REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2023/659

of 2 December 2022

amending Regulation (EU) No 452/2014 as regards the technical requirements and administrative procedures related to air operations of third country operators

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 61(1) letter d) thereof,

Whereas:

(1) Commission Regulation (EU) No 452/2014 ([2]) lays down technical requirements and administrative procedures related to authorisations that air operators from third countries engaged in commercial air transport must obtain if they wish to operate into, within, or out of the territory to which the Treaties apply.

(2) Pursuant to Article 61(2) letter (c) of Regulation (EU) 2018/1139, the process through which the authorisations for the operation of aircraft into, within, or out of the territory to which the Treaties apply by a third country aircraft operator must be simple, proportionate, effective and cost-efficient and must allow for demonstrations of compliance which are proportionate to the complexity of the operation and risk involved in that operation.

(3) An assessment of Regulation (EU) No 452/2014 performed by the European Union Aviation Safety Agency ('the Agency') identified several potential improvements, covering four main areas: efficiency, enforcement, flexibility and consistency with Regulation (EC) No 2111/2005 of the European Parliament and of the Council ([3]). It is therefore necessary to amend certain provisions of Regulation (EU) No 452/2014 to incorporate the identified improvements.

(4) In particular, it is necessary to remove the possibility for third country operators to use mitigating measures to address non-compliances with relevant International Civil Aviation Organisation (ICAO) standards. Compliance with those standards needs to be achieved before a TCO authorisation is issued and any need for flexibility is to be addressed through a procedure laid down in Article 76(4) of Regulation (EU) 2018/1139.

([1]) OJ L 212, 22.8.2018, p. 1.

([2]) Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 133, 6.5.2014, p. 12).

([3]) Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC (OJ L 344, 27.12.2005, p. 15).

(5) It is also necessary to amend the provisions allowing, within certain conditions, third country operators to carry out certain flights into, within or out of the territory subject to the provisions of the Treaties without first obtaining an authorisation, in order to increase legal certainty and improve efficiency.

(6) It is likewise necessary to improve the efficiency of the authorisation and oversight process of third country operators and to increase legal certainty, namely by eliminating certain barriers to digitalisation of the process, by further clarifying certain aspects related to the validity of third country operator's authorisations, as well as certain procedural steps of the process undertaken by the Agency.

(7) To foster a risk-based approach in the authorisation process of third country operators, it is necessary to consider the size, scope and complexity of the relevant operations to improve consistency. At the same time, it is also necessary to increase the oversight and enforcement means at the disposal of the Agency, specifically by allowing intensified surveillance of certain third country operators and clarifying the provisions related to the issuance of findings, as well as the suspension and revocation of third country operator authorisations.

(8) It is similarly necessary to amend certain provisions of Regulation (EU) No 452/2014 to improve consistency with Regulation (EC) No 2111/2005 in particular by further clarifying the conditions and procedural steps to be taken by the Agency when receiving an application from a third country operator subject to an operating ban or an operational restriction pursuant to Regulation (EC) No 2111/2005.

(9) Finally, it is necessary to make several editorial amendments to the provisions of Regulation (EU) No 452/2014, namely, to update legal references to Regulation (EU) 2018/1139. In addition, some changes to the definitions are proposed for reasons of consistency with Regulation (EU) 2018/1139.

(10) Regulation (EU) No 452/2014 should therefore be amended accordingly.

(11) The measures provided for in this Regulation are based on Opinion No 02/2022 ([4]) issued by the Agency in accordance with Article 75(2), points (b) and (c), and Article 76(1) of Regulation (EU) 2018/1139,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 452/2014 is amended as follows:

(1) Articles 1, 2 and 3 are replaced by the following:

'*Article 1*

Subject matter and scope

This Regulation lays down detailed rules for third country operators of aircraft referred to in Article 2(1), point (c), of Regulation (EU) 2018/1139 of the European Parliament and of the Council (*) who are engaged in commercial air transport operations into, within or out of the territory subject to the provisions of the Treaties, including conditions for issuing, maintaining, amending, limiting, suspending or revoking their authorisations, the privileges and responsibilities of the holders of authorisations as well as conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety.

([4]) EASA Opinion No 02/2022, Update of Commission Regulation (EU) No 452/2014 (Third- Country Operator (TCO) Regulation, of 25 April 2022 (https://www.easa.europa.eu/en/document-library/opinions/opinion-no-022022).

Article 2

Definitions

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

(1) 'flight' means a departure from a specified aerodrome towards a specified destination aerodrome;

(2) 'third country operator' means any operator in respect of which the functions and duties of the State of the operator are not carried out by a Member State or the Agency.

Article 3

Authorisations

Third country operators shall only engage in commercial air transport operations into, within, or out of the territory subject to the provisions of the Treaties if they comply with the requirements of Annex 1 and hold an authorisation issued by the Agency in accordance with Annex 2 to this Regulation.'

(*) 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 (OJ L 212, 22.8.2018, p. 1).;

(2) Annexes 1 and 2 to Regulation (EU) No 452/2014 are amended as set out in 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*.

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

Done at Brussels, 2 December 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

(1) Annex 1 is amended as follows:

(a) Section I is amended as follows:

(i) point TCO.100 is replaced by the following:

'TCO.100 Scope

This Annex ('Part-TCO') establishes requirements to be followed by a third country operator engaged in commercial air transport operations into, within or out of the territory subject to the provisions of the Treaties.';

(ii) points TCO.105 and TCO.110 are deleted.

(b) Section II is amended as follows:

(i) in point TCO.200, points (a), (b), and (c) are replaced by the following:

'(a) The third country operator shall comply with:

(1) the applicable standards contained in the Annexes to the Convention on International Civil Aviation, in particular Annexes 1 (Personnel licensing), 2 (Rules of the Air), 6 (Operation of Aircraft), as applicable, 8 (Airworthiness of Aircraft), 18 (Dangerous Goods), and 19 (Safety Management);

(2) the applicable safety directives issued by the Agency in accordance with Article 76(6) of Regulation (EU) 2018/1139;

(3) the relevant requirements of Part-TCO; and

(4) the applicable requirements of Regulation (EU) No 923/2012 (*).

(b) The third country operator shall ensure that an aircraft operated into, within or out of the territory subject to the provisions of the Treaties is operated in accordance with:

(1) its air operator certificate (AOC) and associated operations specifications in accordance with ICAO Annex 6; and

(2) the TCO authorisation issued in accordance with this Regulation and the scope and privileges contained therein.

(c) The third country operator shall ensure that an aircraft operated into, within or out of the territory subject to the provisions of the Treaties has a certificate of airworthiness (CofA) issued or validated in accordance with ICAO Annex 8 by:

(1) the State of registry; or

(2) the State of the third country operator, provided that the State of the third country operator and the State of registry have entered into an agreement under Article 83bis of the Convention on International Civil Aviation that transfers the responsibility for the issue of the CofA.

(*) Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010 (OJ L 281, 13.10.2012, p. 1)';

(ii) in point TCO.200, point (e) is replaced by the following:

'(e) Without prejudice to Regulation (EU) No 996/2010 of the European Parliament and of the Council (*), the third country operator shall without undue delay report to the Agency any accident as defined in ICAO Annex 13, involving aircraft used under its AOC, including those aircraft that are not intended to be flown into, within or out of the territory subject to the provisions of the Treaties.

(*) Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (OJ L 295, 12.11.2010, p. 35).';

(iii) point TCO.205 is replaced by the following:

'TCO.205 Navigation, communication and surveillance equipment

When undertaking operations within the airspace above the territory to which the Treaties apply the third country operator shall equip its aircraft with and operate such navigation, communication and surveillance equipment as required in that airspace.';

(iv) point TCO.215 is replaced by the following:

'TCO.215 Production of documentation, manuals and records

Upon request by a person authorised by the Agency or the competent authority of the Member State where the aircraft operated by a third country operator has landed, the pilot-in-command of that aircraft shall, without undue delay, present any documentation, manuals or records required to be carried on board.';

(c) Section III is amended as follows:

(i) point TCO.305 is replaced by the following:

'TCO.305 One-off notification flights

(a) By way of derogation from point TCO.300(a), the third country operator may carry out the following flights into, within or out of the territory subject to the provisions of the Treaties without first obtaining an authorisation:

(1) flights that are performed in the public interest, to address an urgent need, such as humanitarian missions and disaster relief operations;

(2) air ambulance flights that are performed to move sick or injured patients between healthcare facilities or deliver patient medical care.

(b) The provisions of point (a) shall only apply if the third country operator:

(1) notified the Agency prior to the intended date of the first flight in a form and manner established by the Agency;

(2) is not subject to an operating ban pursuant to Regulation (EC) No 2111/2005;

(3) is not subject to a suspension or revocation pursuant to point ART.235 of Annex 2;

(4) has not been subject to rejection of an application for TCO authorisation pursuant to point ART.200 (e)(1) of Annex 2; and

(5) applies for an authorisation pursuant to point TCO.300 within 14 days after the date of notification to the Agency pursuant to point (b)(1) above.

(c) The flight(s) specified in the notification prescribed in point (a) may be performed for the period requested by the third country operator, but no longer than for a maximum of 12 consecutive weeks after the date of notification or until the Agency has taken a decision on the application in accordance with point ART.200 of Part-ART, whichever comes sooner.

(d) A notification may be filed only once every 24 months by the third country operator.';

(ii) point TCO.310 is replaced by the following:

'TCO.310 Privileges of an authorisation holder

The privileges of the third country operator shall be listed in the authorisation and not exceed the privileges granted by the State of the third country operator.';

(iii) point TCO.315 is replaced by the following:

'TCO.315 Changes

(a) Any change, other than those agreed under point ART.210(c) of Annex 2, affecting the terms of an authorisation shall require prior approval by the Agency.

(b) The third country operator shall submit the application for prior approval by the Agency at least 30 days before the date of implementation of the intended change.

The third country operator shall provide the Agency with the information referred to in point TCO.300, restricted to the extent of the change.

After submission of an application for a change, the third country operator shall operate under the conditions prescribed by the Agency pursuant to point ART.225(b) of Annex 2.

(c) All changes not requiring prior approval, as agreed in accordance with point ART.210(c) of Annex 2, shall be notified to the Agency before the change takes place.';

(iv) in point TCO.320, point (a)(6) is replaced by the following:

'(6) the third country operator being able to substantiate, upon request by the Agency, its intention to continue to conduct operations under its TCO authorisation;';

(v) in point TCO.320, point (a)(7) is added:

'(7) the third country operator operating at least one aircraft under its TCO authorisation.';

(vi) in point TCO.320, point (b) is replaced by the following:

'(b) If the authorisation has become invalid, the third country operator shall obtain a new authorisation from the Agency, prior to recommencing operations into, within or out of the territory subject to the provisions of the Treaties. The third country operator shall apply for the new authorisation in a form and manner established by the Agency and shall provide any document necessary to determine that the reasons for the authorisation to become invalid are no longer present, and that the third country operator complies with the requirements to obtain the authorisation under Part-TCO.';

(2) Annex 2 is amended as follows:

(a) Section I is amended as follows:

(1) point ART.105 is deleted;

(a) in point ART.110, point (b) is replaced by the following:

'(b) The Agency shall inform the Member States about the notifications it has received in accordance with point TCO.305 of Annex 1 without any undue delay.';

(b) in point ART.115, points (a)(5), (a)(6) and (a)(7) are replaced by the following:

'(5) enforcement measures taken, including fines requested by the Agency in accordance with Regulation (EU) 2018/1139;

(6) the implementation of corrective actions mandated by the Agency in accordance with Article 76(6) of Regulation (EU) 2018/1139; and

(7) the use of flexibility provisions in accordance with Article 71 of Regulation (EU) 2018/1139.';

(b) Section II is amended as follows:

(i) in point ART.200, point (b) is replaced by the following:

'(b) The Agency shall complete the initial assessment within 30 days after receipt of all required documents pursuant to point TCO.300 (c) and (d) of Annex 1.

When the initial assessment requires a further assessment or an audit, the assessment period shall be extended for the duration of the further assessment or the audit, as appropriate.';

(ii) in point ART.200, point (d) is replaced by the following:

'(d) When the third country operator does not provide the information required for the assessment in accordance with point TCO.300 (c) and (d) of Annex 1 within the timeline established by the Agency, the Agency may decide to suspend the assessment of the application until the information is provided. In this case, the Agency shall inform the third country operator of its decision.';

(iii) in point ART.200, point (e)(1) is replaced by the following:

'(1) reject the application when the outcome of the assessment indicates that further assessment will not result in the issue of an authorisation; or';

(iv) in point ART.200, point (f) is added:

'(f) When an application from a third country operator was previously rejected or authorisation revoked, the Agency may decide to wait 9 months from the date of revocation or rejection before starting to process the new application.';

(v) in point ART.205, point (a) is replaced by the following:

'(a) Upon receiving an application for an authorisation from the third country operator subject to an operating ban or an operational restriction pursuant to Regulation (EC) No 2111/2005, the Agency shall take into account the scope of the ban in order to define the relevant assessment procedure, as described in point ART.200. When the third country operator is subject to an operating ban covering the entire scope of its operations, the assessment shall include an audit of the third country operator.';

(vi) in point ART.205, point (c) is replaced by the following:

'(c) The Agency shall perform an audit only if:

(1) the third country operator agrees to be audited;

(2) the outcome of the initial evaluation procedure referred to in point ART.200 indicates that there is a possibility that the audit will have a positive result; and

(3) the audit can be performed at the third country operator's facilities without the risk of compromising the safety and security of the Agency's personnel.';

(vii) in point (a) of point ART.210, the introductory wording is replaced by the following:

'(a) The Agency shall issue the authorisation, when:';

(viii) in point ART.210, point (a)(4) is replaced by the following:

'(4) there is no evidence of major deficiencies in the ability of the State of the third country operator or the State of registry, as applicable, to certify and oversee the third country operator and/or aircraft in accordance with the applicable ICAO standards;';

(ix) in point ART.210, point (a)(5) is replaced by the following:

'(5) the applicant is not subject to an operating ban pursuant to Regulation (EC) No 2111/2005; and';

(x) in point ART.210, point (a)(6) is added:

'(6) any non-compliance finding raised during the assessment has been closed.';

(xi) in point ART.210, points (b) and (c) are replaced by the following:

'(b) The authorisation shall be issued for an unlimited duration.

The Agency shall specify the privileges and the scope of the activities that the third country operator is authorised to conduct.

(c) The Agency shall agree with the third country operator the scope of changes to the third country operator obligations not requiring any prior approval taking into consideration the size, type and complexity of the operation.';

(xii) in point ART.215, point (a)(2) is replaced by the following:

'(2) if applicable, the implementation of corrective actions mandated by the Agency in accordance with Article 76(6) of Regulation (EU) 2018/1139.';

(xiii) in point ART.215, point (b)(4) is replaced by the following:

'(4) take into account decisions and investigations pursuant to Regulation (EC) No 2111/2005 or joint consultations pursuant to Regulation (EC) No 473/2006;';

(xiv) in point ART.215, point (d) is replaced by the following:

'(d) Where, based on available information, the safety performance of the third country operator and/or the oversight capabilities of the State of the operator or the State of Registry are suspected to have decreased below the applicable standards contained in the Annexes to the Convention on International Civil Aviation, the Agency shall submit the affected third country operator to intensified surveillance. The Agency shall take any necessary measures to ensure that the third country operator's intended operation will be conducted in compliance with the applicable requirements of Part-TCO. These measures may include:

(1) an audit of the third country operator in accordance with point ART.205(d);

(2) a requirement for the third country operator to submit reports or tailored technical information to the Agency at regular intervals;

(3) a temporary limitation of the operation to the third country operator's current fleet and/or scope of commercial air transport operations into, within or out of the territory subject to the provisions of the Treaties.';

(xv) in point ART.220, point (e) is added:

'(e) When determining the review interval, the Agency shall take into consideration the size, type and complexity of the operation, available information on the number of flights performed under the TCO authorisation, and the relevant elements referred to in point ART.200(c).';

(xvi) in point ART.230, points (b), (c) and (d) are replaced by the following:

'(b) A level 1 finding shall be issued by the Agency when any significant non-compliance is detected with the applicable requirements of Regulation (EU) 2018/1139 and Part-TCO, or with the terms of the authorisation that lowers safety or seriously hazards flight safety.

The level 1 findings shall include, but are not limited to:

(1) failure to give the Agency access to the third country operator's facilities as defined in point TCO.115(b) of Annex 1 during normal operating hours and after a written request;

(2) implementing changes requiring prior approval without having received an approval as defined in point ART.210;

(3) obtaining or maintaining the validity of the authorisation by falsification of documentary evidence;

(4) evidence of malpractice or fraudulent use of the authorisation;

(5) presence of multiple level 2 findings raised during an assessment, indicating a systemic weakness that lowers safety or seriously hazards flight safety.

(c) A level 2 finding shall be issued by the Agency when any non-compliance is detected with the applicable requirements of Regulation (EU) 2018/1139 and Part-TCO, or with the terms of the authorisation which could lower safety or hazard flight safety.

(d) When a finding is detected during monitoring, the Agency shall, without prejudice to any additional action required by Regulation (EU) 2018/1139 and its delegated and implementing acts, communicate the finding to the third country operator in writing and request corrective action to eliminate or mitigate the root cause in order to prevent recurrence of the non-compliance(s) identified.';

(xvii) in point ART.230, point (e)(2) is replaced by the following:

'(2) assess the corrective action and implementation plan proposed by the third country operator. If the assessment concludes that it contains root cause(s) analysis and course(s) of action to effectively eliminate or mitigate the root cause(s) to prevent recurrence of the non-compliance(s), the corrective action and implementation plan shall be accepted.

If the third country operator fails to submit an acceptable corrective action plan, as referred to in (e)(1), or to perform the corrective action within the time period accepted or extended by the Agency, the finding shall be raised to a level 1 finding and action shall be taken as laid down in point ART.235(a).';

(xviii) in point ART.235, points (b), (c), (d) and (e) are replaced by the following:

'(b) The limitation or suspension shall be lifted when the Agency is satisfied that successful corrective action has been taken by the third country operator and/or the State of the operator or State of registry, as applicable.

(c) In considering the lifting of a suspension, the Agency shall consider conducting an audit of the third country operator when the conditions in point ART.205(c) are met. In case the suspension is due to major deficiencies in the oversight of the applicant by the State of the operator or State of registry, as applicable, the audit may include an assessment with the aim of verifying whether these oversight deficiencies have been corrected.

(d) The Agency may revoke the authorisation when, following a suspension, the third country operator and/or the State of the operator or State of registry, as applicable, have not taken successful corrective action within a maximum period of 12 months.

(e) The Agency shall revoke the authorisation when the third country operator becomes subject to an operating ban pursuant to Regulation (EC) No 2111/2005.';

(xix) the following point ART.240 is added:

'ART.240 Validity of the authorisation

(a) When the holder of a TCO authorisation no longer complies with the requirements for continued validity of point TCO.320 of Annex 1, the Agency shall inform the third country operator and the Member States that the TCO authorisation has lost its validity.

(b) Upon receiving an application for a new authorization after the previous authorisation had become invalid, the Agency shall perform an assessment as necessary to ensure that the intended operation will be conducted in compliance with the applicable requirements of Part-TCO.';

(xx) the following point ART.245 is added:

'ART.245 One-off notification flights

Upon receiving a notification from the third country operator pursuant to point TCO.305 of Annex 1, the Agency shall, without undue delay, assess whether the conditions established in point TCO.305 of Annex 1 are met.

When the Agency finds that the conditions established in point TCO.305 of Annex 1 are not met, the Agency shall inform the third country operator and the affected Member State(s) thereof.'.