

# Alert

Breaking News  
from  
**Blum & Grob**

ATTORNEYS AT LAW

Zurich, April 2016

## EASA PART-NCC and more...

**The deadline is approaching fast – by 25 August 2016 all non-commercial operators of complex motor-powered aircraft (so-called “non-commercial operations with complex motor-powered aircraft” – NCC) have to comply with the new EASA Part-NCC regulations<sup>1</sup>. But there is more than that.**

### **Part-NCC – it is indeed complex**

Part-NCC regulations are the EU's approach to increase the safety standards of non-commercial operations to the level of commercial operations.

Affected operators need to be familiar and compliant with the relevant EU legislation, which means a lot of paperwork (operations manual, minimum equipment list, record keeping, etc.), training and qualification of personnel (accountable manager, engagement of a continuing airworthiness management organisation (CAMO)), operating procedures (standard procedures, conduct of audits) as well as performance limitations (fuel requirements, mass and balance, loading). All Part-NCC operators have to submit a declaration to the competent civil aviation authority by 25 August 2016 as per which they have to acknowledge their responsibility under the applicable safety regulations and that they hold all necessary approvals. For Swiss Part-NCC operators the Swiss Federal Office of Civil Aviation (FOCA) has recently published a sample declaration and further guidance (see [www.bazl.admin.ch](http://www.bazl.admin.ch)).

Part-NCC requires the competent civil aviation authorities to review compliance of affected operators within 48 months of the August 25<sup>th</sup> deadline, so why hurry? The administrative sanctions of non-compliance with Part-NCC are not entirely clear, yet. However, in case of an incident or accident non-compliance will likely be an issue when discussing safe and lawful operation with the insurers.

### **Who is affected?**

The new regulations do not only apply to aircraft registered in an EASA member state (i.e. one of the 28 EU member states, Switzerland, Norway, Iceland and Lichtenstein) but also to non-EASA registered aircraft where the operator (see below) has its principal place of business or residence in an EASA member state. And there are quite a few that fall within the latter category: it is estimated that there are approximately 2,500 non-EASA registered aircraft affected by Part-NCC (foremost registered in the US, the Isle of Man, Bermuda and the Cayman Islands).

A *complex motor-powered aircraft* is an aeroplane / helicopter with:

- a maximum certificated take off weight (MTOW) exceeding 5,700kg (for helicopters 3,175kg); or
- certificated for a maximum passenger seating configuration of more than 19 (for helicopters 9); or
- certificated for operation with a minimum crew of at least two pilots; or
- equipped with one or more turbojet engines or two or more turboprop engines.

Given the first three criteria it appears that only midsize to large jets are impacted but it is the last one that extends the scope of application to operators of aircraft of the so-called entry level: for example, a Citation Mustang or an Embraer Phenom 100 (despite below 5,700kg MTOW) is covered but a Pilatus PC12 is not. In relation to twin turboprops at or below a MTOW of 5,700kg, and despite the above definition, EASA has agreed to a derogation to allow an operation of such twin turboprops under EASA Part-NCO (so called “non-commercial operations with other-than-complex aircraft”) rules instead of Part-NCC. So, for example, a KingAir 200 is likely out of the scope of Part-NCC but a KingAir 350 is within.

Another pitfall is the question of who the *operator* under Part-NCC is, i.e. whether or not it is located in an EASA member state and required to comply with Part-NCC. Some aircraft registries identify only the owner (such as the US) and some only the operator, whereas others show both. However, the registered owner or operator is not necessarily the operator under Part-NCC as the relevant EU legislation applies a

<sup>1</sup> The regulations in fact originate from the European Union (EU) and not from the European Aviation Safety Agency (EASA), as the latter has no legislative authority. In relation to Swiss registered aircraft and Swiss based operators (Switzerland is not a member state of the EU) the EU legislation applies on the basis of a bilateral treaty.

‘form over substance’ approach: it considers the person or entity as operator which has *continual effective disposal* of the use or operation of the aircraft. So, for example, an individual resident in Switzerland pilots his N-registered Embraer Phenom 100 within Europe for leisure and business purposes. The aircraft is registered with the US FAA in the name of an US owner trustee and dry-leased to a company located in the British Virgin Islands (BVI) controlled by him. Does his operation fall under Part-NCC? We believe it does, as it is very likely that the pilot, rather than the owner trustee or the BVI company, will be considered as operator under the relevant EASA regulations.

#### ICAO Annex 6 Part II

There is not only Part-NCC but there are also the International Standards and Recommended Practices (SARPs) by the International Civil Aviation Organisation (ICAO) extending to international general aviation (ICAO Annex 6 Part II). Said SARPs apply to non-commercial operations and, comparable to Part-NCC (compliance with these provisions has actually been a drafting principle of Part-NCC), are requiring a structured and auditable approach to the operation of larger complex aircraft including, among others, various manuals and personnel overseeing operation and safety. It is with the ICAO member states to implement the ICAO standards into domestic law. Non-EASA operators of non-EASA registered aircraft should, therefore, verify with the competent civil aviation authority in the state of registration how the amendments to the ICAO regulations have been implemented and by when it has to be complied therewith (for example, in the Isle of Man the implementing regulations will enter into force on 1 May 2016).

#### Part-FCL & Reg-TCO

The EU has recently established rules concerning flight crew licencing (Part-FCL) and pilot licences are now regulated by the EASA and no longer on the level of EASA member states. It is important to note that Part-FCL not only applies to pilots of EASA registered aircraft but also to pilots holding a third country licence (i.e. a licence issued by a country that is not an EASA member state) involved in the non-commercial operation of a non-EASA registered aircraft whose operator is established or is residing in an EASA member state. Said pilots have to comply with Part-FCL, i.e. obtain an EASA license or validation. For example pilots with an FAA license need to obtain EASA certificates and ratings which require additional exams, medical examinations, etc. The compliance deadline has been delayed by EASA several times and was just very recently newly set for 8 April 2017.

Moreover, there are further EASA regulations in the pipeline which are anticipated to come into force in 2018: implementing rules for the oversight of third country registered aircraft and operators which are not established or residing in an EASA member state (so-called “third country operator” - TCO) involved in non-commercial operations into, within, or out of the EASA area. However, the TCO regulations and the EASA’s approach to gain oversight over third country aircraft and TCOs are not only contentious in the light of international law (i.e. the Chicago Convention) but also on a political level. It, therefore, remains to be seen whether and to which extent the plan of the EU to implement the TCO regulations will succeed or not.

**Hans-Ruedi Grob**, Dr. iur., LL.M., [h.grob@blumgrob.ch](mailto:h.grob@blumgrob.ch)

**Philippe Wenker**, lic. iur., LL.M., [p.wenker@blumgrob.ch](mailto:p.wenker@blumgrob.ch)

**Michael Eitle**, MLaw, [m.eitle@blumgrob.ch](mailto:m.eitle@blumgrob.ch)

---

# Breaking & News