

Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (Text with EEA relevance)

## ANNEX 2

### PART-ART

### AUTHORITY REQUIREMENTS REGARDING THE AUTHORISATION OF THIRD COUNTRY OPERATORS

#### SECTION I

#### General

##### **ART.100 Scope**

This Annex ('Part-ART') establishes administrative requirements to be followed by Member States and the Agency, specifically regarding:

- (a) the issuance, maintenance, change, limitation, suspension or revocation of authorisations of third country operators engaging in commercial air transport operations; and
- (b) the monitoring of these operators.

##### **ART.105 Alternative means of compliance**

The Agency shall evaluate all alternative means of compliance proposed by third country operators in accordance with TCO.105(b) by analysing the documentation provided and, if considered necessary, conducting an inspection of the third country operator.

When the Agency finds that the alternative means of compliance are in accordance with Part-TCO it shall without undue delay notify the applicant that the alternative means of compliance may be implemented and, if applicable, amend the authorisation of the applicant accordingly.

##### **ART.110 Exchange of information**

- (a) The Agency shall inform the Commission and the Member States when it:
  - (1) rejects an application for an authorisation;
  - (2) imposes a limitation due to safety concerns, suspends or revokes an authorisation.
- (b) The Agency shall inform the Member States of the notifications it has received in accordance with TCO.305 within one working day after receipt of the notification.
- (c) The Agency shall regularly make available to the Member States an updated list containing the authorisations it has issued, limited, changed, suspended or revoked.
- (d) Member States shall inform the Agency when they intend to take a measure pursuant to Article 6(1) of Regulation (EC) No 2111/2005.

##### **ART.115 Record-keeping**

- (a) The Agency shall establish a system of record-keeping providing for adequate storage, accessibility and reliable traceability of:
  - (1) training, qualification and authorisation of its personnel;
  - (2) third country operator authorisations issued or notifications received;

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- (3) authorisation processes and continuing monitoring of authorised third country operators;
  - (4) findings, agreed corrective actions and date of action closure;
  - (5) enforcement measures taken, including fines requested by the Agency in accordance with Regulation (EC) No 216/2008;
  - (6) the implementation of corrective actions mandated by the Agency in accordance with Article 22(1) of Regulation (EC) No 216/2008; and
  - (7) the use of flexibility provisions in accordance with Article 18(d) of Regulation (EC) No 216/2008.
- (b) All records shall be kept for a minimum period of 5 years, subject to applicable data protection law.

## *SECTION II*

### **Authorisation, monitoring and enforcement**

#### **ART.200 Initial evaluation procedure — general**

- (a) Upon receiving an application for an authorisation in accordance with TCO.300, the Agency shall assess the third country operator's compliance with applicable requirements in Part-TCO.
- (b) The initial assessment shall be completed within 30 days after receipt of the application or 30 days before the intended starting date of operation, whichever is the later.

When the initial assessment requires a further assessment or an audit, the assessment period shall be extended for the duration of the further assessment or the audit, as appropriate.

- (c) The initial assessment shall be based on:
  - (1) documentation and data provided by the third country operator;
  - (2) relevant information on the safety performance of the third country operator, including ramp inspection reports, information reported in accordance with ARO.RAMP.145(c), recognised industry standards, accidents records and enforcement measures taken by a third country;
  - (3) relevant information on the oversight capabilities of the State of the operator or State of registry, as applicable, including the outcome of audits carried out under international conventions or State safety assessment programmes; and
  - (4) decisions, investigations pursuant to Regulation (EC) No 2111/2005 or joint consultations pursuant to Regulation (EC) No 473/2006<sup>(1)</sup>.
- (d) The Agency shall, in consultation with the Member States, identify those ICAO standards for which it may accept mitigating measures in case the State of the operator or the State of registry has notified a difference to ICAO. The Agency shall accept the mitigating measure when it is satisfied that these measures ensure an equivalent level of safety to that achieved by the standard to which differences have been notified.
- (e) When the Agency cannot establish a sufficient level of confidence in the third country operator and/or the State of the operator during the initial assessment, it shall:

- (1) refuse the application when the outcome of the assessment indicates that further assessment will not result in the issue of an authorisation; or
- (2) conduct further assessments to the extent necessary to establish that the intended operation will be conducted in compliance with the applicable requirements of Part-TCO.

**ART.205 Initial evaluation procedure — third country operators subject to an operating ban**

- (a) Upon receiving an application for an authorisation from an operator subject to an operating ban or an operational restriction pursuant to Regulation (EC) No 2111/2005 the Agency shall apply the relevant assessment procedure as described in ART.200.
- (b) When the operator is subject to an operating ban due to the State of the operator not performing adequate oversight, the Agency shall inform the Commission for further assessment of the operator and the State of Operator under Regulation (EC) No 2111/2005.
- (c) The Agency shall perform an audit when:
  - (1) the third country operator agrees to be audited;
  - (2) the outcome of the assessments referred to in (a) and (b) indicates that there is a possibility that the audit will have a positive result; and
  - (3) the audit can be performed at the third country operator's facilities without the risk of compromising the security of the Agency's personnel.
- (d) The audit of the third country operator may include an assessment of the oversight conducted by the State of the operator when there is evidence of major deficiencies in the oversight of the applicant.
- (e) The Agency shall inform the Commission of the results of the audit.

**ART.210 Issue of an authorisation**

- (a) The Agency shall issue the authorisation, including the associated specifications, as established in Appendices I and II, when:
  - (1) it is satisfied that the third country operator holds a valid AOC or equivalent document and associated operations specifications issued by the State of the operator;
  - (2) it is satisfied that the third country operator is authorised by the State of the operator to conduct operations into the EU;
  - (3) it is satisfied that the third country operator has established:
    - (i) compliance with the applicable requirements of Part-TCO;
    - (ii) transparent, adequate and timely communication in response to a further assessment and/or an audit of the Agency, if applicable; and
    - (iii) a timely and successful corrective action submitted in response to an identified non-compliance, if any.
  - (4) there is no evidence of major deficiencies in the ability of the State of the operator or the State of registry, as applicable, to certify and oversee the operator and/or aircraft in accordance with the applicable ICAO standards; and

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(5) the applicant not being subject to an operating ban pursuant to Regulation (EC) No 2111/2005.

(b) The authorisation shall be issued for an unlimited duration.

The privileges and the scope of the activities that the third country operator is authorised to conduct shall be specified in the specifications attached to the authorisation.

(c) The Agency shall agree with the third country operator the scope of changes to the third country operator not requiring prior authorisation.

#### **ART.215 Monitoring**

(a) The Agency shall assess:

(1) continued compliance of third country operators it has authorised with the applicable requirements of Part-TCO;

(2) if applicable, the implementation of corrective actions mandated by the Agency in accordance with Article 22(1) of Regulation (EC) No 216/2008.

(b) This assessment shall:

(1) take into account safety relevant documentation and data provided by the third country operator;

(2) take into account relevant information on the safety performance of the third country operator, including ramp inspection reports, information reported in accordance with ARO.RAMP.145(c), recognised industry standards, accidents records and enforcement measures taken by a third country;

(3) take into account relevant information on the oversight capabilities of the State of the operator or State of registry, as applicable, including the outcome of audits carried out under international conventions or State safety assessment programmes;

(4) take into account decisions and investigations pursuant to Regulation (EC) No 2111/2005 or joint consultations pursuant Regulation (EC) No 473/2006;

(5) take into account previous assessments or audits, if carried out; and

(6) provide the Agency with the evidence needed in case further action is required, including the measures foreseen by ART.235.

(c) The scope of monitoring defined in (a) and (b) shall be determined on the basis of the results of past authorisation and/or monitoring activities.

(d) Where, based on available information, the safety performance of the third country operator and/or the oversight capabilities of the State of the operator are suspected to have decreased below the applicable standards contained in the Annexes to the Convention on International Civil Aviation, the Agency shall conduct further assessments to the extent necessary to establish that the intended operation will be conducted in compliance with the applicable requirements of Part-TCO.

(e) The Agency shall collect and process any safety information deemed relevant for monitoring.

#### **ART.220 Monitoring programme**

- (a) The Agency shall establish and maintain a monitoring programme covering the activities required by ART.215 and, if applicable, by Subpart ARO.RAMP.
- (b) The monitoring programme shall be developed taking into account the results of past authorisation and/or monitoring activities.
- (c) The Agency shall perform a review of third country operators at intervals not exceeding 24 months.

The interval may be reduced if there are indications that the safety performance of the third country operator and/or the oversight capabilities of the State of the operator may have decreased below the applicable standards contained in the Annexes to the Convention on International Civil Aviation.

The Agency may extend the interval to a maximum of 48 months if it has established that, during the previous monitoring period:

- (1) there are no indications that the overseeing authority of the State of the operator fails to perform effective oversight on operators under its oversight responsibility;
  - (2) the third country operator has continuously and timely reported changes referred to in TCO.315;
  - (3) no level 1 findings, referred to in ART.230(b), have been issued; and
  - (4) all corrective actions have been implemented within the time period accepted or extended by the Agency as defined in ART.230(e)(1).
- (d) The monitoring programme shall include records of the dates of monitoring activities, including meetings.

#### **ART.225 Changes**

- (a) Upon receiving an application for a change that requires prior authorisation, the Agency shall apply the relevant procedure as described in ART.200, restricted to the extent of the change.
- (b) The Agency shall prescribe the conditions under which the third country operator may operate within the scope of its authorisation during the change, unless the Agency determines that the authorisation needs to be suspended.
- (c) For changes not requiring prior authorisation, the Agency shall assess the information provided in the notification sent by the third country operator in accordance with TCO.315 to verify compliance with the applicable requirements. In case of any non-compliance, the Agency shall:
  - (1) notify the third country operator about the non-compliance and request a revised proposal to achieve compliance; and
  - (2) in case of level 1 or level 2 findings, act in accordance with ART.230 and ART.235, as appropriate.

#### **ART.230 Findings and corrective actions**

- (a) The Agency shall have a system to analyse findings for their safety significance.
- (b) A level 1 finding shall be issued by the Agency when any significant non-compliance is detected with the applicable requirements of Regulation (EC) No 216/2008 and Part-

TCO, or with the terms of the authorisation that lowers safety or seriously hazards flight safety.

The level 1 findings shall include, but are not limited to:

- (1) failure to give the Agency access to the third country operator's facilities as defined in TCO.115(b) during normal operating hours and after a written request;
- (2) implementing changes requiring prior authorisation without having received an authorisation as defined in ART.210;
- (3) obtaining or maintaining the validity of the authorisation by falsification of documentary evidence;
- (4) evidence of malpractice or fraudulent use of the authorisation.
- (c) A level 2 finding shall be issued by the Agency when any non-compliance is detected with the applicable requirements of Regulation (EC) No 216/2008 and Part-TCO, or with the terms of the authorisation which could lower safety or hazard flight safety.
- (d) When a finding is detected during monitoring, the Agency shall, without prejudice to any additional action required by Regulation (EC) No 216/2008 and its Implementing Rules, communicate the finding to the third country operator in writing and request corrective action to eliminate or mitigate the root cause in order to prevent recurrence of the non-compliance(s) identified.
- (e) In the case of level 2 findings, the Agency shall:
  - (1) grant the third country operator a corrective action implementation period appropriate to the nature of the finding. At the end of the period, and subject to the nature of the finding, the Agency may extend the period subject to a second satisfactory corrective action plan agreed by the Agency; and
  - (2) assess the corrective action and implementation plan proposed by the third country operator. If the assessment concludes that it contains root cause(s) analysis and course(s) of action to effectively eliminate or mitigate the root cause(s) to prevent recurrence of the non-compliance(s), the corrective action and implementation plan shall be accepted.

Where a third country operator fails to submit an acceptable corrective action plan referred to in ART.230(e)(1), or to perform the corrective action within the time period accepted or extended by the Agency, the finding shall be raised to a level 1 finding and action taken as laid down in ART.235(a).

- (f) The Agency shall record and notify the State of the operator or the State of registry, as applicable, of all findings it has raised.

#### **ART.235 Limitation, suspension and revocation of authorisations**

- (a) Without prejudice to any additional enforcement measures, the Agency shall take action to limit or suspend the authorisation in case of:
  - (1) a level 1 finding;
  - (2) verifiable evidence that the State of operator or State of registry, as applicable, is not capable to certify and oversee the operator and/or aircraft in accordance with the applicable ICAO standard; or

- (3) the third country operator being subject to a measure pursuant to paragraphs (1) and (2) of Article 6 of Regulation (EC) No 2111/2005.
- (b) An authorisation shall be suspended for a maximum period of 6 months. At the end of the 6-month period the Agency may extend the suspension period for an additional 3 months.
- (c) The limitation or suspension shall be lifted when the Agency is satisfied that successful corrective action has been taken by the third country operator and/or the State of the operator.
- (d) In considering the lifting of a suspension the Agency shall conduct an audit of the third country operator when the conditions in ART.205(c) are met. In case the suspension is due to major deficiencies in the oversight of the applicant by the State of the operator or State of registry, as applicable, the audit may include an assessment with the aim to verify if these oversight deficiencies have been corrected.
- (e) The Agency shall revoke the authorisation when:
  - (1) the period referred to in (b) has expired; or
  - (2) the third country operator becomes subject to an operating ban pursuant to Regulation (EC) No 2111/2005.
- (f) If following a limitation referred to in (a) an operational restriction is imposed on the third country operator in accordance with Regulation (EC) No 2111/2005, the Agency shall maintain such limitation until the operational restriction has been withdrawn.



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## Appendix I

### AUTHORISATION

<b>Types of operation:</b> Commercial air transport (CAT)	
Authorisation <sup>(1)</sup> :	Operator Name: Dba Trading Name <sup>(2)</sup> : State of the operator <sup>(3)</sup> : AOC or equivalent document number:
This authorisation confirms that ..... <sup>(4)</sup> has complied with the requirements of Part TCO and is entitled to apply for individual operating permits or equivalent documents to perform commercial air transport operations into, within or out of the territory subject to the provisions of the Treaty in accordance with the conditions defined in the specifications in their latest version as published electronically.	
This authorisation may be used to apply for individual operating permits <sup>(5)</sup> :	
This authorisation is valid whilst the authorised operator remains in compliance with Part-TCO.	
Subject to compliance with the foregoing condition, this authorisation will remain valid unless the authorisation or the air operator certificate issued by the state of the operator has been surrendered, suspended or revoked.	
Date of issue <sup>(6)</sup> :	Name and Signature <sup>(7)</sup> Title:
<p><sup>(1)</sup> Authorisation reference as issued by the Agency.</p> <p><sup>(2)</sup> Operator trading name, if different. Insert 'DBA' (for 'doing business as') before the trading name.</p> <p><sup>(3)</sup> Insert the name of the State of the Operator.</p> <p><sup>(4)</sup> Operator's registered name.</p> <p><sup>(5)</sup> Individual operational permits or equivalent documents related to 'traffic rights' in the framework of agreements between EU Member States and third countries must be obtained from EU Member States in addition to this authorisation prior to the intended starting date of the operation.</p> <p><sup>(6)</sup> Issue date of the Authorisation (dd-mm-yyyy).</p> <p><sup>(7)</sup> Title, name and signature of EASA's representative.</p>	

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## Appendix II

SPECIFICATION associated to TCO Authorisation (subject to the approved conditions in the AOC and associated operations specifications)				
EASA European Aviation Safety Agency				
Authorisation <sup>(1)</sup> : ..... Date <sup>(2)</sup> : ..... Operator name <sup>(3)</sup> : ..... Specifications: ..... Trading name ..... Signature: .....				
Aircraft model <sup>(4)</sup> : ..... Note: Authorised registration marks are listed in the Agency's electronic publication.				
Types of operation: Commercial air transportation <input type="checkbox"/> Passengers <input type="checkbox"/> Cargo <input type="checkbox"/> Other <sup>(5)</sup> : .....				
Special limitations <sup>(6)</sup>				
SPECIAL AUTHORISATIONS	YES	NO	SPECIFICATION <sup>(7)</sup>	REMARKS
Dangerous goods	<input type="checkbox"/>	<input type="checkbox"/>		
Low visibility operations				
Take Off	<input type="checkbox"/>	<input type="checkbox"/>	RVR <sup>(8)</sup> : ..... m	
Approach and Landing	<input type="checkbox"/>	<input type="checkbox"/>	CAT <sup>(9)</sup> : ..... DH: ..... ft      RVR: ..... m	
RVSM <sup>(10)</sup> <input type="checkbox"/> N/A	<input type="checkbox"/>	<input type="checkbox"/>		
ETOPS <sup>(11)</sup> <input type="checkbox"/> N/A	<input type="checkbox"/>	<input type="checkbox"/>	Maximum diversion Time <sup>(12)</sup> : ..... min	
Navigation specifications for PBN operations	<input type="checkbox"/>	<input type="checkbox"/>		
Other <sup>(13)</sup>	<input type="checkbox"/>	<input type="checkbox"/>		
<sup>(1)</sup> Insertion of associated operator's authorisation number. <sup>(2)</sup> Issuance date of the operations specifications (dd-mm-yyyy). <sup>(3)</sup> Operator's registered name and the operator's trading name, if different. <sup>(4)</sup> Insert the Commercial Aviation Safety Team (CAST)/ICAO designation of the aircraft make, model and series, or master series, if a series has been designated (e.g. Boeing-737-3K2 or Boeing-777-232). The CAST/ICAO taxonomy is available at <a href="http://www.intlaviationstandards.org/">http://www.intlaviationstandards.org/</a> <sup>(5)</sup> Other type of transportation to be specified (e.g. emergency medical service). <sup>(6)</sup> List the applicable special limitations (e.g. VFR only, day only) <sup>(7)</sup> List in this column the most permissive criteria for each approval or the approval type (with appropriate criteria). <sup>(8)</sup> Insert the approved minimum take-off RVR in metres. One line per approval may be used if different approvals are granted. <sup>(9)</sup> Insert the applicable precision approach category (CAT II, IIIA, IIIB or IIIC). Insert the minimum RVR in metres and decision height in feet. One line is used per listed approach category. <sup>(10)</sup> 'Not applicable (N/A)' box may be checked only if the aircraft maximum ceiling is below FL 290. <sup>(11)</sup> Extended range operations (ETOPS) currently applies only to twin-engined aircraft. Therefore the 'Not applicable (N/A)' box may be checked if the aircraft model has more than 2 engines. <sup>(12)</sup> The threshold distance may also be listed (in NM), as well as the engine type. <sup>(13)</sup> Other authorisations or data can be entered here, using one line (or one multi-line block) per authorisation (e.g. special approach authorisation, MNPS, approved navigation performance).				

- (1) Commission Regulation (EC) No 473/2006 of 22 March 2006 laying down implementing rules for the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council (OJ L 84, 23.3.2006, p. 8).