

Management Board Decision

DECISION N° 01-2023

of 13 April 2023

concerning the General Principles related to Authorisation Procedures to be applied by the Agency for issuing Authorisations for Third Country Operators (“TCO Authorisation Procedure”)

THE MANAGEMENT BOARD OF THE EUROPEAN UNION AVIATION SAFETY AGENCY,

Having regard to Regulation (EU) 2018/1139¹ 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’), and in particular Article 82 thereof,

Having regard to Commission Regulation (EU) No 452/2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council.

WHEREAS:

- (1) Whereas the European Parliament and the Council of the European Union, by adopting Regulation (EU) No 2018/1139 (hereinafter the Basic Regulation), has established the European Union Aviation Safety Agency (hereinafter the Agency);
- (2) Whereas Article 82 of the Basic Regulation requiring a system in respect of the authorisation of third country operators (hereinafter TCO);
- (3) Considering the Commission Implementing Regulation laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EU) No 2018/1139 of the European Parliament and of the Council (Implementing Regulation Third Country Operators – hereinafter Part-TCO); and
- (4) Whereas Article 98 of the Basic Regulation which requires the Management Board to establish transparent procedures the Executive Director shall follow for taking individual decisions.

Has decided



Section 1 – Basic Principles

Article 1

Objectives and Applicability

1. The objective of this Decision is to establish transparent procedures to be followed by the Agency when carrying out the authorisation of third country operators, including the monitoring of these operators, pursuant to Part-TCO.
2. The Agency shall establish and maintain a process to ensure fair, standardised and proportionate treatment of all TCO applicants and authorisation holders (operators).
3. Holders of an AOC issued by a Member State or by the Agency itself will not be subject to TCO authorisation.

Article 2

Coordination process with the EU Safety List pursuant to Reg. (EC) No 2111/2005

In cooperation with the Commission, the Agency shall engage in establishing and maintaining a coordination process between the EU Safety List and Part-TCO, ensuring the integrity of both Regulations.

Article 3

Risk-based approach (TCO model)

1. The Agency shall use a risk-based approach to help determine the Agency's level of confidence in the AOC's issued to third country operators. The Agency shall adequately allocate its resources and strengthen the assessment of TCOs for which it has a limited level of confidence. When deciding on the appropriate deployment of the Agency's resources, consideration shall also be given to the third country operator's exposure for the European citizens.
2. The Agency shall establish and maintain a TCO model to process data obtained from specified, trustworthy internal and external sources. Results of the TCO model are indicative and shall not be decisive for authorisation decisions. The use of TCO model results shall normally be restricted to internal use. Any request to the Agency for information by a Member State at any stage of the assessment or monitoring process should be justifiable and would normally be made on an exceptional basis and shared on a confidential basis. An example being that upon justifiable request by a Member State, the Agency may share with Member States on a confidential basis detailed information about its assessment, including TCO model results, if a negative authorisation decision was issued against an applicant exercising traffic rights in the territory of that Member State during the TCO transition period.
3. The TCO model shall consist of clearly specified parameters for both the State of operator and the operator and allow for continuous comparison of the safety performance of third country operators applying for or holding a TCO Authorisation.

Article 4
Exemptions

Upon request from the TCO Authorisation holder, the Agency may grant exemptions from specific requirements of Part-TCO, following the conditions laid down in Article 76(4) of the Basic Regulation.

Article 5
Exceptional measures imposed by a Member State

The Agency shall work with Member States towards establishing and maintaining a process that ensures timely information from Member States to the Agency in case that a Member State intends to take a measure pursuant to Article 6 of Regulation (EC) No 2111/2005.

Section 2 – Authorisation Procedure

Article 6
Receipt and eligibility of the application

1. Upon receipt of an application, the Agency shall perform an eligibility check according to Part-TCO and inform the applicant when its application is accepted for further processing. In case of refusal of the application for reasons of non-eligibility, the Agency shall reject the application in writing and justify its decision to the applicant.
2. The Agency shall determine how to proceed with each eligible application. When receiving an application from a TCO subject to an operating ban due to the State of the operator not performing adequate oversight, due account shall be taken of the need for coordination with the Commission in order to ensure a consistent approach with Regulation (EC) No 2111/2005 and the requirements of Part-TCO.
3. When receiving an application from an applicant that is currently not possessing an air operator certificate and associated operations specifications that entitle the operator to operate to territories, where the Treaties apply, then the Agency shall not accept the application. The Agency may however give the operator access to the Agency's web-based software application for the purpose of information sharing, under the condition that the applicant provides evidence from its competent authority that certification activity has been initiated which will lead to the eligibility of the operator to apply for a TCO authorisation. The Agency shall only accept the formal application after the TCO has obtained the necessary approvals from its competent authority.



Article 7
Assessment

1. Results of the TCO model shall be used to determine the appropriate assessment methodology of each applicant or authorisation holder.
2. In the absence of relevant safety concerns, and when the TCO model indicates confidence into the State of Operator and the operator itself, the Agency shall abstain from further assessment pursuant to ART.200(e)(2) or ART.215(d), as applicable.
3. Subject to efficiency and resource considerations, the Agency may accept on request of the operator to carry out parts of further assessment outside of EASA premises in compliance with Agency procedures applicable to ensure absence of conflicts of interest, staff health and security, and travel policy. In this case, the applicable fees and charges for an on-site audit shall apply in accordance with the Commission Implementing Regulation on the fees and charges levied by EASA.
4. Where an assessment of the State oversight capabilities is required in accordance with ART.200, ART.210 or ART.235, the Agency shall coordinate such assessment with the European Commission and agree on the most efficient and effective methodology giving regard to the European Commission's responsibility for the EU Safety List Regulation (EC) 2111/2005.

Article 8
Authorisation document and changes

1. The TCO Authorisation shall specify the conditions for continued validity and include the necessary conditions or limitations, as the case may be. This can be done in an electronic format.

The Agency shall specify the manner of requesting changes by TCO Authorisation holders that require prior approval by the Agency. The Agency may decide to apply a simplified process for the addition of new aircraft to the TCO Authorisation that are used for non-scheduled operations in the business aviation sector.

Article 9
Monitoring plan and reaction to safety concerns

1. The Agency shall establish a monitoring plan for each TCO Authorisation holder. This plan shall be established at the beginning of each monitoring interval and modified in case the level of confidence changes.
2. The Agency shall establish and maintain a process to react appropriately and timely to aviation safety concerns that may adversely affect the safe operation of TCO Authorisation holders.



Article 10
Industry Standards

1. Conformity with industry standards should not be considered in isolation from other assessment elements.
2. When considering any audits performed as part of certification or registration in accordance with industry standards, the following requirements should be assessed by the Agency:
 - a. The demonstration of conformity is based on a certification/registration audit scheme which provides for systematic verification, absence of conflict of interest, comprehensive programme description, defined standards and protocols;
 - b. The certification/registration audit scheme is managed by an organisation with a documented management system and internal quality assurance programme and is performed by auditors/assessors who demonstrate to meet specific and relevant qualification criteria;
 - c. Certification/registration audits are relevant to applicable Annexes to the Chicago Convention and should cover at least the scope defined in TCO.200(a)(1) of Part-TCO. If the industry standard does not fully cover the scope defined in TCO.200(a)(1) then the shortfall should be accounted for separately;
 - d. It can be demonstrated that such certification/registration audits can easily be mapped against the requirements of Part-TCO; and
 - e. Audit/assessment results are accessible to the Agency and may be used for the purpose of determining compliance with Part-TCO.
3. The certification/registration audit scheme referenced in paragraph 2 should ensure that the Agency is notified about relevant changes to the operator, such as conditions that could affect the certification/registration, and suspension or removal of certification/registration in accordance with the industry standards.

Article 11
Findings

1. In case of a level 1 finding, the Agency shall not issue an initial TCO Authorisation and shall initiate the refusal of the application.
2. For an operator that already holds a TCO Authorisation and is subject to a level 1 finding, the Agency shall decide on a suitable measure, e.g., limitation to address the finding or on the suspension of the TCO authorisation.

Furthermore, the Agency shall decide on the conditions for de-escalation of the level 1 finding to level 2.



3. The Agency may only approve a change when the level 1 finding is permanently rectified by the operator and closed by the Agency or when the finding has been de-escalated to level 2 and is appropriately controlled.
4. In case of level 2 findings, the Agency shall not issue an initial TCO Authorisation until such time when the finding is permanently rectified by the applicant and closed by the Agency.
5. The Agency may continue a TCO Authorisation and may approve a change, provided that all level 2 findings are appropriately controlled in accordance with ART.230.
6. The Agency shall establish and maintain a process to decide about the escalation of level 2 findings to level 1 findings in cases when several level 2 findings indicate systemic non-compliances. In addition to the number of findings raised, the process shall take into consideration the areas of non-compliance and their interdependence and the possibility for organisational or managerial shortcomings.

Article 12
Authorisation Panel Decisions

1. A TCO Authorisation Panel shall be established in the Agency in accordance with appropriate Terms of Reference that outline its composition and its processes.
2. The TCO Authorisation Panel shall decide about the classification of non-compliance findings, recommendations pertaining to authorisation decisions, and the proposition of enforcement actions. Decisions of the panel shall be recorded.
3. The Agency shall establish and maintain a process to ensure the electronic publication of its authorisation decisions.

Article 13
Termination of an initial evaluation

1. The Agency may terminate an initial evaluation procedure when the applicant is unable or unwilling to demonstrate compliance with Part-TCO as demonstrated by:
 - a. a lack of transparency or adequate and timely communication on the part of the applicant; or
 - b. an inappropriate or insufficient corrective action plan presented in response to findings.
2. If during an initial evaluation procedure the Agency determines that the number and/or nature of non-compliance findings of an applicant is such that permanent rectification of all level 1 findings within 3 months after their initial notification is unlikely or unrealistic, the Agency may decide to reject the application on grounds of significant systemic non-compliance with Part-TCO in accordance with ART.200 (e)(1)..



Article 14
Web-based TCO Software Application

The Agency shall deploy and maintain a secure software application for receiving the necessary information from the applicant during the initial assessment and during the continuous monitoring of third country operators. The application shall facilitate processing the information received and managing authorisations in line with Part-TCO. The software application shall also support the timely exchange of information related to TCO Authorisations between the Commission, Member States, applicants and TCO Authorisation holders in accordance with Art. 110. The application shall also provide foreign competent authorities with a possibility to review information pertaining to operators in their competence.

Section 3 – Final Provisions

Article 15
Enforcement

1. In accordance with ART.235, to the extent not already otherwise established by equivalent policies and procedures, the Agency shall establish and maintain procedures for taking enforcement action in respect of TCO Authorisation holders.
2. The TCO Authorisation Panel shall decide on the requirement for intensified surveillance pursuant to ART.215(d). When taking the decision, the authorisation panel shall decide on the appropriate measures, taking into consideration the nature of the safety concerns, the presence of non-compliance findings, the confidence into the State oversight capabilities, the size and complexity of the operation and the exposure to the European citizen. The Agency shall inform the operator about the measures taken under the umbrella of intensified surveillance and shall notify the State of the Operator and the State of Registry as applicable. Furthermore, the Agency shall inform the operator under which circumstances the intensified surveillance can be terminated.
3. When a TCO Authorisation shall be limited, suspended, or revoked, the Agency shall notify by letter the TCO Authorisation holder of its decision and the reasons therefore. This letter shall refer to the possibility for appeal as specified in Articles 108 to 114 of the Basic Regulation.
4. The Agency shall determine if and when a suspended authorisation shall be revoked. When taking the decision, the Agency shall take into consideration the time that is necessary to take corrective action on non-compliance findings, the efforts made by the operator to rectify the non-compliance. Where the TCO Authorisation holder has not taken the necessary corrective actions, or there is no obvious interest on the part of the operator to have a suspension lifted, the Agency may decide to refrain from revoking the authorisation.



5. When considering lifting a suspension, the Agency shall take at least the following into consideration when determining the appropriate methodology to verify that the operator has taken successful corrective action on the findings raised:
 - a. the number and nature of the open findings,
 - b. their suitability for desktop review,
 - c. the feasibility of teleconferencing to replace an on-site audit.

6. The Agency may not lift a suspension before closure of all level 1 findings. In case that additional level 2 findings are present, the Agency may decide to lift the suspension, provided that these findings are controlled with a corrective action plan that has been accepted by the Agency. When taking the decision whether to lift a suspension in the presence of open level 2 findings due regard shall be giving to the number of the findings, their nature, their effect on the safety of the operation and to the expected time that is necessary for finding closure.

Article 16
Resolution of Disagreements

1. Every effort shall be made to resolve all disagreements between the applicant or the authorisation holder and the Agency at the lowest possible level.

2. In case the applicant or TCO Authorisation holder continues to disagree with a decision of the Agency, it may lodge a formal appeal under the Agency's appeal process.

Article 17
Entry into Force

This Decision enters into force in its entirety on the day of its publication in the Official Publication of the Agency.

Done in Warsaw, 13 April 2023

(signed)

PIOTR SAMSON
Chair of the Management Board

