

COMMISSION IMPLEMENTING REGULATION (EU) .../..

of **XXX**

amending Implementing Regulation (EU) 2017/373 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, and Implementing Regulation (EU) No 923/2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation

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 8a(5) and 8b(6) thereof,

Having regard to Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation) ⁽²⁾, and in particular Articles 4 and 6 thereof,

Having regard to Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation) ⁽³⁾, and in particular Article 4 thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 lays down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight ⁽⁴⁾.
- (2) Commission Implementing Regulation (EU) No 923/2012 lays down the common rules of the air and operational provisions regarding services and procedures in air navigation ⁽⁵⁾.
- (3) In order to ensure a high level of civil aviation safety in the European Union (EU), the measures set out in this Regulation should reflect the state of the art in aviation safety in the field of air traffic services (ATS). Therefore, this Regulation should be based on the applicable International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPs), specifically the Seventh Edition of Annex 10

¹ OJ L 79, 19.3.2008, p. 1.

² OJ L 96, 31.3.2004, p. 10.

³ OJ L 96, 31.3.2004, p. 20.

⁴ OJ L 62, 8.3.2017, p. 1.

⁵ OJ L 281, 13.10.2012, p. 1.

‘Aeronautical Telecommunications’ (Volume II) and the Fourteenth Edition Annex 11 ‘Air Traffic Services’ to the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the ‘Chicago Convention’), as well as on the ICAO PANS included in the Sixteenth Edition of Doc 4444 ‘Procedures for Air Navigation Services – Air Traffic Management (PANS ATM)’.

- (4) The measures provided with this Regulation therefore amend Commission Implementing Regulation (EU) 2017/373 and certain Annexes thereto also in order to fully implement the Essential Requirements of Annex Vb 2.(c) to Regulation (EC) No 216/2008 concerning the provision of air traffic services. Additionally, this Regulation introduces other necessary amendments to the standardised European rules of the air of Commission Implementing Regulation (EU) No 923/2012.
- (5) The measures provided for in this Regulation are based on Opinion No 03/2018 issued by the European Aviation Safety Agency, pursuant to Articles 17(2)(b) and 19(1) of Regulation (EC) No 216/2008.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 5(3) of Regulation (EC) No 549/2004 ⁽⁶⁾.
- (7) 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

Implementing Regulation (EU) 2017/373 is amended as follows:

1. A new Article 3a is added, as follows:

‘Article 3a

Determination of the need for air traffic services

1. Member States shall determine the need for the provision of air traffic services by taking into consideration the following:
 - (a) the types of air traffic involved;
 - (b) the density of air traffic;
 - (c) the meteorological conditions;
 - (d) such other factors as may be relevant.
2. The carriage of airborne collision avoidance systems (ACAS) by aircraft in a given area shall not be a factor in determining the need for air traffic services in that area.’

(Annex 11— Sections 2.4.1 and 2.4.2)

2. A new Article 3b is added, as follows:

‘Article 3b

Coordination between military authorities and air traffic services

Member States shall ensure that special procedures are established so that:

1. air traffic services units are notified if a military unit observes that an aircraft which is, or might be, a civil aircraft is approaching, or has entered, any area in which interception might become necessary;
2. all possible efforts are made to confirm the identity of the aircraft and to provide it with the navigational guidance necessary to avoid the need for interception.

(Annex 11— Section 2.18.3.2)’

3. A new Article 3c is added, as follows:

‘Article 3c

Coordination of activities potentially hazardous to civil traffic

1. Member States shall ensure that the arrangements for activities potentially hazardous to civil aircraft over their territory are coordinated. When over the high seas, potentially hazardous activities shall be coordinated with the competent authority of the State having accepted, pursuant to an ICAO Regional Air Navigation Agreement, the responsibility to provide air traffic services within the airspace concerned. The coordination shall be effected early enough to permit timely promulgation of information regarding these activities.
2. Member States shall establish arrangements for the promulgation of information regarding such activities.
3. Member States shall take adequate measures to prevent emission of laser beams from adversely affecting flight operations.

(Annex 11 — Sections 2.19.1, 2.19.3 and 2.19.5)’

4. A new Article 3d is added, as follows:

‘Article 3d

Very-high frequency (VHF) emergency channel

1. Member States shall ensure that the VHF emergency channel (121.500 MHz) is used for genuine emergency purposes as specified in ATS.OR.405(a).
2. Member States may allow the use of this emergency channel for other activities related to the intended use of this frequency, provided that they are limited to the extent necessary to achieve their aim, in order to reduce the impact upon aircraft in distress or emergency and upon the operations of air traffic services units.’

5. A new Article 3e is added, as follows:

Article 3e

Coordination and information exchange with parties outside the scope of Regulation (EC) No 216/2008

Member States shall ensure that appropriate arrangements between the relevant ATM/ANS and ATM network functions and parties other than service providers regulated by this Regulation or other than aerodrome operators regulated by Regulation (EU) No 139/2014 are established for the adequate coordination of activities and services provided as well as the exchange of relevant data and information.'

6. In Article 6, paragraph (d) is replaced as follows:

'(d) for providers of air traffic services, in addition to the requirements of points (a) and (c), the requirements laid down in Annex IV (Part-ATS) and the requirements laid down in Implementing Regulation (EU) No 923/2012;'

7. Annex I (Part-DEFINITIONS) to Implementing Regulation (EU) 2017/373 is amended in accordance with Annex I to this Regulation.
8. Annex IV (Part-ATS) to Implementing Regulation (EU) 2017/373 is amended in accordance with Annex II to this Regulation.
9. Annex V (Part-MET) to Implementing Regulation (EU) 2017/373 is amended in accordance with Annex III to this Regulation.

Article 2

Implementing Regulation (EU) No 923/2012 is amended as follows:

1. A new recital (14) is added and the existing recital (14) is re-numbered into (15), as follows:

'[13] (...)

(14) the provisions contained in this Regulation should support and complement rules related to the provision of air traffic services contained in Annex 10 Volume II and Annex 11 to the Chicago Convention, ICAO Doc 4444 (PANS ATM) and Implementing Regulation (EU) 2017/373, to ensure consistency of service provision with pilot actions under this Regulation.

[15] Where necessary, other Union legislation should be updated to refer to this Regulation.'

2. A new article 4a is added, as follows:

Article 4a

Very-high frequency (VHF) emergency channel

1. Member States shall ensure that the VHF emergency channel (121.500 MHz) is used for genuine emergency purposes as specified in point (d) of SERA.14095.
2. Member States may allow the use of this emergency channel for other activities related to the intended use of this frequency, provided that they are limited to the extent necessary to achieve their aim, in order to reduce the impact upon aircraft in distress or emergency and upon the operations of air traffic services units.’
3. The definition of ‘controlled aerodrome’ in Article 2 (57) is replaced by the following:
‘‘controlled aerodrome’ means an aerodrome at which air traffic control service is provided to aerodrome traffic within the controlled airspace associated with such aerodrome;’
4. In Article 2, a new definition (93a) of ‘low-visibility operations’ is added, as follows:
(93a) ‘‘low-visibility operations (LVOs)’ means approach or take-off operations on a runway with any RVR less than 550 m or taxiing at an aerodrome at which any RVR is less than 550 m.’
5. In Article 2, a new definition (61a) of ‘critical area’ is added, as follows:
(61a) ‘‘critical area’ means an area of defined dimensions extending about the ground equipment of a precision instrument approach within which the presence of vehicles or aircraft will cause unacceptable disturbance of the guidance signals.’
6. In Article 2, a new definition (118a) of ‘sensitive area’ is added, as follows:
(118a) ‘‘sensitive area’ means an area extending beyond the Critical Area where the parking and/or movement of aircraft or vehicles will affect the guidance signal to the extent that it may be rendered unacceptable to aircraft using the signal.’
7. The Annex to Implementing Regulation (EU) 923/2012 is amended in accordance with Annex IV to this Regulation.

Article 3

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
It shall apply from 27 January 2022.
2. By way of derogation from paragraph 1, Member States may decide not to apply, in whole or in part, Annex IV (Part-ATS) to Regulation (EU) 2017/373 with regard to the scope of flight information service provided in Class G airspace until 22 January 2025, subject to the following conditions:

- a) the derogation shall be supported by a safety assessment of changes to the functional system, conducted in accordance with applicable requirements of Annexes II, III and IV to Regulation (EU) 2017/373; and
 - b) during the period of the derogation, the objectives of the air traffic services defined in ATS.TR.100 shall continue to be achieved.
3. The Agency, the Commission and the other Member States shall be notified of such derogation. The notification for the derogation to the Agency and to the Commission shall include the elements referred to in paragraph 2 as well as the reasons for the derogation, its duration and the programme for implementation, containing the envisaged actions and the related timing.
 4. The derogation shall only take effect after the approval by the Commission.

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

Done at Brussels,

For the Commission

The President