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2010-10-06

New EASA-rules to create prohibitive roadblocks for international General Aviation

The proposed new EASA-rules for licensing (pilots), maintenance (aircraft) and operations (traffic) coming into force in April 2012, place unprecedented roadblocks in front of individuals and businesses from outside the EU wishing to operate General Aviation aircraft within the European Union.

EASA is thereby threatening the vital flow of people, goods and services to and from the Community and places itself at odds with international law such as the time-tested and binding ICAO-Convention on Civil Aviation.

By applying whole new categories from the world of commercial aviation to private and business-flights, EASA puts all aircraft operators within the community in a legal limbo that has the potential to occupy courts from Spitsbergen to Malta for years to come.

We have compiled three cases of personal and business use of General Aviation aircraft. These are not wire-drawn or hypothetical cases. These are just three of many actual cases of General Aviation utilization that we have personally witnessed throughout the last years. We only undertook the effort to transpose them to the year 2013.

The people and businesses described herein are real. But if they wish to do in 2013 what they have done legally and safely in 2010, they won't be able to, according to EASA-rules.

Case 1: Mr. Jones goes on vacation

Our first case, we'll call him Mr. Jones, is an experienced American glider pilot for more than 30 years. Practicing aviation purely as a hobby, he has a passion for vintage glider aircraft and the history of soaring as a whole. Not surprisingly, Mr. Jones has read just about every book dealing with the history of the glider-movement in Germany in the 1920s and 1930s. He knows places such as "Wasserkuppe" and can list the most influential designs of Alexander Lippisch and Gottlob Espenlaub without hesitation.

One of his most cherished dreams is to fly where it all began. In the Rhön Mountains. While still working as an officer for the United States Department of Transportation he takes a full four weeks of vacation to travel to Germany together with his wife.

Being in government himself, he does not expect things to be easy. Utilizing his contacts in Germany, he prepares all the necessary steps to obtain a license validation. He gets an FAA medical certificate (that's a first for him since a medical is not required for US glider pilots), he studies Air Law and Human Performance on the web, and upon his arrival in Germany receives a thorough multi-day introduction and checkout in the local procedures and airspace-structure.

He passes his required skill test according to Part-FCL with flying colors, rents out a Schleicher K 6 and later a rare Schleicher K 10 and spends a wonderful 10 days of soaring throughout Hesse and Thuringia before fulfilling his part of the bargain with his wife by traveling to Rome and Paris as normal tourists.

The experience has been an enchanting one and the many contacts he has made have opened up new possibilities. He has been invited to almost every vintage glider fly-in in Europe and he and his wife are positive about returning to Germany. Maybe after he retired in two years – then he would have plenty of time to travel!

However, when he returns in two years time, he will not be able to do what he has done during his first visit to Germany. Annex III A(1) to Part-FCL specifically states:

"The period of validation of a license shall not exceed 1 year, provided that the basic licence remains valid. This period may only be extended once by the competent authority that issued the validation when, during the validation period, the pilot has applied, or is undergoing training, for the issuance of a licence in accordance with Part-FCL."

His validation is now invalid and can not be renewed. Ever. The only way to repeat his flying-holiday is to obtain a conversion. Even mustering all his enthusiasm, obtaining a standalone Part-FCL license, including written examinations, and a European medical is a little too much just to facilitate another 10-15 hours of soaring over Hesse.

The European Union will have to decide whether it wants to shut out foreign pilots permanently from taking an active role in Europe's rich aviation history. Floatplane-touring in Scandinavia, gliding in Germany and the Alpine Region or island hopping in the Mediterranean – Europe has attracted many foreign pilots in the past.

There is no documented safety-issue from pilots flying on validated licenses.

Through a unique one-year-limit on validations, EASA is now proposing to make a flying-vacation in Europe not only a unique, but truly **a once-in-a-lifetime experience**.

We call on EASA not to shut out pilots from other parts of the world from our European aviation experience. While the fact, that a validation in Europe is more onerous and difficult to obtain – than, let's say, in Canada or Australia – can't really surprise the savvy traveler, the requirement to obtain a conversion, including written examinations and European medical, is more in line with what countries like Zimbabwe or Myanmar mandate.

Case 2: Mr. Smith means business

Our second exhibit, Mr. Smith, is the co-founder and one of the senior managers of a midsize American technology company specializing in IT-infrastructure. As a result of the significant growth of his business in Europe, Smith decides to move to London, England, for three years, in order to direct the company's rapid expansion and lead the fast growing team of IT-professionals.

Having been a pilot for most of his life, Smith has been using General Aviation for business travel successfully since the early days of his company. As an ambitious and skillful engineer, he has obtained all FAA airplane certificates up to the full US Airline Transport Pilot (ATPL) over the years.

Accepting only the highest standards of safety for himself, his wife, his three children and of course his employees, he owns a King Air C90 that he purchased anew about 10 years ago. With the high demand for flexible travel and transportation in the fast and hectic growing-phase of his European subsidiary, Smith doesn't think twice before taking his trusted King Air along with him to Europe.

Unfortunately, as soon as he receives the keys to his pretty London brownstone home where he and his family will live for the next three years, he won't be able to operate his King Air anymore. That's because the Basic Regulation 216/2008 Article 4(1)(c) stipulates that the full set of EASA-regulations are now applicable to

"Aircraft, registered in a third country and [...] used into, within or out of the Community by an operator established or residing in the Community".

Since Smith owns his airplane, flies it himself and controls all aspects of the operation of his King Air, there will be no plausible way to exclude him from this definition. Besides, taking legal chances is something utterly alien to him. Smith will now be mandated to validate his license before the next time he flies his own aircraft.

The validation of at least a PPL/IFR Multiengine would be onerous, but feasible. However, since the FAA does not require a type rating for the C90 and EASA does, the exact requirements are not even defined. There is no type rating for him as a basis of the validation. We'll simply assume for the continuation of the story, that his 2.000+ hours in the C90 will somehow give him a validated type rating plus the also required HPA-theory-credit.

As seen in case 1, even if he gets the validated PPL/IFR + type rating + HPA, he will only be able to use it for a year – maybe a little longer if he has started training to obtain a full blown EASA Part-FCL license.

It get's worse: Annex III, which deals with the validation and conversion of third country licenses does not contain any provisions for converting an Instrument Rating. Smith will have to start from scratch. This will require him to complete all subjects of the extensive IR theory examination, and an unspecified amount of training in his aircraft. Then he has to obtain the type rating for the aircraft he flies for 10 years.

Adding insult to injury, he won't even be able to do the training for the type rating in his own aircraft, because EASA specifically prohibits flight-training within the EU in Non-EU-registered aircraft.

Assuming just for a moment, that while comforting his family in a new country, expanding his business and hiring new staff by the dozens, he somehow manages to accomplish all this, he won't be out of the woods just yet.

The second problem he faces will be even harder to overcome than the licensing issue. Since his aircraft is considered a "complex aircraft" by the Basic Regulation, he is mandated by Part-T to relinquish control over the airworthiness management of his King Air to a yet to be found CAMO-T (Continuing Airworthiness Management Organisation).

He will be allowed to use US procedures, and US parts but he has to sign over all control over his own aircrafts maintenance to the European CAMO-T. This will most likely not only be awkward for an owner-pilot who has managed his aircraft for ten years since the day he picked it up from the local Beechcraft-Dealer, this will also **put him in direct violation of applicable US law.**

In the FAA-System the responsibility for aircraft maintenance lies directly with the owner/operator. The owner/operator has to select the inspection program in accordance with FAR 91 Subpart F. He has to make sure logbook entries are made and he has to schedule and contract out the work. He may of course delegate any task involved in the maintenance of his aircraft, but he can never ever delegate responsibility. However, that is exactly, what the EASA-rules require him to do through the CAMO-T.

He could of course – at least in theory – put his King Air on the UK-register for the three years of his stay. Besides taking a significant hit in resale value (when the aircraft has been "out of the system") he would soon learn that this also isn't an option: Striving for modern and safer equipment he had his legacy cockpit instruments replaced by a brand new glass-cockpit two years ago. The installation was done by means of a standard FAA Supplemental Type Certificate, that despite international agreements to the contrary, is not automatically accepted nor validated by EASA.

EASA effectively shuts out foreign registered aircraft from Europe. In a global and interconnected world, visions and ways of life cross borders and continents. This after all is one of the founding principles of the EU.

With it's reach for complete control over foreign registered aircraft within the community, EASA not only violates the ICAO-convention, EASA also places impossible burdens on companies and people.

There is a reason, why ICAO, the International Civil Aviation Organization, makes such important determinations as to what licensing- and maintenance-rules apply to an aircraft, by it's country of ownership and registration. The ICAO-convention grants the EU-States all necessary rights to prevent pilots and operators from flying who don't abide by the law or who pose a safety risk. The enforcement-tools are there, even though privately owned third-country-aircraft have never been shown to pose any higher risk than domestic aircraft.

Even if a stronger oversight than mere enforcement was sought, the Basic Regulation would provide an instrument to accomplish just that: Article 7(2) explicitly introduces the method of "accepting" a foreign license in precisely the 4(1)(c) type of operation described in this case.

For reasons unclear to the author, EASA has chosen not implement this method in it's regulatory opinion and rather mandates the much more heavy handed procedure of validation and later conversion.

Case 3: Travelcorp just wants to know the rules

Our third case deals with a European company we'll call Travelcorp. The company is established in Europe for almost 30 years. Part of it's business is to enable pilots to do journeys that require special preparation and guidance.

More than just a few pilots dream about navigating to Asia, flying the Himalaya, crossing the North Atlantic, roaming the Andes or seeing the South Sea for themselves. They want to navigate and experience the journey from Europe to these far flung places the slow and the hard way, just as our ancestors, the great explorers by sea and by air have done.

Travelcorp not only provides specific training and area familiarization for pilots flying to the remote corners of the world, the company also helps in planning the journey, it provides experienced safety-pilots and – last but not least – makes available aircraft suited for long-range travel, but still simple enough to be flown by a well-trained private pilot.

The business-concept is simple and common: Guided tours with rented equipment can be found in almost any other field of activity where experience and local knowledge are key: Sailing, hiking, climbing, hunting or diving – this really is a very straight forward proposition.

These aircraft used are on the US-register and that's for two very simple reasons:

1. Only the FAA-system provides the global deployment needed for these kinds of flights. Whether you need an engine-checkup in Singapore or a landing-gear-repair in Buenos Aires – a licensed mechanic and a legal signoff is only available from the FAA. There are no certified EASA repair stations for the PT6 in Southeast Asia, and there are no knowledgeable EASA facilities for General Aviation aircraft in South America. The US-system is the only system where the General Aviation operator at least stands a chance of finding licensed parts and labour all over the world.
2. The FAA-system has an excellent reputation and has acquired a safety-record known and admired by pilots and authorities all over the world. Attracting customers from all continents, being "n-reg." is simply good for business.

As in the case of Mr. Smith the 4(1)(c) classification of this undoubtedly EU-established business will place significant if not prohibitive obstacles in Travelcorps path. But this should not be our concern. Our concern in this case is simply whether there is a chance at all of being legal.

Being safe, being legal and being insured are the three most important pillars of Travelcorps business. That is especially true, since the flights conducted to these parts of the world admittedly pose a higher operational risk than your average flight from London to Hannover. There is really nothing worse than having a collapsed nose gear in Kathmandu and having to argue with the insurance-company. Hence, being legal is paramount to Travelcorps business model.

With pinning all kinds of requirements on the question of who the operator is and where the operator resides, the determination of being legal or not becomes all but impossible.

Let's say one of Travelcorps turboprops is going on a nine months round-the-world-flight. The simple question is: Who is the operator?

- Is the operator maybe the US-Trust the aircraft is registered in?
- Is the operator maybe Travelcorp, which, though scheduling the aircraft in the long run, has not laid eyes on the plane for months and has no operational control whatsoever over the aircraft which is sitting on the other side of the globe?
- Is the operator maybe the crew, that actually does decide whether the aircraft flies north, south, east or west? The crew actually negotiates with local maintenance, accepts the aircraft back and handles the funds. And if the crew is the operator – Who precisely? The paying customer(s) or the hired safety pilot who might well be a freelancer and not an employee of Travelcorp?

This is an actual and fairly straight-forward business-case. It does not take a lot of imagination to complicate the question even further. We just need to bring holdings, clubs, overseas companies, foreign nationals and other factors into the picture to really get creative.

The application of the term "operator" to private flights such as this and pinning all kinds of requirements to it, will create a multitude of legal issues.

Using the term operator does make perfect sense in any kind of operation where an operator certificate is required, like as a flight school or a charter-service. The holder of the certificate is the operator. Simple.

Where there is no operator certificate required, the application of the term operator as in Article 4(1)(c) of the basic regulation is bound to create a world of hurt for all parties involved. Moreover, it creates legal insecurity and that – as we all know – is the most potent poison for business.

The simple solution would be to render the definition of the term operator in Article 3(h) of the Basic Regulation more precise. An operator of an aircraft would be the holder of the applicable operator certificate. If no operator certificate is required, the registered owner is deemed the operator unless he appoints another natural or legal person to that role.

Kindest Regards,



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