

## **List of questions for public consultation**

### **Background**

Regulation 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (EASA) foresees in its article 25 the possibility for the Commission to impose fines and/or periodic penalty payments in case of breach of provisions of Regulation 216/2008 and its implementing rules. This applies to holders of certificates and approvals issued by EASA. Through the introduction of financial penalties, the Commission will be able to give a more flexible answer to a breach of the rules, compared to the withdrawal of a certificate.

The article 25 stipulates the following :

"1. Without prejudice to Articles 20 and 55, at the Agency's request the Commission may:

(a) impose on the persons and the undertakings to which the Agency has issued a certificate, fines, where, intentionally or negligently, the provisions of this Regulation and its implementing rules have been breached;

(b) impose, on the persons and undertakings to which the Agency has issued a certificate, periodic penalty payments, calculated from the date set in the decision, in order to compel those persons and undertakings to comply with the provisions of this Regulation and its implementing rules.

2. The fines and periodic penalty payments referred to in paragraph 1 shall be dissuasive and proportionate to both the gravity of the case and the economic capacity of the certificate holder concerned, taking into particular account the extent to which safety has been compromised. The amount of the fines shall not exceed 4 % of the annual income or turnover of the certificate holder. The amount of the periodic penalty shall not exceed 2,5 % of the average daily income or turnover of the certificate holder.

3. The Commission shall adopt, in accordance with the procedure laid down in Article 65(3), the detailed rules for the implementation of this Article. In doing so, it shall specify in particular:

(a) detailed criteria for establishing the amount of the fine or periodic penalty payment; and

(b) procedures for enquiries, associated measures and reporting, as well as rules of procedure for decision-making, including provisions on rights of defence, access to file, legal representation, confidentiality and temporal provisions and the quantification and collection of fines and periodic penalty payments.

4. The Court of Justice of the European Communities shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

5. Decisions taken pursuant to paragraph 1 shall not be of a criminal law nature."

As said in paragraph 3, this article must be implemented through implementing rules adopted in comitology. Article 25 is already quite detailed concerning elements which will be in the implementing rules and gives little room of interpretation. It is for example the case for the amount of fines: the basic regulation already made the choice of an amount in terms of a percentage of turnover.

### **Questionnaire**

DG TREN would like to gather suggestions on these implementing measures :

1. How to divide the tasks between the Agency and the Commission?
2. How to collect the necessary information?
3. Are there any specific categories of breaches to be identified?
4. How to guarantee the rights of defence and confidentiality for the certificate holder?
5. What are the conditions and criteria for imposing fines or periodic penalty payments?
6. Are there any other aspects which should be considered?