Commission Implementing Regulation (EU) 2018/1975 of 14 December 2018 amending Regulation (EU) No 965/2012 as regards air operations requirements for sailplanes and electronic flight bags

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1975

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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)] establishes the conditions for the safety of several types of air operations with different categories of aircraft, including sailplane operations.

(2) Operators involved in the operation of aircraft referred to in points (b)(i) and (ii) of Article 2(1) of Regulation (EU) 2018/1139 are required to comply with the relevant essential requirements set out in Annex V to that Regulation.

(3) Commission Implementing Regulation (EU) 2018/1976[(3)] lays down specific rules for the operation of sailplanes. From the date of application of that Regulation, such operations should no longer be subject to the general rules for air operations laid down in Regulation (EU) No 965/2012. However, the rules in respect of oversight of air operations by the competent authorities of the Member States, set out in Article 3 of Regulation (EU) No 965/2012 and Annex II thereto, should continue to apply with respect to air operations with sailplanes, as those requirements are not specific to any particular air operation activity but apply horizontally in respect of all such activities.

(4) Regulation (EU) No 965/2012 should therefore be amended accordingly, so as to take account of the new rules applicable to operations with sailplanes and to clarify which provisions of that Regulation continue applying to operations with sailplanes.

(5) Considering the close link between provisions of Implementing Regulation (EU) 2018/1976 and provisions of this Regulation, their date of application should be aligned.

(6) In 2014, ICAO introduced in Annex 6, Part I and Part III, Section II, provisions for the use of electronic flight bags for commercial air transport operations. Those provisions contain generic requirements for the use of electronic flight bags and also a requirement for an operational approval for the use of electronic flight bag applications used for the safe operation of aircraft. Therefore it is necessary to align Regulation (EU) No 965/2012 with ICAO provisions by introducing a new rule containing generic requirements for the use of electronic flight bags for commercial air transport and new provisions supporting an operational approval for the use of electronic flight bag applications that have a failure condition classified as minor or below.

(7) In 2014, ICAO also introduced in Annex 6, Part II and Part III, Section III, provisions for the use of electronic flight bags in general aviation. Those provisions contain generic requirements for the use of electronic flight bags and also a requirement for Contracting States to establish criteria for the use of electronic flight bag applications used for the safe operation of aircraft. Therefore it is necessary to align Regulation (EU) No 965/2012 with ICAO provisions by introducing for non-commercial operations with complex motor-powered aircraft and for specialised operations with complex motor-powered aircraft new rules containing generic requirements for the use of electronic flight bags and requirements for the use of electronic flight bag applications with a failure condition classified as minor or below. Furthermore, this Regulation amends Regulation (EU) No 965/2012 by aligning the requirements for portable electronic devices for non-commercial operations with other-than-complex motor-powered aircraft with the generic ICAO provisions for electronic flight bag equipment.

(8) The European Union Aviation Safety Agency prepared draft implementing rules related to specific rules for the operation of sailplanes and submitted them as an opinion[(4)] to the Commission in accordance with points (b) and (c) of Article 75(2) and Article 76(1) of Regulation (EU) 2018/1139.

(9) The European Union Aviation Safety Agency prepared draft implementing rules related to the use of electronic flight bags and submitted them as an opinion[(5)] to the Commission in accordance with points (b) and (c) of Article 75(2) and Article 76(1) Regulation (EU) 2018/1139.

(10) 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

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

(1) Article 1 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

1. This Regulation lays down detailed rules for air operations with aeroplanes and helicopters, including ramp inspections of aircraft of operators under the safety oversight of another State when landed at aerodromes located in the territory subject to the provisions of the Treaties.

2 This Regulation also lays down detailed rules on the conditions for issuing, maintaining, amending, limiting, suspending or revoking the certificates of operators of aircraft referred to in points (b)(i) and (ii) of Article 2(1) of Regulation (EU) 2018/1139, except for balloons and sailplanes, engaged in commercial air transport operation, the privileges and responsibilities of the holders of certificates as well as conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety;

3 This Regulation also lays down detailed rules on the conditions and procedures for the declaration by operators engaged in commercial specialised operations of aeroplanes and helicopters or in non-commercial operation of complex motor-powered aircraft, including non-commercial specialised operations of complex motor-powered aircraft, of their capability and the availability of the means to discharge the responsibilities associated with the operation of aircraft, and for the oversight of such operators.;

(b) paragraph 7 is replaced by the following:

7. This Regulation shall not apply to air operations with balloons and sailplanes. However, in respect of such air operations with balloons, other than tethered gas balloons, and sailplanes, the requirements in respect of oversight of Article 3 shall apply.;

(2) Article 2 is amended as follows:

(a) points (1), (1a) and 1(b) are replaced by the following:

(1) “aeroplane” means an engine-driven fixed-wing aircraft heavier than air that is supported in flight by the dynamic reaction of the air against its wings;

(1a) “helicopter” means a heavier-than-air aircraft supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes;

(1b) “balloon” means a manned lighter-than-air aircraft which is not power-driven and sustains flight through the use of either a lighter-than-air gas or an airborne heater, including gas balloons, hot-air balloons, mixed balloons and, although power-driven, hot-air airships;;

(b) the following points (1c), (1d) and (1e) are inserted:

(1c) “sailplane” means a heavier-than-air aircraft that is supported in flight by the dynamic reaction of the air against its fixed lifting surfaces, the free flight of which does not depend on an engine;

(1d) “commercial operation” means any operation of an aircraft, in return for remuneration or other valuable consideration, which is available for the public or, when not made available to the public,

which is performed under a contract between an operator and a customer, where the latter has no control over the operator;

(1e) "tethered gas balloon" means a gas balloon with a tether system that continuously anchors the balloon to a fixed point during operation;;

(c) point (9) is replaced by the following:

(9) "introductory flight" means any operation against remuneration or other valuable consideration consisting of an air tour of short duration for the purpose of attracting new trainees or new members, performed either by a training organisation referred to in Article 10a of Commission Regulation (EU) No 1178/2011[(6)] or by an organisation created with the aim of promoting aerial sport or leisure aviation;;

(3) Article 5 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. Operators shall only operate an aeroplane or a helicopter for the purpose of commercial air transport (hereinafter "CAT") operations as specified in Annexes III and IV.;

(b) in paragraph 2, point (b) is replaced by the following:

(b) aeroplanes and helicopters used for the transport of dangerous goods (DG);;

(c) paragraphs 4, 5 and 6 are replaced by the following:

4. Operators of other-than-complex motor-powered aeroplanes and helicopters involved in non-commercial operations, including non-commercial specialised operations, shall operate the aircraft in accordance with the provisions set out in Annex VII.

5 Training organisations referred to in Article 10a of Regulation (EU) No 1178/2011 and having their principal place of business in a Member State shall, when conducting flight training into, within or out of the Union, operate:

a complex motor-powered aeroplanes and helicopters in accordance with the provisions specified in Annex VI;

b other aeroplanes and helicopters in accordance with the provisions specified in Annex VII.

6 Operators shall only operate an aeroplane or a helicopter for the purpose of commercial specialised operations in accordance with the requirements in Annexes III and VIII.;

(4) Article 6 is amended as follows:

(a) paragraph 3 is replaced by the following:

3. By way of derogation from Article 5 of this Regulation and without prejudice to point (b) of Article 18(2) of Regulation (EU) 2018/1139 and to Subpart P of Annex I to Commission Regulation (EU) No 748/2012[(7)]

concerning the permit to fly, the following flights shall continue to be operated under the requirements specified in the national law of the Member State in which the operator has its principal place of business, or, where the operator has no principal place of business, the place where the operator is established or resides:

a flights related to the introduction or modification of aeroplane or helicopter types conducted by design or production organisations within the scope of their privileges;

b flights carrying no passengers or cargo where the aeroplane or helicopter is ferried for refurbishment, repair, maintenance checks, inspections, delivery, export or similar purposes.;

(b) paragraph 4a is amended as follows:

(i) the introductory wording is replaced by the following:

4a. By way of derogation from Article 5(1) and (6), the following operations with other-than-complex motor-powered aeroplanes and helicopters may be conducted in accordance with Annex VII:;

(ii) point (c) is replaced by the following:

(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 referred to in Article 10a of 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.;

(5) Article 10 is amended as follows:

(a) in paragraph 1, the paragraph numbering is deleted and the second subparagraph is replaced by the following:

It shall apply from 28 October 2012.;

(b) paragraphs 2 to 6 are deleted.

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

Article 2

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*.

It shall apply from 9 July 2019.