

# EASA

## **TERMS OF REFERENCE**

**TOR Nr:** OPS.004

**Issue:** 1

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### **Regulatory reference:**

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<sup>1</sup> (hereafter referred to as the Basic Regulation).

### **Reference documents:**

Opinion No. 3/2004 of the European Aviation Safety Agency for amending the Basic Regulation to extend its scope to the regulation of pilot licensing, air operations and third country aircraft.

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, "Extending the tasks of the European Aviation Safety Agency – An Agenda for 2010", COM(2005)578 final, 15 November 2005.

Proposal for a Regulation of the European Parliament and of the Council amending the Basic Regulation (presented by the Commission), COM(2005)579 final- 2005/0228(COD), 15 November 2005.

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council amending the Basic Regulation COM(2005) 579 final — 2005/0228 (COD), (C 185, 8.8.2006, p. 106).

Commission Regulation (EC) No 768/2006 of 19 May 2006 implementing Directive 2004/36/EC of the European Parliament and of the Council as regards the collection and exchange of information on the safety of aircraft using Community airports and the management of the information system<sup>2</sup>.

The Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (hereafter referred to as "Chicago Convention").

Relevant regulations by third countries (e.g. Code of Federal Regulations (CFR) Title 14, Aeronautics and Space Part 129 (hereafter referred to as "Title 14 CFR Part 129") of the Federal Aviation Administration and applicable provisions).

### **1. Subject:**

Extension of the Basic Regulation to third-country aircraft.

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

2.1 On 15 November 2005 the European Commission adopted a proposal for a Regulation of the European Parliament and of the Council amending the Basic Regulation [COM(2005) 579 final] based on the European Aviation Safety Agency's (hereafter referred to as EASA) Opinion 3/2004, issued on 16 December 2004 to extend the scope of the Basic Regulation to air operation, pilot licensing and third country aircraft.

The main aspects of the proposal are:

- To give executive powers to the Commission to adopt the necessary implementing rules and to the Agency or the aviation authorities in the Member State, to issue certificates as provided for in recognition agreements
- For the Agency to issue, renew, amend, limit suspend or revoke authorisations with regard to

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

<sup>2</sup> OJ L 134, 20.5.2006, p. 16

operators of aircraft engaged in commercial operations and to conduct investigations and audits.

- For the Agency to receive declarations with regard to non-commercial operations of complex motor-powered aircraft and conduct the oversight of operators from which it has received a declaration.
- To contribute to a high and uniform level of protection of the European citizen by the adoption of common safety rules to include operations of third-country aircraft within or out of the Community, within the limits imposed by the Chicago Convention.

2.2 Furthermore, as is stated in Opinion No. 3/2004 by the EASA “as far as third-country aircraft operations are concerned, EASA is of the opinion that third-country operators must comply with the same strict requirements as imposed on Community operators, when they are within the territory of the European Community. This shall include in particular the obligation for third-country operators to hold a Community certificate.”

2.3 Aware of the need to ensure the safety of the European citizens following accidents involving third-country operators, the legislator adopted Directive 2004/36/CE of the European Parliament and the Council of 21 April 2004 on the safety of third-country aircraft using Community airports and Regulation (EC) No 2111/05 of the European Parliament and the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC. Notwithstanding the success of this legislation, EASA, relayed by the Commission and now the Council is of the opinion that a more pro-active approach towards protecting European citizens was needed to complement them.

2.4 Furthermore, there is a need to restore the level playing field with other countries which impose such a requirement on Community operators flying within the territory of those countries. Recognition agreements concluded between the Community and a third country may provide for the acceptance of certification on the basis of certificates issued by aeronautical authorities of such a third country, consequently relieving undue burden on operators concerned.

2.5 Finally, the long-term goal remains that all Contracting States of the International Civil Aviation Organisation (hereafter referred to as ICAO) fulfil their responsibilities under the Convention which could ultimately make distinct provisions for third country operators obsolete.

### **3. Specific tasks and interface issues (Deliverables):**

3.1 EASA shall develop an opinion for a Commission implementing regulation and related AMC/GM material to regulate the issuance of an authorisation to third-country operators engaged in commercial operations, and as applicable, a declaration for third-country operations of non-commercial complex motor-powered aircraft. The opinion shall include how aircraft or crew, which do not hold a standard ICAO certificate of airworthiness or licence, may be authorised to operate into, within or out of the Community.

3.2 To do so EASA shall:

- review the Chicago Convention, Directive 2004/36/CE, Regulation (EC) No 2111/05, Regulation (EC) No. 768/2006, Title 14 CFR Part 129 and other reference material as appropriate,
- give due consideration to relevant ICAO initiatives including the Universal Safety Oversight Audit Programme (hereafter referred to as USOAP) and in particular, maintain contact with the ICAO Task Force on the Improvement of the Air Operator Certificate to ensure that the interoperability objectives contained in ICAO Standards and Recommendations are taken into consideration so as to avoid disrupting the global system they underpin, and
- give due consideration to the conclusions reached during the legislative process of the amendment of the Basic Regulation, so as to adjust the deliverables to the likely outcome.

3.3 Finally, no preliminary RIA has been developed as it is assumed that the legislator will leave no choice than developing the necessary rules for implementing the extended regulation. It is therefore necessary to carefully evaluate the impact of the regulatory solutions envisaged.

**4. Working Methods** (in addition to the applicable EASA procedures):

The work shall be carried out by the Agency.

**5. Time scale, milestones:**

NPA to be ready by September 2007 and published as soon as the relevant competence has been established.

Opinion to be issued 9 months thereafter.

Executive Director Decisions to be issued after the adoption of the Implementing rules by the Commission.'

These dates may be reviewed taking into account the legislative and comitology processes.