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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	20 March 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2023) 1760 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 20.3.2023 amending Regulation (EU) No 748/2012 as regards the definition of complex motor-powered aircraft and correcting that Regulation

Delegations will find attached document C(2023) 1760 final.

Encl.: C(2023) 1760 final



Brussels, 20.3.2023
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COMMISSION DELEGATED REGULATION (EU) .../...

of 20.3.2023

amending Regulation (EU) No 748/2012 as regards the definition of complex motor-powered aircraft and correcting that Regulation

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Correction of some changes previously introduced by Regulation (EU) 2022/1358.

Adaptation required by Regulation (EU) 2018/1139, Article 140, paragraph 2, regarding the definition of complex motor-powered aircraft (CMPA).

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

No consultation has been performed by EASA, because the amendment consists of:
simple corrections; and

The introduction of the CMPA definition that was formerly provided in Regulation (EU) 216/2008. This definition has been used in Regulation (EU) 748/2012, the corresponding AMC and GM, and some Certification Specification, without any reported concerns from stakeholders that would justify the need for consultation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The corrections will restore the correctness and legal certainty of Regulation (EU) No 748/2012, as some important elements were inadvertently modified or removed by Regulation (EU) 2022/1358.

The introduction of the CMPA definition will provide the required legal reference as this term is currently used in Regulation (EU) 748/2012 as part of the ELA1 and ELA2 definitions and the related AMC and GM material, as well as in several Certification Specifications (CS-STAN, CS-MMEL, CS-GEN-MMEL, CS-FCD, CS-27, and CS-29).

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

of 20.3.2023

amending Regulation (EU) No 748/2012 as regards the definition of complex motor-powered aircraft and correcting that Regulation

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 3922/91¹, and in particular Article 19(1) and Article 62(13) thereof,

Whereas:

- (1) Commission Regulation (EU) No 748/2012² lays down the requirements for the airworthiness and environmental certification of products, parts and appliances of civil aircraft, such as engines, propellers and parts to be installed therein, for the purposes of Regulation (EU) 2018/1139.
- (2) Article 140(2) of Regulation (EU) 2018/1139 requires the implementing rules adopted on the basis of Regulation (EC) No 216/2008 of the European Parliament and of the Council³ to be adapted to Regulation (EU) 2018/1139 no later than 12 September 2023. Regulation (EU) No 748/2012 should therefore be amended to introduce the definition of ‘complex motor-powered aircraft’.
- (3) Commission Delegated Regulation (EU) 2022/1358⁴ amended Article 3 of Regulation (EU) No 748/2012 to update the references to Annex I of Regulation (EU) No 748/2012. Article 1, point (5) of Delegated Regulation (EU) 2022/1358 inadvertently stated that it replaced paragraphs 3 and 4 of Article 3 of Regulation (EU) No 748/2012. In fact, it should have replaced paragraphs 2 and 3 of that Article. The whole of Article 3 of Regulation (EU) No 748/2012 should now be replaced to avoid confusion.

¹ OJ L 212, 22.8.2018, p. 1.

² 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).

³ 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 (OJ L 79, 19.3.2008, p. 1).

⁴ Commission Delegated Regulation (EU) 2022/1358 of 2 June 2022 amending Regulation (EU) No 748/2012 as regards the implementation of more proportionate requirements for aircraft used for sport and recreational aviation (OJ L 205, 5.8.2022, p. 7).

- (4) Article 1, point (6) of Delegated Regulation (EU) 2022/1358 inadvertently stated that it replaced paragraph 3 of Article 8 of Regulation (EU) No 748/2012. In fact, Article 8(3) of Regulation (EU) No 748/2012 is considered to be important for the correct functioning of Regulation (EU) No 748/2012 and should have been retained. Therefore, the original Article 8(3) should be reintroduced as a new paragraph 6.
- (5) Article 1, point (8) of Delegated Regulation (EU) 2022/1358 inadvertently stated that it replaced paragraphs 2 and 3 of Article 9 of Regulation (EU) No 748/2012. In fact, those provisions are considered to be important for the correct functioning of Regulation (EU) No 748/2012 and should have been retained. The whole of Article 9 of Regulation (EU) No 748/2012 should now be replaced to avoid confusion.
- (6) Regulation (EU) No 748/2012 should therefore be amended and corrected accordingly,
HAS ADOPTED THIS REGULATION:

Article 1

In Article 1(2) of Regulation (EU) No 748/2012, the following point (ha) is inserted:

‘(ha) ‘complex motor-powered aircraft’ means:

- (i) an aeroplane
 - with a maximum certificated take-off mass exceeding 5 700 kg, or
 - certificated for a maximum passenger seating configuration of more than nineteen, or
 - certificated for operation with a minimum crew of at least two pilots, or
 - equipped with (a) turbojet engine(s) or more than one turboprop engine, or
- (ii) a helicopter certificated:
 - for a maximum take-off mass exceeding 3 175 kg, or
 - for a maximum passenger seating configuration of more than nine, or
 - for operation with a minimum crew of at least two pilots, or
- (iii) a tilt rotor aircraft.’.

Article 2

Regulation (EU) No 748/2012 is corrected as follows:

- (1) Article 3 is replaced by the following:

‘Article 3

Continued validity of type-certificates and related certificates of airworthiness

1. With regard to products which had a type-certificate, or a document allowing the issuing of a certificate of airworthiness, issued before 28 September 2003 by a Member State, the following provisions shall apply:
 - (a) the product shall be deemed to have a type-certificate issued in accordance with this Regulation when:
 - (i) its type-certification basis was:

- the JAA type-certification basis, for products that have been certificated under JAA procedures, as defined in their JAA data sheet, or
- for other products, the type-certification basis as defined in the type-certificate data sheet of the State of design, if that State of design was:
 - a Member State, unless the Agency determines, taking into account, in particular, certification specifications used and service experience, that such type-certification basis does not provide for a level of safety equivalent to that required by Regulation (EU) 2018/1139 and this Regulation, or
 - a State with which a Member State had concluded a bilateral airworthiness agreement or similar arrangement under which such products have been certificated on the basis of the certification specifications of that State of design, unless the Agency determines that such certification specifications or service experience or the safety system of that State of design do not provide for a level of safety equivalent to that required by Regulation (EU) 2018/1139 and this Regulation.

The Agency shall make a first evaluation of the implication of the provisions of the second indent in view of producing an opinion to the Commission including possible amendments to this Regulation;

- (ii) the environmental protection requirements were those laid down in Annex 16 to the Chicago Convention, as applicable to the product;
 - (iii) the applicable airworthiness directives were those of the State of design.
- (b) the design of an individual aircraft, which was on the register of a Member State before 28 September 2003, shall be deemed to have been approved in accordance with this Regulation when:
- (i) its basic type design was part of a type-certificate referred to in point (a);
 - (ii) all changes to this basic type design, which were not under the responsibility of the type-certificate holder, had been approved; and
 - (iii) the airworthiness directives issued or adopted by the Member State of registry before 28 September 2003 were complied with, including any variations to the airworthiness directives of the State of design agreed by the Member State of registry.
2. With regard to products for which a type-certification process was proceeding through the JAA or a Member State on 28 September 2003, the following shall apply:

- (a) if a product is under certification by several Member States, the most advanced project shall be used as the reference;
 - (b) points 21.A.15(a), (b) and (c) of Annex I (Part 21) shall not apply;
 - (c) by way of derogation from point 21.B.80 of Annex I (Part 21), the type-certification basis shall be that established by the JAA or, where applicable, the Member State at the date of application for the approval;
 - (d) compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purposes of compliance with points 21.A.20(a) and (d) of Annex I (Part 21).
3. With regard to products that have a national type certificate, or equivalent, and for which the approval process of a change carried out by a Member State was not finalised at the time when the type certificate had to be approved in accordance with this Regulation, the following conditions shall apply:
- (a) if an approval process is being carried out by several Member States, the most advanced project shall be used as the reference;
 - (b) point 21.A.93 of Annex I (Part 21) shall not apply;
 - (c) the applicable type-certification basis shall be that established by the JAA or, where applicable, the Member State at the date of application for the approval of change;
 - (d) compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purposes of compliance with point 21.B.107 of Annex I (Part 21).
4. With regard to products that had a national type-certificate, or equivalent, and for which the approval process of a major repair design carried out by a Member State was not finalised at the time when the type-certificate had to be determined in accordance with this Regulation, compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purpose of complying with point 21.A.433(a) of Annex I (Part 21).
5. A certificate of airworthiness issued by a Member State attesting conformity with a type-certificate determined in accordance with paragraph 1 shall be deemed to comply with this Regulation.’;
- (2) in Article 8, the following paragraph 6 is added:
- ‘6. Design organisation approvals issued or recognised by a Member State in accordance with the JAA requirements and procedures and valid before 28 September 2003 shall be deemed to comply with this Regulation.’;
- (3) Article 9 is replaced by the following:

‘Article 9

Production organisations

1. An organisation responsible for the manufacture of products, parts and appliances shall demonstrate its capability in accordance with the provisions of Annex I (Part 21). This demonstration of capability is not required for the parts or appliances that an organisation manufactures which, in accordance with the provisions of Annex I (Part 21), are eligible for installation in a type-certified

product without the need to be accompanied by an authorised release certificate (i.e. EASA Form 1).

2. By way of derogation from point 1, a manufacturer whose principal place of business is in a non-member State may demonstrate its capability by holding a certificate issued by that State for the product, part and appliance for which it applies, provided:
 - (a) that State is the State of manufacture; and
 - (b) the Agency has determined that the system of that State includes the same independent level of checking of compliance as provided by this Regulation, either through an equivalent system of approvals of organisations or through direct involvement of the competent authority of that State.
3. Production organisation approvals issued or recognised by a Member State in accordance with the JAA requirements and procedures and valid before 28 September 2003 shall be deemed to comply with this Regulation.
4. By way of derogation from paragraph 1, the production organisation may apply to the competent authority for exemptions from the environmental protection requirements referred to in the first subparagraph of Article 9(2) of Regulation (EU) 2018/1139.
5. By way of derogation from points 21.B.225(d)(1) and (2) of Annex I (Part 21), a production organisation that holds a valid approval certificate issued in accordance with Annex I (Part 21) may correct, until 7 March 2025, any findings of non-compliance related to the Annex I requirements introduced by Commission Delegated Regulation (EU) 2022/201 (*).

Where after 7 March 2025 the organisation has not closed those findings, the approval certificate shall be revoked, limited or suspended in whole or in part.
6. By way of derogation from point 21.A.125C(a)(1) of Annex I (Part 21), an organisation that produces products, parts or appliances without an approval certificate and that holds a valid letter of agreement issued on or before 7 March 2023 in accordance with Annex I (Part 21) shall not be required to comply with the relevant Annex I requirements introduced by Delegated Regulation (EU) 2022/201.
7. By way of derogation from paragraph 1 of this Article, a natural or legal person whose principal place of business is in a Member State and who is responsible for the manufacture of products and their parts and appliances in accordance with Article 2(2) may alternatively demonstrate their capability in accordance with Annex Ib (Part 21 Light).
8. The demonstration of capability pursuant to paragraphs 1 or 2 shall not be required where the production organisation or natural or legal person are involved in the following manufacturing activities:
 - (a) the manufacture of parts or appliances that are eligible, in accordance with Annex I (Part 21), for installation in a type-certified product without the need to be accompanied by an authorised release certificate (that is to say EASA Form 1);

- (b) the manufacture of parts that are eligible, in accordance with Annex Ib (Part 21 Light), for installation in an aircraft that has been subject to a declaration of design compliance without the need to be accompanied by an authorised release certificate (that is to say EASA Form 1);
- (c) the manufacture of an aircraft that has been subject to a declaration of design compliance referred to in Article 2(3), and of parts that are eligible for installation on such aircraft. In such case, the manufacturing activities shall be conducted in accordance with Subpart R of Section A of Annex Ib (Part 21 Light) by a production organisation or a natural or legal person whose principal place of business is in a Member State.

(*) Commission Delegated Regulation (EU) 2022/201 of 10 December 2021 amending Regulation (EU) No 748/2012 as regards management systems and occurrence-reporting systems to be established by design and production organisations, as well as procedures applied by the Agency, and correcting that Regulation (OJ L 33, 15.2.2022, p. 7).⁷

Article 3

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 25 August 2023.

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

Done at Brussels, 20.3.2023

For the Commission
The President
Ursula VON DER LEYEN