

Recommendation N° IFTSS/2015/80/NO on the notification by Norway about its intention to grant an approval derogating from certain provisions of Commission Regulation 965/2012 on the basis of Article 14(6) of Regulation (EC) No 216/2008.

A) BACKGROUND

With the attached letter of 09 December 2015, Norway notified the EFTA Surveillance Authority and EASA their intention to derogate from ORO.FTL.210(a)(1) of Annex-III (Part-ORO) to Regulation 965¹ (the AIR OPS-Regulation), on the basis of article 14(6) of Regulation (EC) 216/2008² (the Basic Regulation).

In the attached notification letter, Norway explains its intention to approve an individual flight specification scheme for Widerøe (hereafter the operator), derogating from the implementing rule, requiring

that the total duty periods to which a crew member may be assigned shall not exceed 60 duty hours in any 7 consecutive days.

The CAA-NO quotes the operator's proposed measures as follows:

- (1) a limit of 70 duty hours which may be distributed in any seven consecutive days within any 14 consecutive day period;
- (2) a limit of 90 duty hours in any 14 consecutive days, instead of the limit of 110 duty hours in 14 consecutive days;
- (3) a maximum of 180 duty hours in any 28 consecutive days.

B) LEGAL FRAMEWORK

Article 14 (6) and (7) of the Basic Regulation state the following:

"6. Where an equivalent level of protection to that attained by the application of the rules implementing this Regulation can be achieved by other means, Member States may, without discrimination on grounds of nationality, grant an approval derogating from those implementing rules. In such cases, the Member State concerned shall notify the Agency and the Commission that it intends to grant such an approval, and shall give

¹ Commission Regulation (EU) No 965/2012 of 5 October 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

² Regulation (EC) No 216/2008 of 20/02/2008 of the European Parliament and of the Council 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 1592/2003 and Directive 2004/36/EC.

reasons demonstrating the need to derogate from the rule concerned, as well as the conditions laid down to ensure that an equivalent level of protection is achieved.

7. Within two months of being notified in accordance with paragraph 6, the Agency shall issue a recommendation in accordance with Article 18(b) on whether an approval proposed in accordance with paragraph 6 fulfils the conditions laid down in that paragraph. The measures designed to amend non-essential elements of this Regulation, by supplementing it, relating to whether a proposed approval may be granted shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 65(6) within one month of receiving the Agency's recommendation. In such a case, the Commission shall notify its decision to all Member States, which shall also be entitled to apply that measure. The provisions of Article 15 shall apply to the measure in question."

The derogation refers to ORO.FTL.210 (a) of Annex-III (Part-ORO), which reads:

"(a) The total duty periods to which a crew member may be assigned shall not exceed:

(1) 60 duty hours in any 7 consecutive days;

(2) 110 duty hours in any 14 consecutive days; and

(3) 190 duty hours in any 28 consecutive days, spread as evenly as practicable throughout that period."

C) EVALUATION

The Agency reviewed the proposal with the help of a panel of experts³. The experts were provided in advance with the documents submitted by the CAA-NO. The experts were invited to comment on the operator's proposal, the CAA-NL's assessment of the operator's proposal and on the Agency's comments. Documents and comments were discussed during a WebEx meeting on 21 January 2016.

The following remarks result from the examination of the documents submitted by CAA-NO to support the proposed deviations:

- The panel is satisfied with the reasons demonstrating the need to derogate. The proposed rostering system (7 days on/7 days off for pilots and 7 days on/ 6 days off for cabin crew) addresses appropriately the operational need to operate regional flights out of remote home bases whilst respecting the preference of the majority of crew members to choose their residence in a more central part of Norway. According to the documents provided by CAA-NO, approximately 80% of the operator's crew work force has chosen voluntarily the 7/7 (pilots) or 7/6 (cabin crew) scheduling system and the system is supported by the operator's collective labour agreements.
- The panel noted an uncommonly short proposed 10-minute post flight duty time. Reporting time and post flight duty time have an impact on the time available time for rest. Therefore, the CAA-NO should verify the operator's analysis of the task list of post flight tasks.
- The panel highlighted that the possibility to accept overtime during the 7 (6 for cabin crew) off-duty days could have a negative impact on the effectiveness of the otherwise appropriate mitigating measure to offer 7 (6 for cabin crew) consecutive off-duty days. Although the operator provides an increased extended recovery rest period of 40 hours including 2 local nights before and after each 7-day on-duty period, the examined documents do not provide evidence that the increased recovery rest period is equally effective when crew members have accepted overtime. The panel welcomed including a prescriptive limit for overtime use in a defined period of time. There was, however, no evidence to support the effectiveness of the proposed limit (25 days of overtime per year).

³ Panel composition IFTSS 2015/80/NO shared with Advisory Bodies on Circabc

D) CONCLUSION

Having reviewed the derogation notified by Norway, the Agency sees no reason to consider that the proposed measures do not lead to an equivalent level of protection to that attained by the application of the rules implementing the Basic Regulation, provided the following conditions are fulfilled in addition to the mitigating measures listed in Norway's notification letter dated 09 December 2015:

- The effectiveness of the proposed mitigating measures is continuously monitored by an approved Fatigue Risk Management (FRM) in accordance with ORO.FTL.120. Such approval shall be obtained by the operator before 31 December 2016.
- The operator achieves the milestones of its FRM implementation plan as presented by CAA-NO with this derogation notification.
- The operator presents to CAA-NO a data based verification of the customised elements of its flight time specification scheme (e.g. reporting time and post flight duty), in particular when these have an impact on the time available for rest.
- A scientific study conducted within the first 24 months after the temporary approval, analysing data on cabin and flight crew fatigue, including at least two sources of objective data (e.g. psychomotor vigilance test (PVT), actigraphy) to verify the effectiveness of the proposed mitigating measures examines at least:
 - the effect on cumulative fatigue of high workload originating from a high number of sectors⁴; and
 - the impact of the use of overtime on cumulative fatigue with a view of providing evidence to define an effective prescriptive limit for the use of overtime.
- The operator includes flight data monitoring (FDM) event trend monitoring as a trigger for further investigation in its reactive FRM processes.
- The operator demonstrates that its fatigue reporting system is evolving towards a more proactive stage within the first 24 months after the temporary approval. Milestones on the evolution of the operator's fatigue reporting system are included in the comprehensive oversight programme for the operator.

Signed on *Cologne*

February 25.2016

Ricardo Génova Galván

⁴ "Sector" means the segment of a flight duty period (FDP) between an aircraft first moving for the purpose of taking off until it comes to rest after landing on the designated parking position.

