



## TERMS OF REFERENCE

**Task Nr:** 21.056

**Issue:** 1

**Date:** 3 August 2010

**Regulatory reference:** Regulation (EC) No 216/2008 (Basic Regulation):

- Article 5(4)(a)
- Article 20 (1)(l)

Regulation (EC) No 1702/2003 (Part 21):

- 21A.163(e)
- 21A.263(c)(6)
- 21A.263(c)(7)
- Subpart P - Permit to Fly and related GM/AMC

Regulation (EC) No 2042/2003 (Part-M):

- M.A.711(c)

**Reference documents:** Pre-RIA 21.056

**1. Subject:** Permit to Fly: Issue by the Agency/DOA privileges to approve flight conditions

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

The new Basic Regulation (EC) No 216/2008<sup>1</sup> of 20 February 2008, that replaced the original Basic Regulation (EC) No 1592/2002 of 15 July 2002, has assigned the Agency, in a new paragraph (l) of Article 20(1), with a new competency as follows:

*'To that end, it (the Agency) shall in particular:*

...

*(l) issue permits to fly to aircraft for the purpose of certification under the control of the Agency, in agreement with the Member State in which the aircraft is registered or is to be registered.'*

...

The new competency to issue permits to fly (PtF) by the Agency has not yet been reflected in the Annex (Part 21) to the Commission Regulation (EC) 1702/2003<sup>2</sup> as last amended by Commission Regulation (EC) 1194/2009 of 30 November 2009. Therefore, the above new

<sup>1</sup> 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).

<sup>2</sup> 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) 1194/2009 of 30 November 2009 ((OJ L 321, 8.12.2009, p. 5).

competency cannot be currently exercised by the Agency.

Considering Articles 5(5)(e) and 19(1) of the Basic Regulation requesting the Agency to assist the Commission in adopting the Implementing Rules and their amendments by preparation of drafts thereof, the Agency is legally obliged to act and propose an amendment to the Commission Regulation (EC) 1702/2003 in order to restore its consistency with the Basic Regulation (EC) No 216/2008.

In addition, there is a need to reconsider the relevant DOA privilege limitation to approve flight conditions for 'initial flights' in order to reflect the experience gained from Part 21 Subpart P implementation and recent discussion between the Agency and industry about the Agency's and DOA holder's respective roles.

### 3. Objective:

The objective of this task is:

- To align Regulation (EC) No 1702/2003, and namely the provisions of Part 21 for PtF (Subpart P), with the Basic Regulation No 216/2008 in order to support implementation of the new Article 20(1)(l) by allowing the Agency to issue PtF for the purpose of development/certification flights;
- To reconsider the current limitation in DOA privileges for the approval of the flight conditions for initial flights.

### 4. Specific tasks and interface issues (Deliverables):

Draft an NPA with an amendment to the Part 21, and in particular address the following specific tasks:

- Complement 21A.711 by provisions giving the Agency the competency to issue PtF;
- Define the appropriate conditions under which PtF can be issued by the Agency;
- Determine the intended scope of the new Agency's competency to issue PtF for the purpose of development and/or certification flight testing and its relation to the scope of the competencies already assigned in Part 21 to competent authorities and appropriately approved organisations, in particular design (DOA) and maintenance (CAMO) organisations, by means of their privileges (21A.263(c)(7), M.A.711(c));
- Reconsider the need for the current limitation in DOA privileges to approve flight conditions for 'initial flights' (see 21A.263(c)(6)(i));
- Consider a need for incorporation of explicit requirements on occurrence reporting by holders of approved flight conditions/PtF;
- Consider aspects of necessary co-operation between the Agency and the competent authority of the Member State of aircraft registry in issuance of PtF. In particular consider:
  - Applicable national rules, e.g. for airspace limitations, aircraft registration and insurance, a radio license, flight crew restrictions, etc.;
  - Means of verifying the aircraft configuration conformity;
  - Means of attesting the aircraft conformity with approved flight conditions;
- For each drafted rule assess a need to complement it with appropriate AMC/GM material.

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

Agency

**6. Time scale, milestones:**

NPA: 2010/Q3

CRD: 2011/Q1

Opinion: 2011/Q2