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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, ...
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Draft

COMMISSION REGULATION (EU) No .../...

of [...]

**laying down requirements and administrative procedures related to Air Operations
pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the
Council**

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the functioning of the European Union,

Having regard to Regulation (EC) No 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, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC¹, and in particular Articles 8(5) and 10(5) thereof,

Whereas:

- (1) Regulation (EC) No 216/2008 aims at establishing and maintaining a high uniform level of civil aviation safety in Europe. That Regulation provides for the means of achieving that objective and other objectives in the field of civil aviation safety.
- (2) Operators and personnel involved in the operation of certain aircraft have to comply with the relevant essential requirements set out in Annex IV to Regulation (EC) No 216/2008. According to that Regulation, unless otherwise determined in the implementing rules, operators engaged in commercial operations shall demonstrate their capability and means of discharging the responsibilities associated with their privileges. These capabilities and means shall be recognised through the issuance of a certificate. The privileges granted to the operator and the scope of the operations shall be specified in the certificate.
- (3) Member States shall, in addition to their oversight of certificates that they have issued, conduct investigations, including ramp inspections, and shall take any measure, including the grounding of aircraft, to prevent the continuation of an infringement.
- (4) Regulation (EC) No 216/2008 requires the European Commission to adopt the necessary implementing rules for establishing the conditions for the safe operation of aircraft. This Regulation provides for those implementing measures.
- (5) In order to ensure a smooth transition and a high level of civil aviation safety in the European Union, implementing rules should reflect the state of the art, including best practices, and scientific and technical progress in the field of air operations. Accordingly, technical requirements and administrative procedures agreed under the auspices of the International Civil Aviation Organisation (hereinafter "ICAO") and the European Joint Aviation Authorities until 30 June 2009 as well as existing legislation pertaining to a specific national environment, should be considered.

¹ OJ L 79, 13.3.2008, p.1.

- (6) It is necessary to provide sufficient time for the aeronautical industry and Member State administrations to adapt to the new regulatory framework and to recognise under certain conditions the validity of certificates issued before the applicability of this Regulation.
- (7) The measures specified in Annex III to Regulation (EEC) No 3922/91² are deleted in accordance with Article 69(3) of Regulation (EC) No 216/2008. The measures adopted by this Regulation are to be regarded as the corresponding measures.
- (8) The European Aviation Safety Agency (hereinafter “the Agency”) prepared draft implementing rules and submitted them as an opinion to the European Commission in accordance with Article 19(1) of Regulation (EC) No 216/2008.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 65 of Regulation (EC) No 216/2008,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

1. This Regulation lays down detailed rules to be fulfilled by Member States and the Agency for the implementation and enforcement of Regulation (EC) No 216/2008 in the area of air operations, including ramp inspections of aircraft of operators under the safety oversight of another State when landed at aerodromes located in the territory subject to the provisions of the Treaty. This Regulation shall not apply to air operations falling under Article 1(2)(a) of Regulation (EC) No 216/2008.
2. This Regulation also lays down detailed rules on the conditions for issuing, maintaining, amending, limiting, suspending or revoking the certificates of operators of aircraft referred to in Article 4(1)(b) and (c) of Regulation (EC) No 216/2008 engaged in commercial air transport operations, the privileges and responsibilities of the holders of certificates as well as conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety.

Article 2

Definitions

Within the scope of this Regulation:

1. ‘AOC’ means air operator certificate.
2. ‘Commercial air transport (CAT) operation’ means an aircraft operation to transport passengers, cargo or mail for remuneration or other valuable consideration.
3. ‘Specialised operation’ means commercial or non-commercial operation where an aircraft is used to undertake specialised tasks or services as specified in Annex VIII to this Regulation.

² Council Regulation (EEC) No 3922/1991 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation. *OJ L 373, 31.12.1991, p. 4.*

Article 3

Safety planning

1. The Member States and the Agency shall establish aviation safety plans aimed at maintaining a high uniform level of safety.
2. In the context of drawing up their plans, Member States and the Agency shall exchange information and cooperate in deciding actions required to establish and maintain a high level of civil aviation safety.

Article 4

Oversight capabilities

1. Member States shall designate one or more entities as the competent authority within that Member State with the necessary powers and allocated responsibilities for the certification and oversight of persons and organisations subject to Regulation (EC) No 216/2008 and its implementing rules.
2. If a Member State designates more than one entity as competent authority:
 - (a) the areas of competence of each competent authority shall be clearly defined in terms of responsibilities and geographic limitation; and
 - (b) coordination shall be established between those entities to ensure effective oversight of all organisations and persons subject to Regulation (EC) No 216/2008 and its implementing rules within their respective remits.
3. Member States shall ensure that the competent authority(ies) has(ve) the necessary capability to ensure the oversight of all persons and organisations covered by their oversight programme, including sufficient resources to fulfil the requirements of this Regulation.
4. Member States shall ensure that competent authority personnel do not perform oversight activities when there is evidence that this could result directly or indirectly in a conflict of interest, in particular when relating to family or financial interest.
5. Personnel authorised by the competent authority to carry out certification and/or oversight tasks shall be empowered to perform at least the following tasks:
 - (a) examine the records, data, procedures and any other material relevant to the execution of the certification and/or oversight task;
 - (b) take copies of or extracts from such records, data, procedures and other material;
 - (c) ask for an oral explanation on site;
 - (d) enter relevant premises, operating sites or means of transport;
 - (e) perform audits, investigations, assessments, inspections, including ramp inspections and unannounced inspections; and
 - (f) take enforcement measures as appropriate.
6. The tasks under paragraph 5 shall be carried out in compliance with the legal provisions of the relevant Member State.

Article 5

Ramp inspections

1. Ramp inspections of aircraft of operators under the safety oversight of another Member State or third country shall be carried out as specified in Annex II to this Regulation.
2. By way of derogation from Annex II, Member States may elect to accomplish in 2012 at least 65% of the minimum annual quota of points calculated in accordance with AR.RAMP.100.

Article 6

Air operations

1. Operators of aeroplanes and helicopters shall only operate an aircraft for the purpose of CAT operations as specified in Annex III and IV to this Regulation.
2. Notwithstanding paragraph 1, the following CAT operations shall not be subject to compliance with Annex III and IV:

- (a) transportation of passengers under visual flight rules (VFR) day, starting and ending at the same aerodrome/operating site and with a maximum duration of 30 minutes, or within a local area specified by the competent authority, with:
 - (i) single-engined propeller-driven aeroplanes having a maximum certified take-off mass of 2 000 kg or less and carrying a maximum of six persons including the pilot; or
 - (ii) single-engined helicopters and carrying a maximum of six persons including the pilot,

provided that the overall maximum amount of flying hours accumulated in such operation is limited to 30 hours per calendar year per aircraft.

3. Without prejudice to paragraphs 1 and 2, operators shall also comply with the relevant provisions of Annex V to this Regulation when operating:
 - (a) aeroplanes and helicopters used for:
 - (i) operations using performance-based navigation (PBN);
 - (ii) operations in accordance with minimum navigation performance specifications (MNPS);
 - (iii) operations in airspace with reduced vertical separation minima (RVSM);
 - (iv) low visibility operations (LVO);
 - (b) aeroplanes, helicopters, balloons and sailplanes used for the transport of dangerous goods (DG);
 - (c) two-engined aeroplanes used for extended range operations (ETOPS) in commercial air transport;
 - (d) helicopters used for commercial air transport, operations with the aid of night vision imaging systems (NVIS);
 - (e) helicopters used for commercial air transport, hoist operations (HHO); and

- (f) helicopters used for commercial air transport, emergency medical service operations (HEMS).
4. By way of derogation from Article 1:
- (a) aircraft referred to in Article 4(5) of Regulation (EC) No 216/2008, when used in CAT operations, may only be operated under the conditions set out in Commission Decision C(2009) 7633 of 14.10.2009. Any change to the operation that affects the conditions set out in that Commission Decision shall be notified to the European Commission and the Agency before the change is implemented. Similarly, any intended use of the Decision by another Member State shall be notified to the European Commission and the Agency before the derogation is implemented. The European Commission and the Agency shall assess to what extent the change or intended use deviates from the conditions of the Commission Decision or impacts on the initial safety assessment performed in the context of the Commission Decision. If the assessment shows that the change or intended use does not correspond to the initial safety assessment accomplished for the Commission Decision, a Member State shall submit a new derogation request in accordance with Article 14(6) of Regulation (EC) No 216/2008;
 - (b) airships, tilt-rotor aircraft, tethered balloons and unmanned aerial systems shall be operated under the conditions set out in Member States' national law; and
 - (c) flights related to the introduction or modification of aircraft types conducted by design or production organisations within the scope of their privileges shall continue to be operated under the conditions set out in Member States' national law.
5. Member States may determine that for CAT helicopter offshore operations a specific approval is required in accordance with Member States' national law until the related implementing rules are adopted. Member States shall notify the European Commission and the Agency of the additional requirements to be applied regarding operational procedures, equipment, crew qualification and training before granting such specific approval. These requirements shall not be less restrictive than those of Annexes III and IV.
6. Flights taking place immediately before, during or immediately after specialised services or tasks and directly connected to such specialised services or tasks shall be operated in accordance with Annex VIII. Except for parachute operations, no more than 6 persons indispensable to the task or service, excluding crew members, shall be carried on board.

Article 7

Air operator certificates

1. AOCs issued by a Member State to CAT operators of aeroplanes before 8 April 2012 shall be deemed to have been issued in accordance with this Regulation if they were issued following Regulation (EC) No 3922/1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation.

In such case:

- (a) the privileges of these operators shall be limited to those included in the AOC issued by the Member State; and

- (b) at the latest by 8 April 2014, operators shall have adapted their management system, training programmes, procedures and manuals to be compliant with Annex III, IV and V, as relevant.
2. The AOC referred to in paragraph 1 shall be replaced by certificates issued as provided for in Annex II no later than 8 April 2014.
 3. CAT AOC for helicopter operators issued by a Member State before the applicability of this Regulation shall be converted into an AOC compliant with this Regulation by the Member State that issued the AOC.
 4. CAT helicopter AOC shall be converted into an AOC compliant with this Regulation in accordance with the elements laid down in a conversion report.
 5. The conversion report shall:
 - (a) be established no later than 8 April 2013 by the Member State that issued the AOC and in consultation with the Agency;
 - (b) be developed in consultation with operators;
 - (c) include an analysis of the differences between the national requirements on the basis of which the AOC was issued and the requirements of Annex III, IV and V;
 - (d) describe the scope of the privileges that were given to the operator;
 - (e) indicate for which requirements in Annex III, IV and V credit is to be given;
 - (f) indicate any limitations that need to be included on the new AOC and any requirements the operator has to comply with in order to remove those limitations.
 6. The conversion report shall include copies of all documents necessary to demonstrate the elements set out in points (a) to (f) of paragraph 5, including copies of the relevant national requirements and procedures.
 7. Applicants for an AOC or specific approval having submitted their application before 8 April 2012 and not having been issued such a certificate before that date shall show compliance with the provisions of this Regulation before the AOC or specific approval is issued.

Article 8

Flight time limitations

Article 8.4 and Subpart Q of Annex III to Regulation (EEC) No 3922/91 remain in force until the related Implementing Rules are adopted.

Article 9

MEL

Minimum equipment lists (MEL) approved before 8 April 2012 by the State of Operator or Registry, as applicable, are deemed to be approved in accordance with this Regulation and may continue to be used by the operator having received the approval. After 8 April 2012, any change of the MEL shall be carried out in compliance with ORO.MLR.105.

Article 10

Flight and cabin crew training

Already operating flight crew and cabin crew members who have completed training, in accordance with ORO.FC and ORO.CC, that did not include the mandatory elements established in the relevant operational suitability data shall undertake training covering any such mandatory elements. This training shall be undertaken by the time of the next required recurrent training and checking, in the case of published operational suitability data as relevant to the aircraft type(s) operated by the crew members concerned.

Article 11

Entry into force

1. This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.
It shall apply as from 8 April 2012.
2. By way of derogation from paragraph 1, Member States may elect not to apply:
 - (a) the provisions of ARO.GEN.200 (a)(1), (4) and (5) until no later than 8 April 2013;
 - (b) the provisions of Annex III, IV and V to CAT operations with helicopters until 8 April 2014;
 - (c) the provisions of Annex V to non-commercial operations with any aircraft until 8 April 2014;
 - (d) the provisions of Annex V to:
 - (i) CAT operations with aeroplanes or helicopters specified in Art. 7(2) or sailplanes or balloons; or
 - (ii) specialised operations with any aircraft,until 8 April 2015;
3. When a Member State makes use of the provisions of paragraph 2, it shall notify the European Commission and the Agency. This notification shall describe the reasons for such derogation and its duration as well as the programme for implementation containing actions envisaged and related timing.

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

Done at Brussels, [...]

For the Commission

[...]

The President