Commission Implementing Regulation (EU) 2016/1185 of 20 July 2016 amending Implementing Regulation (EU) No 923/2012 as regards the update and completion of the common rules of the air and operational provisions regarding services and procedures in air navigation (SERA Part C) and repealing Regulation (EC) No 730/2006 (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1185

of 20 July 2016

amending Implementing Regulation (EU) No 923/2012 as regards the update and completion of the common rules of the air and operational provisions regarding services and procedures in air navigation (SERA Part C) and repealing Regulation (EC) No 730/2006

(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 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[(1)], and in particular Article 4 thereof,

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[(2)], and in particular Article 8b(6) thereof,

Whereas:

(1) Article 4 of Regulation (EC) No 551/2004 requires the Commission to adopt implementing rules on rules of the air and on the uniform application of airspace classification. The Union's rules of the air have been developed in two phases. In Phase I (SERA Part A), the Commission, supported by Eurocontrol, the European Aviation Safety Agency (‘Agency’) and the International Civil Aviation Organisation (‘ICAO’), prepared the transposition into Union law of Annex 2 to the Convention on International Civil Aviation (‘Chicago Convention’). In Phase II (SERA Part B), the relevant provisions from Annexes 3 and 11 to the Chicago Convention have been transposed into Union law. The outcome was Commission Implementing Regulation (EU) No 923/2012[(3)], combining both those Parts A and B in one Union act.

(2) Implementing Regulation (EU) No 923/2012 should now be completed by including in it the remaining relevant ICAO provisions, in particular those set out in Annex 10 to the Chicago Convention and in Document 4444 (PANS-ATM), which have a rules of the air-nature and which have not yet been transposed into Union law.

Changes to legislation: *There are outstanding changes not yet made to Commission Implementing Regulation (EU) 2016/1185. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) The provisions contained in this Regulation, should support and complement rules related to the provision of air traffic services contained in Annex 10 Volume II and Annex 11 to the Chicago Convention, ICAO Doc. 4444 (PANS-ATM) and the Common Requirements established in accordance with Article 8b of Regulation (EC) No 216/2008, to ensure consistency of service provision with actions of pilots and other actors under this Regulation

(4) Implementing Regulation (EU) No 923/2012 should also be aligned with Commission Regulations (EU) No 965/2012[(4)] and (EU) No 139/2014[(5)], in order to ensure a consistent approach to regulating civil aviation safety.

(5) For the same reason, and in order to ensure a more user-friendly presentation of the applicable rules, the rules set out in Commission Regulation (EC) No 730/2006[(6)] should be inserted in Implementing Regulation (EU) No 923/2012.

(6) Therefore, Implementing Regulation (EU) No 923/2012 should be amended accordingly and Regulation (EC) No 730/2006 should be repealed.

(7) Sufficient transition time should be provided for Member States, aircraft operators, air navigation service providers and other interested parties to be able to correctly implement this Regulation, including the necessary publication of new procedures and the training of operators and affected staff. However, the provisions of this Regulation containing urgent amendments of Implementing Regulation (EU) No 923/2012 in light of recent amendments of Annexes 2 and 11 to the Chicago Convention or lessons learned from the implementation of Regulation (EU) No 923/2012 should apply already from an appropriate earlier date, taking into account the system of aeronautical information regulation and control 'AIRAC' notification dates.

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

(9) The measures provided for in this Regulation are in accordance with the opinion of the Single Sky Committee, established by Article 5 of Regulation (EC) No 549/2004 of the European Parliament and of the Council[(7)],

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 923/2012 is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 3 is replaced by the following:

3. This Regulation shall also apply to the competent authorities of the Member States, air navigation service providers, aerodrome operators and ground personnel engaged in aircraft operations.;

(b) the following paragraph 4 is added:

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4. This Regulation shall not apply to model aircraft and toy aircraft. However, Member States shall ensure that national rules are established to ensure that model aircraft and toy aircraft are operated in such a manner as to minimise hazards related to civil aviation safety, to persons, property or other aircraft..

(2) Article 2 is amended as follows:

(a) point 2 is deleted;

(b) point 25 is replaced by the following:

25. "air-taxiing" means movement of a helicopter/vertical take-off and landing (VTOL) above the surface of an aerodrome, normally in ground effect and at a ground speed normally less than 37 km/h (20 kts);;

(c) point 27 and 28 are replaced by the following:

27. "air traffic advisory service" means a service provided within advisory airspace to ensure separation, in so far as practical, between aircraft which are operating on instrument flight rules (IFR) flight plans;

28. "air traffic control (ATC) clearance" means authorisation for an aircraft to proceed under conditions specified by an air traffic control unit;;

(d) points 33, 34, and 35 are replaced by the following:

33. "air traffic services (ATS) airspaces" mean airspaces of defined dimensions, alphabetically designated, within which specific types of flights may operate and for which air traffic services and rules of operation are specified;

34. "air traffic services (ATS) reporting office (ARO)" means a unit established for the purpose of receiving reports concerning air traffic services and flight plans submitted before departure;

35. "air traffic services (ATS) unit" means a generic term meaning, variously, air traffic control unit, flight information centre, aerodrome flight information service unit or air traffic services reporting office;;

(e) the following point 34a is inserted:

34a. "air traffic services (ATS) surveillance service" means a service provided directly by means of an ATS surveillance system;;

(f) point 38 is replaced by the following:

38. "alternate aerodrome" means an aerodrome to which an aircraft may proceed when it becomes either impossible or inadvisable to proceed to or to land at the aerodrome of intended landing, where the necessary services and facilities are available, where aircraft performance requirements can be met and which is operational

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at the expected time of use. Alternate aerodromes include the following:

(a) take-off alternate	:	an alternate aerodrome at which an aircraft would be able to land should this become necessary shortly after take-off and it is not possible to use the aerodrome of departure;
(b) en-route alternate	:	an alternate aerodrome at which an aircraft would be able to land in the event that a diversion becomes necessary while en route;
(c) destination alternate	:	an alternate aerodrome at which an aircraft would be able to land should it become either impossible or inadvisable to land at the aerodrome of intended landing;;

(g) the following point 48a is inserted:

48a. "automatic dependent surveillance — contract (ADS-C) agreement" means a reporting plan which establishes the conditions of ADS-C data reporting (i.e. data required by the air traffic services unit and frequency of ADS-C reports which have to be agreed to, prior to using ADS-C in the provision of air traffic services);;

(h) point 71 is replaced by the following:

71. "estimated time of arrival (ETA)" means for IFR flights, the time at which it is estimated that the aircraft will arrive over that designated point, defined by reference to navigation aids, from which it is intended that an instrument approach procedure will be commenced, or, if no navigation aid is associated with the aerodrome, the time at which the aircraft will arrive over the aerodrome. For visual flight rules (VFR) flights, the time at which it is estimated that the aircraft will arrive over the aerodrome;;

(i) the following point 89a is inserted:

89a. "instrument approach operation" means an approach and landing using instruments for navigation guidance based on an instrument

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approach procedure. There are two methods for executing instrument approach operations:

(a) a two-dimensional (2D) instrument approach operation, using lateral navigation guidance only; and

(b) a three-dimensional (3D) instrument approach operation, using both lateral and vertical navigation guidance.;

(j) points (a), (b) and (c) of point 90 are replaced by the following:

(a) non-precision approach (NPA) procedure. An instrument approach procedure designed for 2D instrument approach operations Type A.

(b) approach procedure with vertical guidance (APV). A performance-based navigation (PBN) instrument approach procedure designed for 3D instrument approach operations Type A.

(c) precision approach (PA) procedure. An instrument approach procedure based on navigation systems (ILS, MLS, GLS and SBAS Cat I) designed for 3D instrument approach operations Type A or B;;

(k) the following point 94a is inserted:

94a. "minimum fuel" means a term used to describe a situation in which an aircraft's fuel supply has reached a state where the flight is committed to land at a specific aerodrome and no additional delay can be accepted;;

(l) the following points 95a and 95b are inserted:

95a. "model aircraft" means an unmanned aircraft, other than toy aircraft, having an operating mass not exceeding limits prescribed by the competent authority, that is capable of sustained flight in the atmosphere and that is used exclusively for display or recreational activities;

95b. "mountainous area" means an area of changing terrain profile where the changes of terrain elevation exceed 900 m (3 000 ft) within a distance of 18,5 km (10,0 NM);;

(m) point 114 is replaced by the following:

114. "runway-holding position" means a designated position intended to protect a runway, an obstacle limitation surface, or an instrument landing system (ILS)/microwave landing system (MLS) critical/sensitive area at which taxiing aircraft and vehicles are to stop and hold, unless otherwise authorised by the aerodrome control tower;;

(n) point 116 is replaced by the following:

116. "safety-sensitive personnel" means persons who might endanger aviation safety if they perform their duties and functions improperly, including crew members, aircraft maintenance personnel, aerodrome operations personnel, rescue, fire-fighting