

Recommendation N° IFTSS/2016/T/005/FR on the notification by The Republic of France about its intention to grant an approval for a temporary flight time specification scheme deviating from certain provisions of CS FTL-1 on the basis of Article 22(2) of Regulation (EC) No 216/2008.

A) BACKGROUND

- (1) By letter dated 22 April 2016, the French Permanent Representation to the EU in Brussels notified the Commission and EASA of an exemption granted by DGAC France on the basis of Article 14(4) of Regulation (EC) No 216/2008¹. The exemption concerns CS FTL.1.205 (c) establishing the minimum standards for in-flight rest facilities.
- (2) In the notification letter France explains that it has authorised the French AOC holder “XL Airways France” with AOC FR.AOC.0017 (hereafter the operator) to derogate from the provisions of ORO.FTL.205 (e) by applying Article 7 of the French ‘*arrêté du 25 Mars 2008*’ on flight time limitations instead of CS FTL.1.205 (c). The operator’s long-haul network does not allow operations without an extension of the maximum flight duty period (FDP) due to in-flight rest. Two A330-200 operated on that route network do not have in-flight rest facilities that fulfil the minimum standard as described in CS FTL.1.205 (c).
- (3) The notification letter states that:
 - The French competent authority (DGAC) has evaluated the exemption requested by the operator and has found that it is justified for two reasons:
 - The aircraft interior of the aircrafts operated by the operator on the long-haul network needs to be modified.
 - It is an urgent and unexpected operational requirement
 - The implementation period of Regulation (EU) No 83/2014 (2 years) did not allow implementing this modification because of the time required to identify, develop and approve the modification.
 - DGAC has judged that this exemption does not affect the level of safety required by Regulation (EU) No 83/2014, the implementing provisions [the French in-flight rest provisions] being more restrictive than those authorised by Article 2 of that Regulation².
 - The operator has submitted a compliance plan to DGAC entailing two actions:
 - Installation of 45° reclining seats, completed before 18/02/2016;

¹ 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.

² Article 2 of Regulation (EU) No 83/2014 reads as follows: 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.

- Installation of footrests on all of these seats. This modification requires prior approval by DGAC and shall have been completed before 30/06/2016.
- (4) France has opted **not** to postpone the applicability of the provisions of ORO.FTL.205 (e).
 - (5) The Agency has informed DGAC by e-mail dated 19 May 2016 that their request entailed a deviation from CS FTL.1.205 (c) and that it should be processed following the provisions of Article 22(2) of Regulation (EC) No 216/2008.
 - (6) Based on Article 22(2) of Regulation (EC) No 216/2008, DGAC was invited by e-mail dated 01 August 2016 to submit a full description of the intended deviation and an assessment of the measures implemented by the operator in question, aimed at demonstrating that the requirements of Regulation (EC) No 216/2008 and of Regulation (EU) No 83/2014 are met.
 - (7) DGAC was invited by e-mail dated 15 September 2016 to give further information during a WebEx meeting on 22 September 2016.

B) LEGAL FRAMEWORK

- (1) Article 14(4) of the Basic Regulation states the following:

“Member States may grant exemptions from the substantive requirements laid down in this Regulation and its implementing rules in the event of unforeseen urgent operational circumstances or operational needs of a limited duration, provided the level of safety is not adversely affected. The Agency, the Commission and the other Member States shall be notified of any such exemptions as soon as they become repetitive or where they are granted for periods of more than two months.”

- (2) Article 14(5) of the Basic Regulation states the following:

“The Agency shall assess whether the exemptions notified by a Member State are less restrictive than the applicable Community provisions and, within one month of being notified thereof, shall issue a recommendation in accordance with Article 18(b) on whether these exemptions comply with the general safety objectives of this Regulation or any other rule of Community law.

If an exemption does not comply with the general safety objectives of this Regulation or any other rule of Community law, the Commission shall take a decision not to permit the exemption in accordance with the procedure referred to in Article 65(7). In such a case, the Member State concerned shall revoke the exemption.”

- (3) Article 22(2) of the Basic Regulation states the following:

“With regard to flight time limitation:

- (a) *the Agency shall issue the applicable certification specifications to ensure compliance with essential requirements and, as appropriate, the related implementing rules. Initially, the implementing rules shall 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;*
- (b) *a Member State may approve individual flight time specification schemes which deviate from the certification specifications referred to in point (a). In this case the Member State shall*



without delay notify the Agency, the Commission and the other Member States that it intends to grant approval for such an individual scheme;

- (c) upon notification the Agency shall, within one month, assess the individual scheme on the basis of a scientific and medical evaluation. Thereafter the Member State concerned may grant the approval as notified, unless the Agency has discussed the scheme with that Member State and proposed changes thereto. Should the Member State agree with these changes, it may grant the approval accordingly;*
- (d) in the event of unforeseen urgent operational circumstances or operational needs of limited duration and non-repetitive nature, derogations to certification specifications may apply provisionally until the Agency expresses its opinion;*
- (e) should a Member State disagree with the Agency's conclusions concerning an individual scheme, it shall refer the issue to the Commission to decide whether that scheme complies with the safety objectives of this Regulation, in accordance with the procedure referred to in Article 65(3);*
- (f) the contents of individual schemes which are acceptable to the Agency, or on which the Commission has taken a positive decision in accordance with point (e), shall be published."*

(4) ARO.OPS.235 of Annex II of Regulation (EU) No 965/2012 requires that:

- (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.'*

(5) The notification refers to ORO.FTL.205 (e), which reads:

*"Maximum daily FDP with the use of extensions due to in-flight rest
Flight time specification schemes shall specify the conditions for extensions of the maximum basic daily FDP with in-flight rest in accordance with the certification specifications applicable to the type of operation, taking into account:*

- (i) the number of sectors flown;*
- (ii) the minimum in-flight rest allocated to each crew member;*
- (iii) the type of in-flight rest facilities; and*
- (iv) the augmentation of the basic flight crew."*

(6) and CS FTL.1.205 (c), which reads:

"[...] 'Class 3 rest facility' means a seat in an aircraft cabin or flight crew compartment that reclines at least 40° from the vertical, provides leg and foot support and is separated from passengers by at least a curtain to provide darkness and some sound mitigation, and is not adjacent to any seat occupied by passengers.[...]"



C) EVALUATION

- (1) The Agency reviewed the request with the help of a panel of experts³. The experts were provided in advance with the document submitted by DGAC. The experts were invited to comment on the document provided by DGAC. DGAC did not provide additional information. The document was discussed with the panel during the WebEx meeting.
- (2) The following remarks result from the examination of the document submitted by DGAC to support the temporary deviation:
 - Article 2 of COMMISSION REGULATION (EU) No 83/2014⁴ offers the possibility for Member States to delay the application of the provisions concerning in-flight rest.
 - The Republic of France decided not to delay the application of the requirements concerning in-flight rest.
 - Article 2 of COMMISSION REGULATION (EU) No 83/2014 is a horizontal measure. Therefore, it does not offer to the Member States the possibility to retroactively opt out from the requirements concerning in-flight rest in the benefit of a particular operator.
 - The document submitted by DGAC does not describe the measures concerning in-flight rest implemented by the operator.
 - The document submitted by DGAC states that the modification of the aircraft interior to comply with the minimum standards described in CS FTL.1.205 (c) will have been completed before 30 June 2016.
 - The exemption approved by DGAC to the operator expired on 30 June 2016.
 - ORO.FTL.205 (e) contains a list of determinants concerning extended FDPs with in-flight rest. CS FTL.1.205 (c) contains quantitative boundaries for these determinants.
 - Article 14(4) of Regulation (EC) No 216/2008 allows Member States to grant exemptions from [...] implementing rules [...], provided the level of safety is not adversely affected.
 - Article 14(5) Regulation (EC) No 216/2008 requires the Agency to assess whether the exemptions notified by the Member State are less restrictive than the applicable EU provisions [...].
 - Article 22(2) allows Member States to approve individual flight time specification schemes which deviate from the certification specifications issued by the Agency applicable to the type of operation. The Agency shall assess the individual flight time specification scheme on the basis of a scientific and medical evaluation.

D) CONCLUSION

Having reviewed the document provided by DGAC the Agency is of the opinion that:

- (1) Subsequent to the decision of the Republic of France to not delay the application of the provisions of point ORO.FTL.205(e) of Annex III to Regulation (EU) No 965/2012, the minimum standards for in-flight rest facilities described in CS FTL.1.205 (c) have become the applicable norm in France on this matter.

³ Panel composition IFTSS 2016/T/005/FR shared with Advisory Bodies on Circabc.

⁴ 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.



- (2) The information provided by DGAC is insufficient to assess whether the exemption notified by the Republic of France following the provisions of Article 14(4) of Regulation (EC) No 216/2008 is less restrictive than the applicable EU provisions.
- (3) The operator has been operating to an individual flight time specification scheme that deviates from CS FTL.1.205 (c).
- (4) An approval by DGAC-F of the operator's individual flight time specification scheme that deviates from CS FTL.1.205 (c) is conditional upon:
 - i. a full description of the operator's in-flight rest facilities; and
 - ii. a positive assessment by the Agency that the proposed alternative fatigue mitigations for the operator's actual pairings and individual rosters provide an equivalent level of protection to that attained by the implementation of the applicable EU requirements.
- (5) The information provided by DGAC is insufficient to assess an individual flight time specification scheme either.
- (6) Therefore, the Agency is not able to positively evaluate the exemption as described in point A.2 above.

Signed on 13. OKT. 2016


Patrick KY
Executive Director

