Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION REGULATION (EU) No 452/2014

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(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 9(4) thereof,

Whereas:

(1) According to Regulation (EC) No 216/2008, third country operators involved in commercial air transport operations of aircraft have to comply with the relevant standards of the International Civil Aviation Organisation (ICAO).

(2) Regulation (EC) No 216/2008 does not apply to third country operators flying over the territory subject to the provisions of the Treaty.

(3) Regulation (EC) No 216/2008 requires that to the extent that there are no relevant ICAO standards, third country operators have to comply with the relevant essential requirements set out in Annexes I, III, IV and, if applicable, Vb to Regulation (EC) No 216/2008, provided that these requirements are not in conflict with the rights of third countries under international conventions.

(4) Regulation (EC) No 216/2008 requires that a European Aviation Safety Agency (hereafter referred to as ‘the Agency’) issues authorisations and continuously monitors authorisations that it has issued. The authorisation is one prerequisite in the process of obtaining an operating permit or equivalent document from the respective EU Member State under existing Air Service Agreements between EU Member States and third countries.

(5) For the purpose of initial authorisations and continuous monitoring, the Agency is to conduct assessments and is to take any measure to prevent the continuation of an infringement.

Changes to legislation: *Commission Regulation (EU) No 452/2014 is up to date with all changes known to be in force on or before 24 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) The process of authorisation of third country operators should be simple, proportionate, cost effective, efficient and take account of the results of the ICAO Universal Safety Oversight Audit Programme, ramp inspections and other recognised information on safety aspects with regard to third country operators.

(7) Assessments of third country operators subject to an operating ban pursuant to Regulation (EC) No 2111/2005 of the European Parliament and of the Council[(2)] may include an audit on-site the operator's premises. For the purpose of lifting a suspension of an authorisation, the Agency may consider conducting an audit of the third country operator.

(8) In order to ensure a smooth transition and a high level of civil aviation safety in the European Union, implementing measures should take into consideration the recommended practices and guidance documents agreed under the auspices of ICAO.

(9) It is necessary to provide sufficient time for the aeronautical industry and the Agency's administration to adapt to the new regulatory framework and to recognise under certain conditions operating permits or equivalent documents issued by a Member State to operate into, within or out of its territory.

(10) The European Aviation Safety Agency prepared draft implementing rules and submitted them as an opinion to the Commission in accordance with Article 19(1) of Regulation (EC) No 216/2008.

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

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation lays down detailed rules for third country operators of aircraft referred to in Article 4(1)(d) of Regulation (EC) No 216/2008 engaged in commercial air transport operations into, within or out of the territory subject to the provisions of the Treaty, including conditions for issuing, maintaining, amending, limiting, suspending or revoking their authorisations, the privileges and responsibilities of the holders of authorisations as well as conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety.

Article 2

Definitions

For the purposes of this Regulation:

(1) ‘alternative means of compliance’ are those that propose an alternative to an existing Acceptable Means of Compliance (AMC) or those that propose new means to establish compliance with Regulation (EC) No 216/2008 and its Implementing Rules for which no associated AMC have been adopted by the Agency;

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(2) ‘commercial air transport (CAT) operation’ means an aircraft operation to transport passengers, cargo or mail for remuneration or other valuable consideration;

(3) ‘flight’ means a departure from a specified aerodrome towards a specified destination aerodrome;

(4) ‘third country operator’ means any operator holding an air operator certificate issued by a third country.

Article 3

Authorisations

Third country operators shall only engage in commercial air transport operations within, into or out of the territory subject to the provisions of the Treaty if they comply with the requirements of Annex 1 and hold an authorisation issued by the Agency in accordance with Annex 2 to this Regulation.

Article 4

Entry into force

1 This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the 20th day following that of its publication in the *Official Journal of the European Union*.

2 By way of derogation from the second subparagraph of paragraph 1, Member States that at the date of entry into force of this Regulation are issuing operating permits or equivalent documents to third country operators in accordance with their national law shall continue to do so. The third country operators shall comply with the scope and privileges defined in the permit or equivalent document granted by the Member State until the Agency has taken a decision in accordance with Annex 2 to this Regulation. Member States shall inform the Agency of the issue of such operating permits or equivalent documents.

After the date the Agency has taken a decision for the relevant third country operator, or after a maximum period of 30 months after entry into force of this Regulation, whichever comes sooner, the Member State shall no longer perform a safety assessment of that third country operator in accordance with their national law when issuing operating permits.

3 Third country operators that at the date of entry into force hold an operating permit or equivalent document, shall submit an application for an authorisation to the Agency no later than 6 months after entry into force of this Regulation. The application shall contain information about any operating permits granted by a Member State.

4 Upon receiving an application, the Agency shall assess the third country operator's compliance with the applicable requirements. The assessment shall be completed no later than 30 months after entry into force of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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ANNEX 1

PART-TCO
THIRD COUNTRY OPERATORS

SECTION I

General requirements

TCO.100Scope

This Annex (hereafter referred to as 'Part-TCO') establishes requirements to be followed by a third country operator engaged in commercial air transport operations into, within or out of the territory subject to the provisions of the Treaty.

TCO.105Means of compliance

(a) Alternative means of compliance to the AMC adopted by the Agency may be used by a third country operator to establish compliance with Regulation (EC) No 216/2008[(3)] and Part-TCO.

(b) When a third country operator subject to an authorisation wishes to use an alternative means of compliance to the AMC adopted by the Agency to establish compliance with Regulation (EC) No 216/2008 and Part-TCO, it shall, prior to implementing it, notify it to the Agency with a full description of the alternative means of compliance. The description shall include any revisions to manuals or procedures that may be relevant, as well as an assessment demonstrating that the Implementing Rules are met.

The third country operator may implement these alternative means of compliance subject to prior approval by the Agency and upon receipt of the notification as prescribed in ART.105 in Annex 2 (hereafter referred to as 'Part-ART').

TCO.110Mitigating measures

(a) When the State of operator or the State of registry have notified differences to ICAO standards that have been identified by the Agency in accordance with ART.200(d) in Part-ART, the third country operator may propose mitigating measures to establish compliance with Part-TCO.

(b) The third country operator shall demonstrate to the Agency that these measures ensure an equivalent level of safety to that achieved by the standard to which differences have been notified.

TCO.115Access

(a) The third country operator shall ensure that any person authorised by the Agency or the Member State in whose territory one of its aircraft has landed will be permitted to board such aircraft, at any time, with or without prior notice to:

(1) inspect the documents and manuals to be carried on board and to perform inspections to ensure compliance with Part-TCO; or

(2) carry out a ramp inspection as referred to in Annex II to Commission Regulation (EU) No 965/2012[(4)].