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COMMISSION REGULATION (EU) No .../..

of **XXX**

laying down technical requirements and administrative procedures related to service providers and the oversight thereof pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council and repealing Commission Regulation (EC) No 482/2008, Commission Implementing Regulations (EU) Nos 1034/2011 and 1035/2011 and amending Commission Regulation (EU) No 677/2011

ANNEX TO EASA OPINION 03/2014

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ANNEX TO EASA OPINION 03/2014

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, and in particular Article 8b thereof,

Having regard to Regulations (EC) No 549/2004, 550/2004, 551/2004 and 552/2004 of the European Parliament and of the Council of 10 March 2004 as amended by Regulation (EC) No 1070/2009 laying down the framework for the creation of the single European sky (the framework Regulation), Whereas:

- (1) Regulation (EC) No 216/2008 as amended by Commission Regulation (EU) No 1108/2009 establishes a comprehensive framework for the definition and implementation of common technical requirements and administrative procedures in the field of civil aviation. Said Regulation empowers the Commission to adopt implementing regulations for ATM/ANS including the implementing regulations for certification and oversight by the competent authorities. Furthermore, it requires that implementing measures are initially developed on the basis of the provisions of Regulations (EC) Nos 549/2004, 550/2004, 551/2004 and 552/2004, and provides for transitional mechanisms to ensure the continuity of certificates already granted under those Regulations. [Initial capital...].
- (2) As a result, Commission Implementing Regulations (EU) Nos 1034/2011 of 17 October 2011 on safety oversight in air traffic management and air navigation services and 1035/2011 of 17 October 2011 laying down common requirements for the provision of air navigation services were adopted as a first step with the aim, with the adoption of this Regulation, of completing the implementation of the requirements stemming from the Basic Regulation and, in particular, of establishing full compliance with Articles 8b and 22a and the Essential Requirements in Annex Vb to that Regulation.
- (3) Aiming at synergies of these rules with rules of other aviation domains and towards a ‘total system approach’, this Regulation proposes the merging of the two Commission Implementing Regulations (EU) Nos 1034/2011 and 1035/2011 into one single rule following the EC principle of ‘smart regulation’.

- (4) Common rules for the certification and oversight of service providers are essential to increase the Member States' confidence in each other's systems. To ensure the highest level of safety, uniform requirements for the provision of services and the oversight thereof should, therefore, be strengthened. This will ensure the safe, high-quality provision of services for the purpose of air navigation and will ensure the recognition of certificates throughout the European Union, thereby increasing freedom of movement and improving the availability of said services.
- (5) Acknowledging that the management of safety is that function of services which ensures that safety risks have been identified, assessed and satisfactorily mitigated, this Regulation further elaborates on the requirements related to the safety assessment of changes to the functional system by the certified organisation. These requirements should be adapted towards a total system approach, taking into account the integration of these provisions into the common regulatory structure for civil aviation safety, as well as the experience gained by stakeholders and competent authorities in the field of safety oversight.
- (6) In order to ensure a smooth transition and a high level of civil aviation safety in the European Union, implementing measures should reflect the state of the art in aviation safety, including best practice and scientific and technical progress in the field of meteorological services. Accordingly, the Implementing Rules are based on the applicable International Civil Aviation Organization (hereinafter referred to as 'ICAO') Standards and Recommended Practices, specifically ICAO Annex 3 on 'Meteorological Service for International Air Navigation', while following European and worldwide meteorological service provisions experience and remaining proportionate to the size, type and complexity of the meteorological services provider.
- (7) This Regulation introduces safety culture as an aspect of the service provider's management system in a way that promotes its understanding and improvement acknowledging the need to strengthen it further especially by integrating reliable occurrence reporting.
- (8) It is necessary to provide sufficient time for the aeronautical industry and Member States administrations to adapt to the new regulatory framework and to recognise under certain conditions the validity of certificates issued before this Regulation applies.
- (9) While this Regulation builds on previous achievements and EU regulatory requirements, Commission Regulation (EC) No 482/2008 and Commission Implementing Regulations (EU) Nos 1034/2011 and 1035/2011 should be repealed.
- (10) The measures provided for in this Regulation are based on the Opinion issued by the Agency in accordance with Articles 17(2)(b) and 19(1) of Regulation (EC) No 216/2008.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 8b(6) of Regulation (EC) No 216/2008,

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter and scope

1. This Regulation lays down:
 - (a) requirements for service providers; and

- (b) requirements to be applied by the competent authorities and the qualified entities acting on their behalf in order to exercise the oversight function of the service providers.
2. Unless Annexes III to XIII provide otherwise, the requirements referred to in 1(a) do not apply to:
- (a) activities by a service provider other than those defined in this Regulation; and
 - (b) resources allocated to activities of the service provider other than those defined in this Regulation..

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. The definitions in Article 2 of Regulation (EC) No 549/2004 and Article 3 of Regulation (EC) No 216/2008; however, the definition of ‘certificate’ in Article 2(15) of Regulation (EC) No 549/2004 does not apply;
2. ‘Service provider’ means any legal or natural person providing aeronautical information services, services consisting in the origination and processing of data and formatting and delivering data to general air traffic for the purpose of safety-critical air navigation, air traffic services, communication, navigation and surveillance services, meteorological services, air traffic flow management, airspace management and ATM network functions, either individually or bundled for general air traffic; and
3. ‘Network Manager’ means the body established on the basis of Article 6 of Regulation (EC) No 551/2004 to perform the duties provided in that Article and in Regulation (EU) No 677/2011¹.

Article 3

Provision of services

1. Member States shall ensure that the appropriate services are provided in accordance with this Regulation, taking into account safety consideration. In doing so, when Member States adopt new additional provisions to complement this Regulation as well as any matters left to the decision of a competent authority under this Regulation, these shall follow the standards and recommended practices set by the Chicago Convention.
2. Member States shall publish the provisions in accordance with paragraph (1) through their aeronautical information publications, where appropriate. They shall inform the Agency at the latest two months after the additional provisions have been adopted.

Article 4

Competent authority

1. For the purposes of this Regulation, the competent authority for certification, receipt of declarations and oversight shall be:

¹ Commission Regulation (EU) No 677/2011 of 7 July 2011 laying down detailed rules for the implementation of air traffic management (ATM) network functions and amending Regulation (EU) No 691/2010 (OJ L 185, 15.7.2011, p. 1).

- (a) the national supervisory authority(ies) nominated or established by the Member State, in accordance with Article 4 of Regulation (EC) No 549/2004, where the service provider has its principal place of operation or, if any, its registered office;
 - (b) the competent authority(ies) nominated or established under agreements concluded among Member States in accordance with Article 2 paragraphs (3) to (6) of Regulation (EC) No 550/2004 for the service provider where the responsibilities have been allocated differently from paragraph (a);
 - (c) the Agency for the service provider in the airspace of the territory to which the Treaty applies and having its principal place of operation or, if any, its registered office located outside the territory subject to the provisions of the Treaty; and
 - (d) the Agency for organisations providing pan-European services as well as for the Network Manager.
2. If a Member State nominates or establishes more than one competent authority in accordance with paragraphs 1(a) and 1(b), the areas of competence of each competent authority shall be clearly defined in terms of responsibilities and geographic and airspace limitation, where appropriate. Coordination based on written arrangements shall be established between those entities to ensure effective oversight of all organisations subject to this Regulation within their respective remits.
 3. When concluding an agreement on the supervision of service providers active in functional airspace blocks (FABs) or in cross-border activities in which the Agency is the competent authority for at least one of the organisations, the Member States concerned shall coordinate with the Agency so as to ensure that points (1), (2) and (3) of ATM/ANS.AR.A.005(b) are met.
 4. The competent authority(ies) shall be independent of any service providers. This independence shall be achieved through adequate separation, at the functional level at least, between the competent authority and such service providers. Member States shall ensure that the competent authority(ies) exercises (exercise) its (their) powers impartially and transparently.
 5. Member States shall notify the Agency of the names and addresses of the competent authority(ies), as well as any changes thereof.

Article 5
Service providers

1. Service providers shall be certified, except when so decided by Member States in accordance with Article 7, and shall comply with the requirements in Annex III (Part-ATM/ANS.OR), Subparts A and B.
2. Service providers other than ATS providers shall comply, in addition to 1, with the requirements in Annex III (Part-ATM/ANS.OR), Subpart C.
3. An air navigation services (ANS) provider, an air traffic flow management (ATFM) provider and the Network Manager shall comply, in addition to 1, with the requirements in Annex III (Part-ATM/ANS.OR), Subpart D.
4. An air traffic services (ATS) provider shall comply, in addition to 1 and 3, with the requirements in Annex IV (Part-ATS).

5. A meteorological services (MET) provider shall comply, in addition to 1, 2 and 3, with the requirements in Annex V (Part-MET).
6. An aeronautical information services (AIS) provider shall comply, in addition to 1, 2 and 3, with the requirements in Annex VI (Part-AIS).
7. A data services (DAT) provider shall comply, in addition to 1 and 2, with the requirements in Annex VII (Part-DAT).
8. A communication navigation and surveillance services (CNS) provider shall comply, in addition to 1, 2 and 3, with the requirements in Annex VIII (Part-CNS).
9. An air traffic flow management (ATFM) provider shall comply, in addition to 1, 2 and 3, with the requirements in Annex IX (Part-ATFM).
10. An airspace management (ASM) provider shall comply, in addition to 1 and 2, with the requirements in Annex X (Part-ASM).
11. [to be introduced under RMT.0445].
12. The Network Manager shall comply, in addition to 1, 2 and 3, with the requirements in Annex XII (Part-NM).
13. Service providers shall comply, in addition to 1 to 12 as applicable, with the relevant requirements in Annex XIII (Part-PERS).

Article 6
Oversight capabilities

1. Member States and the Commission, where the Agency is the competent authority, shall ensure that competent authority(ies) has (have) the necessary capability to ensure the oversight of service providers operating under its (their) supervision and subject to its (their) oversight programme, including sufficient resources to fulfil the requirements of this Regulation. When ensuring the necessary capability, Member States and the Commission shall use the assessments produced by the competent authorities in accordance with paragraph 3.
2. Competent authorities for certification and oversight in accordance with Article 4(1) shall comply with the requirements laid down in Annex II.
3. The competent authority shall produce and update every two years an assessment of the human resources needed to perform its oversight functions, based on the analysis of the processes required by this Regulation and their application.
4. Member States shall require competent authorities to ensure their personnel do not perform oversight activities when there is evidence that this could result directly or indirectly in a conflict of interest, in particular when relating to family or financial interest.
5. Personnel authorised by the competent authority to carry out certification and/or oversight tasks shall be empowered:
 - (a) to examine the relevant records, data, procedures and any other material relevant to the execution of the certification and/or oversight tasks;
 - (b) to take copies of, or extracts from such records, data, procedures, and other material;
 - (c) to ask for an oral explanation on-site;

- (d) to enter relevant premises, operating sites, or means of transport;
 - (e) to perform audits, investigations, assessments, inspections; and
 - (f) to take or initiate enforcement measures.
6. The tasks under paragraph 5 shall be carried out in compliance with the legal provisions applicable to the competent authority undertaking them.

Article 7

Declaration by flight information services providers

When Member States decide that flight information services providers are allowed to declare their capability and means of discharging the responsibilities associated with the services provided, in accordance with Article 8b.3 of Regulation (EC) No 216/2008, these providers shall fulfil the criteria and requirements under ATM/ANS.OR.A.015.

Article 8

Transitional provisions

1. Certificates issued in accordance with Commission Implementing Regulation (EU) No 1035/2011 shall be deemed to have been issued in accordance with this Regulation.
2. Member States shall replace the certificates referred to paragraph (1) with certificates complying with the format laid down in Appendix 1 to Annex II to this Regulation by [24 months from the date of the entry into force of this Regulation] at the latest.

Article 9

Repeal

1. Commission Regulation (EC) No 482/2008 is repealed from the date of application of this Regulation, in accordance with paragraphs (3), (4), (5) and (6) of Article 10 of this Regulation.
2. Commission Implementing Regulation (EU) No 1034/2011 is repealed from the date of application of this Regulation, in accordance with paragraphs (3), (4), (5) and (6) of Article 10 of this Regulation.
3. Commission Implementing Regulation (EU) No 1035/2011 is repealed from the date of application of this Regulation, in accordance with paragraphs (3), (4), (5) and (6) of Article 10 of this Regulation.
4. Article 12 of Commission Regulation (EU) No 677/2011 is repealed from the date of application of this Regulation, in accordance with paragraphs (3), (4), (5) and (6) of Article 10 of this Regulation.

Article 10

Entry into force

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. Competent authorities involved in the certification and oversight of service providers shall comply with the requirements laid down in Annex II to this Regulation by [18 months from the date of the entry into force of this Regulation].

3. The service providers certified in accordance with Commission Implementing Regulation (EU) No 1035/2011 shall comply with the requirements laid down in Annexes III, IV, V, VI, VIII and XIII, as applicable, to this Regulation by [24 months from the date of the entry into force of this Regulation].
4. The Network Manager overseen in accordance with Commission Regulation (EU) No 677/2011 and Commission Implementing Regulation (EU) No 1034/2011 shall comply with the requirements laid down in Annexes III, IX, XII and XIII, as applicable, to this Regulation by [24 months from the date of the entry into force of this Regulation].
5. Service providers overseen in accordance with Commission Implementing Regulation (EU) No 1034/2011 shall comply with the requirements laid down in Annexes III, IX, X and XIII, as applicable, to this Regulation by [24 months from the date of the entry into force of this Regulation].
6. By way of derogation from paragraph 5, Member States may decide not to apply Annexes III, IX, X and XIII, in whole or in part, until [36 months from the date of the entry into force of this Regulation].

When a Member State makes use of this possibility, it shall notify the Commission and the Agency by [23 months from the date of the entry into force of this Regulation] at the latest. This notification shall describe the scope of the derogation(s) as well as the programme for implementation containing actions envisaged and related timing. In that case, the relevant provisions of Commission Implementing Regulations (EU) Nos 1034/2011 and 1035/2011 shall continue to apply.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the Commission
The President*