



Examiner Bulletin



Editorial

Dear Examiner



Hansmartin Amrein
Leiter SBFP

Approximately 90% of all “Codes of Conduct” have been signed and returned to us. This positive fact makes us confident that, in cooperation with a proven and experienced crew, we can continue to fulfil our duties at a high level of competence.

I understand each and every individual who might be questioning the current changes in the domain of examiner activities. So what are the benefits? Well, that is certainly debatable. However, it is a fact that we have been instructed by instances at a higher political level to make these adjustments.

In the interest of flight safety, now it is about making the best of the situation and taking corrective measures where necessary – and once again, it should be emphasised that established processes and standards will remain unchanged. All of us are committed to a common target, which we will pursue also in the future: ensuring that every pilot is able to operate safely at any time and in any situation, and making them

aware of their own weaknesses and development areas in order to undergo targeted training for improvement.

In this context, there is no space for over-zealous business sense and complaisance. In our capacity as Authority, we will closely monitor the situation.

However, we can also understand the 10% of all addressees who have not yet signed the “Code of Conduct”, maybe because they do not want to continue, or because they first want their open questions to be clarified. This is where the new quarterly bulletin comes into play. We want to provide you with first-hand information to ensure that as an expert, you will maintain the necessary knowledge advantage and be informed about any changes in due time. We will supply guidelines, measuring tools and support, and you shall receive answers to frequently asked questions in due time.

I would like to thank you sincerely for your commitment and wish you continued personal satisfaction in practising your examiner privileges.

Best regards from Ittigen

Hansmartin Amrein and the entire SBFP-Crew

In this bulletin, the following topics will be developed:

- Amendment of FOCA's price recommendation
- Costs for basic and advance examiner training
- Examiner entry in license
- State liability in the context of the activity as an examiner
- Registration as a self-employed member with the competent cantonal social security
- New model regarding remuneration Examiner AoC's
- AoC of instructors
- Future Specific Examiner Bulletin

Amendment of FOCA's price recommendation

As you know, in the context of the examiner reorganisation, the examination fees for flight examinations will be waived as from 1st of January 2019. At the same time, a standard rate for flight examinations conducted by FOCA inspectors will be introduced. The establishment of these fees has been based on the examination fees invoiced up to now.

We will closely monitor the evolution resulting from the reorganisation and, in the future, adapt the rates to market prices as far as necessary.

Thanks to your feedback, we have already recognised that some rates need to be amended, especially those for Single Engine Skill Tests / Proficiency Checks, but also for the Initial IR Skill Test. We shall modify these fees with the next revision of the Fee Ordinance.

However, our nonbinding recommendation regarding fees and remuneration of expenses for examiners is based precisely on the fees requiring modification, which leads to some differences compared to the examiner remuneration applied up to now.

Therefore, we recommend that you continue to claim 250.- instead of 200.- respectively 150.- for the Single Engine Skill Test / Proficiency Check, and 350.- instead of 700.- for the IR Skill Test, as established in the directive concerning remuneration of experts which was in force up to now.

Costs for basic and advance examiner training

Training costs MPA	
Initial course 2 days	1000 CHF
Supervisions	1000 to 2000 CHF*
AoC	500 CHF
License entry	100 CHF

Training costs SPA	
Initial course 2 days	600 CHF
Supervisions	800 to 1600 CHF *
AoC	400 CHF
License entry	100 CHF

Training costs sailplane & balon	
Initial course 2 days	200 CHF
Supervisions	200 to 400 CHF *
AoC	200 CHF
License entry	100 CHF

*depending on numbers of supervision lessons, company internal settlement, expenses abroad

Advanced training costs	
Category	Kursgebühr
Multipilot A	500 CHF per day
Singlepilot A & H	300 CHF per day
Balloon und Sailplane	100 CHF per day

Examiner entry in license

FOCA will insert the examiner authorization into the license at the beginning of 2019. While starting this process we will not issue any certificates anymore.

State liability in the context of the activity as an examiner

“During a proficiency check on a helicopter, the examiner simulated engine failure. The examinee correctly increased lift just prior to landing. However, initially he undercompensated for the higher torque, and the helicopter rotated to the left. The examinee noticed this and attempted to correct, abruptly applying right pedal. The examiner reacted promptly by lowering the collective, but was unable to prevent overtorque.”

This example illustrates how quickly an exam situation can deteriorate, leading to aircraft damage. When that happens, liability—who is at fault—rapidly becomes the central question. The obvious answer would seem to be that the person who caused the damage is at fault. In reality, determining who caused the damage is often not so simple. Is it the examiner or the examinee? Or could it be the aircraft operator? The mechanic? Someone else? Incidents involving damages are usually a very complex matter to investigate. Assessing and characterizing the damage itself is also problematic. Are we talking about damage to property, economic loss, injury? Examiners may be tempted to think that the answers to these questions do not concern them, on the grounds that the state, i.e. the Swiss Federation, has ultimate liability and will therefore cover all damages and losses associated with their work. In the following, we shall demonstrate that this view is simplistic. Liability is affected by many factors, which need to be duly considered and analysed for their legal relevance. The record shows that claims made in recent years have failed to meet the criteria or elements needed to establish liability, resulting in claims being dismissed by the responsible authorities.

Claims for damages must be submitted by the injured party to the federal financial authorities, who are responsible for taking a decision in the first instance regarding compensation. The decision may subsequently be appealed before the Federal Administrative Court or the Federal Supreme Court.

FOCA itself does not adjudicate, but will provide the adjudicating authority with an expert opinion, after consultation with the examiner. In this process, the examiner has the obligation to cooperate with the investigators who are determining the facts of the matter.

In principle, the state is liable for any damages caused by its officials, under the principle of state responsibility¹. For the purposes of a check being carried out for FOCA, i.e. the state, which is the case for all Swiss licensees, the examiner is considered to be a state official. For the Swiss Confederation to accept liability for the damages, the following conditions must be met:

- the state’s role must be limited to that of sovereign, not that of a subject under civil law;
- damages must have been demonstrated;
- the damages must be attributable to a state official pursuant to state liability law;
- the alleged actions must be such that they might reasonably have been expected to lead to the damages in the ordinary course of events (the doctrine of adequate causation);
- the damages must have been caused in the performance of official duties; and
- an absolute right must have been infringed, or an economic loss sustained, that falls under a *Schutzgesetz*, a category of law intended to protect individuals against civil wrongs (illegality).

When a claim for compensation is filed, all these criteria will be examined. If all of the conditions are met in the specific case in question, the state undertakes full compensation for the damages caused by the examiner. In rare cases, steps may be taken to recover the damages from the examiner, if they are the result of willful or grossly negligent actions on his or her part. In such cases, the state remains liable for the damages, but may seek to recover compensation from the person who caused them (this is known as «regress» under Swiss law). To avoid such an undesirable turn of

¹ The Government Liability Act (*Verantwortlichkeitsgesetz* (VG), SR 170.321) is the legal basis.

events, compliance with FOCA instructions for the conduct of examinations is crucial. In particular, a check must not include any kind of training. Furthermore, the due diligence requirements that apply to all aircraft operations should be followed scrupulously.

If one or more of the conditions for state liability are not met, the person causing the damages may nonetheless have liability under private law. In this case, the person causing the damages has unlimited liability in accordance with the provisions of Swiss law on obligations. The injured party will need to file a private-law suit in a civil court, seeking compensation for damages. The lawsuit may be aimed at obtaining compensation from any and all persons who may have responsibility for the damages, including the examiner. In such a case the examiner would be directly involved. Contrary to what happens in a state liability case, in a private-law proceedings FOCA will not necessarily be involved.

Experience shows that private-law suits claiming compensation for damages that occurred during examinations are rare. This is because the requirements for private-law liability are similar to those governing state liability². If in the course of a state liability proceedings the court finds that the examiner is not at fault for the damages, the civil proceedings must abide by that finding and absolve him or her of liability. This is in fact what happens in the majority of cases involving damages. The finding might be different if the reason for excluding state liability was that the examiner caused the damages outside his or her official capacity, for example by an action that took place before the check began or after it ended. In such a case the examiner may be held liable for the damages under private law. It is advisable in any case to call on a professional barrister for civil proceedings. FOCA is currently studying the possibility of offering legal insurance to examiners to protect them in the event of a civil-law suit for damages.

² - damages must have been demonstrated;
- the actions must be such that they might reasonably have been expected to lead to the damages in the ordinary course of events (the doctrine of adequate causation);

Conclusion:

While the considerations outlined above may appear daunting, it is possible to significantly reduce liability-related legal risks simply by complying with instructions and legal obligations applicable to examiners and by exercising due diligence. It is also worth noting that the legal régime has not changed in a long time, and the laws pertaining to damages in the context of the work of examiners have not changed with the discontinuation of examiner contracts.

The work of examiners has always been associated with certain risks related to damages, even if individual examiners were hardly ever held to account personally. For this reason a prudent examiner should protect himself or herself against work-related liability risks, in particular by obtaining liability insurance coverage. Finally, it should be borne in mind that none of this may apply if the examinee is not in possession of a Swiss licence. In such a case, liability is determined by the law of the country that has mandated the examination.

Note:

In the past, examiners working under a FOCA contract enjoyed SUVA coverage for work-related accidents. Examiners whose work regularly and clearly exceeded eight hours per week were insured against non-work-related accidents. This insurance coverage is coming to an end with the termination of those contracts. It should be noted these changes have been pending for some time now, under the legal régime for the work of examiners at the European level. Although the new rules were not applied to examiners until now, as from 1 January 2019 all examiners will be responsible for their own insurance coverage, as FOCA will no longer have the option of providing it. In certain cases, such insurance may be provided by the examiner's employer.

- contract or unauthorized action (or both)
- either an absolute right was infringed, or an economic loss was sustained that falls under a law intended to protect individuals against civil wrongs (illegality)..

Registration as a self-employed member with the competent cantonal social security

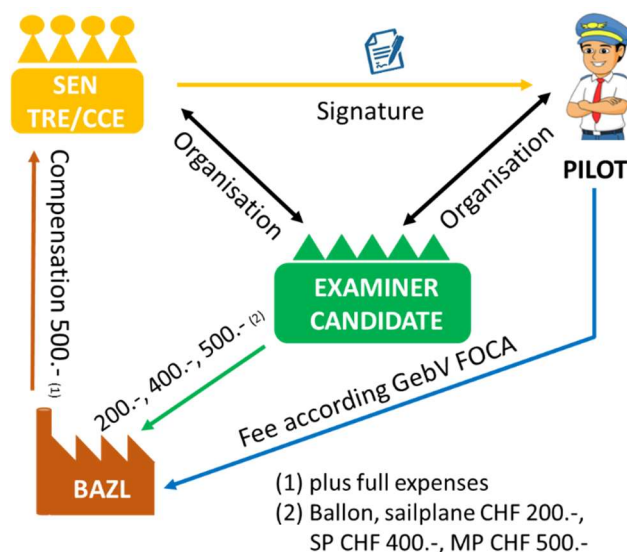
SBFP made timely clarifications with the CCO (Central Compensation Office) regarding the reorganisation in the domain of examiner activities, and took the necessary measures.

Nevertheless, it has come to our attention that an examiner was confronted with problems when trying to register as a self-employed member with the Argovian social security. This prompted us to immediately contact the CCO and intervene. It seems that the CCO had initially provided the cantonal instances with a recommendation only. The incorporation in the BSV's (Swiss Federal Office for Social Security) Guidelines will only take place in the course of the next revision in 2019. Therefore, and until further notice, the COO asks all examiners to report any registration problems to Mr. David Menge. He will then immediately contact the competent cantonal social security and clarify the situation.

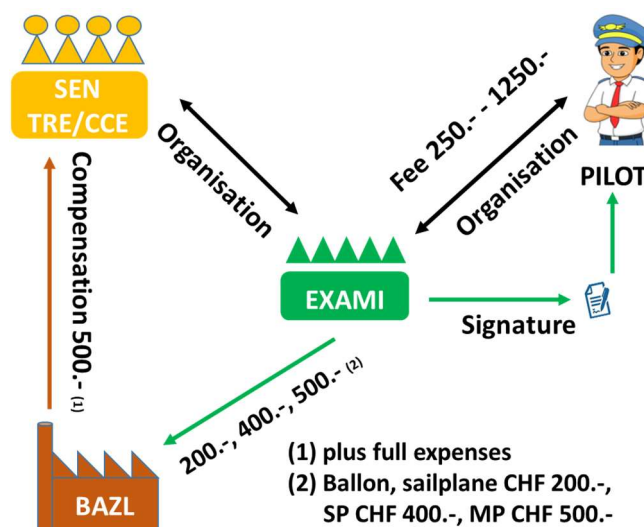
david.menge@zas.admin.ch

New model regarding remuneration Examiner AoC's

TRE Initial and Renewal:



TRE Revalidation:



AoC of Instructors

The fee for an Assessment of Competence AoC of an instructor (FI, CRI, IRI, TRI, SFI, etc.) shall be agreed directly between the examiner and the instructor. If the assessment is conducted by a FOCA Inspector, the existing Fee Ordinance is still applicable.

Future Specific Examiner Bulletin

The examiner community currently faces a very dynamic environment, coupled with increasing expectations and obligations, placed on all stakeholders. Accordingly, examiners should receive regularly essential and relevant information from FOCA; it is not only a wish from many, but more importantly there is a professional need, to assist in carrying out examination tasks safely, diligently and in compliance with the applicable rules and regulation.

Starting next year, FOCA-SBFP will start providing the different examiners with specific examiner bulletins, namely Helicopter Examiners, MPA Examiners, and SPA Examiners. The objective is to focus on the specific needs, situation and reality faced by the different examiner categories, and share specific information, issues or best practices as they arise. Nevertheless, it will be a united redaction effort from the three Chief Examiners; common issues will be treated jointly for consistency, and to share knowledge and solutions. We endeavour to provide you in March, June, October and December with concise and value-added information, to support you in discharging your duties and responsibilities as FOCA Examiners.

Sandro Guidetti
Patrick Huggler
Emmanuel Ansermot

Kontakt

SPA Examiners

Sandro Guidetti

E-mail: sandro.guidetti@bazl.admin.ch

MPA Examiners

Patrick Huggler

E-mail: patrick.huggler@bazl.admin.ch

SPH/MPH Examiners

Emmanuel Ansermot

E-Mail: emmanuel.ansermot@bazl.admin.ch