

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

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### **EXPLANATORY NOTE ON THE INTRODUCTION OF A “FINAL AD WITH REQUEST FOR COMMENTS”**

#### **Introduction**

The Agency proposed under Agenda item 10 of the MB 03/2007 (13 June 2007) the working paper WP 10(a) containing justifications for introducing a new AD type “for immediate issuance, with request for comments”. This document is being attached to that note, for your convenience).

At the meeting, the MB agreed to adopt through written procedure the proposed revision of the certification procedure, after reception of the comments from the EAB and after these comments have been evaluated by the Agency.

The comments from the EAB which were received in late July (this is distributed to you under WP 06c) have now been reviewed by the Agency and are further responded to below.

Since some of the comments from the EAB have inspired EASA to slightly change the original justification it is considered appropriate to re-submit the issue to the MB for its review and final decision instead of using the written procedure. When doing so it should be noted that the wording of the original draft amendment to the MB decision, which was submitted to the MB 03/2007, remains unchanged; the accepted changes concern only the justification. Some clerical mistakes of the original procedure were corrected.

The Agency would like to take the opportunity to thank the EAB for its valuable comments and for their constructive support in this issue.

#### **Detailed response to the comments from the EAB**

The EAB proposes two options: the first option is to not support the proposed amendment but to use alternative methods instead while the second option is to support the proposed amendment but only if additional conditions are complied with.

##### *Option 1*

The main argument supporting the *first option* is, according to the EAB, that a new type of AD would cause additional confusion in an already

complex European AD system. The Agency can accept that the use of the words 'third type of AD' and 'new type of AD' has created the impression that a 'new kind' of AD is proposed to be introduced. This is something which should be clarified. The Agency has, as discussed in the original explanatory note (EASA MB 03/2007, WP10(a)), identified the need to have a third way to issue an Airworthiness Directive. To that end a new method was proposed which would include public consultation after issuance of the AD. This new method would have to be introduced through an amendment to Article 12 of the MB Decision since the existing text only describes two methods: normal ADs and emergency ADs. Consequently, what the Agency has set out to do is to introduce a new method of issuing ADs and nothing else. The AD issued through this method is a normal AD with the difference that the consultation is made after its issuance instead of before. The Agency trusts that this clarifies its intentions and provides a satisfactory response to the comment made by EAB.

As alternatives to introducing ADs "for immediate issuance, with request for comments", the EAB suggests that:

"[...] situations of short compliance time might be addressed by solutions other than the creation of a new type of AD, such as, for instance:

- Shortened duration of comment period to allow earlier issuance of an AD, as permitted by flexibility already existing in Article 12(5), or
- Issuance of an Emergency AD with a request for comments, in case the effective date is a concern."

The Agency takes the following view concerning the suggested alternatives.

**Shortened duration of comments:** Generally any consultation period should be sufficiently long to give the consulted parties genuine time to review and respond to the proposed measure. This certainly applies to the AD process where important values are at stake. To introduce on a wide scale a consultation period less than the standard 4 weeks prescribed by the present internal working procedures could be considered too short to allow for comments to be developed and submitted to the Agency. This is a situation which the Agency would like to avoid.

**Usage of Emergency AD:** The proposal to issue an 'Emergency AD' where no true emergency situation exists could, according to the Agency, lead to excessive use of this procedure which possibly could result in confusion and a diminished sense of urgency among aircraft owners and operators. This would not be conducive to safety.

*Option 2*

According to the *second option* proposed by the EAB the introduction of the new concept could be accepted if two conditions are complied with.

The *first* condition is that compliance time criteria for the issuance of various categories of ADs should not be mentioned with precise reference to hours or flight cycles in the Decision or in the subsequent amendment of EASA continued airworthiness procedures. The Agency can assure the EAB that it does not have the intention to determine the respective 'compliance times' in the Decision and/or the working procedures. However, since it is important that the Agency's PCMs are guided on the substance, such information will be made available in the AD Writing Manual which is an internal document still under development. In this document, the rationale for choosing certain compliance times will be added as explanatory notes. The Agency trusts that this removes the concerns of the EAB that such information will be used in the wrong place and/or way.

The *second* condition proposed by the EAB is that the denomination of the "new category of ADs" should not contain the word "immediate" since it may be a risk for confusion with the term "emergency". The Agency welcomes this proposal and accordingly accepts the suggestion to identify the procedure as leading to a 'Final AD with request for comments'. The Agency trusts that this will avoid any possible confusion and that this satisfies the concerns of the EAB.

By doing so, the two conditions mentioned by the EAB are fulfilled.

## **Conclusion**

After having reviewed and responded to the comments from the EAB the Agency concludes that it can maintain the original proposal to amend the MB Decision to introduce a new method of issuing ADs. The clear benefits outweigh any possible shortcomings. The points of concern raised by the EAB have been addressed and the conditions proposed by EAB under option 2 are fulfilled. As a result the Agency has not seen the need to alter the proposal to amend the EASA MB Decision No. 07/2004, Article 12 (5), as previously submitted to MB 03/2007.

## **Recommendation to the MB**

The Agency therefore recommends the MB to adopt the amendments to MB Decision No. 07/2004 as proposed in WP06(b).

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As an additional proposal, the EAB suggests that the new category of ADs could be used also as EASA formal publication to cover ADs from non-EU member states since they would not be" subject of any publication or notification".

With regard to this point the Agency would like to clarify that, based on EASA ED Decision N° 2/2003, any 'Foreign' AD does not need to be 're-published' as EASA AD, provided the Agency agrees with its content. These ADs are routinely reviewed by the responsible Agency Project Certification Managers and, in nearly all cases, adopted by the Agency. Consequently, these ADs are then posted on our website on a separate page, dedicated to 'non-EU' product ADs. The adoption process of these ADs and subsequent posting on the Agency website is deemed to be an adequate equivalent to 'publication' or 'notification'. In addition, in specific and/or urgent cases, the Agency's AD Section notifies 'Foreign' ADs to the EU MS NAAs and requests them to transmit these to owners and operators of aircraft registered in their respective countries. Finally, the Agency expects to include these ADs into the website database, which is continually being improved and developed, whereupon any 'Foreign' AD will become part of the e-mail notification system which is currently in use to 'notify' EASA ADs to subscribers.

**Attachment: document WP 10a from last meeting**

***European Aviation Safety Agency***

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**EXPLANATORY NOTE**

**NEW AD TYPE 'FOR IMMEDIATE ISSUANCE, WITH REQUEST FOR  
COMMENTS' - JUSTIFICATIONS**

Many reasons are leading to the conclusion a third "type" of AD is necessary. To this day, EASA only has the options to publish Airworthiness Directives as proposed AD [PAD] for consultation, leading to a 'Normal' AD, taking into account any comments received; and in case of urgency, the Emergency AD, which is published without any (request for) consultation.

The proposed 'third option' would be identified as an "immediately issued" AD, including a request for comments, to be processed after publication.

The reasons to use the third option and publish an 'immediate' AD, are:

- Experience has shown that an unsafe condition may exist or develop that must be addressed by an AD with some expediency, even though the calculated compliance time (resulting from the risk analysis) does not qualify the case for issuance of an Emergency AD. To avoid any delay by having to go through a 'consultation' period, prior to publishing the required corrective action, the "immediately issued" AD has been developed to do both at the same time.
- EU NAAs are no longer allowed to issue AD for those products for which they were SoD before 28 September 2003. It happens many times that a "national" AD needs to be revised for whatever reason, therefore an EASA AD, superseding the national one, has to be issued. In most cases there is no actual change of the AD compliance requirements, but the AD needs to be revised for "administrative" reasons, e.g. to include the latest rev. of the relevant Service Bulletin or to formalise the acceptance of an alternative option (i.e. AMOC) to comply with the intent. Asking for comments on such an AD (which could be considered a 'revision' rather than a 'new' AD) does not seem to be really appropriate, as all the requirements of the national AD are taken over by the EASA one, and would lead to an unnecessary delay of the adoption.

- There is a request from the industry to introduce such “Immediate Issuance AD”, which is also in line with what other authorities in the world (e.g. FAA) are already doing.

To clarify the distinction between the 3 options:

Type AD	Effective date	Compliance time (guidance)
‘Emergency’ AD	2 working days after publication	A period equal to, or shorter than 25 flight hours (FH), 25 flight cycles (FC) or 30 days calendar time, counted from the effective date.
‘Immediate’ AD	14 days after publication	A period longer than 25 FH, 25 FC or 30 days calendar time, counted from the effective date, but not more than 50 FH, 50FC or 60 days calendar time, counted from the effective date.
‘Normal’ AD	14 days after publication	Any (longer) compliance period

Note: Each AD could contain repetitive (recurring) instruction tasks; for practical reason, the above table guidelines would be related to the initial compliance time.

Since Article 12(5) of the Management Board Decision 7-2004 still requires a public consultation PRIOR to the issuance of the AD, it is necessary to amend the aforesaid MB Decision as per the attached proposal in order to allow the introduction of the “immediately issued” AD concept.

It should be clear that the ‘immediately issued’ AD, **including a request for comments**, will be used only within the scope of the reasons described in this justification, not to avoid the consultation period altogether. Any comments received after publication must be addressed and published in the same manner as would be done for a PAD. Based on those comments, although deemed unlikely, the PCM may decide that AD revision or even supersedure of the AD is necessary.