

Brussels, **XXX**
[...] (2022) **XXX** draft

Annex to EASA Opinion No 02/2022

COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

amending Regulation (EU) No 452/2014 of 29 April 2014 as regards the technical requirements and administrative procedures related to air operations of third country operators

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 452/2014 of 29 April 2014¹ (the TCO Regulation) contains requirements on the authorisation of third-country operators by the European Union Aviation Agency (EASA).

During 2019 and 2020, EASA carried out an evaluation of the TCO Regulation, to assess the effectiveness and efficiency level of the rules. The final report of this evaluation², issued in 2021, recommended a review of certain provisions of that Regulation.

The objective of this delegated Act is to foster a risk-based approach in the authorisation process of third-country operators and improve the efficiency of EASA as the authority being responsible for the implementation of the TCO Regulation. In addition, this Delegated Act intends to clarify existing provisions, remove inconsistencies, and improve the coherence of the TCO Regulation with the EU Air Safety List.

The proposals are expected to mostly maintain the level of safety, with some expected to provide a positive impact. In terms of impacts on operators, the proposals are mostly neutral. The main benefit expected from the proposals is in terms of the cost-effectiveness of the TCO authorisation process, with a positive impact on EASA's efficiency.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with Article 128(4) of Regulation (EU) 2018/1139, before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. The present draft delegated act was presented to the Air Safety experts group, which includes representatives from the Member States, at its meeting on [...]. The present draft delegated act is based on EASA Opinion No 02/2022 whose contents had been publicly consulted through Notice of Proposed Amendment (NPA) 2022-101 'Update of Commission Regulation (EU) No 452/2014 (Third-Country Operator (TCO) Regulation)'.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 61(1) of Regulation (EU) 2018/1139 empowers the Commission to adopt delegated acts, in accordance with Article 128 of that Regulation, laying down detailed rules for the authorisation of the operation of aircraft into, within or out of the territory to which the Treaties apply by a third-country aircraft operator.

⁽¹⁾ 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 (OJ L 133, 6.5.2014, p. 12).

⁽²⁾ Analysis of the lessons learnt from the implementation of Commission Regulation (EU) No 452/2014 related to air operations of third-country operators (and of the associated soft law and EASA Management Board Decision) (<https://www.easa.europa.eu/downloads/128393/en>)

COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

amending Regulation (EU) No 452/2014 of 29 April 2014 as regards the technical requirements and administrative procedures related to air operations of third country operators

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91³, and in particular Article 61 thereof,

Whereas:

- (1) Commission Regulation (EU) No 452/2014⁽⁴⁾ lays down technical requirements and administrative procedures related to air operations of third country operators.
- (2) In order to ensure an adequate level of safety and proportionality, a risk-based approach to the authorisation process of third country operators should be fostered.
- (3) An evaluation of Commission Regulation (EU) No 452/2014 performed by the European Union Aviation Safety Agency identified several areas where the efficiency of the authorisation process of third country operators could be improved. It is therefore advisable to revise certain provisions of Commission Regulation (EU) No 452/2014 to improve the efficiency of the European Union Aviation Safety Agency as the authority being responsible for the implementation of that Regulation.
- (4) It is also necessary to revise certain provisions of Commission Regulation (EU) No 452/2014 to take into account Regulation (EU) 2018/1139, and to improve consistency with Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC⁵.
- (5) Commission Regulation (EU) No 452/2014 should therefore be amended accordingly.
- (6) Pursuant to Article 75(2), points (b) and (c), and Article 76(1) of Regulation (EU) 2018/1139, the European Union Aviation Safety Agency prepared and submitted to the Commission Opinion No XX/2022 as regards draft implementing rules,

³ [OJ L 212, 22.8.2018, p. 1.](#)

⁴ 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 ([OJ L 133, 6.5.2014, p. 12](#)).

⁵ [OJ L 344, 27.12.2005, p. 15.](#)

HAS ADOPTED THIS REGULATION:

Article 1

Commission Regulation (EU) No 452/2014 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
[...]

ANNEX

(1) Regulation (EU) No 452/2014 is amended as follows:

(a) Articles 1, 2 and 3 are replaced by the following:

“Article 1 – Subject matter and scope

This Regulation lays down detailed rules for third country operators of aircraft referred to in Article 2(1)(c) of Regulation (EU) 2018/1139 engaged in commercial air transport operations into, within or out of the territory subject to the provisions of the Treaties, including conditions for issuing, maintaining, amending, limiting, suspending or revoking their authorisations, the privileges and responsibilities of the holders of authorisations as well as conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety.”

“Article 2 – Definitions

For the purposes of this Regulation:

1. ‘Flight’ means a departure from a specified aerodrome towards a specified destination aerodrome.
2. ‘Third country operator’ means any operator in respect of which the functions and duties of the State of the operator are not carried out by a Member State or the Agency.”

“Article 3 – Authorisations

Third country operators shall only engage in commercial air transport operations into, within, or out of the territory subject to the provisions of the Treaties if they comply with the requirements of Annex 1 and hold an authorisation issued by the Agency in accordance with Annex 2 to this Regulation.”;

(b) points 2, 3 and 4 of Article 4 are deleted;

(2) Annex 1 – Third country operators (Part-TCO) is amended as follows:

- (a) in point TCO.100, the word “Treaty” is replaced by “Treaties”;
- (b) points TCO.105 and TCO.110 are deleted;
- (c) in point TCO.200, points (a), (b), (c) and (e) are replaced by the following:

“(a) The third country operator shall comply with:

- (1) the applicable standards contained in the Annexes to the Convention on International Civil Aviation, in particular Annexes 1 (Personnel licensing), 2 (Rules of the Air), 6 (Operation of Aircraft), as applicable, 8 (Airworthiness of Aircraft), 18 (Dangerous Goods), and 19 (Safety Management);
- (2) the applicable safety directives issued by the Agency in accordance with Article 76(6) of Regulation (EU) 2018/1139;

- (3) the relevant requirements of Part-TCO; and
 - (4) the applicable standardised European rules of the air (SERA).
- (b) The third country operator shall ensure that an aircraft operated into, within or out of the territory subject to the provisions of the Treaties is operated in accordance with:
- (1) its air operator certificate (AOC) and associated operations specifications in accordance with ICAO Annex 6; and
 - (2) the TCO authorisation issued in accordance with this Regulation and the scope and privileges contained therein.
- (c) The third country operator shall ensure that an aircraft operated into, within or out of the territory subject to the provisions of the Treaties has a certificate of airworthiness (CofA) issued or validated in accordance with ICAO Annex 8 by:
- (1) the State of registry; or
 - (2) the State of the operator, provided that the State of the operator and the State of registry have entered into an agreement under Article 83bis of the Convention on International Civil Aviation that transfers the responsibility for the issue of the CofA.

[...]

- (e) Without prejudice to Regulation (EU) No 996/2010⁶, the third country operator shall without undue delay report to the Agency any accident as defined in ICAO Annex 13, involving aircraft used under its AOC, including those aircraft that are not intended to be flown into, within or out of the territory subject to the provisions of the Treaties.”;
- (d) in point TCO.205, the words “Treaty applies” are replaced with “Treaties apply”;
- (e) point TCO.215 is replaced by the following:
 “TCO.215 Production of documentation, manuals and records
 Upon request by a person authorised by the Agency or the competent authority of the Member State where the aircraft has landed, the pilot-in-command shall, without undue delay, present any documentation, manuals or records required to be carried on board.”;
- (f) point TCO.305 is replaced by the following:
 “TCO.305 One-off notification flights

⁶ Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC, OJ L 295, 12.11.2010, p. 35.

- (a) By way of derogation from TCO.300(a) a third country operator may carry out flights into, within or out of the territory subject to the provisions of the Treaties without first obtaining an authorisation in the following cases:
- (1) flights that are performed in the public interest, to address an urgent need, such as humanitarian missions and disaster relief operations;
 - (2) air ambulance flights that are performed to move sick or injured patients between healthcare facilities or deliver patient medical care.
- (b) The provisions of (a) shall only apply provided that the operator:
- (1) notifies the Agency prior to the intended date of the first flight in a form and manner established by the Agency;
 - (2) is not subject to an operating ban pursuant to Regulation (EC) No 2111/2005;
 - (3) is not subject to a suspension or revocation pursuant to ART.235;
 - (4) has not been subject to rejection of an application for TCO authorisation pursuant to ART.200(e)(1); and
 - (5) applies for an authorisation pursuant to TCO.300 within 14 days after the date of notification to the Agency pursuant to TCO.300.
- (c) The flight(s) specified in the notification prescribed in (a) may be performed for the period requested by the operator, but no longer than for a maximum of 12 consecutive weeks after the date of notification or until the Agency has taken a decision on the application in accordance with Part-ART, whichever comes sooner.
- (d) A notification may be filed only once every 24 months by an operator.”;
- (g) point TCO.310 is replaced by the following:
“TCO.310 Privileges of an authorisation holder
The privileges of the operator shall be listed in the authorisation and not exceed the privileges granted by the State of the operator.”;
- (h) point TCO.315 is replaced by the following:
“TCO.315 Changes
- (a) Any change, other than those agreed under ART.210(c), affecting the terms of an authorisation shall require prior approval by the Agency.
 - (b) The application for prior approval by the Agency shall be submitted by the third country operator at least 30 days before the date of implementation of the intended change.
The third country operator shall provide the Agency with the information referred to in TCO.300, restricted to the extent of the change.

After submission of an application for a change, the third country operator shall operate under the conditions prescribed by the Agency pursuant to ART.225(b).

- (c) All changes not requiring prior approval, as agreed in accordance with ART.210(c), shall be notified to the Agency before the change takes place.”;
 - (i) point TCO.320 is amended as follows:
 - (i) point (a)(6) is replaced by the following:

“(6) the operator being able to substantiate, upon request by the Agency, its intention to continue to conduct operations under its TCO authorisation.”;
 - (ii) a new point (a)(7) is added as follows:

“(7) the third country operator operating at least one aircraft under its TCO authorisation.”;
 - (iii) point (b) is replaced by the following:

“(b) If an authorisation has become invalid, the third country operator shall apply for and obtain a renewal of its authorisation by the Agency, prior to recommencing operations into, within or out of the territory subject to the provisions of the Treaties. The application shall be made in a form and manner established by the Agency and shall be accompanied by any document necessary to determine that the reasons for the authorisation to become invalid are no longer present, and that the operator complies with the requirements to obtain an authorisation under Part-TCO.”;
- (3) Annex 2 – Authority requirements regarding the authorisation of third country operators (Part-ART) is amended as follows:
- (a) point ART.105 is deleted;
 - (b) in point ART.110, point (b) is replaced by the following:

“(b) The Agency shall inform the Member States of the notifications it has received in accordance with TCO.305 without any undue delay.”;
 - (c) in point ART.115, points (a)(5), (a)(6) and (a)(7) are replaced by the following:

“(a) [...]”

 - (5) enforcement measures taken, including fines requested by the Agency in accordance with Regulation (EU) 2018/1139;
 - (6) the implementation of corrective actions mandated by the Agency in accordance with Article 76(6) of Regulation (EU) 2018/1139; and
 - (7) the use of flexibility provisions in accordance with Article 71 of Regulation (EU) 2018/1139.”;
 - (d) a new point ART.120 is added as follows:

“ART.120 One-off notification flights

Upon receiving a notification from an operator pursuant to TCO.305, the Agency shall, without undue delay, assess whether the conditions established in TCO.305 have been met.

When the Agency finds that the conditions established in TCO.305 have not been met, the Agency shall inform the operator and the affected Member State(s) thereof.”;

(e) Point ART.200 is amended as follows:

(i) points (b) and (d) are replaced by the following:

“(b) The initial assessment shall be completed within 30 days after receipt of all required documents pursuant to TCO.300 (c) and (d).

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.

[...]

(d) When an operator does not provide the information required for the assessment in accordance with TCO.300 (c) and (d) within the timeline established by the Agency, the Agency may decide to suspend the assessment of the application until the information is provided. In this case, the Agency shall inform the operator of its decision.”;

(ii) in point (e)(1), the word “refuse” is replaced by “reject”;

(iii) a new point (f) is added, as follows:

“(f) The Agency may decide not to start processing a new application from an operator whose authorisation has been revoked or whose application has been rejected, before 9 months after the date of revocation or rejection.”;

(f) point ART.205 is amended as follows:

(i) point (a) is replaced by the following:

“(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 take into account the scope of the ban in order to define the relevant assessment procedure, as described in ART.200. When the operator is subject to an operating ban covering the entire scope of its operations, the assessment shall include an audit of the operator.”

(ii) point (c) is replaced by the following:

“(c) The Agency shall only perform an audit when:

(1) the third country operator agrees to be audited;

(2) the outcome of the initial evaluation procedure referred to in ART.200 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 safety and security of the Agency’s personnel.”;

(g) point ART.210 is amended as follows:

(i) in point (a), the initial sentence is replaced by the following:

“(a) The Agency shall issue the authorisation, when:”;

- (ii) in point (a)(4), the word “and” at the end of the point is deleted;
- (iii) point (a)(5) is replaced by the following:
 - “(5) the applicant is not subject to an operating ban pursuant to Regulation (EC) No 2111/2005; and”;
- (iv) a new point (a)(6) is added, as follows:
 - “(6) any non-compliance finding raised during the assessment has been closed.”;
- (v) points (b) and (c) are replaced by the following:
 - “(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 by the Agency.
 - (c) The Agency shall agree with the third country operator the scope of changes to the third country operator not requiring prior approval taking into consideration the size, type and complexity of the operation.”;
- (h) Point ART.215 is amended as follows:
 - (i) point (a)(2) is replaced by the following:
 - “(2) if applicable, the implementation of corrective actions mandated by the Agency in accordance with Article 76(6) of Regulation (EU) 2018/1139.”;
 - (ii) point (b)(4) is replaced by the following:
 - “(4) take into account decisions and investigations pursuant to Regulation (EC) No 2111/2005 or joint consultations pursuant to Regulation (EC) No 473/2006.”;
 - (iii) point (d) is replaced by the following:
 - “(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 submit the affected third country operator to intensified surveillance. The Agency shall take any necessary measures to ensure that the intended operation will be conducted in compliance with the applicable requirements of Part-TCO. These measures may include:
 - (1) an audit of the third country operator in accordance with ART.205(d);
 - (2) a requirement for the operator to submit reports or tailored technical information to the Agency at regular intervals;

- (3) a temporary limitation of the operation to the operator’s current fleet and/or scope of commercial air transport operations into, within or out of the territory subject to the provisions of the Treaties.”;
- (i) a new point (e) is added to ART.220 as follows:
“(e) When determining the review interval, the Agency shall take into consideration the size, type and complexity of the operation, available information on the number of flights performed under the TCO authorisation, and the relevant elements referred to in ART.200(c).”;
- (j) point ART.230 is amended as follows:
(i) points (b), (c) and (d) are replaced by the following:
“(b) A level 1 finding shall be issued by the Agency when any significant non-compliance is detected with the applicable requirements of Regulation (EU) 2018/1139 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 approval without having received an approval 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;
(5) presence of multiple level 2 findings raised during an assessment, indicating a systemic weakness that lowers safety or seriously hazards flight safety.
(c) A level 2 finding shall be issued by the Agency when any non-compliance is detected with the applicable requirements of Regulation (EU) 2018/1139 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 (EU) 2018/1139 and its delegated and implementing acts, 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.”;
- (ii) point (e)(2) is replaced by the following:

“(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, as referred to in (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 shall be taken as laid down in ART.235(a).”

(k) points (b), (c), (d) and (e) of ART.235 are replaced by the following:

“(b) 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 or State of registry, as applicable.

(c) In considering the lifting of a suspension, the Agency shall consider conducting 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 of verifying whether these oversight deficiencies have been corrected.

(d) The Agency may revoke the authorisation when, following a suspension, the operator and/or the State of the operator or State of registry, as applicable, have not taken successful corrective action within a maximum period of 12 months.

(e) The Agency shall revoke the authorisation when the third country operator becomes subject to an operating ban pursuant to Regulation (EC) No 2111/2005.”;

(l) a new point ART.240 is added, as follows:

“ART.240 Validity of the authorisation

(a) When the holder of a TCO authorisation no longer complies with the requirements for continued validity of TCO.320, the Agency shall inform the operator and the Member States that the TCO authorisation has lost its validity.

(b) When receiving an application for renewal of an invalid authorisation, the Agency shall perform an assessment as necessary to ensure that the intended operation will be conducted in compliance with the applicable requirements of Part-TCO.”