



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.10.2009
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COMMISSION DECISION

of 14.10.2009

authorising Austria, Germany, the United Kingdom and Malta to issue Air Operator's Certificates by way of derogation from Council Regulation (EEC) No 3922/1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation

(only the German, English and Maltese texts are authentic)

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3922/1991 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation¹, and in particular Article 8(3) thereof,

Whereas:

- (1) OPS 1.180(a)(1) of Regulation (EEC) No 3922/1991 stipulates that an operator will not be granted an AOC and that an AOC will not remain valid unless aeroplanes operated have a standard certificate of airworthiness issued in accordance with 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 organisations².
- (2) A standard certificate of airworthiness is defined in the Annex to Regulation (EC) No 1702/2003, Part 21 A.173(a).
- (3) OPS 1.180(a)(2) requires that the maintenance system has to be approved by the Authority in accordance with Part M, Subpart G, of 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 tasks³.
- (4) OPS 1.875 lays down that for an aeroplane to be operated, it must be maintained and released to service by an organisation appropriately approved/accepted in accordance with Part 145 of Regulation (EC) No 2042/2003, pre-flight inspections excepted, and that aeroplane continuing airworthiness requirements needed to comply with the operator certification requirements in OPS 1.180 are those set up in Part M of the latter Regulation.

¹ OJ L 373, 31.12.1991, p. 4.

² OJ L 243, 27.9.2003, p. 6.

³ OJ L 315, 28.11.2003, p. 1.

- (5) OPS 1.175(o) stipulates that the operator must comply with the maintenance requirements, in accordance with Part M, for all aeroplanes operated under the terms of its AOC.
- (6) OPS 1.1070 mandates that an operator shall keep a current approved continuing airworthiness management exposition as prescribed in Part M, paragraph M.A.704 Continuing airworthiness management exposition.
- (7) OPS 1.660 states that a turbine propeller powered aeroplane with a maximum certificated take-off mass in excess of 5.700 kg or having a maximum approved passenger seating configuration of more than nine seats or a turbojet powered aeroplane shall not be operated unless they are equipped with an altitude alerting warning system.
- (8) OPS 1.665 specifies that a turbine powered aeroplane having a maximum certificated take-off mass in excess of 5.700 kg or a maximum approved passenger seating configuration of more than nine shall not be operated unless it is equipped with a ground proximity warning system that includes a predictive terrain hazard warning function (terrain awareness and warning system – TAWS).

Austria

- (9) By letter of 14 October 2008, Austria notified the Commission, under Article 8(3) of Regulation (EEC) No 3922/1991, of its intention to derogate from the provision OPS 1.180(a)(1) of Annex III to this Regulation for the AOC holder Luftfahrtunternehmen Peter Gabriel until 9 July 2009. By letter dated 4 June 2009, Austria declared the request to be unlimited in time.
- (10) The type of aeroplane referred to in the notification by Austria, Antonov AN 2, is included in Annex II to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC⁴. Therefore, the aeroplane concerned is exempted from the application of the airworthiness provisions laid down in Regulation (EC) No 216/2008 and cannot be issued a standard certificate of airworthiness as defined above.
- (11) Austria described the measures which would allow to ensure an equivalent level of safety in the terms of Article 8(3) of Regulation (EEC) No 3922/91: flights are conducted in VFR/day only; the aircraft has a certificate of airworthiness, issued by a Member State, in accordance with ICAO Annex 8 and fully complies with the continued airworthiness requirements of Regulation (EC) No 2042/2003; all Austrian and Community requirements for operations, except the one for which the derogation is requested, are fulfilled by the operator.

Germany

- (12) By letter of 12 September 2008, Germany notified the Commission, under Article 8(3) of Regulation (EEC) No 3922/1991, of its intention to derogate from the provision

⁴ OJ L 79, 19.3.2008, p. 1.

OPS 1.180(a)(1) of Annex III to this Regulation, for the companies Air Services Berlin CFH GmbH, Air Tempelhof Fluggesellschaft mbH & Co. KG, Deutsche Lufthansa Berlin Stiftung, Donau Air Service GmbH, Hanseflug GmbH, LTS LuftTaxiService in Berlin and Brandenburg MiniHansa Flugbetriebsgesellschaft MbH.

- (13) By letter of 13 November 2008, Germany informed the Commission of its intention to extend the referred derogation to the companies Clipper Aviation and Axenbeck Sky Services.
- (14) The types of aeroplanes concerned by these German notifications - Junkers Ju 52, Dornier Do 27, Antonov AN 2 and AN 2T, Douglas DC-3-R 1830-90C, de Havilland DHC-2 ML1 Beaver, Piper PA 18-150 and Max Holste MH-1521 Broussard - are included in Annex II to Regulation (EC) No 216/2008. Therefore, these aircraft cannot be issued a standard certificate of airworthiness as defined above.
- (15) Germany described the measures in place which would ensure an equivalent level of safety in the terms of Article 8(3) of Regulation (EEC) No 3922/91: the concerned aircraft have national certificates of airworthiness issued in accordance with ICAO Annex 8; the continuing airworthiness is ensured by German maintenance organisations being in the possession of Part 145 as well as national approvals; the related airworthiness procedures were approved by Germany according to a national agreement and are audited by Germany on a regular basis in accordance with national legislation.

United Kingdom

- (16) By letter of 2 September 2008, the United Kingdom notified the Commission, under Article 8(3) of Regulation (EEC) No 3922/1991, of its intention to derogate from the provisions OPS 1.180(a)(1), OPS 1.180(a)(2), OPS 1.875, OPS 1.175(o) and OPS 1.1070 of Annex III to this Regulation as regards the companies RVL Aviation Limited and Cirrus Aviation Limited.
- (17) The types of aeroplanes included in the notification of the United Kingdom – Douglas DC3, Scottish Aviation Twin pioneer, De Havilland DH89A Rapide and DH104 Dove - are included in Annex II to Regulation (EC) No 216/2008. Accordingly, these aircraft cannot be issued a standard certificate of airworthiness as defined above.
- (18) The United Kingdom states that any potential hazard of operating an aeroplane without a Part 21 certificate of airworthiness and fully compliance with the maintenance provisions contained in Regulation (EEC) No 3922/91 referred in its notification is mitigated by a national certificate of airworthiness meeting the requirements of ICAO Annex 8 and national approved maintenance arrangements which are in accordance with Part M of Commission Regulation (EC) No 2042/2003. In addition, the United Kingdom allows these flights under limited conditions: only A to A flights conducted in day/VFR and remaining within 50 nautical miles of the aerodrome.

Malta

- (19) By letter of 10 September 2008, Malta notified the Commission, under Article 8(3) of Regulation (EEC) No 3922/1991, of its intention to derogate from the provisions of

Annex III of this Regulation OPS 1.180(a)(1), OPS 1.180(a)(2), OPS 1.175(o), OPS 1.875 (a) and (d), OPS 1.660 and OPS 1.665 concerning the company Harbour Air (Malta) Limited.

- (20) The type of aeroplane included in the notification of Malta – a seaplane Viking De Havilland DHC 3T - is included in the Annex II to Regulation (EC) No 216/2008. Therefore, this aircraft cannot be issued a standard certificate of airworthiness as defined above.
- (21) As regards the measures in place aimed at ensuring an equivalent level of safety in the terms of Article 8(3) of Regulation (EEC) No 3922/91, Malta indicated that: it has issued a national certificate of airworthiness in compliance with ICAO Annex 8 to the concerned seaplane; compliance with Subpart M of this Regulation is covered by the Malta Civil Airworthiness Requirements (MCAR), which are composed of Part M and Part 145 requirements adapted to the specificities of Annex II aircraft, and the continuing oversight of compliance executed by the Malta Department of Civil Aviation (DCA); all other provisions of Regulation (EEC) No 3922/91 are complied with; any potential hazard of the concerned operations is limited due to the fact that the flights are restricted to day/VFR. Accordingly, the risk of non-compliance with OPS 1.660 and OPS 1.665 is equally mitigated.

Assessment

- (22) The Commission assessed the requests of derogation described above as regards the conditions prescribed under Article 8(3), first subparagraph, of Regulation (EEC) No 3922/91. In this process, it took into consideration the provisions of this Regulation and of Regulation (EC) No 1702/2003, the information provided by the Member States and other information gathered on the basis of Directive 2004/36/EC of the European Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports⁵ as well as of Regulations (EC) No 216/2008 and (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/EC⁶.
- (23) The Commission considered that the measures notified by Austria, Germany, the United Kingdom and Malta comply with the safety objectives of Regulation (EEC) No 3922/91 and ensure that an equivalent level of safety is achieved, given the conditions under which the concerned aircraft are operated, including the oversight, airworthiness, maintenance and operational measures in place.
- (24) The derogations sought by Austria, Germany, the United Kingdom and Malta are necessary in order to maintain the commercial air transport operations of the aircraft concerned.
- (25) The alternative to the derogations related to the standard certificate of airworthiness would be to cease commercial operations or to undertake the effort to be issued a

⁵ OJ L 143, 30.4.2004, p. 76.

⁶ OJ L 344, 27.12.2005, p. 15.

standard certificate of airworthiness in accordance with Regulation (EC) 1702/2003, Part 21 A. 173(a). However, the cost of such certification would be excessive, if not prohibitive, and disproportionate in the light of the ensured safety level.

- (26) The measures provided for in this Decision are in accordance with the opinion of the Air Safety Committee,

HAS ADOPTED THIS DECISION:

Article 1

Austria may, by derogation from OPS 1.180 (a)(1) of Regulation (EEC) No 3922/1991, issue an Air Operator's Certificate to the AOC holder Luftfahrtunternehmen Peter Gabriel for the operation of aircraft of the type Antonov AN 2.

Article 2

Germany may, by derogation from OPS 1.180 (a)(1) of Regulation (EEC) No 3922/1991, issue an Air Operator's Certificate to the companies Clipper Air Services Berlin CFH GmbH, Air Tempelhof Fluggesellschaft mbH & Co. KG, Deutsche Lufthansa Berlin Stiftung, Donau Air Service GmbH, Hanseflug GmbH, LTS LuftTaxiService in Berlin, Brandenburg MiniHansa Flugbetriebsgesellschaft MbHAviation and Axenbeck Sky Services for the operation of aircraft of the type Junkers Ju52, Dornier Do27, Antonov AN-2 and AN-2T, Douglas DC 3 R 1830-90C, De Havilland DHC-2 ML1 Beaver, Piper PA 18-150 and Max Holste MH-1521 Broussard.

Article 3

The United Kingdom may, by derogation from OPS 1.180 (a)(1), OPS 1.180(a)(2), OPS 1.875, OPS 1.175(o) and OPS 1.1070 of Regulation (EEC) No 3922/1991, issue an Air Operator's Certificate to the companies RVL Aviation Limited and Cirrus Aviation Limited for the operation of aircraft of the types Douglas DC3, Scottish Aviation Twin Pioneer, De Havilland DH89A Rapide and De Havilland DH104 Dove.

Article 4

Malta may, by derogation from OPS 1.180 (a)(1), OPS 1.180(a)(2), OPS 1.175(o), OPS 1.875(a) and (b), OPS 1.660 and OPS 1.665 of Regulation (EEC) No 3922/1991, issue an Air Operator's Certificate to the company Harbour Air (Malta) Limited for the operation of aircraft of the type Viking De Havilland DHC-3T.

Article 5

1. The aeroplanes subject to the derogations described under Articles 1 to 4 shall have a certificate of airworthiness issued in accordance with national rules and meeting the requirements of Annex 8 to the Convention on International Civil Aviation, signed in Chicago on 7 December 1944.

2. The operators concerned by the derogations described under Articles 1 to 4 shall comply with Regulation (EC) No 2042/2003 or have in place equivalent continued airworthiness and maintenance arrangements approved by the competent national Authority.
3. The operations concerned by the derogations described under Articles 1 to 4 shall be conducted in full compliance with all provisions of Regulation (EEC) No 3922/91 which are not covered by these derogations.

Article 6

The certification granted in accordance with Articles 1 to 4, shall state that it has been issued by way of derogation from Regulation (EEC) No 3922/1991 pursuant to this Decision.

Article 7

This Decision is addressed to the Republic of Austria, the Federal Republic of Germany, the United Kingdom of Great Britain and Northern Ireland and the Republic of Malta.

Done at Brussels, 14.10.2009.

For the Commission
Antonio TAJANI
Member of the Commission

