

## ***European Aviation Safety Agency***

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### **DECISION OF THE MANAGEMENT BOARD<sup>1</sup> 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,

- Whereas the European Parliament and the Council of the European Union, by adopting Regulation (EC) No 216/2008 (hereinafter the Basic Regulation), have created the European Aviation Safety Agency (hereinafter the Agency);
- Whereas Article 23 of the Basic Regulation requiring a system in respect of the authorisation of third country operators (hereinafter TCO);
- Considering the Commission Implementing Regulation 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 (Implementing Regulation Third Country Operators – hereinafter Part-TCO); and
- Whereas Article 53 of the Basic Regulation which requires the Management Board to establish transparent procedures the Executive Director shall follow for taking individual decisions;

HAS ADOPTED THIS DECISION

#### **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.
3. Holders of an AOC issued by a Member State will be not be subject to TCO authorisation.

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<sup>1</sup> Adopted at MB 01/2014 of 11 March 2014.

*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*

1. The Agency shall use a risk-based approach to help determine the Agency's level of confidence in respect of the AOC's of third country operators that have been issued by the respective competent authorities, adequately allocate its resources and strengthen the assessment of TCOs for which it has a limited level of confidence into their AOC, taking into consideration the operator's traffic volume.
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 – Management of ICAO Differences*

1. The Agency shall use ICAO's Electronic Filing of Differences (EFOD) system as the central repository when identifying ICAO standards for which it may accept mitigating measures for differences notified to ICAO by the State of operator or the State of registry, as applicable, pursuant to ART.200(d).
2. ICAO differences notified by EASA Member States shall be considered by the Agency when identifying ICAO standards in accordance with paragraph 1.

*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.

*Article 6 – Transitional Phase*

1. The Agency shall establish a phase-in plan that:

- a. to the extent possible ensures uninterrupted continuation of international air services;
  - b. balances the Agency's workload of assessing third country operators; and
  - c. ensures the completion of TCO assessments before the end of the transition period established in Article 4 of Part TCO.
2. Pursuant to paragraph 2 of Article 4 of Part TCO, the Agency shall coordinate with the Member States the transfer of performing safety assessments of third country operators to which they have issued an operational authorisation.
  3. During the course of the transfer described in paragraph 2, the Agency shall consider information of the latest safety assessments performed by Member States.
  4. A negative authorisation decision during the transition phase, due to a level 1 finding being issued by the Agency to an applicant, shall be communicated by the Agency to all Member States.

## **Section 2 – Authorisation Procedure**

### *Article 7 - 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.

### *Article 8 – 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, and provided that travel and accommodation arrangements are made by the applicant or TCO Authorisation holder, 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.

*Article 9 – Authorisation document and changes*

1. The TCO Authorisation shall specify the conditions for continued validity and include the necessary conditions or restrictions, as the case may be.
2. The Agency shall specify the manner of requesting changes by TCO Authorisation holders that require prior approval by the Agency.

*Article 10 – 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 11 – 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 12 – Findings*

1. In case of a level 1 finding, the Agency shall not issue an initial TCO Authorisation and shall not approve a change until such time when the level 1 finding is permanently rectified by the applicant and closed by the Agency.
2. In case of level 2 findings,
  - a. during the TCO transition period, the Agency may issue a TCO Authorisation and approve a change, provided that all level 2 findings are appropriately controlled in accordance with ART.230;
  - b. after the TCO transition period, the Agency may continue a TCO Authorisation and approve a change, provided that all level 2 findings are appropriately controlled in accordance with ART.230.
3. 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.

### *Article 13 – Authorisation Panel Decisions*

1. A 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.
2. The Agency shall establish and maintain a process to ensure the electronic publication of its authorisation decisions.

### *Article 14 – Termination of an initial evaluation*

1. The Agency may terminate an initial evaluation procedure when the applicant is unable or unwilling to comply 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 terminate the evaluation on grounds of significant systemic non-compliance with Part-TCO. In such a case, the Agency shall not be required to start processing a new initial application of the same operator sooner than 6 months after the date of rejection.

### *Article 15 – Web-based TCO Software Application*

The Agency shall deploy a secure software application for receiving the necessary information from the applicant during the assessment, 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.

### **Section 3 – Final Provisions**

#### *Article 16 – 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. 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 make reference to the possibility for appeal as specified in Articles 44 to 50 of the Basic Regulation.

#### *Article 17 – 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 18 – 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 at Brussels,

[Signed]

Michael Smethers  
Chair of the Management Board