Commission Implementing Regulation (EU) 2019/1387 of 1 August 2019 amending Regulation (EU) No 965/2012 as regards requirements for aeroplane landing performance calculations and the standards for assessing the runway surface conditions, update on certain aircraft safety equipment and requirements and operations without holding an extended range operational approval

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1387

of 1 August 2019

amending Regulation (EU) No 965/2012 as regards requirements for aeroplane landing performance calculations and the standards for assessing the runway surface conditions, update on certain aircraft safety equipment and requirements and operations without holding an extended range operational approval

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 3922/91[(1)], and in particular Article 31 thereof,

Whereas:

(1) Commission Regulation (EU) No 965/2012[(2)] lays down detailed rules as regard safety margins for approach and landing performance conditions, for flights of two-engined aeroplanes with one engine inoperative without holding an extended range operational approval ('ETOPS'), as well as technical requirements for the carriage of flight recorders. That Regulation also lays down detailed rules on the secure flight crew compartment door for performance class A aeroplanes that have a maximum operational passenger seating ('MOPS') configuration of 19.

(2) Investigation reports of accidents have indicated that the different methods for assessing the runway surface conditions before landing and on reporting on them after landing contribute significantly to runway excursions, in particular when the runway is wet or contaminated. The current standards in Commission Regulation (EU) No 965/2012 for aeroplane performance calculations do not cover adequately all surface conditions on wet and contaminated runways in relation to the method used for assessing and reporting the runway surface conditions.

(3) In this regard, the International Civil Aviation Organization ('ICAO') amended a number of Standards and Recommended Practices ('SARPs') in Annexes 6, 8, 14 and 15 to the Convention on International Civil Aviation ('Chicago Convention') and has produced extensive accompanying guidance material. The purpose of those documents

is to establish a globally harmonised reporting format for runway surface conditions and the airworthiness standards necessary for the assessment of the landing distance for aeroplanes as well as operational provisions on landing performance calculations and runway surface conditions reporting.

(4) Regulation (EU) No 965/2012 should therefore be amended to address the safety recommendations issued by investigation authorities and to implement the relevant ICAO SARPs. In order to meet the ICAO recommendations, the amended requirements should enter into force on 5 November 2020 at the latest.

(5) Furthermore, in CAT operations aeroplanes of certain performance classes (A and B) are allowed in other regulatory systems to land within a reduced landing distance available on the intended runway, provided that they are granted a prior approval from the competent authority and that they fulfil a number of risk-mitigating conditions. Regulation (EU) No 965/2012 should define the conditions under which those operations may be conducted, while maintaining an acceptable level of safety. The relevant administrative form for operational approvals should be amended accordingly to include those operations.

(6) Reports from investigations of accidents have indicated that in some instances a continuous recording by cockpit voice recorders ('CVRs') and their associated cockpit-mounted area microphones after an interruption of the main electrical generating system could have provided useful information. Therefore, to mitigate any possible interruption of the main electrical generating system, an alternate power supply should be required. This is in line with Annex 6 Part I to the Chicago Convention.

(7) For some categories of light aeroplanes and helicopters operated in CAT, the recently adopted SARPs in Annex 6 to the Chicago Convention require the carriage of in-flight recording equipment. In addition, safety investigation authorities addressed to the European Union Aviation Safety Agency ('the Agency') twelve safety recommendations related to the need for an in-flight recording for light aeroplanes and helicopters.

(8) In line with the principle of proportionality and based on risk assessment, the obligation to install a flight recorder in new aircraft should reflect the size and complexity of such aircraft and the type of operation. Therefore, light aeroplanes and helicopters that are newly manufactured and that are used in CAT or commercial specialised operations ('SPO') should be equipped with flight recorders when they meet certain criteria regarding their maximum take-off weight, their propulsion-type or their maximum occupancy. In addition, requirements on the handling (preservation, production, protection and use) of recordings by flight recorders, should be modified to encompass the types of flight recorders introduced by the new flight recorder carriage requirements.

(9) With regard to the requirement to equip with a secure flight crew compartment door, ICAO amended SARPs by changing the mass limits that render a secure flight crew compartment door mandatory. Thus, Regulation (EU) No 965/2012 should be amended accordingly to ensure harmonisation of the rules for air operations and a level playing field between Union and third-country air operators.

(10) Regulation (EU) No 965/2012 defines eligibility criteria (certified maximum take-off mass and certified maximum operational passenger seating configuration threshold) for the conduct of flights without holding an ETOPS approval and with performance class A aeroplanes over a route that contains a point further to a distance beyond 60 minutes and up to 120 minutes of flight time from an adequate aerodrome at the one-engine-inoperative cruising speed. Class A aeroplanes that meet those eligibility criteria are allowed to be operated at a distance between 120 and 180 minutes from an adequate aerodrome, provided they obtained an approval by the competent authority and provided that the aeroplane has been granted a type design approval for such operations.

(11) Several aeroplane manufacturers have already designed or are designing performance class A aeroplanes that are above those eligibility criteria for operations without ETOPS. The current provisions distort competition among air taxi operators with aeroplanes that are below those criteria. Given that no other major regulatory body has imposed such criteria for operations without ETOPS, Regulation (EU) No 965/2012 should be amended accordingly.

(12) With regard to first-aid oxygen equipment in CAT operations, recent technological developments of that equipment attain an equivalent level of safety and therefore Regulation (EU) No 965/2012 should be amended to allow the use of such equipment.

(13) Requirements of a Minimum Equipment List (MEL) of Annex III of Regulation (EU) No 965/2012 are not applicable to Approved Training Organisation (ATO), therefore Regulation (EU) No 965/2012 should be amended to allow competent authorities to issue an approval for the development of a (MEL) by an ATO.

(14) Further to recent amendments to Commission Regulation (EU) No 1321/2014[(3)], Regulation (EU) No 965/2012 should be amended to correct cross-references between the two regulations.

(15) The Agency has prepared draft implementing rules and submitted them with Opinion No 02/2019 to the Commission in accordance with points (b) and (c) Article 75(2) and Article 76(1) of Regulation (EU) 2018/1139.

(16) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 127 of Regulation (EU) 2018/1139,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 965/2012

(1) Article 9*aa* is replaced by the following:

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/1387. (See end of Document for details)*

Article 9aa

Flight crew requirements for maintenance check flights

A pilot having acted, before 25 September 2019, 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 25 September 2019 and the obligations provided in Section 5 of Subpart E of Annex VIII to this Regulation including those derived from the related procedures established by the operator.;

(2) Annexes I, II, III, IV, V, VI, VII and VIII to Regulation (EU) No 965/2012 are amended in accordance with the Annex to this Regulation.

Article 2

Date of 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*.

The following points of the Annex shall apply from 25 September 2019:
— point (4)(a);
— point (6)(b);
— point (8)(b).

The following points of point (4) of the Annex shall apply from **[**F1**]**12 August 2021**]**:
— point (c);
— point (d);
— point (e);
— point (f);
— point (g);
— point (n);
— point (q).

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2020/1176 of 7 August 2020 amending Implementing Regulation (EU) 2019/1387 as regards postponing dates of application of certain measures in the context of the COVID-19 pandemic (Text with EEA relevance).

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

ANNEX

Annexes I, II, III, IV, VI, VII and VIII to Regulation (EU) No 965/2012 are amended as follows:

(1) Annex I (Definitions for terms used in Annexes II to VIII) is amended as follows:

(a) the following point (22a) is inserted:

(22a) "cockpit voice recorder (CVR)" means a crash-protected flight recorder that uses a combination of microphones and other audio and digital inputs to collect and record the aural environment of the flight crew compartment and communications to, from and between the flight crew members;;

(b) point (25) is replaced by the following:

(25) "contaminated runway" means a runway of which a significant portion of its surface area (whether in isolated areas or not) within the length and width being used is covered by one or more of the substances listed under the runway surface condition descriptors;;

(c) point (32) is deleted;

(d) point (42) is replaced by the following:

(42) "dry runway" means a runway whose surface is free of visible moisture and not contaminated within the area intended to be used;;

(e) the following point (49b) is inserted:

(49b) "flight data recorder (FDR)" means a crash-protected flight recorder that uses a combination of data sources to collect and record parameters that reflect the state and performance of the aircraft;;

(f) the following point (49c) is inserted:

(49c) "flight recorder" means any type of recorder that is installed on the aircraft for the purpose of facilitating accident or incident safety investigations;;

(g) the following point (70a) is inserted:

(70a) "landing distance at time of arrival (LDTA)" means a landing distance that is achievable in normal operations based on landing performance data and associated procedures determined for the prevailing conditions at the time of landing;;

(h) the following point (103c) is inserted:

(103c) "runway condition report (RCR)" means a comprehensive standardised report relating to the conditions of the runway surface and their effect on the aeroplane landing and take-off performance, described by means of runway conditions code;;

(i) the following point (107a) is inserted:

(107a) "specially prepared winter runway" means a runway with a dry frozen surface of compacted snow or ice which has been treated