Commission Regulation (EU) 2015/2338 of 11 December 2015 amending Regulation (EU) No 965/2012 as regards requirements for flight recorders, underwater locating devices and aircraft tracking systems

COMMISSION REGULATION (EU) 2015/2338

of 11 December 2015

amending Regulation (EU) No 965/2012 as regards requirements for flight recorders, underwater locating devices and aircraft tracking systems

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 8(5) thereof,

Whereas:

(1) The operation of aircraft has to comply with the essential requirements set out in Annex IV to Regulation (EC) No 216/2008. In accordance with Regulation (EC) No 216/2008, the Commission should adopt the necessary implementing rules for establishing the conditions for the safe operation of aircraft.

(2) The Cockpit Voice Recorder (CVR) aims at supporting the safety investigation performed by the safety investigation authority in the case an accident or an incident occurs. Relevant safeguards to protect CVR from disclosure in a situation where a safety investigation has been opened are set out in Regulation (EU) No 996/2010 of the European Parliament and of the Council[(2)]. With the introduction of safety management, it is recognised that CVR might be used outside the context of a safety investigation in order to maintain or improve safety. Therefore, Commission Regulation (EU) No 965/2012[(3)] should be amended in order to reinforce conditions that aim to effectively prevent the inappropriate use and disclosure of CVR recordings.

(3) With the objective to improve the overall performance of flight recorders and to facilitate the recovery of an aircraft and its flight recorders after an accident over water, several safety improvements to the current requirement have been put forward by the International Civil Aviation Organisation (ICAO). Those safety improvements include the discontinuation of outdated recording technologies such as magnetic tape or magnetic wire, the extension of the minimum recording duration of the CVR as well as the extension of the transmission time of the flight recorder underwater locating device and the carriage of an underwater locating device with a very long detection range for aeroplanes performing long-range overwater flights. Therefore, Regulation (EU) No 965/2012 should be amended in order to reflect those safety improvements.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) 2015/2338. (See end of Document for details)*

(4) It is necessary to take into consideration the disappearance of flight MH370 on 8 March 2014 and the recommendations made by the multidisciplinary meeting of the ICAO on global tracking of 12 and 13 May 2014. The position of public transport aircraft should be known at all times, even in a remote location, in order to facilitate the location of the aircraft in case of an abnormal behaviour, an emergency or an accident. Whenever possible, the aircraft tracking means should be robust to loss of normal electrical power on board and should not offer any control to disable it during the flight. Therefore, Regulation (EU) No 965/2012 should be amended in order to include additional requirements related to means to track aircraft on a global basis, including over oceans and remote areas.

(5) In accordance with the proposition of the Flight Recorder Panel (FLIRECP) of the ICAO, with respect to the carriage of CVRs with extended recording duration for large aeroplanes, provision should be made for the introduction of CVR with a recording duration of 25 hours on board aircraft, manufactured after 1 January 2021, with a maximum certificated take-off mass of over 27 000 kg.

(6) The measures provided for in this Regulation address 13 safety recommendations from safety investigation authorities[(4)], with a view to increasing safety by facilitating the recovery of information for the purposes of European civil aviation safety investigations and improving flight recorder performance and handling as well as the location of aircraft after an accident over water.

(7) The measures provided for in this Regulation are based on the Opinion No 01/2014[(5)] issued by the European Aviation Safety Agency (EASA) in accordance with Articles 17(2)(b) and 19(1) of Regulation (EC) No 216/2008.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 65 of Regulation (EC) No 216/2008,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I (Definitions), Annex IV (Part-CAT), Annex VI (Part-NCC) and Annex VIII (Part-SPO) to Regulation (EU) No 965/2012 are amended in accordance with the Annex to this Regulation.

Article 2

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.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EU) 2015/2338. (See end of Document for details)*

Done at Brussels, 11 December 2015.

For the Commission

The President

Jean-Claude JUNCKER

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) 2015/2338. (See end of Document for details)*

ANNEX

1. The following points are inserted in Annex I to Regulation (EU) No 965/2012:

(8a) "aircraft tracking" means a ground based process that maintains and updates, at standardised intervals, a record of the four dimensional position of individual aircraft in flight;

(8b) "aircraft tracking system" means a system that relies on aircraft tracking in order to identify abnormal flight behaviour and provide alert;.

2. Annex IV to Regulation (EU) No 965/2012 is amended as follows:

(a) In CAT.GEN.MPA.105(a), item (10) is replaced by the following:

(10) ensure that:

(i) flight recorders are not disabled or switched off during flight;

(ii) in the event of an occurrence other than an accident or a serious incident that shall be reported according to ORO.GEN.160(a), flight recorders' recordings are not intentionally erased; and

(iii) in the event of an accident or a serious incident, or if preservation of recordings of flight recorders is directed by the investigating authority:

(A) flight recorders' recordings are not intentionally erased;

(B) flight recorders are deactivated immediately after the flight is completed; and

(C) precautionary measures to preserve the recordings of flight recorders are taken before leaving the flight crew compartment..

(b) CAT.GEN.MPA.195 is amended as follows:

(i) the title is replaced by the following:
CAT.GEN.MPA.195 Handling of flight recorder recordings: preservation, production, protection and use.

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

(a) Following an accident, a serious incident or an occurrence identified by the investigating authority, the operator of an aircraft shall preserve the original recorded data for a period of 60 days or until otherwise directed by the investigating authority..

(iii) point (f) is replaced by the following:

(f) Without prejudice to Regulation (EU) No 996/2010 of the European Parliament and of the Council[(6)]:

(1) Except for ensuring the CVR serviceability, CVR recordings shall not be disclosed or used unless:

(i) a procedure related to the handling of CVR recordings and of their transcript is in place;

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EU) 2015/2338. (See end of Document for details)*

(ii) all crew members and maintenance personnel concerned have given their prior consent; and

(iii) they are used only for maintaining or improving safety.

(1a) When a CVR recording is inspected for ensuring the CVR serviceability, the operator shall ensure the privacy of the CVR recording and the CVR recording shall not be disclosed or used for other purposes than ensuring the CVR serviceability.

(2) FDR recordings or data link recordings shall only be used for purposes other than for the investigation of an accident or an incident which is subject to mandatory reporting, if such records are:

(i) used by the operator for airworthiness or maintenance purposes only; or

(ii) de-identified; or

(iii) disclosed under secure procedures..

(c) The following point CAT.GEN.MPA.205 is inserted:

CAT.GEN.MPA.205 Aircraft tracking system — Aeroplanes

(a) By 16 December 2018 at the latest, the operator shall establish and maintain, as part of the system for exercising operational control over the flights, an aircraft tracking system, which includes the flights eligible to (b) when performed with the following aeroplanes:

(1) aeroplanes with an MCTOM of more than 27 000 kg, with an MOPSC of more than 19, and first issued with an individual CofA before 16 December 2018, which are equipped with a capability to provide a position additional to the secondary surveillance radar transponder;

(2) all aeroplanes with an MCTOM of more than 27 000 kg, with an MOPSC of more than 19, and first issued with an individual CofA on or after 16 December 2018; and

(3) all aeroplanes with an MCTOM of more than 45 500 kg and first issued with an individual CofA on or after 16 December 2018.

(b) Flights shall be tracked by the operator from take-off to landing, except when the planned route and the planned diversion routes are fully included in airspace blocks where:

(1) ATS surveillance service is normally provided which is supported by ATC surveillance systems locating the aircraft at time intervals with adequate duration; and