

**COMMISSION REGULATION (EC) No 104/2004
of 22 January 2004**

**laying down rules on the organisation and composition of the Board of Appeal of the European
Aviation Safety Agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency ⁽¹⁾, as last amended by Commission Regulation (EC) No 1701/2003 ⁽²⁾, and in particular Article 31(3) and Article 32(5) thereof,

Whereas:

- (1) Regulation (EC) No 1592/2002 gives power to the European Aviation Safety Agency (the Agency) to take individual decisions in the fields of airworthiness and environmental certification, investigation of undertakings, payment of applicable fees and charges; it also establishes a Board of Appeal before which such individual decisions of the Agency may be appealed against.
- (2) Articles 31 and 32 of Regulation (EC) No 1592/2002 empower the Commission to adopt detailed rules concerning the number of boards of appeal, the work allocation, the qualifications required for the members of each board and the powers of individual members in the preparatory phase of the decisions as well as the voting conditions.
- (3) It is expected that the number of appeals will be quite limited at least as long as Regulation (EC) No 1592/2002 is not amended to extend its scope to flight operations and crew licensing.
- (4) The Board will examine matters for which a high level general technical experience in the domain of certification is mainly required; it is nevertheless necessary that the Board is chaired by a legally qualified member with recognised experience in Community and international law. This member should be the Chairperson.
- (5) To facilitate the handling and disposal of appeals, a rapporteur should be designated for each case, who should be responsible *inter alia* for preparing communications with the parties and for drafting decisions.
- (6) To ensure the smooth and efficient operating of the Board of Appeal, a registry should be attached to it, the personnel of which will be in charge of all support functions involving no legal or technical discretion.

- (7) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 54(3) of Regulation (EC) No 1592/2002,

HAS ADOPTED THIS REGULATION:

Article 1

The number of boards

For the purpose of deciding on appeals from the decisions referred to in Article 35 of Regulation (EC) No 1592/2002 a Board of Appeal is established.

Article 2

Qualifications of the members

1. The Board of Appeal shall consist of two technically qualified members and one legally qualified member which shall be the Chairperson of the Board.
2. The technically qualified members and their alternates shall hold a university degree or an equivalent qualification and shall have substantial professional experience in the field of certification, in one or more of the disciplines set out in the Annex to this Regulation.
3. The legally qualified member and his alternate shall be a graduate in law and qualified by recognised experience in Community and international law.

Article 3

Powers of the Chairperson

1. The Board of Appeal shall be convened by its Chairperson. The Chairperson shall ensure the quality and consistency of the Board's decisions.
2. The Chairperson shall assign the examination of an appeal to one of the Board's members as rapporteur.

Article 4

Role of the rapporteurs

1. The rapporteur shall carry out a preliminary study of the appeal.

⁽¹⁾ OJ L 240, 7.9.2002, p. 1.

⁽²⁾ OJ L 243, 27.9.2003, p. 5.

2. The rapporteur shall ensure a close consultation and exchange of information with the parties to the proceedings. For that purpose, the rapporteur shall:

- (a) prepare communications to the parties subject to the direction of the Chairperson of the Board;
- (b) communicate any deficiencies to be remedied by a party to the proceedings;
- (c) set appropriate procedural time limits in accordance with Article 39(2) of Regulation (EC) No 1592/2002; and
- (d) sign all communications on behalf of the Board.

3. The rapporteur shall prepare internal meetings of the Board and the oral proceedings.

4. The rapporteur shall draft the decision.

Article 5

Registry attached to the Board of Appeal

1. The Executive Director shall attach a registry to the Board of Appeal. Personnel in charge of the registry shall not participate in any Agency proceedings relating to decisions that can be brought under appeal.

2. The personnel of the registry shall in particular be responsible for:

- (a) the keeping of a register initialled by the Chairperson in which all appeals and supporting documents are lodged in chronological order;
- (b) the receipt, transmission and custody of documents;
- (c) the performance of other support functions to the Board of Appeal which involve no legal or technical discretion, particularly with regard to representation, the submission of translations and notifications;

- (d) the submission to the Chairperson of the Board of a report on the formal admissibility of each newly-filed appeal;
- (e) where necessary, drawing up the minutes of oral proceedings.

Article 6

Deliberations

1. Only members of the Board shall participate in the deliberations; the Chairperson of the Board may, however, authorise other officers such as personnel of the registry or interpreters to attend. Deliberations shall be secret.

2. During the deliberations between members of the Board, the opinion of the rapporteur shall be heard first and the Chairperson last.

Article 7

Voting conditions and order

1. Decisions of the Board of Appeal shall be taken by a majority of its members. In the event of a tie, the vote of the Chairperson of the Board shall be decisive.

2. If voting is necessary, votes shall be taken in the sequence provided for in Article 6(2). Abstentions shall not be permitted.

Article 8

Entry into force

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 January 2004.

For the Commission
Loyola DE PALACIO
Vice-President

ANNEX

LIST OF DISCIPLINES

1. The following technical disciplines:
 - (i) flight/performance
 - (ii) structure
 - (iii) hydromechanical systems
 - (iv) rotor/transmission systems
 - (v) electrical/HIRF/lightning
 - (vi) avionics/software
 - (vii) powerplant installation/fuel systems
 - (viii) cabin safety/environmental systems
 - (ix) noise/emissions
 - (x) continued airworthiness/airworthiness directives as applied to the following products, their parts and appliances:
 - (a) large aeroplanes
 - (b) rotorcraft
 - (c) small aeroplanes
 - (d) balloons/airships/gliders/UAV's
 - (e) engines/APUs/propellers.
 2. Approvals of and quality systems associated with:
 - (i) design organisations
 - (ii) production organisations
 - (iii) maintenance organisations.
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