

**NOTICE OF PROPOSED AMENDMENT (NPA) No 17/2006**

**DRAFT OPINION OF THE EXECUTIVE DIRECTOR OF THE AGENCY**

**ABOUT AMENDING  
COMMISSION REGULATION N° 1702/2003  
of 12 September 2003**

**laying down implementing rules for the airworthiness and environmental  
certification of aircraft and related products, parts and appliances, as well as for  
the certification of design and production organisations**

**“Continued operation of aircraft designed in the Soviet Union and currently  
registered by Member States”**

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## **Explanatory Note**

### **I. General**

1. The purpose of this Notice of Proposed Amendment (NPA) is to envisage amending Commission Regulation n° 1702/2003 of 12 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations to allow the continued operation of aircraft designed in the Soviet Union<sup>1</sup> and currently registered by Member States, until the time when an EASA type-certificate can be determined by the Agency for some of them or their continued operation can no more be justified. The scope of this rulemaking activity is outlined in ToR MDM.041 and is described in more detail below.
2. The Agency is directly involved in the rule-shaping process. It assists the Commission in its executive tasks by preparing draft regulations, and amendments thereof, for the implementation of the Basic Regulation,<sup>2</sup> which are adopted as “Opinions” (Article 14.1). It also adopts Certification Specifications, including Airworthiness Codes and Acceptable Means of Compliance and Guidance Material to be used in the certification process (Article 14.2).
3. When developing rules, the Agency is bound to following a structured process as required by article 43.1 of the Basic Regulation. Such process has been adopted by the Agency’s Management Board and is referred to as “The Rulemaking Procedure”<sup>3</sup>.
4. This rulemaking activity is included in the Agency’s rulemaking programme for 2007. It implements the rulemaking task MDM.041 related to the continued operation of aircraft designed in the Soviet Union and currently registered by Member States.
5. The text of this NPA has been developed by the Agency. It is submitted for consultation of all interested parties in accordance with Article 43 of the Basic Regulation and Articles 5(3) and 6 of the EASA rulemaking procedure.

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<sup>1</sup> These aircraft are those designed in the Soviet Union and whose States of design are now the members of the Community of Independent States (CIS) and Ukraine. The authorised representatives of these states are respectively the Inter-States Aviation Committee and the Ukrainian aeronautical authorities.

<sup>2</sup> 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 a European Aviation Safety Agency. *OJ L 240*, 7.9.2002, p.1. Regulation as last amended by Commission Regulation (EC) 1701/2003 of 24 September 2003 (*OJ L 243*, 27.9.2003, p. 5).

<sup>3</sup> Management Board decision concerning the procedure to be applied by the Agency for the issuing of opinions, certification specifications and guidance material (“rulemaking procedure”), EASA MB/7/03, 27.6.2003

## II. Consultation

6. To achieve optimal consultation, the Agency is publishing the draft decision of the Executive Director on its internet site. Comments should be provided within 6 weeks in view of the urgency of task as explained hereunder. Comments on this proposal may be forwarded (*preferably by e-mail*), using the attached comment form, to:

**By e-mail:** [NPA@easa.europa.eu](mailto:NPA@easa.europa.eu)

**By correspondence:** Process Support  
Rulemaking Directorate  
EASA  
Ref: NPA 17-2006  
Postfach 10 12 53  
D-50452 Cologne  
Germany

Comments should be received by the Agency **before 25-12-2006**. If received after this deadline they might not be treated. Comments may not be considered if the form provided for this purpose is not used.

## III. Comment response document

7. All comments received in time will be responded to and incorporated in a comment response document (CRD). This may contain a list of all persons and/or organisations that have provided comments. The CRD will be widely available on the Agency's website.

## IV. Content of the draft opinion

8. Regarding aircraft designed in third countries, Commission Regulation 1702/2003 (the Regulation) only grandfathers type certificates that have been issued by Member States prior to 28 September 2003 if such certificates were issued on the basis of bilateral agreements stipulating that such certificates had for basis the airworthiness code of the State of design. This was not the case for any of the aircraft designed in the former Soviet countries; as a consequence, only those of these aircraft that had been certified by Member States on the basis of JAA airworthiness codes before 28 September 2003 have been grandfathered; there are very few of them.
9. The Regulation required therefore the Agency to investigate the conditions under which such aircraft had been certified by their State of design and to determine before 28 March 2007 an EASA type-certificate that would allow inserting them into the EASA continuing airworthiness system. Unfortunately the catch-up process to determine such an EASA reference type certificate has not progressed as envisaged, mainly because of the costs incurred, the limited commercial perspectives for such aircraft and the significant regulatory differences between the former Soviet airworthiness system and the EASA one. As a consequence, now that the deadline for integration of these aircraft is approaching, very few have a chance to receive an EASA type certificate in due time.

10. The Regulation also provides the basis for issuing restricted certificates of airworthiness. This can be done through the issuing of restricted type certificates or of individual specific certification specifications by the Agency. There has been no application so far for such action. This option for inserting foreign aircraft in the EASA system has however no chance to be implemented in due time. Not only the Agency does not have the necessary human resources, but the lack of support from the designers of the concerned aircraft makes it totally impossible to issue the related specific certification specifications or restricted type-certificates. This option, which does not require rulemaking is however available at any time if the above conditions are met on a case-by-case basis
11. During a meeting of the EASA Committee convened especially on 19 July, it has been agreed to make a detailed inventory of the aircraft subject to the Basic Regulation that could be affected and to examine various options to maintain them flying while avoiding heavy legislative procedures that would have no chance to be finalised in due time. The result of this inventory is reported in the attached tables.
12. A number of aircraft can already be considered as falling under Annex II of the Basic Regulation and are not therefore affected by the issue mentioned here above. The list of these aircraft is in attachment 1. As some of them are excluded from the scope of Community competence because of the provisions of paragraph a) of Annex II related to the age of the initial design (40 years) or the final date of production (25 years) care must be taken that the envisaged changes of this annex do not affect their current status. This would imply reconsidering the dates in paragraph (a)(i) of Commission proposal COM(579)2005 of 16 November 2005.
13. Some additional aircraft (mainly Antonov 2, YAK 12 and YAK 52) are likely to meet the provisions of the revised Annex II, which gives a wider definition of design of historical relevance as it does not include in particular the conditions of age or number contained in the criteria of the second part of paragraph a) of the present Annex. These aircraft are listed in attachment 2. It is likely however that there will be a gap between the expiration of the transition period specified in the Basic Regulation (28 March 2007) and the time when such Annex II is revised. It may also be moreover that the envisaged modifications of this annex are rejected by the legislator. In such cases, these aircraft would be eligible to the measures envisaged here under.
14. The only aircraft for which specific measures shall therefore be considered are those listed in attachment 3, which includes 45 large aeroplanes engaged in commercial operations (mainly Antonov 24, 26, 28 72 and 74); 192 heavy helicopters (Kamov); and 79 general aviation aeroplanes (mainly Sukhoi 26/31 and Yak 18/55). Grounding these aircraft, in particular those involved in commercial operations, because no EASA type certificate could be determined in due time would have a significant economic impact on their owners and operators, while they have no direct responsibility in this situation and there is no immediate safety justification for such an action. The present rulemaking task concentrates therefore on finding ways and means to allow their continued operation until the time when an EASA type-certificate can be determined by the Agency for some of them or their continued operation can no more be justified.
15. As can be seen in the following regulatory impact assessment, several options could be envisaged. Grandfathering the State of design certificates, as this was done for

most European, American, Brazilian and Canadian designed aircraft, is not really an option as it does not allow introducing these aircraft in the EASA continuing airworthiness system as established by Commission Regulation 2042/2003.<sup>4</sup> Transfer into Annex II by adjusting the criteria of the said annex, can only be considered marginally as it would have for effect to negate the very objective of the Basic Regulation by automatically excluding from its scope a number of western built aircraft that are already under EASA control. Such transfer could therefore be only considered for a finite list of aircraft to be mentioned explicitly in the said annex; this requires a full legislative process, whose outcome is uncertain as it would allow a number of aircraft to operate outside the scope of the framework the Community considers the most appropriate to provide the level of safety that European citizens deserve. The Agency has therefore reached the conclusion that the most practicable option is to allow the continued operation of these aircraft under restricted certificates of airworthiness provided they also meet the applicable environmental requirements.

16. It is however now too late for the Agency to enter into the process of determining the individual specific certification specifications on the bases of which Member states will issue the said restricted certificates of airworthiness, as required by Articles 5.3 and 15.1(b) of the Basic Regulation and the provisions of 21A.184 of the Annex to the Regulation (Part 21). The only solution is therefore to amend the Regulation to determine such specific certification specifications by reference to the approved design of the States of design. As grandfathering however does not allow the Agency to acquire an in-depth knowledge of the design of the concerned products, such a measure can only be envisaged if such knowledge is provided by the State of design under conditions that place the Agency in a position to receive the necessary data to amend as appropriate these specifications and ensure the continued safety of the concerned aircraft. This should require that appropriate arrangements are concluded between the Agency and the states of design to ensure the necessary support. The Agency considers moreover that it would not be sound to allow the issuing of restricted certificates of airworthiness on these bases for an unlimited period of time.
17. First it must be noted that among the aircraft at stake, the large ones and those involved in commercial air transport should already comply with the provisions of Commission Regulation 2042/2003 related to aircraft maintenance and that unfortunately the non availability of design data had made this practically impossible. As a consequence such aircraft fly illegally. The same will happen to all other aircraft when Part M fully enters into force on 28 September 2008. Since it will take a certain time to determine the EASA type certificate of these aircraft and the Commission does not envisage delegating back to Member States the regulation of the continuing airworthiness of these aircraft, it is essential to find alternative means within the limits of the current legislation to ensure their safe operation, in particular if such operation is continued beyond the limit of 28 March 2007 set by the Basic Regulation. Work is therefore being conducted in parallel by the Agency and some of the most affected Member States to find a solution on the basis of the provisions of Article 10 paragraph 5 and 6 of the Basic Regulation. This cannot however be perpetuated indefinitely as it raises concerns as regards possible unfair

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<sup>4</sup>Commission Regulation (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks (OJ L 315, 28.11.2003, p. 1). Regulation as amended by Commission Regulation (EC) No 707/2006 of 8 May 2006 (OJ L 122, 9.5.2006, p. 17)

competition in the internal market if aircraft involved in the same operations are not subject to the same regulatory regime. There must therefore be an incentive for designers, owners and operators to work with the Agency to fully integrate these aircraft into the EASA system through the determination of an EASA Type certificate. In view of the work to be done to achieve this goal, the Agency considers that the validity of the grandfathered specific certification specification should be limited to five (5) years.

18. It is accepted that all aircraft may not be eligible for a standard EASA type certificate, but in such case the Agency should be able to review the grand-fathered specific certifications specifications to verify that all safety precautions have been taken as it will be ultimately responsible for such specifications. This should allow issuing individual specific certification specifications on a case by case basis before the end of validity of those determined by the amended Regulation. The Agency considers that the five years' duration of the grand-fathered specifications mentioned here above is sufficient to conduct the necessary work if the designers, owners and operators accept to co-operate. It must be stressed in this context that aircraft that would not have been issued an EASA type certificate or an individual specific certification specification in due time will be unable to continue to fly beyond this limit.
19. The Agency considers also that the envisaged grandfathering measure should be limited to aircraft that are already registered by Member States. Additional aircraft of the same types should not be registered by Member States unless they have been issued an EASA type certificate and they can be fully integrated in the EASA safety system. To avoid also that the time needed to amend the Regulation is used to introduce additional grandfathered aircraft in the Community, the date before which the measure will apply should be one when no one knew it was likely to be adopted. As the decision to initiate the process was taken in July, it is envisaged to use 1 July 2006 as the reference date.
20. It might be useful at this point to also clarify that the Agency is not opposed in principle to applying the same logic to other aircraft that have not been grandfathered or for which no EASA type certificate has been determined so far. It should however be stressed that there are very few aircraft that have not been yet introduced in the EASA system. The exceptions are related to aircraft for which no design organisation willing to co-operate with the Agency could be identified. In such cases the Agency considers that the normal process is the determination on a case by case of individual specific certification specification, as it envisages doing for orphan aircraft.
21. The intention being finally to allow the affected aircraft to continue their current operations, this implies that many of them will be involved in commercial operations. Using however aircraft with a restricted certificate of airworthiness in commercial operations is not a current practice. The recently approved extension of Regulation 3922/91 to the commercial air transportation by aeroplanes requires that such aircraft hold a "standard" certificate of airworthiness issued in accordance with the Regulation. Although the word "standard" is not specified in the regulation, it can be understood as meaning a normal certificate of airworthiness and excluding therefore restricted certificates of airworthiness. This should be corrected before the said extension enters into force (probably in June 2008). The Agency intends to address this issue when developing the implementing rules for the extension of the

Basic Regulation to air operation and will make proposals to the Commission in due course.

22. It is on these bases that the Agency started drafting an amended Article 2 of the Regulation. This simply implies determining the necessary specific certification specifications by reference to the applicable design as this was done for determining the EASA reference type certificate of the other grandfathered aircraft. The amendment should enter into force on 28 March 2007 to avoid any gap or overlap of responsibilities.
23. When doing so the Agency realised that the text of the amended article, which is already difficult to understand, would become too complex if the opportunity was not used to restructure it and if some problems of interpretation were not clarified at the same time. The attached amendment of the Regulation aims at fulfilling these two objectives without affecting the initial intent of the legislator more than necessary to allow the continued operation of aircraft that cannot be otherwise transferred into the EASA system. It should be noted however that the provisions or paragraphs 10 and 11 of Article 2 disappear as they were only valid until 27 March 2007.

## **V. Regulatory Impact Assessment**

### **1. Purpose and Intended Effect**

#### a. Issue which the NPA is intended to address

24. Because it has been impossible to determine EASA type-certificates for aircraft registered in several Member States, which were designed and built in the former Soviet Union, consideration must be given to other options to maintain them in operation until the time when such type-certificates can be determined by the Agency for some of them or their continued operation can no more be justified.

#### b. Scale of the issue

25. Assuming that the hypotheses reflected in the attachment about aircraft that can be classified as complying with the requirements of the current and revised Annex II of the Basic regulation (see paragraphs 11 and 12 above), 323 aircraft are affected. If Annex were not revised, there would be an additional 667 concerned aircraft. It has not been possible for the Agency to make an evaluation of the related size of the business conducted by these aircraft. It is assumed that the 45 (plus 6 potentially covered by the revised Annex II) large aeroplane are involved in commercial air transport. It can also be considered that the 192 heavy helicopters are involved in commercial aerial work, although some can probably be considered as being exclusively involved in state missions and excluded therefore from the scope of the EASA system. It is likely that the 86 (+661) light aircraft are only marginally involved in commercial operations. Despite this lack of data on the activities of the fleet, it is reasonable to assume that its operation generate few thousands of direct jobs.



c. Brief statement of the objectives of the NPA

26. Taking into account the various options to address the issue explained above, the objective of this NPA is to evaluate the feasibility of; and the conditions for, a regulatory grandfathering of aircraft already registered by Member States, which were designed and built in the former soviet system. This should provide for sufficient time to introduce some of them in the EASA system or for their operators to adapt to their withdrawal from national registers. Such a measure should allow the continuation of current operations, but should not open the door to increasing the dimension of the issue it aims at solving.

**2. Options**

a. The options identified

27. All the possible options are:
- Option 1: Do nothing;
  - Option 2: Amend the Basic Regulation to extend the transition period specified in its Article 56.2;
  - Option 3: Amend Annex II of the Basic regulation to exclude the concerned aircraft from the scope of the EASA system;
  - Option 4: Extend the current grand-fathering provisions of Article 2.3 of the Regulation to the concerned aircraft;
  - Option 5: Issue restricted certificates of airworthiness to the aircraft concerned on the basis of specific certification specifications determined by reference to the State of design type-certificate data sheet.

b. The realistic options selected

28. Several of the above options do not need further evaluation as they are considered unrealistic or without effect. Options 2 and 3, which are only based on an amendment of the Basic Regulation, have no chance to be implemented in the short time frame that is left before the end of the transition period. It is also unlikely that the Community legislator endorses the exclusion of aircraft that are perceived by the public as being potentially unsafe. The Commission made therefore very clear during the above mentioned meeting of the EASA Committee, that it would not initiate the necessary legislative process.
29. Option 4 means that the concerned aircraft will be deemed to have been issued an EASA type-certificate in accordance with the Regulation. This in turn implies that there is a TC holder that meets the conditions of Sub-Part J of Part 21 or that the system of the State of design has been determined by the Agency as providing the same independent level of checking of compliance as provided by the Regulation through an equivalent system of approval of organisations or through direct involvement of the competent authority (article 3.2 of the Regulation). None of these conditions are met. As a consequence the grand-fathered type-certificates would automatically become orphan as soon as deemed issued. The aircraft would be grounded, unless the Agency issues specific certification specifications to allow Member states to issue the necessary restricted certificates of airworthiness. This option is therefore without effect as it leads to the situation described in paragraph

10 and therefore to Option 5. This regulatory impact assessment is therefore limited to examining the impact of options 1 and 5.

### **3. Sectors concerned**

30. The sectors affected are mainly all the natural and legal persons (owners, operators, pilots, staff, ...) involved in the operation and maintenance of the concerned aircraft. As explained in above paragraph 24, although it has not been possible to make a quantified evaluation of the number of persons and of the volume of business affected, it can be assumed that they are of a magnitude of few thousands for the first ones and of several tens of millions of Euros for the second.

### **4. Impacts**

#### **a. Safety impact**

31. Option 1 implies that all the aircraft concerned are taken out of the registers of Member States. If they actually stop flying, it could be considered that this option improves safety as many of these aircraft are relatively old and their oversight and continuing operation without a sufficient knowledge of their design is difficult. It is however unlikely that all their operators can stop their activities in few months time. They are likely therefore to seek registration in third countries in order to continue their operations. This could lead to a reduction of safety as the control that can be exercised by Member States' National Aviation Authorities on such operation will be diluted, if not completely impossible.
32. Assuming that the issue of continuing airworthiness is addressed properly in accordance with Article 10.5 and 6 of the Basic regulation (see above paragraph 16), Option 5 can be considered as neutral as it would maintain the status quo until the Agency can determine an EASA type-certificate or adapt the specific certification specifications to correct possible shortcomings. If complemented by a time limitation to force the Agency, the owners and the designers to co-operate in improving the knowledge of the design, it would lead to improved safety. Meanwhile, as the Agency takes over responsibility for the specific certification specifications so determined by the legislator, it is necessary that it receives the support of the State of design to ensure that safety is maintained through an appropriate continued oversight of the design.

#### **b. Economic impact**

33. Option 1 leads automatically to grounding the concerned aircraft and to the loss of the related economic activities. At best the operators will be able to buy new aircraft and continue their operations; this however implies significant investments of several hundreds of millions of Euros. It cannot be excluded therefore that work be shifted to foreign operators or that some essential air services could no more be provided; this would have very important consequences for the economy of the affected countries.
34. Option 5 allows maintaining the status quo until viable solutions can be found. It can nevertheless be criticised by other competing operators, which could consider that the alternative regulatory system established for the continued operation of the affected aircraft implies discrimination at their detriment. This justifies a limited

duration of the measure so that a pressure is exercised to integrate the affected aircraft into the normal EASA system.

c. Environmental impact

35. Option 1 probably contributes to improving the environment as most affected aircraft are of a relatively old design meeting only marginally the applicable conditions of ICAO Annex 16, when they do. As however explained here above, there is no certainty that their operation will actually be suspended. Option 5 merely maintains the status quo for the duration of the grandfathering. Work during this period should be conducted to examine the noise data sheets and re-issue them as appropriate with the necessary catch-up process that needs to be done to determine an EASA type certificate or refine the specific certification specifications that would be necessary to maintain the concerned aircraft on Member States registers. This would reduce the environmental impact of the envisaged measure.

d. Social impact

36. Option 1 leads automatically to the destruction of a number of jobs. This would have direct serious social consequence in the Member States where the concerned aircraft represent a significant economic activity. While maintaining the activity for a certain period of time, Option 5 gives time to adapt and convert jobs to other types of aircraft, at least for those that would be affected by the de-registration of aircraft that would not be ultimately integrated in the EASA system.

e. Impact on the functioning of the internal market

37. Option 1 leads to the disappearance of some services that are essential to the good functioning of the economy of certain countries and may affect therefore their competitiveness in the internal market. This however opens new opportunities for service providers established in other Member States and facilitate the opening of some market. It must be underlined however that some of the concerned aircraft do not have any real substitutes and provide services that are essential to other Member States, in particular in the field of heavy lift. Taking into account this various elements it might be considered that this option has a negative impact on the functioning of the internal market.
38. Option 5 again maintains the status quo. This could nevertheless be criticised by some who consider that competition by the concerned aircraft is unfair as they do not fulfil all the conditions imposed on other aircraft providing more or less the same services. They also fear that the measure is used to introduce more aircraft in the internal market and increase their market share at the detriment of their competitors. Limiting the duration of the measure would be a strong deterrent to such development. This could be strengthened by limiting the grandfathering to aircraft on Member States registers at a date where no one could expect the measure was going to be adopted.

e. Impact on international co-operation

39. Option 1 is likely to have a negative impact on our relations with our Russian and Ukrainian partners. They already claim that they consider these aircraft as safe and do not see why they should be withdrawn for Member States registers only because

we changed our regulatory system. Option 5, at the contrary will provide additional time to integrate the concerned aircraft in the EASA system. This however will be only possible if the designers and the States of design co-operate to that goal. Eventual failures would then be a joint responsibility that can be duly substantiated.

## 5. Final Assessment

40. In view of the above the Agency is of the opinion that Option 1 is not a practicable solution. Its negative economic, social and international impacts largely outweigh the few positive safety and environmental gains. It considers therefore that a grandfathering measure allowing the continued operation of the concerned aircraft under restricted certificates of airworthiness is the best way forward provided appropriate safeguards are built in such a grandfathering to avoid the proliferation of the fleet of former soviet designed aircraft in the Community and encourage the integration of these types of aircraft in the ESAS regulatory system. Such is the objective the amendment to the Regulation detailed in the following chapter. Taking into account the related impact on the complexity of the affected article of the regulation, it has been felt necessary to restructure it without affecting its previous provisions.

## B. PROPOSALS

The text of the amendment is arranged to show deleted text, new text or a new paragraph as shown below:

1. ~~Text to be deleted is shown with a line through it.~~
2. New text to be inserted is highlighted with grey shading.
3. New paragraph or parts are not highlighted with grey shading, but are accompanied by the following box text:

Insert new paragraph / part (*Include N° and title*), or replace existing paragraph/ part

4. ....

Indicates that remaining text is unchanged in front of or following the reflected amendment.

....

*The following amendments should be included in Decision No. 2003/14/RM of the Executive Director of the Agency of 14 November 2003:*

## C DRAFT OPINION

41. Article 2 of Commission regulation 1702/2003 is modified by deleting paragraphs 3 to 10 and 12 to 14 and that are transferred to new articles 2a and 2c, except paragraphs 10 and 11 that have no effect beyond 28 March 2007:

### *Article 2*

#### *Products, parts and appliances certification*

1. Products, parts and appliances shall be issued certificates as specified in Part 21.

2. By way of derogation from paragraph 1, aircraft, including any installed product, part and appliance, which are not registered in a Member State shall be exempted from the provisions of Subparts H and I of Part 21.
3. Where reference is made in Part 21 to apply and/or to comply with the provisions of Part M and Part M is not in force, the relevant national rules shall apply instead.
42. The new article 2a includes paragraphs 3 to 7, 9 and 14 of the previous Article 2 related to the grand-fathering of type certificates, supplemental type-certificates and findings made during ongoing certification processes at the time of the transfer of competence, as well as the related airworthiness. The opportunity is used to clarify that grandfathering applies also to aircraft that were issued an “equivalent document” before the concept of type-certificate existed.

### **Article 2a**

#### ***Continued validity of type-certificates, supplemental type- certificates and the related certificates of airworthiness***

1. With regard to a product that has a type-certificate, **or an equivalent document**, issued before 28 September 2003 by a Member State, the following provisions shall apply:
  - (a) Such a product shall be deemed to have a type-certificate issued in accordance with this Regulation when:
    - (i) its type-certification basis is:
      - the JAA type-certification basis, for products that have been certificated under JAA procedures, as defined in their JAA data sheet; or
      - for other products, the type-certification basis as defined in the type-certificate data sheet of the State of design, if that State of design is:
        - a Member State, unless the Agency determines, taking into account, in particular, airworthiness codes used and service experience, that such type-certification basis does not provide for a level of safety equivalent to that required by the Basic Regulation and this Regulation; or
        - a State with which a Member State has concluded a bilateral airworthiness agreement or similar arrangement under which such products have been certificated on the basis of that State of design airworthiness codes, unless the Agency determines that such airworthiness codes or service experience or the safety system of that State of design do not provide for a level of safety equivalent to that required by the Basic Regulation and this Regulation;
      - The Agency shall make a first evaluation of the implication of these two above provisions in view of producing an opinion to the Commission including possible amendments to the present Regulation.
    - (ii) the environmental protection requirements are those laid down in Annex 16 to the Chicago Convention, as applicable to the product;
    - (iii) the applicable airworthiness directives are those of the State of design.

- (b) The design of an individual aircraft, which is on the register of a Member State before the 28 September 2003, shall be deemed to have been approved in accordance with this Regulation when:
    - (i) its basic type design is part of a type-certificate referred to in paragraph (a);
    - (ii) all changes to this basic type design, which are not under the responsibility of the type-certificate holder, have been approved; and
    - (iii) the airworthiness directives issued or adopted by the Member State of registry before 28 September 2003 are complied with, including any variations to the airworthiness directives of the State of design agreed by the Member State of registry.
  - (c) The Agency shall determine the type-certificate of the products not meeting paragraph (a) before 28 March 2007.
  - (d) The Agency shall determine the type-certificate data sheet for noise for all products covered by paragraph (a) before 28 March 2007. Until such determination, Member States may continue to issue noise certificates in accordance with applicable national regulations.
2. With regard to supplemental type-certificates issued by a Member State under JAA procedures or applicable national procedures and with regard to changes to products proposed by persons other than the type-certificate holder of the product, approved by a Member State under applicable national procedures, where the supplemental type-certificate, or change, is valid on 28 September 2003, the supplemental type-certificate, or change, shall be deemed to have been issued under this Regulation.
3. With regard to products for which a type-certification process is proceeding through the JAA or a Member State on 28 September 2003:
- (a) if a product is under certification by several Member States, the most advanced project shall be used as the reference;
  - (b) 21A.15(a), (b) and (c) of Part 21 shall not apply;
  - (c) by way of derogation from 21A.17(a) of Part 21, the type-certification basis shall be that established by the JAA or, where applicable, the Member State at the date of application for the approval;
  - (d) compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.20(a) and (b) of Part 21;
4. With regard to products that have a national type-certificate, or equivalent, and for which the approval process of a change carried out by a Member State is not finalised at the time when the type-certificate is determined in accordance with this Regulation:
- (a) if an approval process is being carried out by several Member States, the most advanced project shall be used as the reference;
  - (b) 21A.93 of Part 21 shall not apply;

- (c) the applicable type-certification basis shall be that established by the JAA or, where applicable, the Member State at the date of application for the approval of change;
  - (d) compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.103(a)(2) and (b) of Part 21.
5. With regard to supplemental type-certificates for which a certification process is being carried out by a Member State on 28 September 2003 under applicable JAA supplemental type-certificate procedures; and with regard to major changes to products, proposed by persons other than the type-certificate holder of the product, for which a certification process is being carried out by a Member State on 28 September 2003 under applicable national procedures:
- (a) if a certification process is being carried out by several Member States, the most advanced project shall be used as the reference;.
  - (b) 21A.113 (a) and (b) of Part 21 shall not apply;
  - (c) the applicable certification basis shall be that established by the JAA or, where applicable, the Member State at the date of application for the supplemental type-certificate or the major change approval;
  - (d) the compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.115(a) of Part 21.
6. With regard to products that have a national type-certificate, or equivalent, and for which the approval process of a major repair design carried out by a Member State is not finalised at the time when the type-certificate is determined in accordance with this Regulation, compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.433(a) of Part 21.
7. A certificate of airworthiness issued by a Member State attesting conformity with a type-certificate determined in accordance with paragraph 1 shall be deemed to comply with this Regulation.
43. A new article 2b is added to provide a legal basis for the continued operation of the concerned aircraft on the bases developed here above. .

## **Article 2b**

### ***Continued validity of other certificates of airworthiness***

1. With regard to an aircraft that is not eligible to the provisions of Article 2a and that has been issued a certificate of airworthiness before 1 July 2006 by a Member State, and which was on its register on that date, specific certification specifications are deemed to have been issued in accordance with this Regulation under the following conditions:

(a) the applicable specific certification specifications are the type-certificate data sheet or equivalent document of the State of design, provided that State of design has concluded a working arrangement with the Agency covering the continued airworthiness of the design of such an aircraft.

(b) the environmental protection requirements are those laid down in Annex 16 to the Chicago Convention, as applicable to such an aircraft.

(c) the applicable airworthiness directives are those of the State of design.

2. The specific certification specifications referred to in paragraph 1 shall allow the continuation of the type of operations the aircraft is currently entitled to and are valid until 28 March 2012 unless superseded by a type-certificate determined in accordance with this regulation or by additional specific certification specifications determined by the Agency in accordance with this Regulation.

44. The new article 2c includes paragraphs 8 and 13 of the previous Article 2 related to the grand-fathering of parts and appliances approvals.

#### **Article 2c**

##### ***Continued validity of parts and appliances certificates***

1. Approvals of parts and appliances issued by a Member State and valid on 28 September 2003 shall be deemed to have been issued in accordance with this Regulation.
  2. With regard to parts and appliances for which an approval or authorisation process is being carried out by a Member State on 28 September 2003:
    - (a) if an authorisation process is being carried out by several Member States, the most advanced project shall be used as the reference;
    - (b) 21A.603 of Part 21 shall not apply;
    - (c) the applicable data requirements under 21A.605 of Part 21 shall be those established by the relevant Member State, at the date of application for the approval or authorisation;
    - (d) compliance findings made by the relevant Member State shall be deemed to have been made by the Agency for the purpose of complying with 21A.606(b) of Part 21.
45. The envisaged date of entry into force of the amending regulation is 28 March 2007 in order to avoid a vacuum between the end of the transition period specified in the Regulation and the grandfathering



**D. APPENDICES****Attachment 1****Annex II Soviet designed aircraft**

TC holder	Type/model	Fleet in EU	Fleet in Bulgaria	Fleet in Romania
<b>Antonov</b>	An-12		9	
	An-12A		1	
	An-12B		2	
	An-12BP		7	
	An-12P	1	1	
	An-12T	1	1	
<b>Ilyushin</b>	Il-2	2		
<b>Lisunov</b>	Li-2	1		
<b>Mil</b>	Mi-2	28	19	2
	Mi-8		9	
	Mi-8AMT (171)	2		
	Mi-8MTV		2	
	Mi-8MTV-1		5	
	Mi-8P	1	1	
	Mi-8T	9	2	
	Mi-26T		1	
<b>Polikarpov</b>	Po-2	1		
	CSS-13	1		
<b>Yakovlev</b>	Yak-1	1		
	Yak-3 (3+3U+3M)	4		
	Yak-3UA	1		
	Yak-3UTI-PW	1		
	Yak-9U-M	2		
	Yak-11	10		
	Yak-18	4		
	Yak-18A	3		
	Yak-50	40		
	Yak C.11	8		
	Yak C.18A	1		
<b>TOTAL</b>		<b>122</b>	<b>60</b>	<b>2</b>

\*not registered or State Mission

Large transport

Gen Aviation

Rotorcraft

## Attachment 2

## Soviet designed aircraft that could be covered by the revised Annex II

Type	Model	Fleet in EU	Fleet in Bulgaria	Fleet in Romania
Antonov	An-2**	78	148	
	An-2C/H**	3		
	An-2P**	20		
	An-2PD**	2		
	An-2PF**	6		
	An-2PK**	1		
	An-2R**	110		
	An-2T**	31		
	An-2TD**	28		
	An-2T**	33		
	An-2TPD**	1		
	An-2TPR**	1		
Ilyushin	Il-76MD	1		
	Il-76T	3		
	Il-76TD	2		
Yakovlev	Yak-12A	19		
	Yak-12M	32		
	Yak-52	141		3*
	Yak-52TD	4		
TOTAL		516	148	3*

\*not registered or State Mission

\*\* many of these are likely to be in fact of Polish design as PZL aircraft

Large transport

Gen Aviation

## Attachment 3

## Soviet designed aircraft subject to Community law

Type	Model	Fleet in EU	Fleet in Bulgaria	Fleet in Romania
Antonov	An-24		1	
	An-24 PB		1	
	An-26	4	5	
	An-26B	18		
	An-28	7		
	An-72-100	2		
	An-72-100D	1		
	An-74	1		
	An-74-200	1		
	An-74-TK-100	1		
Interavia-Servis	61TA	2		
	70TA	1		
	80TA	1		
	81TA	1		
Kamov	Ka-26	98	43	35
	Ka-32		2	
	Ka-32A11BC	6		
	Ka-32AO		4	
	Ka-32C		1	
	Ka-32T		3	
Sukhoi	Su-26	2		
	Su-26M	5		
	Su-26M2	2		
	Su-29	3		
	Su-31	4		
	Su-31M	3		
	Szu-29	6		
Tupolev	Tu-154M	2*		
Yakovlev	Yak-18T	35	1	
	Yak-40	3		
	Yak-54	1		
	Yak-55	10		
	Yak-55M	2		
TOTAL		220+2	61	35

\*not registered or State Mission

Large transport
Gen Aviation
Rotorcraft