Commission Regulation (EU) No 83/2014 of 29 January 2014 amending Regulation (EU) No 965/2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council

COMMISSION REGULATION (EU) No 83/2014

of 29 January 2014

amending Regulation (EU) No 965/2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council

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) Commission Regulation (EU) No 965/2012[(2)] lays down technical requirements and administrative procedures related to air operations which replaced Annex III to Council Regulation (EEC) No 3922/91[(3)], excluding Subpart Q concerning flight and duty time limitations and rest requirements.

(2) In accordance with Article 22(2) of Regulation (EC) No 216/2008, implementing rules related to flight and duty times and rest requirements should initially include all substantive provisions of Subpart Q of Annex III to Regulation (EEC) No 3922/91, taking into account the latest scientific and technical evidence.

(3) This Regulation constitutes an implementing measure referred to in Articles 8(5) and 22(2) of Regulation (EC) No 216/2008, therefore Subpart Q of Annex III to Regulation (EEC) No 3922/91 should be deleted in accordance with Article 69(3) of Regulation (EC) No 216/2008. However, Subpart Q of Annex III to Regulation (EEC) No 3922/91 should continue to apply until the transitional periods foreseen in this Regulation have expired and for the types of operations for which no implementing measures have been established.

(4) This Regulation is without prejudice to the limits and minimum standards already established by Council Directive 2000/79/EC[(4)], in particular the provisions on working time and days free of duty, which should always be respected for mobile staff in civil aviation. The provisions of this Regulation and other provisions approved pursuant to this Regulation are not intended to justify any reductions in existing levels of protections for that mobile staff. The provisions of this Regulation do not preclude and should be

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 83/2014. (See end of Document for details)*

without prejudice to more protective national social legislation and collective labour agreements concerning working conditions and health and safety at work.

(5) Member States may derogate or deviate from this Regulation or the related certification specifications respectively, by applying provisions of a level of safety which is at least equivalent to the provisions of this Regulation, in order to better address particular national considerations or operational practices. Any derogations or deviations from this Regulation should be notified and treated in accordance with Articles 14 and 22 of Regulation (EC) No 216/2008, which ensure transparent and non-discriminatory decisions based on objective criteria.

(6) The European Aviation Safety Agency (hereinafter 'the Agency') prepared draft implementing rules and submitted them as an opinion[(5)] to the Commission in accordance with Article 19(1) of Regulation (EC) No 216/2008.

(7) Regulation (EU) No 965/2012 should therefore be amended to include flight and duty time limitations and rest requirements.

(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

Regulation (EU) No 965/2012 is amended as follows:

(1) in Article 2, the following point (6) is added:

(6) "air taxi operation" means, for the purpose of flight time and duty time limitations, a non-scheduled on demand commercial air transport operation with an aeroplane with a maximum operational passenger seating configuration ("MOPSC") of 19 or less.;

(2) Article 8 is replaced by the following:

Article 8

Flight time limitations

1 CAT operations with aeroplanes shall be subject to Subpart FTL of Annex III.

2 By way of derogation from paragraph 1, air taxi, emergency medical service and single pilot CAT operations by aeroplanes shall be subject to Article 8(4) of Regulation (EEC) No 3922/91 and Subpart Q of Annex III to Regulation (EEC) No 3922/91 and to related national exemptions based on safety risk assessments carried out by the competent authorities.

3 CAT operations with helicopters shall comply with national requirements.;

(3) the following Article 9a is inserted:

Article 9a

The Agency shall conduct a continuous review of the effectiveness of the provisions concerning flight and duty time limitations and rest requirements contained in Annexes II and III. No later than 18 February 2019 the Agency shall produce a first report on the results of this review.

That review shall involve scientific expertise and shall be based on operational data gathered, with the assistance of Member States, on a long-term basis after the date of application of this Regulation.

The review referred to in paragraph 1 shall assess the impact on aircrew alertness of at least the following:

— duties of more than 13 hours at the most favourable time of the day,
— duties of more than 10 hours at less favourable time of the day,
— duties of more than 11 hours for crew members in an unknown state of acclimatisation,
— duties including a high level of sectors (more than 6),
— on-call duties such as standby or reserve followed by flight duties, and
— disruptive schedules.;

(4) Annex II is amended in accordance with Annex I to this Regulation;

(5) Annex III is amended in accordance with Annex II 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*.

It shall apply from 18 February 2016.

By way of derogation from the second paragraph, Member States may choose not to apply the provisions of point ORO.FTL.205(e) of Annex III to Regulation (EU) No 965/2012 and continue to apply the existing national provisions concerning in-flight rest until 17 February 2017.

When a Member State applies the provisions of the third paragraph, it shall notify the Commission and the Agency and it shall describe the reasons for the derogation, its duration as well as the programme for implementation containing the envisaged actions and the related timing.

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

Done at Brussels, 29 January 2014.

For the Commission

The President

José Manuel BARROSO

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 83/2014. (See end of Document for details)*

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EU) No 83/2014. (See end of Document for details)*

ANNEX I

In Annex II to Regulation (EU) No 965/2012, the following points ARO.OPS.230 and ARO.OPS.235 are added:

ARO.OPS.230 Determination of disruptive schedules

For the purpose of flight time limitations, the competent authority shall determine, in accordance with the definitions of "early type" and "late type" of disruptive schedules in point ORO.FTL.105 of Annex III, which of those two types of disruptive schedules shall apply to all CAT operators under its oversight.

ARO.OPS.235 Approval of individual flight time specification schemes

(a) The competent authority shall approve flight time specification schemes proposed by CAT operators if the operator demonstrates compliance with Regulation (EC) No 216/2008 and Subpart FTL of Annex III to this Regulation.

(b) Whenever a flight time specification scheme proposed by an operator deviates from the applicable certification specifications issued by the Agency, the competent authority shall apply the procedure described in Article 22(2) of Regulation (EC) No 216/2008.

(c) Whenever a flight time specification scheme proposed by an operator derogates from applicable implementing rules, the competent authority shall apply the procedure described in Article 14(6) of Regulation (EC) No 216/2008.

(d) Approved deviations or derogations shall be subject, after being applied, to an assessment to determine whether such deviations or derogations should be confirmed or amended. The competent authority and the Agency shall conduct an independent assessment based on information provided by the operator. The assessment shall be proportionate, transparent and based on scientific principles and knowledge.

ANNEX II

In Annex III to Regulation (EU) No 965/2012, the following Subpart FTL is added:

SUBPART FTL *FLIGHT AND DUTY TIME LIMITATIONS AND REST REQUIREMENTS*

SECTION 1

General

ORO.FTL.100 Scope

This Subpart establishes the requirements to be met by an operator and its crew members with regard to flight and duty time limitations and rest requirements for crew members.

ORO.FTL.105 Definitions

For the purpose of this Subpart, the following definitions shall apply:

(1) "acclimatised" means a state in which a crew member's circadian biological clock is synchronised to the time zone where the crew member is. A crew member is considered to be acclimatised to a 2-hour wide time zone surrounding the local time at the point of departure. When the local time at the place where a duty commences differs by more than 2 hours from the local time at the place where the next duty