

INTRODUCTION TO OPINION NO 1/2003

OPINION OF THE EUROPEAN AVIATION SAFETY AGENCY

for a Commission Regulation on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks

I. General

1. Regulation (EC) No 1592/2002 of the European Parliament and of the Council (the “Basic Regulation”) requires the Commission, as part of the legislative process leading to Agency establishment, to adopt a comprehensive framework of rules for the implementation of the essential airworthiness and environmental protection requirements. Whilst taking into account the worldwide aircraft experience, and scientific and technical progress, these implementing rules must reflect the state of the art and the best practices in the field of airworthiness and allow for rapid reactions.
2. The Agency is directly involved in the rule-shaping process. It assists the Commission in preparing drafts in accordance with Regulation procedures, which will be submitted to the Commission as ‘Opinions’ (see Articles 12, 13 and 14 of the Basic Regulation).
3. The Agency herewith submits its Opinion to the Commission which purports to fulfil the requirements of the Articles 5 and 12, paragraph 2(b) of the Basic Regulation to permit its full implementation in the field of continuing airworthiness. This Opinion consists of a Commission Regulation on the continuing airworthiness, including maintenance, of aircraft, parts and appliances, and the certification of organisations and personnel involved in the related tasks. This Regulation contains four Annexes for the related fields (Part-M, Part-145, Part-66 and Part-147).
4. The structure and scope of the Opinion is outlined further below. For the development of that text the Agency gratefully relied on the voluntary contributions of so-called ‘Core Groups’. These are groups of experts who, dwelling on their expertise and technical knowledge, facilitated the drafting of implementing rules in the light of existing international, JAA and industry practices. The text, in particular its technical provisions, present a pragmatic approach, JARs and changes thereto, as well as available JAA regulatory material having been used extensively to provide with maximum continuity with the current requirements widely used by Member States.
5. The Agency has also developed drafts of acceptable means of compliance (AMC) and guidance material (GM). These drafts have been published for consultation of the interested parties. The associated material however fall outside the remit of the implementing rules and will therefore be subject to separate adoption by the Agency’s Executive Director.

II. Consultation and review of comments

6. The draft Opinion for a Commission Regulation on the continuing airworthiness, including maintenance, of aircraft, parts and appliances, as well as the certification of organisations and personnel involved in the related tasks, was circulated the 6th of June 2003 among the interested parties, after the consistency of the draft with the Community law and the European policies has been verified.
7. By 18 July 2003, 1870 comments were received as listed in this document. 288 comments are related to the draft Commission Regulation, 854 to the Annex I of the draft Commission Regulation (Part-M), 412 to the Annex II (Part-145), 211 to the Annex III (Part-66) and 104 to the Annex IV (Part-147).
8. The review of all comments has been made by a group composed of the focal points of the Core Groups that had prepared the building elements of the draft Commission Regulation and of the legal revisers involved in the preparation of the draft Opinion. The results of the review of all received comments are incorporated in the Comment/Response Documents (CRD). As required by the Basic Regulation, this opinion, including the CRD, will be widely available, in particular via the web site of the JAA and the Agency.
9. Several commenters have stressed the need for Acceptable Means of Compliance (AMC) and Guidance Material (GM) to be published in the same time as the implementing rules, but with regard to the time restraints it is not possible to publish the Opinion and the revised AMC and GM simultaneously. While such simultaneity is not a legal requirement, the Agency recognises the benefit of their early availability and will do its utmost to finalise and publish them at the same time the adopted Commission Regulation is published.
10. The final version of the Opinion includes improvements thanks to the comments sent by the NAAs, the industry and the foreign organisations. The revised text of the Opinion does not differ significantly from the initial draft. It should be noted that the initial wording of that draft was the result of the discussions in the Core Groups where several interested parties were represented and of further exchanges between the Core Groups and JAA Sectoral Teams in which interested parties are participating. With regard to the received comments, it has been decided to extent significantly the transition periods for several provisions of the Commission Regulation.
11. The present document consists of three different parts:
 - All received comments on the draft Opinion and the responses (divided into five CRDs).
 - The modified draft Commission Regulation including the changes made in accordance with the received comments.

- Notes regarding the consultation procedure (note 1), the transition (note 2) and the consequences of the entry into force of the Commission Regulation on foreign organisations and personnel (note 3).

III. Main points

12. In this chapter are summarised the most important concerns expressed by commenters. Detailed comments and responses are included in the attached CRD.

A) Main points related to Part-M

Most notable comments addressed the following issues:

a) Transition

13. A number of comments were received on transition. There were two main areas. On the one hand the absence of a transition period for the provisions of that Part transposing the relevant provisions of JAR-OPS created a serious problem as in many Member States JAR-OPS is not yet the sole technical code used to regulate commercial air transport. On the other hand, it was felt by many that for general aviation and airworthiness reviews, the transition proposed was not sufficient. The text has been changed in order to satisfy these concerns

b) Relations with third countries

14. Some Member States have existing arrangements with third countries for the continuing airworthiness of aircraft on their register. It was asked by these Member States to allow these arrangements to continue. The Basic Regulation in Article 4 already covers this issue. It was therefore not possible to satisfy their request. Some of these arrangements will no longer be applicable.

c) Light aviation

15. The general aviation community expressed a lot of concerns. Most of these concerns are based on misconceptions; requirements placed in Part-21 that are not relevant to that Part and possible unclear wording in the text. The rule has been amended each time it was found unclear. Adjustments have been made also to Part 21 (see the related Opinion). As a general remark, the Agency want to draw the attention of commenters on the fact that the proposed measures are in line, as a minimum, with the ICAO Annexes with the possibility given to owners of aircraft to have a higher standard of continuing airworthiness on a voluntary basis. It also realises the need to use the transition periods to communicate with this section of the aviation community to better explain the content of the regulations and the issues at hand.

d) Contracting of technical services

16. The proposed measures merely transpose the provisions of the JAR-OPS system which do not permit the contracting of technical services by a commercial operator. Only subcontracting according to JAA TGL 34 (authorising some tasks to be carried out by another organisation under the operator's complete responsibility) is possible. Many operators would like a more liberal solution to be implemented. Discussions have already taken place for several years within the JAA system and such discussions may need to be reopened to find a reasonable outcome. For the time being the Opinion, as agreed at the beginning of the exercise, reflect the current situation in the JAA system.

e) Maintenance programmes

17. Some parts of industry do not wish to have approved maintenance programmes adapted for each aircraft, as some Member States do not require them. However, the approved maintenance programme is the cornerstone of the ICAO system and is applied in many countries. The solution found has been to simplify as much as possible both the development and the approval of these maintenance programmes.

f) Aircraft surveys

18. Some commented that it was not necessary to survey the aircraft during airworthiness reviews. Furthermore it was felt unnecessary to have qualified certifying staff to assist during this survey. After having given full consideration to the arguments proposed the Agency concludes that these surveys are essential to flight safety as they allow control of the aircraft as described on paper with the aircraft itself, thus creating an extra filter for mistakes and omissions. Furthermore, some surveys may involve tasks that can be qualified as maintenance, thus the need for qualified certifying staff.

B) Main points related to Part-145

a) Transition

19. This subject proved to be the common thread for many comments, in particular those elements associated with Part-66 compliance for aircraft above 5700kg, aircraft 5700kg and below, component certification and human factors, which was transferred from JAA Amendment 5 to JAR 145. These transition elements have therefore been taken into account in the final draft of the Commission Regulation.

b) Relations with third countries

20. Various comments addressed the subjects of existing bilateral agreements and non-EU JAA full Member State approvals, which are part of the existing JAA system. An explanation of how the new system will work for foreign organisations and personnel provided in the attached note 3.

c) Addition of existing JAA text to the rule

21. Numerous comments were received regarding the incorporation into the rule of text from the JAA categories of Acceptable Means of Compliance (AMC) and Temporary Guidance Leaflets (TGLs). Most notably the incorporation of elements of JAA TGLs 9, 10 and 11 into a new paragraph 145.A.42 dealing with components and the incorporation of JAA TGLs 38 and 42 into 145.A.30 (j). These comments led to significant text changes to eliminate possible difficulties.

d) Interface with other Parts

22. Text that required harmonisation between Part-145, Part-66 and in particular Part-M was a widely commented aspect of the proposed Part-145, with extensive amendments being made as a result of the valuable comments.

C) *Main points related to Part-66*

a) Age requirements

23. Five commenters questioned the minimum age of 18 years for applying for a Part-66 licence, noting that the original JAR 66 requirement included a minimum of 21 years. In fact JAR 66 included a minimum age of 21 years for exercising certification privileges, however nothing prevented a person from applying for a JAR 66 licence before the age of 21, e.g. at 18. In practice the original JAR 66 21 year old limit for exercising privileges was transferred to Part-145 while it was decided to include an 18 year old limit for applying for a licence in Part-66. This proposal has the following merits:

- it does not affect the minimum age for certifying staff in a Part-145 organisation;
- it still permits a person to apply for a Part-66 licence before the age of 21;
- it complies with the equivalent provisions of ICAO Annex 1;
- it permits a licence holder to exercise privileges in non commercial air transport before the age of 21, as the Part-M Core Group wished. For all the above reasons it was decided to keep the minimum age of 18 in the final rule.

b) Basic knowledge requirement: specific category for light aircraft avionics

24. This question was raised by three commenters and already discussed at length when developing the JAA proposal on which draft Part-66 is based. It proved impractical to define a specific avionics category for aircraft below 5700kg: within this group of aircraft, some aircraft are of simple technology without avionics systems, where most maintenance can be

performed by category B1 certifying staff, while some other aircraft include complex avionics systems, the maintenance of which would require the full B2 knowledge level. Moreover similar avionics system can be found on numerous light aircraft types. Therefore an important issue for avionics certifying staff is that when they are qualified on a given avionics system fitted on different aircraft, types, they cannot afford to be type trained on every particular aircraft type using said avionics systems before being authorised on this particular aircraft type. These are the reasons why 66.A.45(g) includes the possibility for group ratings in the B2 category on light aircraft. Such group ratings can only be granted on the basis of a sound basic qualification standard, which would allow the holder of a licence to easily transfer competencies from one aircraft type to another aircraft type. In other words, while taken in isolation the basic B2 knowledge requirement may seem onerous for light aircraft, its counterpart (group ratings) will provide significant savings and flexibility to the B2 licence holder during his career. For the above reasons the current proposal is found reasonably well balanced and it was agreed that no specific light aircraft avionics licence should be introduced.

c) Conversion

25. Four commenters pointed out that draft Part-66 did not include a provision for converting the qualification of those persons undergoing a qualification process at the date of entry into force of Part-66. Such a provision was included in JAR 66, and therefore 66.A.70 text has been changed accordingly.

D) Main points related to Part-147

26. No significant comments were made on Part-147. Detailed comments and responses are included in the attached CRD.