

Appendix 3: Repetitive exemption definition

Background

Basic Regulation (BR) 216/2008 article 14.4 on flexibility provisions:

"Member States (MS) may grant exemptions from the substantive requirements laid down in this Regulation and its IR in the event of unforeseen urgent operational circumstances or operational needs of a limited duration, provided the level of safety is not adversely affected.

The Agency, the Commission and the other MS shall be notified of any such exemptions as soon as they become **repetitive** or where they are granted for periods of more than two months."

What is an exemption that becomes repetitive?

In order to ensure a common understanding of the BR by all MS and a harmonized implementation, the Agency has proposed to AGNA members in July 2010 some elements to help defining what a repetitive exemption is. Following some comments received by AGNA members, the original paper was reviewed and following definition is now proposed for NAA/MS.

This definition does not constitute an exhaustive list of elements to be considered. The aim of this paper is to cover most of the basic cases. Depending on the circumstances, a case by case approach can still be needed.

1. An exemption can be considered as repetitive only in the context of the relevant MS, meaning that an exemption granted by one MS is not considered as repetitive if another MS has already granted a similar exemption.
2. For the determination of a repetitive exemption, the unique identity of an exemption shall be governed by:
 - the person or organisation it is issued to;
 - the products, persons or organisations exempted
 - the rule or requirement that is exempted from; and
 - the date of issue.

Where an exemption is issued to a person or organisation and the MS/NAA is requested to issue a further exemption to the same person or organisation against the same requirement for the same product, person or organisation, this shall be considered as a repetitive exemption.

This is the case of an extension in time of an existing exemption, or the case of the renewal of an exemption that has already expired. In this case, the "repetitive" exemption is granted against the same requirement, to the same person or organisation for the same product, person or organisation.

The reason may be different (the operational need or urgent operational circumstance can evolve).

The safety justifications and mitigating measures can also be different (due to the different timeframe, additional justifications or different measures can be needed).

Furthermore, the duration of the initial exemption is irrelevant: whether it was granted for one day or for two months. As soon as it is renewed it becomes repetitive.

Examples of repetitive exemptions

A first exemption is delivered to an airline for a non approved change installed on an aircraft A for 2 months.

Then the second exemption issued to extend the 2 months with 2 additional months for the same aircraft A will be considered as a repetitive exemption. The second exemption is granted to the same organisation to the same product against the same requirement.

3. The following shall not be considered to be repetitive exemptions:

- An exemption is issued to a person or organisation against the same requirement, but for a different product(s) or person(s);
- An exemption is issued to the same person or organisation against a different requirement, but for the same product(s)/person(s);
- An identical exemption is issued to another person or organisation;
- An identical exemption issued by another Member State.

Where an exemption is re-issued to correct an error, and the validity of the revised exemption does not exceed 2 months from the date of issue of the original exemption, this will not be considered to be a repetitive one.

Examples of non repetitive exemptions

- A first exemption is delivered to an airline for a non approved change installed on an aircraft A for 2 months.
If 6 months later, a second exemption is issued for the same non approved modification but on a different aircraft (aircraft B), this exemption should not be considered as a repetitive exemption. The aircraft B can be part of the same airline, be part of another airline (in the same MS or in another MS). The aircraft B may be of the same type or not of the same type as aircraft A.
- An AD has not been implemented within the given timeframe.

If an airline X requests for an exemption against Part M.A.301 for aircraft A, and some months after, requests for the same exemption for aircraft B, then the second exemption applicable to the aircraft B should not be considered as repetitive.

If an airline Y, in the same MS applies for an exemption against Part M.A.301 concerning the same AD for an aircraft C, this exemption should also not be considered as repetitive.
