

**ASSEMBLY – 35TH SESSION**

**EXECUTIVE COMMITTEE**

**Agenda Item 16: Improvement of safety oversight**

**THE NEW EUROPEAN FRAMEWORK FOR AVIATION SAFETY AND THE  
ESTABLISHMENT OF THE EUROPEAN AVIATION SAFETY AGENCY**

(Presented by the European Commission)

**INFORMATION PAPER**

**SUMMARY**

This Information Paper presents the new European aviation safety framework established by regulation (EC) No 1592/2002 and the state of play in the establishment of the European Aviation Safety Agency.

It then analyses the consequences of this change for ICAO and its Contracting States. It concludes that the European Community Member States remain bound by the obligations incumbent on them by the fact of their having concluded the Chicago Convention. What has changed is only the way they execute some of their obligations, as a consequence of the fact that the Agency has become as from 28<sup>th</sup> of September 2003 their authorised representative for the fulfilment of their obligations as State of design or manufacture, as specified in Part II of Annex VIII to the Chicago Convention.

**1. INTRODUCTION**

This paper presents the new European aviation safety framework established by Regulation (EC) No 1592/2002 of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (hereinafter called the Agency)<sup>2</sup> and analyses the consequences of this change for ICAO and its Contracting States.

**2. REGULATION (EC) NO 1592/2002 AND THE ROLE OF THE AGENCY**

2.1 On 15 July 2002 the European Community adopted Regulation (EC) No 1592/2002 which establishes provisions on various fields related to the regulation of civil aviation and environmental compatibility. This Regulation entered into force on 28 September 2002. It requires the European

<sup>1</sup> French and Spanish versions provided by the European Commission.

<sup>2</sup> OJ L 240, 07.09.2002, p. 1.

Commission to adopt rules for its implementation and establishes the Agency to assist the Commission and to perform several certification tasks. It also foresees that the Agency shall undertake these certification tasks starting one year after the entry into force of the regulation, i.e. as from 28 September 2003.

2.2 The overall mission of the Agency is to ensure a high level of safety and environmental protection in the field of civil aviation. To this end, the Agency assists the Commission in the latter's legislative and regulatory tasks. The Agency is also responsible for issuing certificates of conformity with essential requirements laid down by Regulation (EC) No 1592/2002 and its implementing rules, to types of products and to design organisations. It is also responsible for issuing certificates to production and maintenance organisations located in third countries. In areas in which certificates are issued by the Member States' administrations, the Agency will assist the Commission in the monitoring of the application of Community law through standardisation inspections of those administrations. Lastly, it will establish a market monitoring system to assess the effects of Community legislation and its implementation, in particular with regard to the resulting levels of safety and environmental protection.

2.3 Regulation (EC) No 1592/2002 foresees that the Commission adopts rules for its implementation on the basis of drafts prepared by the Agency. These rules are directly applicable in all EU Member States and supersede national requirements from their date of entry into force.

2.4 As indicated earlier, Regulation (EC) No 1592/2002 establishes a sharing of executive powers between the Agency and the National Aviation Authorities (NAAs) of EU Member States, which can be summarised as follows:

- For aircraft and related products, parts and appliances, type certificates are issued by the Agency ; individual certificates are issued by the NAAs;
- For organisations, certificates are issued by the Agency to all design organisations (independently of their location), as well as to production and maintenance organisations located in third countries. For production and maintenance organisations located within the territory of EU Member States, certificates are issued by the NAAs (except if the State in question requests the Agency to issue a certificate for a production organisation).

2.5 It has to be underlined that both the Agency and the NAAs act as agents implementing Community law, i.e. Regulation (EC) No 1592/2002, and are therefore under the obligation to perform their tasks in full compliance with the Regulation, its essential requirements and the above-mentioned implementing rules.

### **3. THE ESTABLISHMENT OF THE AGENCY – STATE OF PLAY**

3.1 Rules for the implementation of Regulation (EC) No 1592/2002 have been adopted in the form of Commission Regulations<sup>3,4</sup>. They cover, *inter alia*, the certification of aeronautical products and their continued airworthiness. They are largely based on JAA rules thus ensuring continuity with the previous European system.

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<sup>3</sup> Commission Regulation (EC) No 1702/2003 of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations, OJL 243, 27.9.2003, p. 6.

<sup>4</sup> Commission Regulation (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks, OJL 315, 28.11.2003, p. 1

3.2 As required by the European legislator, EASA has indeed taken over all certification tasks incumbent upon it as from 28 September 2003. As the intention was to ensure continuity in the transition between the old (Joint Aviation Authorities) and the new European system, a transition policy has been defined and embedded in the above mentioned implementing rules, based on the principle that certificates, approvals and licences previously issued by Member States in accordance with JAA requirements shall continue to apply.

3.3 Since the Agency is still in a developing stage and recruiting necessary staff, certification tasks are executed on its behalf by JAA and National Aviation Authorities, in accordance with guidelines adopted by the Management Board of the Agency on its outsourcing policy and on the basis of contractual arrangements.

The Agency has by now recruited its senior management staff and is in the process of recruiting middle management and other staff. As staff numbers increase it will progressively internalise certification tasks.

In parallel, the great majority of its working procedures have been adopted by now, including in particular certification procedures, rule-making policy and outsourcing policy.

3.4 Following a decision taken by the European Council in December 2003 the Agency (now provisionally located in Brussels) has its headquarters in Cologne, Germany, where it will move in the course of this year.

#### **4. THE IMPLICATIONS OF THE NEW EUROPEAN FRAMEWORK FOR AVIATION SAFETY FOR EU MEMBER STATES**

4.1 With the entry into force of Regulation (EC) 1592/2002 the Community has laid down common rules in various fields related to civil aviation safety and environmental compatibility.

As a consequence, the EU Member States are under the obligation to take this new situation into account when acting in bilateral or multilateral for a dealing with subjects covered by that Regulation. As far as ICAO is concerned, this means that when such subjects are discussed at the ICAO Council, prior coordination will be organised between the EU Member States in order to reach a common position to be presented in the ICAO Council.

In the same vein, replies to ICAO "State letters" concerning areas covered by the above mentioned Regulation will be also subject to prior coordination at Community level.

4.2 As far as bilateral relations are concerned, existing bilateral agreements between Member States and third countries on the reciprocal acceptance of certification findings and/or on approvals of maintenance organisations will remain in force for the time being. The European Commission has requested EU Member States to exchange diplomatic notes with their counterparts to such agreements, notifying in particular the institutional changes in the EU. EU Member States are in the process of doing so.

4.3 However, EU Member States are no longer entitled to engage in new agreements with third countries in this field. Indeed all existing bilateral agreements between Member States and third countries have to be replaced by agreements between the Community and those countries. This is clearly stated in the Regulation itself, in particular article 9 (1) thereof. This is accepted by the Community's main foreign partners which have all expressed their interest in, and willingness to, entering into such

agreements with the Community with the view to establishing a clear framework ensuring the continued smooth flow of aeronautical products and services.

4.4 The European Commission has received in March and April 2004 the authorisation by the Council to open negotiations with the United States and Canada respectively. Other States will follow as appropriate.

## **5. THE CONSEQUENCES FOR ICAO AND THE DEMARCHE OF EU MEMBER STATES TOWARDS IT**

5.1 With the entry into force of Regulation (EC) 1592/2002 a number of changes that have some consequences for ICAO have occurred:

- All EU Member States share by now a common set of rules covering the certification of aeronautical products and their continued oversight.
- The Agency is as from the 28<sup>th</sup> September 2003 in charge of the approval of new designs and the continuing oversight of products currently designed and manufactured by organisations or persons established in the EU.

5.2 Since all EU Member States are contracting parties to the Chicago Convention and since Annex VIII to the Chicago Convention specifies a number of obligations for the States, the relationship between the Regulation and the obligations of EU Member States under the Chicago Convention has to be analysed. In reality, the answer to this question is quite straightforward.

5.3 Regulation (EC) 1592/2002 makes abundantly clear that EU Member States have to comply with their obligations under the Chicago Convention and takes into account the existence of the convention in several ways:

- By ensuring that Community essential requirements and rules preserve as a minimum prior commitments taken in the framework of the Chicago convention as stated in its recital 5<sup>5</sup>;
- By including as one of the Regulation's objectives, in its article 2, to assist member States in fulfilling their obligations under the Chicago Convention<sup>6</sup>;
- By stating in article 4(3) that "This regulation shall not affect the rights of third countries as specified in international conventions, in particular the Chicago Convention";
- By imposing in article 6 the compliance of products, parts and appliances with the environmental protection requirements of Annex 16 to the Chicago Convention and the possibility to update this article in line with any subsequent amendments of the Convention and its Annexes. The Commission

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<sup>5</sup> Recital 5 : "The Convention on International Aviation, signed in Chicago on 7 December 1944 ("Chicago convention") to which all Member States are parties, already provides for minimum standards to ensure the safety of civil aviation and environmental protection relating thereto. Community essential requirements and rules adopted for their implementation should ensure that member States fulfil the obligations created by the Chicago convention, including those vis-à-vis third countries";

<sup>6</sup> Article 2(2d) : "to assist Member States in fulfilling their obligations under the Chicago Convention, by providing a basis for a common interpretation and uniform implementation of its provisions, and by ensuring that its provisions are duly taken into account in this Regulation and in the rules drawn up for its implementation";

has already adopted a regulation<sup>7</sup> in order to adapt article 6 of Regulation 1592/2002 to the latest version of environmental protection requirements, contained in Annex 16 to the Chicago Convention;

- By describing in article 15 the tasks to be executed by the Agency as follows: “With regard to products, parts and appliances referred to in article 4(1), the Agency shall, where applicable and as specified in the Chicago Convention or its Annexes, carry out on behalf of Member States the functions and tasks of the State of design, manufacture or registry when related to design approval. To that end, it shall in particular ...”.

For the sake of brevity, these quotations are not exhaustive.

5.4 In view of the above, third parties that are parties to the Chicago convention can rest assured that any measures taken under this Regulation will not contravene the rules laid down in the Chicago Convention since the legislation confirms that Member States remain bound by the obligations incumbent on them by the fact of their having concluded the Chicago Convention.

Third parties can also rest assured that the Community will honour the obligations of its Member States.

5.5 The European Commission invited the EU Member States to notify to ICAO the main institutional changes that this new legal framework entails in their relations with ICAO, in particular that, as from 28th of September 2003, the Agency is their authorised representative for the fulfilment of their obligations as State of design or manufacture, as specified in Part II of Annex VIII to the Chicago Convention, except for aircraft that still remain under national control in accordance with Annex II of the EASA Regulation or as a consequence of the transition policy<sup>8</sup>. While the process of notifications is complete for some EU Member States, it is still ongoing for others.

## 6. SUMMARY

The attention of the Assembly is drawn to the following:

- (a) with the entry into force of Regulation (EC) 1592/2002 the Community has laid down common rules in various fields related to the regulation of civil aviation and environmental compatibility ;
- (b) the EU Member States remain bound by their obligations incumbent on them by the fact of their having concluded the Chicago Convention ;
- (c) changes have taken place in the way EU Member states execute some of their obligations as a result of the fact the European Aviation Safety Agency has become as from the 28th of September 2003 their authorised representative for the fulfilment of their obligations, as State of design or manufacture, as specified in Part II of Annex VIII to the Chicago Convention.

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<sup>7</sup> Commission Regulation (EC) No 1701/2003 of 24 September 2003 adapting Article 6 of Regulation (EC) No 1592/2002, OJL 243, 27.9.2003, p. 5

<sup>8</sup> For those not complying with JAA requirements, pending the determination of their type-certificate by EASA.