Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/ air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011 (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2017/373

of 1 March 2017

laying down common requirements for providers of air traffic management/ air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011

(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 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC[(1)], and in particular Article 8b(6) thereof,

Having regard to Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation)[(2)], and in particular Articles 4 and 6 thereof,

Having regard to Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation)[(3)], and in particular Article 6(7) thereof,

Whereas:

(1) Commission Implementing Regulations (EU) No 1034/2011[(4)] and (EU) No 1035/2011[(5)] lay down requirements on safety oversight in air traffic management and air navigation services and common requirements for the provision of air navigation services, respectively. Those latter requirements are to be complied with by the service providers concerned in order for them to be issued the certificates referred to in Article 7(1) of Regulation (EC) No 550/2004 and Article 8b(2) of Regulation (EC) No 216/2008. Those Regulations also lay down requirements concerning the competent authorities, which are responsible for issuing those certificates and exercising oversight and enforcement tasks, in accordance with Article 4 of Regulation (EC) No 549/2004 of the European Parliament and of the Council[(6)], Articles 2 and 7(7) of Regulation (EC) No 550/2004 and Articles 10 and 22a of Regulation (EC) No 216/2008.

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(2) The requirements set out in Implementing Regulations (EU) No 1034/2011 and (EU) No 1035/2011 serve in particular to implement, at an initial stage, the essential requirements concerning the provision of air traffic management and air navigation services ('ATM/ANS') set out in Regulation (EC) No 216/2008, in particular to ensure compliance with Articles 8b and 22a of Regulation (EC) No 216/2008 and Annex Vb thereto and to allow the commencement of standardisation inspections in accordance with Article 24 of Regulation (EC) No 216/2008.

(3) Those requirements set out in Implementing Regulations (EU) No 1034/2011 and (EU) No 1035/2011 should now be complemented and updated, in light of technical progress. It should also be clarified that, for service providers to be issued and retain a certificate, or to make a declaration, in accordance with this Regulation, they must comply, and continue to comply, with those requirements as well as with the essential requirements referred to in Article 8b(1) of Regulation (EC) No 216/2008. In addition, consistency should be ensured between those requirements and the requirements set out in Commission Regulations (EU) No 965/2012[(7)], (EU) No 1178/2011[(8)], (EU) No 139/2014[(9)] and (EU) 2015/340[(10)], thus moving towards a 'total system approach', which entails a logical and technologically consistent approach across the various domains. Therefore, the requirements set out in Implementing Regulations (EU) No 1034/2011 and (EU) No 1035/2011 should now be laid down in a single instrument and Implementing Regulations (EU) No 1034/2011 and (EU) No 1035/2011 should be repealed.

(4) Common rules for the certification and oversight of the service providers concerned are essential to increase the Member States' confidence in each other's systems. Therefore, and in order to ensure the highest level of safety and security, uniform requirements for the provision of services and their oversight should be strengthened. That should ensure the safe, high-quality provision of services for the purpose of air navigation and the mutual recognition of certificates throughout the Union, thereby increasing freedom of movement and improving the availability of those services.

(5) In order to ensure a harmonised approach to certification and oversight, the measures to be implemented for security of systems, constituents in use and data should be coordinated across Member States, functional airspace blocks and the network formed by the services, functions and products offered by service providers, the Network Manager, aerodromes and other persons providing the necessary infrastructure for flight operations.

(6) Safety management ensures the identification, assessment and minimisation of safety risks as well as security vulnerabilities which have an impact on safety. Therefore, it is necessary to further elaborate the requirements related to the safety assessment of changes to the functional system by a certified organisation. Those requirements should be adapted taking into account the integration of requirements relating to change management into the common regulatory structure for civil aviation safety, as well as the experience gained by stakeholders and competent authorities in the field of safety oversight.

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(7) It is appropriate to introduce safety culture as an aspect of the management systems of the service providers in a manner that promotes understanding and improvement of those systems, while acknowledging the need to strengthen management systems further, especially by integrating reliable occurrence reporting.

(8) It should be specified which authorities are responsible for the tasks related to certification, oversight and enforcement in respect of the service providers that are subject to this Regulation, in line with the criterion set out in Article 7(2) of Regulation (EC) No 550/2004 and the tasks of the European Aviation Safety Agency ('the Agency') pursuant to Article 22a of Regulation (EC) No 216/2008, and without prejudice to the requirements of Article 2 of Regulation (EC) No 550/2004. The Agency should be the competent authority for providers of data services and for the Network Manager, in light of the nature and scale of the services provided. In order to fulfil the objectives of Regulation (EC) No 216/2008, in particular the objective set out in point (d) of Article 2(2) thereof, and the objective set out in Article 1(3) of Regulation (EC) No 549/2004, it is also appropriate to align the requirements for the competent authorities with the progress in International Civil Aviation Organisation ('ICAO') safety management concepts, in particular the introduction of the authority management system, as well as in the implementation of the state safety programme and in ensuring coordination between those authorities.

(9) It should be clarified that, when exercising their certification, oversight and enforcement tasks under this Regulation, the competent authorities should be independent from any service provider, through ensuring adequate separation of those authorities from those providers at least at the functional level, and that any possible conflict of interest should be avoided. The aim is to guarantee the objectivity and impartiality of those authorities and to ensure that the exercise of their tasks under this Regulation is of high quality.

(10) The Agency should establish a database with relevant information relating to the competent authorities, so as to facilitate standardisation inspections of, and coordination with, the competent authorities, as well as to support the Commission in carrying out its tasks.

(11) With a view to ensuring that the requirements for service providers set out in this Regulation are complied with at all times and the competent authorities can effectively exercise their tasks under this Regulation, in accordance with Article 4(3) and (4) of Regulation (EC) No 549/2004, those authorities should be granted certain specific investigatory powers, in addition to the possibility to carry out investigations and surveys referred to in Article 2(2) of Regulation (EC) No 550/2004 and Article 10(2) and (3) of Regulation (EC) No 216/2008. It is appropriate to clarify that those powers should be exercised in accordance with the applicable rules of national law, while having due regard to a number of specific elements, which are meant to ensure a fair balance between all rights and interests at issue in a particular case.

(12) The air traffic safety electronics personnel employed by a service provider or the Network Manager should be subject to a harmonised training and competence assessment scheme. The service provider or Network Manager should also ensure that the personnel of contracted organisations are appropriately qualified. Therefore,

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detailed provisions on training and competence assessment of such personnel should be included in this Regulation.

(13) In order to ensure a high level of civil aviation safety in the Union, the measures set out in this Regulation should reflect the state of the art in aviation safety, including best practice and scientific and technical progress in the field of meteorological services. Therefore, this Regulation should be based on the applicable ICAO standards and recommended practices, specifically Annex 3 to the Convention on International Aviation, signed in Chicago on 7 December 1944 ('Chicago Convention') on 'Meteorological Service for International Air Navigation', while drawing on the experience of Union and worldwide meteorological service provision and ensuring proportionality according to the size, type and complexity of the meteorological services provider.

(14) Common requirements should be established for the certification and oversight of data services providers to ensure that the providers of aeronautical data for use on aircraft process the data in an appropriate manner, which meets the airspace end-users' requirements and allows for safe performance-based navigation operations.

(15) The aeronautical industry and the competent authorities of the Member States should be allowed sufficient time to adapt to the new regulatory framework established by this Regulation and to replace certificates issued before the date of application of this Regulation.

(16) However, in order to ensure consistency with Regulation (EU) No 965/2012, the relevant provisions of this Regulation should apply to data services providers already from an earlier date. Moreover, those providers should be allowed, on a voluntary basis, to apply for, and be granted, the relevant certificates already immediately upon the entry into force of this Regulation, so as to allow them, as entities that are not subject to Implementing Regulation (EU) No 1035/2011 but that are subject to the practice of issuing voluntary letters of acceptance by the Agency, to benefit from an early application of this Regulation in this regard and the mutual recognition of those certificates. Such early application of this Regulation with respect to data services providers would also relieve aircraft operators from their oversight responsibilities when contracting the services of those providers, once the provider is certified for aeronautical databases. Where such a provider makes use of that possibility, it should be bound by the applicable requirements of this Regulation for the purposes of obtaining a certificate and subsequently continue to be bound by those requirements. In view of this possibility for data service providers, the relevant provisions of this Regulation concerning the competent authority in respect of those providers, which is in this case only the Agency, should also apply already from the date of entry into force of this Regulation.

(17) The provisions contained in Commission Implementing Regulation (EU) No 923/2012[(11)] should be complemented with aspects related to the provision of air traffic services, to ensure consistency of service provision with pilot and air traffic service personnel actions and requirements under that Regulation.

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(18) The safety acceptability of any change proposed by a service provider should be assessed based on the analysis of the risks posed by the introduction of a change to its functional system, differentiated under either quantitative or qualitative objective assessment criteria, or a combination of both, to be determined at a local level.

(19) For reasons of consistency and ease of application, the provisions of Commission Regulation (EC) No 482/2008[(12)] should be integrated in this Regulation and Commission Regulation (EC) No 482/2008 should therefore be repealed.

(20) The requirements of Articles 12 and 21 of Commission Regulation (EU) No 677/2011[(13)] and Annex VI thereto should be integrated in this Regulation in order to ensure a harmonised approach to all service providers. Therefore, those provisions should be deleted.

(21) Commission Implementing Regulation (EU) 2016/1377[(14)], which has not yet become applicable, contains numerous errors. In order to eliminate those errors, while at the same time ensuring the required legal clarity, it is appropriate to repeal Implementing Regulation (EU) 2016/1377 in its entirety and to replace it with the rules set out in this Regulation.

(22) The measures provided for in this Regulation are based on the opinion of the Agency in accordance with Articles 17(2)(b) and 19(1) of Regulation (EC) No 216/2008.

(23) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 5(3) of Regulation (EC) No 549/2004,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down common requirements for:

(1) the provision of air traffic management and air navigation services (‘ATM/ANS’) and other air traffic management network functions (‘ATM network functions’) for general air traffic, in particular for the legal or natural persons providing those services and functions;

(2) the competent authorities, and the qualified entities acting on their behalf, which exercise certification, oversight and enforcement tasks in respect of the providers of the services and functions referred to in point (1).

Article 2

Definitions

For the purposes of this Regulation, the definitions in Annex I and the following definitions shall apply: