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EASA Opinion No 02/2019

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of **XXX**

amending Commission Regulation (EU) No 965/2012 as regards requirements for aeroplane performance, alternate power supply for cockpit voice recorders, in-flight recording for light aircraft, and non-ETOPS operations with performance class A aeroplanes that have a maximum operational passenger seating configuration of 19 or less

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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 Article 31 thereof,

Whereas:

- (1) Operators and personnel that are involved in the operation of aircraft, as well as their competent authorities, shall comply with the relevant essential requirements for air operations set out in Regulation (EU) 2018/1139.
- (2) The requirements related to the different types of operations shall be proportionate to the scale and scope of a particular operation, as well as to the complexity of and the risk involved in that operation.
- (3) Investigations of accidents indicate that the standards for runway surface condition assessment and reporting are not harmonised, and have shown that this fact as a significant contributing factor to runways excursions, in particular when the runway is wet or contaminated.
- (4) The standards for aeroplane performance calculations do not cover adequately all conditions on wet and contaminated runways in relation to the method used for assessing and reporting the runway surface condition.
- (5) ICAO has consequently amended a number of Standards and Recommended Practices (SARPs) in several of its annexes and has produced extensive guidance material in order to establish a globally harmonised reporting format for runway surface conditions, airworthiness standards on performance data necessary for the assessment of the landing distance for aeroplanes at the time of landing, and operational provisions for the flight crew on landing performance calculations and runway condition reporting.

⁽¹⁾ OJ L 212, 22.8.2018, p. 1.

- (6) Commission Regulation (EU) No 965/2012 ⁽²⁾ needs therefore to be amended, including the definitions of the new terms used, to implement the applicable ICAO SARPs on runway surface condition assessment and reporting and aeroplane performance requirements. In order to achieve the objective of the global harmonisation intended by ICAO, the amended requirements need to enter into force on 5 November 2020 at the latest, which is the date set by ICAO.
- (7) Furthermore, the need for operational flexibility has been identified for certain commercial air transport operations with regard to the required landing distance. Certain performance class A and performance class B aeroplanes are allowed in other regulatory systems to land within 80 % of the landing distance available on the intended runway, provided that they are granted a prior approval from the competent authority and that they fulfil a number of risk-mitigating conditions. Commission Regulation (EU) No 965/2012 needs to be amended in this regard as well to define the conditions under which these operations may be conducted, while attaining a level of safety that is equivalent to that attained by the existing requirements for landing performance. The relevant administrative form for operational approvals needs also to be amended to include these operations.
- (8) Current certification standards for aircraft do not require an alternate power source for cockpit voice recorders (CVRs) and their associated cockpit-mounted area microphones to be part of the initial design of the aircraft. Investigation of accidents indicates that in some instances CVRs could have kept recording useful information after the interruption of normal power if an alternate power source had been installed.
- (9) Furthermore, ICAO Annex 6 Part I contains SARPs which require that ‘all aeroplanes of a maximum certificated take-off mass of over 27 000 kg for which the individual certificate of airworthiness is first issued on or after 1 January 2018 should be provided with an alternate power source [...], that powers at least one CVR’.
- (10) In order to align with those ICAO Standards and to respond to safety investigation findings, Commission Regulation (EU) No 965/2012 needs to be amended to require an alternate power source for CVRs and their associated cockpit-mounted area microphones.
- (11) Commission Regulation (EU) No 965/2012 needs to be amended to implement the applicable ICAO Annex 6 SARPs on in-flight recording systems for certain light aeroplanes and helicopters that are used for commercial operations.
- (12) Observing the principle of proportionality and risk hierarchy as regards air operations with light aircraft, the extension of the ‘flight recorder’ concept to include lightweight recording equipment should facilitate the fitment of new aircraft with in-flight recording equipment that is appropriate to the size and complexity of such aircraft, as well as the type of the intended operations.
- (13) The requirements on the handling of flight recorder recordings for aeroplanes and helicopters that are used for commercial operations should be consistent with the requirements for aeroplanes and helicopters that are used for non-commercial operations with complex motor-powered aircraft, hence the need to amend Annex VI (Part-NCC) to Commission Regulation (EU) No 965/2012.

⁽²⁾ 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 (OJ L 296, 25.10.2012, p. 1)

- (14) The objective of the new requirements is to increase the safety of operations by improving the monitoring and management of operations of light aircraft and acquiring better data for purposes of continuing airworthiness of these products. The objective of these new requirements is also to enable a more accurate identification of the causes of accidents that involve light aircraft, thus leading to a better hazard identification and prevention of future occurrences.
- (15) ICAO SARPs ensure that certain passenger-carrying aeroplanes above a certain mass limit used in commercial air transport are equipped with an approved secure flight crew compartment door.
- (16) ICAO SARPs have been amended by changing the mass limits that require a secure flight crew compartment door and thus Commission Regulation (EU) No 965/2012 needs to be amended accordingly to ensure harmonisation of the rules for air operations and a level playing field between European and third-country air operators.
- (17) Commission Regulation (EU) No 965/2012 defines eligibility criteria for the conduct of operations of performance class A aeroplanes over a route that contains a point further to a distance beyond 60 minutes and up to 120 minutes at the one-engine-inoperative (OEI) cruising speed from an adequate aerodrome without an ETOPS approval (non-ETOPS operations), based on the maximum operating passenger seating configuration (MOPSC) and on the maximum certified take-off mass (MCTOM).
- (18) Furthermore, turbojet-powered aeroplanes that meet these criteria may be operated at a distance between 120 and 180 minutes from an adequate aerodrome with an approval from the competent authority and provided that the aeroplane has been granted a type design approval for such operations.
- (19) Several aircraft manufacturers have designed or are designing turbojet-powered aeroplanes with an MCTOM above the current MCTOM threshold for non-ETOPS operations.
- (20) The current provisions distort competition among air taxi operators of aeroplanes that are below or above the current MCTOM threshold as no other major regulatory body has imposed an MCTOM threshold for non-ETOPS operations or a type design requirement for 120–180-minute non-ETOPS operations.
- (21) EASA has prepared draft implementing rules and submitted them with Opinion No 02/2019 ⁽³⁾ to the European Commission in accordance with Article 75(2)(b) and (c) and Article 76(1) of Regulation (EU) 2018/1139.
- (22) The measures provided for in this Regulation are in accordance with the opinion of the committee established by Article 127 of Regulation (EU) 2018/1139,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Commission Regulation (EU) No 965/2012

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

⁽³⁾ <https://www.easa.europa.eu/document-library/opinions>

1. Annexes I (Definitions), II (Part-ARO), III (Part-ORO), IV (Part-CAT), VI (Part-NCC), VII (Part-NCO) and VIII (Part-SPO) are amended in accordance with the Annex to this Regulation.

Article 2

Date of entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. However, the following points of Annex IV (Part-CAT) to Commission Regulation (EU) No 965/2012, as amended by this Regulation, shall apply from 5 November 2020:
 - point CAT.OP.MPA.300,
 - point CAT.OP.MPA.301,
 - point CAT.OP.MPA.303,
 - point CAT.OP.MPA.311,
 - point CAT.POL.A.105(d),
 - point CAT.POL.A.255, and
 - point CAT.POL.A.355.

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

Done at Brussels,

For the Commission
The President
[\[...\]](#)