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| Subject: | COMMISSION REGULATION (EU) .../... of XXX laying down detailed rules for the operation of balloons pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council. |

Delegations will find attached document D051664/02.

Encl.: D051664/02



Brussels, **XXX**
[...](2017) **XXX** draft

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

of XXX

laying down detailed rules for the operation of balloons pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council.

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

of **XXX**

laying down detailed rules for the operation of balloons pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council.

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 8(5) thereof,

Whereas:

- (1) The Commission is to adopt the necessary implementing rules for establishing the conditions for the safe operation of balloons in accordance with Regulation (EC) No 216/2008, where such aircraft meet the conditions specified in points (b) and (c) of Article 4(1) of that Regulation.
- (2) In light of the specific nature of operations with balloons, there is a need for dedicated operational rules, laid down in a self-standing Regulation. Those rules should be based on the general rules for air operations laid down in Commission Regulation (EU) No 965/2012², but they should be restructured and simplified, so as to ensure that they are proportionate and founded on a risk-based approach, whilst ensuring that balloon operations are carried out safely.
- (3) The specific rules for air operations with balloons should not extend, however, to the requirements in respect of oversight of air operations by the competent authorities of the Member States, as those requirements are not specific to any particular air operation activity but apply horizontally in respect of all such activities. As regards oversight, the requirements laid down in Article 3 of Regulation (EU) No 965/2012 and Annex II to that Regulation should therefore continue to apply also with respect to air operations with balloons.
- (4) In the interest of safety and with a view to ensuring compliance with the essential requirements laid down in Annex IV to Regulation (EC) No 216/2008, all operators of balloons covered by this Regulation, with the exception of design or production organisations performing certain operations, shall be subject to a set of basic requirements.
- (5) In order to provide additional protection for balloon passengers, provision should be made for certain additional requirements for operators engaged in commercial operations with balloons which should apply in addition to the basic requirements.

¹ OJ L 79, 19.3.2008, 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).

- (6) Those additional requirements should take account of the less complex nature of commercial operations with balloons as compared to other forms of commercial aviation, be proportionate and founded on a risk-based approach. Therefore, it is appropriate to replace the requirement of a certificate for commercial operations set out in Article 8(2) of Regulation (EC) No 216/2008 by a requirement to make a prior declaration to the competent authority and to lay down the detailed rules for making such declarations as well as certain other additional requirements.
- (7) However, considering the comparatively low level of complexity and in light of a risk-based approach, operators engaged in certain commercial operations with balloons should be exempted from the requirement of certification and from those additional requirements, including the requirement of making a prior declaration. They should instead only be subject to the basic requirements set out in this Regulation which apply to all air operations with balloons covered by this Regulation.
- (8) In order to ensure a smooth transition and to avoid as much as possible any disruptions when introducing the new, specific regime for balloon operations laid down in this Regulation, any certificates, authorisations and approvals issued to operators of balloons in accordance with the rules applicable prior to the date of application of this Regulation should continue to be valid and be deemed to constitute a declaration made in accordance with this Regulation for a limited time period. After the expiry of that time period, all operators engaged in commercial operations with balloons should make a declaration in accordance with the provisions of this Regulation.
- (9) In order to ensure a smooth transition and to give all parties concerned sufficient time to prepare for the application of that new regime, this Regulation should only apply from an appropriate later date.
- (10) The Agency prepared draft implementing rules and submitted them as an opinion³ to the Commission in accordance with point (b) of Article 17(2) and Article 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 65 of Regulation (EC) No 216/2008,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down detailed rules for air operations with balloons, where such aircraft meet the conditions laid down in points (b) and (c) of Article 4(1) of Regulation (EC) No 216/2008.
2. This Regulation does not apply to air operations with tethered gas balloons.

³ Opinion No 01/2016 of the European Aviation Safety Agency of 6 January 2016 for a Commission Regulation on the revision of the European operational rules for balloons.

Article 2
Definitions

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

- (1) 'balloon' means a manned lighter-than-air aircraft which is not power-driven and sustains flight through the use of either a lighter-than-air gas or an airborne heater, including gas balloons, hot-air balloons, mixed balloons and, although power-driven, hot-air airships;
- (2) 'gas balloon' means a free balloon that derives its lift from a lighter-than-air gas;
- (3) 'tethered gas balloon' means a gas balloon with a tether system that continuously anchors the balloon to a fixed point during operation;
- (4) 'free balloon' means a balloon that is not continuously anchored to a fixed point during operation;
- (5) 'hot-air balloon' means a free balloon that derives its lift from heated air;
- (6) 'mixed balloon' means a free balloon that derives its lift from a combination of heated air and a lighter-than-air, non-flammable gas;
- (7) 'hot-air airship' means a power-driven hot-air balloon, whereby the engine does not create any portion of lift;
- (8) 'competition flight' means any air operation with a balloon performed for the purposes of participating in air races or contests, including practising for such an operation and flying to and from air races or contests;
- (9) 'flying display' means any air operation with a balloon performed for the purposes of providing an exhibition or entertainment at an advertised event open to the public, including practising for such an operation and flying to and from the advertised event;
- (10) 'introductory flight' means any air operation against remuneration or other valuable consideration consisting of an air tour of short duration for the purpose of attracting new trainees or new members, performed either by a training organisation approved in accordance with Commission Regulation (EU) No 1178/2011⁴ or by an organisation created with the aim of promoting aerial sport or leisure aviation;
- (11) 'principal place of business' means the head office or registered office of the operator of the balloon within which the principal financial functions and operational control of the activities referred to in this Regulation are exercised;
- (12) 'dry lease agreement' means an agreement between undertakings pursuant to which the balloon is operated under the responsibility of the lessee.

⁴ 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).

Article 3
Air operations

1. Operators of balloons shall operate the balloon in accordance with the requirements set out in Subpart BAS of Annex II.

However, the first subparagraph shall not apply to design or production organisations which are compliant with Articles 8 and 9, respectively, of Commission Regulation (EU) No 748/2012⁵ and which operate the balloon, within the scope of their privileges, for the purposes of the introduction or modification of balloon types.

2. By way of derogation from Article 8(2) of Regulation (EC) No 216/2008, the requirement of certification laid down therein shall not apply to operators engaged in commercial operations with balloons.

Those operators shall only be entitled to engage in such commercial operations after having declared to the competent authority their capacity and means to discharge the responsibilities associated with the operation of the balloon. They shall make that declaration and operate the balloon, in addition to the requirements set out in Subpart BAS, in accordance with the requirements set out in Subpart ADD of Annex II.

However, the second subparagraph shall not apply to operators engaged in the following operations with balloons:

- (a) cost-shared operations by four individuals or less, including the pilot, provided that the direct costs of the flight of the balloon and a proportionate part of the annual costs incurred for the storage, insurance and maintenance of the balloon are shared by all those individuals;
- (b) competition flights or flying displays, provided that the remuneration or any other valuable consideration for such flights is limited to the recovery of the direct costs of the flight of the balloon and a proportionate part of the annual costs incurred for the storage, insurance and maintenance of the balloon and that any prizes gained do not exceed the value specified by the competent authority;
- (c) introductory flights with four individuals or less, including the pilot, and flights for the purposes of parachute dropping, performed either by a training organisation which has its principal place of business in a Member State and which has been approved in accordance with Regulation (EU) No 1178/2011 or by an organisation created for the purposes of promoting aerial sport or leisure aviation, provided that the organisation operates the balloon on the basis of either ownership or a dry lease agreement, that the flight does not generate profits distributed outside of the organisation and that such flights represent only a marginal activity of the organisation;
- (d) training flights, performed by a training organisation which has its principal place of business in a Member State and which has been approved in accordance with Regulation (EU) No 1178/2011.

⁵ Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations (OJ L 224, 21.8.2012, p.1).

Article 4

Transitional provisions

Certificates, authorisations and approvals issued to operators of balloons by Member States before 8 April 2019 in accordance with Regulation (EU) No 965/2012 or in accordance with provisions of national law compliant with Article 10(2), (3) and (5)(b) of Regulation (EU) No 965/2012 shall remain valid until 8 October 2019.

Until 8 October 2019, any reference made in this Regulation to a declaration shall also be understood as a reference to the certificates, authorisations or approvals issued by Member States before 8 April 2019.

Article 5

Entry into force and application

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 8 April 2019.

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

Done at Brussels,

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