

Subject: EASA Operations Rulemaking

Meeting: Meeting June 26 & 28, 2007 and Non-commercial Operations Sub-group Meeting June 26 & 27, 2007

File: EASA

Reported by: Ray Rohr

Summary:

The OPS.001 Rulemaking Group met on June 26 & 28 to review progress in the sub-groups and address open issues. The Group was advised that EU OPS will be updated to include Amendments 9 to 12 in July of this year. They will be effective the same date as EU OPS. Ten additional 10 NPAs from Amendments 13 and 14 will be added to EU OPS later this year – probably with a transition period. Also, it was reported that the FCL Rulemaking Group had reached agreement in principle as to what training related material will be included in Part FCL and what will be in Part OPS.

The Rulemaking Group met on June 26 & 27. They reviewed the work that had been completed to date and agreed to cancel their planned July meeting. EASA staff will consolidate the work done by the Sub-groups and prepare a draft Part OPS that the Rulemaking Group will review at an October 16 – 18 meeting. Subsequent to that meeting work will be undertaken to resolve any outstanding issues.

The European HEMS and Air Ambulance Committee made a presentation to the Rulemaking Group. [A copy of the presentation](#) is linked to this report.

At the ninth meeting of the Non-Commercial Operations with Complex Motor-Powered Aircraft Sub-group the cabin crew implementing rules were reviewed and finalised.

Other issues that were reviewed include:

- The impact of the clause “maximum approved seating configuration of more than 9 seats” in the definition of complex motor-powered aircraft,
- Concern of the impact of the changing definition of complex motor-powered aircraft on the non-commercial IRAs,
- Flight Time Limitations provisions and the potential implications of work underway in EASA, and
- Outstanding issues related to “declaration” and/or “certification” for non-commercial operations.

It was agreed to hold the [discussion paper](#) on regulation of non-commercial operations involving fractional ownership and management companies and use it only if it is required at some point in the future.

Agreement was reached on a process to manage issues that may emerge as the result of subsequent regulatory development activity. The [draft minutes of the meeting](#) are linked to this report.

The next OPS.001 Rulemaking Group meeting is scheduled for Oct. 16 - 18, 2007.

Implication for Business Aviation:

This is a very important ongoing project with a number of issues that must be resolved. Fortunately progress to date has been positive.

Decisions Required:

Nil at this time.

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Discussion Paper

Regulation of Non-commercial Operations Involving Fractional Ownership and Management Companies

1. Issue

To develop for Part OPS 2 the regulatory provisions and associated guidance material for the regulation of non-commercial operations involving fractional ownership and other aircraft management organisations should the amendments to the Essential Requirements proposed of the Council of the European Union be adopted.

2. Background

In the Commission proposal of 15.11.2005 to amend Regulation (EC) No. 1592/2002 commercial operation is defined as:

“a remunerated aeronautical activity covered by a contract between an operator and a customer, where the customer is not, directly or indirectly, an owner of the aircraft used for the purpose of this contract and the operator is not, directly or indirectly, an employee of the customer.”¹

Article 6b.3 of the Commission proposal states:

“Operators engaged in the non-commercial operation of complex motorpowered aircraft shall declare their capability and means to discharge the responsibilities associated with the operation of the aircraft.”²

If these provisions are adopted all non-commercial operations, including fractional ownership operations and other arrangements involving aircraft management organisations, will need only to declare their capability and means to discharge the responsibilities associated with the operation of the aircraft. There will not be any requirement for certification of such operations.

However, this situation may be altered if the recommendations of the Permanent Representatives Committee of the Council of the European Union are adopted. The Council has proposed that commercial operation be defined as:

“any operation of an aircraft, against remuneration or other valuable consideration, which is available to the public or, when not made available to the public, which is performed under a contract between an operator and a customer, where the latter has no control over the operator”.

They also proposed that Article 6b.3 be amended to read as follows:

“Unless otherwise determined in the implementing rules, operators engaged in the non-commercial operation of complex motorpowered aircraft shall declare their capability and means to discharge the responsibilities associated with the operation of the aircraft.”³

The Council also proposed that Article 6b.5 be amended to read as follows:

5. The Commission shall adopt, in accordance with the procedure laid down in Article 54(3a), the rules for the implementation of this Article. In doing so, it shall specify in particular:
 - a. the conditions to operate an aircraft in compliance with the essential requirements laid down in Annex IV;
 - b. the conditions for issuing, maintaining, amending, limiting, suspending or revoking the certificates referred to in paragraph 2⁴ **and the conditions under which a certificate shall**

¹ Proposal for a Regulation of the European Parliament and 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, Commission of the European Communities, Brussels 15.11.2005

² Ibid.

³ COREPAR Report to Council on Amendment of (EC) No. 1592/2002 of 15 July 2002, Council of the European Union, Brussels, 30.11.2006

⁴ Paragraph 2 refers to commercial operations and the certificate issued to commercial operators.

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be replaced by a declaration of the capability and means of the operator to discharge the responsibilities associated with the operation of the aircraft;

- c. the privileges and responsibilities of the holders of certificates;
- d. the conditions and procedures for **the declaration by, and for** the oversight of, operators referred to in paragraph 3 **and the conditions under which a declaration shall be replaced by a demonstration of capability and means to discharge the responsibilities associated with the privileges of the operator recognised by the issuance of a certificate.**⁵

The definition of commercial operation contained in the Commission proposal would unquestionably result in operations where an owner contracts with an aircraft management company to operate an aircraft on his/her behalf being classified as non-commercial when the operation is being conducted for the benefit of the owner and there is no remuneration other than the operating contract involved.

This definition would also appear to classify fractional ownership operations as non-commercial when the owner of a fractional share of an aircraft is being provided with air transport services as long as:

- the aircraft in which the owner owns a fractional share is used, or
- an agreement on dry lease and exchange of aircraft between all of the fractional share owners exists and an aircraft within the program is used.

The definition of commercial operation proposed by the Council would not appear to alter that situation.

If the Council proposal for amendment of articles 6b.3 and 6b.5 is adopted there would be the option in the implementing rules to include a requirement for certification of some non-commercial operations.

On that basis, the Authority Requirements and SMS Sub-group and the Non-commercial Operation with Complex Motor-powered Aircraft Sub-group of the OPS.001 Rulemaking Group met on 24.04.2007 and discussed options for the declaration process and regulatory oversight of non-commercial operations should the amendments proposed by the Council be adopted. The Sub-groups agreed that there was no justification to require certification of non-commercial operations which are conducted by the owner of an aircraft. They agreed that the declaration process was appropriate for such operations.

They also discussed a range of issues related to operations which involved a management organization. They specifically explored options for situations such as:

- fractional ownership operations, and
- operations where an owner of an aircraft contracts with an aircraft management company to maintain and operate the aircraft on his behalf solely for his benefit.

For the purposes of the paper an aircraft management organization is defined as *“any legal or natural person operating or proposing to operate the aircraft on behalf of the aircraft owner”*. That definition includes fractional ownership operations and the traditional aircraft management companies that operate aircraft for an owner through a contracted arrangement.

After discussion of a range of options it was agreed that the ***Consolidated Recommendations of the ECAC Task Force on Fractional Ownership*** of 24 January 2007 presented a reasonable starting point for a framework for regulation of fractional ownership operations and that the principles contained in it should be used as a basis of the development of the EASA Part OPS 2 implementing rules.

In the discussion some members of the Sub-groups expressed the opinion that owners of aircraft who entered into contracts with management organisations no longer retained accountability for the safety

⁵ COREPAR Report to Council on Amendment of (EC) No. 1592/2002 of 15 July 2002, Council of the European Union, Brussels, 30.11.2006

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of the operation of that aircraft and, in fact, became innocent customers of the management organisation, similar to customers of a commercial operator. Some members of the Sub-groups also expressed the concern that unless the implementing rules are carefully constructed both definitions of commercial operation may provide “loopholes” that would permit aircraft operators to conduct illegal charters through the use of contractual arrangements. This issue is discussed in the ***Discussion paper on certification versus declaration for operations with non-commercial complex aircraft*** that was previously presented the Non-commercial Sub-group. On that basis it was concluded that similar implementing rules should be considered for all operations involving aircraft management organisations.

3. Discussion

3.1 ECAC Task Force and Fractional Ownership Considerations

The ECAC Task Force on Fractional Ownership was composed of representatives from the European Commission, EASA and the European aviation industry. Their year-long study addressed the safety aspects, security measures and consideration of the nature of Fractional Ownership operations. The Task Force concluded “*that any new regime adopted in this area would require to give these operations a degree of flexibility that business operations need in order to be efficient.*”⁶ They also noted that “*the industry representatives have pointed out in this regard that should European operators be required to hold an AOC that would greatly impinge on the European industry’s ability to compete internationally.*”⁷

In their recommendations the Task Force noted that as a first step there must be agreement on the definition of fractional ownership. They recommended that a Fractional Ownership program would be any ownership and aircraft exchange program that encompassed all of the following elements:

- a. The provision of services for management of the programme by a single programme manager acting on behalf of the owners;
- b. The availability of two or more aircraft for services;
- c. One or more owners per aircraft belonging to the programme, with at least one aircraft having more than one owner;
- d. Each owner owning a minimum percentage (to be determined) in at least one of the programme’s aircraft;
- e. An agreement on dry lease exchange of aircraft between all the owners;
- f. Multi-annual agreements between participants in the programme, defining conditions with regard to ownership, management of the programme and exchange of aircraft between owners;
- g. An explicit statement in an appropriate legal framework that the operation of a Fractional Ownership programme falls under the **private non-commercial transport** category would be required, as would be an indication that part-owners in a Fractional Ownership programme are in operational control of the programme aircraft, and must delegate all or part of the tasks associated with the operation of the aircraft to the Programme Manager;
- h. A clear statement would be required that transport of passengers or goods or any operation for remuneration or hire under such a programme is prohibited;
- i. A prohibition on the sale or lease of an aircraft interest that is less than the “minimum Fractional Ownership interest” unless the flights associated with that interest are operated under a commercial regime by a certified and licensed air carrier; and
- j. A requirement that passengers on a Fractional Ownership flight must be “designated” by the relevant owner.⁸

⁶ Special ECAC Task Force to Consider Fractional Ownership, Summary of Recommendations adopted by Directors General, European Civil Aviation Conference, Brussels 24.01.2007

⁷ Ibid.

⁸ Ibid.

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The Task Force also recommended that the European safety regulatory requirements for fractional operations should require safety standards similar to those applied to commercial operations but without the need for an air operator certificate.⁹

With regard to the operational control issue the Task Force recommended the following principles should be included in the regulatory regime:

- a. Operational tasks shall be delegated mandatorily to the Programme Manager and shall be listed. The Fractional Owner continues to be jointly and individually responsible for the performance of these tasks and for compliance with applicable regulations and requirements;
- b. The Programme Manager shall be the sole point of contact with national authorities for specifications, approvals and authorisations required by all national or European regulations pertaining to Fractional Ownership Operations for the tasks delegated by the Fractional Owner. These specifications, authorisations and approvals should not be affected by any change in ownership of a programme aircraft in the identified programme;
- c. The Fractional Owner shall formally acknowledge his/her responsibilities in the Programme Management contract, indicating that he/she has read, understood and accepted operational control responsibility. The Fractional Owner shall also acknowledge that he/she is in operational control over programme aircraft when the Fractional Owner uses another programme aircraft through the dry lease interchange agreement;
- d. Arising from the fact that Fractional Owners are signatories to a dry lease interchange agreement which is an essential element of a Fractional Ownership programme, Fractional Owners retain two areas of responsibility as follows:
 - i. As the owner, he/she is responsible for his/her own aircraft irrespective of its use by any other owner from the programme;
 - ii. As the member of the programme, he/she is responsible for any aircraft he/she operates from the aircraft pool.¹⁰

The foregoing conditions parallel the requirements of FAR Part 91, Subpart K - the rules that govern fractional ownership operations in the United States.

3.2 Implications of the Definition of Commercial Operation

While this regulatory framework may initially appear appropriate for application in Part OPS 2, it must be noted that given the definition of commercial operation contained in the Commission proposal of 15.11.2005 and in the Council proposal of 30.11.2006, fractional ownership operations will be considered as non-commercial operations as long as the operation is not available to the public and a contract exists where the aircraft owner has some control over the fractional programme operator. Therefore, it will not be necessary to specify in the implementing rules all of the attributes of a fractional ownership operation that are contained in FAR 91, Subpart K or that are recommended by the ECAC Task Force. One of the most notable impacts of either definition of commercial operation would be that operational control is not a relevant issue. This significantly simplifies the regulatory requirements. On the other hand, the situation where an operation would be classified as non-commercial as long as:

- the operation of the aircraft is not for remuneration,
- it is not available to the public, and
- a contract exists where the aircraft owner has some control over the operator,

results in the situation where both fractional ownership operations and operations involving aircraft management organisations fall within the same definition and it would not be possible to apply different requirements to one of them.

If the Council proposal is adopted, introduction of a means to differentiate between fractional operations and managed operations may be appropriate. However, until that occurs, the only course of action is to develop a process to work within the proposals that are now on the table.

⁹ Ibid.

¹⁰ Ibid.

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Another issue that may deserve further consideration is whether it may be appropriate to specify in the implementing rules what constitutes an acceptable degree of control of the operator by the customer so as to constitute a non-commercial operation. This of course would depend to some degree on the adopted definition of commercial operation. For purposes of this regulatory impact analysis it is assumed that an operation that met either of the following criteria would be classified as non-commercial;

1. The aircraft is owned by a sole owner and the contract is with an aircraft management organisation selected by the owner, and:
 - a. The aircraft is managed under a long term management contract,
 - b. The management contract is specifically for the provision of operational services for the owner's aircraft,
 - c. The aircraft is solely or mainly used by the owner for the carriage of himself and persons or goods designated by the owner, and
 - d. There is no remuneration or other valuable consideration related to the carriage of persons or goods.

Note: In this case it would appear that where a substitute aircraft is provided these criteria will not be satisfied and the operation would be classified as a commercial operation. That could be altered where a dry lease exchange agreement between the aircraft owners existed.

2. The owner owns a fractional share of an aircraft and the contract for the provision of services for management of the programme is with a single programme manager acting on behalf of all of the owners of the aircraft, and:
 - a. The programme manager has two or more aircraft available for services;
 - b. There are one or more owners per aircraft belonging to the programme, with at least one aircraft having more than one owner;
 - c. There is an agreement on dry lease exchange of aircraft between all the owners;
 - d. There are multi-year agreements between participants in the programme, defining conditions with regard to ownership, management of the programme and exchange of aircraft between owners;
 - e. There is no remuneration or other valuable consideration related to the carriage of persons or goods; and
 - f. The aircraft is solely or mainly used by the owner for the carriage of himself and persons or goods designated by the owner.

4. Proposed Regulatory Provisions

Based on the foregoing, it would appear that if the amendments to articles 6b.3 and 6b.5 proposed by the Council are adopted, there are three options that must be considered with regard to the regulation of non-commercial operations involving aircraft management organisations.

1. No requirements other than a declaration by the operator of their capability and means to discharge the responsibilities associated with the operation of the aircraft.
2. The requirement that operations involving aircraft management organisations are conducted under an aircraft management certificate.
3. The requirement that operations involving aircraft management organisations are conducted under an air operator certificate similar to that required under OPS Part 1.

For purposes of option 2 it is assumed that the aircraft management certificate requirements would parallel the Management Specifications of FAR Part 91, Subpart K. For example, the certification process would require that in order to receive an aircraft management certificate the aircraft management organisation would be required to present to the NAA:

1. A current list of all aircraft owners and types of aircraft, registration markings and serial numbers;
2. The authorisations, limitations, and specific procedures under which these operations are to be conducted;

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3. The specific location of the aircraft management organisation's principal base of operations and, if different, the address that will serve as the primary point of contact for correspondence between the regulatory authority and the aircraft management organisation and the name and mailing address of the aircraft management organisation's agent for service;
4. Any authorised deviation and exemption granted from any requirement of OPS Parts 0 and 2; and
5. An operations manual that demonstrates the means of discharging the responsibilities associated with the operation of the aircraft under Part OPS 2.

The NAA would issue the aircraft management certificate if, after review, they find that the applicant:

1. Meets the applicable requirements of Part OPS 2; and
2. Is properly and adequately equipped in accordance with the requirements of OPS Parts 2 and is able to conduct safe operations under that Part and the provisions of the aircraft management certificate.

An application for an aircraft management certificate would be denied if the NAA finds that the applicant is not properly or adequately equipped or is not able to conduct safe operations.

5. Regulatory Impact Assessment

As noted in section 2 of this Discussion Paper, Article 6b.3 of the Commission proposal as amended by the Council states:

“Unless otherwise determined in the implementing rules, operators engaged in the non-commercial operation of complex motorpowered aircraft shall declare their capability and means to discharge the responsibilities associated with the operation of the aircraft.”¹¹

Therefore, any requirement beyond the basic declaration requirement must be justified through a regulatory impact assessment (RIA). This RIA will assess the three options for the regulation of non-commercial operations involving aircraft management organisations with complex motor-powered aircraft in accordance with the provisions identified in section 4 of this paper should the amendment as proposed by the Council be adopted.

5.1 Option 1 – Declaration for Management Companies and Fractional Ownership Operations

Safety

- With only limited regulatory oversight there is some risk that aircraft managers could engage in operations without meeting the requirements of Part OPS 2 for some time without being detected. As all fractional operations in Europe are now conducted under a commercial air operator certificate, this may be considered a reduction in the level of safety only when operators choose to operate under non-commercial rules rather than commercial.
- Given that managed operations are common in North America and Europe, and have been conducted without requirement for of any type of certificate and that there have not been identified safety problems, it would appear that this is not a significant safety concern with this segment of aviation.

Economic

- No economic impact as a declaration is required for such operations by the Essential Requirements.

Environmental

- No environmental impact.

¹¹ COREPAR Report to Council on Amendment of (EC) No. 1592/2002 of 15 July 2002, Council of the European Union, Brussels, 30.11.2006

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Social

- No social impact.

Other aviation requirements

- No impact on other aviation requirements.

Foreign comparable regulatory requirements

- The requirements for fractional ownership operations would be less than the requirements in the USA. This could have a negative impact on efforts to ensure a level playing field between USA and European operators.
- The provision for managed companies would be compatible with international Standards and Recommended Practices.

Equity and fairness issues

- There are no equity and fairness impacts.

5.2 Option 2 – Aircraft Management Certificate for Management Companies and Fractional Ownership Operations

Safety

- The requirements for aircraft management companies and fractional ownership operations to hold an aircraft management certificate would ensure a reasonable level of safety for aircraft owners who are not fully aware of the regulatory and safety responsibilities associated with aircraft ownership and operation and their fellow passengers. Given that fractional ownership operations are more complex than other non-commercial operations, some additional oversight may be justified even though the safety record of this aviation segment is excellent.
- While all such operators would be required to meet the requirements specified in the Essential Requirements and associated Implementing Rules there may be a small risk that faced with additional regulatory burden associated with certification some existing aircraft management companies may withdraw from the market which could in fact result in a degradation of safety.
- The safety record of aircraft management companies has been excellent, so the safety case for additional regulatory provisions for such operations beyond the Essential Requirements and associated Implementing Rules is limited.

Economic

- Under this option the aircraft management companies would incur the costs associated with meeting the initial aircraft management certificate issue requirements and in some States the cost associated with ongoing regulatory surveillance. These costs would be passed on to the aircraft owners.
- As this is a new requirement for management companies and it is anticipated that there would be a significant number that would require certification, this option will result in new costs to NAAs.
- As all existing European fractional ownership operations hold Air Operator Certificates there would be no incremental cost to them.

Environmental

- No environmental impact.

Social

- No social impact.

Other aviation requirements

- No impact on other aviation requirements.

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Foreign comparable regulatory requirements

- This proposal exceeds the regulatory requirements in the USA and those contained in the proposed amendment to Annex 6 Part II for aircraft management companies. Should there be significant costs to the operator associated with the certification process and the associated regulatory oversight these have the potential to put such operators at an economic disadvantage with operators in other areas of the world.
- As the certification requirement for fractional ownership operations is designed to parallel the USA requirements there would be a level playing field between USA and European operators.

Equity and fairness issues

- The introduction of a new requirement for aircraft management companies to be certificated where no safety concern has been identified could be construed as unfair.
- As all existing European fractional ownership operations hold air operator certificates there would be no equity and fairness issues to them.

5.3 Option 3 – Air Operator Certificate for Management Companies and Fractional Ownership Operations

Safety

- Requiring an air operator certificate would ensure an equivalent regulatory safety oversight for non-commercial operations as is provided for commercial operators.
- This level of safety oversight would be far in excess of that applied to non-commercial operations in other areas of the world and contrary to international standards established by ICAO. This option does not recognize the safety responsibilities of the owner which is a fundamental principle for regulating non-commercial operations in the international Standards and Recommended Practices.
- There appears no justification for imposing costly new regulatory provisions on an industry that has an excellent safety record.

Economic

- The aircraft management companies would incur substantial costs associated with meeting the initial air operator certificate issue requirements and the cost associated with ongoing regulatory surveillance.
- These costs could have a very significant negative impact on this non-commercial aviation sector. There would also be significant cost increases to NAAs.

Environmental

- No environmental impact.

Social

- There could be significant negative social impact if this non-commercial aviation sector were subjected to significant contraction.

Other aviation requirements

- The requirement for an air operator certificate would be anomalous to other aviation regulatory requirements in Europe.

Foreign comparable regulatory requirements

- The requirement for an air operator certificate is significantly in excess of the requirements in the USA and in international Standards and Recommended Practices and would have a detrimental effect in efforts to achieve a level playing field.

Equity and fairness issues

- The requirement for an air operator certificate for non-commercial operations would be unfair to owners and inequitable to other similar non-commercial activities.

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6. Conclusions and Recommendations

6.1 Conclusions

Should articles 6b.3 and 6b.5 be adopted as proposed by the Commission both operators involved in non-commercial fractional ownership operations and those involving a management company would only have to declare their capability and means to discharge the responsibilities associated with the operation of the aircraft. However, if the Council proposals are adopted there would be the option in the implementing rules to include a requirement for certification of such operations. In that case, based on the considerations discussed in this RIA, there would appear to be some justification for including in the implementing rules for Part OPS 2 a requirement for a certification process for non-commercial fractional ownership operations. Given that it would appear to not be possible to have different requirements for fractional ownership operations and those involving management companies, the certification would have to apply in both situations.

It would also appear to be appropriate that the certification requirements for fractional operations and management companies should generally follow the principles contained in FAR Part 91, Subpart K.

6.2 Recommendations

1. It is recommended that no regulatory development action be taken until the disposition of articles 6b.3 and 6b.5 is determined.
2. If the amendments proposed by the Council for articles 6b.3 and 6b.5 are adopted, either:
 - the Authority Requirements and SMS Sub-group and the Non-commercial Operation with Complex Motor-powered Aircraft Sub-group of the OPS.001 Rulemaking Group should be reconvened to develop Implementing Rules for certification of fractional ownership operations and aircraft management companies, or
 - the task should be assigned to EASA.
3. In this case the certification requirements for fractional operations should generally follow the principles contained in FAR Part 91, Subpart K.
4. It is recommended that if the Council proposal is accepted that a means be investigated to differentiate in either the Essential Requirements of Implementing rules between fractional ownership operations and other managed operations especially where one entity is owner of the entire aircraft.
5. If a mechanism is developed to differentiate between traditional managed operations and fractional ownership operations, all that should be required for aircraft management companies where fractional ownership of aircraft is not involved, is a declaration of their capability and means to discharge the responsibilities associated with the operation of the aircraft.

European Aviation Safety Agency

TASK OPS.001 RULEMAKING GROUP**SUBGROUP NON-COMMERCIAL OPERATIONS
WITH COMPLEX MOTOR-POWERED AIRCRAFT**

MEETING MINUTES OF

26 JUNE 2007, 10.30 H – 17.00 H

27 JUNE 2007, 08.30 H – 13:00 H

EASA PREMISES, COLOGNE

Attendees:

Douglas Carr (DCA), GAMA
Mike Hamlin (MHA), ECOGAS
Geoff Parker (GPA), UK CAA
Jacob T. Pedersen (JTP), IAOPA
Marco Pereira (MPE), Netjets (observer)
Ray Rohr (RRO), EBAA
Daniela Defossar (DDE), EASA Rulemaking Officer
Betty Lecouturier (BLE), EASA Rulemaking Officer (26/06 morning)
Herbert Meyer (HME), EASA Rulemaking Officer (26/06 morning)
Eric Sivel (ESI), EASA Deputy Head of Flight Standards (26/06 afternoon)

Apologies:

Karl Brady (KBR), ECA
Josef Maurer (JMA), ETF
Dick Nederlof (DNE), CAA Netherlands

1. The subgroup reviewed the proposed agenda. Two additional AOB agenda items on cost recovery for demo flights and intra company charges were added.
2. The minutes of the last meeting and action item list were reviewed. The meeting minutes were adopted without further changes.
3. The subgroup re-addressed the issue of maximum approved passenger seating configuration and minimum cabin crew. BLE and DDE debriefed the subgroup that an emergency evacuation demonstration or analysis is only required for aircraft with more than 44 seats. Some certification requirements are applied through special conditions for certain aircraft configurations. The applicable OPS 2 paragraph on minimum cabin crew was therefore changed to the number of seats installed. BLE and DDE will develop guidance material to take into account specific aircraft configurations.
4. The subgroup discussed the proportionality of the developed rule text. Some members expressed discomfort in knowing that these requirements would apply also to twin turboprop aircraft and some piston engine aircraft with more than 9 seats. Chairman and secretary responded that

the subgroup had drafted a performance based rule that should cover the whole range of operations. It was reminded that the implementing rule has to take into account the essential requirements. DCA requested that the explanatory note of the NPA should mention the ongoing legislative process while drafting the implementing rules and specifically the change of the complex motor-powered definition.

5. HME gave an outlook on the FTL requirements. He presented the framework of essential requirements and ICAO Annex 6 SARPS. He confirmed that the FTL requirements and AMC/GM material prepared by this subgroup were a good basis for non-commercial operations. The AMC may need some adaptations to include only global considerations and provisions without limitations. Proposed schemes should be moved to GM. HME advised that he will also review Annex 6 Part III and include it, as applicable. HME will compile everything in a WP and circulate it to the core group. The WP from JTP on fatigue management for small operators will be incorporated in the WP as well.

6. ESI joined the subgroup to reflect on some discussions that took place in Council and Parliament. As regards the definition of complex motor-powered aircraft the parliament proposal of 19 seats may be retained if the turbojet engine is retained as well. The wording of "maximum approved passenger seating capacity" may be changed to "maximum certificated seating configuration". Changes are highly dependent on future Council and Parliament discussions that could as well result in no further changes to the definition. The Council had some debate on the definition of commercial operations and those activities that would be captured as commercial. It found a compromise solution when changing Art 6b(3) (and 6b(2)) that allowed to differentiate the need for certification from the type of operation. ESI explained the importance of oversight highlighting that a sufficient oversight system could replace the certification requirement in non-commercial operations. ESI furthermore explained the obligation of Art. 56a Penalties. The subgroup agreed that in knowing the background of this provision and discussion in the Council as well as having a sufficient oversight system a certification requirement may not be necessary.

7. The subgroup discussed the proposal from OPS 1 on subpart N flight crew. It was highlighted that freelance pilots need to be trained in the use of the operator's SOPs. It was also clarified that conversion training, as it stands in the present draft of OPS 2, needs to be conducted when changing operators. DDE offered to review the flight crew requirements of OPS 1 and adapt the OPS 2 requirements accordingly. The paper will then be sent to the subgroup for comments.

8. The subgroup met with the authority subgroup to discuss the declaration process and certification of operators. ESI explained the importance of oversight. A certificate may not ensure safety but ensures compliance with the rules and enforcement. ESI highlighted the competent authority responsibility of oversight and identified 4 forms of oversight:

1. access to market oversight and the public perception of the need of safety;
2. independent 3rd party oversight (for example used in the SES);
3. oversight following the declaration; and
4. pure policing activity.

ESI stated that authority self-financing as well as authority liability needs to be taken into account when drafting the regulation as it may have an impact on Member State authorities. It should therefore be part of the RIA.

Members of both subgroups agreed on the need of a risk based oversight for operations using the declaration. This risk based oversight includes ramp inspection, spot checks and periodic audits and should be proportionate to the size and scope of operations. It was also agreed that the policing activity is important. Provided that the competent authority is given sufficient tools, then whether a declaration or certificate is in place is not, in itself, a safety matter. It was therefore agreed that if the declaration and oversight requirements manage to be precise enough and provide appropriate tools, certification for non-commercial operations should not be necessary.

In the case of management companies, the owner declares to the State of registry who is responsible for managing the aircraft. The operator then declares to the State where it has its principle place of business how it complies with the rule. States have the obligation to exchange information.

For operators conducting commercial and non-commercial operations an addendum to the operations manual for non-commercial operations seems sufficient.

9. The subgroup reviewed the operations manual template and made some corrections: Ch. 0 to delete the temporary revisions table, Ch. 1 to finalise management system when the authority subgroup has published its final proposal, Ch. 4 training personnel could refer to the NBAA Management Guide. Correct links to the continuing airworthiness regulations need to be established as well. JTP asked subgroup members to send him the material so that he can pull everything together.

10. The subgroup finally reviewed the OPS 2 template and made some corrections.

11. Regarding cost recovery for demo flights it was agreed that this is not a commercial operation but an activity linked to selling an aircraft. It was however recognised that the subgroup cannot give a final interpretation of the definition.

12. Regarding intra company charges it was explained that one corporation may have a number of wholly owned subsidiaries including the flight department. In such situations, the flight department may be funded by cost recoveries from the user subsidiaries within the

corporation. It was noted that most States view such operations as non-commercial as long as the entities involved are subsidiaries of the parent company and the service is not publicly available. It was agreed that it would appear that the same logic could be applied under the proposed definition of commercial operation.

13. The subgroup blocked the week of 10th September for a meeting, if needed.

ACTION LIST

No.	Meeting No. / Date	Task	Resp.	Timeframe	Status
1.	1 09/11/06	Presentation on IS-BAO	RRO	Meeting 23 28-29/11/06 12-13/12/06	c
2.	1 09/11/06	Circulate meeting documentation of last meeting of the ECAC Task Force on fractional ownership	DDE	asap	c
3.	1 09/11/06	Put link to FAR 91 Subpart K on circa website	DDE	asap	c
4.	1 09/11/06	Prepare WP on the basis of JAR-OPS 0 and 2	RRO+ DDE	Meeting 2 28-29/11/2006	c
5.	2 28-29/11/06	Distribute copy of ICAO Annex 6 Part II proposal	RRO	asap	c
6.	2 28-29/11/06	NBAA Management Guide to be put on circa	DDE	asap	c
7.	2 28-29/11/06	Presentation on FAR 91K and on ICAO discussions when drafting the proposal Annex 6 II regarding fractional ownership	DCA	Meeting 4 9-10/01/2007	c
8.	2 28-29/11/06	Check ICAO SARPs for approval requirements	DDE	asap	c
9.	2 28-29/11/06	Conduct RIA on requirements regarding determination of mass	Group	Meeting 3 12-13/12/2006 See action item 11.	C

No.	Meeting No. / Date	Task	Resp.	Timeframe	Status
10.	2 28-29/11/06	Review JAR-OPS 1 Subparts	GPA, DCA, DDE, JTP, JMA	Meeting 3 12-13/12/2006	c
11.	3 12-13/12/06	Review draft JAR-OPS 2 Subpart J and draft a proposal for the OPS 2 rule	RRO	Meeting 4 09-10/01/2007	c
12	3 12-13/12/06	Clarify "equivalent standard" to FCL	DDE	Meeting 4 09-10/01/2007	c
13	3 12-13/12/06	Redraft OPS 2 requirements regarding the content and structure of an OM	RRO	Meeting 4 09-10/01/2007	c
14	3 12-13/12/06	Review EU-OPS Subpart Q and draft proposal for OPS 2; present FTL schemes	RRO	Meeting 4 09-10/01/2007	c
15	3 12-13/12/06	Circulate IS-BAO checklist for guidance material	RRO	asap	c
16.	3 12-13/12/06	ICAO cross reference list	DDE	Meeting 45 09-10/01/2007 13-14/02/2007	c
17.	4 09-10/01/07	Forward request on additional membership to core group	RRO	asap	c
18.	4 09-10/01/07	Address the issue of legal charter within the non-commercial rules to core group	RRO	asap	c
19.	4 09-10/01/07	Draft requirements on fractional ownership based on FAR 91 K	DCA/ DDE	Meeting 5 13-14/02/2007	c
20.	4 09-10/01/07	Cosmic radiation detection equipment: check EU Directive	DDE	Meeting 56 13-14/02/2007 13-14/03/2007	c
21.	4 09-10/01/07	Internal doors and curtains: check against CS	KBA	Meeting 5 13-14/02/2007	c

No.	Meeting No. / Date	Task	Resp.	Timeframe	Status
22.	4 09-10/01/07	1.795 Crash axes and crowbars: source	All	Meeting 57 13-14/02/2007 24-25/04/2007	c
23.	4 09-10/01/07	M&B WP: incorporate comments for next meeting	RRO/ DDE	Meeting 5 13-14/02/2007	c
24.	4 09-10/01/07	OM WP: incorporate comments for next meeting	RRO/ DDE	Meeting 5 13-14/02/2007	c
25.	4 09-10/01/07	FTL WP: incorporate comments for next meeting	RRO/ DDE	Meeting 5 13-14/02/2007	c
26.	4 09-10/01/07	Security WP: incorporate comments for next meeting	RRO/ DDE	Meeting 5 13-14/02/2007	c
27.	5 13-14/02/2007	Draft WP on cabin crew	RRO	Meeting 6 13-14/03/2007	c
28.	5 13-14/02/2007	Check CS 23 regarding the means for emergency evacuation	KBA	Meeting 6 13-14/03/2007	c
29.	5 13-14/02/2007	Review Declaration WP for next meeting	All	Meeting 6 13-14/03/2007	c
30.	5 13-14/02/2007	Forward paragraph on SOP to authority subgroup to consider for SMS	DDE	asap	c
31.	5 13-14/02/2007	Draft requirements for OPS 2 according to discussion on ICAO cross reference list	DDE	Meeting 6 13-14/03/2007	c
32.	5 13-14/02/2007	Draft WP on operations with involvement of management companies	GPA/ JTP	Meeting 6 13-14/03/2007	c
33.	5 13-14/02/2007	Draft WP on DG	DDE	Meeting 67 13-14/03/2007 24-25/04/2007	c

34.	6 13-14/03/2007	Forward Declaration WP and WP on operations involving management companies to Authority Subgroup and request joint meeting for April	DDE	asap	c
35.	6 13-14/03/2007	Insert cabin crew WP into OPS 2 template	DDE	Meeting 7 24-25/04/2007	c
36.	6 13-14/03/2007	Part OPS 2 template: reflect subgroup discussions; check requirements against ER; prepare a cross reference with ICAO Annex 6 III helicopter general aviation	DDE	Meeting 7 24-25/04/2007	c
37.	6 13-14/03/2007	Preview and prepare AMC/GM material	RRO/ DCA/ GPA/ KBR/ JTP/ DNE/ DDE	Meeting 7 24-25/04/2007	c
38.	6 13-14/03/2007	Invite Mr. Marco Pereira, Netjets for April/May meeting	DDE	Meeting 7 24-25/04/2007	c
39.	7 24-25/04/2007	Prepare WP for management specification	RRO	Meeting 8 15-16/05/2007	c
40.	7 24-25/04/2007	Draft requirements and AMC/GM material for authorities and OPS 2 Part based on the 2 WP from the non-commercial subgroup	LCR/ DDE	Meeting 8 15-16/05/2007 Meeting 9 26-27/06/2007	c

41.	7 24-25/04/2007	Review Canadian GM material for use as AMC/GM for OPS 2	DDE	Meeting 9 26-27/06/2007	c
42.	7 24-25/04/2007	Prepare WP on OM template for small operations	JTP	Meeting 8 15-16/05/2007	c
43.	7 24-25/04/2007	Follow-up on MAPS	DDE	Meeting 8 15-16/05/2007	c
44.	7 24-25/04/2007	Review FTL text	RRO	Meeting 8 15-16/05/2007 Meeting 9 26-27/06/2007	c
45.	8 15-16/05/2007	Reflect subgroup discussions in Certification WP	RRO	asap	c
46.	8 15-16/05/2007	Develop RIA of Certification WP further	all	Meeting 9 26-27/06/2007	c
47.	8 15-16/05/2007	Follow up on cabin crew discussions	DDE/ BLE	Meeting 9 26-27/06/2007	c
48.	8 15-16/05/2007	Review and develop descriptions for OM template	all, as allocated by JTP	Meeting 9 26-27/06/2007	c
49.	8 15-16/05/2007	Review Subpart N WP and provide comments	all	before end of May	c
50.	9 26-27/06/2007	Develop guidance material on number of minimum cabin crew to take into account specific aircraft configurations	BLE/ DDE	asap	o
51.	9 26-27/06/2007	Develop FTL WP and circulate to core group and subgroup; include JTP WP on small operations	HME	asap	o
52.	9 26-27/06/2007	Follow-up on subgroup discussions on operations manual and complement the information as available	JTP/ DDE	asap	o

DDE
12/07/2007