

**Comment Response Document (CRD)  
to Notice of Proposed Amendment (NPA) 09-2005**

**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**

**AND**

**for amending Commission Regulation (EC) No 1702/2003, laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations**

**Principal place of business**

## **Explanatory Note**

### **I. General**

1. The purpose of the Notice of Proposed Amendment (NPA), dated 21 November 2005, was to propose an amendment to 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, and to Commission Regulation (EC) No 1702/2003, laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations.

### **II. Consultation**

2. The draft Opinion amending Commission Regulations (EC) No 2042/2003 and (EC) No 1702/2003 was published on the web site ([www.easa.europa.eu](http://www.easa.europa.eu)) on 22 November 2005.

By the closing date of 22 February 2006, the Agency had received 28 comments from 14 national authorities, professional organisations and private companies.

### **III. Publication of the CRD**

3. All comments received have been acknowledged and incorporated into a Comment Response Document (CRD). This CRD contains a list of all organisations that have provided comments and the answers of the Agency.
4. In responding to comments, a standard terminology has been applied to attest EASA's acceptance of the comment. This terminology is as follows:
  - **Accepted** – The comment is agreed by the Agency and any proposed amendment is wholly transferred to the revised text.
  - **Partially Accepted** – Either the comment is only agreed in part by the Agency, or the comment is agreed by the Agency but any proposed amendment is partially transferred to the revised text.
  - **Noted** – The comment is acknowledged by the Agency but no change to the existing text is considered necessary.
  - **Not Accepted** - The comment is not shared by the Agency
5. The Agency's Opinion will be issued at least two months after the publication of this CRD to allow for any possible reactions of stakeholders regarding possible misunderstandings of the comments received and answers provided.
6. Such reactions should be received by EASA not later than **1<sup>st</sup> October 2006** and should be sent by the following link: [CRD@easa.europa.eu](mailto:CRD@easa.europa.eu);

Com-ment #	Para	Commentor	Comment/Justification	Response	Resulting text
1.	Draft Opinion (EC) No 2042/2003 Paragraph 3) to 145.1 of Annex II	Snecma	<p>“3. For the purpose of this regulation and regarding organisations included within its Annex II, principal place of business is intended to mean <u>the place where most of the personnel are performing the activity of Part 145, including some of the personnel of 145.A.30 having direct authority in the name of the accountable manager to manage the activity, the organisation site from which the organisation’s management personnel specified in 145.A.30 directs, controls or co-ordinates its technical activities, ensuring that the organisation complies with the requirements of Part 145”</u></p> <p>Justification: The current definition of principal place of business is linked to the management personnel specified in 145.A.30. For large organisations, this definition can point to several sites depending on the level of management that is considered, from Chief Executive to direct management personnel.</p>	<p>Partially accepted: The key place is the location where most of the personnel performing managerial activities are. In case of needs, the legal entity responsible for suing will be the one at the location of the company where the majority of management personnel are. Legally speaking, actions should have to be taken at the level of the management.</p> <p>Refer to comment #19 for final resulting text</p>	<p>“3. For the purpose of this regulation and regarding organisations included within its Annex II, principal place of business is intended to mean the organisation site from which <u>the majority of the organisation’s management personnel specified in 145.A.30 (a)(b) directs, controls or co-ordinates its technical activities, ensuring that the organisation complies with the requirements of Part-145”</u></p>
2.	Draft Opinion (EC) No 1702/2003 Point (c) to 21.1 of the Annex	Snecma	<p>”c) For the purpose of this regulation and regarding organisations included within its Annex, principal place of business is intended to mean the organisation site where the personnel specified in 21.A125(b)3 perform their activities under Part 21 Subpart F, and where <u>the appropriate personnel of the production organisation of Part 21 subpart G is issuing authorised release certificates in accordance with the privileges granted in 21.A163, the organisation personnel specified in paragraph 21A.145(e) directs, controls or co-ordinates its technical activities, ensuring that the organisation complies with the requirements specified in Part 21 Subpart G.”</u></p> <p>Justification: The current definition of principal place of business is linked to the management personnel specified in 21A.145(c). For large organisations, this definition can point to several sites depending on the level of</p>	<p>Partially accepted</p> <p>The current definition of “principal place of business” should be linked to the management personnel specified in 21A.125(b)3</p> <p>Refer to comment #19 for final resulting text</p>	<p>”c) For the purpose of this regulation and regarding organisations included within its Annex, principal place of business is intended to mean the organisation site where the personnel specified in 21.A125(b)3 perform their activities under Part 21 Subpart F, and where <u>the majority of the organisation personnel specified in paragraph 21A.145(c) directs, controls or co-ordinates its technical activities, ensuring that the organisation complies with the requirements specified in Part 21 Subpart G.”</u></p>

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			management that is considered; it can range from the site of the Chief Executive to the site of direct management personnel. Therefore we propose to designate rather the site where products, parts or appliances receive their autorised release certificate.		
3.	General	Austro Control	Austro Control is fully supporting NPA 09/2005.	Noted	
4.	Explanatory Note General comments Paragraphs 11, 12, 13, 14, 16, 21, 22	The Salaried Employees' Union HTF	<p>§§ 11-13. Principal place of business as a connecting factor in respect to a regulating authority is logical. Furthermore, as management is both legally and financially responsible, it is necessary to connect them through the definition. However the notion of temporary sojourn, brought up in § 13 is of concern and would justify a more clearly established link between management and the activity or business involved. Without this link, the seat of management could be moved "permanently" while the major activity remains in its original location.</p> <p>§ 14. The third point raised, "...it is also less relevant that the principal place of business be where the production lines...are" avoids the issue. More or less relevant is misleading, as in point of fact, if business is to be described as a given commercial activity, the principal place of such activity may be most easily identified by the location of a greater number of employees, performing this activity. Management and productive employees cannot be separated in respect to principal place of business.</p> <p>§ 16. This note describes a situation which must be avoided at all costs: corporate authority resides in (or moves to) a member state other than that of principal production, requiring the competent authority to "make arrangements with the authority of the Member State where the production line...is located..." The note assumes that such a cooperation is intrinsically</p>	<p>Not accepted</p> <ul style="list-style-type: none"> <li>- The location of the registered office legally defines the entity in case of lawsuit.</li> <li>- For organisations located in several Member States, cooperation and continued oversight through mutual exchange of information shall be given according to M.B.105, 145.B.15, 21B.25 (b)2.</li> <li>- The Agency gives credit to the social aspect but it is regulated by another set of rules; regulations2042/2003 and regulation 1702/2003 only deal with safety.</li> </ul>	

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			<p>implied, without reference to appropriate legislation regulating oversight.</p> <p>§ 21. This note admits the problem evoked above, but does not take it seriously. A definition separating physically management from production and employees opens the door for flag of convenience operations. The mitigating factors are neither strong nor clear enough to satisfy the need for a better regulation to ensure social stability.</p> <p>§ 22. We disagree with the conclusion of the impact assessment and hold that there is a greater risk of detrimental social impact than implied by the explanatory notes.</p> <p>Justification: Principal place of business should not be defined <u>solely</u> by location of management with corporate authority, but should also take into account the location of the primary corporate activity, most easily identified by the location of a major portion of the employees.</p>		
5.	<p>Draft Opinion 2042/2003</p> <p>General comments</p> <p>New § 5. to M.1 of Annex I to Commission regulation (EC) N°2042/2003</p>	<p>DGAC France</p>	<p>Modify the proposed text as follows : “5. For the purpose <u>of</u> this regulation and regarding organizations included within its Annex I [...]”</p> <p>Apart from this editorial comment, DGAC_F has no objection to the proposed changes to Annex I to Commission regulations (EC) No 2042/2003, regarding the principal place of business.</p> <p>Justification: Editorial</p>	<p>Accepted</p> <p>Refer to comment #19 for final resulting text</p>	<p>“5. For the purpose <u>of</u> this regulation and regarding organisations included within its Annex I, principal place of business is intended to mean the organisation site from which the organisation’s management personnel specified in M.A.606 directs, controls or co-ordinates its technical activities, ensuring that the organisation complies with the requirements of Part-M.”</p>

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6.	Draft Opinion 2042/2003  General comments  New § 3. to 145.1 of Annex II to Commission regulation (EC) N°2042/2003	DGAC France	Modify the proposed text as follows : “3. For the purpose <u>of</u> this regulation and regarding organizations included within its Annex II [...]”  Apart from this editorial comment, DGAC_F has no objection to the proposed changes to Annex II to Commission regulations (EC) No 2042/2003, regarding the principal place of business.  Justification: Editorial	Accepted	See comment #1 and refer to comment #19 for final resulting text
7.	Draft Opinion 2042/2003  General comments  New § 3. to 147.1 of Annex IV to Commission regulation (EC) N°2042/2003	DGAC France	Modify the introducing sentence of the proposal as follows : “ <u>c</u> <del>b</del> ) It is proposed to add [...] to 147.1 of Annex <del>III</del> <u>IV</u> to [...]”  Modify the proposed text as follows : “3. For the purpose <u>of</u> this regulation and regarding organizations included within its Annex IV [...]”  Apart from this editorial comments, DGAC_F has no objection to the proposed changes to Annex IV to Commission regulations (EC) No 2042/2003, regarding the principal place of business.  Justification: Consistency with the text of the proposed amendment + Editorial	Accepted	“3. For the purpose <u>of</u> this regulation and regarding organisations included within its Annex IV, principal place of business is intended to mean the organisation site from which the <u>majority</u> of the organisation’s management personnel specified in 147.A.105 directs, controls or co-ordinates its technical activities, ensuring that the organisation complies with the requirements of Part-147”
8.	Draft Opinion 1702/2003  General comments  New § (c) to 147.1 of Annex IV to Commission regulation (EC) N°1702/2003	DGAC France	Modify the proposed text as follows : [...] For the purpose <u>of</u> this regulation and regarding organizations included within its Annex [...]”  Apart from this editorial comment, DGAC_F has no objection to the proposed changes to the Annex to Commission regulations (EC) No 1702/2003, regarding the principal place of business.  Justification: Editorial	Accepted	See comment #2 and refer to comment #19 for final resulting text

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9.	General comments	FAA	<p>Question: Item 13 of the subject document - what is "...and would not include a temporary place of sojourn during ad hoc negotiations" mean?</p>	<p>Noted</p> <p>In case of transitory period (ex: two companies merge), the legal entity remains the one before the merging, avoiding any temporary place of sojourn, to move rapidly from one state to another one.</p>	
10.	General comments	FAA	<p>Item 14 states that under the JAA system, when the organization had facilities in more than one JAA state, the JAT-145 approval was granted by the JAA state in whose state the primary maintenance facility of the organization was located.</p> <p>Item 16, states "Also enforcement actions may be easier because the key personnel is residing in the same country as the competent authority. Such choice may imply that the competent authority may have to make arrangements with the authority Member State where the production line, maintenance facility or training facility is located to ensure appropriate oversight."</p> <p>My comment is: If the a company's "Principal Place of Business" (not co-located with the company's maintenance facility) is located in Germany, then the LBA has responsibility in dealing with the company (including enforcement actions), but the maintenance facility is located in France, then the DGAC has surveillance responsibility. How does the LBA do the enforcement when DGAC is doing the surveillance?</p>	<p>Noted</p> <p>For organisations located in several Member States, cooperation and continued oversight through mutual exchange of information shall be given according to M.B.105, 145.B.15, 21B.25 (b)2.</p> <p>In the quoted example, DGAC will act on behalf of the LBA that remains legally entitled to enforcement actions. DGAC will report to LBA. It may include communication with the Agency (Quality / Standardisation Directorate).</p>	

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11.	Draft Opinion (EC) No 2042/2003 (EC) No 1702/2003 General comments	European Regions Airline Association (ERA)	<p>Whilst ERA support this NPA in principle, we would like to state that, if this NPA is adopted, any definition of principal place of business that is bought into law through the amendment of Regulation 1702/2003 and 2042/2003 should apply only to the technical (not commercial) regulation of our industry.</p> <p>Justification: In no way should these definitions be used in any current or future EU regulations (or amendments thereto) that define the principal place of business for an operational airline that could be used as a “flag of convenience”, thus allowing a non-EU based airline to register it’s principal place of business in an EU Member State and consequently take advantage of the associated traffic rights and freedoms inferred or implied.</p>	<p>Noted</p> <p>The Agency’s remit for this NPA is technical. This comment should be addressed in the future EU regulations if necessary.</p>	
12.	Draft Opinion (EC) No 1702/2003 IR Certification Annex Part 21, proposed Section 21.1(c) and existing 21.1(a) General comments	Airbus Germany	<p>With regard to Section 21.1 “General”, clarification is needed for Design Organizations approved under Part 21 Subpart J.</p> <p>This could be done with additional language in the rule or an EASA Guidance Material:</p> <p>- Proposal for additional rule language: Add a subsection saying “(d) the determination of Competent Authorities in subsection (a) do not apply for organizations approved under Subpart J. The Agency approves and oversees Subpart J organizations independent of their principal place of business.”</p> <p>- Proposal for a GM 21.1: “Basic Regulation EC 1592/2002 lays down the Agencies’ responsibility for approval and oversight of all design organizations located in the EU Member States. A definition of a Competent Authority and principal place of business for Subpart J organizations is not necessary to enforce compliance with Part 21.”</p>	<p>Partially accepted. Noted</p> <p>There is no need to update as the “competent authority” is not used in Part 21 Subpart J.</p> <p>The agency approves and oversees Subpart J organisations independent of their place of business</p>	21.1 General

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			<p>Justification: Annex Part 21 should be comprehensive without reading in parallel the Basic Regulation EC 1592/2002.</p> <p>Part 21 Section 21.1 “General” as written today could be understood as being applicable to all organizations regulated by this Part. The proposed Subsection (c) defines principal places of business only for Subpart F and G organizations. Subsection (a) does not differentiate between Part 21 organizations. There is also no reference to the Basic Regulation or information that the Agency is the competent Authority for all Subpart J organizations, independent of their principal places of business.</p>		
13.	Draft Opinion (EC) No 2042/2003 Paragraph 3) to 145.1 of Annex II	Airtronic Aviation	<p>This proposal is a non sense in our concern, this is the story: Between 2001 and 2004, as small organization established in Belgium, we tried to grant a part 145 agreement, scope of work C2 and C3, and we never been recognized PART 145 compliant by Belgium CAA nor successful. However: - Our MOE has been audited by the BUREAU VERITAS France and stated in compliance with regulation EC 2042/2003 by 31 march 2004. - Internal quality audit has been performed by SABENA TECHNICS and stated in compliance with JAR 145 by 10 June 2003. - Both were never been “acceptable” by BCAA</p> <p>So, when it was becomes clear for us that is was impossible to grant a PART 145 agreement in our country (we are not alone), we had talk friendly about this issue with EASA management during the meeting industry held in Cologne in November 2004 and it was said that the best solution should be to relocate our organization in an other member country.</p> <p>Why an agreement could not be delivered by the</p>	<p>Noted</p> <p>This issue should be addressed to the Quality and Standardisation Directorate of the Agency.</p>	

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			<p>authority where a company headquarter is registered but where no maintenance activities are done and his subsidiary performing the maintenance activities <u>monitored</u> by the competent authority where the subsidiary MRO is established? Does this alter the fundamentals of the safety of the company and how?</p> <p>Actually, when both MRO headquarter and subsidiary are established in different member states, the agreement is delivered by the authority where the accountable manager is located, could be the headquarter, and the subsidiary monitored by the competent authority where this subsidiary is established, isn't it? How this does not alter the fundamentals of the safety of the company?</p> <p>Justification:</p> <p>Economic: Relocating our MRO in a other member state will cost us about 600.000 Euro building new facilities, making new customers, etc...This is a major investment for a small organization.</p> <p>Lost on investment at our actual location.</p> <p>Lost of income tax and jobs for Belgium state especially for Wallonia where we need jobs.</p> <p>Human: Relocating employees, wife and kids in a new country means new educational system for kids, be far away from families staying in the original countries, renting or buying new houses, finding new job for the conjoint are new life challenges that everybody can't takes!</p> <p>Employees which will decide to travel on long distance between family house and they new job place will encounter stress and fatigue. This can alter safety as perfectly described in Human factors.</p> <p>Lost of good people, technicians and engineers which cannot follow us.</p>		

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14.	General comments	International Air Carrier Association (IACA)	<p>The International Air Carrier Association (IACA) represents 38 member airlines serving the tourism industry. IACA members fly over 800 state-of-the-art, environmentally-efficient aircraft and directly employ over 50,000 people. Each year IACA airlines transport over 100 million passengers to 600 holiday destinations worldwide.</p> <p>IACA would like to comment on the EASA Notice of Proposed Amendment (NPA) N° 09/2005 as it considers that the document does not properly address the issue of principle place of business.</p> <p>EASA's NPA refers only to the Regulations (EC) 2042/2003 and (EC) 1702/2003. Both Regulations address technical matters in the field of the airworthiness and certification of aircraft and aeronautical products.</p> <p>However, the notion of a 'principle place of business' is linked to the licence of an air carrier. Indeed, in order to be granted an operating licence by a member state, the air carrier's principal place of business and, if any, its registered office must be located in that member state (Council Regulation 2407/92, art. 4.1.a.). The explicit link between the principle place of business and the licence is also the underlying condition for access by an carrier to traffic rights. Almost every Bilateral Air Services agreement between EU Member States and third countries mentions the prerequisite of 'principle place of business'.</p> <p>IACA acknowledges that so far no clear definition of "principle place of business" exists in legislation nor jurisprudence. However, any definition by a EU Authority should be coherent with other regulations governing aviation matters. A definition of the concept that centres upon airworthiness of equipment may indirectly lead to the establishment of "flags of convenience", either within or outside the EU or undue access to traffic rights.</p>	<p>Noted</p> <p>As mentioned, this NPA only refers to Regulations (EC) 2042/2003 and (EC) 1702/2003. Both Regulations address technical matters in the field of the airworthiness and certification of aircraft and aeronautical products</p> <p>Such a comment should be addressed later on when the Agency is going to issue the regulation for Operations.</p>	

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			The definition of a 'principle place of business should therefore not be covered within a technical context only. IACA hence calls on EASA to refer any discussion on the definition of an airline's (unique) principle place of business to the wider context of the revision of the third package.		
15.	General comments	CAA-NL	CAA-NL has no comment on the proposed changes to te Commission Regulations.	Noted	
16.	General comments	CAA-Sweden	The Swedish Civil Aviation Authority wish to express its support for the proposed amendments to clarify the concept of principal place of business.	Noted	
17.	Draft Opinion (EC) No 2042/2003 Paragraph 5 of M.1 of Annex I and paragraph 3 of 145.1 of Annex II	RMFSZ	Hungarian trade union, RMFSZ (Aircraft Technician Independent Trade-union) as a member of ETF is really welcome this amendment because HgCAA (Hungarian CAA) some times had difficulties to determine principal place of business.	Noted	
18.	General comments	CAA-CZ	<p>The Civil Aviation Authority of the Czech Republic would like to support the basic idea of the NPA under discussion to clarify the meaning of the term "principal place of business".</p> <p>However, taking into account that the following terms "registered office", "central administration" and "principal place of business" used in the primary EU legislation serve in case of a company as a connecting factor with the legal system of a particular state and considering the proposed texts of the definitions, we are of an opinion that, from the terms mentioned above, the designation "principal place of business" corresponds least to the meaning proposed. We would therefore like to propose to select a different designation or to establish a new one - a "head office", for example.</p>	<p>Noted</p> <p>This NPA only applies to Regulations (EC) 2042/2003 and (EC) 1702/2003.</p> <p>The other definitions that might be used in the other set of regulations are not of any EASA responsibility.</p> <p>Additionally, the intend of this NPA is not to rename "Principal place of business" but to clarify the concept.</p>	

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19.	Draft Opinions (EC) No 2042/2003 (EC) No 1702/2003	CAA-CZ	<p>The individual paragraphs as written and numbered would become part of the definition of the competent authority in M.1, 145.1, 147.1 and 21.1. We are of an opinion that the amended articles M.1, 145.1, 147.1 and 21.1 should be restructured so as to state two separate definitions – the definition of the competent authority and the definition of the principal place of business.</p> <p>Justification: Both current and proposed wording of articles M.1, 145.1, 147.1 and 21.1 contain only one definition – the definition of the competent authority. Inclusion of the definition of the principal place of business as part of the definition of the competent authority makes the article 21.1 illogically organized.</p>	<p>Accepted</p> <p>The opinion has been fully re-organized.</p>	<p>I. Proposed changes to Commission Regulation (EC) No 2042/2003</p> <p>A) It is proposed to replace existing paragraph M.1 of Annex I to Commission Regulation (EC) No 2042/2003 and to insert new paragraph, as shown below:</p> <p><b>M.1</b></p> <p>(a) For the purpose of this Part, the competent authority shall be:</p> <ol style="list-style-type: none"> <li>1. for the oversight of the continuing airworthiness of individual aircraft and the issue of airworthiness review certificates the authority designated by the Member State of registry.</li> <li>2. for the oversight of a maintenance organisation as specified in M.A. Subpart F,             <ol style="list-style-type: none"> <li>(i) the authority designated by the Member State where that organisation's principal place of business is located.</li> <li>(ii) the Agency if the organisation is located in a third country.</li> </ol> </li> <li>3. for the oversight of a continuing airworthiness management organisation as specified in M.A. Subpart G,             <ol style="list-style-type: none"> <li>(i) the authority designated by the Member State where that organisation's principle place of business is located if the approval is not included in an air operator's</li> </ol> </li> </ol>

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					<p>certificate.</p> <p>(ii) the authority designated by the Member State of the operator if the approval is included in an air operator's certificate.</p> <p>(iii) the Agency if the organisation is located in a third country.</p> <p>4. for the approval of maintenance programmes,</p> <p>(i) the authority designated by the Member State of registry.</p> <p>(ii) in the case of commercial air transport, when the Member State of the operator is different from the State of registry, the authority agreed by the above two States prior to the approval of the maintenance programme.</p> <p>(b). For the purpose <u>of</u> this Part and regarding organisations included within its Annex I, principal place of business is intended to mean the organisation site from which the majority of the organisation's management personnel specified in M.A.606 and M.A.706 directs, controls or co-ordinates its technical activities, ensuring that the organisation complies with the requirements of Part-M.</p> <p>B) It is proposed to replace existing paragraph 145.1 of Annex II to Commission Regulation (EC) No 2042/2003 and to insert new paragraph, as shown below:</p>

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					<p><b>145.1 General</b></p> <p>(a) For the purpose of this Part, the competent authority shall be:</p> <ol style="list-style-type: none"> <li>1. for organisations having their principal place of business in a Member State, the authority designated by that Member State, or;</li> <li>2. for organisations having their principal place of business located in a third country, the Agency.</li> </ol> <p>(b). For the purpose of this Part and regarding organisations included within its Annex II, principal place of business is intended to mean the organisation site from which the majority of the organisation's management personnel specified in 145.A.30(a)(b) directs, controls or co-ordinates its technical activities, ensuring that the organisation complies with the requirements of Part-145.</p> <p>C) It is proposed to replace existing paragraph 147.1 of Annex IV to Commission Regulation (EC) No 2042/2003 and to insert new paragraph, as shown below:</p> <p><b>147.1</b></p> <p>(a) For the purpose of this Part, the competent authority shall be:</p> <ol style="list-style-type: none"> <li>1. for the organisations having their principal place of business located in the territory of a Member State,</li> </ol>

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					<p>the authority designated by that Member State;</p> <p>2. for the organisations having their principle place of business located in a third country, the Agency.</p> <p>(b) For the purpose of this Part and regarding organisations included within its Annex IV, principal place of business is intended to mean the organisation site from which the majority of the organisation’s management personnel specified in 147.A.105 directs, controls or co-ordinates its technical activities, ensuring that the organisation complies with the requirements of Part-147.</p> <p>II. Proposed changes to Commission Regulation (EC) No 1702/2003</p> <p>It is proposed to add the following point (c) to 21.1 of the Annex to Commission Regulation (EC) No1702/2003:</p> <p>“(c) For the purpose of this regulation and regarding organisations included within its Annex, principal place of business is intended to mean the organisation site where the personnel specified in 21.A125(b)3 perform their activities under Part 21 Subpart F, and where the majority of the organisation personnel specified in paragraph 21A.145(c) directs, controls or co-ordinates its technical activities, ensuring that the organisation complies with the requirements specified in Part 21 Subpart G.”</p>

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20.	Draft Opinions (EC) No 2042/2003  The paragraph relating to Part 147 (erroneously identified as b) instead of c)).	CAA-CZ	The abovementioned paragraph refers to Part 147 as Annex III to the Commission Regulation (EC) No 2042/2003 instead of Annex IV.  Justification: Part 147 represents Annex IV of the Commission Regulation (EC) No 2042/2003.	Accepted	Refer to comment # 7 and refer to comment #19 for final resulting text
21.	Draft Opinions (EC) No 1702/2003  The paragraph relating to Part 21	CAA-CZ	The paragraph erroneously refers to 21.A125(b)3 instead of 21A.125(b)3.  Justification: Erroneous reference.	Accepted	
22.	M.A.606	UK-CAA	It is fairly common that the Accountable Manager in M.A.606 is not "Housed" with the Technical Management therefore M.A.606 could be split.  Where is the principle place of business identified? Form 3 (145) will only identify the approved site(s)! These sites may not be where management control technical activities are situated.	Partially accepted.  The principal place of business is not requested to be identified in the form 3. The Agency could issue an AMC to M.B.603 & 703 in the future.	Refer to comment #1 and refer to comment #19 for final resulting text
23.	Draft opinion para a) and b)	UK-CAA	a) Amend to include M.A.706 which is equally applicable. b) There are 2 para's, b) the second should read c) but more importantly it should refer to Annex IV (147) not Annex III which is Part-66.	Accepted  The opinion has been fully re-organized.  Refer to comment #19 for final resulting text	For the purpose of this regulation and regarding organisations included within its Annex I, principal place of business is intended to mean the organisation site from which the majority of the organisation's management personnel specified in M.A.606 and M.A.706 directs, controls or co-ordinates its technical activities, ensuring that the organisation complies with the requirements of Part-M

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24.	General and 15	UK-CAA	<p>It will be helpful to have a definition of principal place of business so that it is clear which is the appropriate regulator for a particular organisation. The proposal to link PPOB with the location of the relevant accountable management is the approach commended by the CAA to the JAA in 1999 (see attached) and seems to be the best approach.</p> <p>Justification: See Appendix I</p>	<p>Noted</p> <p>The Agency does not feel comfortable with the proposal to link PPOB with the sole location of the relevant Accountable Manager: the AC may move too easily.</p> <p>Consistency and flexibility have been given by adding the term “majority of” to the final proposal as the managerial tasks are supposed to be performed at the same location, regardless of the change of any AC when it happens. The system should not rely only on one person but on the management personnel as a global body.</p>	
25.	16	UK-CAA	<p>There should be kept in mind the question of legal jurisdiction. An NAA may be given legal powers in its domestic legislation to enforce EASA regulations. This is the case with the CAA where the ANO extends a number of powers of access or to demand documents to cover EASA requirements. These powers will only apply within the particular state. Moreover, if they are backed by criminal sanction, again as is the case in the UK, the jurisdiction of the Court will in general be limited to offences occurring within the particular state.</p> <p>An organisation may thus have its PPOB in the UK because this is where its accountable manager is located. But it may carry on substantial operations in other EU states or in third countries. The regulator, in such a case the CAA, will need to rely on the cooperation of the regulators in those other States in order to ensure the proper regulation of those overseas operations.</p>	<p>Noted</p> <p>For organisations located in several Member States, cooperation and continued oversight through mutual exchange of information shall be given according to M.B.105, 145.B.15, 21B.25 (b)2.</p> <p>Refer to comments #4 and #10.</p>	

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Com- ment #	Para	Commentor	Comment/Justification	Response	Resulting text
			<p>There is no way around this difficulty, whatever definition is adopted. But it does emphasise the importance of cooperation between the various authorities as indicated in paragraph 16 of the NPA.</p>		
26.	14	CAA-UK	<p>The proposed definition of PPOB departs from other definitions, for example in EC Regulation 2407/92 concerning the grant of operating licences, in that it does not take any account of the location of the registered office of the organisation. Neither does it take account of the principal place of operations which is one of the criteria for establishing the appropriate National Supervisory Authority for Air Navigation Service Providers under Single European Sky legislation.</p> <p>EASA and the Commission will need to ensure that these differences do not raise difficulties when EASA Regulations come to address safety requirements for commercial air transport and air traffic management.</p>	<p>Noted</p> <p>Your comments will be taken into account for the future safety requirements for commercial air transport and air traffic management.</p>	
27.	M.A.617(2), M.A.713 and 145.A.85	CAA-UK	<p>What is the location of the organisation? Is this the same as the principal place of business?</p>	<p>Noted</p> <p>The PPOB is one location; the organisation may be located in several places.</p> <p>For organisations located in several Member States, cooperation and continued oversight through mutual exchange of information shall be given according to M.B.105, 145.B.15, 21B.25 (b)2.</p>	

Com-ment #	Para	Commentor	Comment/Justification	Response	Resulting text
28.	TERMS OF REFERENCE (TOR) FOR MDM.014	CAA-UK	<p>In a recent email, Benoit Van Noten mentions that the draft JAR-OPS 2 (for corporate operations) uses the term 'main operating base'.</p> <p>A JAA A-NPA for JAR-OPS 0, 2 and 4 "The Regulation of Aerial Work and General Aviation", reference no. JOGWG/WP-02/04.6 discussed these issues at length and CAA recommends the Working Group obtains and reads this document, particularly paragraphs E.2.4 and 6.2.1 (CAA can supply this document if the JAA is unable to do so).</p>	<p>Noted</p> <p>Your comments will have to be addressed to the future safety requirements for commercial air transport and air traffic management.</p> <p>As previously mentioned, this NPA only refers to Regulations (EC) 2042/2003 and (EC) 1702/2003</p>	

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Your Ref: 06/05-3/97-L023  
Our Ref: 2C/9/1/5/31

4 August 1999

Dear Bob

### **APPROVAL OF OVERSEAS ORGANISATIONS UNDER JAR-145**

You may recall that I wrote to you on 24 April 1997 concerning the approval of overseas organisations under JAR-145. I attach a copy of that letter.

CAA is now faced with an approval, the circumstances of which do not appear to be expressly contemplated by JAR-145.

Briefly, Matsushita, a corporation whose registered office and principal place of business is in the United States, has established a maintenance organisation in the UK. For its own reasons, it does not wish to establish that organisation as a separate legal entity. Accordingly, it is simply an outpost of the US corporation. Nonetheless, it operates largely independently of the US. In particular, the management required by JAR 145.30(a) is located within the UK organisation. On that basis, CAA has been prepared to treat it as though it is an organisation "located" in the United Kingdom for the purposes of JAR-145. Matsushita now wishes to establish a facility in Dubai. The facility will be managed by the JAR 145.30(a) management team located within the United Kingdom.

Our view of the position is as follows:

1. The version of JAR-145 which is legally binding in the UK remains the original version published in 1991 and annexed to EC Regulation 3922/91. Subsequent changes to JAR-145 have not been incorporated in that annexed version and are thus not in force. Where these changes amount to clarification of ambiguities in the published version, CAA will seek to conform with those changes. It is not of course open to CAA to comply with an amendment which conflicts with the version in force.
2. Organisation is defined as an organisation registered as a legal entity. There is a subsequent amendment which adds a natural person which again is not relevant to the present case.

3. JAR 145.10 distinguishes between the approval of an organisation located within JAA and an organisation located outside JAA. An organisation in JAA must apply under ( b) and one which is outside JAA must apply under (c). The question is, how does one establish whether an organisation is in or out of JAA for this purpose.
4. An amendment to JAR-145 which is not yet in force qualifies 10(b) and (c) by adding the words “in whole or in part” after the reference to location and redefines location but this does not seem to take us very far.
5. If one focuses purely on the location of a facility, then one would say that any application in respect of a facility within the JAA would be subject to JAR 145.10(b) and any such application in respect of a location outside JAA would fall under sub-paragraph (c). This would mean for example that a Brazilian organisation wishing to establish a facility in Brazil would apply under (c) but if it wished to establish a location within JAA it would apply under (b).
6. Another approach would be to say that it is the State in which the registered office and principal place of business is established that determines whether (b) or (c) applies. This approach is not however reflected in JAR-145.
7. Alternatively, IEM 145.10(b) paragraph 3 states that for an organisation to be approved in accordance with JAR 145.10(b) as an organisation located within a JAA full Member State the management team required under JAR 145.30(a) should be located within that JAA State. This may provide a basis on which an NAA may determine whether an application should be dealt with under (b) or (c).
8. AMC 145.10(c) states that for an application under 145.10(c), “evidence of need is not required in the case of a JAA full Member State based organisation for its own facilities located” outside JAA. It is not clear what is meant by a “JAA full Member State based organisation” in this context. Again, this could be interpreted as a reference to the place where the 145.30(a) management is to be found.
9. On the basis of the above analysis, subject to the views of JAA HQ, CAA is minded to adopt the approach of determining the place in which an organisation is based, for the purposes of JAR-145, as being the place where its JAR 145.30(a) management is situated. Provided that management is accountable for and in control of facilities located elsewhere, whether within or outside JAA, those facilities could be included in their approval. If the 145.30(a) management is in the JAA (and in our case the UK) the application will be dealt with under 145.10(b). If outside JAA, it will be dealt with under 145.10(c).

I would be grateful for your views on this approach. I would suggest that if you agree that this is a reasonable approach, it would be appropriate to make some clarifying amendments to JAR-145 when the opportunity arises.

Yours sincerely

R J Allan  
Deputy Secretary & Legal Adviser