N-Flyers of Europe

Position Paper

This paper addresses the serious concerns of all the pilots flying currently in Europe with non-European pilot licenses, owners and operators of aircraft flying in Europe, but not registered in the EU. These concerns are shared by national and international associations such as GAMA, EGAMA, NBAA, EBAA, IAOPA, AOPA, Europe Air Sports and PPL IR. They all relate to the proposed Commission Regulation implementing certain standards for flight personnel licensing. EASA has presented a draft Commission Regulation as NPA 2008-17b, which would have the effect of making an exception to the ICAO rules, without having been authorized by the Basic Regulation to do so. The effects of the adoption of the EASA proposal would negatively impact the safety levels in General Aviation, in sharp contrast to the mission of EASA. It would seriously interfere with vested rights of many instrument rated private pilots, and would negatively impact the General Aviation industry as a whole.

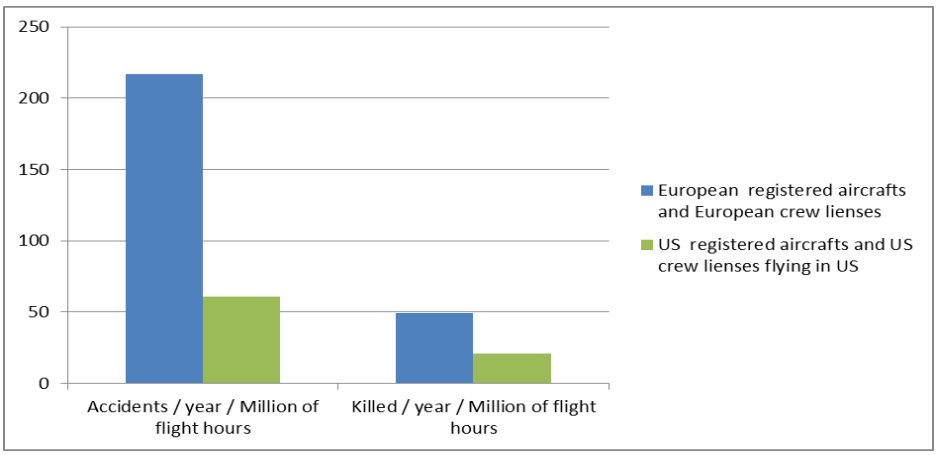
The pilot association that submits this position paper is keen on achieving the highest levels of safety for General Aviation. It is their experience that pilots, both private and professional, who hold an instrument rating have a better safety record. All pilots, regardless of the nationality of their license, should be able to exercise the privileges of their licenses within the airspace of ICAO members, provided these licenses meet the recognized international standards.

EXECUTIVE SUMMARY

The regulation prepared by EASA would deny to thousands of pilots in Europe, professional pilots in business aviaiton and private pilots, the right to fly according to Instruments Flight Rules (IFR) with 3rd countries licenses (particularly US licenses).
This would force them either to take many more risks by flying Visual, or to abandon flying causing a big economic impact.
The economic impact of the proposed EASA ruling is estimated as follows:

- GDP[1] loss of 200M€ / year,
- Negative impact in properties of ~ 1 Md€,
- Jobs cut estimated between 2000 and 5000 in Europe,
- Increasing the number of accidents in General Aviation every year.

EASA claims that safety in Europe will be improved with its proposed European regulation; but it is a fact that General Aviation safety is better by far in 3rd countries like USA than it is in Europe today, see graph below[2]:



EASA would be well inspired in welcoming the US aviation system in Europe, instead of fighting it.

[1] Gross Domestic Product

[2] Sources : EASA, FAA, AOPA

1. The Current situation

a. The legal basis

Today, private pilots (pilots rated to conduct flights for private purposes) and professional pilots (pilots rated to fly business airplanes on behalf of an employer) may fly anywhere in the world, provided that their license is conforming to ICAO (International Civil Aviation Organization) recommended level of training and proficiency. Today ICAO has 189 members having signed various treaties, such as: Chicago Convention, Montreal Convention etc. These countries recognize airman certificates (licenses) between countries and follow the ICAO standards:

International recognition of flight crew licenses

The Convention on International Civil Aviation, often called the Chicago Convention, provides for worldwide recognition of flight crew licenses issued by any member State of the International Civil Aviation Organization (ICAO) provided that :

a. *The license meets or exceeds the ICAO licensing Standards of Annex 1 – Personnel Licensing to the Convention on International Civil Aviation; and*
b. *The license is used on an aircraft which is registered in the State which has issued or validated the license.*

If the license is to be used on an aircraft which is not registered in the issuing State, the license holder must obtain a validation of the license from the State of Registry or alternatively obtain a new license issued by the State of Registry.

The ICAO Agreement further provides, as a rule, that an aircraft should be flown by a pilot licensed under the rules of the country in which the aircraft is registered. Consequently, it is required under ICAO rules that any N-registered aircraft be flown by a pilot that has a license issued by the USA.

It is noted that Council Regulation (EC) 216/2008 ("Basic Regulation") does not foresee that the European Union make use of the possibility of applying the exception that the ICAO Agreement provides for in Article 32b, i.e. requiring a pilot resident within the territory of the ICAO Member State, to be licensed by such ICAO Member State. Moreover, (EC) 216/2008 in Article 7, 7th subparagraph, states that "*The requirements of (…licenses…) may be satisfied by the acceptance of licenses and medical certificates issued by or on behalf of a third country as far as pilots involved in the operation of aircraft referred to in Article 4(1)(c)*[3] *are concerned".*

This clearly means that in our case, FAA licenses are satisfactory to fly a N-registered airplane.

[3] *Article 4 (c) : airplanes registered in a third country (…) used into, within or out of the Community by an operator established or residing in the Community*;

The new regulation issue is explained below, with reference to the texts:

The Draft Commission Regulation on personnel licensing stipulates in Article 7:

*Without prejudice to Article 1, Member States may **accept** third country licenses, including any associated ratings, certificates, authorizations and/or qualifications and medical certificates issued by or on behalf of third countries, in accordance with the provisions of Annex III to this Regulation.*

And ANNEX III of Draft Commission Regulation on personnel licensing says:

*REQUIREMENTS FOR THE **ACCEPTANCE** OF LICENCES ISSUED BY OR ON BEHALF OF THIRD COUNTRIES:*

4. In the case of private pilot licenses with an instrument rating, or CPL and ATPL licenses with an instrument rating where the pilot intends only to exercise private pilot privileges, the holder shall comply with the following requirements:

(a) Complete the skill test for instrument rating and the type or class ratings relevant to the privileges of the license held, in accordance with Appendix 7 and Appendix 9 to Part-FCL;

(b) Demonstrate that he/she has acquired knowledge of Air Law, Aeronautical Weather Codes, Flight Planning and Performance (IR), and Human Performance ;

(c) Demonstrate that he/she has acquired knowledge of English in accordance with FCL.055;

(d) Hold at least a valid Class 2 medical certificate issued in accordance with ICAO Annex 1;

(f) Have a minimum experience of at least 100 hours of instrument flight time as pilot-in-command in the relevant category of aircraft.

And Article 1 says:

This Regulation establishes common technical requirements for: 1. the licensing, training and testing of pilots involved in the operation of aircraft referred to in Article 4(1)(b) and (c) of the Basic Regulation.

And Article 4(1)(b) and (c) of the Basic Regulation says:

Basic principles and applicability:
1. Aircraft, (…), which are (c) registered in a third country (…) used into, within or out of the Community by an operator established or residing in the Community.

This cascade of texts means that (unless this interpretation would be denied by the EC or EASA):

- this new regulation applies on crew flying N-registered airplanes operated by people residing in Europe,
- Crew FAA licenses may be accepted and then converted to FCL European licenses, through a full FCL-licensing education and testing process.
- **In other words, a FAA pilot residing in Europe, holder of a FAA certificate and ratings, would need within 12 months to get a FCL-license with equivalent ratings to keep his privileges to fly his airplane in Europe.**

b. Genesis

In the recent years, European countries have followed a path where obtaining an Instrument Rating (IR: additional qualification that allows pilots to fly into weather in sole reference of their instruments) became more and more difficult. In today's regulatory environment, IR training in the EU is nearly reserved for airline pilots. One must go through ground school for at least 12 months and sit 7 written exams that are designed for airline pilots (with questions about systems that are never encountered on the kind of planes flown by the vast majority of pilots) and then go through practical training.

This means that, in Europe, **only about 5% of all private pilots are instrument rated (compared to 57% in the USA)**

The low level of instrument ratings accounts for the horrendous safety record observed in Europe. Many accidents are the consequence of inadvertent encountering of deteriorated weather conditions by pilots who have no instrument rating.

The IR clearly adds to the safety level. This is evident especially when comparing EU safety statistics to the statistics collected in the USA. In the USA, the IR is taught as an "add-on" to the private or professional certificate and does not require training at an "airline transport" level.

The practical test standards, however, that pilots must comply with to obtain or renew the IR are the same in the USA and in Europe, especially as regards the tolerances and precision of flight maneuvers. Consequently, the IR issued by the USA is fully ICAO equivalent to any IR issued by another ICAO Member State.

2. The contents and effects of the EASA proposal

Going beyond the Basic Regulation, the EASA proposal provides for making an exception from the ICAO rules by requiring any pilot resident in a EU Member State to have a full European license, in addition to the licenses required under the ICAO rules for flying the aircraft. In simple words, under ICAO rules, a N-registered aircraft requires the pilot to be licensed by the Federal Aviation Authority (FAA) in the USA.

Consequently, pilots flying such N-registered aircraft in Europe must have a FAA license, and often have a FAA IR. The EASA proposal ignores the fact that the pilots are licensed in accordance with ICAO rules and requires the pilot resident in the EU to have a European license. The proposal contains no "grandfathering" of any licenses, and the validation possibilities are entirely inadequate. As a consequence, European pilots could not legally fly N-registered aircraft stationed in Europe unless they were dually qualified.

In effect, any pilot with a foreign ICAO level airman certificate and residing in Europe would have to convert his/her license.

The major effects of the EASA proposed regulation would be:

- *Any pilot with a foreign license and residing (even temporarily) in Europe would be **denied the right to fly a N-registered airplane in Europe** according to the privileges of his FAA certificate (ex: CPL, PPL, IR…), and would be **forced** to get a European FCL-based license;*

- *For this purpose, for an initial period of 12 months, these pilots would have to sit written exams and a practical skill test in order to validate their certificate:*

    - *For IR, a minimum of 100 hours of instrument flight time as a Pilot In Command would be required, making it impossible for a recently certified FAA IR pilot.*

    - *A demonstration of English proficiency would be required with an exam (FCL.055), although all FAA-certified pilots, have already gone through English proficiency certification and are "English proficient" as stated on their FAA certificate.*

    - *The fact that some of those pilots have been flying for a long period of time in the European airspace is not taken into account. They are ordered to prove that they are not dangerous, despite their experience and the fact that they have been licensed to ICAO standards and have been flying for years without any problem.*

- *After this grace period of 12 months, the pilot would have to get an FCL European license. For that, and despite the fact that he will have already passed written and practical tests, he would have to retake again written tests and pass a practical test, in order to get an European License.*

    - *These theoretical tests would be consistent with current FCL syllabus, meaning that an IR type-rating would require a heavy theoretical training, not relevant for non-airline pilots;*

    - *A CPL or ATPL certificate could only be converted to a PPL FCL license, meaning that a FAA business aviation pilot would be denied the right to fly and work in Europe.*

Pilots that fly using foreign licenses do not do it for the pleasure of escaping regulations. Why they are in that position is due to one or several reasons below:

- *They cannot get an Instrument rating without entering the airline transport pilot system. As it takes more than one year of ground school in Europe, with many courses entirely irrelevant for pilots flying small aircrafts, to be allowed to pass the written examination, pilots tend to pass their IR in the USA, where the system is fully ICAO compliant, but where the goal is to train a pilot to operate safely in a single engine or twin engine aircraft used for business and leisure trips. The practical test standards applied to pass the IR are the same in the USA and in Europe – pilots with an FAA IR fly as accurately and safely, complying with all relevant rules, as those with a European IR.*
    - *Note that this EASA regulation project is contradicting the "EC Common Rules" of EC216-2008, paragraph (8) which stipulates that "For non-commercial operations, the operational and licensing rules should be tailored to the complexity of the aircraft".*

- *They own a plane that is not certified by European authorities, although they are certified in another country such as the USA to the same ICAO standards as are applied in Europe since many years and have proved themselves to be safe to operate. The USA being the largest market for General Aviation aircraft, all aircraft normally have the FAA certification. However, some manufacturers have not applied for European certification, and for an individual, it is basically impossible to obtain a certification for an imported aircraft, due to the complexity and the requirements of the process in Europe.*
- *They own planes that have received after-market modifications to enhance safety of operations that have not been certified in Europe (anti icing systems, modern avionics, turbo charged engines etc.) but have been certified in another country (to the same ICAO standards as are applied in Europe).*

3. Why do pilots contest the EASA proposal

- ***Because there is no safety issue today caused by such instrument rated pilots in the European sky. By contrast, there is a safety issue from the overwhelming majority of pilots in Europe being unable to obtain an instrument rating: these pilots take more risk by flying at low altitudes when encountering weather, instead of flying by instruments at high altitudes and without risk.***
- ***Because EASA did not present any study on accidents or incidents relative to the danger created by the use of ICAO foreign licenses in the European airspace, nor has EASA presented any study how much safer General Aviation flying would be if more private pilots were instrument rated.***
- ***Because EASA is actually going to create a safety issue by disallowing experienced pilots to fly safely in adverse weather. It is a fact that many accidents are the consequence of non-instrument rated pilots inadvertently encountering adverse weather conditions. Furthermore, numerous airspace infringements that may potentially be dangerous are committed by VFR pilots that are unable to fly under Instrument Flight Rules.***
- ***Because EASA is inconsistent in its reasoning: EASA has created a working group to review the conditions in which instrument ratings can be sought (FCL008). Therefore, EASA recognizes that the current situation is not acceptable and should be amended. But with this proposal, EASA places an unacceptable burden on pilots that have already proved that they operate within the recommended standards of ICAO.***
- ***Because EASA has not produced any financial impact study on the impacted stake holders.***
- ***Because owners of foreign registered planes will find themselves in an impossible legal situation where they will have to maintain licenses deemed illegal by EASA to continue to fly their aircraft, and pass European licenses at an exorbitant cost and effort for no safety advantage.***
- ***Because this regulation project is in conflict with Council Regulation (EC) 216/2008 ("Basic Regulation")***
- ***Moreover, this use of an exception from the ICAO rules would have to be adopted by means of a Council Regulation, not by an implementing regulation adopted by the European Commission. Consequently, the Commission would exceed its powers when adopting the regulation as proposed by EASA.***

Conclusion and alternative proposal

Pilots, national and international associations (GAMA, EGAMA, NBAA, EBAA, IAOPA, AOPA, Europe Air Sports, PPL IR) are all convinced that this project is not safety orientated. The agency (EASA) should look at its basic mandate and not use pilots and aircraft owners as a leverage tool in the battle they have initiated against foreign Aviation agencies such as the FAA. Since the proposal was put forward to comitology, EASA has stated, on multiple occasions, that this text was meant to force Foreign Civil aviation agencies to sign bi-lateral agreements with EASA. Pilots and their representatives object strongly to this on two fronts:

1. Safety of flight is the main goal of EASA, as described in the Basic Regulation. Safety should not be used as a bargaining tool, especially in the aviation world and at the expenses of stakeholders. EASA's job is about safety, not politics.

2. EASA is insinuating that foreign licenses pilots are not as safe as European trained pilots and should be retrained before issuing a validation of their foreign certificate and additional ratings. But this claim is without merit. EASA has given no evidence and not produced any study to support such a claim. In fact, when questioned about the number of pilots residing in Europe that could be impacted, the agency representative, in mid-October, could not even produce an educated guess on this number.

A viable alternative

A viable alternative to EASA's proposal would be the following:

- *Continue to respect ICAO standards for licensing air crews and recognize airman certificates between member countries. Do not impose any supplementary regulations specific to Europe, to pilots, airplanes, operators flying according to ICAO rules.*
- *Give the pilots using a foreign license a realistic opportunity to validate their certificates and ratings in the European system, provided that:*
    - *A foreign instrument rating (ICAO compliant) will be automatically validated as part of the European License, even if the license it has been attached to originally is foreign based. In other words, the validation process for a foreign-based IR would be greatly simplified.*
- *Review the European IR syllabus and develop over the next 12 months a written exam that takes into account the relevant level of theoretical skills needed by a non-Airline Transport Pilot to fly light[4] single or twin engine aircraft safely in Europe. Making the IR more accessible for non-airline pilots would create a situation where pilots would no longer be forced to seek elsewhere the means to fly safely. In this case, European schools would greatly benefit from the situation, as pilots would consider them to train instead of going abroad.*

We are convinced that EASA's proposal does not meet the Agency's goal which is safety. This proposal goes against all the principles of ICAO and could ignite further the worsening of relationships between the USA and Europe from an economic standpoint. EGAMA has produced studies that show that nearly 40,000 jobs and nearly 25 B$ depend of their members. EASA has produced a proposal that does not enhance safety but is drawn from considerations far beyond its mandate. That proposal may also jeopardize the companies that, today, sell the vast majority of their products abroad. (Dassault, Socata/Daher, Sagem, Finnmecannica, Augusta, Eurocopter etc.)

During the NPA process, thousands of stakeholders have responded to EASA's proposal. These comments were basically ignored by the Agency. Furthermore, the Agency doesn't seem concerned by the fact that they have multiple workgroups proposing conflicting solutions, which, again, doesn't help to increase safety of flight.

We urge the European Commission to consider this position paper and to move for no non-sense, pragmatic resolution of this problem.

[4] < 5700 Kg