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

of **XXX**

amending Regulation (EU) No 965/2012, as regards technical requirements and administrative procedures related to introducing support programmes, psychological assessment of flight crew, as well as systematic and random testing of psychoactive substances to ensure medical fitness of flight and cabin crew members,
and
as regards equipping newly manufactured turbine-powered aeroplanes of less than 5 700 maximum certified take-off mass able to carry six to nine passengers with a terrain awareness warning system

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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/EC¹, and in particular Article 7(6), Article 8(5) and Article 10(5) thereof,

Whereas:

- (1) Commission Regulation (EU) No 965/2012² lays down detailed rules for commercial air transport operations with aeroplanes and helicopters, including ramp inspections of aircraft of operators under the safety oversight of another Member State or of a third country, when landed at aerodromes located in the territory subject to the provisions of the Treaty. That Regulation also stipulates that crew members are not to carry out duties on an aircraft when under the influence of psychoactive substances or when unfit due to injury, fatigue, medication, sickness or other similar causes.
- (2) The European Aviation Safety Agency ('the Agency') has identified a number of safety risks and issued recommendations to mitigate those risks. The implementation of some of those recommendations requires regulatory changes as regards the psychological assessment of the flight crew before commencing line flying, the implementation of a support programme for flight crew, the carrying-out of random alcohol testing on flight and cabin crew members by Member States, and systematic testing of psychoactive substances of flight and cabin crew members by commercial air transport operators.
- (3) With regards to psychoactive substance testing, the International Civil Aviation Organization (ICAO) Manual on Prevention of Problematic Use of Substances in the Aviation Workplace (Doc 9654) should be taken into account.
- (4) The existing ramp inspection programme referred to in Subpart RAMP of Annex II to Regulation (EU) No 965/2012 already provides a framework for the systematic, structured and risk-based inspection of operators containing extensive provisions and

⁽¹⁾ OJ L 79, 13.3.2008, p. 1.

⁽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).

safeguards for, inter alia, data protection, inspector training, risk-based sampling, the grounding of aircraft and preventing unnecessary delays. It is therefore appropriate to apply that well-established framework to carry out alcohol tests on flight crew and cabin crew members. A flight crew or cabin crew member who refuses to cooperate during tests or who has been identified to be under the influence of psychoactive substances after a confirmed positive test is to be removed from duty.

- (5) In some Member States, random tests for psychoactive substances are already carried out by other officials than those authorised under Subpart RAMP of Annex II. Therefore, under certain conditions, Member States should be able to carry out alcohol tests on flight crew and cabin crew members outside of the framework of the ramp inspection programme of Annex II to Regulation (EU) No 965/2012.
- (6) Member States should also be given the possibility to carry out additional tests for the presence of psychoactive substances other than alcohol.
- (7) ICAO recommends in Parts I and II of Annex 6 to the Chicago Convention that turbine-powered aeroplanes under 5 700 maximum certified take-off mass (MCTOM) and a maximum operational passenger seating configuration between five and nine be equipped with a ground proximity warning system.
- (8) In order to be aligned with ICAO Standards and Recommended Practices and to mitigate the risks of controlled flights into terrain, Regulation (EU) No 965/2012 should be amended accordingly.
- (9) The measures provided for in this Regulation are based on Opinions No 14/2016 and No 15/2016 issued by the Agency in accordance with Article 19(1) of Regulation (EC) No 216/2008.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee established pursuant to Article 65 of Regulation (EC) No 216/2008,

HAS ADOPTED THIS REGULATION:

Article 1

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

- (1) Article 4 is replaced by the following:

‘Article 4

Ramp inspections

1. Ramp inspections of aircraft of operators under the safety oversight of another Member State or of a third country shall be carried out in accordance with Subpart RAMP of Annex II.

2. Member States shall ensure that the alcohol testing of the flight crew and cabin crew members is carried out with regard to operators under their own oversight as well as with regard to operators under the oversight of another Member State or of a third country. Such testing shall be performed by ramp inspectors within the framework of the ramp inspection programme of Subpart RAMP of Annex II.

3. By way of derogation from paragraph 2, Member States may ensure alcohol testing of flight crew and cabin crew members to be carried out by other authorised officials and outside the framework of the ramp inspection programme of Subpart

RAMP of Annex II, provided that the alcohol testing is carried out within the same scope and applying, as a minimum, equivalent testing methodologies and recognised quality standards as required pursuant to paragraph 2. Results of such alcohol tests shall be included in the centralised database in accordance with point (b) of ARO.RAMP.145.

4. Member States may carry out additional testing of psychoactive substances other than alcohol. In that case, the Member State shall notify the European Aviation Safety Agency ('the Agency') and the Commission.;

(2) Article 9b is replaced by the following:

‘Article 9b

Review

1. 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 shall assess the impact of at least the following on the alertness of aircrew:

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

2. The Agency shall conduct a continuous review of the effectiveness of the provisions concerning support programmes, the psychological assessment of flight crew and the systematic and random testing of psychoactive substances to ensure the medical fitness of flight crew and cabin crew members set out in Annexes II and IV. No later than [OP – please insert the date – 48 months after the entry into force], the Agency shall produce a first report on the results of this review.

That review shall involve relevant expertise and shall be based on data gathered, with the assistance of Member States and the Agency, on a long-term basis.;

(3) Annexes I, II, IV, VI, VII and VIII are amended in accordance with the Annex 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 [OP – please insert the date - 24 months after the entry into force].

However, points 3(f) and 6(b) of the Annex shall apply from [OP – please insert - the twentieth day following that of its publication in the *Official Journal of the European Union*].

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

Done at Brussels,

For the Commission
The President
[...]

ANNEX

Annexes I, IV, VI, VII and VIII are amended as follows:

(1) Annex I is amended as follows:

(a) the following point (78a) is inserted:

‘(78a) ‘misuse of substances’ means the use of one or more psychoactive substances by flight crew, cabin crew members and other safety-sensitive personnel in a way that:

(a) constitutes a direct hazard to the user or endangers the lives, health or welfare of others, and/or

(b) causes or worsens an occupational, social, mental or physical problem or disorder;’;

(b) the following point (98a) is inserted:

‘(98a) ‘psychoactive substances’ means alcohol, opioids, cannabinoids, sedatives and hypnotics, cocaine, other psychostimulants, hallucinogens, and volatile solvents, with the exception of caffeine and tobacco;’;

(c) the following point (105a) is inserted:

‘(105a) ‘safety-sensitive personnel’ means persons who might endanger aviation safety if they perform their duties and functions improperly, including flight crew and cabin crew members, aircraft maintenance personnel and air traffic controllers;’;

(2) Annex II (Part-ARO) is amended as follows:

(a) the following point ARO.RAMP.106 is inserted:

‘ARO.RAMP.106 Alcohol testing

- (a) The competent authority shall carry out alcohol testing on flight and cabin crew.
- (b) The Agency shall provide competent authorities with a list of Union and third-country operators for the prioritisation of alcohol testing within the ramp inspection programme in accordance with ARO.RAMP.105 based on a risk assessment performed by the Agency, taking into account the robustness and effectiveness of existing psychoactive testing programmes.
- (c) When selecting operators for alcohol testing of flight and cabin crew, the competent authority shall use the list established in accordance with point (b).
- (d) Whenever data concerning alcohol tests is included in the centralised database in accordance with point (b) of point ARO.RAMP.145, the competent authority shall ensure that such data excludes any personal data of the crew member concerned.
- (e) In case of a reasonable cause or suspicion, alcohol tests may be carried out at any time.
- (f) The alcohol testing methodology shall apply recognised quality standards such as the Manual on Prevention of Problematic Use of Substances in the Aviation Workplace (Doc 9654) of the International Civil Aviation Organization (ICAO).’;

(3) Annex IV (Part-CAT) is amended as follows:

(a) in point CAT.GEN.MPA.100, point (c)(1) of is replaced by the following:

‘(1)when under the influence of psychoactive substances or when unfit due to injury, fatigue, medication, sickness or other similar causes; ’;

(b) point CAT.GEN.MPA.170 is replaced by the following:

‘CAT.GEN.MPA.170 Psychoactive substances

- (a) The operator shall take all reasonable measures to ensure that no person enters or is in an aircraft when under the influence of psychoactive substances to the extent that the safety of the aircraft or its occupants is likely to be endangered.

- (b) The operator shall develop and implement a policy on the prevention and detection of misuse of psychoactive substances by flight and cabin crew members and by other safety-sensitive personnel under its direct control, in order to ensure that the safety of the aircraft or its occupants is not endangered.
 - (c) Without prejudice to the applicable national legislation on data protection concerning testing of individuals, the operator shall develop and implement an objective, transparent and non-discriminatory procedure for the prevention and detection of cases of misuse of psychoactive substances by its flight and cabin crew and other safety-sensitive personnel.
 - (d) In case of a confirmed positive test result, the operator shall inform its competent authority and the authority responsible for the personnel concerned, such as a medical assessor of the licensing authority.’;
- (c) point CAT.GEN.MPA.175 is replaced by the following:

‘CAT.GEN.MPA.175 Endangering safety

- (a) The operator shall take all reasonable measures to ensure that no person recklessly, intentionally or negligently acts or omits to act so as to:
 - (1) endanger an aircraft or person therein; or
 - (2) cause or permit an aircraft to endanger any person or property.
 - (b) The operator shall ensure that flight crew has undergone a psychological assessment before commencing unsupervised line flying in order to:
 - (1) identify psychological attributes and suitability of the flight crew in respect of the work environment; and
 - (2) reduce the likelihood of negative interference with the safe operation of the aircraft.
 - (c) Considering the size, nature and complexity of the activity of an operator, an operator may replace the psychological assessment referred to in point (b) with an internal assessment of the psychological attributes and suitability of flight crew. ’;
- (d) the following point CAT.GEN.MPA.215 is inserted:

‘CAT.GEN.MPA.215 Support programme

- (a) The operator shall enable, facilitate and ensure access to a proactive and non-punitive support programme that will assist and support flight crew in recognising, coping with, and overcoming any problem which might negatively affect their ability to safely exercise the privileges of their licence. Such access shall be made available to all flight crew.

- (b) Without prejudice to applicable national legislation on the protection of individuals with regard to the processing of personal data and on the free movement of such data, the protection of the confidentiality of data shall be a precondition for an effective support programme as it encourages the use of such a programme and ensures its integrity.’;
- (e) in point CAT.GEN.NMPA.100, point (b)(1) is replaced by the following:
- ‘
- (1) when under the influence of psychoactive substances or when unfit due to injury, fatigue, medication, sickness or other similar causes;’;
- (f) in point CAT.IDE.A.150, the following point (c) is added:
- ‘(c) Turbine-powered aeroplanes for which the individual certificate of airworthiness (CofA) was first issued after 1 January 2019 and having an MCTOM of 5 700 kg or less and an MOPSC of six to nine shall be equipped with a TAWS that meets the requirements for Class B equipment, as specified in an acceptable standard.’;
- (4) Annex VI (Part-NCC) is amended as follows:
- (a) in point NCC.GEN.105, point (e)(2) is replaced by the following:
- ‘
- (2) when under the influence of psychoactive substances or for other reasons as referred to in 7.g of Annex IV to Regulation (EC) No 216/2008.’;
- (5) Annex VII (Part-NCO) is amended as follows:
- (a) in point NCO.SPEC.115, point (e)(2) is replaced by the following:
- ‘
- (2) when under the influence of psychoactive substances or for other reasons as referred to in 7.g of Annex IV to Regulation (EC) No 216/2008.’;
- (6) Annex VIII (Part-SPO) is amended as follows:
- (a) in point SPO.GEN.105, point (e)(2) is replaced by the following:
- ‘

- (2) when under the influence of psychoactive substances or for other reasons as referred to in 7.g of Annex IV to Regulation (EC) No 216/2008.’;

(b) point SPO.IDE.A.130 is replaced by the following:

‘SPO.IDE.A.130 Terrain awareness warning system (TAWS)

- (a) Turbine-powered aeroplanes with a maximum certified take-off mass (MCTOM) of more than 5 700 kg or an MOPSC of more than nine shall be equipped with a TAWS that meets the requirements for:
 - (1) class A equipment, as specified in an acceptable standard, in the case of aeroplanes for which the individual certificate of airworthiness (CofA) was first issued after 1 January 2011; or
 - (2) class B equipment, as specified in an acceptable standard, in the case of aeroplanes for which the individual CofA was first issued on or before 1 January 2011.
- (b) When used in commercial operations, turbine-powered aeroplanes for which the individual CofA was first issued after 1 January 2019 and having an MCTOM of 5 700 kg or less and an MOPSC of six to nine shall be equipped with a TAWS that meets the requirements for class B equipment, as specified in an acceptable standard.’.