



Notice of Proposed Amendment 2015-05

Non-commercial operations of aircraft listed in the Operations Specifications (OpSpecs) by an AOC holder

RMT.0352 (OPS.075(a)) & RMT.0353 (OPS.075(b)) — 30.3.2015

EXECUTIVE SUMMARY

This Notice of Proposed Amendment (NPA) addresses safety issues related to the lack of regulatory operational framework for non-commercial operations performed by Air Operator Certificate (AOC) holders with aircraft listed in the Operations Specifications (OpSpecs).

This NPA aims to facilitate the risk analysis of non-commercial operations performed by AOC holders under the provisions of ORO.AOC.125; it proposes a minimum list of elements to be considered in the risk assessment process when the AOC holders follow different operational procedures from the ones normally used for their CAT operations. AOC holders will thus have flexibility in establishing operational procedures commensurate with the level of risk of a certain type of non-commercial operation.

The NPA also puts forward a list of non-commercial flights in order to standardise the various names used by industry to identify, sometimes, the same (or similar) types of flights.

The proposed changes are expected to increase the level of safety as regards non-commercial operations performed by AOC holders and to ensure a more harmonised implementation of the applicable rules by establishing the minimum requirements and developing guidance tools for their implementation, in line with a performance-based approach.

Applicability		Process map	
Affected regulations and decisions:	Annex I (Definitions), Annex II (Part-ARO), and Annex III (Part-ORO) to Commission Regulation (EU) No 965/2012; Decision 2014/017/R	Concept Paper:	No
Affected stakeholders:	AOC holders performing CAT and other-than-CAT operations (non-commercial operations and/or non-commercial specialised operations); competent authorities	Terms of Reference:	4.12.2013
Driver/origin:	Safety	Rulemaking group:	Yes
Reference:	Safety recommendations FRAN-2009-003 and FRAN-2009-004; BEA report ISBN 978-2-11-098614-6	RIA type:	Light
		Technical consultation during NPA drafting:	No
		Duration of NPA consultation:	3 months
		Review group:	TBD
		Focussed consultation:	TBD
		Publication date of the Opinion:	2016/Q3
		Publication date of the Decision:	2017/Q3



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1. Procedural information

1.1. The rule development procedure

The European Aviation Safety Agency (hereinafter referred to as the 'Agency') developed this Notice of Proposed Amendment (NPA) in line with Regulation (EC) No 216/2008¹ (hereinafter referred to as the 'Basic Regulation') and the Rulemaking Procedure².

This rulemaking activity is included in the Agency's [Revised 4-year Rulemaking Programme for 2014–2016](#) under rulemaking task (RMT) RMT.0352 & RMT.0353 (former task number: OPS.075 (a) & (b)).

The text of this NPA has been developed by the Agency based on the input of the Rulemaking Group RMT.0352 & RMT.0353 (OPS.075(a)&(b)). It is hereby submitted for consultation of all interested parties³.

The process map on the title page contains the major milestones of this rulemaking activity to date and provides an outlook of the timescale of the next steps.

1.2. The structure of this NPA and related documents

Chapter 1 of this NPA contains the procedural information related to this task. Chapter 2 (Explanatory Note) explains the core technical content. Section 2.3 contains the light Regulatory Impact Assessment (RIA) showing which options were considered and what impacts were identified, thereby providing the detailed justification for this NPA. Chapter 3 contains the proposed text for the new requirements.

1.3. How to comment on this NPA

Please submit your comments using the **automated Comment-Response Tool (CRT)** available at <http://hub.easa.europa.eu/crt/>⁴. In addition to the possibility of commenting on any part of the NPA, the Agency invites the stakeholders to comment on certain issues, which are specifically marked in Chapter 2.4 'Overview of the proposed amendments'.

The deadline for submission of comments is **30 June 2015**.

1.4. The next steps in the procedure

The Agency will publish the related CRD concurrently with the Opinion.

The Opinion containing proposed changes to EU regulations will be addressed to the European Commission, which shall use it as a technical basis to prepare a legislative proposal.

¹ Regulation (EC) No 216/2008 of the European Parliament and the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ L 79, 19.3.2008, p. 1), as last amended by Commission Regulation (EU) No 6/2013 of 8 January 2013 (OJ L 4, 9.1.2013, p. 34).

² The Agency is bound to follow a structured rulemaking process as required by Article 52(1) of the Basic Regulation. Such process has been adopted by the Agency's Management Board and is referred to as the 'Rulemaking Procedure'. See Management Board Decision concerning the procedure to be applied by the Agency for the issuing of Opinions, Certification Specifications and Guidance Material (Rulemaking Procedure), EASA MB Decision No 01-2012 of 13 March 2012.

³ In accordance with Article 52 of the Basic Regulation and Articles 5(3) and 6 of the Rulemaking Procedure.

⁴ In case of technical problems, please contact the CRT webmaster (crt@easa.europa.eu).



The Decision containing Acceptable Means of Compliance (AMC) and Guidance Material (GM) will be published by the Agency once the related Implementing Rule(s) are adopted by the European Commission.



2. Explanatory Note

This RMT covers non-commercial operations performed by an AOC holder with aircraft otherwise used for Commercial Air Transport (CAT) operations and which are listed in the OpSpecs. As long as these flights are performed under the AOC holder's operational responsibility, the provisions of Subpart ORO.AOC.125 of Commission Regulation (EU) No 965/2012 on air operations⁵ (hereinafter referred to as 'Air Ops Regulation') shall apply.

2.1. Overview of the issues to be addressed

This RMT is the response to two Safety Recommendations (SRs) addressed to the Agency by the French Bureau d'Enquêtes et d'Analyses (BEA) with regard to an Airbus A320-232 accident on 27 November 2008. The accident happened off the coast of Canet-Plage (France) during a flight to check the systems at the end of a lease agreement and is referred to as the 'Perpignan accident'⁶.

When investigating the accident, BEA drew the following conclusion: 'The flight performed was intended to check the conditions of the airplane in service, at a leasing agreement. This type of flight, though not exceptional in worldwide air transport, is not included in the list of non-revenue flights detailed in the EU-OPS (1.1045), given that the list has no precisions or definitions for the aforementioned flights. Up to now, the BEA has been unable to identify any text applicable to EU states or to non-EU states that sets a framework on non-revenue flights.'

This finding led BEA to issue the following SRs:

- 'That EASA detail in the EU-OPS the various types on non-revenue flights that an operator from an EU state is authorized to perform.', and
- 'That EASA require that non-revenue flights be described precisely in the approved parts of the operations manual, this description specifically determining their preparation, programme and operational framework as well as the qualifications and training of crews.'

Furthermore, the United Kingdom's Aircraft Accident Investigation Branch (AAIB) investigated a serious incident (aircraft type B737, registration number G-EZJK, west of Norwich, Norfolk, on 12 January 2009⁷), identifying also the lack of minimum requirements for non-commercial flights when these are operated in accordance with procedures different from those for CAT operations.

In response to these recommendations, the Agency included in the current Air Ops Regulation general provisions on non-commercial flights of AOC holders. However, this still provides no guidance on how the requirements of ORO.AOC.125 'Non-commercial operations with aircraft listed in the operations specifications by the holder of an AOC' should be implemented. There are various interpretations on the application of the requirements related to non-commercial operations conducted under the AOC holder's operational control; it is unclear when exactly a non-commercial operation is no longer

⁵ 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).

⁶ BEA Report on the accident on 27 November 2008 off the coast of Canet-Plage (66) to the Airbus A320-232 registered D-AXLA operated by XL Airways Germany. ISBN: 978-2-11-098614-6. Safety Recommendations: FRAN-2009-003 and FRAN-2009-004. Report available at <http://www.bea.aero/docspa/2008/d-la081127e/en/pdf/d-la081127e.en.pdf>.

⁷ Department for Transport, Air Accident Investigation Branch, AAIB Bulletin S2/2009 Special. Available at http://www.aaib.gov.uk/cms_resources.cfm?file=/S2-2009%20-%20G-EZJK.pdf



covered by ORO.AOC.125. Guidance is also missing on the minimum requirements applicable to the procedures which an AOC holder may develop for its non-commercial operations whenever they differ from those applied to CAT operations.

This rulemaking task is not addressing the cases where an aircraft is listed on the AOC but occasionally used by another operator which is not an AOC holder, for example the owner. In such a case, the two operators have to clearly identify and distinguish their responsibility and operational control with regard to those particular flights. Each operator will have to comply with the applicable rules for the operation conducted.

Furthermore, this rulemaking task is also not addressing the interchange or lease of aircraft between different AOC holders. Such arrangements have to comply with the provisions on leasing in accordance with ORO.AOC.110.

Connection with related RMTs

Considering the issue from a broader perspective, RMT.0352 & RMT.0353 was preceded by two related RMTs: RMT.0393 & RMT.0394 'Maintenance Check Flights'⁸, driven by the same SRs, and RMT.0348 & RMT.0349 'Flights related to design and production activities'⁹, having a legal driver. All these three RMTs deal with operations which are either partially or not at all covered by the current Air Ops Regulation, requiring operational procedures which may differ from the ones used for CAT operations; the differences between them are in the scope and the particularities of the operators affected. RMT.0352 is using the available inputs from these ongoing RMTs. The status of these RMTs is presented in the following paragraphs.

RMT.0393 & RMT.0394 is a horizontal rulemaking task, affecting not only the OPS domain but also Airworthiness and Aircrew, and it concerns only Maintenance Check Flights (MCFs). The proposed changes will affect several regulations: Air Ops, Aircrew¹⁰ and Part-M¹¹. The publication of the Opinion on MCFs is planned for 2015. The main objective is to help determine when an MCF should be performed and according to which set of rules and responsibilities. Another objective is to establish operational requirements and crew competence criteria for the performance of these flights. The affected stakeholders are AOC holders and maintenance organisations which perform these flights, as well as crews operating on such flights. An MCF may often require the operation of the aircraft in a manner different from a normal CAT operation, a different set of pilot skills, different operational procedures, and different training of the flight crew. The current requirements of the Air Ops Regulation do not contain specific procedures or limitations with regard to these flights. Some EU Member States have developed guidance material for operators in this regard, while some others have not.

⁸ Comment-Response Document 2012-08 'Maintenance check flights (MCFs), CRD to NPA 2012-08 (RMT.0393 (MDM.097(a)) & RMT.0394 (MDM.097(b))) of 10.12.2013 (available at <http://easa.europa.eu/system/files/dfu/CRD%202012-08.pdf>).

⁹ EASA Terms of Reference RMT.0348 (OPS.073(a)) and RMT.0349 (OPS.073(b)) 'Flights related to design and production activities', Issue 1, of 31.5.2012 (available at <http://easa.europa.eu/system/files/dfu/ToR%20RMT.0348-0349%20%28OPS.073%29.pdf>).

¹⁰ Commission Regulation (EU) No 1178/2011 laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 311, 25.11.2011, p. 1).

¹¹ ED Decision No 2003/019/RM of the Executive Director of the Agency of 28 November 2003 on acceptable means of compliance and guidance material to Commission Regulation (EC) No 2042/2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks.



The other related rulemaking task (i.e. RMT.0348 & RMT.0349) addresses flights related to Design and Production Activities (DA/PA). These are understood as flights related to the introduction of new aircraft types or changes to aircraft type designs. They are conducted by design and/or production organisations with or without a Design Organisation Approval (DOA) and/or a Production Organisation Approval (POA). Such flights include but are not limited to test flights, demonstration flights, customer acceptance flights, and ferry flights. Due to their specific nature, flights related to design and production activities are presently excluded from the Air Ops Regulation. Instead, they are carried out in accordance with national provisions while harmonised operational requirements should be provided in the area of air operations. RMT.0348 & RMT.0349 fill in this gap. The objective is to establish a uniform level of safety as well as harmonised conditions under which these flights are to be conducted.

As far as RMT.0352 & RMT.0353 is concerned, its scope covers all types of non-commercial operations, but again, from a different perspective: the operators affected are only the AOC holders and the aircraft concerned are those listed in their OpSpecs and are normally used for CAT operations. The main objectives of RMT.0352 & RMT.0353 are to bring more clarity as regards the identification of categories of non-commercial flights and to provide useful tools for operators to develop procedures in compliance with the minimum requirements applicable to various non-commercial operations. The end result will be the improvement of the general level of safety for non-commercial flights operated by AOC holders.

RMT.0352 & RMT.0353 will incorporate — partly in the case of the DA/PA flights — the outcome of both RMTs mentioned above. In an attempt to produce a consistent text for the common parts of all three interrelated RMTs, this draft proposal will not repeat the texts already published by the Agency in its various deliverables (ToR, NPA, CRD or Opinion, whichever the case may be), but will rather refer to them in their latest published version.

General context

Tracing the rule's origin back to the former EU-OPS and JAR-OPS 3¹² requirements, a list of non-revenue¹³ flights had already been drawn up in EU-OPS¹⁴ and JAR-OPS 3, Chapter 8.7, of the operations manual (Appendix 1 to OPS 1.1045 and JAR-OPS 3.1045 'Operations Manual Contents'). These documents briefly mentioned that the operations manual must include procedures and limitations, as well as 'the kind of persons who may be carried on such flights'. However, neither the EU-OPS/JAR-OPS 3 requirements nor the current Air Ops Regulation contain specific procedures or limitations for non-commercial flights in general. The guidance material developed by some national aviation authorities cannot ensure harmonisation across all EASA Member States.

In the current Air Ops Regulation, the rule ORO.AOC.125 'Non-commercial operations of aircraft listed in the operations specifications by the holder of an AOC' mentions 'non-commercial operations with an aircraft otherwise used for commercial air transport operations that is listed in the operations specifications of its AOC'. Further requirements refer to the operations manual which must include 'the identification and a description of the applicable requirements; a clear identification of any

¹² Joint Aviation Authorities, Joint Aviation Requirements JAR-OPS 3, Commercial Air Transportation (Helicopters).

¹³ For clarification purposes, the terms 'non-revenue' and 'non-commercial' in relation to flights or operations are synonymous. The preference for one term in particular will be explained further in this chapter.

¹⁴ Commission Regulation (EC) No 859/2008 of 20 August 2008 amending Council Regulation (EEC) No 3922/91 as regards common technical requirements and administrative procedures applicable to commercial transportation by aeroplane (OJ L 254, 20.9.2008, p. 1).



difference between operating procedures used when conducting commercial and non-commercial operations', as well as 'a means of ensuring that all personnel involved in the operation are fully familiar with the associated procedures'. ORO.AOC.125 also requires that the differing operating procedures be submitted to the Competent Authority (CA) for prior approval.

These high-level provisions were introduced in the initial Air Ops Regulation to cover the period until the launch of this rulemaking task, which examines the issue in more detail.

AMC3 ORO.MLR.100 'Operations manual — general' preserves the EU-OPS and JAR-OPS 3 phraseology and the examples of non-commercial (or non-revenue) flights.

A detailed description of the issues and how they are being addressed can be found in Sections 2.3 and 2.4.

Rule applicability and risk assessment

As far as the operational framework and the applicable requirements for such flights are concerned, different practices are currently used in the EASA Member States (MSs): several MSs require full compliance with Part-CAT rules for all flights; others declare that such flights are to be carried out in accordance with the applicable national, non-commercial rules; and some apply a mixed system depending on the flight. However, there is no uniform system to ensure consistency in deciding which rules should apply to non-commercial flights operated by AOC holders.

The Agency received several requests from national aviation authorities and operators to further clarify the intent of paragraph ORO.AOC.125 and how it should be implemented.

The use of the term 'non-commercial operations' in the context of ORO.AOC.125 does not imply that the AOC holder must apply Part-NCC/Part-NCO to its non-commercial flights. The AOC holder has the possibility to choose the most appropriate set of rules (CAT or NCC/NCO) to apply to non-commercial operations. To do that, the operator should first ensure that these flights are included in the safety risk assessment process.

Non-commercial operations involving different levels of risk may require different organisational supervision in operation. For example, a maintenance check flight, a positioning flight, and a training flight have different risk profiles. This is why the operator should include each type of non-commercial operation it performs in its risk assessment scheme with appropriate mitigation measures.

In order to have a proper risk assessment with adequate operating procedures and crew qualifications, operators need to have the same understanding of similar categories of non-commercial flights and the level of risk involved by each of them. This means having an accurate denomination of the various non-commercial types of operation, which is currently missing.

Terminology issues

(a) Non-commercial operations — Terminology and classification

The term 'non-revenue flights' is commonly used to identify different types of non-commercial flights conducted by an AOC holder. They are generally understood as flights with no intended fare-paying passengers or non-revenue-generating cargo/mail on board, such as the ones listed in EU-OPS and JAR-OPS 3 and in the subsequent AMC3 ORO.MLR.100: 'training flights, test flights, delivery flights, ferry flights, demonstration flights, positioning flights'.



Industry practice shows, however, that the terminology used for non-commercial flights (or non-revenue flights, being the ‘consecrated’ term used) is much broader and subcategorisations exist. Thus, industry uses also terms like ‘functional check flights’, ‘maintenance check flights’, ‘proving flights’, ‘charity flights’, ‘non-commercial flights’, and ‘technical flights’.

The variety of the terms used makes it difficult, and sometimes even confusing, to identify the actual type of flight an operator is performing. All these various terms could increase confusion for instance in the case of a flight at the end of a lease period, which is operated with mixed crews. This, in turn, could create misunderstandings in the application of proper operational procedures. There is a need for using the same terminology and classifying the non-commercial types of flights into larger groups to which similar operational requirements can be applied.

The Rulemaking Group, therefore, considered to detail the list of non-commercial flights, to give examples, and to list a number of terms commonly used in order to classify them according to type.

It should, however, be considered that regulatory action has limits as it cannot take into account the specific operating environment of each operation. Therefore, the logical steps would be for the operator to identify the types of its non-commercial flights in the framework of the safety risk assessment process; then, by properly identifying them, it becomes easier to distinguish the cases when special operating procedures are required to be developed and applied. Thus, the preference is to a performance-based approach, leaving to the operator enough flexibility to adapt its procedures to the risk level specific to each type of operation. Moreover, guidance on the preparation, programming and operational framework, qualifications and training of crews for the various categories of non-commercial flights have been included in the proposed rule.

(b) *‘Non-revenue’ versus ‘non-commercial’*

The Rulemaking Group had extensive discussions about the terminology that should be used throughout the regulation (Implementing Rules (IRs) and Acceptable Means of Compliance (AMC)/Guidance Material (GM)) for consistency reasons. Two terms with the same meaning, i.e. ‘non-revenue’ and ‘non-commercial’, are currently used in the Air Ops Regulation and the associated EASA Decisions in relation to these flights. After evaluating the pros and cons for each term, the Rulemaking Group decided to choose the term ‘non-commercial’. The reasoning is that the term ‘commercial operation’ is already defined in Article 3 of the Basic Regulation, so a ‘non-commercial operation’ is any operation which does not fall under the definition of ‘commercial operation’. Proposing another definition for a term already defined in the current Regulation, without adding any new information, would only create confusion. ‘Non-revenue flight’ is a term inherited from EU-OPS and JAR-OPS 3, without being actually defined; some operators use this term to distinguish certain flights from the larger category of non-commercial flights only for accounting purposes. From an operational point of view, these two terms are treated as synonyms.

Relationship between ORO.AOC.125 and SPO activities

AOC holders may also conduct commercial operations other than CAT. Such operations are classified as Specialised Operations (SPO) and fall under a declaration scheme (ORO.DEC.100); they could also be subject to a high-risk SPO authorisation (ORO.SPO.110). As the SPO concept is distinct from the one



applying to CAT operations, an AOC holder wishing to conduct commercial operations other than CAT will have to comply fully with Part-SPO and its associated procedures. This will also apply to the obligation of submitting a declaration.

The provisions of ORO.DEC.100 require an operator of complex motor-powered aircraft engaged in non-commercial operations, or non-commercial SPO, or commercial SPO to submit a declaration (Appendix 1 to Annex III 'Part-ORO'). Under paragraph ORO.AOC.125 (b), an AOC holder need not submit this declaration when conducting non-commercial operations with the aircraft listed in its OpSpecs, but only when conducting SPO activities.

This different administrative regime (declaration required for SPO activities but not for non-commercial operations of an AOC holder under ORO.AOC.125) is in fact substantiated in the different risk models applicable to CAT operations (and by extension to non-commercial operations) versus SPO operations. The SPO capabilities are not considered during the AOC certification process. The special operating procedures developed for SPO are very particular and adjusted to each type of SPO, therefore a different approach is required for these activities.

Waiving the declaration for SPO operations performed under ORO.AOC.125 would bring about consistency in the administrative procedures supported by both the AOC holder and the CA. Nevertheless, the data related to the SPO activities, currently comprised in the declaration, would have to be included in other documents of the AOC holder.

On the side of the CA, if the AOC holder is no longer required to submit a declaration for its SPO activities, the CA might lose evidence of these activities conducted by the AOC holders, which would impact on its continuous oversight process.

The NPA, therefore, proposes no change in this regard.

Stakeholders are invited to provide their comments and feedback on this approach.

2.2. Objectives

The overall objectives of the EASA system are defined in Article 2 of the Basic Regulation. This proposal will contribute to the achievement of the overall objectives by addressing the issues outlined in Chapter 2 of this NPA.

The specific objectives of this proposal are the following:

- To improve safety:
 - by specifying the minimum requirements for non-commercial operations by AOC holders related to the preparation, programming and operational framework, as well as to flight crew qualification, training and experience, as appropriate.
- To improve the cost-efficiency of regulation:
 - by establishing the relevant minimum number of cabin crew on non-commercial flights under ORO.AOC.125.
- To clarify the current rules:
 - by identifying the categories of flights which are considered as non-commercial flights by AOC holders;



- by standardising the unofficial terms used and to have a clear understanding of the different categories of non-commercial flights.
- To harmonise implementation.

2.3. Summary of the Regulatory Impact Assessment (RIA)

2.3.1. Safety risk assessment

The Perpignan accident involved seven fatalities and destruction of equipment. Therefore, the severity of occurrence has to be considered ‘catastrophic’.

As described already, the purpose of the flight was to check the condition of the aeroplane at the end of a lease agreement. This type of flight is likely to be performed occasionally. Regarding this type of flight, the probability of occurrence of an accident due to the fact that there are no rules in place or that there is varying interpretation of the existing rules is considered to be improbable.

This classification is illustrated in the safety risk matrix in Table 1 below¹⁵.

Probability of occurrence		Severity of occurrence				
		Negligible	Minor	Major	Hazardous	Catastrophic
		1	2	3	5	8
Extremely improbable	1					
Improbable	2					8
Remote	3					
Occasional	4					
Frequent	5					

As the task addresses at least one SR, it is classified as being of medium significance.

2.3.2. Who is affected?

The affected parties are AOC holders conducting both CAT and other-than-CAT operations (non-commercial operations) with aircraft listed in the OpSpecs, as well as national aviation authorities. The proposal does not affect non-commercial or General Aviation operators.

However, one obstacle in the adoption of the proposed rules might be the fact that, as non-commercial operations of AOC holders were not addressed under the EU-OPS Regulation and JAR-OPS 3 rules, Member States apply different regimes and harmonisation may require national aviation authorities and some operators to change their procedures accordingly.

¹⁵ The matrix is based on the ICAO Safety Management Manual, Doc 9859 Safety Management Manual, 2nd Edition, 2009, and adapted to the Agency’s impact assessment process. The green boxes correspond to low-significance issues, the yellow to medium-significance issues, and the red to high-significance issues.



2.3.3. How could the issue/problem evolve?

Leased aircraft make up a significant portion of the operational fleet worldwide. This situation is likely to increase significantly in the future. Should that be the case, the number of acceptance flights, functional check flights or maintenance check flights — generally those types of flights requested by the lessor/owner at the end of a leasing period — may increase. The risk is that the operational and training requirements for non-commercial flights involving a higher level of risk (such as these ones) may not cover all the necessary elements if they are not properly identified as such and adequately described.

Without a regulatory change, the confusion existing today regarding the ‘applicable requirements’ and the adequate operational procedures for different types of non-commercial operations will remain. Moreover, the risk of not properly identifying the type of non-commercial flight to be performed is to end up choosing inappropriate safety procedures and crew.

Consequently, with no change to the current regulations, the safety risks already identified remain unaddressed.

2.3.4. Policy options

In order to achieve the objectives of this RMT, the options below were identified.

Table 1: Selected policy options

Option No	Description	Consequences
0	No regulatory change/Ensure rule compliance	<p>Risks remain as outlined in the issue analysis.</p> <p>The current requirements will continue to be implemented following different practices:</p> <ul style="list-style-type: none"> — either full compliance with Part-CAT rules for all flights of an AOC holder; or — applicable (national) non-commercial rules; or — mixed system, depending on the flight. <p>Lack of guidance on non-commercial operations (definitions and minimum operating requirements) would continue to lead to safety and cost-efficiency issues with the current rule requirements.</p>
1	Amend the rule	<ul style="list-style-type: none"> — Clarify the existing rule. <p>Provide minimum requirements for non-commercial flights while keeping flexibility for AOC holders to address the safety of operation.</p>

Option 0 — No regulatory change/Ensure rule compliance

The baseline option (Option 0) would not address the issue and the related safety concerns. Non-commercial flights performed by an AOC holder would continue to be operated in an unharmonised manner without specific guidance or with guidance kept at national level. Therefore, the risk of recurrent occurrences might remain.



It could be argued that the Perpignan accident described above is a special case, which may be due to non-compliance with the appropriate operational requirements. In fact, the Air Ops Regulation already contains provisions on non-commercial operations performed by an AOC holder and on the establishment of the appropriate operational procedures (rule ORO.AOC.125). Such procedures should contain the elements listed in the BEA recommendations. Furthermore, it should also be considered that the accident could have been avoided if the operator had developed appropriate risk mitigation measures for this type of operation.

It is the CA's duty to ensure the appropriate oversight of the operator, thus ensuring continued compliance with the rules. Aiming for the enforcement of this rule could already be a solution. However, the lack of guidance on what is considered to be non-commercial operation of an AOC holder or what the minimum operational requirements should be for these flights would remain unaddressed.

Option 1 — Amend the rule

The Perpignan accident could be considered to be a justification to start a rulemaking task. Therefore, Option 1 — proposing to initiate regulatory action and to improve the definitions and the operational framework for non-commercial flights operated with aircraft listed in the OpSpecs by an AOC holder — has to be taken into account.

Option 1 proposes new AMC and GM (AMC1 and GM1 to ORO.AOC.125(a)(2)(i); AMC1 and GM1 to ORO.AOC.125(a)(2)(ii)) to explain the intent of the rule and to assist operators and CAs in assessing the safety of non-commercial operations conducted under ORO.AOC.125. A clear identification of the applicable requirement for each type of non-commercial operation, together with the description of the different procedures used, using as guidance the minimum elements to be considered in the risk assessment process developed for the various types of operations performed under the AOC coverage would benefit both the airline operators in completing their operations manuals as well as the CAs in performing their oversight activities.

One should also keep in mind that certain categories of non-commercial operations involve a lower level of operational risk (private flights, leisure flights). Thus, it is not necessary for those non-commercial operations to be subjected to the same demanding requirements as the ones used for CAT operations, when the NCC/NCO set of rules ensures the minimum requirements needed for such flights. The rule needs to be specific enough to provide this flexibility to operators so that they can address both higher and lower levels of risk proportionately.

2.3.5. Safety impact

Option 0 — No regulatory change/Ensure rule compliance

By choosing Option 0, the current safety issue would continue to exist.

The difficulty faced by operators and CAs alike in determining the minimum acceptable level of safety for a number of elements in the operational procedures would continue to generate enquiries and requests for more guidance. On the other hand, the lack of guidance may lead to the conduct of non-commercial operations at lower levels of safety, thus increasing the risk of accidents. Moreover, operators may apply different standards which could lead, for example, to misunderstandings between mixed crews when handing over an aircraft at the end of a lease. The approval of the current different procedures used by operators would continue at national level and there would be no harmonisation in the rule implementation.



Option 1 — Amend the rule

Amending the rule would compensate for the lack of information mentioned above. This NPA also proposes Guidance Material on how such flights should be evaluated within the framework of the safety management system. This approach ensures enough flexibility for the operator when choosing which provisions it may apply to its non-commercial operations, keeping at the same time its operation compliant with the minimum safety requirements.

The proposed additional clarifications would bring about an increased level of safety and legal certainty.

Therefore, Option 1 is considered to have a positive impact.

Summary

<i>Type of impact</i>	<i>Option 0</i>	<i>Option 1</i>
Safety impact	-/0	+

2.3.6. Environmental impact

This proposal has no impact on the environment.

2.3.7. Social impact

This proposal has no social impact.

2.3.8. Economic impact**Option 0: No regulatory change/Ensure rule compliance**

Despite the fact that most large operators already apply similar procedures to the ones proposed in this NPA, Option 0 does not address the lack of guidance in the current regulatory framework which triggers implementation issues.

Option 0 is thus considered to have no impact.

Option 1 — Amend the rule

Operators are requested to have a scheme for non-commercial flights in place. As most large operators already apply similar procedures to the ones proposed in this NPA, a global low-cost impact for the AOCs which are not yet in line with Option 1 may occur due to the number of working hours to be spent on updating the operations manuals with different operational procedures for non-commercial operations whenever the AOC holder decides to apply procedures other than CAT.

The European Union's budget, EU Member States, internal market and competitiveness are not affected by this proposal. There would be no economic impact on the national aviation authorities either.

Option 1 is considered to have both a negative and a positive economic impact.

Summary



<i>Type of impact</i>	<i>Option 0</i>	<i>Option 1</i>
Economic impact	0	-/+

2.3.9. General Aviation and proportionality issues

This RMT is not relevant to the General Aviation community.

The situation would not change with Options 0 and 1, i.e. no impact on General Aviation.

Proportionality

With Option 1 (amend the rule), the additional AMC and GM will provide explanations on the applicability and flexibility of the rule. AOC holders have already enough flexibility in choosing the minimum requirements they should apply to their non-commercial operations. The new AMC and GM will provide more guidance on how the rule should be understood and implemented. The rule is flexible enough to allow operators to adjust their own procedures proportionately to the risk level implied by a certain type of non-commercial operation. There is no impact on proportionality.

Summary

<i>Type of impact</i>	<i>Option 0</i>	<i>Option 1</i>
Proportionality impact	0	0

2.3.10. Impact on 'better regulation' and harmonisation

Option 0 — No regulatory change/Ensure rule compliance

The situation described in Section 2.1 would not change with Option 0, i.e. no impact.

Option 1 — Amend the rule

Firstly, the rule proposal brings about consistency in the terminology used (by proposing the adoption of the term 'non-commercial' instead of 'non-revenue', and a new classification of these flights).

Secondly, the proposed AMC and GM clarify the intent of ORO.AOC.125. The guidelines for the risk assessment of a non-commercial flight performed by an AOC holder would contribute to a harmonised implementation at European level.

Thirdly, the simplification is benefitting both the AOC holders and the CAs, as it alleviates the prior approval of the different procedures developed by the AOC holder for its non-commercial operations.

There is no impact on the EU Member States' obligations towards ICAO.

This proposal does not conflict with other EU legislation or existing national legislation.

Option 1 is considered to have a positive impact on 'better regulation' and harmonisation.



Summary

<i>Type of impact</i>	<i>Option 0</i>	<i>Option 1</i>
Impact on 'better regulation' and harmonisation	0	+

2.3.11. Comparison and conclusion**Table 2: Summary of impacts per option**

<i>Type of impacts</i>	<i>Option 0</i>	<i>Option 1</i>
Safety impact	-/0	+
Environmental impact	0	0
Social impact	0	0
Economic impact	0	-/+
Proportionality issues	0	0
'Better regulation' and harmonisation	0	+
Overall impact	-/0	-/+

This NPA proposes to complete the missing guidance on how the provisions of the paragraph related to non-commercial operations performed by an AOC holder should be implemented (ORO.AOC.125).

Considering the assessments presented in the previous chapters, and given that Option 0 does not address the issue, the preferred option is Option 1.

2.4. Overview of the proposed amendments

This is a summary of the proposed changes:

Annex I (Definitions): New definitions are introduced for demonstration flights, functional check flights, maintenance check flights, and relocation flights.

Annex II (Part-ARO):

Appendix II 'Operations Specifications' is modified in the text of Note #20 to remove the words referring to aircraft used for non-commercial operations, as the prior approval for these operations is deleted from paragraph ORO.AOC.125. The change is made for consistency reasons with the amendment to ORO.AOC.125.

Annex III (Part-ORO):

GM3 ORO.GEN.130(b) 'Changes related to an AOC holder – Changes requiring prior approval' is modified by deleting point (e), which referred to non-commercial operations performed by an AOC holder, to be consistent with the removal of the prior approval by the CA.



ORO.AOC.125 'Non-commercial operations of aircraft listed in the operations specifications by the holder of an AOC' is modified with the removal of the prior approval by the CA, which is stipulated in paragraph (a)(2). The arguments supporting this proposal are as follows:

- These operations have to be included in the operator's safety management system according to ORO.GEN.200 'Management system', so that they are verified by the CA in this context.
- The different procedures would continue to be submitted to the CA anyway, but not for prior approval.
- The CA monitors the AOC holder's CAT operation through its regular oversight activities, so the AOC holder is an already known and trusted entity to the CA.
- Non-commercial operations performed by non-commercial operators in accordance with the provisions of Annex VI (Part-NCC) or Annex VII (Part-NCO) are not required to apply for prior approval of their operation, so this proposal would be proportionate.

The new GM1 ORO.AOC.125 'Rule applicability' explains to what extent the provisions of this rule apply to the non-commercial operations of an AOC holder. It also explains which rules should apply if the operational control of the flight is transferred to another operator.

The new GM1 ORO.AOC.125(a)(2) 'List of non-commercial flights performed by an AOC holder' is added to provide a non-exhaustive list of non-commercial terms that identify various types of operations which an AOC holder may conduct.

The inclusion of new definitions for several types of flights generated the necessity to subcategorise them and provide examples of other terms used in order to define the same types of operation:

- demonstration flights ((route) proving flights, public relations flights);
- functional check flights (acceptance flights, maintenance check flights¹⁶);
- relocation flights (ferry flights, delivery flights, positioning flights, recovery flights);
- training flights;
- other non-commercial flights (charity flights, leisure flights).

The definitions and examples are introduced in order to support AOC holders in identifying these flights if they use a different terminology, and in implicitly choosing the adequate operational framework. This will also ease the standardisation of the various terms used to define different non-commercial types of flights.

Stakeholders (AOC holders) are invited to confirm the classification of flights.

The new AMC1 ORO.AOC.125(a)(2)(i) 'Identification of the applicable requirements' specifies the minimum requirements with which an operator should comply when conducting operations other than CAT – Part-NCC/Part-NCO or Part-SPO, depending on the type of operation. This means that the rule also offers flexibility to the operator to apply the requirements for CAT operations to its non-commercial operations, if it wishes to ensure a higher level of safety than the minimum required.

¹⁶ A definition of 'maintenance check flight' is proposed in the EASA [Comment-Response Document 2012-08](#) 'Maintenance check flights (MCFs)', to be included in Annex I to Commission Regulation (EU) No 965/2012 on air operations.



The new GM1 ORO.AOC.125(a)(2)(i) 'Identification of the applicable requirements' is added to provide explanations related to the intent of the rule and the principle behind it.

A new AMC1 ORO.AOC.125(a)(2)(ii) 'Minimum elements of risk assessment' is added to prevent the safety risks identified in the issue analysis by providing a minimum set of elements which an operator should consider when performing the risk assessment of its non-commercial operations (e.g. flight profile, operating procedures, workload, and fatigue management). These elements may be the same or different from the AOC holder's CAT operation. If they differ, they should be included in the operator's risk assessment and addressed properly. This is also conceived as a tool to be used by CAs in their assessment of the operator's management system, especially the risk assessment process.

Most MSs and experts share the view that fatigue is a hazard 'with memory', which means that the fatigue that is accumulated during operations, whether conducted within the remits covered by an AOC or outside these remits, has an impact on the pilots' alertness in the subsequent flights. Cumulative fatigue remains an issue regardless of the type of operations. A new AMC2 ORO.AOC.125(a)(2)(ii) 'Flight and duty time limitations and rest requirements for mixed operations' is added to cover the mixed operations performed by an AOC holder under ORO.AOC.125. Mixed operations are understood to be combinations of CAT, non-commercial and specialised operations.

A new AMC3 ORO.AOC.125(a)(2)(ii) 'Categories of passengers carried on board' is added to distinguish between two categories of passengers on non-commercial flights carrying maximum 19 passengers and no cabin crew assigned on board. There are passengers (usually the operator's employees) who are knowledgeable about cabin safety and passenger protection (such as crew members), and passengers who have no such knowledge (operator's employees who are not familiar with safety and emergency procedures, media representatives, operator's guests, etc.). Different mitigation measures should be ensured for each of these two categories of passengers.

The new GM1 ORO.AOC.125(a)(ii) 'Examples of differences in operational procedures applied to non-commercial operations' provides a non-exhaustive list of elements for which the operator may develop different procedures for its non-commercial operations as compared to its CAT operations. For example: performance requirements, crew licensing and qualification requirements, crew composition requirements, or aircraft equipment requirements. The purpose of this non-exhaustive list is to offer the AOC holder some guidelines along which it may identify different operational procedures and flight crew training requirements for its non-commercial operations. The list may vary in complexity. The operator may add its own elements to the list or shorten it by preserving the same operational procedures as in its CAT operations for a number of elements on the list. The list provides examples of areas where the operational procedures could be different (applying different minimum requirements) per type of operation.

GM2 ORO.AOC.125(a)(2)(ii) proposes a flight programme which the AOC holder could use for its non-commercial operation.

AMC3 ORO.MLR.100 'Operations manual — General. Contents — Commercial Air Transport operations' is amended for consistency reasons; the examples of non-commercial operations provided in OM-A Chapter 8.7 'Non-revenue flights' are deleted and replaced with a reference to ORO.AOC.125 'Non-commercial operations of aircraft listed in the operations specifications by the holder of an AOC'.



GM1 ORO.MLR.105(d)(3) 'Minimum equipment list — Scope of the MEL' is amended for consistency reasons; the examples of non-commercial operations are deleted and replaced with a more general phraseology.

Current provisions (ORO.CC.100(a)) state that 'at least one cabin crew member shall be assigned for the operation of aircraft with a Maximum Operational Passenger Seating Configuration (MOPSC) of more than 19 when carrying one or more passenger(s)'. This requirement may be superfluous especially for a flight with only a few passengers on board, where most or all of whom are the operator's safety critical professionals. The AOC holder may also conduct non-commercial flights with a reduced number of passengers on board, on condition that mitigation measures are implemented (passenger briefing and cabin safety instructions prior to the flight; special seating arrangements). Currently, flying without a cabin crew assigned on board a non-commercial flight is not allowed under the current rule for aircraft with an MOPSC over 19. In order to address these issues, paragraph (d) is added in ORO.CC.100 'Number and composition of cabin crew'. It reviews the appropriate minimum number of cabin crew required on board non-commercial flights. The text has been developed with the support of the Agency's cabin safety experts. The Rulemaking Group agreed that an AOC holder may perform a non-commercial flight with no cabin crew assigned for the operation of the aircraft, without compromising the safety of the flight, provided that certain requirements are followed: to carry maximum 19 passengers on board and to develop and implement additional mitigation measures in order to ensure appropriate protection of the passengers on board. The number of 19 was proposed as a maximum in order to be consistent with the provisions of ORO.CC.100(a), according to which at least 1 cabin crew has to be assigned for the operation of aircraft with an MOPSC of more than 19 when carrying 1 or more passengers, which implies that no cabin crew is required for aircraft with an MOPSC 19 or less. The Rulemaking Group was aware that there are certain types of aircraft which do require a minimum number of cabin crew on board according to the certification approval for cabin configurations, and the proposed alleviation cannot overrule the certification requirements.

A new AMC1 ORO.CC.100(d) 'Number and composition of cabin crew — Additional mitigation measures for non-commercial operations performed by an AOC holder with maximum 19 passengers and no assigned cabin crew' is added to explain the type of mitigation measures that the operator has to apply when operating non-commercial flights with no cabin crew assigned on board.

A new GM1 ORO.CC.100(d) 'Number and composition of cabin crew — Certification approval aspects' is added to provide some clarifications on the certification process of the cabin configuration of an aircraft and to explain that the alleviation proposed in ORO.CC.100(d) applies to non-commercial flights performed by an AOC holder under certain conditions.



3. Proposed amendments

The text of the amendment is arranged to show deleted text, new or amended text as shown below:

- (a) deleted text is marked with ~~strike through~~;
- (b) new or amended text is highlighted in grey;
- (c) an ellipsis (...) indicates that the remaining text is unchanged in front of or following the reflected amendment.

3.1. Draft Regulation (Draft EASA Opinion)

The following changes are proposed to Commission Regulation (EU) No 965/2012.

3.1.1. Annex I 'Definitions for terms used in Annexes II to VIII' — Proposed amendments

New definitions are proposed:

- (39) 'demonstration flight' means a flight to demonstrate the aircraft's capabilities to persons on board;
- (53) 'functional check flight' means a flight performed to assess or demonstrate the aircraft's serviceability;
- (79) 'maintenance check flight' means a flight carried out to provide reassurance of the aircraft's performance or to establish the correct functioning of a system that cannot be fully established during ground checks:
 - (a) as required by the Aircraft Maintenance Manual (AMM) or any other maintenance data issued by the design approval holder for the continuing airworthiness of the aircraft; or
 - (b) after maintenance, as required by the operator; or
 - (c) as required by the maintenance organisation for verification of a successful defect rectification; or
 - (d) to assist with fault isolation or troubleshooting.
- (106) 'relocation flight' means a flight with the purpose of changing the aircraft's location;

3.1.2. Annex II 'Authority requirements for air operations' (Part-ARO) — Proposed amendments

The following change is proposed to Appendix II to Part-ARO:

Operations specifications, EASA Form 139

(...)

Note 20 – Others:

- 20. Other approvals or data can be entered here, using one line (or one multi-line block) per authorisation (e.g. short landing operations, steep approach operations, helicopter operations to/from a public interest site, helicopter operations over a hostile environment located outside a congested area, helicopter operations without a safe forced landing capability, operations with increased bank angles, maximum distance from an adequate aerodrome for two-engined aeroplanes without an ETOPS approval, ~~aircraft used for non-commercial operations~~).

3.1.3. Annex III 'Organisation requirements for air operations' (Part-ORO) — Proposed amendments

ORO.AOC.125 is amended as follows:



ORO.AOC.125 Non-commercial operations of with aircraft listed in the operations specifications by the holder of an AOC

- (a) The holder of an AOC may conduct non-commercial operations with an aircraft otherwise used for commercial air transport operations that is listed in the operations specifications of its AOC, provided that the operator:
- (1) for maintenance check flights, the operator complies with Annex VIII (Part-SPO);
 - (2) for all other flights, the operator describes such operations in detail in the operations manual, including:
 - (i) identification of the applicable requirements;
 - (ii) a clear identification of any differences between operating procedures used when conducting commercial air transport and non-commercial operations;
 - (iii) a means of ensuring that all personnel involved in the operation are fully familiar with the associated procedures;
 - (23) the operator submits notifies the identified differences between the operating procedures referred to in (a)(12)(ii) to the competent authority for prior approval.
- (b) An AOC holder conducting operations referred to in (a) shall not be required to submit a declaration in accordance with this Part.

A new paragraph (d) is inserted in ORO.CC.100:

ORO.CC.100 Number and composition of cabin crew

(...)

- (d) For non-commercial operations of an AOC holder, a maximum of 19 passengers may be carried without an assigned cabin crew member on board only if specific safety and emergency procedures are established in the operations manual and are approved by the competent authority. These procedures shall also cover passenger seating and briefing, as appropriate to the categories of passengers carried on board, and shall take into account the relevant data included in the certification approval of the aircraft cabin configuration used by the operator.

3.2. Draft Acceptable Means of Compliance and Guidance Material (Draft EASA Decision)

3.2.1. ED Decision 2014/017/R (AMC and GM to Part-ORO of Regulation (EU) No 965/2012) — Proposed amendments

In GM3 ORO.GEN.130(b), the text from paragraph (e) is deleted and paragraphs are renumbered:

GM3 ORO.GEN.130(b) Changes related to an AOC holder

CHANGES REQUIRING PRIOR APPROVAL

(...)

- (e) specific safety and emergency procedures for non-commercial operations performed by AOC holders with maximum 19 passengers on board and no assigned cabin crew ~~non-commercial operations by air operator certificate (AOC) holders;~~

(...)



New GM1 and GM2 to ORO.AOC.125 are proposed:

GM1 ORO.AOC.125 Non-commercial operations with aircraft listed in the operations specifications by the holder of an AOC

RULE APPLICABILITY

If the operator of a particular non-commercial flight is the AOC holder and the aircraft is listed in its AOC, the provisions of ORO.AOC.125 apply.

If the operational control is transferred from the AOC holder to another operator, then the provisions of ORO.AOC.125 do not apply anymore since the AOC holder is no longer the operator of the aircraft. The new operator has to comply with the appropriate rules, e.g. Part-NCC for non-commercial operations with complex aircraft, Part-SPO for specialised operations, etc., and has to submit a declaration in accordance with ORO.DEC.100.

GM1 ORO.AOC.125(a)(2) Non-commercial operations ~~of~~with aircraft listed in the operations specifications by the holder of an AOC

LIST OF NON-COMMERCIAL FLIGHTS PERFORMED BY AN AOC HOLDER

The following non-exhaustive list of terms should be used to identify non-commercial flights with aircraft operated by an AOC holder under ORO.AOC.125:

DEMONSTRATION FLIGHTS

The purpose of a demonstration flight is to demonstrate the aircraft's handling, performance, and functionalities to the competent authority, the media, or to the actual or potential buyers or lessees. The following subcategories of flights may be declared as demonstration flights, depending on the aircraft status and the flight profile:

- (a) (route) proving flight: a flight to demonstrate the aircraft's flying characteristics and systems to the competent authority, for verification of compliance with the operational requirements, as per ARO.GEN.310(a).
- (b) public relations flight: a flight targeting official or media representatives.

FUNCTIONAL CHECK FLIGHTS

- (a) Acceptance flight: a flight for the purpose of demonstrating to customers (lessee, buyer) the actual compliance of the aircraft with the contractual specifications. It involves serviceability aspects.
- (b) Maintenance Check Flight (MCF), as defined in Annex I (Definitions) to Commission Regulation (EU) No 965/2012. The operational framework as well as crew qualification and training requirements are detailed in CRD 2012-08 on 'MCFs'.
Examples of terms used for an MCF: technical flight, engineering flight, acceptance flight.
- (c) Check flights: flights with the purpose of testing or checking a piece of equipment, which is outside the scope of the MCF;
- (d) Flights performed before the transfer of ownership or at the end of a leasing period.

RELOCATION FLIGHTS

- (a) 'Ferry flight': a flight to a location for maintenance purposes. The aircraft may not be fully serviceable.

Examples of ferry flights:

- (1) unpressurised flight,



- (2) gear-down flight,
 - (3) flight with one engine inoperative, etc.
- (b) 'Delivery flight': a flight to transfer the aircraft from the acceptance location (manufacturer, refurbishment location, previous owner, lessor/lessee, long-term storage) to the operator's base.
- (c) 'Positioning flight': a flight to position the aircraft and its crew members to a location from which a further flight will be performed.
For a positioning flight, the aircraft is considered to be fully serviceable.
- (d) 'Recovery flight': a flight to position a serviceable aircraft from its current location to an adequately secure location for various reasons (to remove it from a hazardous area, or to recover it from the previous operator whose operator licence may be no longer valid).

TRAINING FLIGHTS

- (a) 'Licensing training': a flight with the purpose of obtaining or maintaining the aircrew licence. Refer to Article 5.5 of the Air Ops Regulation.
- (b) 'Operating training': a flight performed by the operator with the purpose of training, checking and/or familiarising a crew member with the operator's procedures linked to the aircraft being operated. A training flight is usually conducted using the procedures detailed in OM D for CAT operators.

OTHER NON-COMMERCIAL FLIGHTS

Examples (non-exhaustive list):

- (a) Private flights or leisure flights,
- (b) Charity flights.

These flights are performed at the full cost of the AOC holder or the owner.

For these flights, the operational control remains with the AOC holder.

A new AMC to ORO.AOC.125(a)(2)(i) is proposed:

AMC1 ORO.AOC.125(a)(2)(i) Non-commercial operations of aircraft listed in the operations specifications by the holder of an AOC

IDENTIFICATION OF THE APPLICABLE REQUIREMENTS

If the operator develops for its non-commercial operations different procedures from the ones used for CAT operations, the provisions of Annex VI (Part-NCC), Annex VII (Part-NCO) or Annex VIII (Part-SPO), as appropriate, should be used as the minimum requirements to demonstrate compliance with this rule.

For any non-commercial flight, the operator should mention the applicable category in its flight-related documents (OFF, loadsheet, etc.) prior to the flight.

A new GM to ORO.AOC.125(a)(2)(i) is proposed:

GM1 ORO.AOC.125(a)(2)(i) Non-commercial operations of aircraft listed in the operations specifications by the holder of an AOC



IDENTIFICATION OF THE APPLICABLE REQUIREMENTS

The provisions of ORO.AOC.125 allow the AOC holder to choose the most appropriate requirements when performing non-commercial flights which are performed under its operational control. The AOC holder should include these flights into its safety management process.

The AOC holder may choose to apply to these operations the provisions for:

- (a) CAT operations, or
- (b) non-commercial operations (for complex or other-than-complex motor-powered aircraft, as applicable).

To its non-commercial operations, the AOC holder may decide to apply either:

- (1) the same operational procedures as those applied for its normal CAT operations. In this case, the provisions of Part-CAT should apply, and no additional descriptions are required; or
- (2) different operational procedures than those normally applied for its CAT operations. In this case, the minimum requirements should be Part-NCC or Part-NCO, depending on the aircraft complexity. For these, the AOC holder should identify the differences and describe the different applicable procedures in its operations manual;

or

- (c) specialised operations for maintenance check flights.

New AMCs to ORO.AOC.125(a)(2)(ii) are proposed:

AMC1 ORO.AOC.125(a)(2)(ii) Non-commercial operations of with aircraft listed in the operations specifications by the holder of an AOC**MINIMUM ELEMENTS OF RISK ASSESSMENT**

When developing different operating procedures for its non-commercial flights, the operator should identify hazards and assess and mitigate the risks associated with its specific operation, as part of its safety risk management process.

This process should consider at least the following elements:

- (a) Flight profile (including manoeuvres to be performed, any simulated abnormal situations in flight, duties and responsibilities of the crew members);
- (b) Levels of functional equipment and systems (MEL, CDL);
- (c) Operating procedures, minima, and dispatch criteria;
- (d) Flight and duty time limitations and rest requirements, cumulative and transient fatigue;
- (e) Selection, composition, and training of flight and cabin crew; and
- (f) Categories of passengers on board.

AMC2 ORO.AOC.125(a)(2)(ii) Non-commercial operations of with aircraft listed in the operations specifications by the holder of an AOC**FLIGHT AND DUTY TIME LIMITATIONS AND REST REQUIREMENTS FOR MIXED OPERATIONS**

When conducting a mixed operation of CAT and NCC/NCO flights, the operator should:

- (a) comply with the provisions of ORO.FTL.210 'Flight times and duty periods' at any time, to ensure compliance with Subpart FTL for any CAT flight.



- (b) include mixed operations in its safety risk management process to ensure that the fatigue risks arising from any combination of CAT and NCC/NCO operations do not affect the CAT operation.

AMC3 ORO.AOC.125(a)(2)(ii) Non-commercial operations of aircraft listed in the operations specifications by the holder of an AOC

CATEGORIES OF PASSENGERS CARRIED ON BOARD

The AOC holder should apply additional mitigation measures to ensure the protection of passengers during non-commercial flights with no assigned cabin crew.

These additional mitigation measures should be properly adapted to the categories of passengers carried on board such flights, who may be knowledgeable or not about procedures in normal operations and in abnormal and/or emergency situations.

New GMs to ORO.AOC.125(a)(2)(ii) are proposed:

GM1 ORO.AOC.125(a)(2)(ii) Non-commercial operations of aircraft listed in the operations specifications by the holder of an AOC

EXAMPLES OF DIFFERENCES IN OPERATIONAL PROCEDURES APPLIED TO NON-COMMERCIAL OPERATIONS

Below is a non-exhaustive list of elements that an AOC holder may identify and describe as being different in its operating procedures for non-commercial operations and for which the provisions of Part-NCC/ Part-NCO or Part-SPO may apply as minimum requirements to ensure compliance with the rule:

- (a) Qualification, training and experience of crew members, including aerodrome and route competence requirements;

- (b) Flight crew and cabin crew composition requirements;

CAT operations require more stringent requirements for crew members, e.g. dual-pilot vs single-pilot requirements. When operating under the NCC/NCO rules, a single-pilot certified aircraft does not necessarily require two flight crew members, for example, to ferry an aircraft for scheduled maintenance. Similarly, certain non-commercial types of operation may be performed without assigned cabin crew on board.

The AOC holder should specify the minimum number of flight and cabin crew and the applicable crew composition;

- (c) Fuel requirements;

- (d) Performance requirements;

- (e) Serviceable instruments, data and equipment and MEL considerations;

- (f) Non-ETOPS/ETOPS

ETOPS are for CAT operations only and thus a flight operated according to the NCC/NCO rules may be performed without the ETOPS restrictions;

- (g) Categories of passengers on board

The passengers on board a non-commercial flight with no assigned cabin crew could be classified into two categories:



- (1) Non-operating crew members (flight crew, cabin crew, technical crew) who are knowledgeable about procedures in normal operations and in abnormal and/or emergency situations. This category of passengers should be able to ensure their own protection provided that appropriate mitigation measures are established and applied.

Example of such flights: relocation flights.

- (2) Officials or representatives of the media, operator's employees, operator's guests or any other persons who are not knowledgeable about procedures in normal operations and in abnormal and/or emergency situations. These passengers are entitled to an equivalent level of protection as for any passenger on a CAT flight.

Example of such flights: charity flights.

GM2 ORO.AOC.125(a)(2)(ii) Non-commercial operations of aircraft listed in the operations specifications by the holder of an AOC

FLIGHT PROGRAMME

An AOC holder may establish flight programmes for flights with an increased level of risk. Such programmes could include:

- (a) manoeuvres to be performed in flight;
- (b) special operating procedures;
- (c) crew briefing;
- (d) duties and responsibilities of the crew members involved, task sharing;
- (e) operational limitations;
- (f) potential risks and contingency plans;
- (g) adequate available airspace and coordination with the Air Traffic Control (ATC).

The following amendments are proposed to AMC3 ORO.MLR.100:

AMC3 ORO.MLR.100 Operations manual — General

CONTENTS — COMMERCIAL AIR TRANSPORT OPERATIONS

(...)

8.7 Non-commercial operations ~~Non-revenue flights.~~ Information as required by ORO.AOC.125 for each type of non-commercial operation. ~~Procedures including the kind of persons who may be carried on such flights and limitations, for example, for the following:~~

- ~~(a) non-commercial operations by AOC holders, a description of the differences to commercial operations,~~
- ~~(b) training flights,~~
- ~~(c) test flights,~~
- ~~(d) delivery flights,~~
- ~~(e) ferry flights,~~
- ~~(f) demonstration flights,~~
- ~~(g) positioning flights.~~

(...)



The following amendments are proposed to GM1 ORO.MLR.105(d)(3):

GM1 ORO.MLR.105(d)(3) Minimum equipment list

SCOPE OF THE MEL

(...)

(b) ~~Examples of~~ Different types of operations carried out by the operator in accordance with ORO.AOC.125. may be:

~~(1) crew training,~~

~~(2) positioning flights,~~

~~(3) demonstration flights.~~

(...)

New AMC and GM are proposed to ORO.CC.100(d):

AMC1 ORO.CC.100(d) Number and composition of cabin crew

ADDITIONAL MITIGATION MEASURES FOR NON-COMMERCIAL OPERATIONS PERFORMED BY AN AOC HOLDER WITH MAXIMUM 19 PASSENGERS AND NO ASSIGNED CABIN CREW

The provisions of ORO.CC.100(d) are applicable to non-commercial operations performed by an AOC holder under ORO.AOC.125.

The AOC holder should ensure that specific safety and emergency procedures are established and applied to non-commercial flights with maximum 19 passengers and no cabin crew assigned on board.

The mitigation measures included in these procedures should be adapted to one of the two following categories of passengers:

(a) Non-operating crew members (flight crew, cabin crew, technical crew) who are familiar with the procedures in normal operations and in abnormal and/or emergency situations.

For this category of passengers, the AOC holder may use the provisions on passenger seating and briefing of Annex IV (Part-CAT) or Annex VI (Part-NCC) to ensure appropriate passenger protection.

(b) Officials or representatives of the media, operator's employees, operator's guests or any other persons who are not familiar with the procedures in normal operations and in abnormal and/or emergency situations.

For this category of passengers, the AOC holder should establish and apply procedures to ensure an adequate level of passenger protection in the cabin, such as:

(1) Passenger seating

(i) Safety and emergency procedures to ensure both easy access to the emergency exits and rapid evacuation of passengers;

(ii) Special seating arrangements for passengers in the cabin to enable clear and quick communication with the flight crew and also good visibility of all passengers in emergency situations.

(2) Passenger briefing

(i) Safety and emergency procedures, including the operation of the emergency exits and rapid evacuation of the passengers on board in an emergency.



(3) Coordination of passengers in emergency situations

- (i) Such procedures should describe how appropriate surveillance of the passenger compartment is ensured for the duration of the flight.
- (ii) As an example, the operator may decide to have a mixture of the two categories described above and, out of the 19 passengers carried on board without cabin crew, establish a ratio between the two categories. Another example may be to provide an extended briefing to one or more passengers to facilitate communication and coordination.

GM1 ORO.CC.100(d) Number and composition of cabin crew

CERTIFICATION APPROVAL ASPECTS

A certification approval is a supplemental document (Supplemental Type Certificate (STC)) to the Type Certificate Data Sheet (TCDS) which is required when an operator intends to operate its aircraft with a changed cabin configuration. The certification approval may also specify a different minimum number of cabin crew than the one mentioned in the TCDS.

The alleviation in ORO.CC.100(d), applicable only to AOC holders operating non-commercial flights with maximum 19 passengers on board, may be used also for those aircraft where the minimum number of cabin crew is specified in the aircraft's TCDS or STC, provided that the operator develops and applies specific safety and emergency procedures approved by the competent authority.

On developing such procedures, the AOC holder should consider the cabin crew requirements specified in the certification documentation mentioned above and should ensure that the mitigation measures address the risks of operating without cabin crew assigned on board and that they provide an equivalent level of protection to that ensured for any passenger on a CAT flight.

For example, the TCDS for a certain type of aircraft requires minimum 8 cabin crew members for up to 400 passengers. Nevertheless, if the operator provides adequate mitigations for the carriage of maximum 19 passengers on board a non-commercial flight, cabin crew may not be required.



4. References

4.1. Affected regulations

- 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), as last amended.

4.2. Affected AMC and GM

- Decision 2014/017/R of the Executive Director of the Agency of 24 April 2014 adopting Acceptable Means of Compliance and Guidance Material to Part-ORO of Regulation (EU) No 965/2012 — ‘AMC and GM to Part-ORO — Issue 2’ (available at <http://www.easa.europa.eu/document-library/agency-decisions/ed-decision-2014017r>)

4.3. Reference documents

- BEA Report: Accident on 27 November 2008 off the coast of Canet-Plage (66) to the Airbus A320-232 registered D-AXLA operated by XL Airways Germany. Published: September 2010. English edition. ISBN: 978-2-11-099128-7 (available at <http://www.bea.aero/docspa/2008/d-la081127e.en/pdf/d-la081127e.en.pdf>)
- EASA ‘ADREP Production’ database: excerpt of Accidents and Serious Incidents Involving Aeroplanes Above 5,700 kg MTOM, Non-Revenue Operations 1 January 2003 – 16 August 2013
- EASA Comment-Response Document to NPA 2012-08 ‘Maintenance check flights (MCFs)’ (RMT.0393 (MDM.097(a)) & RMT.0394 (MDM.097(b))), published on 10 December 2013 (available at <http://easa.europa.eu/document-library/comment-response-documents/crd-2012-08>)
- EASA Opinion No 07/2013 ‘Flight Testing’ to amend Commission Regulation (EU) No 748/2012. Related NPA/CRD: 2008-20. Publication date: 22 August 2013 (available at <http://easa.europa.eu/system/files/dfu/Opinion%2007-2013.pdf>)
- EASA Safety Information Bulletin. SIB No: 2011-07. Issued: 05 May 2011. Subject: Functional Check Flights (available at <http://ad.easa.europa.eu/ad/2011-07>)
- EASA Safety Information Bulletin. SIB No.: 2014-29. Issued: 24 October 2014. Subject: Minimum Cabin Crew for Twin Aisle Aeroplanes (available at <http://ad.easa.europa.eu/ad/2014-29>)
- UK Department for Transport, Air Accident Investigation Branch, AAIB Bulletin S2/2009 Special (available at http://www.aairb.gov.uk/cms_resources.cfm?file=/S2-2009%20-%20G-EZJK.pdf)

