European Union Aviation Safety Agency

FAQ n.70141

FAQs:

Basic Regulation, Regulations

Question:

Which kind of measures can the Commission apply against the National aviation authorities who do not comply with their obligations deriving from Regulation (EU) No 2018/1139 and of the delegated and implementing acts?

Answer:

The implementation of the Basic Regulation and its implementing rules by Member States is subject to the European Union oversight. According to Article 85 of the Basic Regulation - Monitoring of Member States - the Agency shall assist the Commission in monitoring such implementation by conducting standardisation inspections and monitoring activities. Upon the standardisation inspection the Agency establishes an inspection report where it addresses findings identified during the inspection and which will be sent to the Member State concerned and to the Commission. In cases of non-compliance, the Commission may initiate an infringement procedure.

Additionally, in accordance with Article 67, the Commission, on its own initiative or at the request of a Member State or the Agency, may initiate a comitology procedure to decide whether a certificate issued or declaration made in accordance with the Basic Regulation or of delegated and implementing acts adopted on the basis thereof, effectively complies with them. In case of non-compliance, the Commission shall require, based on a recommendation of EASA, the Member State responsible of the oversight of a certificate to take appropriate corrective action, such as limitation or suspension of that certificate. Moreover, once the Commission issues such a decision, the obligation of mutual recognition of certificates ceases to apply to the other Member States. Once the Commission has sufficient evidence that appropriate corrective action has been taken, it will decide that mutual recognition shall be restored.

The oversight support mechanism in Article 66 is a new mechanism foreseen in the Basic Regulation meant to deal with situations where the Member State has shown a serious and persisting failure in complying with the safety provisions; in other words, it is a tool to react to immediate safety concerns. Article 66 of the Basic Regulation provides that in certain cases and only when the conditions described in the article the Commission can request the Member

State concerned and EASA to establish jointly a temporary technical assistance programme, where the Agency would help the Member State to restore the acceptable level of safety. In accordance to Article 66 (2), during the oversight support programme, the Member State and the Agency would work together and the operations in the affected Member State can continue while the deficiencies are corrected, hence no negative impact to the aviation industry in the concerned Member State.

It is also important to note, that differently to Articles 64 and 65 of the new Basic Regulation, the support mechanism does not result in reallocation of responsibilities for the tasks related to certification, oversight and enforcement. This means that even during the oversight support programme, the Member State concerned remains responsible for its tasks, Article 66 (2).

While the Commission has a power to request that the Member State concerned and EASA establish an oversight support programme and the Member State concerned should make all possible efforts to restore its ability to perform its tasks, the article also provides a Member State a possibility to step out from the programme. If the Member State concerned recognises that the programme cannot be successfully implemented as planned, it should inform the Commission, and either reallocate responsibility for the certification, oversight and enforcement tasks to which the deficiencies pertain to the Agency or another Member State, or take other measures to resolve the deficiencies (Article 66(4).

Last updated:

23/01/2019

Link:

https://www.easa.europa.eu/en/faq/70141