



Brussels, **XXX**
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ANNEX TO EASA OPINION No 04/2017

COMMISSION REGULATION (EU) .../..

of **XXX**

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**amending Commission Regulations (EU) No 965/2012 and (EU) No 1321/2014 as regards
an update of the air operational rules and the use of aircraft included in an AOC for
other-than-CAT operations**

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/EC ⁽¹⁾, and in particular Articles 5(5) and 8(5) thereof,

Whereas:

- (1) Commission Regulation (EU) No 965/2012 of 5 October 2012⁽²⁾ lays down detailed rules for air operations. These rules should be updated to ensure that they reflect the state-of-the-art and the best practices in the field concerned.
- (2) Experience has demonstrated that certain requirements are open to interpretation and may lead to harmonisation problems.
- (3) A number of editorial errors have also been identified in Commission Regulation (EU) No 965/2012.
- (4) The requirements related to different types of operation should be proportionate to the scale and scope of the operation, as well as to the complexity of operations and the risk involved.
- (5) The requirement that the competent authority must approve the different procedures of an AOC holder's non-commercial operation creates an uneven treatment between AOC holders and non-commercial operators regarding such operations. This requirement should therefore be removed, to ensure regulatory consistency.
- (6) An alleviation for non-commercial operations with no operating cabin crew on board an aircraft having a maximum operational passenger seating configuration (MOPSC) above 19 and with maximum 19 passengers on board should be allowed provided that the application thereof does not contradict the data of the aircraft certification approval of the aircraft cabin configuration used by the operator. Additionally, the operator should be allowed to use this alleviation only if it applies appropriate measures to mitigate the risk of such operation. This alleviation would ensure that the cabin crew requirements for non-commercial operation with maximum 19 passengers on a large aircraft (MOPSC above 19) are kept at a proportionate level compared to those for

⁽¹⁾ OJ L 79, 19.3.2008, p. 1.

⁽²⁾ Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

commercial operation with the same maximum number of passengers (19) but on a smaller aircraft (MOPSC of maximum 19).

- (7) Additional provisions to address the use of aircraft included in the air operator certificate (AOC) by other operators (including flight training organisations), for other-than-CAT operations performed in accordance with Part-NCC, Part-NCO or Part-SPO should be included in the current requirements. These provisions should be practical enough to enable the use of such aircraft by other operators without removing it from the AOC. They should describe a clear operational framework, easy to implement and oversee, with no impact on the safety of these operations.
- (8) The safety of such operations should be reinforced at the level of continuing airworthiness of the aircraft used by other operators, thus ensuring that the same continuing airworthiness management organisation performs the tasks related to continuing airworthiness of that aircraft.
- (9) Commission Regulation (EU) No 1321/2014, Annex I (Part-M) should, therefore, be amended accordingly.
- (10) Commission Regulation (EU) No 965/2012 requires commercial air transport (CAT) operators to brief passengers and to provide them with a safety briefing card, but does not distinguish between the operation of safety and emergency equipment. In addition, Commission Regulation (EU) No 965/2012 does not contain a definition of emergency exits.
- (11) Commission Regulation (EC) No 965/2012 should, therefore, be amended accordingly.
- (12) The measures provided for in this Regulation are based on Opinion No 04/2017 issued by the Agency in accordance with Article 19(1) of Regulation (EC) No 216/2008.
- (13) 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

Article 6(3) of Commission Regulation (EU) No 965/2012 is replaced as follows:

- ‘3. By way of derogation from Article 5 and without prejudice to Regulation (EC) No 216/2008 and Commission Regulation (EU) No 748/2012 (*) related to the permit to fly, the following flights shall be operated under conditions set out in Member States' national law:
 - (a) flights related to the introduction or modification of aircraft types conducted by design or production organisations within the scope of their privileges;
 - (b) one-off flights carrying no passengers or cargo where the aircraft is ferried for refurbishment, repair, maintenance checks, inspections, delivery, export or similar purposes, provided that such flights are operated by an organisation other than an AOC holder and the aircraft is not listed on an air operator certificate.’

Article 2

Paragraph (c) of Article 6(4a) of Commission Regulation (EU) No 965/2012 is replaced as follows:

- ‘(c) introductory flights, parachute dropping, sailplane towing or aerobatic flights performed either by a training organisation having its principal place of business in a Member State and approved in accordance with Regulation (EU) No 1178/2011, or by an organisation created with the aim of promoting aerial sport or leisure aviation, on the condition that the aircraft is operated by the organisation on the basis of ownership or dry lease, that the flight does not generate profits distributed outside of the organisation, and that whenever non-members of the organisation are involved, such flights represent only a marginal activity of the organisation. The competent authority shall publish criteria specifying to which extent it considers an activity marginal and how this is being overseen.’

Article 3

The following Annexes to Commission Regulation (EU) No 965/2012 are amended in accordance with Annex I to this Regulation:

- (1) Annex I Definitions for terms used in Annexes II to VIII
- (2) Annex II Authority Requirements for Air Operations [PART-ARO]
- (3) Annex III Organisation Requirements for Air Operations [PART-ORO]
- (4) Annex IV Commercial Air Transport Operations [Part-CAT]
- (5) Annex V Specific Approvals [Part-SPA]
- (6) Annex VI Non-Commercial Air Operations with Complex Motor-Powered Aircraft [PART-NCC]
- (7) Annex VII Non-Commercial Air Operations with Other-Than Complex Motor-Powered Aircraft [PART-NCO]
- (8) Annex VIII Specialised Operations [PART-SPO]

Article 4

Annex I (Part-M) to Commission Regulation (EU) No 1321/2014 is amended in accordance with Annex II to this Regulation.

Article 5

Entry into force

This Regulation shall enter into force on the twentieth 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,

For the Commission
The President
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