Changes to legislation: *Commission Implementing Regulation (EU) No 646/2012 is up to date with all changes known to be in force on or before 28 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*

Commission Implementing Regulation (EU) No 646/2012 of 16 July 2012 laying down detailed rules on fines and periodic penalty payments pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) No 646/2012

of 16 July 2012

laying down detailed rules on fines and periodic penalty payments pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council

(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 25(3) thereof,

Whereas:

(1) Regulation (EC) No 216/2008 aims to establish and maintain a high uniform level of civil aviation safety in Europe. That Regulation provides for the means of achieving that objective and other objectives in the field of civil aviation safety.

(2) Pursuant to Regulation (EC) No 216/2008 the European Aviation Safety Agency ('the Agency') is responsible for the certification of certain products, persons and undertakings. In those areas under its responsibility, the Agency has to oversee that those products, persons and undertakings comply with the applicable requirements including the provisions of Regulation (EC) No 216/2008 and its implementing rules.

(3) In cases where identified potential shortcomings are not adequately resolved during the existing oversight process, Article 25 of Regulation (EC) No 216/2008 empowers the Commission, at the request of the Agency, to impose fines or periodic penalty payments on holders of certificates issued by the Agency for the intentional or negligent breach of any of the obligations laid down in Regulation (EC) No 216/2008 or its implementing rules.

(4) Through the introduction of fines and periodic penalty payments the Commission should have a supplementary tool, allowing it to give a more nuanced, flexible and graduated response to a breach of the rules, compared to the withdrawal of a certificate which the Agency has issued.

(5) It is necessary to lay down rules concerning procedures, inquiries, associated measures and reporting by the Agency as well as rules of procedure for decision-making, including provisions on the quantification and collection of fines and periodic penalty

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payments. It is also necessary to lay down detailed criteria for establishing the amount of the fines or periodic penalty payments.

(6) These rules and procedures should be guided by the need to ensure the highest possible safety and environmental protection standards, by the need to encourage an effective conduct of the inquiry and of the decision-making phases as well as by the need to guarantee the fairness and transparency of the procedures and the imposition of fines and periodic penalty payments.

(7) The provisions of this Regulation can be effectively enforced only in a framework of close cooperation between the Member States, the Commission and the Agency. For that purpose it is necessary to set up arrangements for consultation and cooperation between them in order to ensure the effective conduct of the inquiry and the decision-making process regarding alleged breaches.

(8) It is appropriate that, for the purposes of the initiation and conduct of the non-compliance procedure and the quantification of fines and periodic penalty payments, the Commission and the Agency should take into account other procedures against the same certificate holder which have been initiated or concluded by a Member State or by third countries.

(9) The Commission and the Agency should also take into account any pending procedure initiated, or decision taken, by the Agency regarding the amendment, limitation, suspension or revocation of the relevant certificate in accordance with Regulation (EC) No 216/2008.

(10) Without prejudice to Union law preventing the use of safety information for the purposes of blame or liability, in particular Article 16(2) of Regulation (EC) No 216/2008, Article 19(2) of Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC[(2)] and Article 7 of Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation[(3)], any oversight power conferred on the Commission or the Agency by Union law as regards certificates issued in accordance with Regulation (EC) No 216/2008 may be used in the course of the investigation or during the decision-making stages of such a non-compliance procedure. The Commission's decision imposing fines or periodic penalty payments should be based on the inquiry by the Agency, the observations of the certificate holder subject to the non-compliance procedure and, where appropriate, other information submitted to the Agency and the Commission.

(11) It is appropriate to give certificate holders the opportunity, within a specified time-limit, to voluntarily comply with Regulation (EC) No 216/2008 and its implementing rules, in which case no fines or periodic penalty payments should be imposed by the Commission. This possibility to demonstrate voluntary compliance should nonetheless be limited in time.

(12) Decisions imposing fines or periodic penalty payments should be based exclusively on grounds on which the certificate holder concerned has been able to comment.

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(13) The fines or periodic penalty payments imposed should be effective, proportionate and dissuasive, having regard to the circumstances of the specific case.

(14) It appears appropriate to provide for a specific procedure in cases where the Commission intends to impose periodic penalty payments for failure by a certificate holder subject to a non-compliance procedure to cooperate with the Commission or the Agency with regard to measures of inquiry or other requests for information.

(15) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular as regards the rights of defence and the principle of confidentiality in accordance with the general principles of law and the case-law of the Court of Justice of the European Union.

(16) For the purposes of ensuring legal certainty in the conduct of the non-compliance procedure, it is necessary to lay down detailed rules for the computation of time-limits and limitation periods for the imposition and enforcement of fines and periodic penalty payments.

(17) Decisions imposing fines and periodic penalty payments should be enforceable in accordance with Article 299 of the Treaty on the Functioning of the European Union and should be subject to review by the Court of Justice of the European Union.

(18) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 65(1) of Regulation (EC) No 216/2008,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject-matter and scope

1 This Regulation lays down detailed rules for the implementation of Regulation (EC) No 216/2008 concerning the criteria for establishing the amount of fines or periodic penalty payments, procedures for inquiries, associated measures and reporting, as well as rules of procedure for decision-making, including provisions on rights of defence, access to the file, legal representation, confidentiality and temporal provisions and the quantification and collection of fines and periodic penalty payments.

2 This Regulation applies to the imposition:

a of fines on persons and undertakings to which the European Aviation Safety Agency (‘the Agency’) has issued a certificate (‘certificate holder’) where, intentionally or negligently, the provisions of Regulation (EC) No 216/2008 or its implementing rules have been breached and where interests of the Union are involved;

b of periodic penalty payments on certificate holders referred to in point (a) in order to compel them to comply with Regulation (EC) No 216/2008 or its implementing rules.

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CHAPTER II

NON-COMPLIANCE PROCEDURE

SECTION 1

Inquiry

Article 2

The non-compliance procedure

1 The non-compliance procedure laid down in this Chapter covers all the administrative stages of investigation of possible breaches of Regulation (EC) No 216/2008 or its implementing rules.

2 The Agency may initiate the non-compliance procedure on its own initiative or following a request from the Commission or a Member State.

3 Where the initiation of the non-compliance procedure follows a request from the Commission or a Member State, the Commission or the Member State shall be informed by the Agency of the course given to their request.

Article 3

Requests for information

1 For the purposes of initiating and conducting a non-compliance procedure the Agency may use any information obtained in the exercise of any oversight power conferred on it by Union law as regards certificates issued in accordance with Regulation (EC) No 216/2008. This empowerment is without prejudice to Union law preventing the use of information for the purposes of attributing blame or liability.

2 Prior to initiating a non-compliance procedure, the Agency may request from the certificate holder concerned information relating to the alleged breach.

The Agency shall state the purpose of the request and the fact that it is made under this Regulation, and set a time-limit for the submission of the information.

Article 4

Notification

1 The Agency shall send written notification of the initiation of a non-compliance procedure to the certificate holder, to the Commission and to the national aviation authorities of the Member State(s) or the third country or countries where the certificate holder has its principal place of business and where the breach has taken place as well as, where appropriate, to the aeronautical authorities of third countries and international organisations competent in matters covered by this Regulation.

2 The notification shall:

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a set out the allegations against the certificate holder, specifying the provisions of Regulation (EC) No 216/2008 or its implementing rules allegedly breached, and the evidence on which those allegations are founded; and

b inform the certificate holder that a fine or a periodic penalty payment may be imposed.

Article 5

Inquiries

1 Once the inquiry has been initiated, the Agency shall clarify the facts and allegations.

2 The Agency may request the certificate holder to provide written or oral explanations, or particulars or documents.

The request shall be addressed in writing to the certificate holder. The Agency shall state the legal basis and the purpose of the request, set a time-limit by which the information is to be provided, and inform the certificate holder about the periodic penalty payments provided for in Article 16(1)(a) and (b) for failing to comply with the request or for supplying incorrect or misleading information.

3 The Agency may request national aviation authorities to cooperate in the investigation and, in particular, to provide any information relating to the alleged breach.

The request shall state the legal basis and the purpose of the request and shall set a time-limit for the submission of the reply or the conduct of the measure of inquiry.

4 The Agency may ask any natural or legal persons or aeronautical authorities of third countries to provide information relating to the alleged breach.

The request shall state the legal basis and the purpose of the request, and shall set a time-limit by which the information is to be provided.

Article 6

Voluntary compliance

1 At the notification of the initiation of the non-compliance procedure or thereafter the Agency shall set a time-limit within which the certificate holder may indicate in writing that it has voluntarily complied, or, where appropriate, that it intends to comply, with the breached provisions. In case of voluntary compliance by the certificate holder within the time-limit set by the Agency, the Agency shall decide to close the initiated non-compliance procedure.

The Agency shall not be obliged to take into account replies received after the expiry of that time-limit.

2 The time-limit provided for in paragraph 1 shall in no case expire later than the date on which the Agency notifies the statement of objections provided for in Article 7.