

**OPINION No 2/2004**

**OF THE EUROPEAN AVIATION SAFETY AGENCY**

**for amending Commission Regulation (EC) No 2042/2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances and on the approval of organisations and personnel involved in these tasks, to allow the Agency to make use of some of the provisions of its article 7.**

## **I. General**

1. The purpose of this Opinion is to suggest the Commission amend Article 7 (entry into force) to the Commission Regulation (EC) No 20042/2003<sup>1</sup> so as to allow the Agency to also make use of some of its provisions.
2. This Opinion has been adopted, following the procedure<sup>2</sup> specified by the Agency's Management Board, in accordance with the provisions of Article 14 of the EASA Regulation<sup>3</sup>.

## **II. Consultation**

3. The draft Opinion for a Commission Regulation amending Commission Regulation (EC) No 2042/2003 was published on the Agency website ([www.easa.eu.int](http://www.easa.eu.int)) on 31 July 2004 (NPA No 7/2004).
4. Considering the nature of the proposal and the urgency of the envisaged measure, the Agency decided to reduce the length of the consultation period to six weeks in accordance with Article 6(5) of the EASA Rulemaking procedure.
5. By the closing date of 14 September 2004, the Agency had received 12 comments from 10 persons, national authorities, private companies or trade organisations.
6. All comments received have been acknowledged and incorporated into a Comment Response Document (CRD). This CRD contains a list of all persons and/or organisations that have provided comments. It is widely available through the Agency website. Again, in view of the urgency and the large support for, the suggested measure, the Agency decided not to wait the minimum two months specified in the above mentioned rulemaking procedure before issuing this opinion.

## **III. Content of the Opinion of the Agency**

7. In November 2003, the European Commission adopted Regulation (EC) No 2042/2003. During the discussion related to the adoption of the said Regulation, the subject of its entry into force was addressed. This resulted in the conclusion that the entry into force of some provisions should be progressive. It was also agreed that the pace at which these provisions would be implemented should be left to Member States to decide, as they have a better knowledge of the state of

---

<sup>1</sup> Commission Regulation (EC) No 2042/2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks. OJ L 315, 28.11.2003, p. 1.

<sup>2</sup> Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of Opinions, Certifications Specifications and Guidance Material. EASA MB/7/03 of 27.06.2003.

<sup>3</sup> Regulation (EC) No 1592/2002 of the European Parliament and of the Council. OJ L 240, 7.9.2002.

readiness of their industry to do so. This led to the opt-out provisions of Article 7 allowing Member States to postpone the entry into force of certain provisions of Regulation (EC) No 2042/2003.

8. In the case of Annex II (Part-145),
  - the provisions of:
    - 145.A.30(e), human factors elements,
    - 145.A.30(g), as applicable to large aircraft with a maximum take-off mass of more than 5700 kg,
    - 145.A.30(h)(1) as applicable to large aircraft with a maximum take-off mass of more than 5700 kg,
    - 145.A.30(j)(1) Appendix IV, and
    - 145.A.30(j)(2) Appendix IVcould be postponed until 28 September 2006 and
  - the provisions of:
    - 145.A.30(g), as applicable to large aircraft with a maximum take-off mass of 5700 kg or below,
    - 145.A.30(h)(1), as applicable to large aircraft with a maximum take-off mass of 5700 kg or below, and
    - 145.A.30(h)(2)could be postponed until 28 September 2008.
9. Unfortunately, this discussion focussed on European organisations and the case of the foreign ones was overlooked. This results in the impossibility for the Agency to postpone the entry into force of the above paragraphs of Annex II (Part-145) for the organisations for which it acts as competent authority. As certain provisions are linked to the implementation of other annexes such as Annex III (Part 66), it will be impossible for these organisations to implement the rule. Furthermore, this situation could be felt as discriminatory by certain foreign maintenance organisations.
10. The Agency considered therefore necessary to urgently amend Article 7 of Regulation (EC) No 2042/2003 to allow it to also make use of the opt-out provisions of this article. Such an amendment should be made before 28 November 2004 (end of the transition period included in the Commission Regulation for closing findings related to the differences between Part 145 and the former applicable rules based on JAR145) to avoid several foreign organisations to be in an illegal situation beyond that date.
11. As the Agency only issues approvals of an unlimited duration, it is not felt necessary to include a provision allowing the Agency to make use of an opt-out for Article 7(4).
12. It is the Agency's opinion that the Commission should modify Article 7 of Regulation (EC) No 2042/2003:
  - to add a new Article 7(6) so that the text would read as follows:

“6. By way of derogation from paragraph 1 the Agency may elect not to apply:

- (a) the following provisions of Annex II, until 28 September 2006:
  - 145.A.30(e) human factors elements,
  - 145.A.30(g) as applicable to large aircraft with a maximum take-off mass of more than 5700 kg,
  - 145.A.30(h)(1) as applicable to aircraft with a maximum take-off mass of more than 5700 kg,
  - 145.A.30(j)(1) Appendix IV,
  - 145.A.30(j)(2) Appendix IV.
- (b) the following provisions of Annex II, until 28 September 2008:
  - 145.A.30(g) as applicable to aircraft with a maximum take-off mass of 5700 kg or below,
  - 145.A.30(h)(1) as applicable to aircraft with a maximum take-off mass of 5700 kg or below,
  - 145.A.30(h)(2).

- to create a new Article 7(7) that would read as follows:

“7. When the Agency makes use the provisions of paragraph 6 it shall notify the Commission.” and

- to renumber Article 7(6) into 7(8).

#### **IV. Regulatory Impact Assessment.**

13. The proposal is expected to have only a positive impact as it will give foreign organisations and the Agency the same progressive implementation calendar as that available for organisations located in the territory of Member States.

Brussels, 1 October 2004

P. Goudou  
Executive Director