



Brussels, **XXX**
[...](2019) **XXX** draft

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

of **XXX**

amending Regulations (EU) No 965/2012 and (EU) No 1321/2014 as regards the use of aircraft listed on an air operator certificate for non-commercial operations and specialised operations, the establishment of operational requirements for the conduct of maintenance check flights, the establishment of rules on non-commercial operations with reduced cabin crew on board and introducing editorial updates concerning air operations requirements

(Text with EEA relevance)

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

of **XXX**

amending Regulations (EU) No 965/2012 and (EU) No 1321/2014 as regards the use of aircraft listed on an air operator certificate for non-commercial operations and specialised operations, the establishment of operational requirements for the conduct of maintenance check flights, the establishment of rules on non-commercial operations with reduced cabin crew on board and introducing editorial updates concerning air operations requirements

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91¹, and in particular Article 17(1) and Article 31 thereof,

Whereas:

- (1) Commission Regulation (EU) No 965/2012² lays down detailed rules for commercial air transport ('CAT') operations, for non-commercial operations of complex motor-powered aircraft and other than complex motor-powered aircraft, for commercial specialised operations and non-commercial specialised operations, as well as for certain high risk commercial specialised operations. Those rules do not take account of the fact that the same aircraft could carry out several types of operations during its service life.
- (2) Therefore, for the change of use of the aircraft from CAT operations to non-commercial operations or specialised operations, new rules for the continuous use of such aircraft should be introduced. Those rules should be sufficiently flexible to enable the use of the same aircraft by operators performing non-commercial operations or specialised operations, without removing the aircraft from the air operator certificate ('AOC'). This new operational framework should also ensure a smooth implementation and an effective oversight of those operations without affecting their safety.

¹ OJ L 212, 22.8.2018, 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).

- (3) In accordance with Regulation (EU) No 965/2012, the competent authority is to approve the different operational procedures that an AOC holder applies to its various non-commercial operations. That requirement constitutes an unequal treatment between AOC holders and non-commercial operators for the same type of operations and should therefore be removed to ensure regulatory consistency.
- (4) Based upon safety recommendations and feedback from Member States and stakeholders, including from standardisation inspections, the Commission is of the opinion that Regulation (EU) No 965/2012 should be updated to reflect the state of the art and the best practices as regards various air operations requirements. Editorial changes should be introduced to update several references to the repealed regulations, namely to Regulations (EU) No 2042/2003 and (EC) No 216/2008. In addition, new wording should be added to clarify several existing provisions.
- (5) A number of air accidents or incidents have occurred in flights conducted with aircraft that had just undergone incomplete or inadequate maintenance or to flights conducted to verify whether the maintenance of the aircraft was adequate ('maintenance check flights'). In view of the Airbus A320-232 accident on 27 November 2008 off the coast of Canet-Plage (France), Regulation (EU) No 965/2012 should be amended in order to define accurately that category of flights and to set, where needed, the minimum requirements for flight crews and the procedures to be observed in the preparation and conduct of those flights.
- (6) Furthermore, less rigorous requirements for non-commercial operations with no operating cabin crew on board should be introduced for aircraft having a maximum operational passenger seating configuration (MOPSC) above 19 and with maximum 19 passengers, provided that certain conditions are fulfilled. Operators should be allowed to apply those less rigorous requirements only together with appropriate measures mitigating the risks of such operations.
- (7) Regulation (EU) No 965/2012 requires CAT operators to brief passengers and to provide them with a safety briefing card containing picture-type instructions indicating the operation of emergency equipment and emergency exits likely to be used by passengers. Regulation (EU) No 965/2012 should contain a new definition of emergency exits.
- (8) Regulation (EC) No 965/2012 should therefore be amended in accordance with Annex I to this Regulation.
- (9) Following a change of use of the aircraft from CAT operations to non-commercial operations or to specialised operations, [the responsibility for the continuing airworthiness of aircraft subject to that change should be kept at the AOC holder level. Therefore Annexes I (Part-M) and Vb (Part-ML) to Commission Regulation (EU) No 1321/2014³ should be amended accordingly.
- (10) The Agency prepared draft implementing rules and submitted them to the Commission as opinions⁽⁴⁾ in accordance with Articles 75 and 76 of Regulation (EU) 2018/1139.

³ Commission Regulation (EU) No 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks (OJ L 362, 17.12.2014, p. 1).

⁴ Opinion No 04/2017 of the European Aviation Safety Agency of 29. June 2017 for a draft Commission Regulation on the revision of the rules on air operations and continuing airworthiness and Opinion No 01/2017 of the European Aviation Safety Agency of 07. March 2017 for a draft Commission Regulation on the revision of the rules on air operations regarding maintenance check flights.

- (11) The measures provided for in this Regulation are in accordance with the opinion of the Committee referred to in Article 127 of Regulation (EU) 2018/1139,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 965/2012

Regulation (EU) No 965/2012 is amended as follows:

- (1) in Article 2, point (7) is replaced by the following:
- ”7. ‘Specialised operation’ means any operation, other than commercial air transport operation, where the aircraft is used for specialised activities such as agriculture, construction, photography, surveying, observation and patrol, aerial advertisement, maintenance check flights;”;
- (2) in Article 6(3), point (b) is replaced by the following:
- “(b) flights carrying no passengers or cargo, where the aeroplane or helicopter is ferried for refurbishment, repair, inspections, delivery, export or similar purposes, provided that the aircraft is not listed on an air operator certificate or on a declaration.”;
- (3) the following Article 9aa is inserted:

“Article 9aa

Flight crew requirements for maintenance check flights

A pilot having acted, before [*DDMonthYYYY, the day of the entry into force of this amending regulation*], as a pilot-in-command on a maintenance check flight that in accordance with the definition in point SPO.SPEC.MCF.100 in Annex VIII is categorised as a Level A maintenance check flight, shall be given credit for the purpose of complying with point SPO.SPEC.MCF.115(a)(1) of that Annex. In that case, the operator shall ensure that the pilot-in-command receives a briefing on any differences identified between the operating practices established before [*DD Month YYYY, the day of the entry into force of this amending regulation*] and the obligations provided in Sections 5 and 6 of Subpart E of Annex VII to this Regulation including those derived from the related procedures established by the operator.”;

- (4) Annexes I, II, III, IV, V, VI, VII and VIII are amended in accordance with Annex I to this Regulation.

Article 2

Amendments to Regulation (EU) No 1321/2014

Annex I (Part-M) and Annex Vb (Part-ML) to Regulation (EU) No 1321/2014 are amended in accordance with Annex II to this Regulation.

Article 3

Entry into force and application

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
Jean-Claude JUNCKER