Commission Implementing Regulation (EU) 2019/1384 of 24 July 2019 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) 2019/1384

of 24 July 2019

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(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 3922/91[(1)], and in particular Article 17(1) and Article 31 thereof,

Whereas:

(1) Commission Regulation (EU) No 965/2012[(2)] 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.

(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 Commission Regulation (EU) 2042/2003[(3)] and Regulation (EC) No 216/2008 of the European Parliament and of the Council[(4)]. 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 1321/2014[(5)] should be amended accordingly.

(10) The Agency prepared draft implementing rules and submitted them to the Commission as opinions[(6)] in accordance with Articles 75 and 76 of Regulation (EU) 2018/1139.

(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 9*aa* is inserted:

Article 9aa

Flight crew requirements for maintenance check flights

A pilot having acted, before 20 August 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 20 August 2019 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.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/1384. (See end of Document for details)*

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, 24 July 2019.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX I

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

(1) Annex I (Part-DEF) is amended as follows:

(a) point (17) is replaced by the following:

(17) "category A with respect to helicopters" means a multi-engined helicopter designed with engine and system isolation features specified in the applicable certification specification and capable of operations using take-off and landing data scheduled under a critical engine failure concept that assures adequate designated surface area and adequate performance capability for continued safe flight or safe rejected take-off in the event of engine failure;;

(b) the following point (45a) is inserted:

(45a) "emergency exit" means an installed exit-type egress point from the aircraft that allows maximum opportunity for cabin and flight crew compartment evacuation within an appropriate time period and includes floor level door, window exit or any other type of exit, for instance hatch in the flight crew compartment and tail cone exit;;

(c) the following point (48a) is inserted:

(48a) "flight crew member" means a licensed crew member charged with duties essential to the operation of an aircraft during a flight duty period;;

(d) the following point (49a) is inserted:

(49a) "flight operations officer" or "flight dispatcher" means a person designated by the operator to engage in the control and supervision of flight operations, who is suitably qualified, who supports, briefs or assists, or both, the pilot-in-command in the safe conduct of the flight;;

(e) the following point (76a) is inserted:

(76a) "maintenance check flight ('MCF')" means a flight of an aircraft with an airworthiness certificate or with a permit to fly which is carried out for troubleshooting purposes or to check the functioning of one or more systems, parts or appliances after maintenance, if the functioning of the systems, parts or appliances cannot be established during ground checks and which is carried out in any of the following situations:

(a) as required by the aircraft maintenance manual ("AMM") or any other maintenance data issued by a design approval holder being responsible for the continuing airworthiness of the aircraft;