Commission Implementing Regulation (EU) 2020/357 of 4 March 2020 amending Regulation (EU) 2018/395 as regards balloon pilot licences (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2020/357

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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 (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91[(1)], and in particular Articles 23, 27 and 31 thereof,

Whereas:

(1) The Commission is to adopt the necessary implementing rules for establishing the requirements for balloon pilot licences ('BPLs') in accordance with Regulation (EU) 2018/1139, where such aircraft meet the conditions specified in points (b)(i) and (ii) of Article 2(1) of that Regulation.

(2) In light of the specific nature of flight crew licensing for balloons, dedicated licensing requirements that are laid down in stand-alone regulations are necessary. Those requirements should be based on the general rules for flight crew licensing that are laid down in Commission Regulation (EU) No 1178/2011[(2)]. However, they should be restructured and simplified in order to ensure that they are proportionate and founded on a risk-based approach, whilst ensuring that balloon pilots are and continue to be competent to carry out their activities and to discharge their responsibilities.

(3) Pursuant to Article 12(2a)(3) of Regulation (EU) No 1178/2011, Member States may continue to apply national licensing rules that provide access to basic pilot privileges until 8 April 2020. Some Member States have reported to the Commission and the European Union Aviation Safety Agency ('EASA') that, in that context, continuation of those national licensing rules, whereby student pilots exercise limited privileges without supervision and obtain basic privileges on a step-by-step basis supports the promotion of aerial sports and recreational activities due to easy and more affordable access to flying. Promoting and enabling such easier access to general aviation is in line with the objectives of EASA's General Aviation Road Map that aims to create a more proportional, flexible and proactive regulatory system[(3)]. For those reasons, Member

States should be given the discretion to continue with those national licensing rules in accordance with the principles introduced in Regulation (EU) [(4)] for the purpose of issuing balloon pilot licences ('BPL'). However, Member States should inform the Commission and the EASA whenever they make use of such authorisations. The Member States should also monitor the use of such authorisations in order to maintain an acceptable level of aviation safety.

(4) In order to ensure a smooth transition, any certificates, authorisations and approvals issued to balloon pilots in accordance with Regulation (EU) No 1178/2011 prior to the date of application of this Regulation should continue to be valid. National balloon pilot licences issued prior to the date of application of this Regulation should be converted into licences issued in accordance with this Regulation, through conversion reports established by the competent authorities of Member States in consultation with the EASA.

(5) Balloon pilot trainings that commenced in accordance with Annex I (Part-FCL) to Regulation (EU) No 1178/2011 prior to the date of application of this Regulation, should be fully credited because they provide equal or even broader scope of training requirements than those introduced by this Regulation. Training that commenced prior to the date of application of this Regulation in accordance with Annex 1 to the Chicago Convention should be credited on the basis of credit reports established by the Member States.

(6) Existing training organisations should be given the appropriate time to adapt their training programmes, where necessary, in the context of the simplified training requirements.

(7) Provisions of Commission Regulation (EU) 2018/395[(5)] should be updated also as regards operations with balloons, to take account of lessons learned since the adoption of that regulation and to clarify certain aspects, such as the submission of declarations for commercial activities.

(8) The measures provided for in this Regulation are based on Opinion No 01/2019[(6)] of the EASA in accordance with points (b) and (c) of Article 75(2) and with Article 76(1) of Regulation (EU) 2018/1139.

(9) The measures provided for in this Regulation are in accordance with the opinion of the committee established by Article 127 of Regulation (EC) No 2018/1139,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2018/395 is amended as follows:

(1) the title is replaced by the following:

> Commission Regulation (EU) 2018/395 of 13 March 2018 laying down detailed rules for the operation of balloons as well as for the flight crew licensing for balloons pursuant to Regulation (EU) 2018/1139 of the European Parliament and of the Council;

(2) in Article 1, paragraph 1 is replaced by the following:

1. This Regulation lays down detailed rules for air operations with balloons as well as for issuing and maintaining pilot licences and associated ratings, privileges and certificates for balloons, where such aircraft meet the conditions laid down in points (b)(i) and (ii) of Article (2)(1) of Regulation (EU) 2018/1139 of the European Parliament and of the Council[7].;

(3) Article 2 is amended as follows:

(a) the introductory sentence is replaced by the following:

For the purpose of this Regulation, the following definitions and, unless terms are defined otherwise in this Article, the definitions of Article 2 of Commission Regulation (EU) No 1178/2011[8] apply:;

(b) the following point (7a) is inserted:

(7a) "commercial operation" means any operation of a balloon, in return for remuneration or other valuable consideration, which is available for the public or, when not made available to the public, is performed under a contract between an operator and a customer, where the latter has no control over the operator;;

(c) point (10) is replaced by the following:

(10) "introductory flight" means any air operation, against remuneration or other valuable consideration, that consists of an air tour of short duration for the purpose of attracting new trainees or new members, performed either by a training organisation referred to in Article 10a of Regulation (EU) No 1178/2011 or by an organisation established with the aim of promoting aerial sport or leisure aviation;;

(d) point (12) is replaced by the following:

(12) "dry lease agreement" means an agreement between undertakings pursuant to which the balloon is operated under the responsibility of the lessee;;

(e) the following points (13) to (15) are added:

(13) "national licence" means a pilot licence issued by a Member State in accordance with national legislation before the date of application of Annex III (Part-BFCL) to this Regulation or of Annex I (Part-FCL) to Regulation (EU) No 1178/2011;

(14) "Part-BFCL licence" means a flight crew licence which complies with the requirements of Annex III (Part-BFCL) to this Regulation;

(15) "conversion report" means a report on the basis of which a licence may be converted into a Part-BFCL licence.;

(4) paragraph 2 of Article 3 is amended as follows:

(a) the first subparagraph is replaced by the following:

2. Operators of balloons shall engage in commercial operations only after having declared to the competent authority their capacity and means to discharge the responsibilities associated with the operation of the balloon.;

(b) the second subparagraph is deleted;

(c) the third subparagraph is amended as follows:

(i) the introductory sentence is replaced by the following:

The first subparagraph shall not apply to the following operations with balloons:;

(ii) points (c) and (d) are replaced by the following:

(c) introductory flights with four individuals or less, including the pilot, and flights for the purposes of parachute dropping, performed either by a training organisation referred to in Article 10a of Regulation (EU) No 1178/2011 that has its principal place of business in a Member State, or by an organisation created for the purposes of promoting aerial sport or leisure aviation, provided that the organisation operates the balloon on the basis of either ownership or a dry lease agreement and provided that the flight does not generate profits distributed outside the organisation and that such flights represent only a marginal activity of the organisation;

(d) training flights performed by a training organisation referred to in Article 10a of Regulation (EU) No 1178/2011 that has its principal place of business in a Member State.;

(5) after Article 3, the following Articles 3a to 3d are inserted:

Article 3a

Pilot licences and medical certification

1 Without prejudice to Commission Delegated Regulation (EU)[9], pilots of aircraft referred to in Article 1(1) of this Regulation shall comply with the technical requirements and administrative procedures laid down in Annex III (Part-BFCL) to this Regulation and in Annex IV (Part-MED) to Regulation (EU) No 1178/2011.

2 As an exception to the privileges of the holders of licences as defined in Annex III (Part-BFCL) to this Regulation, holders of such licences may carry out flights referred to in Article 3(2)(a) to (d) without complying with point BFCL.215 of Annex III (Part-BFCL) to this Regulation.

3 A Member State may authorise student pilots who follow a balloon pilot licence ("BPL") training course to exercise limited privileges without supervision before they meet all the requirements that are necessary for the issue of a BPL in accordance with Annex III (Part-BFCL), subject to all of the following conditions:

a the scope of the privileges granted shall be based on a safety risk assessment carried out by the Member State, taking into account the extent of training necessary for the intended level of pilot competence to be achieved;

b the privileges shall be limited to the following:

(i) the whole or part of the national territory of the authorising Member State;

(ii) balloons that are registered in the authorising Member State;

c the holder of such an authorisation who applies for the issue of a BPL shall receive credits for training conducted under the authorisation on the basis of a recommendation from an approved training organisation ("ATO") or a declared training organisation ("DTO");

d the Member State shall submit reports and safety risk assessments to the Commission and the European Union Aviation Safety Agency every 3 years;

e the Member State shall monitor the use of authorisations issued under this paragraph to ensure an acceptable level of aviation safety and take appropriate action in case of identifying an increased safety risk or any safety concerns.

Article 3b

Existing pilot licences and national medical certificates

1 Part-FCL licences for balloons and associated privileges, ratings and certificates issued by a Member State before the date of application of this Regulation shall be deemed to have been issued in accordance with this Regulation. Member States shall replace those licences with licences that comply with the format laid down in Annex VI (Part-ARA) to Regulation (EU) No 1178/2011 when they reissue licences for administrative reasons or upon a request of licence holders.

2 When a Member State reissues licences and associated privileges, ratings and certificates in accordance with paragraph 1 of this Article, the Member State shall, as applicable:

a transfer all privileges already endorsed in Part-FCL licences to the new licence format;

b convert the privileges for tethered flight or commercial operation associated with a Part-FCL licence into a tethered flight rating or a commercial operation rating in accordance with the provisions of Point BFCL.200 and BFCL.215 of Annex III (Part-BFCL) to this Regulation;

c endorse the expiry date of a flight instructor certificate associated with a Part-FCL licence into the pilot's logbook or issue an equivalent document. After that date, those pilots shall exercise instructor privileges only if they comply with point BFCL.360 of Annex III (Part-BFCL) to this Regulation.

3 Holders of national licences for balloons issued by a Member State before the date of application of Annex III (Part-BFCL) to this Regulation shall be allowed to continue to exercise the privileges of their licences until 8 April 2021. By that date, Member States shall convert those licences into Part-BFCL licences and associated ratings, privileges and certificates in accordance with the elements laid down in a conversion report that complies with the requirements of Article 4(4) and (5) of Regulation (EU) No 1178/2011.