

# International Council of Aircraft Owner and Pilot Associations - European Region



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The following document is a White Paper stating IAOPAs position on the subject of Instructions for Continued Airworthiness (ICA) as they apply to aircraft having FAA-issued Type Certificates (TC) issued in accordance with CAR 3 or FAR 23.

This document also states IAOPAs position on the requirements to be placed on Repairs, Modifications/Installations completed before 28 Sept 2003 when Part 21 of Regulation EC 1702/2003 came into effect.

## Background:

Before 28 Sept 2003 when Part 21 of Regulation EC 1702/2003 came into effect repairs and modifications/installations were approved by the National Airworthiness Authorities (NAA). The procedures for this varied from country to country, where some NAA in certain cases in effect only verbally authorised some repairs and installations.

This kind of authorisation, although contrary to good practice, was instigated wholly on the part of the NAA, and the aircraft owner or the maintenance facilities involved cannot be held responsible. After all, there was no higher authority than the NAA in those days.

Due to this legacy, or possibly due to difficulties in interpreting the intent of Part J M, some NAA appears to consider the wording in AMC M.A.901 (g) (on Airworthiness Review Certificate issue):

“The statement should confirm that the aircraft in its current configuration complies with the following:..... Part 21 for all modifications and repairs.”

As is stated in the Regulation EC 1702/2003 the regulation came into effect on the 28<sup>th</sup> of September 2003, consequently the regulation cannot have any effect before that date.

Furthermore, Part 21 Article 2.a. 1b states:

*“The design of individual aircrafts (sic) which was on register of a Member State before 28 September 2003, shall be deemed to have been approved in accordance with this regulation when:*

*(i)...*

*(ii) all changes to this basic type design, which were not under the responsibility of the type-certificate holder, had been approved; and...”*

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This wording could be interpreted as referring to Supplemental Type Certificates (STC), however STC are regulated in Article 2b so we must assume the author to mean other minor modifications approved by the respective NAAs.

There is no reason to believe the Agency's intention was to make previously airworthy aircraft suddenly not airworthy through retroactive legislation.

The less-than-perfect interpretation of Part M by various NAAs has led to cases where individual aircraft owners has seen their aircraft grounded for many months while the CAMO and the owner jointly trying to uncover decade old documents, sometimes at great cost and sometimes unsuccessfully.

### **US Regulations:**

CFR 14, Paragraph 23.1529 introduces a requirement for the TC-applicant to produce Instructions for Continued Airworthiness and an Airworthiness Limitations section to the Administrator for inclusion by reference in the Type Certificate.

This paragraph is applicable to TCs issued for aircraft models after 1980 regardless of the date of any original Type Certificate. The paragraph is however not retroactive, i.e. existing TCs issued to any aircraft type or model before 1980 is not affected.

For aircraft types and models having a TC issued before 1980, the ICA situation remains unchanged. Since the TC for these older aircraft was issued before 1980, they have no legally binding ICA. This is addressed through Appendix D to the regulation FAR 43. This appendix lists the inspections necessary for maintaining the airworthiness of the referenced aircraft.

The requirement is for a private non-commercial operator to do these inspections at least annually, and for others to do them annually and each 100 hours of operation.

A TC-holder will in most cases issue Maintenance Manuals (MM) for his products. The MMs from different manufacturers and different times vary in the amount of content from next to nothing to very comprehensive documents.

Nevertheless, they carry no legal weight as basis for maintenance intervals.

Most TC-holders will from time to time issue information on maintenance or operational issues in the form of Service Bulletins (SB), Service Letters (SL) or Service Instructions (SI). This information is sometimes marked "Mandatory" or "(Manufacturer) considers this modification mandatory" or similar wording.

Under the FAA rules, this type of information is not legally binding for a private, non-commercial operator. If, however, the FAA determines that the information given in a SB or other document is vital to flight safety, a proposition for an Airworthiness Directive (AD) is issued, where stakeholders may comment. The FAA will also do an impact assessment to see if the gain in safety is proportional to the cost of embodiment.

If and when the FAA issues the AD, the AD becomes legally binding for all operators and must be carried out within the specified time frame.

In short: For a private non-commercial operator, only FAR Appendix D and Airworthiness Directives, and for newer aircraft, the Airworthiness Limitations, constitute legally binding documents. All other documents issued by the Type Certificate holder, including information on time between overhauls as published in e.g. Service Instructions or Service Bulletins, must be considered as recommendations.

### **European Regulations:**

The basis for Continuing Airworthiness in the European Union is detailed in Commission Regulation EC 2042/2003, Part M and associated Acceptable Means of Compliance (AMC) and is centred on the Maintenance Program (MP). The MP is to be put together by the Continuing Airworthiness Management Organization (CAMO) and is approved by the authority, either directly or indirectly.

In Part M, EASA makes some references to Service Bulletins, in no case are they portrayed as mandatory, in most cases quite to the contrary:

*“...make recommendations on embodiment of an SB and other associated non-mandatory material...”* (app. II M.A. 201 (h) 1 )

*“Non-mandatory information such as service bulletins and other information is that produced for the aircraft and its components by an approved design organization, the manufacturer, the competent authority or the Agency.”* ( AMC M.A. 301-7)

Unfortunately some NAA have not taken notice the above cited paragraphs, and instead apparently mis-interpreted AMC M.A. 302 (d) 1. :

*“An owner or operators maintenance programme should normally be based upon the maintenance review board (MRB) report where applicable, the maintenance planning document (MPD), the relevant chapters of the maintenance manual or any other maintenance data containing information on scheduling. Furthermore, an owner or operators maintenance programme should also take into account any maintenance data containing information on scheduling for components.”*

The wording in this paragraph is obviously chosen to avoid naming a few maintenance documents and thereby excluding those not mentioned.

To construe the intent of this AMC to the meaning that all information containing any form of time intervals to be mandatory is contrary to Part M, as Service Bulletins are being named as **non-mandatory information** in several instances. SB, SL and SI often contain information on inspections or maintenance intervals.

Another side-effect of this construed interpretation is that all maintenance actions in the Maintenance Manual (which, as we have seen, is not the FAA-approved basis for maintenance) are mandatory and must be carried out to the letter. This has already caused problems for aircraft owners whose door-seals are not lubricated every 30 days by a certified mechanic to give an example.

For an SB, SL or SI to be approved for incorporation in an aircraft registered in an EASA-country, the SB, SL or SI must marked thus: “Technical content approved by the FAA” or words to similar effect. This is given in EASA Decision 2004/04/CF (as amended by Decision 2007/001/C) article 1 c and in pt M, M.A. 304. The effect of this is that **if** the operator decides to incorporate an SB,SL or SI, the modification therein is approved.

Another implication is that it tells us that any information given by the TC-holder is not automatically approved, the information must be specifically approved by the FAA to be eligible for incorporation as it constitutes a change to a Type Certificated product.

#### **IAOPAs Position:**

Regarding Instructions for Continued Airworthiness (ICA), we remind the reader of the fact that where there is no mention in the FAA-issued Type Certificate on ICA or Airworthiness Limitations, the FAA-approved maintenance schedule is to perform the inspections detailed in FAR 43 appendix D annually and in some cases at 100-hours.

This schedule is appropriate for the complexity of these aircraft and IAOPA cannot see any reason to go beyond that.

Adhering to the FAA-approved schedule will minimize the risk of unintentional consequences from any national variations in terminology, since Maintenance Manuals issued by the TC-holders are written in their own legal context.

It is also IAOPAs position that Service Bulletins, Service Letters and Service Instructions are to be regarded as recommendations only. Again, any other course of action will sooner or later result in unforeseen problems.

To allow (unapproved as Instructions for Continued Airworthiness) Maintenance Manuals as well as SB, SL and SI to constitute mandatory maintenance actions is to give privately employed non-EU citizens of the various Type Certificate holders legislative powers within all of the European Union. Such a situation is completely unacceptable to IAOPA.

It is IAOPAs position that Service Bulletins, service Letters and Service Instructions should not by default have to be included in the Aircraft Maintenance Program as compiled by the Continuing airworthiness Organisation, this position conforms with the intent of Part M; M.A. 302.

IAOPA urges EASA to issue a statement clarifying this issue.

Regarding Repairs, Modifications/Installations carried out before Part 21 came into effect on the 28<sup>th</sup> September 2003 it is IAOPAs position that they are approved and grandfathered into the present system. Researching records for repairs and modifications/installations done before Part 21 came in to effect in 2003 shall only be carried out if there are reasons to believe that the work performed or the materials used constitute a hazard to flight safety.

IAOPA requests EASA to issue a statement clarifying this matter.

IAOPA further urges EASA regarding those EASA-issued Type Certificates that mirror the original FAA-issued Type Certificate but differ from the original by including the Maintenance Manual and Service Bulletins and Service Instructions as "Service Instructions", to clarify to the NAA, CAMOs and Owners that the referenced manuals are not the basis for maintenance programs.

IAOPA also asks EASA to remind NAA that national regulations or practises cannot in any way be contrary to the intent of Part M.

A handwritten signature in black ink, appearing to read 'M Robinson', on a light blue background.

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