



## Strengthening Aviation Safety in Europe

### - Revision of EASA Regulation 1592/2002<sup>1</sup> -

#### 1. Strengthening EASA – One-Stop-Shop for Aviation Safety

A single aviation market needs a single safety body. The European Cockpit Association – representing over 36.100 pilots from 31 European countries – therefore strongly supports the extension of EASA's scope to Air Operations, Pilot Licensing and third-country aircraft, as well as strengthening collective safety oversight and enforcement.

ECA welcomes the German Presidency's effort to use the Trialogue process to find an early political agreement between the Council of Ministers and European Parliament, which would be formally endorsed in a quick second Reading in early Autumn 2007.

ECA has a keen interest that the outcome of this Trialogue enhances aviation safety. We would be concerned if the pressure to find compromises during the German Presidency lead to bad solutions from a safety and technical perspective.

With this in mind, ECA submits a number of recommendations to Parliament and Council focusing on those – sometimes technical – issues that directly contribute to a more systematic, reliable and uniform aviation safety system in Europe.<sup>2</sup>

***ECA's key recommendations*** (for concrete text proposals, see chapter 2-7):

- to reject / withdraw the proposed inclusion of non-technical skills in Annex III;
- to ensure harmonised flight and duty times across Europe by avoiding the watering down and fragmentation of the related EASA Implementing Rules;
- to recognise the value of reported safety information and create the best possible environment for its collection
- to ensure strong, central, European safety oversight – central certification of pilot licensing and air operations; including 'ramp checks'.
- to reject / withdraw the proposal to reduce the number of pre-flight inspections in case of a "consistent series of consecutive flights";
- to create a strong and dynamic regulation which recognises future scientific progress and understanding in all areas of civil aviation, incl. pilot licensing.

<sup>1</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1592/2002 of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency.

<sup>2</sup> However, ECA refrains from commenting on the more political issues such as governance, sanctions, financing, etc..

## **2. Non-technical Skills – Risk of Arbitrary Decisions**

Annex III of the proposed Regulation contains the “Essential requirements” for Pilot Licensing, i.e. the framework for future pilot licensing in Europe.

The Council’s Political Agreement of December 2006 has added a new requirement for the skills to be demonstrated and maintained by a pilot: so-called “non-technical skills”, including the recognition and management of threats and errors.

Such non-technical skills include for example the ability to detect, fight, manage and solve certain errors, or how the person behaves in work groups/ teams. It is obvious that such skills are useful for every pilot. Any experienced pilot licence holder does have such skills. However, to make the demonstration of these “soft” skills a prerequisite for obtaining or keeping a pilot licence is not acceptable because:

- Best practice, and ICAO advice, is that the most effective development of these skills is achieved by discussion / debriefing as a ‘crew’, rather than a licence issue or renewal being threatened for each crew member that is assessed as individual.
- these skills are not clearly definable and hence open for arbitrary interpretation;
- they could be abused as a pretext to punish “unpopular” pilots;
- they are not scientifically proven, no objective assessment methods are yet in place;
- there are no clearly defined trainer-competencies for such skills and checkable ‘watermarks’ ;
- the skills, their interpretation and assessment depend very much on the culture (i.e. dependent on the company and the nationality involved).

ECA strongly feels that this is an issue that requires further investigation before including it in EASA’s essential requirements.

**ECA strongly recommends to reject / withdraw the proposed inclusion of non-technical skills in Annex III.**

## **3. Transferring EU-OPS into EASA**

Under the revised Reg. 1592 EASA will become responsible for operational issues currently covered by the “EU-OPS Regulation” 1899/2006. Under Art. 6(b), the Agency will develop Implementing Rules for what is now contained in Annex III of Reg. 1899/2006. Once these Implementing Rules come into force, Annex III will be repealed, and EASA’s rules will become the legal standard in Europe.

### **3.1. Transferring EU-OPS into EASA**

The Council of Ministers’ Political Agreement (Dec. 2006) makes some major changes to the Commission proposal. Among others, it changes the Commission text as to what the Implementing Rules (IRs) for air operations shall include and achieve.

However, both the Commission’s and the Council’s text entail the risk that the provisions of Article 8(a) of the EU-OPS Regulation get lost in the transfer to EASA. Neither text refers to the scientific and medical evaluation of Subpart Q (Flight Time Limitations) of Annex III, nor to the mandate given to the Agency to come up with proposals for the modification of Subpart Q, as stated in Art. 8(a).

ECA suggests amending the Council text, to mirror EU-OPS Article 8(a).

<u>Council – Art 6(b)6</u>	<u>Council – Art 6(b)6</u>
<p>6. The implementing rules referred to in paragraph 5 shall:</p> <ul style="list-style-type: none"> <li>- [...]</li> <li>- [...]</li> <li>- take into account worldwide aircraft experience in service, and scientific and technical progress;</li> <li>- <u>with regard to commercial transportation by aeroplane, and without prejudice to the previous subparagraph, be developed initially on the basis of the common technical requirements and administrative procedures specified in Annex III to Regulation (EC) No 3922/1991;</u></li> <li>- [...]</li> <li>- [...]</li> </ul>	<p>6. The implementing rules referred to in paragraph 5 shall:</p> <ul style="list-style-type: none"> <li>- [...]</li> <li>- [...]</li> <li>- take into account worldwide aircraft experience in service, and scientific and technical progress;</li> <li>- <u>with regard to commercial transportation by aeroplane, and without prejudice to the previous subparagraph, be developed initially on the basis of the common technical requirements and administrative procedures specified in Annex III to Regulation (EC) No 3922/1991, as well as of the results of the evaluation provided for under Article 8a of that Regulation.</u></li> <li>- [...] ...[...].</li> </ul>

### **3.2. No Re-Fragmentation of Flight Time Limitations**

The main objective of the “EU-OPS Regulation” 1899/2006 is to harmonise operational matters throughout Europe. Council proposes to completely rewrite Art. 15b (Air Operations). If this text is adopted, the revised EASA Reg. 1592 would lead to a re-fragmentation of Flight Time Limitation rules and practices in Europe. ECA strongly objects to this.

In a new paragraph 2 to Art. 15b, Council proposes two highly worrying new elements as regards Flight Time Limitations (FTL):

#### **1) “Soft law” vs. “hard law”**

Sub-paragraph (a) allows the Agency to issue – legally non-binding – “certification specifications” for FTL, without a strong, unequivocal link to the Implementing Rules and Subpart Q of Annex III of Reg. 1899/2006. This would open the possibility of moving much of the – legally binding – provisions of Subpart Q of 1899/2006 into legally *non-binding* certification specifications.

To ensure harmonised FTL in Europe such a downgrading from binding “hard law” into non-binding “soft law” must be avoided. A strong, binding basic rule-set is needed to prevent operators from cherry-picking what they want to comply with.

**ECA strongly recommends to amend the Council building an explicit link to the Implementing Rules and Subpart Q of Annex III of Reg. 1899/2006.**

<u>Council – Art 15(b)2 (a)</u>	<u>ECA – Art 15(b)2 (a)</u>
<p><u>2. With regard to flight time limitation:</u>  <u>(a) the Agency shall issue the applicable certification specifications to ensure compliance with the essential requirements and, as appropriate, the related implementing rules;</u>            (b)- (e) [...]</p>	<p><u>2. With regard to flight time limitation:</u>  <u>(a) the Agency shall issue the applicable certification specifications to ensure compliance with the essential requirements and, <del>as appropriate,</del> the related implementing rules. <b><u>The implementing rules and certification specifications shall fully reflect the provisions of Subpart Q of Annex III to Regulation (EC) No 3922/1991, taking into account latest scientific and technical progress and evidence.</u></b></u>            (b)- (e) [...]</p>

## 2) **“Carte Blanche” to disregard FTL Implementing Rules**

Sub-paragraphs (b) – (e) introduce a new procedure which would allow Member States to approve individual operators’ FTL schemes even if they do not comply with the related certification specifications. A Member State can do so without any *prior* consultation of and approval by EASA and/or the Commission. If EASA disagrees with the national approval, the Member State is free to ignore EASA’s opinion; EASA can *not* stop the approval. Instead, EASA has to refer the issue to the Commission which will take a decision via Comitology.

ECA strongly opposes such a “carte blanche” for Member States without requiring prior approval by the Agency and, if necessary, the Commission. Under the Council proposal, nationally approved FTL schemes that endanger flight safety could mushroom across Europe and remain in place as long as it takes for EASA and then the Commission to order the Member State to withdraw the approval. With limited human resources available at the Agency and the Commission, this could be a long time during which aviation safety could be seriously compromised.

ECA objects to such a safety-hole into the EASA Regulation, to such a weakening of EASA’s the central safety role, and the fragmentation of FTL practices in Europe. The “Flexibility Provisions” of Art. 10 provide sufficient flexibility to Member States and operators to apply for deviations from the certification specifications, including the principle of *prior* approval by the Agency and/or Commission.

**ECA strongly recommends to reject / withdraw this new “carte blanche” procedure.**

Alternatively, the Council text should be amended (using the language of Art.10 requesting Member States to get *prior authorisation* before granting approval for a FTL scheme deviating from the certification specifications.

<u>Council – Art 15(b)2 (b)-(e)</u>	<u>ECA – Art 15(b)2 (b)-(e)</u>
<p><u>2. With regard to flight time limitation:</u></p> <p><u>(a) [...]</u></p> <p><u>(b) a Member State may approve individual flight time specification schemes which deviate from the above certification specifications. In this case the Member State shall without delay notify such an individual scheme to the Agency and inform the other Member States thereof;</u></p> <p><u>(c) upon notification the Agency shall assess the individual scheme on the basis of a scientific and medical evaluation. When necessary, the Agency shall discuss this scheme with the Member State concerned and, where appropriate, shall propose changes thereto;</u></p> <p><u>(d) should a Member State disagree with the Agency's conclusions concerning an individual scheme, the Agency shall refer the issue to the Commission to decide whether the individual scheme complies with the safety objectives of this Regulation, in accordance with the procedure referred to in Article 54(3);</u></p> <p><u>(e) the contents of individual schemes which are acceptable to the Agency, or on which the Commission has taken a positive decision in accordance with the previous sub-paragraph, shall be published.</u></p>	<p><u>2. With regard to flight time limitation:</u></p> <p><u>(a) [...]</u></p> <p><u>(b) a Member State may approve individual flight time specification schemes which deviate from the above certification specifications. In this case the Member State shall without delay notify <b>the Agency, the Commission and Member States that it intends to grant approval for such an individual scheme to the Agency and inform the other Member States thereof;</b></u></p> <p><u>(c) upon notification the Agency shall assess the individual scheme on the basis of a scientific and medical evaluation. When necessary, the Agency shall discuss this scheme with the Member State concerned and, where appropriate, shall propose changes thereto; <b>should a Member State agree with these changes, it may grant the approval;</b></u></p> <p><u>(d) should a Member State disagree with the Agency's conclusions concerning an individual scheme, the Agency shall refer the issue to the Commission to decide whether the individual scheme complies with the safety objectives of this Regulation <b>and whether the proposed approval may be granted, in accordance with the procedure referred to in Article 54(3);</b></u></p> <p><u>(e) the contents of individual schemes which are acceptable to the Agency, or on which the Commission has taken a positive decision in accordance with the previous sub-paragraph, shall be published.</u></p>

#### 4. Safety Incident Reporting – Protection of the Source of Information

Article 11a of the proposed EASA Regulation deals with the protection of the source of information in cases of incident investigations and occurrence reporting. Learning the lessons from accidents and incidents – duly reported by those involved in them – is crucial to improve aviation safety.

Article 11a states that: 1) the source of the information should not be revealed, 2) Member States refrain from starting legal proceedings against individuals, and 3) employees are not subject to prejudice by their employer (except for gross negligence).

It is often pilots and air traffic controllers who report on safety incidents. It is their reports that help to identify safety gaps and to improve the safety system. If the reporters have to fear that they will be legally prosecuted and punished they will not report openly. Crucial safety information will not be available for improving the system.

The EP (Amendment 16) and the Council propose identical changes to Art. 11a. However, Art. 11a has a major shortcoming: the protection of the source of information applies only “*without prejudice to the [national] applicable rules of penal law*”.

Aviation stakeholders acknowledge the need for a non-punitive reporting system. But the national *judicial* authorities’ approach tends to be in conflict with the safety interests in aviation. Based on national penal law, prosecutors could request access to incident reports, reveal the source of information, and sometimes even legally prosecute the reporter.

**To acknowledge the need for non-punitive reporting, Council suggests a Recital 11. ECA recommends to accept this Recital, but urges to strengthen it:**

<u>Council – New Recital</u>	<u>ECA – New Recital</u>
<p><u>(11) Promotion of a safety culture and the proper functioning of a regulatory system in the fields covered by this Regulation require that incidents and occurrences are spontaneously reported by their witnesses. Such reporting would be facilitated by the establishment of a non-punitive environment, and appropriate measures should be taken by Member States to provide for the protection of such information and of its reporters.</u></p>	<p><u>(11) Promotion of a safety culture and the proper functioning of a regulatory system in the fields covered by this Regulation require that incidents and occurrences are spontaneously reported by their witnesses. Such reporting is only possible by the establishment of a non-punitive environment. Appropriate measures, including changes to national penal law where necessary, should be taken by Member States to provide for the protection of such information and of its reporters.</u></p>

#### 5. OPS, Licensing & Safety Oversight

The Commission proposed to confer EASA with limited new certification tasks in the areas of air operations (Art. 15a) and pilot licensing (Art. 15b), as well as with related oversight tasks. It also proposes “ramp inspections” of EU and foreign aircraft at airports

carried out by EASA (Art. 7, Collective Oversight). ECA welcomes these proposals. Europe needs strong oversight and enforcement of the rules it sets.

However, the Council proposes to weaken EASA's role, compared with the Commission proposal. This runs counter the objective of a strong central safety body, and waters down the Agency's role in air operations and licensing.

**ECA recommends to EP and Council to provide EASA with a strong collective oversight mechanism, and with certification tasks for operations and licensing, as proposed by the Commission.**

## **7. Aircraft Inspections Before Each Flight**

Council proposes to water down the "Essential Requirement" to have an aircraft inspected – through pre-flight checks – before *each* flight, to determine if the plane is safe for operating (Annex IV, Art. 6.b). It proposes that – in case of a "consistent series of consecutive flights" – inspections are done only before such a *series* of flights.

From a safety point of view this is unacceptable. Checking before *each* flight is a standard procedure established by the aircraft manufacturers. Safety is not assured after – or during – a series of flights when these inspections are not done, as some elements or equipment of the aircraft could be damaged from the previous flight and not being noticed, e.g.:

- Possible unreported damage by ground staff (catering-, servicing-, luggage-carts);
- unnoticed bird-strike-damage, e.g. to the aircraft's engine;
- Foreign Object Damage due jet-blast on empennage, engine, flight control surfaces
- Unmonitored access-doors, which remained unintentionally open.

Also, the mandatory pre-flight *security* checks before *each* flight should not be replaced by periodic checks after a series of flight.

**ECA recommends to reject / withdraw the proposal to reduce the number of pre-flight inspections in case of a "consistent series of consecutive flights".**

## **8. Scientific Progress in Licensing**

Pilot Licensing needs to take into account the scientific and technical progress in aviation. No such provision is contained in the Commission proposal for Implementing Rules (IR) related to Pilot Licensing (Art. 6 (a), para. 7), whereas scientific/technical progress is mentioned for IR on Air Operations (Art. 6(b), para. 6), airworthiness (Art. 5, para 5) and EASA opinions (Art. 14, para 2).

**To align the licensing provisions with the other parts of the Regulation and to ensure licensing rules take into account scientific/technical progress, ECA recommends to support EP amendment 8 regarding Art. 6(a) para. 7.**