III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DELEGATED DECISION No 47/20/COL

of 25 May 2020

authorising Norway to derogate from certain common aviation safety rules pursuant to Article 14(6) of Regulation (EC) No 216/2008 [2020/1248]

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Act referred to at point 66n of Annex XIII to the EEA Agreement,

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 ([1]), as amended ('the Act'), as adapted to the EEA Agreement by Protocol 1 thereto, and by the Decision of the EEA Joint Committee No 163/2011, and in particular point 3(e) of the Annex to that Decision.

Having regard in particular to Articles 14(6) and 14(7) of the Act,

Having regard to the opinion of the EFTA Transport Committee delivered on 6 May 2020 in the form of tacit approval, the initial date for the opinion having been subject to a one-month extension on an exceptional basis as a result of the coronavirus crisis,

Whereas:

Norway notified the EFTA Surveillance Authority ('the Authority') and the European Aviation Safety Agency ('the Agency') of its intention to derogate from the requirements of FCL.905.SFI of Annex I of Commission Regulation (EU) No 1178/2011 ([2]) by granting Synthetic Flight Instructors ('SFI's) the privilege to provide instructions for applicants for an SFI certificate without meeting the requirement to have at least 3 years of experience as Type Rating Instructor (TRI).

Article 14(6) of the Act states that where an equivalent level of protection to that attained by the application of the rules implementing the Regulation can be achieved by other means, Member States may, without discrimination on grounds of nationality grant an approval derogating from those implementing rules.

Pursuant to Article 14(7) of the Act, the Authority has assessed the need for, and the level of protection emerging from, the derogation requested, based on a recommendation from the Agency, issued on 29 October 2019 (Doc No 1094402) and corrected on 6 November 2019 (Doc. No 1095781). The Authority has also taken note of a similar derogation having been positively assessed by the European Commission in Commission Decision 2014/69/EU ([3]) and concludes that the variation will provide for a level of protection equivalent to the one attained by the application of the common aviation safety rules, provided certain conditions are met.

([1]) OJ L 79, 19.3.2008, p. 1.

([2]) Commission Regulation (EU) No 1178/2011 of 3 November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 311, 25.11.2011, p. 1), as adapted to the EEA Agreement by Protocol 1 thereto.

([3]) Commission Decision 2014/69/EU of 6 February 2014 authorising Sweden and the United Kingdom to derogate from certain common aviation safety rules pursuant to Article 14(6) of Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 39, 8.2.2014, p. 60).

Pursuant to Article 1 of EEA Joint Committee Decision No 163/2011 and adaptation (a) set out in point 3 of the Annex thereto, the term 'Member State(s)' is to be understood to include, in addition to its meaning in the Regulation, the EFTA States.

In accordance with Article 14(7) of the Act, a derogation granted to one EFTA State shall be notified to all EFTA States, which shall also be entitled to apply that derogation. This Decision should therefore be addressed to all EFTA States. The description of each derogation, as well as the conditions attached to it, should be such as to enable other EFTA States to apply that measure when they are in the same situation, without requiring a further approval from the Authority. Nevertheless, EFTA States should notify the application of derogations, as they may have effects outside that EFTA State.

The measures provided for in this Decision are in accordance with the opinion of the EFTA Transport Committee,

HAS ADOPTED THIS DECISION:

1. Norway may derogate from the requirements in point FCL.905.SFI of Annex I of Regulation (EU) No 1178/2011, as specified in the Annex to this Decision, provided that conditions specified in point 4 of the Annex to this Decision are complied with.

2. All EFTA States shall be entitled to apply the same measure as specified in the Annex to this Decision. EFTA States shall notify the Authority, the Agency and the national aviation authorities thereof.

3. The Decision is addressed to EFTA States. It is authentic in the English language.

4. This Decision shall be notified to Norway, Iceland and Liechtenstein.

Done at Brussels, 25 May 2020.

For the EFTA Surveillance Authority, acting under Delegation Decision No 103/13/COL

Högni KRISTJÁNSSON
Responsible College Member

Carsten ZATSCHLER
Countersigning as Director, Legal and Executive Affairs

ANNEX

Derogation by EFTA States from Regulation (EU) No 1178/2011 with respect to the privileges and conditions for the Synthetic Flight Instructor

1. **Description of the request**

Provision FCL.905.SFI of Annex I to Regulation (EU) No 1178/2011 establishes the privileges of the Synthetic Flight Instructor (SFI) and does not allow the SFI to provide instruction to applicants for the SFI certificate. Part-FCL gives the privilege to provide this instruction only to holders of a Type Rating Instructor (TRI) certificate, provided that they have at least 3 years of experience as TRI.

By letter dated 11 July 2019 (Doc. No 1080642), the Norwegian Government notified the Authority of its intention to derogate from the requirements of FCL.905.SFI of Annex I. The Norwegian Government notified the European Aviation Safety Agency ('Agency') by letter dated 20 August 2019 (Doc. No 1084282).

Norway proposed to grant SFIs the privilege to provide instructions for applicants for an SFI certificate without meeting the requirement to have at least 3 years of experience as TRI.

2. **Assessment of the request**

2.1. *Need*

According to Norway, the current provision of FCL.905.SFI of Annex I to Regulation (EU) No 1178/2011 does not allow an SFI to provide instruction to applicants for the SFI certificate. Part-FCL gives the privilege to provide this instruction to holders of a TRI certificate, provided that they have at least 3 years of experience as TRI. Many SFIs working as tutors in SFI courses in Norway cannot comply with the requirement to become a TRI with 3 years of experience. Such SFIs will therefore be unable to continue to act as tutors in SFI courses. Furthermore, many of the current SFIs would be unable to fulfil the TRI requirements for medical reasons.

Based on an assessment of the current situation, made by Norway, there is an insufficient number of TRIs to teach a sufficient number of applicants for an SFI certificate and to meet the industry's training needs. As a result, there will be a shortage of qualified instructors to provide this training, which would cause a disruption to the training of pilots, particular in the business/corporate aircraft domain unless a derogation is given.

2.2. *Equivalency of the level of protection*

Norway proposed to allow SFIs that do not fulfil the requirements of having at least 3 years of experience as a TRI to provide instruction for the SFI applicants. Such SFIs shall have a minimum of 3 years of experience of instruction as an SFI and have completed a specific 2-day SFI tutor course provided by an SFI tutor and have passed an assessment of competence. In addition, Norway proposed to require these SFIs to pass an assessment of competence during an SFI training course in order to maintain the validity of their SFI tutor privilege.

The Agency, agreed with Norway's assessment that an equivalent level of protection to that attained by the application of the common aviation safety rules is achieved by the intended derogation, specifically with the additional training and checking requirements suggested.

3. **Description of the derogation**

Norway may, by derogation from FCL.905.SFI of Annex I to Regulation (EU) No 1178/2011, grant the privilege to SFIs that do not fulfil the requirement of having at least 3 years of experience as TRI, to provide instruction for the SFI applicants.

4. **Conditions attached to the application of the derogation**

Such SFIs shall have a minimum of 3 years of experience of instruction as an SFI, shall complete a specific 2-day SFI tutor course provided by an SFI tutor and shall pass an assessment of competence.

5. **General applicability of the derogation**

All EFTA States may apply this derogation provided that the conditions described in point 4 are met.