



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.12.1998
COM(1998) 759 final

98/ 0349 (SYN)

Proposal for a

COUNCIL REGULATION (EC)

amending Council Regulation (EEC) N° 3922/91 of
16 December 1991 on the harmonisation of
technical requirements and administrative procedures
in the field of civil aviation

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The common air transport policy of the European Community aims inter alia at ensuring a high level of safety in civil aviation and at the abolition of obstacles to the free movement of aviation products and services within the Community. Council Regulation (EEC) N° 3922/91¹ on the harmonisation of technical requirements and administrative procedures in the field of civil aviation provides the instrument by which harmonised technical requirements can be incorporated into Community legislation in order to achieve these goals.
2. This regulation provides for transposition into Community legislation of the technical rules and administrative procedures (JARs) worked out by the JAA – an association of several European national aviation authorities (including those of all the Community Member-States) - and listed in its Annex II. This list is to be completed to cover all aspects of aviation safety and in particular, the design, manufacture, operation and maintenance of aircraft, as well as persons and organisations involved in these tasks. Under this regulation and in particular its article 11, the Commission shall make any amendments necessitated by scientific and technical progress to the common technical requirements and administrative procedures listed in the annexes thereto.
3. The incorporation of a JAR or its amendments into the annexes of the regulation implies however a full consistency of their content with the provisions of Council Regulation (EEC) 3922/91 and with the Treaty itself. This very problem emerged when considering the incorporation of JAR 145: Approved Maintenance Organisations.²

JAR 145 includes in its article 10 (c) as revised by amendment 145/97/1 (NPA 145-5) a provision which would allow individual Member States to accept a foreign maintenance organisation on the basis of an approval granted by a third country provided that the organisation is in compliance with special conditions to ensure equivalence to JAR 145.

¹ OJ N° L 373 of 31.12.91, p 4

² JAR 145 is a requirement that addresses the approval of organisations to carry out maintenance on aircraft or aircraft components, including engines, used for commercial air transport. All aircraft or components used for commercial air transport must be maintained by appropriately approved or accepted JAR 145 organisations.

4. This type of simplified procedure is already largely used in the aviation community to ensure the most effective use of staff resources, the acceleration of the approval of foreign products, organisations and personnel and the reduction of administrative costs to applicants. Moreover, these practices, when reciprocal, facilitate the continuous activities of European companies and citizens outside the Community. Accordingly the Commission considers it is beneficial to use them with any country where a significant number of organisations provide services or make products used by the European aviation industry.
5. Making such simplified approval procedures official through the mere incorporation of JARs, such as JAR 145, in the annexes of Regulation 3922/91 would not however be consistent with the external competencies of the European Community. The Court of Justice has already stated indeed that "the Community enjoys the capacity to establish contractual links with third countries over the whole field of objectives defined by the Treaty. This authority arises not only from an express conferment by the Treaty, but may equally flow from other provisions of the Treaty and from measures adopted, within the framework of those provisions, by the Community Institutions". This position has been reiterated when the Court considered that an international agreement preventing technical obstacles to international trade belongs to the common commercial policy and then to the exclusive competence of the Community³.
6. The Community has already concluded with Australia⁴ and New Zealand⁵ mutual recognition agreements on the basis of the Council's mandate⁶ which includes airworthiness: the Parties agreed to insert within the two years following the entry into force of the agreement an annex on aircraft certification and certificates of airworthiness.
7. To develop this policy the Community will have to negotiate the appropriate bilateral agreements that require a day to day management capacity which is not possible in the near future. As a consequence, and as long as the Community itself has not concluded such agreements, it is proposed that Member States could be empowered to recognise the approvals granted to foreign products, organisations and personnel. Such practice could be allowed and be subject to Community surveillance in order to ensure that:
 - it does not prejudice Community competence in this field, nor affect ongoing negotiations or compromise safety;
 - approvals given in this context are of an interim nature and can be terminated at reasonable short notice in view of their substitution by a Community agreement;
 - it does not confer unfair advantages on third parties.

³ Opinion 1/94 of ECJ of 15.11.94

⁴ Council Decision 98/508/EC of 18.06.98 O.J. N° L229 of 17.08.98

⁵ Council Decision 98/509/EC of 18.06.98 O.J. N° L229 of 17.08.98

⁶ Council Decision of 21.09.92

8. In order to ensure the necessary Community surveillance, such approvals should be notified to the Commission and the Member States in order to allow an *a priori* examination of their compatibility with Community interest ; and the Commission should be entitled to require, as appropriate, a Member State to modify the envisaged approval, or not to grant it or to suspend it, to meet the above mentioned criteria.

When doing so the Commission should be assisted by a committee of Member States representatives. As in this task, the Commission will monitor the conformity of national measures with Community obligations. This committee may have only a consultative power.

9. Regulation (EEC) 3922/91 has set up a committee which acts under a regulatory procedure. For the application of the above mentioned community control mechanism a consultative procedure has to be added. As a consequence articles 9, 11 and 12 of the Regulation have to be redrafted to correct this position.
10. Therefore, the Commission proposes that the Council amend Council Regulation N° (EEC) 3922/91 by introducing a new article which would allow Member States to continue, under appropriate Community control, to grant the necessary approvals on the basis of approvals granted by a third country according to simplified procedures, pending the conclusion by the Community of mutual recognition agreements. At the same time it is necessary to clarify the comitology aspects of this Regulation to accord with Decision 87/373/EEC on the procedures for the exercise of implementing powers conferred to the Commission. Such are the purposes of the present initiative.

Proposal for a

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THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty, establishing the European Community, and in particular Article 84 (2) thereof;

Having regard to the proposal of the Commission; Acting in accordance with the procedure referred to in Article 189C of the Treaty;

Having regard to the opinion of the Economic and Social Committee;

Whereas Council Regulation (EEC) N° 3922/91 of 16 December 1991¹ on the harmonisation of technical requirements and administrative procedures in the field of civil aviation lays down procedures relating to recognition of certifications of the conformity of products, services and persons;

Whereas these technical requirements and administrative procedures apply equally to products, organisations and personnel from the European Community and third countries;

Whereas it may be necessary to facilitate approval of third countries' products, organisations and personnel by using the findings made by the competent authorities of these countries;

Whereas such an approval mechanism relates to the exchange of goods or services with third countries and affects the approval conditions set out by Council Regulation (EEC) N° 3922/91, and falls therefore in the field of Community competence;

¹ OJ N° L 373 of 31.12.91, p 4

Whereas pending the conclusion by the Community of mutual recognition agreements covering these products, organisations and personnel, it is appropriate to allow Member States to give the necessary approval on the basis of the findings made by third countries' competent authorities;

Whereas it is necessary to ensure that such approvals are granted in accordance with Community policies and obligations and do not give unfair advantages to third parties; they should therefore be granted only on a temporary basis pending the conclusion by the Community of mutual recognition agreements with a concerned third country;

Whereas it is appropriate to entrust the Commission with the task of monitoring the granting of such approvals by Member States in order to safeguard Community interests and for the Commission to be assisted by a Committee acting in a consultative capacity;

HAS ADOPTED THIS REGULATION

Article 1

Council Regulation (EEC) N° 3922/91 is hereby amended by the inclusion of a new Article 7bis:

“Article 7 bis

- (a) Where, under the common technical requirements and administrative procedures, a Member State or a body acting on its behalf, intends to grant an approval or accept an organisation on the basis of approvals granted by the competent authorities of a third country, it shall notify the Commission and the Member States of the scope and the detailed conditions under which such an approval would be granted.
- (b) If, within three months from the notification the Commission considers that
- the conditions under which such approval would be granted do not provide a level of safety equivalent to that specified by the present Regulation and its annexes ; and/or
 - such approval would give an unfair advantage to a third country, or is contrary to Community policy vis-à-vis this third country;
- it may, in accordance with the procedure laid down in paragraph 4 of Article 12, require the Member State concerned to modify the approval it proposes to grant or not to grant such approval.

- (c) Approvals granted on the basis of this article shall expire upon the entry into force of an agreement between the Community and the third country in question, but not later than two years after the grants of such approvals. Upon request of the Member State concerned, in respect of the grant of any approval, the Commission may, in accordance with the procedure laid down in paragraph 4 of Article 12, authorise the extension of such a two year period as appropriate, provided that the situations in paragraph (b) do not arise.”

Article 2

Articles 9, 11, and 12 of Council Regulation (EEC) N° 3922/91 are replaced by the following provisions:

Article 9:

“Member States shall take the necessary steps to co-ordinate their research programmes to improve the safety of civil aircraft and their operation and to inform the Commission thereof. The Commission may take any relevant initiative to promote such national research programmes.”

Article 11:

1. The Commission, following the procedure laid down in paragraph 2 of Article 12, shall make the amendments necessitated by scientific and technical progress to the common technical requirements and administrative procedures listed in Annex II...
2. Where the amendments referred to in paragraph 1 contain a national variant for a Member State the Commission, following the procedure laid down in paragraph 2 of Article 12, shall decide whether or not to include that variant in the common technical requirements and administrative procedures.

Article 12:

Replace the first paragraph by the following:

- “1. The Commission shall be assisted by a Committee composed of representatives of the Member States and chaired by the representative of the Commission.”

Add a new paragraph:

“4. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit, which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The Commission shall take the utmost account of the opinion, delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.”

Article 3

This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Communities.

Done at Brussels, ...

For the Council..

IMPACT ASSASSMENT

Impact of the proposal on business with special reference to small and medium sized enterprises (SMEs)

Title of the proposal:

Proposal for a Council Regulation amending Council Regulation (EEC) N° 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation.

What is the main justification for this proposal?

The proposal will facilitate the acceptance of the findings of third countries' authorities for the approval of products, organisations and personnel.

Who will be affected by the proposal?

Air operators, aircraft maintenance organisations, flight training organisations, licensed workers, ...

In particular - are there a great number of SMEs concerned? Yes
- are there concentrations in regions? No

What constraints will be imposed on business? None

What constraints are likely to be imposed indirectly on the enterprises by way of local authorities? None

Are there special measures for SMEs? No

What economic effects is the proposal likely to have?

Such simplified procedures will ensure the most effective use of staff resources, accelerate the approval of foreign products, organisations and personnel and reduce administrative costs. This will also facilitate the activities of European companies and citizens when they operate outside the Community. Therefore the impact on

- employment
- investment and creation of new business
- competitive position of business

will be significant.

Does the proposal contain measures to take account of the specific situation of small and medium-sized firms?

Indirectly yes, because SMEs' often don't have the necessary structured relationship with third country markets and will therefore benefit from a simplification of the approvals process, be it for the use of imported products or services, or for their own access to foreign markets.

What industrial organisations have been consulted and what are their views?

All JAA proposals are the result of extensive consultations with all interested parties. Therefore and as the proposal does not introduce any additional burden on affected parties but only simplifies the approvals needed for the importation of products and services, the Commission services in charge have not felt necessary to make another specific consultation.

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DOCUMENTS

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