In addition, it is proposed to add a reference to the State of registry to point (b), for reasons of completeness. No impacts have been identified for this change, which reflects already existing legal requirements and current practice.

Finally, it is proposed to amend the text of point (c) to provide for more flexibility to EASA when deciding which type of assessment is needed when considering lifting a suspension<sup>36</sup>. The current text mandates an on-site audit, which experience has shown is not always necessary. This change is expected to have a positive impact on EASA's efficiency and on the operators, with no negative impact on safety.

A new ART.240 is proposed, which clarifies the actions to be taken by EASA when a TCO authorisation loses validity, as well as when EASA receives an application for renewal of a TCO authorisation. These changes mirror the changes made to TCO.320, particularly the proposed new point (a)(7). No impacts have been identified for this change, which merely reflects already existing practices, thereby creating additional legal certainty.

#### 2.4. What are the stakeholders' views — outcome of the consultation

EASA conducted a focused consultation with the affected stakeholders through a webinar that took place on 24 November 2021. The webinar was attended by over 200 participants, representing EU Member States, the European Commission, third-country regulators, industry associations and over 130 third-country operators, from 45 different States. Stakeholders were also offered the possibility to provide feedback in writing to EASA after the webinar.

The feedback received was mostly positive. Some stakeholders provided EASA with detailed proposed changes, mostly of an editorial nature. Some substantive comments were also received, which led, in some cases, to amending the initial proposals. More details on these comments and the resulting changes are given in Section 2.3 above.

In addition, a general comment was received from IATA requesting EASA to consider including provisions allowing the recognition of third-country certificates. IATA highlighted that there are several different TCO-type regulations worldwide, requiring operators to obtain multiple approvals from different States. IATA stated that this creates a significant administrative burden for its members, while providing only limited safety benefits. IATA therefore suggested that dedicated provisions should be included in the TCO Regulation or that the recognition of foreign certificates is included in bilateral aviation safety agreements (BASAs) between the EU and foreign countries. EASA took note of the comment but is not proposing the inclusion of any provisions on recognition of foreign certificates into the TCO Regulation. Further to the ToR, this topic is beyond the scope of this task, and EASA considers that further reflection is needed before a decision on how to proceed is taken.

EASA would like to highlight, however, that while it recognises that the existence of multiple approvals worldwide does create some administrative burden for operators, it does not agree with IATA's

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<sup>36</sup> Point 5.2.2. of the report.

statement that TCO-like schemes have only limited safety benefits. In fact, experience has shown that the EASA TCO system is well balanced and beneficial to flight safety.

In addition, it should be noted that the balanced risk approach that is the cornerstone of the EASA TCO system significantly reduces the potential administrative burden on operators. In fact, while third-country certificates are not formally recognised, EASA considers the oversight performed by foreign competent authorities in its authorisation and oversight process. As a result of the risk-based approach taken, less than 5 % of the third-country operators applying for a TCO authorisation undergo a technical meeting or an on-site audit before the authorisation is issued, and more than 80 % of the operators do not need to submit any manuals to EASA, and only documents and approvals issued by the State of registry and the State of the operator must be attached to the online questionnaire.

In addition, the EASA TCO authorisations are recognised in 31 EASA Member States that use the TCO Web-Interface as a main source of information. The information received by EASA for the TCO system is also used by SAFA inspectors in those States as a source of information. So, the administrative requirements made under the TCO system are well justified and provide added value also for operators.

NPA 2022-101 was submitted to the EASA ABs for consultation on 1 February 2022. The NPA already considered all the comments received during and after the Webinar.

Comments to the NPA were received only from five national competent authorities (NCAs) – Finland, France, the Netherlands, Sweden, and Switzerland. All comments received were positive and supported the proposals. No substantial comments were made, but some editorial suggestions were taken on board by EASA, after review of the comments.

## 2.5. What are the expected benefits and drawbacks of the proposed amendments

Achieving the objectives of this task, as mentioned in Section 2.2 above, required amending the TCO Regulation. Therefore, rulemaking was the only available option. When developing this task, EASA considered that the limited nature of the impacts expected from the proposed amendments, as well as the fact that the proposed changes largely follow the recommendations made by EVT.008, which already contained an assessment of impacts, did not require the development of a detailed, quantitative impact assessment. Nevertheless, the expected benefits and drawbacks of each of the proposed changes were assessed and are mentioned in more detail in Section 2.3 above.

Overall, it can be said that the changes proposed by this Opinion will have a positive impact.

It is in terms of efficiency, particularly EASA's efficiency, that most of the changes proposed are expected to bring benefits. Efficiency is the main driver for this task and was also the focus of the recommendations of EVT.008. Almost all the proposals in this Opinion are expected to bring positive impacts in terms of EASA's efficiency, and many are also expected to benefit operators.

Regarding operators, most of the changes proposed have a neutral impact or may bring small positive impacts, linked to the additional clarity that is provided to the applicable legal requirements and processes. A few of the proposed changes may have a small negative impact, specifically those proposed to TCO.305 (b)(3) and (b)(4) (which is offset by the positive safety impact) and ART.200(b). It should be highlighted that the changes proposed to ART.235 (c) and (d) and to ART.210(c) and ART.220 are expected to have a positive impact on operators, in particular business operators in the case of the two latter proposals.

In terms of safety, most of the proposed changes have a neutral impact, but a few are expected to bring benefits, namely those proposed to TCO.305 (b)(3) and (b)(4) and ART.215.



### 3. How we monitor and evaluate the proposed amendments

No specific monitoring or evaluation of the proposed amendments is foreseen, besides the already existing exchanges between EASA, TCO operators and EASA Member States, which should identify any emerging issues.

The proposals in this Opinion already follow the results of an evaluation and are limited in terms of their impact. EVT.008 has shown that the TCO Regulation is already adequate for its purpose and proportionate, and the current amendments address the recommendations for improvement that were made.

Cologne, 25 April 2022

*For the European Union Aviation Safety Agency*

*The Executive Director*

Patrick KY



## 4. References

### 4.1. Related EU regulations

- Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1)
- Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 133, 6.5.2014, p.12)

### 4.2. Related EASA decisions

- EASA Management Board Decision 01-2014, adopting the Third Country Operators Authorisation Procedures
- ED Decision 2014/023/R of the Executive Director of the Agency of 6 May 2014 adopting Acceptable Means of Compliance and Guidance Material to Part TCO – Third country operators - of Commission Regulation (EU) No 452/2014 ‘AMC and GM to Part-TCO — Initial Issue’

### 4.3. Other references

- Report of EVT.008 — Analysis of the lessons learnt in the implementation on Commission Regulation (EU) No. 452/2014 related to air operations of third country operators and the related soft law, dated August 2020.
- Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC (OJ L 344, 27.12.2005, p.15)
- Final report of the Evaluation of Regulation (EC) No 2111/2005 on the establishment of a Community list of air carriers subject to an operating ban in the Community, published on 6 May 2019.
- ICAO Doc 8335, Manual of Procedures for Operations Inspection, Certification and Continued Surveillance.

