

**DECISION  
OF THE EASA BOARD OF APPEAL  
OF 19 DECEMBER 2022<sup>1</sup>**

In Appeal Case AP/17/2022 lodged by

**Aviones Piezas y Accesorios (APA) S.L.**

Aeropuerto de Cuatro Vientos, Hangar 7  
28054 Madrid  
Spain

(**'the Appellant'**), represented by [REDACTED]

against

**The European Union Aviation Safety Agency**

Konrad Adenauer Ufer 3  
50668 Cologne  
Germany

(**'the Agency'** or **'EASA'**), represented by Arthur Beckand

Appeal contesting EASA's decision of 8 March 2022 to partially suspend the Design Organisation Approval (**'DOA'**) privileges of DOA No. EASA.21J.262 issued to the Appellant (**'the contested decision'**).

**THE EASA BOARD OF APPEAL**

Composed of:

Dr. Michael Sánchez Rydelski (Chairman and Rapporteur)

Dr. Helmut Stärker (Member)

Humberto Vieira Rijo (Member)

Registrar: Loïc Rochas

gives, on 19 December 2022 the following decision:

***The Appeal against EASA's decision of 8 March 2022 to partially suspend the DOA privileges of DOA No. EASA.21J.262 is rejected as unfounded.***

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<sup>1</sup> Language of the proceedings: English

## I. BACKGROUND

1. Since 11 January 2006, the Appellant is the holder of DOA No. EASA.21J.262.
2. By email of 23 September 2021, the Appellant was informed about the Agency's intention to conduct an audit at the Appellant's premises. By email of 26 October 2021, the Agency sent the proposed audit agenda to the Appellant and the audit questionnaire was sent to the Appellant by email on 15 November 2021.<sup>2</sup>
3. On 17 and 18 November 2021, the Agency carried out an audit of the Appellant. The audit was conducted to assess the Appellant's compliance with the requirements of 'Part 21' of Regulation (EU) No. 748/2012 and performed by assessing examples of the Appellant's work ('sampling') and interviews with the Appellant's staff. During the audit, the Agency raised in total four 'level 2' findings and two 'level 3' findings.
4. As part of the sampling, the Agency reviewed design change no. 109225, which was approved by the Appellant under its privilege as a 'minor change'. That design change consisted of the installation of a Nav/Comm Bendix KX-165 equipment on a Cessna model C-337G aircraft<sup>3</sup> with piston engines. That minor change also integrated, with certain adaptations, two supplementary type certificates ('**STCs**') with numbers 10037574 and 10060873, which had been previously issued by the Agency to Garmin.
5. On 3 December 2021, the Agency formally notified the Appellant of the outcome of the audit and raised, *inter alia*, two 'level 2' findings in accordance with Point 21.A.258(a)(2) of Part 21 (with reference numbers 262-0064 and 262-0067). In the notification of findings, the Agency offered to have a meeting with the Appellant to clarify the impact the findings would have on the DOA's Terms of Approval ('**ToA**'). The Appellant was given until 2 February 2022 to propose corrective measures for the Agency to close these findings.
6. Concerning finding no. 262-0064, the Agency concluded that the Appellant did not demonstrate compliance with Point 21.A.95(b)(4) of Part 21. The finding reads as follows: *There are characteristics in the product, for which change 109225 is approved, that may make the product unsafe for the uses for which certification is intended. The document AFMS 109225 should include a limitation under section "kind of operations" as follows: "Day VFR only. IFR operation not permitted"*.<sup>4</sup>
7. With regard to finding no. 262-0067, the Agency concluded that the Appellant did not demonstrate compliance with Point 21.A.243(d) of Part 21. The finding reads as follows: *The discussions with APA engineers (holding positions of*

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<sup>2</sup> The audit questionnaire sent on 15 November 2021 by the Agency to the Appellant did not contain any detailed technical questions related to specific avionics competences.

<sup>3</sup> The design aircraft itself was covered by a Type Certificate no. A6CE.

<sup>4</sup> AFMS stands for 'Airplane Flight Manual Supplement', VFR stands for 'Visual Flight Rules' and IFR stands for 'Instrument Flight Rules'.

*Chief OoA, CVE and design) has shown a lack of competence: A. in Functional Analysis, Equipment qualification process and Safety Assessment process, in order to ensure compliance with CS XX.1301 and CS XX.1309 requirements; B. in CS-ACNS, and; C. in the classification of certain avionic changes.*

8. The Agency furthermore noted in the 'Level 2' finding no. 262-0067 that the DOA's ToA would be amended to exclude STC activity where the technical disciplines listed in that finding were required. While the audit did not focus on STC activity, the samples audited showed deficiencies in the classification of changes and the associated demonstration of compliance which gave rise to concern that the Appellant did not have the correct capabilities to work on STCs where those technical disciplines were required.
9. On 17 December 2021, the Agency requested the Appellant to submit its corrective actions for the finding with reference no. 262-0064. Additionally, in the absence of pre-configuration data and the associated Airplane Flight Manual ('AFM') for a particular aircraft, the Agency requested the Appellant to submit information regarding the aircraft on which the equipment approved by the Appellant under design change no. 109225 was planned to be installed and regarding the operator of the aircraft. The Appellant submitted the missing corrective actions on 21 December 2021, however, the Appellant did not submit the information the Agency had requested (i.e. the identification of the aircraft where the change had been installed and the operator of the aircraft).
10. In January 2022, the Appellant proposed further corrective measures, none of which were accepted by the Agency. In this context, the Appellant acknowledged that the aircraft in fact did not include the minimum equipment necessary to perform IFR operations.
11. Concerning finding no. 262-0064, the Agency informed the Appellant on 7 March 2022 that it had reclassified that finding to a 'level 1' finding, due to the lack of a corrective action plan by the Appellant, and encouraged the Appellant to provide the missing information, in order for it to be able to close the finding. However, the missing information was not submitted.
12. Based on the above findings, the Agency informed the Appellant on 8 March 2022 by the contested decision of the partial suspension of privileges of DOA No. EASA.21J.262, due to non-compliance with approval requirements for a DOA. The contested decision was based on Article 77(2)(a) of Regulation (EU) 2018/1139 and Point 21.A.258(d) of Annex I ('Part 21') to Regulation (EU) No. 748/2012 and modified the terms of approval of DOA No. EASA.21J.262 as follows:
  1. *to limit design activities affecting navigation, communication and autoflight systems to products certified for day VFR only,*
  2. *to remove STC activity for avionics systems in large aeroplanes and large rotorcraft,*

*3. to exclude design activities on systems with catastrophic/hazardous/major failure conditions in small aeroplanes and small rotorcraft,*

*until the corrections of non-compliances are implemented to the satisfaction of EASA.*

13. The Agency attached to the contested decision an updated ToA (Issue 12), reflecting these limitations, and requested the Appellant to return to the Agency the original ToA (Issue 11) dated 16 April 2020.

## **II. PROCEDURE**

14. On 16 March 2022, the Appellant lodged an appeal against the contested decision, together with the statement of grounds (**'the Appeal'**). In March 2022, the Appellant also paid the appeal charges.
15. On 22 March 2022, the Appellant provided the requested information and evidence of corrective actions related to the 'Level 1' finding no. 262-0064, which the Agency considered satisfactory. As a consequence, the Agency closed that finding on 28 March 2022.
16. On 28 March 2022, the Registrar of the Board of Appeal formally notified the Executive Director of the Agency of the Appeal and requested, on behalf of the Board of Appeal, an interlocutory revision in accordance with Article 111 of Regulation (EU) 2018/1139.
17. On 23 May 2022, the Agency handed down its interlocutory revision. The interlocutory revision concluded that the Appeal was admissible, but not well founded. The Agency therefore upheld the contested decision. The Agency did not find any reason to suspend the application of the contested decision. In this context, the Agency stressed that finding no. 262-0067 remained open, and therefore the Agency considered that the privileges it partially suspended could not be reinstated. The Appellant's request to annul the ToA Issue 12 of 8 March 2022 and restore ToA Issue 11 could therefore not be met by the Agency until the Appellant had shown that its staff had the required competences and finding no. 262-0067 could be closed.
18. On 2 June 2022, the Registrar of the Board of Appeal informed the Appellant of the outcome of the interlocutory revision, by way of transmitting the Agency's interlocutory revision opinion, and invited the Appellant to submit its reply to that opinion by 4 July 2022.
19. On 29 June 2022, the Appellant submitted its reply to the interlocutory revision in Spanish. The Registrar of the Board of Appeal arranged for translation of the reply into English.

20. The translated reply, which was received on 22 July 2022, was subsequently sent to the Agency, which was invited to submit a rejoinder by 12 September 2022. On 25 August 2022, the Agency applied for an extension of the deadline, which was granted until 26 September 2022. The final rejoinder was received on 22 September 2022 and forwarded to the Appellant.
21. In September 2022, the Board of Appeal requested access to the file, in particular in relation to findings no. 262-0064 and 262-0067, which the Agency granted.
22. On 4 October 2022, the Appellant requested an oral hearing to which the Board of Appeal agreed.
23. On 22 November 2022, the Agency informed the Appellant that it had decided to partially reinstate the scope of the DOA issued to the Appellant and to permit the Appellant to conduct under its DOA specific work on small aeroplanes (CS-23 aircraft) and small rotorcraft (CS-27 aircraft). Consequently, a new ToA (Issue 13) was sent to the Appellant, with the following limitations: *Design activities affecting Navigation Communication and Autoflight Systems are limited to products certified for day VFR only. Design activities on systems with catastrophic / hazardous failure conditions are excluded.*
24. On 7 December 2022, the oral hearing took place and was organised remotely. According to Article 26(3) of the Rules of Procedure of the Board of Appeal, the Board of Appeal decided not to have a public hearing, given the nature of the information discussed during the hearing, which covered, *inter alia*, the methodology of how the Agency conducts audits, sensitive business information in relation to the Appellant and personal information concerning the Appellant's staff. The parties did not oppose having a closed hearing.

### III. MAIN PROVISIONS AT ISSUE

25. According to Article 108(1) of 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 (**'the Basic Regulation'**),<sup>5</sup> an appeal may be brought against decisions of the Agency taken pursuant to, *inter alia*, Article 77 of the Basic Regulation.

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<sup>5</sup> OJ L 212, 22.8.2018, page 1.

26. Article 110 of the Basic Regulation reads:

*The appeal, together with a substantiated statement of grounds thereof, shall be filed in writing at the Board of Appeal's secretariat within two months of the notification of the measure to the person concerned or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.*

27. Article 62(2) of the Basic Regulation, *inter alia*, stipulates:

*To ensure compliance with this Regulation and with the delegated and implementing acts adopted on the basis thereof, the Agency and the national competent authorities shall:*

...

*(c) conduct the necessary investigations, inspections, including ramp inspections, audits and other monitoring activities to identify possible infringements by legal or natural persons subject to this Regulation of the requirements set out in this Regulation and in the delegated and implementing acts adopted on the basis thereof;*

*(d) take all necessary enforcement measures, including amending, limiting, suspending or revoking certificates issued by them, grounding of aircraft and imposing penalties, in order to terminate identified infringements; ...*

28. Article 77(2)(a) of the Basic Regulation provides:

*The Agency shall be responsible for the tasks related to certification, oversight and enforcement in accordance with Article 62(2) with respect to:*

*(a) the approvals of and the declarations made by the organisations responsible for the design of products, parts, non-installed equipment and equipment to control unmanned aircraft remotely, in accordance with Article 15(1), point (g) of Article 19(1) and Article 56(1) and (5); ...*

29. Article 83(1) of the Basic Regulation reads:

*The Agency shall conduct either itself or through national competent authorities or qualified entities the investigations necessary for the performance of its tasks related to certification, oversight and enforcement in accordance with Article 62(2).*

30. Article 8(1) of Commission Regulation (EU) No. 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations, as amended ('**Regulation 748/2012**'),<sup>6</sup> provides:

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<sup>6</sup> OJ L 224, 21.8.2012, page 1.



*An organisation responsible for the design of products, parts and appliances or for changes or repairs thereto shall demonstrate its capability in accordance with Annex I (Part 21).*

31. Article 1(2)(c) of Regulation 748/2012 provides the following definition:

*‘Part 21’ means the requirements and procedures for the certification of aircraft and related products, parts and appliances, and of design and production organisations laid down in Annex I to this Regulation; ...*

32. Point 21.A.95(b) of Annex I (Part 21) to Regulation 748/2012 stipulates:

*A minor change to a type-certificate shall only be approved:*

- 1. when it has been demonstrated that the change and areas affected by the change comply with the type-certification basis and the environmental protection requirements incorporated by reference in the type-certificate;*
- 2. in the case of a change affecting the operational suitability data, when it has been demonstrated that the necessary changes to the operational suitability data comply with the operational suitability data certification basis incorporated by reference in the type-certificate;*
- 3. when compliance with the type-certification basis that applies in accordance with point (1) has been declared and the justifications of compliance have been recorded in the compliance documents; and*
- 4. when no feature or characteristic has been identified that may make the product unsafe for the uses for which certification is requested.*

33. Point 21.A.243(d) of Annex I (Part 21) to Regulation 748/2012 provides:

*The design organisation shall furnish a statement of the qualifications and experience of the management staff and other persons responsible for making decisions affecting airworthiness and environmental protection in the organisation.*

34. Point 21.A.245 of Annex I (Part 21) to Regulation 748/2012, entitled ‘Approval requirements’ reads:

*The design organisation shall demonstrate, on the basis of the information submitted in accordance with point 21.A.243 that, in addition to complying with point 21.A.239:*

- (a) the staff in all technical departments are of sufficient numbers and experience and have been given appropriate authority to be able to discharge their allocated responsibilities and these, together with the accommodation, facilities and equipment are adequate to enable the staff to achieve the airworthiness, operational suitability and environmental protection objectives for the product;*

*(b) there is full and efficient coordination between departments and within departments in respect of airworthiness, operational suitability and environmental protection matters.*

35. Point 21.A.257 of Annex I (Part 21) to Regulation 748/2012, entitled 'Investigations', reads:

*(a) The design organisation shall make arrangements that allow the Agency to make any investigations, including investigations of partners and subcontractors, necessary to determine compliance and continued compliance with the applicable requirements of this Subpart.*

*(b) The design organisation shall allow the Agency to review any report and make any inspection and perform or witness any flight and ground test necessary to check the validity of the compliance statements submitted by the applicant under point 21.A.239(b).*

36. Point 21.A.258(a) of Annex I (Part 21) to Regulation 748/2012 stipulates:

*When, during the investigations referred to in points 21.A.257 and 21.B.100, objective evidence is found demonstrating non-compliance of the holder of a design organisation approval with the applicable requirements of this Annex, the finding shall be classified as follows:*

- 1. a 'level 1' finding is any non-compliance with the requirements of this Annex that may lead to uncontrolled non-compliances with applicable requirements and affect the safety of the aircraft;*
- 2. a 'level 2' finding is any non-compliance with the requirements of this Annex that is not classified as a 'level 1' finding.*

37. Point 21.A.258(c)(1) and (2) of Annex I (Part 21) to Regulation 748/2012 reads:

*After receipt of notification of findings under the applicable administrative procedures established by the Agency:*

*1. in the case of a 'level 1' finding, the holder of the design organisation approval shall demonstrate to the satisfaction of the Agency that it has taken adequate corrective action within a period of no more than 21 working days after written confirmation of the finding;*

*2. in the case of a 'level 2' findings, the holder of a design organisation approval shall demonstrate to the satisfaction of the Agency that it has taken adequate corrective action within a time period set by the Agency which is appropriate to the nature of the finding and is initially no longer than three months. The Agency may extend that initial time period where it considers that the nature of the finding allows such extension and where the applicant has submitted a corrective action plan which the Agency finds satisfactory;*

...



38. Point 21.A.258(d) of Annex I (Part 21) to Regulation 748/2012 provides:

*In case of 'level 1' or 'level 2' findings, the design organisation approval may be subject to a partial or full suspension or revocation under the applicable administrative procedures established by the Agency. In that case, the holder of the design organisation approval shall provide confirmation of receipt of the notice of suspension or revocation of the design organisation approval in a timely manner.*

39. Point 21.A.259(a)(1) of Annex I (Part 21) to Regulation 748/2012 stipulates:

*A design organisation approval shall be issued for an unlimited duration. It shall remain valid unless:*  
*1. the design organisation fails to demonstrate compliance with the applicable requirements of this Subpart; ...*

#### **IV. SUBMISSIONS OF THE PARTIES**

##### ***The Appellant***

40. In essence, the Appellant contests the Agency's interpretation of the DOA responsibilities and challenges the correctness of the finding that was reclassified to a 'Level 1' finding, with reference to finding no. 262-0064. The substance of the other finding, 'Level 2' finding no. 262-0067, which remains open, is not contested by the Appellant. Concerning finding no. 262-0067, the Appellant only submits that, at the time of the audit, not all of the Appellant's staff were assessed and the synergy of the knowledge of Appellant's staff, as a whole, was not considered.
41. As regards finding no. 262-0064, the Appellant submits that it included in the AFM supplement of the minor change no. 109225 the same statement as is already included in the AFMs associated with the generic STC 100337524 and STC 10060873 that have been issued to Garmin and which the design change no. 109225 integrates. The Appellant states that this is sufficient and disagrees with the Agency's request to include in its AFM supplement a limitation to 'daytime Visual Flight Rules (VFR) flights,' because this would result in an inconsistency with the AFM supplements for the above-mentioned Garmin STCs and exclude installation of the change no. 109225 on IFR certified aircraft in general. Furthermore, the Appellant claims that as a DOA holder it is not responsible for the operation of the aircraft or for carrying out operation approvals, but that this is the responsibility of the Continuing Airworthiness Management Organisation ('CAMO'). The Appellant also claims that CAMO must verify that the installed equipment complies with regulations, and it is the operator's Operations department, which designates the pilots, which must have the licence with the appropriate rating.
42. With regard to finding no. 262-0064, the Appellant alleges that it was forced to accept the finding closure conditions and to add the limitation required by the

Agency: *'Due to EASA requirements, this aircraft is limited to Day VFR only. IFR operation not permitted', as otherwise the Agency would have 'closed' the DOA.*

43. The Appellant also makes statements that a DOA organisation must have the opportunity to present its reasoning directly to the Agency to reach a final solution and take the necessary steps to allow the DOA to continue.
44. The Appellant requests that: (1) the new ToA (Issue 12) be annulled and the previous ToA (Issue 11) be restored; (2) finding no. 262-0064 be suspended as a precautionary measure; and (3) the outcome of the audit carried out by the Agency on 17 and 18 November 2021 be cancelled. In relation to point (3), the Appellant alleges that the audit came as a surprise and that it felt discriminated against by having been selected and assessed in the audit.

### ***The Agency***

45. Concerning finding no. 262-0064, the Agency disagrees with the Appellant's assessment for basically two reasons: First, the subject matter Garmin STCs are separate approvals originally issued by the US Federal Aviation Administration and subsequently validated by the Agency under the 'Agreement between the USA and the EU on cooperation in the regulation of civil aviation safety'. During the validation process, the statement included in the Garmin STCs AFM Supplement (*i.e. "This AFM Supplement does not grant the approval for IFR operations to aircraft limited to VFR operations"*) was accepted by the Agency as those STCs are of generic scope and not tailored to a particular type of aircraft. Therefore, if the Garmin STCs conditions are met and installation instructions of those STCs can be performed, CAMO may include the STC supplement in the AFM. Second, in the case of the Appellant, the generic Garmin STCs were incorporated with other changes under minor change no. 109225 intended for a particular aircraft model, Cessna model C-337G aircraft with piston engines, with A6CE type certificate. By issuing that minor change the Appellant became responsible, as per Point 21.A.265 of Part 21, for the complete design data associated with that minor change. However, the certification data package of the Appellant did not document the configurations detailed in the Garmin STC (EASA STC 10037574) master drawing list and the pre-installation conditions/options of the Garmin installation manual.
46. The Agency submits that the Garmin STC has two EASA configurations: one to upgrade an IFR aircraft and the other to upgrade a VFR aircraft. Garmin produced a specific AFM supplement for each configuration. Therefore, the important technical difference between the Garmin STCs and the minor change no. 109225 is that the minor change includes the specific AFM supplement to upgrade an IFR aircraft without however a clear identification of the pre-installation conditions for this kind of operation, while the Garmin STC installation manual covers both VFR and IFR aircraft.
47. The Agency states that while the minor change no. 109225 was not limited to one aircraft, the Agency discovered that the minor change was intended to be installed on an aircraft that does not have the equipment necessary to perform

IFR operation. The Agency submits that this was confirmed by the Appellant in its communication to the Agency of 14 January 2022. When trying to clarify this aspect during the audit, the Appellant refused to provide further details concerning the pre-mod configuration of the aircraft. The Agency found this was not acceptable, as it is the responsibility of a DOA to proactively assess if the installation is allowed for IFR, in order to be compliant with Point 21.A.95 of Part 21. Since the scope of operations covered by the Garmin STC and by the minor change no. 109225 are different, the AFM Supplement for the minor change cannot be formulated in the exact same manner as in the Garmin STC, contrary to what is argued by the Appellant. The AFM supplement for the minor change should clearly describe the actual operations limitations of the specific aircraft for which the minor change no. 109225 is intended. This could be achieved, for example, by providing a limitation for the specific aircraft in the AFM or through a placard installed on the aircraft. As a result, the Agency concluded that the use of the text of the Garmin STC AFM supplement in the supplement associated with the minor change no. 109225 would give to the pilot of that specific aircraft the incorrect impression that the aircraft could be operated in IFR, instead of only in VFR, and this could affect the safety of the aircraft operation.

48. The Agency states that VFR flights shall be conducted so that the aircraft is flown in conditions of visibility and distance from clouds, as stipulated in SERA.5005(a) of Section 5 of the Annex to Commission Regulation (EU) No 923/2012 (SERA Regulation). IFR flights can however be performed with aircraft that are equipped with suitable instruments and with navigation equipment appropriate to the route to be flown and in accordance with the applicable air operations legislation, as stipulated in SERA.5015 of the SERA Regulation. It is therefore important that it is completely clear if an aircraft, taking into account all its modifications, is approved for an IFR flight or not.
49. The Agency states that in accordance with Point 21.A.95(b)(4) of Part 21 a minor change to a type-certificate shall only be approved when no feature or characteristic has been identified (in this case by the DOA holder, given that the approval is issued under a DOA privilege) that may make the product unsafe for the uses for which certification is requested. Furthermore, the holder of a DOA shall determine that the design of products, or changes, or repairs thereto comply with the applicable specifications and requirements and have no unsafe features, in accordance with Point 21.A.265(c) of Part 21. By not clearly specifying the limitations of the equipment covered by change approval no. 109225, the Appellant did not fully discharge its DOA responsibilities. Therefore, the Agency is of the opinion that the Appellant did not comply with the abovementioned requirements.
50. According to the Agency, the Appellant referred in the Appeal to the responsibilities of CAMO when it comes to installation of equipment. A CAMO holds certain responsibilities in accordance with CAMO.A.315 in conjunction with Subpart C of Part-M of Regulation (EU) No 1321/2014 (CAW Regulation). This includes the responsibility for ensuring that modifications are carried out by using data approved by the Agency, or an appropriately approved Part 21

design organisation, or data contained in the certification specifications referred to in Points 21.A.90B or 21.A.431B of Part 21, in accordance with M.A.304 of the CAW Regulation. CAMO therefore cannot take over the design responsibilities of a DOA holder but must verify that the modification was approved by a capable entity, such as a DOA holder.

51. Concerning finding no. 262-0067, the Agency submits that it registered a lack of competences, which it had witnessed during the audit on 17 and 18 November 2021, concerning in particular the engineers holding, respectively, the positions of Chief of the Office of Airworthiness ('**OoA**'), Compliance Verification Engineers ('**CVEs**') and design, who the Agency considers as not being compliant with Point 21.A.243(d) in conjunction with Point 21.A.245 of Part 21. Consequently, finding no. 262-0067 remains open, and therefore the Agency considers that the privileges it partially suspended cannot be reinstated. The Appellant's request to annul the ToA Issue 12 of 8 March 2022 and restore ToA Issue 11 can therefore not be met by the Agency until the Appellant has shown that its staff has the required competences and finding no. 262-0067 is closed.
52. The Agency also points out that it was in continuous communication with the Appellant, both before and after the audit, and that it gave guidance to the Appellant on which expectations had to be met, in order for it to be able to close the finding. Furthermore, the Appellant was notified on multiple occasions, in the audit report, the related finding description documents and by emails on 3 December 2021, 2 February 2022, 16 February 2022, 2 March 2022 and 7 March 2022, of the possibility that its approval would be suspended if the Agency did not receive the requested material to be able to close the findings.
53. The Agency therefore considers that the Appellant was made aware of the consequences of any insufficient action on its side. In total, the Appellant was given over 3 months to provide an acceptable corrective action plan for the open findings. In accordance with Point 21.A.258(c)(2) of Part 21, the holder of a DOA shall demonstrate to the satisfaction of the Agency that it has taken adequate corrective action within a time period set by the Agency, which is appropriate to the nature of the finding and is initially no longer than three months. The Agency may extend that initial time period where it considers that the nature of the finding allows such extension and where the applicant has submitted a corrective action plan, which the Agency finds satisfactory.
54. Finally, the Agency submits that the audit performed on 17 and 18 November 2021 had been notified to the Appellant in advance (whom it had consulted in advance) and that the Agency has been both before and after the audit in continuous communication with the Appellant. The Appellant has not submitted evidence that the audit was performed in an unlawful manner, and therefore the Agency cannot accept the Appellant's request to cancel its outcomes.

## V. FINDINGS OF THE BOARD OF APPEAL

### *Admissibility*

55. According to Article 108(1) of the Basic Regulation, an appeal may be brought against decisions the Agency has adopted pursuant to, *inter alia*, Article 77 of the same Regulation. The contested decision is an Agency decision taken pursuant to Article 77(2)(a) of the Basic Regulation and is therefore subject to appeal, as set forth in Article 108(1) of the same Regulation.
56. Under Article 109 of the Basic Regulation the Appellant, as the addressee of the contested measure, is entitled to appeal the contested decision.
57. The Appellant paid the appeal charges in accordance with Article 17(3) of the Regulation (EU) 2019/2153.<sup>7</sup>
58. Article 110 of the Basic Regulation, entitled “Time limit and form”, provides that the appeal, together with a substantiated statement of grounds thereof, shall be filed in writing at the Board of Appeal’s secretariat within two months of the notification of the measure to the person concerned, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be. The Appellant was notified of the contested decision on 8 March 2022. The Appeal, together with a statement of grounds, was filed in writing at the Board of Appeal’s secretariat on 16 March 2022 and was therefore within the two-month time limit laid down in Article 110 of the Basic Regulation.
59. Against this background, the Appeal is therefore admissible.

### *Substance*

#### *Preliminary Remarks*

60. The Board of Appeal remarks at the outset that, according to Article 8(1) of Regulation 748/2012, an organisation responsible for the design of products, parts and appliances or for changes or repairs thereto must demonstrate its capability in accordance with Annex I (Part 21) to Regulation 748/2012. This implies that DOA holders, such as the Appellant, are required, during the entire time they hold a DOA, to comply with the relevant requirements and conditions in Annex I (Part 21) and are able to demonstrate their capability and means to discharge their obligations and associated privileges. This is also confirmed by Point 21.A.259(a)(1) of Annex I (Part 21) to Regulation 748/2012, which states that a design organisation approval is issued for an unlimited duration and that it remains valid unless the design organisation fails to demonstrate compliance with the applicable requirements of Annex I (Part 21).

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<sup>7</sup> Commission Implementing Regulation (EU) 2019/2153 of 16 December 2019 on the fees and charges levied by the European Union Aviation Safety Agency, and repealing Regulation (EU) No. 319/2014 (OJ L 327, 17.12.2019, page 36).



61. 'Subpart J' of Annex I (Part 21) establishes the procedure for the approval of design organisations and the rules governing the rights and obligations of applicants for, and holders of, such approvals. To ensure the DOA holder's continued compliance with the relevant rules, Point 21.A.257 of Annex I (Part 21) obliges design organisations to make arrangements that allow the Agency to make any investigations, including investigations of partners and subcontractors, necessary to determine compliance and continued compliance with the applicable requirements of Subpart J. Such investigations include audits, such as the one conducted at the Appellant's premises on 17 and 18 November 2021.
62. Findings are raised, for example in the course of audits, in accordance with the process provided for in Point 21.A.258 of Annex I (Part 21). Raising a finding by the Agency does not in itself lead to suspension, limitation or revocation of an approval. Such measures on the certificate will be taken only if the findings are not adequately addressed within a certain deadline. In accordance with Point 21.A.258(d) of Annex I (Part 21), in cases of 'level 1' or 'level 2' findings, the DOA may be subject to a partial or full suspension or revocation under the applicable administrative procedures established by the Agency. The Board of Appeal observes that the Agency followed the process provided for in Point 21.A.258 of Annex I (Part 21) with regard to findings no. 262-0064 and 262-0067. The Board of Appeal will now address both findings in turn.

*As regards finding no. 262-0064*

63. The Board of Appeal notes that the contested decision is no longer based on finding no. 262-0064. On 28 March 2022, the Agency closed finding no. 262-0064, related to the specific problem of the AFM supplement of the change no. 109225 sampled during the audit, as the Appellant had finally submitted an acceptable corrective action plan for the finding. In order to close finding no. 262-0064, the Agency requested an update of the AFM with an operational limitation (allowing only Day VFR operation), the definition of a placard indicating such limitation, proof of provision of the updated AFM documentation to the operator/CAMO and proof of installation of the placard into the aircraft cockpit by the operator/CAMO. The Appellant provided evidence of fulfilment of the requests and therefore the finding was closed.
64. The Appellant alleged that it was forced by the Agency to accept the finding closure conditions and to add the limitation required by the Agency, as otherwise the Agency would have 'closed the DOA'. However, when confronted by the Board of Appeal with the request to substantiate this allegation, the Appellant failed to do so. The Appellant only referred to the Agency's email of 7 March 2022, in which the Agency communicated that it had reclassified finding no. 262-0064 to a 'level 1' finding, due to the lack of a corrective action plan by the Appellant, and that it encouraged the Appellant to provide the missing information, in order to be able to close the finding. In that email, the Agency also mentioned that, in the absence of corrective actions and the required information, the Agency could suspend the DOA. However, in reply to this email the Appellant neither provided a corrective action plan nor the required



information. The Appellant's reply led to the adoption of the contested decision of 8 March 2022. Consequently, the Agency's email of 7 March 2022 cannot be seen as forcing the Appellant to accept the finding closure conditions, when on 22 March 2022, the Appellant finally provided the requested information and evidence of corrective actions related to the 'Level 1' finding no. 262-0064, which the Agency considered satisfactory, because on 22 March 2022 DOA No. EASA.21J.262 was already partially suspended.

65. The Board of Appeal further observes that, on 22 November 2022, the Agency informed the Appellant that it decided to partially reinstate the scope of the DOA issued to the Appellant and to permit the Appellant to conduct under its DOA specific work on small aeroplanes and small rotorcraft. Consequently, a new ToA (Issue 13) was issued. The Board of Appeal notes that finding no. 262-0064, which was already closed, had no bearing on the issuance of the new ToA (Issue 13).
66. Consequently, since the contested decision is no longer based on finding no. 262-0064 and its closure was in line with the process provided for in Point 21.A.258 of Annex I (Part 21), there is no need for the Board of Appeal to adjudicate on this matter (see similarly, Order of 24 April 2012, *Alstom v Commission*, T-517/09, EU:T:2012:195, paragraphs 23 to 25; Judgment of 16 June 2011, *Gosselin and Portilje v Commission*, T-208/08 and T-209/08, EU:T:2011:287, paragraph 173; Judgment of 13 July 2011, *Schindler Holding and Others v Commission*, T-138/07, EU:T:2011:362, paragraphs 40 to 44).

*As regards finding no. 262-0067*

67. The contested decision was not only based on the 'Level 1' finding no. 262-0064, but also on the still open 'Level 2' finding no. 262-0067. Under this finding, the Agency registered the lack of competences it had witnessed during the audit, concerning in particular the engineers holding the positions of Chief of the OoA, CVEs and design, who the Agency considered as not being compliant with Point 21.A.243(d) in conjunction with Point 21.A.245 of Annex I (Part 21) to Regulation 748/2012.
68. Point 21.A.245(a) of Annex I (Part 21) requires that the staff in all technical departments of a design organisation 'are of sufficient numbers and experience and have been given appropriate authority to be able to discharge their allocated responsibilities'. Point 21.A.243(d) of Annex I (Part 21) requires the design organisation to furnish a statement of the qualifications and experience of the management staff and other persons responsible for making decisions affecting airworthiness and environmental protection in the organisation.
69. When these responsibilities are related to aspects of airworthiness, then sufficient experience is expected from the staff to fulfil the airworthiness requirements applicable to the products for which the DOA scope is defined. In the case of the Appellant, the scope of its DOA covered STCs, major changes and minor changes in the field of avionics for large and small aircraft. The Board of Appeal notes that this was the area on which the Agency focused its audit.

70. The Agency submitted that the assessment during the audit consisted of the following: (1) review of certification documentation created by the organisation, followed by questions and answers between the Agency's team and technical staff from the Appellant's organisation responsible for that documentation (Chief of the OoA, CVEs, Design Engineers); (2) interviews of personnel involved in the creation, verification and approval of certification documentation, discussion of general and detailed questions on applicable airworthiness requirements and associated means of compliance, and discussion on the applicability of those requirements to approved minor changes performed by the Appellant's organisation and sample cases that were representative of the Appellant's design organisation approval scope.
71. The Agency further submitted that, during this assessment, the Agency's team identified important gaps in the knowledge and experience of the Appellant's engineering staff. To this end, the Agency provided examples of knowledge and experience gaps during the discussion of sample cases and referred the Board of Appeal to the DOA Audit Record Form (Audit No C6Y1-01) on the file. According to the Agency, the gaps in knowledge and experience identified during interviews with staff were also confirmed through sampling of the Appellant's certification documentation. Considering the information before it, the Board of Appeal has no reasons to question the Agency's conclusions regarding the Appellant's staff assessment, which led to finding no. 262-0067.
72. Further, the Appellant does not contest finding no. 262-0067, but merely submits that at the time of the audit, not all of the Appellant's staff was assessed and the synergy of the knowledge of Appellant's staff, as a whole, was not considered.
73. The Board of Appeal recalls that the Appellant was informed already on 23 September 2021 about the Agency's intention to conduct the audit. On 26 October 2021, the Agency sent the proposed audit agenda to the Appellant and the audit questionnaire was sent to the Appellant on 15 November 2021. The details included in the audit agenda and audit questionnaire provided sufficient information to the Appellant to prepare the audit and to identify the necessary participants. The agenda of the audit communicated to the Appellant on 26 October 2021 indicated that one of the topics to be reviewed by the Agency would be 'competences' in the field of avionics. The audit questionnaire communicated on 15 November 2021 also indicated that the Agency's team would wish to have discussions with design engineers and CVEs nominated for avionics aspects. In the light of these circumstances, the Board of Appeal finds that the Appellant was sufficiently informed before the audit, in order to prepare its staff. That not all questions and issues raised during an audit are communicated beforehand to a DOA holder is inherent in an audit exercise, in order to ensure that an independent, objective, representative and fair assessment is made of the parties concerned.

74. Consequently, the Agency was correct concerning 'Level 2' finding no. 262-0067 and its conclusion that the lack of competences it had witnessed during audit was not compliant with Point 21.A.243(d) in conjunction with Point 21.A.245 of Annex I (Part 21) to Regulation 748/2012. The Board of Appeal also finds that the contested decision was proportionate, as it only led to a partial suspension and not to a revocation of the DOA, and that the Appellant had various opportunities to be heard before the contested decision was adopted. The Board of Appeal considers that the Appellant was made aware of the consequences of any insufficient action on its side. In total, the Appellant was given over three months to provide an acceptable corrective action plan for the open findings.

*No cancellation of the audit*

75. Finally, in accordance with Point 21.A.257(a) of Annex I (Part-21) to Regulation 748/2012, the design organisation shall make arrangements that allow the Agency to make any investigations necessary to determine compliance and continued compliance with the applicable requirements of Subpart J of Part-21.
76. The audit was notified to the Appellant in advance, and the Agency was both before and after the audit in regularly communication with the Appellant. The Appellant can therefore not claim that the audit came as a 'surprise'. The Board of Appeal does also not share the Appellant's unsubstantiated view that it was discriminated against by having been selected and assessed in the audit. Considering the information before it, the Board of Appeal finds that the entire procedure before, during and after the audit was conducted by the Agency in a transparent, fair and non-discriminatory manner. The Board of Appeal therefore rejects the Appellant's request to cancel the audit's outcomes.
77. Against this background, the Appeal is unfounded.

**VI. CONCLUSION**

78. The examination of the Appeal has not disclosed any reasons for allowing the Appeal.
79. Thus, the Appeal is rejected as unfounded.
80. The appeal charges are accordingly not reimbursed.
81. The decision is unanimous.

## VII. JUDICIAL REVIEW

82. This decision can be appealed to the General Court of the European Union, in accordance with Article 263 of the Treaty on the Functioning of the European Union in conjunction with Article 114 of the Basic Regulation. Any appeal must be made within two months of the notification of this decision to the Appellant.

Signatures of the Board of Appeal

<signed>

<signed>

<signed>

**Dr. Michael Sánchez Rydelski**

**Dr. Helmut Stärker**

**Humberto Vieira Rijo**

Adopted on 19 December 2022

Registrar:

<signed>

Loïc Rochas