



Yves Morier  
Acting chairman of the JAA RST

Brussels, 6 March 2007

**Re.: NPA JAR-27**

Dear Mr Morier,

The European Cockpit Association (ECA) urges that the RST does not endorse the publication of NPA JAR- 27 and returns this text to the LST.

ECA believes that the current draft NPA does not comply with the requirements set out in JAR 11 and may contravene some obligations of JAA Member States under EU law:

**Breaches of JAR 11**

1. Wrongful Motivation

JAR 11 states that Sectorial Team reports to the RST must reflect the degree of consensus obtained during the debate of adoption of draft NPAs and provide, in case of a lack of full consensus a summary of the arguments of the dissenting members and of the majority of the ST

The Explanatory Note that the LST director addresses to the RST concerning JAR-FCL NPA 27 states that this draft had obtained consensus. In the draft minutes of the LST meeting it is clearly stated that LST could NOT achieve consensus. Since this element is omitted, there is also no indication of the arguments of the dissenting parties.

The report's incorrect reflection of the debate in the LST is of a nature to mislead the RST members, as the report fails to provide the necessary elements for taking a fully informed decision. ECA considers that this is an important breach of JAR 11 which makes the whole report NULL AND VOID.

ECA ask the RST to return the draft NPA to the LST to document the actual position of its members.

2. Insufficient Impact Analysis

The LST explanatory note states that "no major cost impacts are envisaged". ECA believes, on the contrary, that a proper implementation of the rule will need considerable investment.

For indication, the EU conducted in 1998 the only validation of a CRM assessment methodology for airline operations (NOTECHS). This project was tendered for 1.358.000 ECUS, and lasted 30 months. In order to implement the current proposals, appropriate methodologies would have to be developed and validated in the same way.

Furthermore, the LST does not estimate the cost of training that this new NPA will create. It does not take into consideration the cost of the closure of the organisations that would no longer be able to perform the assessments given the new requirements.

Finally, it has not evaluated the potential impact on crews. There is no indication as to what could be the impact of subjective losses or refusals of licences.

The impact analysis does not address the potential costs of litigation for contesting the validity of CRM assessments.

### 3. Inconsistency with ICAO Standards and Recommended Practices

JAR 11 requires, when drafting new regulations, to look for inconsistencies with the ICAO system. ICAO has repeated on many occasions in letters to the LST that the assessment of non technical skills is against ICAO interpretation of Annex 1.

## Breaches of EU Law

### 1. Breach of the Loyalty Principle

According to EU law, Member States shall refrain from all acts that may impair Community action (Article 10 of the Treaty Establishing the European Community). This principle, which is known as the principle of loyalty, means that, unless urgent and necessary reasons prevail, Member States should not legislate in areas where a proposal from the Commission has been tabled.

As you know, the Commission has tabled a proposal on Reg. 1592/2002 that includes "essential requirements on personnel licensing". EASA is currently working on the way to implement the current JAR-FCLs in the EASA domain according to these requirements.

It is ECA's belief that, until EASA takes responsibilities for licensing regulations, the JAA should only consider introducing changes that are urgent or necessary.

The proposed NPA is neither urgent nor necessary. On the contrary, its necessity is questioned even by ICAO and it is a controversial amendment that risks creating divisions among Members and among industry stakeholders.

Furthermore, the European Parliament and the Council are discussing the convenience of including Non Technical Skills Assessment in the Licensing Essential Requirements of the Commission Proposal. Taking a decision in the JAA at this moment should certainly be considered as an unjustified intrusion in the on-going parliamentary/legislative debate and a breach of the loyalty principle.

### 2. Breach of the Right to Work

The EU Social Charter recognises that every citizen has the right to work. ECA considers that the current NPA would contravene this right as it will make access to the profession of

pilot or the pursuance of this profession, dependent of an assessment which is based on subjective criteria.

The JAR-TEL project, which is the validation of the only methodology for assessing Non Technical Skills (NTS) in the field of operations, showed that this methodology had a rate of inter-assessor discrepancies of 20%. Therefore, potentially one out of five candidates for the issue or renewal of a licence could be unjustly failed and deprived of his or her right to work.

Such a big rate of subjectivity is not acceptable in a democratic society.

The assessment of non technical skills on individuals is also unjust because performance on NTS does not depend on a single individual. It depends also on the other team member. Making the right to work dependent on a third party's performance is also unacceptable.

Sincerely yours,



Philip von Schöppenthau  
ECA Secretary General