



TERMS OF REFERENCE

Task Nr: 21.010

Issue: 1

Date: 07 December 2009

Regulatory reference:

- Chapter 4 of the Annex 8 to the Convention on International Civil Aviation (ICAO Chicago Convention),
- Article 20 (1) of the Regulation (EC) 216/2008¹ (Basic Regulation),
- Article 2a of the Commission Regulation (EC) 1702/2003²,
- paragraphs 21A.3B and 21B.60 of the annexed Part-21 and their related AMC/GM.

Reference documents:

- Pre-RIA for the rulemaking task 21.010 (Issue of 13.02.2006),
- EASA Airworthiness Directive Policy C.Y001-01 (first issue of 28.07.2008),
- EASA Continuing Airworthiness of Type Design Procedure (CAP) C.P006-01 (issue 2 of 10.03.2008),
- EASA AD workshop with NAAs of 15th October 2008 – Meeting Summary (dated 4th November 2008).

1. **Subject:** Airworthiness Directives (ADs)

2. **Problem/Statement of issue and justification; reason for regulatory evolution (regulatory tasks):**

BACKGROUND

The Convention on International Civil Aviation (ICAO Chicago Convention), and namely its Annex 8, stipulates requirements for the Contracting States in relation to assurance of continuing airworthiness of aircraft, including their engines and propellers. Annex 8 assigns specific responsibilities to those Contracting States involved in the design, manufacture and/or operation of a particular aircraft when executing their roles of "State of Design", "State of Manufacture" or "State of Registry". The overall obligation to assure the continuing airworthiness of aircraft is therefore a shared task with specific responsibilities distributed among various players involved. The term used by ICAO is "mandatory continuing airworthiness information" (MCAI) that is required by Annex 8 to be approved by the State of Design and transmitted to the other Contracting States involved, namely to those which have entered that particular aircraft into their Register.

This mandatory information normally takes the form of an Airworthiness Directive (AD) which is adopted and issued by the State of Design to address a continuing airworthiness issue on a particular aircraft. Such AD requires a mandatory action which

¹ Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC. (OJ L 79, 19.03.2008, p. 1)

² Commission Regulation (EC) 1702/2003 of 24 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 (OJ L 243, 27.9.2003, p. 6). Regulation as last amended by Commission Regulation (EC) 1057/2008 of 27 October 2008 (OJ L 283, 28.9.2008, p. 30).

can bear different forms such as a modification to aircraft design, replacement of parts, an inspection, a new or modified maintenance task or amendments to the operating limitations and procedures (contained normally in Aircraft Flight Manual (AFM)).

In the specific EU situation, given by its specific legal framework defined by the Regulation (EC) No. 216/2008 (the Basic Regulation), the task to fulfil the above ICAO obligations becomes even more complicated by the fact that the Basic Regulation gives exclusive power to the Agency to carry out on behalf of EU Member States the functions and tasks of the state of design, manufacture and registry. However, this power is only limited to cases "when related to design approval" (Article 20 (1) of the Basic Regulation).

PROBLEM/STATEMENT OF THE ISSUE

So far experience from application of the above rules of the Basic Regulation, as further developed by the Commission Regulation (EC) 1702/2003 in Article 2a and paragraphs 21A.3B and 21B.60 of the annexed Part-21, has shown that the above EU specific distribution of responsibilities between the Agency and Member States is causing repetitive interpretation and implementation difficulties, in particular due to differing interpretations of the limitation "when related to design approval". It is not very well appreciated that the distribution of the various responsibilities among different players when solving a continuing airworthiness problem (resulting in an unsafe condition) can be different, depending on the area where the problem originated i.e. design, manufacture or maintenance areas. The issue is not commonly understood by the Agency, the NAAs and/or the other stakeholders (Industry). There is danger that the lack of common understanding could ultimately lead to safety gaps in continuing airworthiness of aircraft.

The Agency reacted to the problem by issuing a policy on ADs (EASA Airworthiness Directive Policy C.Y001-01 of 28.07.2008). The policy aimed to clarify the Agency's interpretation of the applicable EU and ICAO legal framework, specify the role and obligations of the Agency, including interpretation of its limitations in the EU legal framework, and specify the role and obligations of the EU Member States in the MCAI processes. The policy introduced a new concept of the Emergency Conformity Information (ECI) to be used when the Agency does not consider itself to be entitled to issue an AD. It also clarifies the role of EU Member States. It has been identified that the respective roles of the Agency and NAAs related to ADs and ECIs as explained in the policy deserve further clarification in Part-21.

In addition, several other implementation issues related to ADs were identified (specified in section 4 of this ToR) with a need to be considered for amendments to the applicable provisions of Part-21 and/or associated AMC/GM.

3. Objective:

The objective of the task is to propose amendments to the applicable provisions of the Commission Regulation (EC) 1702/2003, its Part-21 and associated AMC/GM in order to:

- identify and remove potential safety gaps between the area of competency of the Agency and that of the EU Member States when reacting to a safety problem by issuance of an AD;
- improve consistency of the Commission Regulation (EC) 1702/2003, its Part-21 and associated AMC/GM with the applicable provisions of the Basic Regulation and the ICAO Annex 8;
- clarify the respective roles of the Agency and the EU Member states in the AD and ECI processes;
- address the specific, AD related implementation issues identified.

4. Specific tasks and interface issues (Deliverables):

The following specific issues should be looked at and, if advisable, proposals for an EASA NPA should be presented:

- a) Evaluate a need for alignment of the applicable provisions of the Regulation (EC) 1702/2003, its Part-21 and the associated AMC/GM with the Basic Regulation and the EASA AD policy to address the following issues:
- b) A need for a clarification of the competence and scope of the Agency when issuing and disseminating mandatory continuing airworthiness information, including determination of the conditions and circumstances in which the Agency is competent to issue an AD.
- c) A need for a clear determination of obligations of EU Member States (to be put in Section B of Part-21) when reacting to mandatory and other continuing airworthiness information issued by the Agency or when fulfilling their own (non-design approval related) responsibilities as the State of Registry in accordance with ICAO Annex 8;
- d) Assess how the above functions and distribution of obligations between the Agency and the Member States conform to the objectives/standards of ICAO Annex 8.
- e) A need for an interpretation of the term "applicable ADs" (Article 2a, (1)(a) (iii) of (EC) 1702/2003 regulation), specifically in relation to ADs issued for "grandfathered" TCs;
- f) A need for a clear indication of the possibility for the Agency to issue ADs for engines, propellers and/or approved parts and appliances, in particular to address situations when an unsafe condition developed at the level of the engine or propeller or an ETSO article and such condition can be determined as generic, i.e. in principle not dependent on any particular aircraft installation;
- g) Means for approval by the Agency of deviations to ADs including Alternative Methods of Compliance (AMOC);
- h) Consideration to a removal of the paragraph 21B.60 from Part-21;
- i) Evaluation of conditions under which an EASA AD can address multiple aircraft types and be addressed to several TC Holders ;
- j) Assess, how to better express in AMC/GM that a preferable solution to an identified unsafe condition is a terminating action through an AD, i.e. an action that will finally remove the unsafe condition from the aircraft;
- k) Investigation and reporting obligations of the design approval holder when responding to an identified unsafe condition, in particular in situations when the unsafe condition originated from maintenance of the aircraft or production issues.
- l) Evaluate if and under which conditions the EASA design approval holders can declare and designate their service information "mandatory" (e.g. in the form of a "Mandatory Service Bulletin") when at the same time it is concluded by the Agency that a mandatory action is not justified because of the absence of an unsafe condition.

5. Working Methods (in addition to the applicable Agency procedures):

Agency

6. Time scale, milestones:

NPA: 2010/Q2

CRD: 2010/Q4

Opinion: 2011/Q2