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**TECHNICAL REQUIREMENTS**  
relating to  
**THE CROSS-BORDER TRANSFERABILITY OF AIRCRAFT**

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**Aviation Working Group**

**4 July 2008**

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## **TECHNICAL REQUIREMENTS RELATING TO THE CROSS-BORDER TRANSFERABILITY OF AIRCRAFT**

The purpose of this paper is to describe and prioritize action needed to streamline cross-border aircraft transferability, while ensuring compliance with the highest level of safety.

Aircraft leasing generates direct benefits in terms of airline competition and lower fares. As a by-product, it also encourages highly skilled employment and high-technology manufacturing.

The core of the leasing model is the lessor's ability to move aircraft between countries safely, predictably and efficiently. Therefore, our specific goal is to simplify and streamline the procedures for transferring used aircraft from one country to another, while maintaining or improving safety. Airlines acquiring aircraft on lease would also gain benefits from such efforts.

### **1. INTRODUCTION**

AWG is a not-for-profit legal entity whose purpose is to '*contribute to the development and acceptance of policies, laws, regulations, and rules that (i) facilitate advanced international aviation financing and leasing or (ii) address inefficiencies in aviation financing or leasing or that constrain these transactions*'. Co-chaired by Airbus and Boeing, AWG is comprised of the major aviation manufacturers and financial institutions, including most of the world's largest leasing companies. More information regarding AWG, its members and its activities may be found at [www.awg.aero](http://www.awg.aero).

AWG has an active sub-group that focuses on technical requirements relating to the cross-border transferability of aircraft. The sub-group: (1) provides recommendations to proposed importation technical and documentation requirements; and (2) consults with governments and international organizations with a view towards improving existing importation technical requirements and practices that cause undue economic burden and delays, while maintaining the highest level of safety.

The sub-group is particularly focussed on aircraft transferability issues impacting the aircraft leasing and financing industry due to national aviation authority requirements. Nearly 50% of aircraft operate outside the FAA and EASA environment. AWG therefore believes that it is important to have a harmonized, global and transparent approach to technical and documentation requirements for aircraft transfers, without compromising aircraft safety or the responsibilities of national aviation authorities.

### **2. ROLE OF THE LEASING COMMUNITY**

The aircraft leasing and financing community is a significant stakeholder in commercial aviation. We highlight the role of the leasing sector, though many of the points made are equally applicable to the financing sector. Leasing plays an essential role in the development of aviation, both in manufacturing and operations. Leased aircraft comprise approximately one-third of the world's commercial aircraft. Leasing plays a significant role in the continued operation and development of the worldwide operators, as follows:

- Leasing provides opportunities for airline fleet management flexibility in answer to industry upward and downward economic trends, and access to new markets.
- Leasing has provided essential start-up support to low-cost carriers.

- In the longer term, leasing provides continued opportunities for fleet renewal and expansion.

Leasing is predicated upon flexibility in remarketing aircraft, which, in turn, requires a global framework, and to the extent possible, harmonised requirements, for cross-border aircraft transfers.

The leasing community has as much interest in, and desire to achieve, the highest level of airworthiness of its assets as do aviation authorities. Apart from the obvious benefits of a safe industry being a requirement for our business to function, high levels of airworthiness have a positive commercial effect on the lessors/financiers through lower transfer costs, shorter off-lease periods during transfers and higher asset values. The increasing trend towards operating lease arrangements has led to more frequent transition of aircraft between operators and jurisdictions, and consequently aircraft are subject to transfers (with attendant airworthiness assessments) more frequently than in the past. The average narrow-body aircraft of 120 or more seats will transition five times in its operating lifetime, and the average wide-body aircraft will transition three times.

### **3. AWG PRIORITY INITIATIVES**

AWG has established the following three priorities in this field. They are summarized as follows.

#### **(1) Registry of Special Requirements of Importing Countries**

AWG advocates the setting up of a web-based registry listing special requirements for import from each ICAO Contracting State. Each State would be asked to register and update its own import requirements for each Contracting State. The registry would list any special operational or airworthiness requirements. It would also describe that State's approach to aircraft records and the acceptability of repair, modifications and parts approval.

Any national approach to such requirements would by definition be restricted to transfers into that country<sup>1</sup>. We believe that ICAO is uniquely positioned to provide this global informational framework, which, in due course, could lead to focused harmonization initiatives. This role for ICAO would complement and build upon Annexes 6 (operation of aircraft) and 8 (airworthiness of aircraft) to the Chicago Convention.

#### **(2) EASA Operational, Licensing and "Third Country Aircraft" Requirements**

AWG is monitoring the release of the EASA Operational and "Third Country Aircraft" requirements. The proposed EASA requirements may set out new rules requiring aircraft retrofits prior to import to any EASA member state and EASA participating member state.

In view of the potential impact of such requirements on aircraft transfers, AWG requests consultations with EASA prior to the draft release of these requirements.

We have provided further detail on this topic in **Appendix 1**.

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<sup>1</sup> For example, Appendix 2 of FAA advisory circular (AC) 21-2K, which contains information and guidance on procedures for exporting, is limited to transfers from the US constituting imports to a third country. In addition, its focus on items associated with the aircraft type certification is restrictive.

### **(3) Used Aircraft Transfers into and within the EU**

Regulations (EC) No. 1702/2003 and (EC) No. 2042/2003 raise issues with the transfer of aircraft into and within the EU.

In addition, EASA has recently adopted Part M requirements. AWG believes that certain aspects of these requirements should be clarified or revised.

These issues are set out in **Appendix 2**, which is divided into:

Part A: Used Aircraft Transfers into the EU.

Part B: Used Aircraft Transfers within the EU.

Part C: Request for an EASA Liaison Office or Helpdesk.

Part D: The Owner-Operator Revision.

AWG requests consultations on these items.

## **4. OTHER ISSUES**

### **(1) Use of ICAO Article 83bis Agreements**

The concepts of nationality of aircraft and nationality of airlines evolved individually, but jointly produced a situation in which the State of Registry retained safety responsibilities but possessed no actual control of leased aircraft. ICAO recognized this difficulty and adopted Article 83bis to overcome the issue. Article 83bis agreements allow for improved regulation and oversight of aircraft involved in international lease, charter, or interchange. It entered into force on 20 June 1997.

However, despite the availability of detailed guidance on the implementation of Article 83bis (ICAO Circular 295) and the globalization of the leasing market, few States have chosen to use the provisions of this Article. Without the ability to place aircraft on registers other than on the register of the State of the Operator, there will be an adverse impact on the expansion of the aircraft leasing business.

AWG wishes to understand why certain States are reluctant to use Article 83bis arrangements and to encourage additional States to accept the use of such provisions. An additional goal of AWG is to work with EASA and ICAO to formulate a mechanism whereby EASA working arrangements can facilitate the use of Article 83bis.

### **(2) Various Other Issues**

AWG has also identified a number of other technical issues which require study and possible modification, albeit as a lower priority than the matters specified above. They are listed in **Appendix 3**, divided into Part A: Other EASA Issues, and Part B: Various Other Issues. AWG plans to make proposals and request consultations on these items in due course.

## **5. CURRENT AND EMERGING ISSUES – ANNUAL CONSULTATIONS**

AWG requests annual consultative meetings with FAA and EASA to discuss the current and emerging aircraft transferability issues faced by the leasing industry.

The purpose of the meetings would be to discuss aircraft transferability issues and regulations affecting such transferability (for example, implementation of the EU/US Bilateral Agreement).

AWG also requests a role in the subsidiary working bodies being established under the EU/US Bilateral Agreement, where it can advise on issues material to the aviation leasing and financing community.

*Aviation Working Group*  
*4 July 2008*

## APPENDIX 1

### EASA OPERATIONAL, LICENSING AND THIRD COUNTRY REQUIREMENTS: POTENTIAL CONSEQUENCES FOR LEASING COMPANIES

#### 1. Background

The new EASA basic regulation, (EC) No. 216/2008, issued on 20 February 2008, is expanding the mandate of EASA in the following areas:

1. Flight crew licences.
2. Air operations.
3. Third country operators.
4. Oversight and enforcement.

The basic regulation merely defines the mandate, and tasks EASA to draft implementation regulations (*IRs*) that will define the details of the new requirements applicable to operators and flight crew in the future. The basic regulation is applicable starting 20 days after the official publication date. However, as the implementation regulation still has to be issued, a final date of 8 April 2012 has been set by which all new IRs have to be issued and implemented.

These new IRs are still in a drafting process. Notices of Proposed Amendments (*NPA*s) are expected to be issued for formal consultation during mid- and second half of 2008. After addressing industry comments, EASA will send the draft IRs as an “EASA Opinion” to the European Commission.

The European Commission will use its legislative/comitology process to obtain agreement from the member states. It is expected that this process will take at least 6 to 9 months. The draft IRs are not yet officially available to the public, although some parts of the drafts have been circulated in certain groups. It is therefore difficult to propose detailed comments on the new draft IRs as they are not yet officially available.

EASA rule-making working groups are drafting these new IRs. These groups have been composed of staff from the EASA, the National Aviation Authorities and (for some groups) from industry and union representatives. The composition has been decided by the EASA Regulation Director (*EASA RD*); membership changes have to be agreed by the Safety Standards Consultative Committee (*SSCC*) and the EASA RD.

#### 2. Specific Remarks

Based on open workshops recently held by EASA, and on unofficial drafts of the IRs, the following remarks can be made at this time.

2.1 **Flight Crew Licensing:** Some potential new restrictions might have effect on the start-up of a new aircraft type by an operator. The new IR will require the flight crew of any third country to have an EU licence for operations into or out of the EU. Bilateral agreements addressing acceptance of licences are urgently needed. The same principle should apply to training organizations, and ferrying of EU-registered aircraft.

2.2 **Air Operations:** At present, very limited information is available on the draft regulation. However, there are two main areas of concern:

(a) **Operational equipment (e.g. CVR, FDR, EGPWS):** no details are known yet, although there is a potential risk for a non-harmonized approach by EASA with respect to other countries' requirements, in particular the FAA. Specifically, CVR and FDR can be at risk. EASA and the FAA should follow a fully harmonized approach now and in the future.

(b) **Operational Suitability Certificate (OSC):** the new basic regulation has placed on the Type Certificate (TC) holder the responsibility for some operational-related documents including, for example, Manufacturer's Minimum Equipment List (MMEL), training syllabi for flight crew and maintenance staff. An OSC covering these documents has to be issued to the TC holder before the specific aircraft type can start operations in the EU. This applies to new TCs, amended TCs and Supplemental Type Certificates (STCs.) Although these documents are not new to the TC holders, the required approval process could create problems. In particular, STC applicants can face issues, while also the OSC approval for the existing types (already operating in the EU) will be an issue. We recommend that EASA grandfather existing MMELs and training syllabi.

2.3 **Third country operators:** EASA has the mandate to regulate all third-country operators flying to the EU. This means that EASA will issue certificates to individual operators, allowing them to start their operation in an EU member state. In principle, EASA can look to all aspect of the operations, including the aircraft, the training of the flight crew, etc, although EASA will base its assessment upon ICAO regulations. Bilaterals are considered to be essential to allow EASA to accept Air Operator's Certificates (AOCs) issued by foreign authorities. Foreign authorities and EASA should work on these bilaterals. One of the basic foundations of the worldwide aviation system and bilateral agreements is to ensure that the appropriate regulations are in place and being deployed into the day-to-day system. The approval of an Aviation Authority Quality System and their oversight of that system should be sufficient to ensure that the appropriate safeguards are in place and being deployed to ensure compliance and harmonization.

### 3. Transfers from FAA Registry to EASA Jurisdiction Registry<sup>2</sup>

#### 3.1 Differences in Technical Requirements

The differences in current technical requirements to transfer aircraft from the FAA N-register to an EASA jurisdiction can be divided into three main categories - aircraft age dependent, airspace differences (relating to Europe's more congested airspace) and Eurocontrol-driven changes. We summarise these differences below.

##### *Aircraft Age Dependent:*

- (a) CVR 2-HR - Cockpit Voice Recorder.
- (b) DFDR - Digital Flight Data Recorder.

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<sup>2</sup> In this paper, we are not addressing the issues arising under TIP for airworthiness and environmental certification - paragraph 2.8 (procedure for acceptance of design approval for parts) and paragraph 1.6(h) (definition of 'critical component') - and the divergent practice relating thereto, though we note their importance. AWG plans to prepare a separate document on these issues.

- (c) Fixed ELT - Emergency Locator Transmitter.

***Airspace-related Operational Requirements:***

- (a) FM immunity (VHF receivers).
- (b) Cockpit Door Surveillance System.

***Eurocontrol Requirements:***

- (a) 8.33KHZ Radio Channel Spacing.
- (b) Enhanced Mode S.

### **3.2 Cost Impact**

Based upon these differing operational requirements, AWG estimates the cost to accomplish all of the above tasks to be between US\$500,000 and US\$750,000 per aircraft. This cost could be reduced if such operational requirements were harmonized, producing economic benefits for both lessors and airlines.

### **3.3 Cargo Fire Suppression and Smoke Detection System**

We also note that in Europe it is currently not mandatory to have a cargo fire suppression and smoke detection system, although several operators have installed systems to detect smoke and control or hold back fire in accordance with US FAA regulations. However, EASA is also considering a similar regulation that may be more restrictive, and thus aircraft that comply with the US regulation may need to be further modified. A more logical approach to the subject would have been to adopt the FAA regulation, but then work with the FAA to adapt it as appropriate.

## APPENDIX 2: PART M ISSUES

### PART A. ISSUES ON USED AIRCRAFT TRANSFERS INTO EU

The following are AWG's comments on specific issues that AWG considers to be problematic at present in case of aircraft transfers into the EU.

#### 1. Relationship between Continuing Airworthiness Maintenance Organizations (CAMOs) and National Aviation Authorities (NAAs)

##### 1.1 General Remarks

From 28 September 2008, the process of obtaining an airworthiness certificate (*CofA*) for imported aircraft will change by the entry into full force of Regulation (EC) No. 2042/2003 Annex I(I). The CAMO will recommend an aircraft as being in compliance with airworthiness requirements, and thereafter the NAA will issue the CofA and the initial Airworthiness Review Certificate (*ARC*) when satisfied that airworthiness requirements have been met. Depending on their knowledge of the CAMO, the NAA may issue the CofA and ARC without further review, or may choose to accomplish their own complete airworthiness review.

If an aircraft was previously operated in an EASA member state, the CAMO review should only be applicable for the time period when the aircraft was no longer operated under the oversight of an EASA operator or CAMO organization. An Export Certificate of Airworthiness from a country with a bilateral agreement should also be considered by the importing EASA NAA as sufficient evidence that an airworthiness review was accomplished in accordance with the bilateral agreement, and as such meets the importing country's requirements.

Regulation (EC) No. 2042/2003 Article M.B. 901 grants the NAA powers to complete its own investigation. The Acceptable Means of Compliance and Guidance Materials (*AMC* and *GM*) with respect to M.B. 901 contained in Decision No. 2003/19/RM of the Executive Director of EASA give quite a wide leeway to the individual NAAs to review the work of the CAMO, possibly on subjective grounds. The combination of recommendations by CAMOs and differences in interpretation by NAAs is almost certain to lead to conflict and problems between CAMOs and NAAs. For example, in case of a mid-term lease termination (for airline default or insolvency) the NAA might require a full documentary review.

This appears to cut across Regulation (EC) No. 1592/2002 Article 2(c) (the regulation that established EASA), which states that one of the objectives of establishment of common rules in the field of civil aviation is to avoid duplication at national and European level.

AWG requests the opportunity to help shape the process for interaction between CAMOs and NAAs<sup>3</sup> when Regulation (EC) No. 2042/2003 Annex I(I) enters into force, especially as to how it will relate to aircraft owners.

##### 1.2 Specific Comments and Questions on Part M

AWG has the following specific comments and questions on Part M:

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<sup>3</sup> We appreciate that, at least initially, NAAs should have discretion to review the work of the CAMO (for example, if issues have previously arisen with respect to certification by the CAMO) in situations where the aircraft is being imported into the EU.

(1) AWG considers that clarity and standardization of requirements is needed across all the NAAs in what they expect to see in an ARC and CofA recommendation from a CAMO, both for importation from outside the EU and for cross-border transfer within the EU. This requires detailed, unambiguous and extensive AMCs, and AWG wishes to seek a method of commenting on and modifying them.

(2) The term "*EASA Form 1 or its equivalent*" is used in a number of places in Part M. Equivalents need to be defined, for example is it only an 8130 or are there acceptable Australian/Canadian/Russian/Chinese/Brazilian equivalents?

(3) The wording of Part M suggests that there is no restriction on a CAMO in one NAA jurisdiction providing CAM to an operator in a second jurisdiction, and indeed providing an ARC and a recommendation to issue a CofA to a third NAA. This would be within the spirit of the EU, but it will need to be spelled out, perhaps as an AMC.

(4) MA 305(e)3 requires the recording of hours/cycles etc. for every life-limited component fitted on its Form 1. This simply cannot be done and would, if strictly interpreted, bring the system to a halt. With the advent and adoption of the MSG III maintenance philosophy by all the aviation authorities worldwide, this is an unnecessary requirement which adds neither value nor safety to the system, and in fact undermines the MSG III philosophy by creating an unnecessary record-keeping burden which is not supported by current maintenance practices.

(5) MA 501(d) appears to require retention of conformity certification on all materials used in a repair (metals, glue, tape, etc). This could be grossly over-interpreted, and needs an AMC urgently.

(6) MA 708 seems to suggest that to take an aircraft over for CAM, a CAMO has to submit a maintenance programme to the NAA for approval. This is impractical for a lessor who needs the CAMO to perform the Airworthiness Review and submit a recommendation for a CofA to the NAA so the aircraft can be imported to a register to be placed with a lessee on their programme. This needs clarification. Demonstrating that an aircraft is or has been maintained in accordance with the manufacturer's recommendations at an Aviation Authority-approved repair station should be sufficient to satisfy a CAMO and/or NAA requirement.

(7) There is no reference to Export Certificates of Airworthiness. Will these still exist after 28 September? If so, will they still be issued by NAAs in accordance with national regulations, or is there an EASA standard? What is the role of the CAMO in obtaining the export CofA?

## **2. Complete Airworthiness Review by EASA – Aircraft Previously Operated in EU**

### **2.1 Grandfathering of Modifications while Aircraft registered in EU**

Naturally, when an aircraft is imported into the EU for the first time from a state with which EASA does not have a bilateral agreement, EASA will want to perform a full airworthiness review.

However, if the aircraft has been previously operated in the EU we believe there is scope for "grandfathering" maintenance and modifications performed while it was registered in the EU, such that only maintenance and modifications performed while the aircraft was outside the EU would be the subject of a full airworthiness review.

This would also bring the position into line with aircraft that have not left the EU - a full airworthiness review is not carried out when aircraft leave one EU member state and go to another EU member state (though please note our concerns in Part B of this Appendix).

It is also in the industry's interest that all aviation authorities are encouraged to put in place more bilateral agreements with other states, to permit faster and more economic transfers of aircraft without compromising safety.

## **2.2 Approval for Modifications made pursuant to Supplemental Type Certificates (STCs)**

The transfer of used aircraft into EASA Member States and EASA Participating Member States also requires validation of FAA STCs prior to importation. This process can give rise to potential delays in the aircraft delivery to the European airline.

The current process for EASA validation of an FAA STC takes 3-6 months. This process requires co-operation of the STC holder to submit the application and data package to their local FAA Aircraft Certification Office. Furthermore, EASA will not release the STC validation until the fees and charges have been paid by the STC holder.

With a view towards facilitating timely aircraft deliveries to the European airlines, AWG wishes to co-ordinate with EASA to establish an appropriate approach to exempting STCs. We understand that BASA (US-EU) provides for this, and would encourage and support further bilateral agreements with other countries.

In order to minimize safety concerns, we also recommend that the FAA and EASA implement the same criteria for issuance and validation of STCs.

## **PART B: ISSUES ON USED AIRCRAFT TRANSFERS WITHIN EU**

### **1. Introduction**

At present, it is sometimes the case that when an aircraft is transferred from member state EU-1 to member state EU-2, state EU-2 deems the aircraft not airworthy, and insists on a full airworthiness review, even though it is airworthy in state EU-1.

AWG's view is that if an aircraft is deemed airworthy by one EU member state, it should be able to be transferred to another member state speedily and efficiently. Indeed, Regulation (EC) No. 1592/2002, Article 2, states that one of the objectives in establishing EASA is to promote cost-efficiency in the regulatory and certification processes by the uniform implementation of all necessary acts by NAAs. AWG is concerned that, particularly in the case of STCs and non-OEM modifications, this objective is not being met.

We have set out a case study on this issue, titled **Case Study B**.

### **2. Application for New Certificate of Airworthiness**

Regulation (EC) No 2042/2003 Article M.A. 903 provides that, when transferring an aircraft registration within the EU, the applicant shall apply for issuance in accordance with Part 21 (contained in the Annex to Regulation (EC) No. 1702/2003).

Regulation (EC) No. 1702/2003 Part 21 Section 21A.183(2) goes on to state that the NAA of a member state shall issue an airworthiness certificate upon the presentation of the documentation required by 21A.174(b)(3) "*when the aircraft conforms to an approved design and is in a condition for safe operation. This may include inspections by the competent authority of the Member State of registry.*"

It is AWG's view that this section provides more leeway than is necessary to a member state to reject an aircraft that had previously been registered in another member state. In particular, we have encountered different systems for verifying STCs and non-OEM modifications between European NAAs. An example of this is set out in Case Study B (procedure recognized by the EU-1 NAA, but not by the EU-2 NAA).

Another example we have encountered is differences of interpretation as to whether "*dirty fingerprint*" records are required to prove the exact timing for implementation of airworthiness directives, as opposed to verification at a recent shop visit. Additionally, some NAAs have required a copy of an actual "*dirty fingerprint*" accomplishment record for an AD, when a different NAA within EASA allowed the previous operator to dispose of the actual "*dirty fingerprint*" based upon an approved quality system and approved record-keeping system. Differing standards delay the timely transition of aircraft within a region.

Pursuant to Decision No. 2003/1/RM of the Executive Director of EASA, there is no AMC or GM with respect to the subpart of Part 21 dealing with the issue of airworthiness certificates.

### **3. AWG's Proposal**

AWG would like to work with EASA to produce an AMC and/or GM detailing more specific rules/criteria to be applied by all EU NAAs on aircraft transfers from one EU state to another.

It is our view that this would not impact on safety, as we are dealing with aircraft that have previously been deemed airworthy by a member state within the EU. If the aircraft are airworthy in one member state, one would expect that EASA would be comfortable with streamlining the procedure to enable them to be certified as airworthy in another member state. EASA should be approving the individual NAA quality systems based upon one standard, and that standard should allow for a seamless transition of aircraft where individual NAA operational equipment is installed.

## **PART C: REQUEST FOR EASA LIAISON OFFICE OR HELPDESK**

AWG considers that it would be most useful if a liaison office or “helpdesk” or similar forum could be set up within EASA, to provide advice and guidance to lessors and other stakeholders.

We recognise that in most cases the NAA is responsible for applying the regulations, and that normally EASA has no formal relationship with individual persons (or companies). However, in practice whenever an issue arises individuals will often contact whoever they know with EASA to get a recommendation, which could lead to the same question generating different answers. It would be better if a formal contact point existed for external enquiries to guide people to the correct department or authority.

In addition, that contact point could provide guidance in circumstances in which the NAAs of two member states disagreed on an aspect of the interpretation of the regulations.

If such a helpdesk could be resourced so as to be able to provide and publish a timely recommendation to the NAAs in question, that could be of great benefit to the aviation community as a whole.

We are concerned that when Regulation (EC) No. 2042/2003 Annex I(I) enters into force on 28 September 2008, the process of importing aircraft into the EU will become more difficult, as a CAMO will be responsible for certifying that aircraft are airworthy. We believe a forum for a collaborative approach between CAMOs, EASA and individual NAAs would facilitate the transfer of aircraft into and within Europe.

We believe that EASA itself would also benefit from such a liaison / helpdesk or forum approach, since it would get direct feedback on which regulations are problematic or ambiguous and would benefit from further clarification in future legislation.

## **PART D: THE OWNER-OPERATOR REVISION**

One significant change in the new EASA regulations was to place the responsibility for compliance with the regulations onto the aircraft owner in the event that an aircraft is not being used in commercial service and maintained on an air operator's certificate. Previously when an aircraft was off lease an owner would take responsibility for the aircraft and ensure maintenance was performed as a matter of course.

In the new EASA regulations, the owner is obligated to either act as, or hire the services of, a CAMO as well as a maintenance and repair organisation to ensure the continued airworthiness of the aircraft.

While AWG agrees with this concept of maintaining airworthiness of off-lease aircraft, we believe the regulations do not fully consider the implications and variability of off-lease aircraft transfer situations. For example, the regulations require a CAMO to be engaged whenever an aircraft comes off lease. In practice it would be impractical to appoint a CAMO when the off-lease period was short.

Furthermore, while many airlines will be CAMO-certified, lessors are highly unlikely to be able to achieve certification. The availability of certified CAMOs to support leasing activities is a major concern. If insufficient CAMOs are available then lessors will have to present their aircraft to the NAAs who may lack sufficient resources.

As more regulations are written and the AMC or GM documents prepared, AWG wishes to encourage EASA to support the inclusion of aircraft owners in the working groups that define and write these documents.

## APPENDIX 3: OTHER ISSUES

### PART A: OTHER ISSUES RELATING TO EASA

#### 1. EU Regulation 2042/2003 – Aircraft Transfer Costs

AWG has particular concerns regarding the impact of EU Regulation 2042/2003, which has been in force since 28 September 2005. At present lessors endure a significant administrative and cost burden in satisfying EASA's requirements for used aircraft which are being imported into the EU for lease to EU operators. Aircraft transfer costs consist of two elements:

- **Expenditure on the aircraft** - the typical level of expenditure on modifications, approvals, component re-certifications and repairs is between US\$250,000 and US\$1,500,000 per aircraft (depending partly on the size of the particular aircraft).
- **Extended downtime** when the aircraft cannot earn lease rentals. This also means significant delays in delivery of aircraft to European airlines.

We set out below two sample case studies (Case Study A and B).

A significant increase in aircraft transfer costs adversely impacts the remarketability of aircraft, and hence their residual value. All of these costs are ultimately transferred to the lessee's through the payment of higher lease rentals. A reduction in remarketability of aircraft into Europe affects the availability of and/or cost of aircraft to European carriers, which in turn affects their competitiveness, through either a higher lease cost and hence higher fares for passengers or a decreased flexibility in not being able to make full use of leasing to exploit business opportunities. This latter point is particularly relevant in today's market, where the availability of new aircraft from the manufacturers is typically 4–5 years lead time, whereas the typical lead time for supply of used aircraft from lessors is 2–3 years.

AWG considers that increased attractiveness of used aircraft as assets would benefit the airlines by creating both (i) lower cost and risk and (ii) more predictable expenditure in transferring aircraft from operation in country A to country B. This increased attractiveness would have the following effects:

- It would promote the entry of more owner/participants into the market for aviation assets. A greater number of active buyers and sellers would increase the liquidity in the market for aviation assets.
- The boost to demand provided by increased liquidity would benefit manufacturers by enabling them to sell more aircraft. Increased aircraft production would lead to the creation of more high-tech jobs at and around production sites.
- The increased competition brought about by greater liquidity would also put downward pressure on prices, which would provide airlines with cheaper access to aircraft. This too would have a beneficial effect on employment, both in terms of established airlines and in terms of making it more cost-effective for new start-up airlines to create jobs.

At a European level, one can also consider the aircraft transfer issues to be an unnecessary barrier to international trade. One of the original tenets in the formation of the European Community, described in the preamble to the Treaty of Rome, was "*to contribute, by means*

*of a common commercial policy, to the progressive abolition of restrictions on international trade”.*

## **2. Amendments to EASA Regulations - Restatement**

We note that amendments to regulations are not always incorporated into the main texts. This makes it difficult to achieve certainty that the reader has the complete regulation, including all amendments, and also requires the interpretation of several non-contiguous documents. AWG would encourage the practice of restating regulations following amendments.

## CASE STUDY A

### Aircraft History

A new wide-body aircraft (*Aircraft*) was delivered from a manufacturer to a major European airline in January 1994 and placed on the register of EU State 1. The Aircraft was one of several such aircraft delivered to that airline. The form of the transaction was a ten-year lease from a European leasing company.

The Aircraft's cabin configuration was innovative, including then cutting-edge installation of an all-passenger LCD personal video system. Many of the on-board systems and features were installed by means of modifications designed by third-party engineering companies, other than the manufacturer.

During the early 1990s, such modifications were approved under the control and supervision of the NAA of EU State 1 (*EU State 1, NAA*).

After the end of the initial lease (2004), the Aircraft was exported from the EU and leased to an operator outside the EU. The exporting regulatory authority at that time was the JAA.

Upon export from the EU, the Aircraft became registered in that non-EU State and operated for 3 years. No configuration changes were made, and routine maintenance in accordance with the approved maintenance schedule was performed.

At the end of the lease to that non-EU operator (2007), the Aircraft was returned to the lessor and ferried to Europe.

### Return under EASA Regime

Since the export in 2004, Regulation (EC) No. 2042/2003 had come into force (on 28 September 2005), with certain exceptions. One was the procedure in Annex I(I): which would have an approved CAMO reviewing airworthiness status and issuing a recommendation to the NAA for the issuance of an ARC. The combination of the ARC and the CofA would render the aircraft airworthy and suitable for commercial operation under the operator's AOC.

### Issues with the Aircraft

When the lessor exported the Aircraft in 2004, the Aircraft was subject to JAA, not EASA, rules. Upon return into the EU in 2007, EASA policy was to undertake a *de novo* review of the airworthiness status. Even though the full CAMO / ARC procedure would not enter into force until 28 September 2008, the maintenance organizations (*MROs*) involved acted as if it was in force.

A major European MRO (*MRO-2*) performed the Airworthiness Review, and, in close coordination with its NAA (*EU State 2, NAA*), concluded the Aircraft was airworthy subject to the completion of certain maintenance tasks, and was prepared to issue a recommendation to EU State 2, NAA upon completion of those tasks.

The Aircraft was to be leased to an airline in a different EU State (*EU State 3*) and registered in EU State 3. The maintenance department of that airline (*MRO-3*), then seeking certification as a CAMO, was closely scrutinized by EU State 3, NAA. In fact, EU State 3,

NAA had made a policy decision to follow a very strict interpretation of all regulations. That interpretation was considerably more stringent than that followed by EU State 2, NAA.

While the airline in EU State 3 urgently needed the Aircraft, and had originally agreed to accept the Aircraft on the basis of approval by EU State 2, MRO-3 (acting as a CAMO) would not confirm airworthiness and did not agree to issue a recommendation for the issuance of an ARC by EU State 3.

The main issues related to the cabin and the cabin systems, in particular the fact that original installations were done by parties other than the original manufacturer (which were approved in EU State 1 and accepted by EU State 2 on export and re-import, respectively). It was not possible to satisfy EU State 3 by, in effect, removing all the STC modifications or producing additional data (some of the companies that designed various parts in the cabin were no longer in existence), since a complete replacement of the cabin and IFE to remove the STCs would have cost in excess of US\$10 million, while the lead time to complete the work would have been in excess of 12 months. This was impractical from both an economic and an operational point of view. If EU State 3 would have permitted a grace period while the STCs were gradually removed and replaced, then the transaction could have proceeded and the needs of the airline in EU State 3 could have been satisfied.

In the end, the Aircraft could not be registered in EU State 3, though it could have been registered in EU State 2. Safety was never considered an issue (the Aircraft could have been operated in EU State 3, if registered in EU State 2). The airline could not make use of the Aircraft. The lessor decided that in light of these costs, delay and lack of certainty as to the view of other EU NAAs, it would not re-lease the Aircraft. After a mere 13 years in service (of a 25 / 30 year useful lifespan), it was taken out of service (sold as spare parts). The lost rental for the Aircraft was of the order of US\$1,800,000–2,000,000 annually.

*End note: The practices of EU State 3, NAA were inconsistent, as seen in aircraft substantially similar to the Aircraft being deemed airworthy, imported and operated by the same operator in EU State 3 prior to the airworthiness review with respect to the Aircraft. Thus, this case study indicates both (i) lack of consistency among EU States (resulting in acute economic loss), and (ii) changes in practices where similar fact patterns were treated differently (contrary to prohibition of restrictions on EU free trade).*

## CASE STUDY B

An aircraft (*Aircraft*) leased to a non-EU State was imported into the EU following expiry of the lease.

EU State 1 undertook a *de novo* airworthiness review and certified airworthiness, subject to modifications. Such modifications were performed in accordance with EASA regulations.

A lessee in EU State 2 applied to have the aircraft added to its AOC in EU State 2 (under an ICAO 83bis agreement), but EU State 2's NAA was unwilling to accept the determinations of EU State 1's NAA based on the methodology the MRO used to re-certify component parts. (The procedure, authorized by the JAA and followed by EU State 1's NAA, had re-certification of a system rather than its component parts, the latter being required by EU State 2's NAA.)

The result was several months of additional cost (in an approximate amount of US\$500,000) and delay, causing economic damage to the lessor and the lessee in EU State 2.

## **PART B: VARIOUS OTHER ISSUES**

### **1. FAA /EASA Acceptance of Third Country Modifications**

Bilateral agreements by definition are not satisfactory where aircraft are likely to pass through multiple jurisdictions throughout their lives. Use of a bilateral agreement when transferring an aircraft may actually restrict the ability for onward transfer. The importing State may not accept approvals accepted by the exporting State during previous transfer processes.

AWG advocates the acceptance of modifications and repairs fitted to an aircraft at the time of import, when previously approved via a bilateral arrangement between the exporting State and a third country. Such approvals would be limited to a specific tail number and would not confer any grandfathering rights to the approval holder. As the FAA and EASA have the largest amounts of bilateral arrangements in place, acceptance of this principle by the FAA and EASA would have maximum impact.

### **2. Process for Acceptance of Used Engines**

Engine imports on short-term lease are subject to local NAA acceptance procedures which are not standard across jurisdictions. As a result of a lack of such standard procedures, it is time-consuming, cumbersome and labour-intensive to obtain local NAA acceptance of imported spare engines for immediate use by airlines in a timely manner. The cost to airlines and lessors of AOG and other delays resulting from non-standard acceptance procedures is significant.

AWG advocates standardizing local NAA acceptance procedures for imported spare engines.

END