



ECA Position on EASA CRD Authority and Organisation Requirements

On 4 October 2010, EASA issued its Comment Response Document (CRD) on the Implementing Rules for Authority and Organisation Requirements (AOR). The CRD is open for comments until December 6, the next step will be for EASA to issue its Opinion to the Commission.

AOR – the Glue that Holds the System Together

The AOR requirements are a key part of the total legislative package that will govern Europe's aviation in the very near future. They establish the administrative requirements to be followed by the Agency and the Member States for the implementation and enforcement of the Basic Regulation (216/2008) regarding, amongst other things, air operations and personnel requirements. They also lay down common technical requirements for the administration, (safety) management system, and the conditions for issuing, maintaining, amending, limiting, suspending or revoking certificates.

The way the Basic Regulation is implemented, enforced and overseen is crucial to guarantee a level playing field across Europe – both at Member State level and between the operators – as well as to guarantee that safety loopholes and backdoors remain firmly closed. This is to avoid any lowering of safety levels in Europe or parts of Europe.

The CRD proposal fails to deliver on this key point.

Alternative Means of Compliance – A Need for *ex-ante* Safety Checks

Next to the requirements in the legally binding Implementing Rules, the EASA system allows for Acceptable Means of Compliance (AMC). These AMC will be defined by EASA and can be used by operators across Europe. However, there is a second route to show compliance with the Implementing Rules: *Alternative Means of Compliance* (AltMOC). These AltMOC are to be proposed by the operator and forwarded to their national authority for assessment and approval. Once approved, that AltMOC can be used by the operator, will be made publically available for use by any other operator in that country (or another country, subject to local approval) and will be notified to EASA.

The Implementing Rules – as proposed in the CRD Document – regrettably do *not* give any authority to EASA to check, amend, agree or refute the AltMOC before it is adopted by the national authority. All EASA could do is check during their standardisation visits if the AltMOC does indeed provide an equivalent level of safety compared to the Implementing Rule. However, this comes *after* the national adoption of the AltMOC and its implementation by the operator.

ECA understands the need for adequate mechanisms to provide flexibility. However, any flexibility must be accompanied by a reliable oversight/control mechanism. The proposed way of *ex-post* checks does not do so. It means that AltMOC could be approved which contravene the Basic Regulation and should have been subject to a proper derogation process and adequate mitigating measures, and which might endanger flight safety. Once approved, such practices could continue for several years, i.e. the time it takes EASA to assess the AltMOC, to instruct its standardisation team to check this AltMOC, to carry out the standardisation visit, to draw conclusions and to have the measure rectified thereafter. During this time, the operator(s) will have been free to apply the AltMOC – without the European safety body having had any possibility to stop such a practice.

The proposed system of *ex-post* checks must be seen against the background of dwindling resources at Member State level. Since the creation of EASA, national authorities increasingly rely on “Europe” to take care of their regulatory and oversight tasks. In many countries national authorities struggle to maintain the necessary financial resources, manpower and expertise within their organisation. Clearly it is a safety concern if the national authorities who are expected to assess and approve the AltMOC have neither the manpower, nor the expertise to do this work properly, especially if EASA is not mandated to check the AltMOC before it can be applied by the operator.

While ECA welcomes the idea of injecting transparency into the granting of AltMOC through an obligation to *notify* the Agency, **we strongly recommend a system of an *ex-ante* safety check by the Agency. ECA proposes a feedback loop to be included in the Implementing Rule stating that the AltMOC, once assessed and provisionally adopted by the national authority, should then be assessed and formally approved by EASA *before* the operator can use it.** Concretely, the AOR must include a legally binding requirement for the national authority to inform the Agency of its intention to adopt the AltMOC, the reasons therefore and the conditions laid down in order to ensure than an equivalent level of safety is achieved. Thereafter, the Agency is required to assess the proposed AltMOC from a safety point of view, and to approve, amend or reject the proposed AltMOC.

Only relying on standardisation visits and the related internal EASA procedures is clearly insufficient to guarantee the correct implementation of the Implementing Rules by AltMOC, and to safeguard against the creation of safety loopholes.

The EASA Business Plan 2010-2014 provides for only 20 visits each for operational and licensing, per year. ECA understands that also EASA has resource limitations, and it is one more reason why the last safety net should not rely on internal EASA procedures and too few (*ex-post*) standardisation visits.

Linking Alternative Means of Compliance to Operational Specificities

An AltMOC requested by an operator and approved by its national authority will often be tailored to the specific needs and characteristics of this operator and should therefore be limited to this operator alone.

However, the CRD proposal allows for any other operator to “copy-and-paste” this AltMOC into its own procedures. ECA is concerned about such a practice as the operations between

two operators can differ widely. AltMOC could thus be used in an unintended way or have effects not considered at the time of approval because the operations the AltMOC was destined for were different to the ones applied at the second operator. The AOR should therefore require that operators wishing to use an AltMOC provide all elements necessary for the authority to assess the equivalence of the operational environment, and an obligation for the latter to carry out such an assessment before authorising the AltMOC use by that operator.

Self-Assessment by the Authority

National authorities are allowed to propose an AltMOC. In that case, according to the proposals in the CRD, it is the national authority themselves who have to assess and approve their AltMOC. After they themselves have approved their own proposal, they can then use it immediately, make it publically available and notify it to EASA. Again EASA is not empowered to assess and approve this AltMOC and can only work through its internal procedures of standardisation visits.

Clearly, it is problematic that the proposer, assessor and approver is one and the same body (the national authority) and this without central oversight from EASA. Again, ECA proposes to include in the Implementing Rule a clear *ex-ante* mechanism mandating EASA to assess and approve the AltMOC before the NAA can use it.

Strict Safety Oversight and a Step-by-Step Approach

With a comprehensive set of new EASA rules – on air operations, flight crew licensing and other key areas – coming into place in April 2011, Europe's aviation sector is up for a major change where rules, roles, rights and obligations will be newly defined. At such times of major change – combined with scarce resources at authority level and with stiff competition in the aviation market – strong AOR are a 'must' to ensure that the regulatory changes do not result in a lowering of safety standards in Europe.

ECA therefore calls upon the EU Institutions to adopt a cautious approach to guarantee a smooth and safe transition from the 'old' system to the new EASA-based one. When there are areas that need flexibility for operational reasons, these areas should be clearly defined and oversight should be based on unambiguous rules with clear lines of accountability and controlling mechanisms that prevent undesired deviations, rather than having to correct after they have been applied for years. Once the new regulatory system has been in place and tested for a reasonable period of time, the AOR should be reviewed and adapted where necessary.

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25 Oct. 2010