



## Terms of Reference

for a rulemaking task

# Non-commercial operations of aircraft listed in the operations specifications by an AOC holder

RMT.0352 (OPS.075 (A)) AND RMT.0353 (OPS.075 (B)) – ISSUE 1 – 4.12.2013

<b>Applicability</b>		<b>Process map</b>	
Affected regulations and decisions:	Annex I - Definitions, Annex III - Part ORO, Annex VIII Part SPO, and associated Decisions	Rulemaking lead:	R3
Affected stakeholders:	CAT Operators	Concept Paper:	No
Driver/origin:	Safety	Rulemaking group:	Yes
Reference:	Safety recommendations FRAN-2009-003, FRAN-2009-004; BEA report ISBN 978-2-11-098614-6.	RIA type:	Light
		Technical consultation during NPA drafting:	No
		Publication date of the NPA:	2015/Q1
		Duration of NPA consultation:	3 months
		Review group:	Yes
		Focused consultation:	TBD
		Publication date of the Opinion:	2016/Q3
		Publication date of the Decision:	2017/Q3

## 1. Issue and reasoning for regulatory change

AOC holders carry out a variety of so-called non-revenue flights. As the term used in Commission Regulation (EU) No 965/2012 on Air operations Subpart ORO.AOC.125<sup>1</sup> is non-commercial flights', this is the term that will be used in the future when referring to non-revenue flights.

For clarification purposes, commercial operation is defined in Article 3 (i) of Regulation EC No 216/2008 (hereinafter referred to as the 'Basic Regulation'), as 'any operation of an aircraft, in return for remuneration or other valuable consideration, which is available to the public or, when not made available to the public, which is performed under a contract between an operator and a customer, where the latter has no control over the operator'.

On the one hand, non-commercial operations comprise several types of aircraft operations for which there is no remuneration or other valuable consideration. They are performed without paying passenger/cargo/mail transportation. The purpose of such flights is mainly to demonstrate, check or ferry/position the aircraft. On the other hand, there are flights, in particular in the business aviation sector, where remuneration or other valuable consideration is involved, but which are not available to the public and where the customer or aircraft owner exercises some control over the AOC operator.

Under ORO.AOC.125, AOC holders must obtain prior approval for their operating procedures for non-commercial flights. It may be difficult for the competent authority to oversee a consistent implementation of safety measures for these flights without having any common EU rules or standards. The risk assessment and the mitigation measures proposed by various operators for the same type of non-commercial operations that they perform may have different reference scales.

Moreover, the terminology used by the industry to name different types of non-commercial flights is diverse. This could also generate misunderstanding and inappropriate operational framework among operators.

A number of occurrences took place during the past years. The following shortcomings were identified after the investigation of these occurrences:

- Great diversity in the description given by the operators regarding the procedures for non-commercial flights;
- No clear definition and requirements in EU-OPS for the different non-commercial flights;
- Lack of any indication as to the standards the operators should follow to establish an appropriate performance of non-commercial flights;
- Absence of minimum criteria for the selection of flight crews to perform these flights; and
- Improvisation in the flight plan and increase of workload for the flight crew during flight phases.

The purpose of this task is to improve the level of safety for non-commercial flights operated by AOC holders by bringing more clarity in the identification of non-commercial operation categories and by establishing common standards as regards operating procedures and flight crew qualification and training.

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<sup>1</sup> ORO.AOC.125 Non-commercial operations of aircraft listed in the operations specifications by the holder of an AOC in Commission Regulation (EU) No 965/2012 on Air Operations, Annex III Organisation Requirements for Air Operations.

### 1.1. Origin of task

The Agency included this task in its rulemaking programme following the safety recommendations addressed by BEA in its investigation of the 'Perpignan accident' (a flight 'to check systems at the end of a leasing agreement')<sup>2</sup>.

Furthermore, while drafting the initial air operations implementing rules, it surfaced that different practices are applied in the EASA Member States – several requiring full compliance with Part CAT rules for all flights, others declaring that such flights are to be carried out in accordance with the applicable national non-commercial rules, and some applying a mixed system depending on the flight.

### 1.2. Current regulatory framework

In Commission Regulation (EU) No 965/2012 on Air Operations<sup>3</sup>, ORO.AOC.125 *Non-commercial operations of aircraft listed in the operations specifications by the holder of an AOC*, non-commercial flights are mentioned in relation with the holders of an AOC as 'non-commercial operations with an aircraft otherwise used for commercial air transport operations that is listed in the operations specifications of its AOC'. Further requirements imposed on the AOC holder refer to the operations manual which must include 'the identification and a description of the applicable requirements; a clear identification of any difference between operating procedures used when conducting commercial and non-commercial operations', as well as 'a means of ensuring that all personnel involved in the operation are fully familiar with the associated procedures'. ORO.AOC.125 also requires that the differing operating procedures must be submitted to the competent authority for prior approval.

The provisions above were introduced in the initial OPS rules to cover the period until this rulemaking task would start to examine the issue in more detail.

AOC holders may also conduct commercial operations other than CAT. Such operations are classified as Specialised Operations (SPO). Taking into account the recent EASA Committee vote on the Opinion on Part SPO, such operations will fall under a declaration scheme; they could also be subject to a high-risk specialised operations authorisation. As this concept is distinct from the one applying to CAT operations, an AOC holder wishing to conduct commercial operations other than CAT will have to comply fully with Part SPO and associated procedures.

Likewise, AOC holders who are also an Approved Training Organisation (ATO) have to comply fully with the applicable operating rules for ATO.

This task will only be applicable to AOC holders who perform both CAT flights and non-commercial flights with the aircraft listed in the operation specifications of their AOC.

### 1.3. Issues to address

This task will address the following safety recommendations from BEA<sup>4</sup>:

- 'That EASA detail in the EU-OPS the various types of non-revenue flights that an operator from a EU state is authorised to perform,

<sup>2</sup> BEA Report on the Accident on 27 November 2008 off the coast of Canet-Plage (66) to the Airbus A320-232 registered D-AXLA operated by XL Airways Germany. ISBN: 978-2-11-098614-6.

<sup>3</sup> [Commission Regulation \(EU\) No 965/2012](#) of 05/10/2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council. (OJ L 296, 25.10.2012, p.1)

<sup>4</sup> FRAN-2009-003; FRAN-2009-004.

- That EASA require that non-revenue flights be described precisely in the approved parts of the operations manual, this description specifically determining their preparation, programme and operational framework as well as the qualifications and training of crews.'

This task will not address the following aspects:

- Flights related to design and production activities (also known as manufacturer flights) as they are detailed in the Agency's RMT.0348 (OPS.073 (a)) and RMT.0349 (OPS.073 (b)); and
- Maintenance check flights as they are covered by the Agency's RMT.0393 (OPS.097 (a)) and RMT.0394 (OPS.097 (b)).

However, it may complement them in the unspecified or uncovered areas.

## 2. Objectives

The objectives of the European Union in the field of civil aviation are defined in Article 2 of the Basic Regulation. This proposal will contribute to these objectives by addressing the issues outlined in Section 1.

The specific objectives of this proposal are:

- to identify the categories of flights which are considered non-commercial flights of AOC holders;
- to standardise the unofficial terms used and to have a clear understanding of the different categories of non-commercial flights;
- to specify standards for non-commercial operations of AOC holders related to the preparation, programme and operational framework, as appropriate;
- to establish the minimum requirements for qualifications and training of the crews for each type of non-commercial flight of AOC holders, as appropriate; and
- to harmonise implementation.

## 3. Activities

To achieve the objectives of this task, the Agency will:

- collect and analyse the currently applied practices;
- assess occurrences of the past 10 years and analyse, within the group of experts, the common grounds of these occurrences and possible mitigation strategies to prevent re-occurrence; and
- assess the risk involved in different categories of non-commercial flights and define mitigating measures that could be specified in common rules. Such mitigating measures could include the stipulation of specific operating procedures or qualifications and training provisions for crew.

This task is linked with one other Rulemaking task in progress –Maintenance Check Flights (MCF) (RMT.0393 (OPS.097 (a)) and RMT.0394 (OPS.097 (b))). MCF are considered to be one type of non-commercial flight. This task is in the process of proposing additional rules for MCF, applying to any operator except those operating ELA 1 and 2 aircraft.

As regards definitions, some overlap may appear with the ongoing task on Flights related to Design and Production Activities (RMT.0348 (OPS.073 (a)) and 0349 (OPS.073 (b))). However, RMT.0348 (OPS.073 (a)) and RMT.0349 (OPS.073 (b)) are addressing flight of design and production organisations within their scope of privileges, while this task is addressing CAT operators.

## 4. Deliverables

- Develop a Regulatory Impact Assessment (RIA);
- Develop the Notice of Proposed Amendment (NPA);
- Develop an Opinion with draft Implementing Rules relating to Annex I – Definitions, Annex III - Part ORO or Annex VIII - Part SPO;
- Develop and amend, as appropriate, related Agency Decisions.

**Note:** Coordination with RMT.0348 (OPS.073 (a)) and RMT.0349 (OPS.073 (b)) ('manufacturer flights'), RMT.0393 (OPS.097 (a)) and RMT.0394 (OPS.097 (b)) ('maintenance check flights'), as well as with RMT.0581 and RMT.0582 ('Loss of control prevention and recovery training') is foreseen so as to avoid any duplication, overlapping or contradiction.

## 5. Profile and contribution of the rulemaking group

The expertise required from the rulemaking group members will be necessary in order to gather information on the current practices, to identify risks and regulatory mitigating measures and to provide input to the RIA. The suggested working methods will be agreed upon with the entire group.

Profile of the potential rulemaking group and its members:

- Specific expertise and work experience in operators conducting both commercial and non-commercial flights;
- Safety risk assessment specialists for flight operations;
- Pilot training experts; and
- Authority inspectors experienced in overseeing such activities.

The group should have a mixed and balanced composition of competent authority representatives, airline operators and pilots.

Their expertise will be requested to achieve the objectives of this task.

## 6. Annex I: Reference documents

### 6.1. Affected regulations

Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012) – Annex I – Definitions, Annex III – Part ORO, Annex VIII – Part SPO.

### 6.2. Affected decisions

- ED Decision 2012/015/R on Acceptable Means of Compliance and Guidance Material to Part Definitions (OPS - Annex I)
- ED Decision 2012/017/R on Acceptable Means of Compliance and Guidance Material to Part ORO (OPS - Annex III)
- ED Decision xxxx/xxx/R on Part SPO

### 6.3. Reference documents

EASA SIB 2011-07