Note 4

Compatibility of the transfer of regulatory tasks to the Agency with the provisions of the Chicago Convention

Article 15(1) of the Basic Regulation states that "the Agency shall (…) carry out on behalf of Member States the functions and tasks of the State of design, manufacture or registry when related to design approval."

The question has been raised whether the issuance by the Agency of TCs is in line with ICAO obligations, because the Community is neither a State nor a member of ICAO and cannot therefore be the 'State of design'. Furthermore it has been suggested for the same reasons, that 'State of design' should be defined with the type-certification process. Also clarification is requested with regard to the situation where the State of design is not the State of registry. Another issue raised is the validity of stating EASA on the TC as State of design.

It follows from Article 15(1) that the Agency exercises as certificating Authority the functions and tasks *on behalf of* the State of design. In doing so the Agency does not become the State of design. The formal ICAO responsibilities remain with the respective Member State (of design). The Agency acts as (certificating) Authority for the State of design.

As such Article 15 is not in contradiction with the ICAO system. The Chicago Convention does not prevent a State to allocate certification tasks to another entity, in this case the Agency. Such functions and tasks may include, for example, the issue of a TC. It should be noted that when the Agency issue a TC under the Basic Regulation, Article 8(1) applies. This means that the Member States (including the Member State of design) is bound by this decision of the Agency.

The Standards and Recommended Practices-SARPs (e.g. in ICAO Annex 8) have laid down a number of tasks to be fulfilled by a State of design. In such case it will be the Agency that will need to carry out these tasks.

Under the ICAO SARPs the State has to maintain a set of national regulations and an administration. This does not mean that the State should itself develop and establish the regulations. It is understood that the national regulations are those laid down under the EASA framework. In this respect the Regulations are directly applicable and as such become part of the national legal order. In this way the relevant Member State has complied with its ICAO obligations. Where administration is concerned, the Agency can act as the competent authority for the Member State.

Where the State of design is not the State of registry, the Agency shall establish the necessary procedures so that the Member State can fulfill its ICAO obligations under Annex 8 Chicago Convention. In this respect the core group dealing with regulatory

interactions has made a number of recommendations concerning *inter alia* the transfer of mandatory airworthiness information, circulation of safety information related to EASA TC and the relationship between the foreign State of design and the Agency or individual Member States.

There are no legally binding ICAO obligations requiring the State of design to be expressly mentioned in a TC. The requirement is to indicate which authority is responsible for the implementation of the obligations of the State of design, in our case the Agency. As such it is not contradictory to ICAO to refer to the Agency in the TC and related documents.