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RÉPUBLIQUE FRANÇAISE

MINISTÈRE DE L'ÉCOLOGIE, DU DÉVELOPPEMENT DURABLE,
DES TRANSPORTS ET DU LOGEMENT

Direction générale de l'Aviation civile

Direction de la sécurité de l'Aviation civile

Direction navigabilité et opérations

Pôle surveillance des activités internationales et qualité des opérations

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Note

AESA RPS rulemaking

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Objet : F comments on NPA-2011-05 TCO

General Comments

Comment on the methodology.

It should have been interesting to have a high level discussion with the Commission and the MS on the basis principles of the TCO authorisation before publishing the NPA so that European regulators appear coordinated to third parties. It is important for the credibility of Europe to have a good convergence between EASA proposals and MS positions, especially for regulations applying to third parties. It's a pity to be compelled to make public negative comments to an EASA proposal when prior discussions may have allowed better convergence showing the "EASA system", including the Commission, EASA and NAA, works well in partnership way.

§8 5th bullet : what kind of « certification tasks » are dealt with ? TCO doesn't mention any such tasks.

§10. 4th bullet : A/C having no ICAO CofA should not be authorised for CAT operations

5th bullet : crew not holding ICAO licence should not be authorised to operate CAT flights.

§11. We totally support the passed approach proposed by EASA limiting TCO authorisations to **CAT operations.** We suggest limiting it in addition to airplane and helicopter CAT operations.

The objective of the TCO IR should not only be the protection of passengers of these TCO operators but also the protection of EU citizens on the ground.
A future rule making task should deal not only with non-commercial TCO but also to commercial TCO other than CAT, and, in case the first set of regulation does only cover CAT with airplane and helicopter as suggested, all other CAT TCO.

§ 12. We agree on the fact that EU agreement will probably result in the simplification of the process. The particular case of ex-JAA states, having adopted EU legislation and / or signed agreement with AESA should be discussed.

§16 ICAO Doc 8335 does not suggest any “on site” audits to assess the safety competence of the TCO.

§ 20 The fact that annex 16 is not mentioned in § 19 is contradictory with the mention of “environmental protection” in the first line.

§22 . **We strongly support the fact that EASA should not substitute itself to the competent authorities of the concerned State of registry or State or of operator.** That is why we consider only documentation checking should be undertaken.

§ 23. **We strongly support the fact that “the State of the operator continues to maintain primary responsibility for certifying the operator and the on-going oversight of its operation**.” It is important that the TCO authorisation cannot be considered as a kind of “foreign certificate” which would give to much responsibility on EASA in case of a TCO accident in Europe.

§26 **We strongly support the idea that TCO regulation and 2111/2005 should not result in contradictory measures**. In addition, we suggest these two regulations to be well articulated and the two processes clearly differentiated.
For that reason, it should be clarified whether on-site visits will be undertaken by EASA in the frame of Regulation 2111/2005 or in the frame of TCO authorisations. Our position is that on-site visits should only occur in the frame of 2111/2005 regulation. It is important not to mix the two processes.

§29 The process proposed by EASA is the result of the RIA it has undertaken. We consider lighter option could have been studied and proposed by EASA. See comments of the RIA.

The details of §29 will be discussed at a later stage in the MB where the impact on the EASA staff, and NAA staff if used for outsourcing, will be discussed. We suggest a complete RIA be developed before any discussion in the MB, including possible retaliation measures from third countries.

Fees

1. In the §32 of the explanatory note, EASA is presenting the process of levying fees with respect to the Third Country Operators applying for an authorization. However, none of these principles are laid down in the NPA-TCO.

2. Further to the previous comment, it became clear, as underlined during different presentations delivered by EASA on the NPA-TCO, that the fees charged for the analysis of the application will be adapted to the “*Assessment Category*” used to perform the technical assessment of the application (A, B or C). However, no legal provisions pertaining to this principle have been included in the NPA-TCO.

3. Pertaining to the fees that EASA intends to levy with respect to the Third Country Operators, the interpretation of EASA presented in the §32 underlines that no incompatibility with the Chicago Convention Article 15 has been identified. However, the inner principle of levying fees that are required to be paid for the required technical authorization, mandatory to be obtained to operate to Europe seems not to be aligned with the following provisions of Article 15 : ”*No fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon”*.

4. EASA did not present in the Explanatory note (nor in the NPA-TCO), how the changes foreseen in the TCO.AUT.115 will be handled as far as fees are concerned with respect to the Third Country Operators applying for changes to their initial authorization (addition of aircraft, modification of the operations specifications delivered by EASA as stated in AR.TCO.205 …). Indeed, from the experience gathered through the last 5 years of implementation, at a national level, of the technical questionnaire in France, the French DGAC noticed that most of the workload related to this activity is linked with changes to the initial technical authorization (or assessment). Therefore, the fees

associated to changes must be clearly précised and proportionate to the magnitude of the changes foreseen by the applicant.

5. Fees related to the assessment of the application of TCO authorization (initial or changes) shall be limited to a minimum. Indeed, the European air carriers are very likely to undergo repercussions in the future following the implementation of the Part-TCO in Europe. Subsequently, they will have to bear multiple costs, especially for those European airlines operating a wide network of destinations in multiple third country States.

General Process

6. The documents that will be used for the TCO to apply for an authorisation as described in TCO.AUT.100 b) are not provided with the NPA-TCO. Therefore, the range and number of the questions / fields that will be reviewed by EASA during the assessment mentioned in AR.TCO.200 can not be commented. These two factors are paramount in properly assessing the relevance of the NPA-TCO as per the workload that will be induced accordingly.

7. Although AR.TCO.200 is giving a general statement on the standards that will be used to assess the compliance of the TCO applying for an authorization, the NPA-TCO (or the Explanatory note) is not providing any details on the specific standards that will be considered, if not fulfilled, as unacceptable for the deliverance of the final technical authorization.

Indeed, this approach is slightly tackled, from a different angle, for two critical safety equipments in the §30 of the Explanatory Note (mentioning the handling, during the assessment by EASA, of States' notified differences to ICAO pertaining to EGPWS and TCAS/ACAS II). However, to enable the Member States to properly comment on the NPA-TCO, the EASA should make available the list of non compliances with the applicable standards that if not properly fulfilled by a TCO, will be considered as unacceptable in the process of deliverance of the final technical authorization.

Related to this list of unacceptable non compliances with applicable standards, you will find hereafter the list used by the French DGAC in the French Technical questionnaire procedures:

a. lack of installation of required safety equipments (when required by ICAO) : EGPWS, TCAS/ACAS II, FDR, CVR, ELT,

b. lack of evidence that the flight crew member, used by the applicant, are performing a sufficient number of proficiency checks per year,

c. lack of compliance of the medical class certificates held by the flight crew members used by the applicant,

d. lack of implementation of a required flight data analysis programme when the applicant is operating aircraft having a MTOW in excess of 27 tons,

e. lack of proper authorization as indicated in the AOC / Operations specifications of the applicant,

f. lack of evidence that a valid certificate of airworthiness has been issued for the aircraft intended to be used by the applicant,

g. lack of evidence regarding the approval, by the State of Registry, of the maintenance programme for each aeroplane intended to be operated to France and of the maintenance control manual for the applicant,

h. lack of evidence of definition of Standard Operating Procedures matching the intended operations (aircraft certified as single-crew, operated for multi-crew operations without having established the relevant SOP for multi-crew operations).

8. The §29 of the Explanatory Note (more specifically related to the Evaluation phase) is underlining that, through the technical questionnaire that will be submitted by the applicants, EASA will review, among others, "*compliance statements with set of selected ICAO SARPs, including references to the applicant's operations manual*". For issues related to general information obtained through the technical questionnaire, compliance statement can be considered as sufficient. However, the French DGAC would like to underline that for safety critical issues, compliance statements are not deem as sufficient and proper documented evidence shall be requested from the applicant.

Indeed, a very high number of TCO have a very vague, if any, notion of the ICAO standards and their acceptable means of compliance, as they implement the national regulation of their responsible State. The French DGAC today, through its technical questionnaire, is requiring the airlines to submit documented evidence of installation or implementation on all the subjects that are considered, if not fulfilled in compliance with the applicable ICAO standards, as enough a reason to raise technical objections:

a. evidence of installation of required safety equipments (as required per ICAO) : EGPWS, TCAS/ACAS II, FDR, CVR, ELT,

b. evidence that the flight crew member are performing a sufficient number of proficiency checks per year,

c. evidence of compliance of the medical class certificates held by the flight crew members,

d. evidence of implementation of a required flight data analysis programme when the airline is operating aircraft having a MTOW in excess of 27 tons,

e. approvals, by the State of Registry, of the maintenance programme for each aeroplane intended to be operated and the maintenance control manual for the applicant,

Therefore, as Article 11 (216/2008) underlines that the EASA TCO Authorization will be valid in all Member States, the safety assessment grid applied by EASA, through the implementation of the Part-TCO, needs to reflect at least the level of details of the best practices implemented at a national level in Europe.

9. Without being provided with the detailed checklist that will be used by EASA during the technical assessment of an application, the French DGAC can not properly assess whether the assessment grid of EASA (especially for the Assessment category A) will be more or less rectrictive than what is currently being applied in France.

10. It should be underlined that the Regulatory Impact Assessment presented along with the NPA-TCO is not considering the scenario where all the TCO applying for an authorization would go through the Assessment category A only, which could be a recommended scenario as a first step of implementation of the Part-TCO. It should be underlined that the French DGAC supports that, as stated in the §2.6 of the Regulatory Impact Assessment "*Overall the records indicate that the current schemes for TCO's applied by Member States provide an adequate level of safety*".

Therefore, as the current scheme applied by Member States stands only for the desktop reviews of technical questionnaires (Assessment category A as established by of §29 of the Explanatory Note), and since this approach is acknowledged by EASA as already providing an adequate level of safety, the scenario where TCO would only be assessed by EASA through category A is even more relevant to be considered, as less time and resource consuming that the actual three-steps approach of Assessment Categories A, B and C.

Dedicated Comments

11. TCO.OPS.100 is giving the minimum standards that a TCO shall comply with, and among others, "*the applicable rules of the State of registry of the aircraft and if relevant the State of the operator*". However, TCO.OPS.200 and TCO.OPS.205 are giving detailed requirements that may be in contradiction with the national rules set by the State of Operator and Registry. In this case, imposing the implementation, within the general TCO operations of TCO.OPS.200 and TCO.OPS.205 would render invalid the Air Operator Certificate delivered by the State of Operator as having been issued in ensuring the compliance of the airline's with the national rules established at a national level.

12. Imposing the implementation, within the general TCO operations of TCO.OPS.200 and TCO.OPS.205 and not only the implementation of these two requirements for the flights of this TCO to or above Europe appears to be in contradiction with the principles of the Chicago Convention on the Sovereignty of States (Article 1) and the Annex 6 – part I - §3.1 "*Compliance*

with laws, regulations and procedures". Indeed, the ICAO principles are that an operator must comply with the rules of its responsible authority and, in addition, with the requirements of the States where the operator is conducting operations. However, the NPA-TCO is now "*exporting*" European requirements to be applied in the general operating procedures of an airline and not solely for its flights to Europe.

13. TCO.OPS.200 is giving requirements on in-flight fuel management. From the gap analysis performed between ICAO Standards and ER of the Annex IV of the 216/2008, EASA underlines that the 3.a.9 was not covered by any ICAO standards. It should be noted that, indeed, TCO should, in accordance with the provisions of the 216/2008, Article 9(1), "*be compliant to the extent that there are no such standards, these aircraft and their operations shall comply with the requirements laid down in the Essential Requirements set out in Annexes I, III, IV and, if applicable Annex Vb, provided these requirements are not in conflict with the rights of third countries under international conventions* ".

Therefore, the TCO should be compliant with the provisions of the 3.a.9 meaning "*the applicable in-flight fuel management procedures must be used, when relevant*".

As a conclusion, there is no legal background to impose to a TCO the application of a requirement such as TCO.OPS.200 (c) that goes beyond the ER while TCO OPS 200 a) and b) stay at a general level of requirement

14. AR.TCO.205 is mentioning that EASA is issuing an authorization, including the associated specifications. If the outcome of this process is embodied and reflected in documents taking a similar layout than an Air Operator Certificate and its associated operations specifications, the EASA TCO authorization process would not appear to be any longer an "*authorization*" process but would be more related to a "*certification*" process. Member State can not, at this stage, elaborate more on this as the layout of the authorization that will be granted by EASA was not presented along with the NPA-TCO.

15. TCO.GEN.115 is underlining that, to be eligible, a TCO shall "*demonstrate the intention to operate into the EU with aircraft under its responsibility*".

GM1-TCO.GEN.115(a)(2) is giving the following "*The operator may substantiate its intention to operate into the EU by submitting its planned schedule for commercial air transport operations or, in the case of unscheduled commerciall air transport operations, by submitting its planned operation and/or a copy of its application(s) for entry permission sent to the Member State(s) into which the third country operator intends to operate* ".

On the other hands, AMC1-TCO.AUT.100 is giving 90 days as the minimum timeframe between the initial application submission and the starting date of operations.

These requirements, taking all together, appear as not covering the cases of TCO performing charter business flights or medical evacuation flights. For both cases, as the planning of operations will be known, at best, few days only before the intended date of operations, this TCO (if not covered in the transitional measures mentioned in the Explanatory note §48) will never be able to comply at the same time TCO.GEN.115 and AMC1-TCO.AUT.100.

Therefore, as being drafted, the NPA-TCO is not allowing TCO, performing charter business flights or medical evacuation flights and not covered by the transitional measures, to be considered as eligible and giving them the timeframe for submission of their application as required by AMC1-TCO.AUT.100.

16. AMC1-TCO.AUT.110 is imposing the minimum timeframe of 30 days regarding the submission of changes to the TCO authorization already granted by EASA. Changes are usually requested to cater for unexpected modification of schedules, or following failures (or issues) affecting the aircraft initially intended to be operated. Therefore, the timeframe given by EASA is too restrictive to cater for the operational needs of TCO and will subsequently reduce the flexibility of operations of TCO coming to Europe.