Commission Implementing Regulation (EU) 2017/386 of 6 March 2017 amending Implementing Regulation (EU) No 1207/2011 laying down requirements for the performance and the interoperability of surveillance for the single European sky (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2017/386

of 6 March 2017

amending Implementing Regulation (EU) No 1207/2011 laying down requirements for the performance and the interoperability of surveillance for the single European sky

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation)[(1)], and in particular Article 3(5) thereof,

After consulting the Single Sky Committee,

Whereas:

(1) Commission Implementing Regulation (EU) No 1207/2011[(2)] lays down requirements on the systems contributing to the provision of surveillance data, their constituents and associated procedures in order to ensure the harmonisation of performance, the interoperability and the efficiency of those systems within the European air traffic management network and for the purpose of civil-military coordination.

(2) In order to be able to equip aircraft with new or upgraded capabilities, operators need to have the necessary equipment specifications by the dates specified in Articles 5(4) and 5(5) of Implementing Regulation (EU) No 1207/2011. However, the relevant certification specifications developed by the European Aviation Safety Agency ('the Agency') are to a certain extent inconsistent with the requirements of Implementing Regulation (EU) No 1207/2011 and should be realigned and made consistent with those requirements. Consequently, not all operators have been able to equip their new aircraft with the new functionalities ADS-B 'Out' and Mode S Enhanced by 8 June 2016.

(3) In addition, stakeholders have reported that, currently, equipped airborne constituents of the surveillance systems are not always compliant with Implementing Regulation (EU) No 1207/2011. This applies especially to previously deployed Mode S Elementary transponders which appear not to comply with the most recent standard (ED-73E) as provided in the relevant certification specifications of the Agency. The non-compliant Mode S Elementary transponders will need to be made compliant by upgrading them. Considering the requirement to also equip the aircraft with the ADS-B and Mode S

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Enhanced functionalities, a single upgrade of the airborne constituents with the three functionalities should be necessary for cost efficiency reasons.

(4) Therefore, the dates by which operators are to comply with the relevant interoperability requirements of Implementing Regulation (EU) No 1207/2011 should be amended, so as to give them sufficient additional time. Taking into account the additional delays in the certification and in the availability of the required equipment that affect the smooth retrofitting of the existing fleet, it is no longer appropriate to distinguish in this regard between aircraft based on the date of their individual certificate of airworthiness.

(5) To comply with their obligations in terms of spectrum protection set out in Article 6 of Implementing Regulation (EU) No 1207/2011, Member States need to ensure that air navigation service providers have the necessary measurement tools and means of compliance in order to avoid the production of harmful interference by ground-based surveillance systems. Taking into account that those means of compliance and tools are not readily available and that the dates by which operators are to comply with the relevant interoperability requirements are now amended, the dates by which Member States are to comply with the relevant spectrum protection requirements of Implementing Regulation (EU) No 1207/2011 should be amended as well, so as to give Member States sufficient additional time to comply with their obligations.

(6) In order to ensure consistency, operators of State aircraft should benefit from similar postponements in implementation dates as operators of other aircraft. The dates by which Member States are to ensure that State aircraft are compliant with the relevant requirements of Implementing Regulation (EU) No 1207/2011 should therefore also be amended. The dates concerning the exemptions to certain categories of aircraft laid down in that Implementing Regulation should be adjusted as well in order to retain the practical effect of those rules, and the references in Annex II thereto should be updated.

(7) Implementing Regulation (EU) No 1207/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 1207/2011 is amended as follows:

(1) Article 5 is amended as follows:

(a) paragraph 4 is deleted;

(b) paragraphs 5, 6 and 7 are replaced by the following:

5. Operators shall ensure that by 7 June 2020 at the latest:

a aircraft operating flights referred to in Article 2(2) are equipped with secondary surveillance radar transponders having the capabilities set out in Part A of Annex II;

b aircraft with a maximum certified take-off mass exceeding 5 700 kg or having a maximum cruising true airspeed capability greater than 250 knots, operating flights referred to in Article 2(2), are equipped with secondary surveillance radar transponders having, in addition

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to the capabilities set out in Part A of Annex II, the capabilities set out in Part B of that Annex;

c fixed wing aircraft with a maximum certified take-off mass exceeding 5 700 kg or having a maximum cruising true airspeed capability greater than 250 knots, operating flights referred to in Article 2(2), are equipped with secondary surveillance radar transponders having, in addition to the capabilities set out in Part A of Annex II, the capabilities set out in Part C of that Annex.

6 Operators shall ensure that aircraft equipped in accordance with paragraph 5 and having a maximum certified take-off mass exceeding 5 700 kg or having a maximum cruising true airspeed capability greater than 250 knots operate with antenna diversity as prescribed in paragraph 3.1.2.10.4 of Annex 10 to the Chicago Convention, Volume IV, Fourth Edition, including all amendments up to No 85.

7 Member States may impose carriage requirements in accordance with point (b) of paragraph 5 to all aircraft operating flights referred to in Article 2(2) in areas where surveillance services using the surveillance data identified in Part B of Annex II are provided by air navigation service providers.;

(2) in paragraphs 1 and 3 of Article 6, ‘5 February 2015’ is replaced by ‘2 January 2020’;

(3) in Article 8, paragraphs 1, 2 and 3 are replaced by the following:

1. Member States shall ensure that, by 7 June 2020 at the latest, State aircraft operating in accordance with Article 2(2) are equipped with secondary surveillance radar transponders having the capability set out in Part A of Annex II.

2 Member States shall ensure that, by 7 June 2020 at the latest, transport-type State aircraft with a maximum certified take-off mass exceeding 5 700 kg or having a maximum cruising true airspeed capability greater than 250 knots, operating in accordance with Article 2(2) are equipped with secondary surveillance radar transponders having in addition to the capability set out in Part A of Annex II, the capability set out in Part B and Part C of that Annex.

3 Member States shall communicate to the Commission by 1 January 2019 at the latest the list of State aircraft that cannot be equipped with secondary surveillance radar transponders that comply with the requirements set out in Part A of Annex II, together with the justification for non-equipage.

Member States shall communicate to the Commission by 1 January 2019 at the latest the list of transport-type State aircraft with a maximum certified take-off mass exceeding 5 700 kg or having a maximum cruising true airspeed capability greater than 250 knots, that cannot be equipped with secondary surveillance radar transponders that comply with the requirements set out in Part B and Part C of Annex II, together with the justification for non-equipage.

The justification for non-equipage shall be one of the following:

a compelling technical reasons;

b State aircraft operating in accordance with Article 2(2) that will be out of operational service by 1 January 2024 at the latest;

c procurement constraints.;