

NOTICE OF PROPOSED AMENDMENT (NPA) No 2/2004

CONSULTATION DOCUMENT

**ON THE APPLICABILITY, BASIC PRINCIPLES AND ESSENTIAL REQUIREMENTS FOR PILOT
PROFICIENCY AND AIR OPERATIONS AND FOR THE REGULATION OF THIRD COUNTRY
AIRCRAFT OPERATED BY THIRD COUNTRY OPERATORS**

CONSULTATION DOCUMENT

I. General

1. When adopting its proposal for a European Parliament and Council Regulation on common requirements in the field of civil aviation and establishing the European Aviation Safety Agency¹, the European Commission acknowledged that its proposal aimed at covering all fields of civil aviation safety and environmental protection. It however recognised that as a first step it was only proposing the provisions necessary to ensure the airworthiness and environmental compatibility of products, as further work was needed to properly regulate air operations, flight crew licensing and the safety of airport operations and air traffic services.
2. During the legislative process, which led to the adoption of the EASA Regulation², the European Parliament and the Council accepted the Commission's view but insisted that system work be undertaken with the view to extend the scope of the regulation to air operations and flight crew licensing. They considered indeed such extension as absolutely necessary to ensure overall consistency of the civil aviation safety regulation system. This would also prevent a complex and unclear sharing of responsibilities between the Community and its Member States, which could lead to loop-holes detrimental to the objective enshrined in the EASA Regulation, of a high and uniform level of aviation safety.
3. Moreover, as no agreement could be reached at the time, both Institutions recognised the need to further work on the safety of third country aircraft operated by third country operators, with the view to extend the scope of the EASA Regulation to that category of aircraft. Recent events show the need for such a measure.
4. To prepare for such extensions, the EASA Regulation (article 12) defines the Agency's tasks as including also the regulation of persons and organisations involved in the operation of civil aircraft. It is therefore its role to develop and adopt the opinions on which the Commission shall base its own proposals in line with Article 14 of the EASA Regulation.
5. Although preparatory work had been undertaken as soon as the EASA Regulation was adopted, it has not been possible for the Agency to adopt its related opinions in summer 2003, as initially envisaged. Not only was it overwhelmed by the work needed to finalise the regulatory environment necessary for the start of its operations in the field of airworthiness, but it also became clear from the results of this preparation that a thorough consultation of all parties was essential. Major policy issues have indeed to be addressed and clarified for legislators to establish the Community civil aviation safety regulatory system on sound, efficient and accepted bases.

¹ COM(2000) 595 final of 27.9.2000 (OJ C 154/29.5.2001)

² Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing the European Aviation Safety Agency (OJ L 240/7.9.2002)

6. The objective of this document is therefore to seek the opinion of all parties on ways and means to regulate these civil aviation safety sectors, so that the Agency can make its decision in full knowledge of the situation and guide the debates of the legislators. It thus explores which safety objectives should be set by the legislator and how. It continues by identifying various options for their implementation by the various segments of the civil aviation community, taking into account the principles developed in the Commission's White Paper on European Governance³.

I.1 The safety objectives

7. Currently the safety objectives are set by the standards adopted by the International Civil Aviation Organisation (ICAO Standards) and the provisions of the basic acts adopted by Member States to establish the regulatory framework applicable to civil aviation. Generally these national basic acts are mainly about the delegation of executive powers to governmental bodies or to independent civil aviation authorities. They include very little about the result expected by the legislator. They thus leave a large discretion for the executive level to implement ICAO Standards and set the safety objectives, subject to political pressure to avoid the occurrence and recurrence of accidents.
8. As the Community is not a contracting party to the Chicago Convention, ICAO Standards are not part of Community law, although they bind its Member States and commit in a certain way the Community. Moreover, according to the jurisprudence of the European Court of Justice, the delegation of executive powers to Community bodies requires that the objectives assigned by the legislator are sufficiently clear and specific to allow judicial control of the acts of such delegated bodies. Last, but not least, if some form of self regulation is to be envisaged for some segments of the civil aviation community, the safety objectives must be sufficiently detailed to allow their direct implementation by the industry or other affected persons. As a conclusion the extended EASA Regulation shall specify in clear and detailed terms the safety objectives of the Community for the regulation of air operations and flight crew licensing.
9. One option to achieve this goal is to transpose the relevant ICAO Standards of Annex 6 and Annex 1, by reference, as was done for environmental protection in article 6 of the EASA Regulation. This is a simple option, easy to implement, which ensures full consistency between the international and Community obligations of Member States. It also facilitates the extension of the scope of the EASA Regulation to third country aircraft in as much as it provides for the same legal basis for their operations in the Community as those accepted by their State of registry. This option, which was initially proposed by the Commission for the regulation of the airworthiness of aeronautical products, was criticised by some that see ICAO Standards as minimum standards, which may not provide for the level of safety required by our citizens. This view can be objected to, as ICAO Standards constitute currently the legal basis for Member States and have allowed action at executive level to make European civil aviation one of the safest in the world. Another weakness of this option is that ICAO Standards combine altogether basic principles, essential requirements and implementation means. This makes it difficult to differentiate requirements that affect the fundamental freedoms of

³ COM (2001) 428 final of 25.07.2001.

persons, which shall be adopted at legislative level, from implementing rules that are for the executive level to decide. Moreover such close mix of requirements of different natures prescribes a specific regulatory system and deprives the Community legislator from its right to decide on alternative systems more in line with new concepts about good governance.

10. Another option is to enshrine in the EASA Regulation the essential requirements, which shall be met through the regulation of air operations and flight crew licensing. Such is the way that was decided for the airworthiness of aeronautical products. This requires that detailed provisions are drafted to specify the obligations that the legislator imposes on the executive level and/or the persons affected so as to achieve the expected level of safety. As quantified targets can hardly be defined, such requirements shall at least describe the measures that shall be implemented to mitigate all reasonably probable risks related to the regulated activity. This presents the advantage that the legislator can tailor its requirements to the needs and aspirations of citizens. It may however create inconsistencies within the international context if our standards are higher than those prescribed by ICAO. Such could be the case currently for aeronautical products issued a restricted certificate of airworthiness because they do not meet the Community essential requirements, while they fully comply with ICAO Standards and should therefore not be penalised.

Question 1: The Agency is interested in knowing the opinion of stakeholders on the best means to set the safety objectives for the regulation of air operations and flight crew licensing: the transposition by reference of related ICAO Standards or the establishment of dedicated essential requirements at Community level.

11. Assuming that the preferred option would be the adoption of dedicated essential requirements, the Agency has developed, with the help of national and JAA⁴ experts, such requirements for both pilot proficiency and air operations. They are attached as Annex 1 and Annex 2 respectively. As explained in their related explanatory memorandum, they have been designed to provide for an appropriate mitigation of any reasonably probable risk specific to be regulated field. They are drafted in a way, which potentially allows for covering all types of activities (commercial, business and recreational). It is expected that their level of detail is sufficient to permit the necessary judicial control of executive acts or direct implementation if some form of self-regulation were decided as more appropriate. Care has been taken to ensure their compatibility with the corresponding ICAO Standards so that Member States can fulfil their ICAO obligations. Conversely they have been conceived to provide for a good legal basis for the adoption of JAR-OPS, JAR-FCL and JAR-STD as possible implementation rules so as to avoid disruption and transitional bureaucratic burden. It is to be noted that no essential requirements have been developed for flight engineers proficiency, as there are practically no licenses issued anymore for this category of personnel. The question whether this category of personnel should be covered by common rules is addressed in paragraph 22. If it were so decided, adequate essential requirements would have to be developed.

⁴ Joint Aviation Authorities

Question 2: *The Agency is interested in knowing whether the attached essential requirements actually meet the criteria developed here above and constitute a good basis for the regulation of air operations and pilot proficiency. The Agency also welcomes any suggestion to improve the essential requirements as described in Annex 1 and 2 by using the forms provided, including proposals to address flight engineers.*

I.2 The scope of common action

12. As a matter of principle, the extended EASA Regulation shall specify clearly which products, activities, persons or organisations are affected. As a consequence they will be subject to the requirements established by this regulation and, as appropriate, to rules taken for its implementation. Conversely Member States will no longer be entitled to establish their own standards in the affected fields. A contrario, any product, activity, person or organisation not covered by Community competence will remain under the full responsibility of Member States, which shall take appropriate measures to provide for the level of protection expected by their citizens.
13. Such is the object of article 4 of the EASA Regulation, which specifies the products subject to the airworthiness and environmental protection requirements set by the Community legislator. For the sake of clarity it refers to an exclusion list (annex 2), which defines in detail the excluded products, which then remain under national competence.
14. Being subject to Community competence provides for significant advantages. Firstly it facilitates the free movement of goods, services and persons. Article 8 of the EASA Regulation establishes the principle of automatic recognition without further showing or control of certificates issued in accordance with that Regulation and its implementing rules. Such an objective is far from being reached for excluded fields as Member States can, and do, make use of the provisions of the Treaty, which recognises their right to impose additional requirements when justified by public safety. Secondly it provides for a high uniform level of protection and identical implementation means throughout the Community, ensuring therefore fair and equal opportunities for all to exercise their activities everywhere. Finally, at a time when national competence in the field of civil aviation progressively vanishes, there may be a temptation for national authorities to compensate for such reduction of their powers by focusing more on activities, which until now, were much less under scrutiny. Including all sectors in the scope of Community competence, in particular if new concepts of good governance are used, as further explained in the next chapter, could protect from such a temptation.
15. Some sectors of the civil aviation community are however afraid of the extension of Community competence to their own field of activity because they were used to working in good harmony with their national authorities. Such a vision may however be worth reconsidering in view of the pros and cons exposed here above and the possibility to enshrine in the EASA Regulation new concepts for the implementation of essential requirements, such as adapted forms of self-regulation. Examples of such forms of regulation are being used for years in several Member States for the oversight of recreational activities and are being considered by the JAA for that of corporate aviation instead of traditional regulatory means.

16. It is in this context that the Agency shall advise the Commission on the scope of the extended EASA Regulation and seeks the opinion of all stakeholders.

a) Third country aircraft

17. As far as third country aircraft are concerned, it seems evident, as dramatically demonstrated by recent accidents, that commercial operations in the Community of third country operators shall be covered. This is the way the United States of America do currently with Federal Aviation Regulation called Part 129. This is less clear for other forms of operations. There are many complaints about third country aircraft based in Europe, far from their State of registry, whose oversight may not be carried out in a proper manner. Registration in a third country sometimes seems to be used to escape local safety requirements. Nothing would prevent the Community from establishing some form of supervision if so decided by the legislator, provided that is done in accordance with the relevant ICAO obligations.

Question 3: *Do stakeholders agree that third country aircraft used for non-commercial activities in the Community by third country operators should be subject to Community legislation?*

b) Pilot proficiency

18. Member States have already accepted within the JAA context, that common requirements (JAR FCL) apply to all pilots, whether they fly for private or professional purposes, including instructors and examiners. Moreover the lower level private licences are part of the build up to higher level professional ones and constitute therefore an integral part of the system. As a consequence, there may be no reason to restrict the scope of Community competence to only some categories of pilots. This of course may be questioned and reviewed bearing in mind that alternative implementation means, as developed in the next chapter, could alleviate the concerns of those who found JAR FCL too burdensome and not well adapted to the needs of recreational activities.

Question 4:

a) *Do stakeholders agree that all categories of pilots should be subject to Community legislation?*

b) *If not, which categories should be excluded?*

c) Air operations.

19. Member States already started working on common requirements for all types of activities, without exclusion, when developing the full range of JAR-OPS. These codes however address domains where there are strong hesitations to give up with national practices, in particular for recreational activities. Discussions about the Commission proposal⁵ to establish common requirements for commercial transportation by

⁵ COM(2000) 121 final of 24.03.2000-OJ C 311 E dated 31.10.2000, amended by COM(2004) final of 10.2.2004.

aeroplanes show a wide consensus on the need to include such commercial air transport activities within the scope of Community competence. It can be assumed that the same would apply to commercial transportation by helicopters. There also seems to be a consensus that all other forms of commercial operations should be covered. The situation is less clear for corporate and recreational activities.

20. Although there is a good understanding of the added value of common action as explained here above, some raise the question of the consistency of the oversight of the airworthiness and operation of excluded aircraft as per Annex 2 of the EASA Regulation. They therefore suggest that non-commercial operation of such aircraft be excluded as well. This is an option, which, if adopted, would have to be reviewed together with that of the content of that annex. A contrario some consider that current restrictions to the free movement of such excluded aircraft will be further aggravated if their operations are also excluded. They however suggest sufficiently flexible regulatory means to be used to make it acceptable by the light aviation community. A few finally would prefer the total exclusion of corporate and recreational activities executed with small aircraft, under a threshold to be defined.

Question 5:

- a) Do stakeholders agree that all non-commercial operations should be subject to Community legislation?*
- b) If not, should:*
- corporate aviation and/ or*
 - recreational aviation*
- be excluded?*
- c) Would the answer be dependent on the type of aircraft? If so what should be the threshold?*

d) Other regulated activities and professions

21. The debate opened by the extension of the scope of the EASA Regulation offers a unique opportunity to clarify some pending questions such as the status of fractional ownership or unmanned air vehicles (UAV). On the first point, although fractional ownership operations present many of the characteristics of commercial air transport, it cannot be denied that passengers define themselves the conditions of their transportation and employ the operator. An easy solution could be to assimilate such activities to those of corporate aviation and apply to them the same implementation measures. As for UAVs, it is worth to recall that they are subject to Community airworthiness and environmental rules when their mass is 150 kg or more. Moreover their activity presents the same characteristics than those of other aircraft. They should therefore be applied the same requirements than other aircraft for the same activities.

Question 6:

- a) Do stakeholders agree that fractional ownership operations should be subject to Community legislation?*
- b) Do stakeholders agree that unmanned air vehicles operations should be subject to Community legislation?*

22. The legislator shall specify whether personnel involved in air operations, other than pilots, should be regulated to ensure that essential safety requirements are met at any time. Such requirements may aim at ensuring not only the necessary training, which is a requirement for all professions, but also appropriate physical/medical fitness and sufficient current practice. The need to meet such requirements, which limit the freedom of individuals to exercise a profession of their choice and can even force them out of their employment when they do not meet them anymore, should be established by the basic law rather than secondary executive acts or industry practices. It is currently widely admitted that cabin crew should be subject to such safety requirements to be set at community level. This is less clear for flight dispatchers, as some Member States do regulate that profession in accordance with ICAO Annex 1, while many others do not. Last, as mentioned here above, there is a need to decide whether flight engineers should be subject to Community legislation as this profession is progressively disappearing and very few licenses are currently issued in Member States.

Question 7: Do stakeholders agree that:
- *flight dispatchers and/ or*
- *flight engineers*
should be subject to Community legislation?

I.3 The implementation means

23. The extended EASA Regulation shall specify how the essential requirements are to be implemented. This includes specifying whether issuing an official certificate, showing to a third party or self-declaration should be used to demonstrate compliance. It also requires that details be provided on how such demonstration of compliance should be made. If such details are too complex or lengthy, executive powers could be given to the Commission or Member States to develop the necessary implementing rules. When appropriate, the bodies in charge with the issue of the certificate or to which compliance is to be shown should be identified. They can be the Agency itself, national administrations or appropriately accredited entities. In the last case, criteria for accreditation would need to be specified and accreditation authorities nominated.
24. There is a wide range of possibilities to implement the common safety objectives. The choice among them is a political decision, which depends on the public sensitivity to the subject. The issue of a certificate by official bodies may be perceived as providing better proof of compliance than showing to a private third party, which itself can be seen as a more powerful tool than self-declaration. Traditions and culture in various sectors also largely influence this choice. As far as civil aviation is concerned, several of these forms of regulation have been used in different Member States in different sectors, there is however no agreed common standard, except for the regulation of commercial air transportation.
25. The choice also depends of the level of uniformity that is sought for a certain type of activity. While uniformity can be essential to facilitate the free movement of goods, services and persons, while ensuring a level playing field for commercial activities, it may not be a necessary condition for other types of activities such as corporate and recreational aviation. Conversely, the choice shall ensure that the selected options do not maintain or create barriers to the free movement in the Community. Last but not

least, the implementation means decided by the Community shall be compatible with the international obligations of Member States so as not to unduly affect the movement of our citizens and companies in the rest of the world.

26. Such are the considerations that guided the legislator when adopting articles 5, 6 and 15 of the EASA Regulation, which describe, in the case of aeronautical products, how the essential requirements are to be implemented and by which executive bodies. It was guided by the need to facilitate the free movement of aeronautical products, maintenance services, maintenance training services and maintenance personnel, bearing in mind that most of these activities are of a commercial nature. The same exercise shall now be undertaken for the new domains to be covered by the EASA Regulation and the Agency shall advise the legislator on the best means to regulate them.

a) Third country aircraft

27. It is clear that third country aircraft themselves cannot be subject to a Community certification process; that would be contrary to the provisions of the Chicago Convention. However when there are doubts about their compliance with ICAO Annex 8, nothing refrains the Community from requiring the showing of compliance with ICAO Annex 8. In the same way the Community can require third country aircraft that do not hold a standard ICAO certificate of airworthiness flying in its territory to show compliance with Community conditions to be issued a restricted certificate or a permit to fly. To ensure unity of action towards third countries it would seem appropriate that common implementing rules were adopted. Compliance with Annex 8 could be shown to Member States while compliance with Community conditions for restricted certificates or permits to fly would be shown to the Agency. Such common rules do indeed already exist partially through the Directive of the European Parliament and of the Council on the safety of third country aircraft using Community airports⁶. The question is then whether additional common rules should be developed to complement the Directive or whether it should be cancelled and executive powers should be given to the Commission to redefine a consistent system. The last option was the one agreed by the legislator in the field of environmental protection when deciding to repeal Directive 80/51 on the limitation of noise emissions from subsonic aircraft and give executive powers to the Commission under article 6 of the EASA Regulation.

Question 8:

a) Do stakeholders agree that powers should be given to the Commission to adopt implementing rules for the regulation of the safety of third country aircraft flying in the territory covered by the EC Treaty?

b) Do stakeholders agree that the Agency should be given powers to verify that third country aircraft that do not hold a standard ICAO certificate of airworthiness do however meet a sufficient level of safety to fly in the territory covered by the EC Treaty?

28. As far as third country operations are concerned, the same reasoning as above can apply. When a third country operator holds an air operator certificate nothing forbids verifying that it actually meets the conditions of applicable ICAO Annexes. A fortiori,

⁶ Adopted by the European Parliament and the Council on 27.01.2004. Not yet published.

when there are no relevant provisions in these Annexes, nothing prevents the Community from imposing on third country operators the same conditions as those required of Community operators to fulfil for the same operations. For the sake of uniformity, it would be advisable that the Commission sets common implementing rules. Compliance for commercial air transportation should probably be shown to the Agency, to provide for a one stop shop approval, while for other commercial or non commercial activities, which are likely to be limited to the territory of one Member State, it should be shown to national administrations. Here again consistency with the Directive of the European Parliament and of the Council on the safety of third country aircraft using community airports shall be ensured.

Question 9:

- a) Do stakeholders agree that powers should be given to the Commission to adopt implementing rules for the regulation of the operation of third country aircraft flying in the territory covered by the EC Treaty?*
- b) Do stakeholders agree that the Agency should be given powers to issue appropriate approvals to third country air transport operators?*

b) Pilot proficiency

29. There seems to be a strong consensus that all pilots involved in commercial operations and instructors shall hold a licence and appropriate ratings attesting compliance with the essential requirements. The extended EASA Regulation shall specify therefore that no one can fly an aircraft involved in commercial operations without a licence and provide for the legal basis of any associated privileges. Everybody seem to agree also that the training of such pilots shall be performed by approved organisations and that the synthetic training devices used for such training shall be certified. For the sake of uniformity, as already accepted by Member States, it seems appropriate to establish common rules for issuing and maintaining such licences, approvals and certificates. Consistent with the principles underlying the EASA Regulation, such rules should be set by the Commission through a comitology process. Their implementation should be carried out at national level except for third country organisations and synthetic training devices, which should be under the supervision of the Agency, without prejudice to possible bilateral arrangements with third countries.
30. For pilots not involved in commercial operations, the debate is worth opening. The current ICAO obligations foresee the need for a licence to benefit of the free movement enshrined in article 5 of the Chicago Convention. This of course does not forbid the Community from deciding differently as far as the free movement in the territory covered by the Treaty is concerned. This however could affect the possibility of EU citizens to fly elsewhere if they do not hold an appropriate licence. An option could be to maintain the need for a licence for activities which imply a certain level of risk for third parties on board or on the ground and a significant probability of crossing external borders of the Community. This would imply that pilots of corporate or relatively heavy motor-powered aircraft would have to hold an official licence. Whether the issuing of such a licence should be subject to common rules is also a point for debate, especially if such licences are to be the first steps towards a professional licence. As JAR FCL already includes provisions for private licences, an easy option could be to include them into the common rules adopted by the Commission through comitology.

Question 10:

- a) Do stakeholders agree that pilots of corporate or heavy motor-powered aircraft should hold a licence? If so, what should be the definition of such heavy motor-powered aircraft?*
- b) Do stakeholders agree that powers should be given to the Commission to adopt implementing rules for the issuing of such licences?*

31. For other activities, such as recreational and air sport with light aircraft, the issuing of a licence may not be necessary; a showing of compliance to a third party such as a federation or a qualified school or instructor could be sufficient. Implementing rules for such showing of compliance could be adopted by Member States themselves provided the free movement of related aircraft and their pilots is not affected thereby. In that context they would have to decide how compliance could be shown and to which bodies. Since that may create some forms of discrimination, there could also be common rules adopted through comitology describing how compliance is to be shown and what conditions shall be met by conformity assessment bodies to be accredited. Member States or the Agency could be in charge with such accreditation. Such an approach would establish a level playing field for all EU citizens.

Question 11:

- a) Do stakeholders agree that pilots of light recreational or sport aircraft should not be required to hold an official licence? If so, what should be the definition of light recreational or sport aircraft?*
- b) Do stakeholders agree that pilots of recreational or sport aircraft should show compliance with the essential requirements to qualified bodies?*
- c) Do stakeholders agree that powers should be given to the Commission to adopt implementing rules for the accreditation of such qualified bodies by national aviation authorities?*

32. Pilot proficiency implies that compliance with physical and medical fitness requirements is demonstrated. As far as pilots involved in commercial operations are concerned there is a consensus that such demonstration should be based on common implementing rules and that medical centres and aeromedical examiners involved in the related investigations should be approved. For other categories of pilots, it is questionable whether flexibility should be introduced through less stringent common rules or delegation at national level. As national differences in the interpretation of physical fitness are currently creating significant obstacles to the free movement of pilots in the Community, it would be consistent with the suggestion in paragraph 31 that common rules are established at Community level for pilots of corporate or heavy motor-powered aircraft. As for the evidence of compliance, the current practice is to issue an attestation by an accredited aeromedical examiner. This practice does not seem to be questioned, although there remains a need to define by whom and how these aeromedical examiners should be accredited. The same questions as above on the need for common rules are relevant. As far as pilots of light recreational or sport aircraft are concerned, as suggested here above, evidence of compliance with the essential requirements could be issued directly by accredited aeromedical examiners.

Question 12:

- a) Do stakeholders agree that powers should be given to the Commission to adopt implementing rules on physical and medical fitness of pilots of corporate or heavy motor-powered aircraft?*
- b) Do stakeholders agree that there is no need for implementing rules on physical and medical fitness of pilots of light recreational or sport aircraft?*
- c) Do stakeholders agree that powers should be given to the Commission to adopt implementing rules for the accreditation of aeromedical examiners by national aviation authorities?*

c) Air operations

- 33. There seems to be a wide consensus on the need to impose a certification process to all commercial air operators, including those carrying out aerial work. As already reflected by the development of JAR-OPS 1 and 3, it is also widely admitted that there should be common implementing rules for commercial air transportation. To ensure maximum uniformity, the Commission through comitology should certainly adopt such rules. The certificates themselves should probably be issued at national level, as that is the normal practice for the implementation of Community law. There could be however some exceptions for future pan-European air carriers, where the Agency could be in a better position to issue itself the appropriate certificates, as it has been agreed in the case of production organisations. Executive powers should also be given to the Agency to approve non-standard activities or mandate operational directives as necessary to ensure the safety of operations. Discussions on the transposition of JAR-OPS 1 into Community law show indeed that the proper functioning of flight time limitation schemes may require that the Agency be given the power to approve itself deviations from standard provisions.
- 34. The situation of other commercial operations than air transport is to be clarified. The flexibility required for these types of operations could be achieved by less stringent common rules or by delegation at national or industry level. In view of the need to facilitate the free movement of services, common rules could be a better option. If another choice were to be made, industry rules rather than national ones would probably better achieve the objective of free movement. Such rules could be established following the Community standardisation process. As the risk associated with these commercial activities is significant, it seems necessary that a qualified entity assess conformity with such industry rules. There would be a need then to define criteria for the accreditation of such qualified entities and to designate an accrediting authority. The IATA⁷ Operational Safety Audit programme provides an example of such a possible regulatory system. IATA has developed an industry rule, the IOSA standard and appoints entities to assess its correct implementation. This option is an adaptation to the aviation context of the global approach to certification and the new approach to standardisation that the Community suggested most industrial sectors to implement for years. If agreed, the extended EASA Regulation would have to specify how compliance with the essential requirements is to be shown, including a presumption of conformity if an appropriately designed industry standard is implemented, and what conditions should

⁷ The International Air Transport Association is a corporate association of major international air carriers.

be met by conformity assessment bodies to be accredited. Member States or the Agency could be in charge with such accreditation.

Question 13:

- a) Do stakeholders agree that there should be implementing rules for the regulation of commercial operations other than air transport?*
- b) If not, do stakeholders consider more appropriate to apply the approach described here above to regulate these activities?*
- c) In such a case, do stakeholders agree that powers should be given to the Commission to adopt implementing rules for the accreditation of qualified entities by national aviation authorities?*

35. Turning now to non-commercial activities, the same questions as above have again to be answered. Should the legislator require certificates attesting compliance with the essential requirements? Should there be common rules? Who would verify conformity? To regulate corporate aviation and fractional ownership, the approach suggested in paragraph 34, which is very much in line with current developments around JAR OPS 2 and 4, should be seriously considered. As for general aviation and recreational activities, the answer to the two first questions put here above, are likely to be negative. Since there is no international obligation to issue any certificate to enjoy free movement, one can then question the need for any compliance showing. In such a case the essential requirements could be applicable as such, without the need for any form of implementation means, and Member States would only have to verify that they are actually respected. This seems to be in fact the current situation in most, if not all Member States. That would not prevent federations from developing best practices and private operators to voluntarily apply them, within the framework of incentives aimed at improving the safety culture in this domain.

Question 14:

- a) Do stakeholders agree that corporate aviation operations should be subject to the form of self-regulation described in paragraph 34?*
- b) In such a case, do stakeholders agree that powers should be given to the Commission to adopt implementing rules for the accreditation of qualified entities by national aviation authorities?*
- c) Do stakeholders agree that general aviation and recreational activities should be directly subject to the essential requirements without the need for implementing rules, nor certification? If so, what should be the definition of general aviation?*

d) Other regulated professions

36. As mentioned in paragraph 22, it is recognised that cabin crew shall be subject to essential requirements, but there is no common practice for verifying compliance with them. Some Member States issue licences or equivalent attestations or certificates. Others leave it to air operators to verify that some regulatory requirements are met. It is time now to take a clear position about the way the Community shall regulate this category of workers. An option, taking into account the safety nature of their tasks, would be to attest compliance through the issuing of a licence by national authorities on the basis of common implementing rules. As far as flight dispatchers are concerned,

there is also a need to decide whether the Community should create a uniform need for a licence or not.

Question 15:

a) Do stakeholders agree that cabin crew should hold a licence issued on the basis of common implementing rules adopted by the Commission?

b) Do stakeholders agree that flight dispatchers should hold a licence issued on the basis of common implementing rules adopted by the Commission?

II. Consultation

37. The EASA Management Board adopted on 27 June 2003 a decision on the procedure to be followed by the Agency for the issuing of opinions, certification specifications and guidance material to implement the provisions of article 43 of the EASA Regulation. This decision requires the Agency to provide any person with the opportunity to comment on an envisaged rule in which he/she has an interest. To do so an open consultation shall be organised with a consultation period of three months. This period may be extended in the light of the nature of the comments received.

38. The documents submitted by the Agency for consultation in no way prejudices the proposals, which will be finally adopted by the Agency at the end of the consultation process.

39. Comments on this Notice of Proposed Amendment (NPA) may be forwarded to:

By e-mail: ERconsultation.OPS-LIC@jaa.nl

By correspondence: Joint Aviation Authorities
Inge van Opzeeland
NPA Administrator
Box 3000
2130 KA Hoofddorp
Netherlands
Fax: +31 23 56 21714

Comments should be received by the NPA Administrator before 31 July 2004 and if received after this deadline they might not be treated. Comments will not be considered if the form provided for this purpose is not used.

III. Comment response document

40. The review of comments will be made by the Agency with the help of some of the experts that have prepared the attached essential requirements.

41. All comments received will be responded to and incorporated in a comment response document (CRD). The CRD will be widely available ultimately when the Agency's opinion is submitted to the Commission for further action.



Comment Form

*Comment nr.....
(for EASA use only)*

NPA 2/2004

All comments should be sent (preferably in WORD) to: ERconsultation.OPS-LIC@jaa.nl

1a. **COMMENT TO DOCUMENT:**

- Consultation Document
- Essential Requirements for Pilot Proficiency
- Essential Requirements Air Operations

1b. **AFFECTED QUESTION NR, PARAGRAPH OR ARTICLE:**

2. **PROPOSED TEXT/ COMMENT:**

3. **JUSTIFICATION:**

4. **PERSON/ORGANISATION PROVIDING THE COMMENT:**

Name :

Address :

Country :

Phone :

Fax :

E-mail :

5. **SIGNATURE:** **Date:**



Comment Form

GUIDELINES TO COMMENT

1. For a better handling of comments we strongly recommend to use this form.
2. Please use **one form per comment and fill in completely the provided form.**
3. If there is insufficient space on the form, use attachments and summarise your comments on the form.
4. In case of disagreement, failure to explain the reason(s) for disagreeing may well result in the comments being laid aside for lack of understanding.
For the same reason, the grounds for deleting a paragraph should be explained.
5. All comments must be sent by email to ERconsultation.OPS-LIC@jaa.nl unless otherwise indicated in the Consultation Document.