

FAQ n.19112**FAQs:**

Air Operations - General, Air Operations, Regulations

Question:

What is the difference between 'entry into force' and 'date of applicability' in the Cover Regulations?

Answer:

Many Commission Regulations adopted in EASA domains contain two different dates, usually under the heading “entry into force”. The example below is from Regulation (EU) No 965/2012 on air operations:

*Article 10**Entry into force*

1. This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Union.

It shall apply from 28 October 2012.

The entry into force of an EU regulation represents the date when the regulation has legal existence in the EU legal order and in the national legal order of each Member State.

It is common practice that the regulation enters into force 20 days after its publication in the Official Journal of the EU. That is the case when the legislator simply uses the expression “This Regulation enters into force on the 20th day after its publication in the Official Journal of the European Union.” Shorter periods are also used, as was the case in the example above.

Sometimes the date of entry into force is also the date of applicability of a regulation, meaning that from the date when it enters into force, the regulation is also applicable; it can be fully invoked by its addressees and is fully enforceable.

However, due to the complexity of the domains that are regulated, a period of time may be needed between the date the regulation enters into force, i.e. it legally exists, and the date it can actually be applied, i.e. the date when it is enforceable and the legal rights and obligations can be effectively exercised.

This period of time (*vacatio legis*) is deliberately introduced for Member States, competent authorities, operators, organisations, licence holders and any other addressees or beneficiaries of the regulations to prepare their systems, processes, procedures, documentation, etc. for compliance with the new rules.

Vacatio legis is also a period given for the addressees of the regulation to adjust to the upcoming rights and obligations and take the necessary measures to benefit from the legal effects of the regulation, namely for the purposes of mutual recognition of certificates and approvals in the aviation internal market.

In those cases, it is common practice of the legislator to establish two different dates under the article on entry into force. One date establishes the legal existence of the act (**entry into force**); the second date establishes the date when it becomes applicable (**applicability**).

The date of applicability therefore represents the date from which the regulation can produce rights and obligations on the addressees and can be directly enforced towards the courts, administrations, national governments, etc. This means that before the date of applicability, obligations or privileges can neither be exercised nor enforced.

The same understanding is shared by the Legal Service of the Commission, which has also clarified in EASA Committee that the privileges provided for in a regulation can only be exercised as of the applicability date chosen by the legislator. Persons subject to the relevant regulation (including national aviation authorities) may prepare themselves for such an effective date (adapting their procedures and practices), but can neither enjoy the privileges nor enforce the obligations.

Legal consequences:

This means that Member States cannot start delivering authorisations, approvals, certificates, etc. issued in accordance with the new regulations and at the same time producing all the legal effects of the regulation from the date of entry into force of the regulation, **but only from the date of its applicability**. However, during the gap period existing between the date of entry into force and the date of applicability, Member States and competent authorities can prepare the process towards the issuance of such authorisations, approvals, and any other certificates in accordance with the new provisions.

In addition, during the period of *vacatio legis*, an option that Member States and competent authorities can consider, in order to avoid issuing certificates on the last day before the date of applicability, is to issue the new certificates in accordance

with the new regulation while clearly indicating in those certificates that they are only valid as of a certain date that would coincide with the date of applicability of the regulation on the basis of which those certificates are issued. This means that those new certificates may be issued, but are not yet effective and cannot be mutually recognised among Member States until the common date of applicability established by the regulation. Until they become effective, licence holders, organisations and operators should still retain and use the certificates already issued under the previous regime. Competent authorities are only obliged to accept the new certificates once the regulation has become applicable.

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