

ENAC

Protocollo del 05/11/2012

0140646/CSS



Agreement

between

Transport Malta- Civil Aviation Directorate (Malta)
(TM CAD)

and

Ente Nazionale per l'Aviazione Civile (Italy)

(ENAC)

on

the implementation of article 83^{bis} of the Convention on International Civil Aviation (ICAO)
for the transfer of surveillance responsibilities (operations, maintenance and continuing
airworthiness) for aircraft operated under dry leasing contracts or by virtue of ownership of
the concerned aircraft or any other agreement in the spirit of article 83bis of the Convention
on International Civil Aviation



PREMISES

Transport Malta

and

Ente Nazionale per l'Aviazione Civile (ENAC)

Whereas the Protocol of 6 October 1980 to amend to article 83^{bis} of the Convention on International Civil Aviation (hereinafter referred to as "Chicago Convention") of which Malta and Italy are Contracting Parties, entered into force on 20 June 1997,

Whereas Malta and Italy are members of the European Union (EU)

Whereas the State of each Authority has signed the multilateral Airworthiness Agreement of Paris on 22 April 1960 providing for the approval or acceptance by the importing authority of approvals or findings of compliance made by the exporting authority in respect of airworthiness,

Whereas the European Parliament and The Council of The European Union (EU) have adopted Regulation (EC) No 216/2008 to establish and maintain a high uniform level of civil aviation safety in Europe by the adoption of common safety rules and by measures ensuring that products, persons and organisations in the Community comply with such rules and those adopted to protect the environment,

Whereas the European Aviation Safety Agency (EASA) has been established pursuant to Regulation (EC) 1592/2002 (after replaced by European Parliament and The Council of The European Union (EU) have adopted Regulation (EC) No. 216/2008) and has been operational since 28 September 2003 to carry out on behalf of every EU Member State, under article 15 paragraph 1 of the above mentioned EU Regulation, the functions and tasks of the state of design, manufacture or registry when related to design approval,

Whereas the European Commission has adopted Regulation (EU) 748/2012 laying down implementation regulations for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations,

Whereas the European Commission has adopted Regulation (EC) 2042/2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks,

Whereas the Council of European Communities has adopted the new Appendix III (OPS 1) to the Council Regulation (EEC) of the 3922/1991 on the common technical requirements and administrative procedures applicable to commercial air transportation by aircraft and that regulation became binding for EU Member State since 16 July 2008,

Whereas each Authority has determined, pursuant to the above mentioned regulations, that the standards of airworthiness and systems for airworthiness, environmental certification and maintenance of the other Authority are equivalent to its own to make this arrangements practicable;

Whereas each authority, pursuant to the above mentioned European Common regulations, has determined that the operational requirements and design-related operational requirements of the other authority are sufficiently equivalent to its own to make this arrangement practicable,

Whereas Article 83^{bis} of the Chicago Convention provides, with a view to enhanced safety, for the possibility of transferring to the state of the operator all or part of the state of registry's functions and duties pertaining to Articles 12, 30, 31, and 32 letter a of the Chicago Convention,

Whereas, in line with ICAO Document 9642, Part VIII, Chapter 1, and in the light of ICAO Document 8335, Chapter 10, it is necessary to precisely establish the international obligations and responsibilities of Malta and of Italy in accordance with the Chicago Convention when an aircraft registered in Malta is operated by the holder of an air operator's certificate (AOC), or other operational approval, issued by the Italian Civil Aviation Authority or when an aircraft

registered in Italy is operated by the holder of an AOC, or other operational approval, issued by the TM-CAD, under a leasing contract or by virtue of ownership of the concerned aircraft or any other agreement in the spirit of article 83bis,

Whereas, with reference to the relevant Annexes to the Chicago Convention, this Agreement organises the transfer from the State of Registry authority to the operator authority of responsibilities normally assumed by the state of registry, as set out in paragraphs 3 and 4 below,

Whereas the Protocol was ratified by Italy, through the Law no. 437 of 24 July 1985, published in the "Supplemento ordinario alla Gazzetta Ufficiale" no. 197 of 22 August 1985, in conjunction with the "Regolamento Convenzione ICAO - Art. 83 bis trasferimento di alcuni compiti e funzioni dello Stato di Registrazione", and has given effect to the agreement in relation to article 83^{bis} of the Chicago Convention,

Whereas the Protocol was automatically ratified by Malta, upon notification by the ICAO Secretary General of the accession of Malta to the Protocol by means of letter dated 1 April 2003 Ref LE3/1.13.

Have agreed, on the basis of articles 33 and 83^{bis} of the Chicago Convention as follows:

Article 1

GENERAL

(1) The following definitions apply:

- Lessor: registered owner or the party from which the aircraft is leased,
- Lessee: registered operator or the party to which the aircraft is leased
- Operator: owner, or other organisation stipulated as operator on the registration document or detailed in a leasing contract (operator), under whose operating licence and/or operational approval (e.g. AOC, etc) the aircraft is operated ,
- Authority of the state of registry: The National Civil Aviation Authority of the state where the relevant aircraft is registered,



- Authority of the state of the operator: the National Civil Aviation Authority of the state where the operator of the aircraft has his principal place of business and, if any, his registered office and has granted the air operator's certificate (AOC) or other applicable operational authorisation ,
- commercial operations: refer to definitions provided in Regulation (EC) No 216/2008 of the European Parliament and of the Council,
- EASA Member State: any European Union Member State and any other State adhering to EASA system, as identified by EASA.

(2) Italian or Maltese operators are entitled to operate an aircraft registered in Malta or in Italy respectively under a leasing contract or by virtue of ownership of the concerned aircraft or any other agreement in the spirit of article 83bis of the Convention on International Civil Aviation for the purpose of commercial operations. In accordance with ICAO Annex 8 and with the national regulations the State of registry retains legal responsibility for maintaining the validity of the certificate of airworthiness of the aircraft, which is controlled in accordance with provisions of Annex I (Part M) of Regulation (EC) 2042/2003, as revised.

(3) In pursuance of article 83^{bis} of the Chicago Convention, TM-CAD shall be relieved of the responsibility in respect of the functions and duties transferred to Ente Nazionale per l'Aviazione Civile.

(4) In pursuance of article 83^{bis} of the Chicago Convention, Ente Nazionale per l'Aviazione Civile shall be relieved of the responsibility in respect of the functions and duties transferred to TM-CAD.

Article 2

SCOPE OF APPLICATION

The scope of application of this Agreement shall be limited to aircraft, excluding rotorcraft when operated in commercial air transport, on the register of civil aircraft of Malta or Italy and operated in commercial operations under a leasing contract or by virtue of ownership of



the concerned aircraft or any other agreement in the spirit of article 83bis of the Convention on International Civil Aviation by an Italian or Maltese operator respectively.

Article 3

TRANSFERRED RESPONSIBILITIES

(1) Under this Agreement, the Parties agree that the State of Registry authority transfers to the State of operator authority the following functions and duties, including oversight and control of relevant items contained in the respective Annexes to the Chicago Convention:

Annex 1 – Licensing of Aviation Personnel (Personnel Licensing) - issuance and validation of licenses (refer to point 2 below).

Annex 2 – Air Traffic Rules (Rules of the Air) - enforcement of compliance with applicable rules and regulations relating to the flight and manoeuvre of aircraft.

Annex 6 - Operation of Aircraft - all responsibilities which are normally incumbent on the state of registry for the oversight and control of operations of aircraft entered on its register.

Annex 8 - Airworthiness of Aircraft - all responsibilities which are normally incumbent on the state of registry, and have not been assumed by EASA, for the oversight and control of aircraft entered on its register. Responsibilities related to the control of continued validity of the Certificate of Airworthiness of individual aircraft to which the provisions of the present agreement apply, according to Annex I (Part M) of Regulation (EC) 2042/2003, as revised, are transferred in accordance with the terms and conditions laid down in the relevant implementation procedures relevant to this Agreement. Under this Agreement, the responsibility for the supervision of maintenance and continuing airworthiness of leased aircraft operated under the Air Operator's Certificate (AOC) or equivalent operational approval of the operator is hereby transferred to the State of operator Authority.

(2) The responsibilities of the Authority of the State of Registry for the issuance and validation of flight crew licenses shall not be transferred to the Authority of the State of operator. Validation of flight crew licenses issued in accordance with JAR-FCL is not necessary.

(3) The procedures related to the continuing airworthiness of aircraft to which this arrangement applies, to be followed by the operator are contained in the concerned Continuing Airworthiness Management Exposition (CAME) and Operations Manual (OM).

Article 4

NOTIFICATION

(1) This Agreement and its relevant implementation procedures, as well as any amendments to them, shall be submitted to ICAO for registration by both ENAC and TM-CAD, as required by Article 83 of the Chicago Convention and in accordance with the Rules for the Registration of Aeronautical Agreements and Arrangements of ICAO (ICAO Doc. 6685).

(2) A certified true copy of this Agreement and its relevant implementation procedures, as well as any amendments to them, shall be made available by the State of operator authority to the aircraft operators to which this Agreement applies. A copy of the Agreement and the relevant implementation procedures as well as a copy of the relevant initiation and acceptance letter must be kept on board the aircraft concerned.

(3) A certified true copy of the Air Operator's Certificate (AOC) or other relevant operational approval issued to the operator by the State of the operator authority in which the aircraft concerned is duly and properly identified, shall also be carried on board each aircraft concerned. If the operator has obtained, from its Authority, approval for a system to list the registration marks for aircraft operated and authorized under its AOC or, as applicable, other national approval/authorisation for the specific operations, this list and the relevant section of the operations manual describing this system must be kept on board each aircraft to which the present Agreement applies.



(4) Aircraft to which the present Agreement applies are listed in the “Schedule of aircraft registered in Malta and Italian operators (schedule I A)” and “Schedule of aircraft registered in Italy and Maltese operators (Schedule II A)”. They are kept and maintained updated by TM-CAD and ENAC, respectively. A copy of the above lists showing the aircraft to which the present Agreement applies at the time of its signature shall also be provided to the ICAO by each of the two depository authorities as an attachment to the Agreement when the latter is registered according to paragraph 1 above. The lists registered with the ICAO shall be updated by the depository authority every time the validity of the present Agreement is extended by a new aircraft or by a new lease period -

(5) During the implementation of this Agreement, and prior to any aircraft subject to it, being made the object of a sub-lease, the State of the operator shall inform the State of Registry of the situation. None of the duties and functions transferred from the State of Registry to the State of the operator may be carried out under the authority of a third State without the express written agreement of the State of Registry.

Article 5

AUTHORISATION OF LEASING CONTRACTS

Each authority shall ensure that leasing contracts are only authorized if they are in compliance with the terms and conditions laid down in the present Agreement.

Article 6

CO-ORDINATION

Meetings between TM-CAD and ENAC shall be arranged as necessary to discuss both operations and airworthiness matters resulting from inspections that have been conducted by the relevant inspectors. For the sake of enhanced safety, these meetings will take place for the purpose of resolving any discrepancies found as a result of the inspections and in order to ensure that all parties are fully informed about the concerned operator's operations. The following subjects may be discussed during these meetings:

- Flight operations;
- Continuing airworthiness surveillance and aircraft maintenance;



- Operator Maintenance Control Manual procedures, as applicable;
- Flight and cabin crew training and checking;
- Any other significant matters arising from inspections.

Article 7

INITIATION

The transfer of functions related to the surveillance of leased aircraft shall be initiated by the State of Registry authority with a letter referring to the Agreement ENAC-TM-CAD and the specific aircraft and formally accepted by the State of operator authority. In the case of a prolongation of the leasing contract the continued transfer of functions and their acceptance shall be confirmed in writing by both the State of Registry authority and the State of the operator authority, before the beginning of the new lease period. A certified true copy of these letters shall be provided to the operator by the relevant Authority, to be kept on board of the aircraft, during the validity period of this Agreement in respect of that specific aircraft as established in accordance with the provisions of Article 9.

Article 8

CHARGES

Each Authority shall invoice charges and expenses according to its own provisions.

Article 9

FINAL CLAUSES

- (1) The implementation of this Agreement shall be effective on the basis of implementation provisions, agreed between the Parties.
- (2) This Agreement shall enter into force on the date of its signature.
- (3) The definition of TM-CAD and ENAC regulatory responsibilities shall come into effect, for each individual case, when the transfer of the functions is formally accepted by the State of operator authority on the basis of this Agreement. For this purpose, a formal reply letter regarding the transfer of functions shall be sent by the State of operator authority to the State

of Registry authority indicating its acceptance or refusal. Before the start of operations the State of Registry authority shall send a request concerning the transfer of functions to the State of the operator authority. The points of contact for the exchange of correspondence are laid down in the relevant implementation procedures to this Agreement.

(4) The determined regulatory responsibilities of TM-CAD and ENAC for a leased aircraft to which this Agreement applies shall cease to be in effect 24 hours after notice given by either, the State of Registry authority, or the State of the operator authority, but not later than the date of expiry, established by any of the Parties. Such date shall be mentioned by the authority on the request concerning acceptance of functions or in the acceptance letter.

(5) Any modification to this Agreement shall be made in writing.

(6) The responsibility for the registration of amendments to this Agreement with ICAO shall be assumed by both the State of Registry authority and the State of operator authority.

(7) The Agreement shall terminate 60 days after written notice of the termination of this Agreement by either of the two Parties.

Done on 16 October 2012 in two originals in English.

Ente Nazionale per l'Aviazione Civile

Transport Malta

Civil Aviation Directorate



Mr. Enea Guccini
Head of Safety Standardisation Directorate

A handwritten signature in black ink, appearing to be "Ian Falzon".

Mr. Ian Falzon
Director General for Civil Aviation

Date: 16 October 2012

Date: 16 October 2012