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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2020/1234

of 9 June 2020

amending Regulation (EU) No 139/2014 as regards the conditions and procedures for the declaration by organisations responsible for the provision of apron management services*(Text with EEA relevance)*

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 39(1) thereof,

Whereas:

- (1) Commission Regulation (EU) No 139/2014 ⁽²⁾ lays down requirements and administrative procedures related to aerodromes and to the provision of apron management service ('AMS'). However, that Regulation contains a limited number of provisions addressing the safe provision of that service. A dedicated set of additional requirements, as a subpart of aerodrome operations, should therefore be provided.
- (2) Annex II (Part-ADR.AR) of Regulation (EU) No 139/2014 is laying down requirements for management and oversight of organisations by competent authorities. This Annex should be amended to give to the competent authority of the Member State where the AMS is provided, the powers to receive and register the declarations of capability submitted by organisations responsible for the providing of apron management services.
- (3) In order to ensure a high level of safety at an aerodrome, the requirements for organisations responsible for the provision of AMS should be aligned with those applicable to aerodrome operators and in particular with the requirements for safety management, operational procedures and personnel.
- (4) Requirements for the management of safety-related interfaces between the aerodrome operator, the organisations responsible for the provision of AMS and the air traffic service provider with regard to operations on the apron should also be provided for.
- (5) In order to contribute to the safety of operations on an apron, specific operational procedures applicable to the aerodrome operator should be provided for. The aerodrome operator should be allowed to allocate responsibilities to other organisations.
- (6) The European Union Aviation Safety Agency has prepared draft rules and submitted them with Opinion No 2/2014 ⁽³⁾ in accordance with points (b) and (c) of Article 75(2) and with Article 76(1) of Regulation (EU) 2018/1139,

⁽¹⁾ OJ L 212, 22.8.2018, p. 1.

⁽²⁾ Commission Regulation (EU) No 139/2014 of 12 February 2014 laying down requirements and administrative procedures related to aerodromes pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 44, 14.2.2014, p. 1).

⁽³⁾ <https://www.easa.europa.eu/document-library/opinions>

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 139/2014 is amended as follows:

(1) Article 1 is amended as follows:

(a) in paragraph 1, point (h) is replaced by the following:

‘(h) conditions and procedures for the declaration by and for the oversight of organisations responsible for the provision of apron management services referred to in Article 37(2) of Regulation (EU) 2018/1139 of the European Parliament and of the Council (*) as set out in Annexes II and III.

(*) 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).’;

(b) paragraph 3 is replaced by the following:

‘3. Aerodrome operators and organisations responsible for providing apron management service shall comply with the requirements laid down in Annexes III and IV.’;

(c) paragraph 4 is deleted;

(2) Article 3 is amended as follows:

(a) the title is replaced by the following:

‘Oversight’;

(b) paragraph 1 is replaced by the following:

‘1. Member States shall designate one or more entities as the Competent Authority(ies) within that Member State with the necessary powers and responsibilities for the certification and oversight of aerodromes and aerodrome operators, receiving declarations and oversight of providers of apron management service, as well as personnel involved therein.’;

(3) in Article 11, paragraph 5 is deleted;

(4) Annex II is amended in accordance with Annex I to this Regulation;

(5) Annex III is amended in accordance with Annex II to this Regulation;

(6) Annex IV is amended in accordance with Annex III 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 20 March 2022.

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

Done at Brussels, 9 June 2020.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Annex II (Part-ADR.AR) to Regulation (EU) No 139/2014 is amended as follows:

- (1) point ADR.AR.A.001 is replaced by the following:

‘ADR.AR.A.001 Scope

This Annex establishes requirements for the Competent Authorities responsible for:

- (a) the certification and oversight of aerodromes and aerodrome operators;
- (b) receiving declarations of capability and availability of the means to discharge the responsibilities by the organisations responsible for the provision of apron management services and their oversight’;

- (2) in point ADR.AR.A.005, point (b) is replaced by the following:

‘(b) receiving declarations of capability and availability of the means to discharge the responsibilities by the organisations responsible for the provision of apron management services and their oversight’;

- (3) in point ADR.AR.A.010, point (b) is replaced by the following:

‘(b) The Competent Authority shall make available legislative acts, standards, rules, technical publications and related documents to aerodrome operators, organisations responsible for the provision of AMS and other interested parties to facilitate their compliance with the applicable requirements.’;

- (4) point ADR.AR.A.015(d) is amended as follows:

- (a) the first paragraph is replaced by the following:

‘(d) The Competent Authority shall evaluate the alternative means of compliance proposed by an aerodrome operator or an organisation responsible for the provision of AMS, in accordance with point ADR.OR.A.015, by analysing the documentation provided and, if considered necessary, conducting an inspection of the aerodrome operator, the aerodrome or the organisation responsible for the provision of AMS.’;

- (b) in the second paragraph, point (4) is replaced by the following:

‘(4) inform the certified aerodromes and the organisation responsible for the provision of AMS under its oversight, as appropriate.’;

- (5) point ADR.AR.A.030 is amended as follows:

- (a) point (a) is replaced by the following:

‘(a) The Competent Authority shall implement a system to appropriately collect, analyse and disseminate safety information in accordance with Regulation (EU) No 376/2014 of the European Parliament and of the Council (*).

(*) Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007 (OJ L 122, 24.4.2014, p. 18).’;

- (b) point (d) is replaced by the following:

‘(d) Measures taken in accordance with point (c) shall immediately be notified to the aerodrome operators or organisations responsible for the provision of AMS which need to comply with them under Regulation (EU) 2018/1139 and the delegated and implementing acts adopted on the basis thereof. The Competent Authority shall also notify those measures to the Agency and, when combined action is required, the other Member States concerned.’;

- (c) the following point (e) is added:

‘(e) Measures notified to an organisation responsible for the provision of AMS shall also be notified to the operator of the aerodrome where the service is provided.’;

- (6) in point ADR.AR.A.040, the following point (e) is added:

‘(e) Safety directives notified to the organisation responsible for the provision of AMS shall also be notified to the operator of the aerodrome where the service is provided.’;

- (7) in point ADR.AR.B.005, point (c) is replaced by the following:
- ‘(c) The Competent Authority shall establish procedures for participation in a mutual exchange of all necessary information and assistance with other competent authorities concerned, including information on all findings raised, corrective follow-up actions taken in response to such findings, and enforcement measures taken as a result of oversight of the organisation responsible for the provision of AMS registered in more than one Member State.’;
- (8) in point ADR.AR.B.020(a), point (11) is replaced by the following:
- ‘(11) the use of flexibility provisions in accordance with Article 71 of Regulation (EU) 2018/1139.’;
- (9) in point ADR.AR.C.005(a), point (2) is replaced by the following:
- ‘(2) continued compliance with the certification basis and applicable requirements of aerodromes and aerodrome operators or organisations responsible for the provision of AMS; and’;
- (10) point ADR.AR.C.010 is amended as follows:
- (a) in point (a), the introductory phrase is replaced by the following:
- ‘(a) The Competent Authority shall for each aerodrome operator and organisation responsible for the provision of AMS.’;
- (b) point (c) is replaced by the following:
- ‘(c) The oversight programme and planning cycle shall reflect the safety performance of the aerodrome operator or the organisation responsible for the provision of AMS respectively, as well as the risk exposure of the aerodrome.’;
- (11) in point ADR.AR.C.040, the title is replaced by the following:
- ‘ADR.AR.C.040 Changes – aerodrome operator’;
- (12) point ADR.AR.C.050 is replaced by the following:
- ‘ADR.AR.C.050 Declaration of organisations responsible for the provision of AMS and notification of a change
- (a) Upon receiving a declaration from an organisation responsible for the provision of AMS that intends to provide such a service at an aerodrome, or upon receiving a notification of a change to the information contained in the declaration, the Competent Authority shall acknowledge receipt of the declaration or the notification of a change, and shall verify that the declaration or the notification contains all the information required by Annex III (Part-ADR.OR).
- (b) If the declaration or the notification of a change does not contain all the information required under point ADR.OR.F.005 of Annex III, or contains information that is not in accordance with the applicable requirements, the Competent Authority shall notify the organisation responsible for the provision of AMS and the aerodrome operator where such service is provided about the non-compliance and request further information. If deemed necessary the competent authority shall carry out an inspection of the organisation. If the non-compliance is confirmed, the Competent Authority shall take action as defined in point ADR.AR.C.055 of this Annex.
- (c) The Competent Authority shall keep a register of the declarations and of the notifications of a change of the organisation responsible for the provision of AMS under its oversight.’;
- (13) in point ADR.AR.C.055, the following point (f) is added:
- ‘(f) Any findings issued with regard to an organisation responsible for the provision of AMS or any observations made to the organisation responsible for the provision of AMS shall be notified by the Competent Authority to the operator of the aerodrome where such service is provided.’
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ANNEX II

Annex III to Regulation (EU) No 139/2014 is amended as follows:

- (1) the title of Annex III is replaced by the following:
'Part Organisation Requirements (Part-ADR.OR)';
 - (2) the title of Subpart B is replaced by the following:
'SUBPART B – CERTIFICATION – AERODROMES AND AERODROME OPERATORS (ADR.OR.B)';
 - (3) point ADR.OR.B037 is deleted;
 - (4) point ADR.OR.B060 is deleted;
 - (5) the following point ADR.OR.B.070 is added:
'ADR.OR.B.070 Termination of the provision of apron management service
The aerodrome operator shall:
 - (a) take appropriate measures to ensure that safety risks that result from the termination of operation have been assessed and mitigated;
 - (b) provide information on the measures referred to in point (a) to the appropriate aeronautical information service provider.';
 - (6) in point ADR.OR.C.015, the introductory phrase is replaced by the following:
'For the purpose of determining compliance with the relevant requirements in Regulation (EU) 2018/1139 and the delegated and implementing acts adopted on the basis thereof, an aerodrome operator shall grant access to any person authorised by the Competent Authority to:';
 - (7) in point ADR.OR.C.020, the introductory phrase is replaced by the following:
'After receipt of a notification of findings, the aerodrome operator shall:';
 - (8) point ADR.OR.C.025 is replaced by the following:
'ADR.OR.C.025 Immediate reaction to a safety problem – compliance with safety directives
The aerodrome operator shall implement any safety measures, including safety directives, taken by the Competent Authority in accordance with points ADR.AR.A.030(c) and ADR.AR.A.040 of Annex II.';
 - (9) point ADR.OR.C.030 is amended as follows:
 - (a) point (a) is replaced by the following:
'(a) The aerodrome operator shall report to the Competent Authority and to any other organisation required by the State where the aerodrome is located, any accident, serious incident and occurrence as defined in Regulation (EU) No 996/2010 of the European Parliament and the Council (*) and Regulation (EU) No 376/2014.
- (*) Regulation (EU) No 996/2010 of the European Parliament and 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).';
- (b) points (d) and (e) are replaced by the following:
 - (d) Reports shall be made by the aerodrome operator within 72 hours of becoming aware of the occurrence to which the report relates, unless exceptional circumstances prevent this.
 - (e) Where relevant, the aerodrome operator shall produce a follow-up report to provide details of actions it intends to take to prevent similar occurrences in the future, as soon as those actions have been identified. That report shall be produced in a form and manner established by the Member State.';
 - (10) the title of Subpart D is replaced by the following:
'SUBPART D – MANAGEMENT – AERODROME OPERATORS (ADR.OR.D)';
 - (11) the following Subpart F is added:
'SUBPART F – APRON MANAGEMENT SERVICE (ADR.OR.F)
ADR.OR.F.001 Responsibilities of the organisation responsible for the provision of AMS
The organisation responsible for the provision of AMS shall provide the apron management service in accordance with:
 - (a) the requirements set out in Annex VII to Regulation (EU) 2018/1139 and in Annex III (Part-ADR.OR) and Annex IV (Part-ADR.OPS) to this Regulation;

- (b) its declaration;
- (c) the operating procedures included in the aerodrome manual;
- (d) its management system manual in accordance with ADR.OR.F.095;
- (e) any other manuals used for the provision of apron management service.

ADR.OR.F.005 Declaration of the organisation responsible for the provision of AMS

- (a) When an organisation responsible for the provision of AMS intends to provide guidance to aircraft as laid down in points a(1) and a(2) of point ADR.OPS.D.001 as a minimum, it shall submit a declaration to the Competent Authority at least 2 months before the date of the intended start of the provision of the service. The declaration shall contain the following information:
 - (1) the name of the organisation responsible for the provision of AMS;
 - (2) contact details of the organisation responsible for the provision of AMS;
 - (3) name and contact details of the accountable manager;
 - (4) the name(s) of the aerodrome(s) in the Member State where the service will be provided;
 - (5) a list of aerodromes located in other Member States where the service is provided;
 - (6) the date of the intended start of the provision of the apron management service;
 - (7) a statement that confirms that it has established formal arrangements with the aerodrome operator and the air traffic service provider at the aerodrome where it intends to provide the apron management service;
 - (8) a statement that confirms that the organisation responsible for the provision of AMS has developed a safety policy and will apply that policy during the provision of the service covered by the declaration, in accordance with point ADR.OR.F.045(b)(2);
 - (9) a statement that confirms that the organisation responsible for the provision of AMS complies and will, during the provision of the service covered by the declaration, continue to comply with the applicable requirements of Annex VII to Regulation (EU) 2018/1139 and Annex III (Part-ADR.OR) and Annex IV (Part-ADR.OPS) to this Regulation;
- (b) By derogation from point (a), when a certified aerodrome operator or an approved air traffic services provider intends to provide apron management service, it shall:
 - (1) notify its Competent Authority;
 - (2) revise its safety policy to include the provision of apron management service;
 - (3) submit to the Competent Authority the training programme of the personnel intended to be used for the provision of the service.

ADR.OR.F.010 Continued validity of the declaration

A declaration made by an organisation responsible for the provision of AMS in accordance with point ADR.OR.F.005 shall remain valid subject to the following conditions:

- (a) the organisation responsible for the provision of AMS is compliant with the requirements set out in Annex VII to Regulation (EU) 2018/1139 and in Annex III (Part-ADR.OR) and Annex IV (Part-ADR.OPS) to this Regulation, taking into account the provisions related to the handling of findings as specified under point ADR.OR.F.035 of this Annex;
- (b) the Competent Authority is granted access to the organisation responsible for the provision of AMS in accordance with point ADR.OR.F.030 of this Annex to determine continued compliance with the requirements set out in Annex VII to Regulation (EU) 2018/1139 and in Annex III (Part-ADR.OR) and Annex IV (Part-ADR.OPS) to this Regulation;
- (c) the declaration has not been withdrawn by the organisation responsible for the provision of AMS or been notified by the Competent Authority to cease some or all services covered by the declaration.

ADR.OR.F.015 Start of the provision of apron management service

An organisation responsible for the provision of AMS shall start the provision of apron management service at an aerodrome, when:

- (a) the declaration has been received by the Competent Authority;

- (b) it has established formal arrangements with the certified aerodrome operator and the approved air traffic service provider at the aerodrome where the service will be provided in accordance with points ADR.OR.F.085 and ADR.OR.F.090 respectively;
- (c) it provides evidence that its personnel have completed the required initial and unit training.

ADR.OR.F.020 Termination of the provision of apron management service

An organisation responsible for the provision of AMS that intends to terminate permanently the provision of the service at an aerodrome shall:

- (a) notify the aerodrome operator and the Competent Authority, as soon as possible, so as to enable appropriate measures to be taken for the safe continuation of the service;
- (b) submit to the Competent Authority an amended declaration or request de-registration of the declaration, upon the date of termination of the provision of the service.

ADR.OR.F.025 Changes

- (a) The organisation responsible for the provision of AMS shall coordinate with the aerodrome operator any changes to the information contained in the declaration specified in point ADR.OR.F.005(a) and to the training programme or the management system manual respectively referred to in point ADR.OR.F.005(b) and point ADR.OR.F.095.
- (b) The organisation responsible for the provision of AMS shall notify without undue delay the Competent Authority of any changes specified in point (a) and, if necessary, submit an amended declaration.
- (c) The organisation responsible for the provision of AMS shall provide the Competent Authority with the relevant documentation in accordance with point (d).
- (d) As part of its management system referred to in point ADR.OR.F.045, the organisation responsible for the provision of AMS that proposes a change to its organisation, its management system or its training programme shall:
 - (1) determine the interdependences with any affected parties, and plan and conduct a safety assessment in coordination with these organisations;
 - (2) align assumptions and mitigations with any affected parties in a systematic way;
 - (3) ensure a comprehensive assessment of the change including any necessary interactions;
 - (4) ensure that complete and valid arguments, evidence and safety criteria are established and documented to support the safety assessment, and that the change supports the improvement of safety whenever reasonably practicable.

ADR.OR.F.030 Access

For the purpose of determining whether an organisation responsible for the provision of AMS is acting in accordance with its declaration, the organisation responsible for the provision of AMS shall ensure that any person duly authorised by the Competent Authority, at any time:

- (a) is granted access to any facility, document, records, data, procedures or any other material relevant to its activity;
- (b) is allowed to perform or witness any action, inspection, test, assessment or exercise the Competent Authority finds necessary.

ADR.OR.F.035 Findings and corrective actions

- (a) After the Competent Authority has communicated a finding to an organisation responsible for the provision of AMS in accordance with point ADR.AR.C.055 of Annex II, the organisation responsible for the provision of AMS shall take the following steps within the time period determined by the Competent Authority:
 - (1) identify the root cause of the non-compliance;
 - (2) define a corrective action plan;
 - (3) demonstrate the corrective action implementation to the satisfaction of the Competent Authority within the time period agreed with that authority in accordance with point ADR.AR.C.055(d) of Annex II.
- (b) The organisation responsible for the provision of AMS shall inform the aerodrome operator of the actions detailed in point (a) and, where appropriate, coordinate such actions with the aerodrome operator.

ADR.OR.F.040 Immediate reaction to a safety problem – compliance with safety directives

An organisation responsible for the provision of AMS shall:

- (a) implement any safety measures, including safety directives, taken by the Competent Authority in accordance with points ADR.AR.A.030(c) and ADR.AR.A.040 of Annex II;
- (b) when implementing the measures referred to in point (a), coordinate with the aerodrome operator and the air traffic service provider, where necessary.

ADR.OR.F.045 Management system

- (a) The organisation responsible for the provision of AMS, the aerodrome operator or the air traffic service provider, when the latter is partially or exclusively providing apron management services, shall implement and maintain a management system that integrates a safety management system that also covers those activities.
- (b) The management system shall include:
 - (1) clearly defined lines of responsibility and accountability throughout the organisation, including a direct accountability for safety on the part of the senior management;
 - (2) a description of the overall philosophies and principles of the organisation responsible for the provision of AMS with regard to safety, referred to as the safety policy, signed by the accountable manager;
 - (3) a formal process that ensures that hazards in operations are identified;
 - (4) a formal process that ensures analysis, assessment and mitigation of the safety risks in the provision of apron management service;
 - (5) the means to verify the safety performance of the organisation responsible for the provision of AMS in reference to the safety performance indicators and safety performance targets of the safety management system, and to validate the effectiveness of safety risk controls;
 - (6) a formal process to:
 - (i) identify changes within the organisation, its management system, or the provision of apron management service which may affect established processes, procedures and services;
 - (ii) describe the arrangements to ensure safety performance before implementing changes;
 - (iii) eliminate or modify safety risk controls that are no longer needed or effective due to changes in the operational environment;
 - (7) a formal process to review the management system referred to in point (a), identify the cause(s) of substandard performance of the safety management system, determine the implications of such substandard performance in operations, and eliminate or mitigate such cause(s);
 - (8) a safety training programme that ensures that personnel involved in the provision of apron management service are trained and competent to perform the safety management duties;
 - (9) formal means for safety communication that ensures that personnel are fully aware of the safety management system, conveys safety-critical information, and explains why particular safety actions are taken and why safety procedures are introduced or changed;
 - (10) a formal process to monitor the compliance of the organisation with the relevant requirements.
- (c) The organisation responsible for the provision of AMS shall document all management system key processes in a manual.

ADR.OR.F.050 Reporting malfunctions of systems used for the provision of apron management services

Without prejudice to Regulations (EU) No 376/2014, the organisation responsible for the provision of AMS shall report to the Competent Authority of the State where the aerodrome is located, to the aerodrome operator and to the organisation responsible for the design of any aerodrome equipment used for the provision of apron management service, any malfunction, technical defect, exceeding of technical limitations, occurrence or other irregular circumstance that has or may have endangered safety and that has not resulted in an accident or a serious incident.

ADR.OR.F.055 Safety reporting system

- (a) The organisation responsible for the provision of AMS shall establish and implement a safety reporting system for its personnel.
- (b) As part of the process referred to in point ADR.OR.F.045(b)(3), the organisation responsible for the provision of AMS shall ensure that:
 - (1) its personnel use the safety reporting system for the mandatory reporting of any accident, serious incident and occurrence;
 - (2) the safety reporting system may be used for the voluntary reporting of any defect, fault and safety hazard which could impact safety.
- (c) The safety reporting system shall protect the identity of the reporter, encourage voluntary reporting and include the possibility that reports may be submitted anonymously.
- (d) The organisation responsible for the provision of AMS shall:
 - (1) record all reports submitted;
 - (2) transmit the reports to the aerodrome operator, and, if relevant, to the air traffic service provider;
 - (3) in cooperation with the aerodrome operator or the air traffic service provider, or both, analyse and assess the reports, in order to address safety deficiencies and identify trends;
 - (4) participate in the investigation of the reports conducted by the aerodrome operator, as appropriate;
 - (5) refrain from attribution of blame in line with the “just culture” principles.

ADR.OR.F.060 Safety programmes

The organisation responsible for the provision of AMS shall participate in the safety programmes established by the aerodrome operator.

ADR.OR.F.065 Personnel requirements

- (a) The organisation responsible for the provision of AMS shall:
 - (1) appoint an accountable manager, who has the authority to ensure that all activities can be financed and carried out in accordance with the applicable requirements. The accountable manager shall be responsible for establishing and maintaining an effective management system;
 - (2) nominate a person responsible for the management and supervision of operational services related to apron management;
 - (3) nominate a person responsible for the development, maintenance and day-to-day management of the safety management system. That person shall act independently of other managers within the organisation, shall have direct access to the accountable manager and to appropriate management for safety matters, and shall be responsible to the accountable manager;
 - (4) have sufficient and qualified personnel for the planned tasks and activities to be performed in accordance with the applicable requirements;
 - (5) assign a sufficient number of personnel supervisors to defined duties and responsibilities, taking into account the structure of the organisation and the number of personnel employed;
 - (6) ensure that personnel involved in the provision of apron management service are adequately trained in accordance with the training programme.
- (b) In the case that the aerodrome operator or the air traffic service provider are partially or exclusively providing apron management service, they shall ensure that the requirements of point (a) are included in their established allocation of responsibilities within their management systems.

ADR.OR.F.075 Use of alcohol, psychoactive substances and medicines

The organisation responsible for the provision of AMS shall implement the procedures established by the aerodrome operator in accordance with point ADR.OR.C.045 with regard to the consumption of alcohol, psychoactive substances and medicines by its personnel involved in the provision of apron management service.

ADR.OR.F.080 Record-keeping

- (a) The organisation responsible for the provision of AMS shall establish an adequate record-keeping system that covers all its activities undertaken in accordance with Regulation (EU) 2018/1139 and the delegated and implementing acts adopted on the basis thereof.
- (b) The format of the records shall be specified in the management system manual.

- (c) Records shall be stored in a manner that ensures protection from damage, alteration and theft.
- (d) Records shall be kept for a minimum of 5 years, except that:
 - (1) the current declaration shall be kept for the lifespan of the declaration;
 - (2) written agreements with other organisations shall be kept for as long as such agreements are in effect;
 - (3) safety assessment reports shall be kept for the lifetime of the system, procedure or activity;
 - (4) personnel training, qualifications, as well as their proficiency checks shall be kept for at least 4 years after the end of their employment, or until the area of their employment has been audited by the Competent Authority;
- (e) The organisation responsible for the provision of AMS shall establish and maintain a hazard register.

ADR.OR.F.085 Formal arrangement between the organisation responsible for the provision of AMS and the aerodrome operator

- (a) The organisation responsible for the provision of AMS shall have a formal arrangement with the operator of the aerodrome where it intends to provide apron management service.
- (b) The arrangement shall be concluded prior to the start of the provision of the service.
- (c) The formal arrangement shall include as a minimum the following:
 - (1) duration of the arrangement;
 - (2) definition of the area where apron management service will be provided;
 - (3) list of the services that will be conducted by the organisation responsible for the provision of AMS;
 - (4) methods of exchanging operational information between the aerodrome operator and the organisation responsible for the provision of AMS.

ADR.OR.F.090 Formal arrangement between the organisation responsible for the provision of AMS and the air traffic service provider

- (a) The organisation responsible for the provision of AMS shall have a formal arrangement with the air traffic service provider of the aerodrome where it intends to provide apron management service.
- (b) The arrangement shall be concluded prior to the start of the provision of the service.
- (c) The formal arrangement shall include as a minimum the following:
 - (1) duration of the arrangement;
 - (2) scope of services to be provided, including coordination of start-up clearances, taxi and push-back of aircraft;
 - (3) handover points between apron management service and air traffic service provider;
 - (4) methods of exchanging operational information between the air traffic service provider and the organisation responsible for the provision of AMS;
 - (5) coordination of start-up clearances, taxi and push-back of aircraft.

ADR.OR.F.095 Management system manual

- (a) The organisation responsible for the provision of AMS shall:
 - (1) establish and maintain a management system manual;
 - (2) ensure that its personnel have easy access to the manual and are made aware of any changes;
 - (3) after consultation and in coordination with the aerodrome operator, supply the Competent Authority with the intended amendments and revisions of the manual in advance of the effective date;
 - (4) review the content of the manual, ensure that it is kept up to date and amended, whenever necessary;
 - (5) incorporate all amendments and revisions to the manual as required by the Competent Authority;
 - (6) make other organisations concerned aware of the changes that are relevant to their duties.
 - (7) ensure that any information taken from other approved documents, and any amendment thereof, is correctly reflected in the manual;

- (8) ensure that the manual is written in a language acceptable to the Competent Authority;
 - (9) ensure that all personnel are able to read and understand the language in which those parts of the manual and other documents pertaining to their duties and responsibilities are written;
 - (10) ensure that the manual is signed by the accountable manager of the organisation;
 - (11) ensure that the manual is printed or is in electronic format and is easy to revise;
 - (12) ensure that the manual has a system for version control management which is applied and made visible in the manual;
 - (13) ensure that the manual observes human factors principles and is organised in a manner that facilitates its preparation, use and review;
 - (14) keep at least one complete and current copy of the manual at the aerodrome where it provides service, and make it available for inspection by the Competent Authority.
- (b) The content of the manual shall be structured as follows:
- (1) general part;
 - (2) organisation's management system and qualification requirements.
- (c) In the case that the aerodrome operator or the air traffic service provider are partially or exclusively providing apron management service, they shall ensure that the relevant requirements in point (b) are included in the aerodrome manual or the air traffic service operations manual respectively.

ADR.OR.F.100 Documentation requirements

The organisation responsible for the provision of AMS shall:

- (a) make available the parts of the aerodrome manual related to the provision of apron management service to its operational personnel;
 - (b) make available of any other documentation required by the Competent Authority and associated amendments;
 - (c) disseminate operational instructions and other information without delay.'
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ANNEX III

In Annex IV to Regulation (EU) No 139/2014, the following Subpart D is added:

‘SUBPART D – APRON MANAGEMENT OPERATIONS

ADR.OPS.D.001 Apron management safety related activities

- (a) The aerodrome operator shall ensure that means and procedures are established and implemented on the apron in order to:
- (1) regulate movement with the objective of preventing collisions between aircraft, and between aircraft and obstacles;
 - (2) regulate entry of aircraft into, and coordinate exit of aircraft from the apron with the aerodrome control tower;
 - (3) ensure safe and expeditious movement of vehicles;
 - (4) and appropriate regulation of the following activities:
 - (i) aircraft stand allocation;
 - (ii) provision of marshalling services;
 - (iii) aircraft parking procedure and departure from the stand;
 - (iv) aircraft refuelling;
 - (v) jet blast precautions and engine tests;
 - (vi) start up clearances and taxi instructions.
- (b) The aerodrome operator, in order to implement point (a) may allocate responsibilities to other organisations. If the aerodrome operator allocates such responsibilities, it shall include the allocation in the aerodrome manual.

ADR.OPS.D.005 Apron boundaries

- (a) The aerodrome operator, in cooperation with the air traffic service provider, shall define and provide the apron boundaries to the aeronautical information service provider for publication in the Aeronautical Information Publication (AIP).
- (b) When defining the apron boundaries, at least the following shall be taken into consideration:
- (1) aerodrome layout;
 - (2) runway and taxiway configuration and method of operation;
 - (3) traffic density;
 - (4) weather conditions;
 - (5) operational procedures.

ADR.OPS.D.010 Coordination of aircraft entry to/exit from the apron

- (a) The aerodrome operator shall ensure that the aircraft entry to and exit from the apron is coordinated with the air traffic services provider, where aircraft movement on the apron is not managed by the air traffic service provider. The coordination shall include:
- (1) designated handover points between apron management service and air traffic service for arriving and departing aircraft;
 - (2) designated air-ground communication facilities to be used at the apron;
 - (3) holding areas for arriving aircraft when aircraft stands are not available.
- (b) The aerodrome operator shall provide to the aeronautical information service providers for publication in the Aeronautical Information Publication (AIP):
- (1) the designated handover points referred to in point (a)(1);
 - (2) the designated air-ground communication facilities referred to in point (a)(2).

ADR.OPS.D.015 Management of aircraft movements on the apron

The aerodrome operator shall ensure that:

- (a) aircraft are provided with instructions on the route to be followed on the apron;

- (b) adequate visual aids are provided in order to ensure that flight crews are able to identify the assigned route;
- (c) the intended route is free of any obstacle that may risk collision with the moving aircraft.

ADR.OPS. D.025 Aircraft stand allocation

- (a) The aerodrome operator shall establish and ensure the implementation of procedures to ensure that the allocated aircraft stand is:
 - (1) suitable for the aircraft type intended to use it;
 - (2) communicated to the organisation responsible for the provision of AMS, when established, or to the appropriate air traffic service provider;
 - (3) communicated to the persons responsible for the manoeuvring of the aircraft.
- (b) The aerodrome operator shall ensure that, at least the following parameters are taken into consideration when allocating aircraft to aircraft stands:
 - (1) aircraft characteristics;
 - (2) parking aids;
 - (3) facilities serving the aircraft stand;
 - (4) vicinity of infrastructure;
 - (5) other parked aircraft in the neighbouring aircraft stands;
 - (6) aircraft stand dependencies.

ADR.OPS.D.030 Marshalling of aircraft

The aerodrome operator shall ensure that marshalling of aircraft is provided using the marshalling signals in accordance with Appendix 1 to the Annex to Commission Implementing Regulation (EU) No 923/2012 (*).

ADR.OPS.D.035 Aircraft parking

The aerodrome operator shall establish and ensure the implementation of procedures to ensure that:

- (a) an area designated for aircraft parking on an apron is monitored to ensure that the clearance distances are maintained during the parking manoeuvre;
- (b) guidance is provided to enable the aircraft to park safely;
- (c) automated parking guidance systems, if installed, are functioning properly;
- (d) persons responsible for aircraft taxiing are alerted to stop the aircraft when the clearance distances are not maintained;
- (e) persons, other than those required to assist the aircraft parking procedure, are prohibited to approach the aircraft when anti-collision lights are turned on and engines are running;
- (f) the aircraft stand is clear of any Foreign Object Debris (FOD) that may have an impact on safety.

ADR.OPS.D.040 Aircraft departure from the stand

The aerodrome operator shall establish and ensure the implementation of procedures to ensure that during the departure of an aircraft from the aircraft stand:

- (a) ground servicing equipment, excluding push-back trucks if required for the movement of aircraft, and vehicles have been removed from the aircraft stand or parked in designated areas;
- (b) if the aircraft stand is served by passenger boarding bridges, they have been retracted;
- (c) the designated exit route from the aircraft stand is free of foreign object debris (FOD);
- (d) vehicle movements on the stand and traffic on the adjacent road(s) have ceased, except for push-back trucks if required for the movement of aircraft;
- (e) persons, other than those required to assist the aircraft departure from the aircraft stand, are prohibited to approach the aircraft when anti-collision lights are turned on and engines are running.

ADR.OPS.D.045 Dissemination of information to organisations operating at the apron

- (a) The aerodrome operator shall disseminate information regarding limitations to operations on the apron in a timely manner to relevant organisations operating on the apron.

- (b) The information to be provided shall include the following, as applicable:
- (1) the type of the limitation;
 - (2) the duration of the limitation, if known;
 - (3) mitigation measures to be applied;
 - (4) the operational impact of the limitation;
 - (5) availability of aircraft stands;
 - (6) restrictions on aircraft stands;
 - (7) availability of fixed installations at aircraft stands;
 - (8) special parking procedures;
 - (9) temporary changes of driving routes;
 - (10) work in progress;
 - (11) any other information that has operational significance to the apron users.

ADR.OPS.D.050 Alerting of emergency services

- (a) The aerodrome operator shall:
- (1) establish and implement in the aerodrome emergency plan a procedure for alerting emergency services for accidents and incidents at the apron;
 - (2) provide the appropriate means and facilities for alerting the relevant emergency services.
- (b) The procedure established by the aerodrome operator shall include at least the following:
- (1) the contact details and the means that shall be used for alerting the emergency services;
 - (2) the information that has to be given to emergency services in order to handle the incident efficiently, such as:
 - (i) location of the accident or incident;
 - (ii) nature of the accident or incident;
 - (iii) damages;
 - (iv) injuries to persons;
 - (v) dangerous goods.

ADR.OPS.D.055 Jet blast precautions

- (a) The aerodrome operator shall make apron users aware of the hazards arising from jet blast and propeller slipstream.
- (b) The aerodrome operator shall require the apron users to secure vehicles and equipment properly and designate parking areas where the effect of jet blast or propeller slipstream is minimised.
- (c) When designing or making changes to apron layouts, the aerodrome operator shall take into consideration the effect of jet blast or propeller slipstream.
- (d) The aerodrome operator shall identify jet blast-sensitive places and shall either publish a request for minimum thrust to pilots, or take appropriate mitigating measures to minimize the jet blast effect.

ADR.OPS.D.060 Aircraft refuelling

- (a) The aerodrome operator shall establish a procedure for aircraft refuelling.
- (b) The procedure shall require the following:
- (1) the prohibition of open flames and the use of electrical or similar tools likely to produce sparks or arcs within the refuelling zone;
 - (2) the prohibition to start ground power units during refuelling;
 - (3) the existence of an unobstructed path from the aircraft to allow the quick removal of fuel bowsers and persons in case of emergency;
 - (4) the correct bonding of aircraft and fuel supply sources and the correct application of earthing procedures;

- (5) the immediate notification of the fuelling supervisor in case of fuel spillage and detailed instructions on how to handle fuel spillages;
- (6) the positioning of ground support equipment in such a way that emergency exits are free of any obstruction to allow the expeditious evacuation of the passengers, if passengers are embarking or disembarking or remain in the aircraft during refuelling;
- (7) the ready availability of fire extinguishers of a suitable type for at least initial intervention in the event of a fuel fire;
- (8) the discontinuation of refuelling operations if electrical thunderstorms are at or in the vicinity of the aerodrome.

ADR.OPS.D.065 Engine test

- (a) The aerodrome operator shall establish and implement an engine test procedure.
- (b) The procedure shall include the following:
 - (1) the person that has the authority to approve engine tests;
 - (2) the areas where engine tests are conducted;
 - (3) the safety measures that need to be taken.

ADR.OPS.D.070 High-visibility clothing

The aerodrome operator shall require that all personnel working outside, on foot, on the movement area shall wear high-visibility clothing.

ADR.OPS.D.075 Start-up clearances and taxi instructions

- (a) The aerodrome operator shall ensure that start-up clearances, push-back clearances, if required, and taxi instructions are coordinated with the air traffic service provider, when the aircraft movement on the apron is not managed by the air traffic service provider.
- (b) In this case, the aerodrome operator in cooperation with the air traffic service provider shall establish and implement a procedure, which shall include the following:
 - (1) definition of the authority to issue start-up clearances;
 - (2) means to inform each other for start-up clearances issued;
 - (3) means to inform each other of push-back clearances and taxi instructions given.

ADR.OPS.D.080 Training and proficiency check programmes of marshallers and "FOLLOW-ME" drivers

- (a) The aerodrome operator shall establish and ensure the implementation of a training programme for persons providing:
 - (1) marshalling service;
 - (2) "FOLLOW-ME" guidance.
- (b) The training programme shall be implemented in accordance with point ADR.OR.D.017 of Annex III.
- (c) The training shall be designed to impart fundamental knowledge and practical skills related to the execution of their duties.
- (d) The aerodrome operator shall ensure the implementation of a proficiency check programme for personnel referred to in point (a) in order to ensure:
 - (1) their continued competence;
 - (2) that they are aware of the rules and procedures relevant to their functions and tasks. The aerodrome operator shall ensure that persons referred to in point (a) undergo proficiency checks at intervals not exceeding 12 months since the completion of their initial training.

ADR.OPS.D.085 Training and proficiency check programme of personnel providing taxi instructions to aircraft through radiotelephony

- (a) The aerodrome operator shall ensure that:
 - (1) persons providing taxi instructions to aircraft on the apron through radiotelephony, using the assigned aeronautical radio frequencies, are appropriately trained and qualified;
 - (2) the training programme is implemented in accordance with point ADR.OR.D.017 of Annex III, with the following exceptions:
 - (i) the initial training shall be followed by a unit training which comprises the following phases:
 - (A) transitional training phase, designed primarily to impart knowledge and understanding of site-specific operational procedures and task-specific aspects;

- (B) on-the-job training phase, which is the final phase of unit training during which previously acquired job-related routines and skills are integrated in practice under the supervision of a qualified training instructor in a live traffic situation;
 - (ii) recurrent training shall be conducted at intervals not exceeding 12 calendar months and contains a review of the initial training content
 - (iii) refresher training shall be conducted when a person is absent from duties for a period of more than 12 months and shall include the entire initial training content.
- (b) Persons referred to in point (a)(1) shall demonstrate language proficiency, at least at an operational level both in the use of phraseologies and in plain language, in accordance with point (c), in the languages used for air-ground communication at the aerodrome.
- (c) The applicant shall demonstrate the ability to:
 - (1) communicate effectively in voice-only and in face-to-face situations;
 - (2) communicate on common and work-related topics with accuracy and clarity;
 - (3) use appropriate communicative strategies to exchange messages and to recognise and resolve misunderstandings in a general or work-related context;
 - (4) handle successfully the linguistic challenges presented by a complication or unexpected turn of events which occurs within the context of a routine work situation or communicative task with which they are otherwise familiar;
 - (5) use a dialect or accent which is intelligible to the aeronautical community.
- (d) Language proficiency shall be demonstrated by a certificate issued by the organisation that conducted the assessment, attesting the language or languages, the level or levels of proficiency, and the date of the assessment.
- (e) Except for persons who have demonstrated language proficiency at an expert level, the language proficiency shall be re-assessed every:
 - (1) four years from the date of the assessment, if the level demonstrated is operational level;
 - (2) six years from the date of the assessment, if the level demonstrated is extended level.
- (f) The demonstration of language proficiency shall be done through a method of assessment, which shall contain:
 - (1) the process by which an assessment is done;
 - (2) the qualifications of the assessors conducting assessments of language proficiency;
 - (3) the appeal procedure.
- (g) The aerodrome operator shall make available language training to maintain the required level of language proficiency of its personnel.
- (h) The aerodrome operator shall ensure the implementation of a proficiency check programme for personnel referred to in point (a)(1) in order to ensure:
 - (1) their continued competence;
 - (2) that they are aware of the rules and procedures relevant to their functions and tasks. The aerodrome operator shall ensure that persons referred to in point (a) undergo proficiency checks at intervals not exceeding 12 months since the completion of their initial training.

(*) 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).'

DECISIONS

COMMISSION DECISION (EU) 2020/1235

of 26 August 2020

authorising Greece to apply an extension of certain periods specified in Article 4 of Regulation (EU) 2020/698 of the European Parliament and of the Council

(notified under document C(2020) 5742)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2020/698 of the European Parliament and of the Council of 25 May 2020 laying down specific and temporary measures in view of the COVID-19 outbreak concerning the renewal or extension of certain certificates, licences and authorisations and the postponement of certain periodic checks and periodic training in certain areas of transport legislation ⁽¹⁾, and in particular Article 4(4) thereof,

Whereas:

- (1) Article 4(2) of Regulation (EU) 2020/698 extends the time limit for issuing a new driver card pursuant to Regulation (EU) No 165/2014 of the Parliament and the Council ⁽²⁾ to two months after the receipt of the request, where the driver applies for the renewal of the driver card between 1 March 2020 and 31 August 2020.
- (2) Article 4(3) of Regulation (EU) 2020/698 extends the time limit for the replacement of a driver card to two months after the receipt of the request, where the driver applies for such replacement between 1 March 2020 and 31 August 2020.
- (3) By letter dated 24 July 2020, Greece submitted a reasoned request for an authorisation to apply an extension by two months of the periods between 1 March 2020 and 31 August 2020 specified in Article 4(2) and (3) of Regulation (EU) 2020/698. Greece provided additional information in support of its request on 28 July 2020.
- (4) According to the information provided by Greece, the renewal and the replacement of the driver cards is likely to remain impracticable in Greece beyond 31 August 2020 due to measures that it has taken to prevent or contain the spread of COVID-19.
- (5) Greece adopted a number of extraordinary measures concerning the staff of the public sector including the staff of Ministries and regional transport services as a response to the COVID-19 outbreak. Those measures impacted the capacity to renew and replace tachograph driver cards. Among those measures was the 'special purpose leave for civil servants', introduced by Greek legislation and which has considerably affected the number of persons available for the tasks in question.
- (6) As the pandemic evolved in Greece, the measures were gradually adjusted, relaxed and finally lifted. Overall, the measures resulted in serious understaffing of the public sector and long delays in handling applications for the renewal and the replacement of driver cards.
- (7) The understaffing also caused delays in the procedure for awarding a technical assistance contract for the production of tachograph driver cards. The competent authority of the Ministry of Infrastructure and Transport published an open tender for a two-year contract for issuing smart tachograph cards. That contract was finally awarded on 30 June 2020, but the contractor needs a minimum of lead-time, before issuing the cards. Until then, the only way to issue smart tachograph cards is by means of mutual assistance provided by the Polish Card Issuing Authority (Polish CIA), but that assistance is limited to a maximum of 6 000 cards.

⁽¹⁾ OJ L 165, 27.5.2020, p. 10.

⁽²⁾ Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport Text with EEA relevance (OJ L 60, 28.2.2014, p. 1).

- (8) In addition, according to the information provided by Greece, the single laboratory responsible for issuing the interoperability certificate in accordance with Article 12 of Regulation (EU) No 165/2014 is not in a position to arrange for interoperability tests earlier than week 39 of 2020. Cards can be issued only once those tests are completed successfully.
- (9) As a result of the circumstances described in recitals 5 to 8, more than 11 000 applications for the renewal or replacement of driver cards are currently pending and cannot be processed on time.
- (10) Greece should therefore be authorised to apply an extension of the periods between 1 March 2020 and 31 August 2020 specified in Article 4(2) and (3) of Regulation (EU) 2020/698.
- (11) Greece has agreed that this Decision be adopted and notified in English,

HAS ADOPTED THIS DECISION:

Article 1

Greece is authorised to apply an extension of two months of the periods between 1 March 2020 and 31 August 2020 specified in Article 4(2) and (3) of Regulation (EU) 2020/698.

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 26 August 2020.

For the Commission
Adina-Ioana VĂLEAN
Member of the Commission

COMMISSION DECISION (EU) 2020/1236**of 25 August 2020****authorising the Netherlands to apply an extension of certain periods specified in Articles 2 and 3 of Regulation (EU) 2020/698 of the European Parliament and of the Council***(notified under document C(2020) 5745)***(Only the English text is authentic)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2020/698 of the European Parliament and of the Council of 25 May 2020 laying down specific and temporary measures in view of the COVID-19 outbreak concerning the renewal or extension of certain certificates, licences and authorisations and the postponement of certain periodic checks and periodic training in certain areas of transport legislation ⁽¹⁾, and in particular Article 2(6) and Article 3(3) thereof,

Whereas:

- (1) Article 2(1) of Regulation (EU) 2020/698 extends the time limits for the completion, by the holder of a certificate of professional competence (CPC), of periodic training which would otherwise have expired or would otherwise expire between 1 February 2020 and 31 August 2020. Article 2(2) of that Regulation extends the validity of the corresponding marking of the harmonised Union code, '95'.
- (2) Article 3(1) of Regulation (EU) 2020/698 extends the validity of driving licences which would otherwise have expired or would otherwise expire between 1 February 2020 and 31 August 2020.
- (3) By letter dated 1 July 2020, the Netherlands submitted a reasoned request for an authorisation to apply an extension of certain periods specified in Articles 2 and 3 of Regulation (EU) 2020/698. By letter dated 29 July 2020, the Netherlands submitted a revised reasoned request. Through that revised request, it seeks, first, an authorisation to apply an extension by three months of the periods between 1 February 2020 and 31 August 2020 specified in Article 2(1), for the purposes of that provision and of Article 2(2), and in Article 3(1) of Regulation (EU) 2020/698. Second, it seeks an authorisation to apply an extension by two months of the periods of seven months specified in Article 2(1) and (2) and Article 3(1) of Regulation (EU) 2020/698. The Netherlands provided additional information in support of its request on 30 July 2020.
- (4) According to the information provided by the Netherlands, the completion of periodic training, the marking of the harmonised Union code '95' and the renewal of driving licences in the Netherlands is likely to remain impracticable beyond 31 August 2020 due to measures that it has taken to prevent or contain the spread of COVID-19.
- (5) In particular, the Netherlands temporarily suspended all periodic trainings under Directive 2003/59/EC of the European Parliament and of the Council ⁽²⁾. This has resulted in the cancellation of about 30 000 courses that would have been provided under normal circumstances. Consequently, around 2 400 professional drivers failed to renew their CPC in time.

⁽¹⁾ OJ L 165, 27.5.2020, p. 10.

⁽²⁾ Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC (OJ L 226, 10.9.2003, p. 4).

- (6) The periodic training courses have now resumed and additional courses are being planned, in addition to the regular classes that were already planned from May 2020 until the end of 2020. However, the measures necessary to contain COVID-19 still impose constraints in this respect. The training institutes must meet the relevant requirements of the National Institute for Public Health and the Environment ⁽³⁾, for instance by enabling people, insofar as possible, to stay at least 1,5 metres apart.
- (7) The situation is particularly problematic as regards the periodic training for bus drivers. According to the information provided by the Netherlands, many drivers who were carrying out the activity of driver of vehicles used for transport of passengers on 10 September 2008, obtained a CPC as an acquired right pursuant to Article 4 of Directive 2003/59/EC. In practice, and pursuant to Article 4, Article 8(2) and Article 14(2) of Directive 2003/59/EC, many of the CPCs thus granted expired in the first half of September 2015, since the Netherlands made use of the possibility to extend the period referred to in Article 8(2) of Directive 2003/59/EC to up to seven years. In turn, drivers with a category D1, D1+E, D or D+E licence who renewed their CPCs shortly before their expiry in 2015 must again renew their CPCs before their expiry on 10 September 2020. The vast majority of bus drivers in the Netherlands are in this situation. It is uncertain whether the capacity at training institutes will allow all of them to complete their periodic training in time. Furthermore, because of the fact that public transport has resumed according to the normal timetable, less time is available for drivers to participate in the courses.
- (8) As regards driving licences issued under Directive 2006/126/EC of the European Parliament and of the Council ⁽⁴⁾, the Netherlands refer to the temporary restrictions on exercising professions involving physical contact. Those restrictions affected the medical examinations necessary to establish a person's physical and mental fitness for driving ('medical examinations'). As a result, the average number of medical reports based on such examinations submitted to the national licensing authority (CBR ⁽⁵⁾) each week has substantially decreased. Due to the measures taken to prevent or contain the spread of COVID-19 in the Netherlands, 28 000 medical examinations have been postponed and still need to be carried out, in addition to those that need to be carried now and in the near future for licences that will expire shortly.
- (9) About 25 000 doctors carry out medical examinations in the Netherlands. The time necessary to perform the 28 000 medical examinations which were postponed is highly dependent on the extent and speed with which the doctors can resume those tasks. For many doctors in the Netherlands, carrying out medical examinations for the renewal of driving licences is just one of their many tasks. As a result of the additional work involved in dealing with the COVID-19 pandemic, doctors have been unable to carry out as many medical examinations as they usually do.
- (10) According to the information provided by the Netherlands, it is unclear to what extent and at what speed the necessary activity of doctors will recover. The expectation is that the medical capacity will gradually recover while demand for medical examinations will increase as a result of the 'lockdown' period. It is therefore expected that, even after the number of medical examinations carried out returns to the normal, pre-COVID-19, level, the effects of the postponement of the examinations will not be resolved until May 2021.
- (11) According to the Netherlands, it is impossible to precisely predict how many persons will be unable to renew their driving licences which expired or expire between 1 February 2020 and 31 August 2020 in time. This is highly dependent on the availability of doctors, which is partially determined on a regional basis. In any case, it is inevitable that some of the persons who apply for a renewal of their driving licence will face delays as a consequence of waiting lists in the healthcare system, in particular, the approximately 15 % of persons who need to see more than one doctor. The average time required for the renewal of a driving licence for people who need a medical examination to establish their fitness to drive is 125 days when one doctor is consulted, and 179 days when multiple doctors are consulted.

⁽³⁾ Rijksinstituut voor Volksgezondheid en Milieu, RIVM.

⁽⁴⁾ Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ L 403, 30.12.2006, p. 18).

⁽⁵⁾ Centraal Bureau Rijvaardigheidsbewijzen.

- (12) Based on data provided by CBR, the Ministry of Infrastructure and Water Management ⁽⁶⁾ expects the backlog of medical examinations to be around 20 000 on 1 December 2020. Assuming that medical capacity will have reached a normal level again by the first quarter of 2021, it is likely the backlog will continue to have an impact on drivers with licences expiring as of 1 December 2020. However, the expectation is that the requested extension of both the periods between 1 February 2020 and 31 August 2020 and the periods by which the validity of driving licences that would otherwise expire, or have expired, is extended will be sufficient to ensure that all interested persons will be able to comply with the applicable requirements.
- (13) The Netherlands should therefore be authorised to apply an extension of the periods between 1 February 2020 and 31 August 2020 and of the periods of seven months specified in Article 2(1) and in Article 3(1) of Regulation (EU) 2020/698.
- (14) The Netherlands has agreed that this Decision be adopted and notified in English,

HAS ADOPTED THIS DECISION:

Article 1

The Netherlands is authorised to apply the following extensions of the periods specified in Article 2(1) and (2), and Article 3(1) of Regulation (EU) 2020/698:

- (a) an extension of three months of the period between 1 February 2020 and 31 August 2020 specified in Article 2(1) of Regulation (EU) 2020/698, for the purposes of Article 2(1) and (2) of that Regulation;
- (b) an extension of two months of the periods of seven months specified in Article 2(1) and (2) of that Regulation;
- (c) an extension of three months of the period between 1 February 2020 and 31 August 2020 specified in Article 3(1) of that Regulation;
- (d) an extension of two months of the period of seven months specified in Article 3(1) of that Regulation.

Article 2

This Decision is addressed to The Kingdom of The Netherlands.

Done at Brussels, 25 August 2020.

For the Commission
Adina-Ioana VĂLEAN
Member of the Commission

⁽⁶⁾ Ministerie van Infrastructuur en Waterstaat.

COMMISSION DECISION (EU) 2020/1237**of 25 August 2020****authorising the United Kingdom to apply an extension of certain periods specified in Articles 3 and 11 of Regulation (EU) 2020/698 of the European Parliament and of the Council***(notified under document C(2020) 5757)***(Only the English text is authentic)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2020/698 of the European Parliament and of the Council of 25 May 2020 laying down specific and temporary measures in view of the COVID-19 outbreak concerning the renewal or extension of certain certificates, licences and authorisations and the postponement of certain periodic checks and periodic training in certain areas of transport legislation ⁽¹⁾, and in particular Article 3(3) and Article 11(4) thereof, in conjunction with Article 131 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community,

Whereas:

- (1) Article 3(1) of Regulation (EU) 2020/698 extends the validity of driving licences which would otherwise have expired or would otherwise expire between 1 February 2020 and 31 August 2020.
- (2) Article 11(2) of Regulation (EU) 2020/698 extends the time limits for the completion, by the holder of a train driver's licence, of periodic checks which would otherwise have expired or would otherwise expire between 1 March 2020 and 31 August 2020.
- (3) By letter dated 31 July 2020, the United Kingdom submitted a reasoned request for an authorisation to apply an extension by four months of the period between 1 February 2020 and 31 August 2020 specified in Article 3(1) of that Regulation and an extension by four months of the period of seven months specified in that same Article 3(1). By the same letter, the United Kingdom also submitted a reasoned request for an authorisation to apply an extension by four months of the period between 1 March 2020 and 31 August 2020 specified in Article 11(2) of that Regulation.
- (4) As regards driving licences under Directive 2006/126/EC of the European Parliament and of the Council ⁽²⁾, according to the information provided by the United Kingdom, in Great Britain the Driver and Vehicle Licensing Agency ('DVLA') is responsible for issuing driving licences and holds data on 49 million driving licence holders and more than 40 million registered vehicle keepers. On average, the DVLA receives around 1,6 million items of mail each month. While the DVLA's online channels have been available throughout the pandemic there are some transactions that can only be completed by submitting a paper application with supporting documentation. This includes the renewal of driving licences in some circumstances. Each month DVLA receives over 200 000 paper renewal applications where drivers have to renew the administrative validity period of their licence or their driving entitlement as they are 70 or over. Persons making paper applications also include vocational drivers who need to renew their entitlement to drive lorries and/or buses and those who have to renew a medically restricted driving licence. The United Kingdom considers that this requires a considerable number of staff to be present at the DVLA licence issuing facility to process the applications and issue renewed licences. The renewal of driving licences in Northern Ireland is carried out by the Driver and Vehicle Agency ('DVA'), which is facing similar constraints on its ability to renew driving licences as the DVLA.
- (5) In order to prevent and contain the spread of COVID-19, requirements to close certain businesses and premises and restrictions on movement and gatherings were introduced in England and Wales on 26 March (The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020; The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020), in Scotland on 28 March (the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020) and in Northern Ireland on 28 March (The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020).

⁽¹⁾ OJ L 165, 27.5.2020, p. 10.

⁽²⁾ Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ L 403, 30.12.2006, p. 18).

- (6) According to the information provided by the United Kingdom, the DVLA has 6 000 staff who predominantly work in one building, where all licence issuing activities are undertaken. When the restrictions due to COVID-19 were imposed, the DVLA had to reduce the number of staff on-site from 6 000 to 800, with as few as 300 staff being on-site during the early stages of those restrictions. This meant that the DVLA was unable to deal with the usual volume of transactions. In normal circumstances, the DVLA processes around 140 000 paper renewal applications each month. In April 2020, the volumes processed fell to below 13 000, while in May 2020 it was just below 30 000.
- (7) While every effort is being made to increase capacity, maintaining legally required social distancing measures continues to have a significant impact on the number of staff DVLA has available at any one time to be able to process applications. The law in Wales, where the DVLA has its premises, requires organisations to take all reasonable measures to ensure that a distance of 2 metres is maintained on particular premises. The number of staff that can be present at the licence issuing facility at any one time is currently restricted to around 1 600 – a decrease of 75 % from the pre-COVID-19 situation. Consequently, the number of renewal applications DVLA can currently process and issue is significantly lower than 200 000 a month and it will not return to normal capacity until 2021 at the earliest.
- (8) According to the information provided by the United Kingdom, the current forecast is that between 1 September 2020 and 31 December 2020 DVLA will receive around 1,5 million driving licences for renewal. As part of these, DVLA expects to receive around 200 000 paper applications each month.
- (9) According to the information provided by the United Kingdom, the DVLA continues to implement additional measures to alleviate the impact of the significant shortfall of staff. However, these measures are insufficient to enable DVLA to return to processing 200 000 paper-based renewal applications each month. This is so despite the fact that the measures taken are comprehensive and include introducing shift work to process applications outside of the normal working day, increasing the number of staff and providing them with accommodation, and leasing additional office space to enable a greater volume of licensing activity to take place in a way that is compliant with social distancing laws in place to mitigate the impact of COVID-19. While these measures will help a return to normal capacity for 2021, they will not be sufficient to enable the DVLA to return to renewing 200 000 paper-based licences each month between September and December 2020.
- (10) According to the information provided by the United Kingdom, the DVA (Northern Ireland) offices were shut down on 27 March 2020 and the processing of paper applications was stopped. Staff working remotely were able to process applications that were submitted through the online channels, but it was not possible to process paper applications. The DVA has gradually increased the number of staff who are coming into the office, initially to process applications for key workers, and has secured additional temporary accommodation to ensure that staff working in the office can maintain social distancing. Part of the staff continue to work remotely. While restrictions are easing, constraints that are still in place mean that it remains difficult for those who require access to medical practitioners to have medical forms completed in support of their driving licence application. Like for the DVLA, any reinstatement of restrictions would have a further impact on the ability of the DVA to process applications.
- (11) According to the information provided by the United Kingdom, a further factor impacting the return to normality is that many drivers have been unable to apply to renew their licences. In March 2020 certain groups of persons, including those considered particularly at risk from severe illness from COVID-19 or extremely clinically vulnerable, were advised to adopt a number of more stringent measures to isolate themselves from others. This meant that these drivers were unable to obtain the necessary paperwork or undergo medical assessments in order to make a paper application to renew their driving licences. While restrictions are easing in the United Kingdom and drivers are able to resume more day-to-day activities, a number of constraints remain in place. This means that some of these drivers are still unable to provide all the necessary documentation required to make a valid renewal application. In addition, restrictions are easing at a different pace in the different nations of the United Kingdom, further complicating the situation.
- (12) According to the information provided by the United Kingdom, people aged 70 and over and those with certain underlying medical conditions may wish to minimise contact with others and would prefer not to visit Post Offices or photo booths in order to get the documentation needed to complete a paper application. For the period September 2020 to 31 December 2020, it is forecasted that around 650 000 drivers aged 70 or over, will need to renew. This means that without a further extension, from September 2020 some of these 650 000 drivers could lose their entitlement to drive.

- (13) As regards the completion of periodic checks for train drivers under Directive 2007/59/EC of the European Parliament and of the Council ^(*) the United Kingdom considers this is likely to remain impracticable beyond 31 August 2020, at least for some train drivers.
- (14) According to the information provided by the United Kingdom, a significant number of periodic medical checks for train drivers were suspended between 26 March 2020 and 4 July 2020, due to the strict controls that were put in place by the Government to prevent the spread of COVID-19. Restrictions began to ease in early May 2020, and periodic medical checks have gradually resumed since then. The United Kingdom has issued guidance on how periodic checks should be conducted while applying the ongoing measures to control COVID-19. However, while the easing of social distancing rules has enabled some periodic checks to be completed, the suspension of many planned appointments between March 2020 and July 2020 has resulted in a build-up of a backlog of medical checks that still need to be completed.
- (15) According to the information provided by the United Kingdom, the build-up of that backlog of (deferred) medical checks means that an additional 162 periodic medical checks per month on top of the average 250 medical checks will need to be undertaken up to the end of December 2020. This will place additional strain on the workloads of doctors and clinicians completing these periodic checks, while requiring train drivers to travel significant distances to reach medical centres should lockdown measures be introduced specifically in their locality.
- (16) According to the information provided by the United Kingdom, within the framework of the procedures established for checking medical fitness and competence of train drivers, fewer cases than normal can be dealt with, due to social distancing restrictions and additional cleaning requirements. This increases the difficulty of managing the build-up of deferred periodic checks. Moreover, a number of train drivers can be expected to remain unable to attend a clinic or training centre due to their clinical vulnerability whilst COVID-19 remains present in the wider population.
- (17) The United Kingdom should therefore be authorised to apply an extension of the period between 1 February 2020 and 31 August 2020 specified in Article 3(1) of Regulation (EU) 2020/698 and of the period of seven months specified in that same Article. The United Kingdom should also be authorised to apply an extension of four months of the period between 1 March 2020 and 31 August 2020 specified in Article 11(2) of Regulation (EU) 2020/698,

HAS ADOPTED THIS DECISION:

Article 1

The United Kingdom is authorised to apply the following extensions of the periods specified in Article 3(1) and Article 11 (2) of Regulation (EU) 2020/698:

- (a) an extension of four months of the period between 1 February 2020 and 31 August 2020 specified in Article 3(1) of Regulation (EU) 2020/698;
- (b) an extension of four months of the period of seven months specified in Article 3(1) of Regulation (EU) 2020/698;
- (c) an extension of four months of the period between 1 March 2020 and 31 August 2020 specified in Article 11(2) of Regulation (EU) 2020/698.

^(*) Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community (OJ L 315, 3.12.2007, p. 51).

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 25 August 2020.

For the Commission
Adina-Ioana VĂLEAN
Member of the Commission

RULES OF PROCEDURE

DECISION 2019/15 OF THE MANAGEMENT BOARD OF THE EUROPEAN AGENCY FOR SAFETY AND HEALTH AT WORK

of 11 December 2019

on internal rules concerning restrictions of certain rights of data subjects in relation to processing of personal data in the framework of the functioning of EU-OSHA

THE MANAGEMENT BOARD OF THE EUROPEAN AGENCY FOR SAFETY AND HEALTH AT WORK,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ⁽¹⁾, and in particular Article 25 thereof,

Having regard to Regulation (EU) 2019/126 of the European Parliament and of the Council of 16 January 2019 establishing the European Agency for Safety and Health at Work (EU-OSHA) and repealing Council Regulation (EC) No 2062/94 ⁽²⁾,

Having regard to the Rules of procedure of the Management Board of EU-OSHA,

Having regard to the opinion of the European Data Protection Supervisor (EDPS) of 17 October 2019 and to the EDPS Guidance on Article 25 of the new Regulation and internal rules,

Whereas:

- (1) EU-OSHA carries out its activities in accordance with Regulation (EU) 2019/126.
- (2) In accordance with Article 25(1) of Regulation (EU) 2018/1725 restrictions of the application of Articles 14 to 21, 35 and 36, as well as Article 4 of that Regulation in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 21 should be based on internal rules to be adopted by the Agency, where these are not based on legal acts adopted on the basis of the Treaties.
- (3) These internal rules, including its provisions on the assessment of the necessity and proportionality of a restriction, should not apply where a legal act adopted on the basis of the Treaties provides for a restriction of data subject rights.
- (4) Where the Agency performs its duties with respect to data subject's rights under Regulation (EU) 2018/1725, it shall consider whether any of the exemptions laid down in that Regulation apply.
- (5) Within the framework of its administrative functioning, the Agency may conduct administrative inquiries, disciplinary proceedings, carry out preliminary activities related to cases of potential irregularities reported to OLAF, process whistleblowing cases, process (formal and informal) procedures of harassment, process internal and external complaints, conduct internal audits, carry out investigations by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725 and internal (IT) security investigations. In addition, the Agency may handle requests for access to the medical file of the staff members.

The Agency processes several categories of personal data, including hard data ('objective' data such as identification data, contact data, professional data, administrative details, data received from specific sources, electronic communications and traffic data) and/or soft data ('subjective' data related to the case such as reasoning, behavioural data, appraisals, performance and conduct data and data related to or brought forward in connection with the subject matter of the procedure or activity).

⁽¹⁾ OJ L 295, 21.11.2018, p. 39.

⁽²⁾ OJ L 30, 31.1.2019, p. 58.

- (6) The Agency, represented by its Executive Director, acts as the data controller irrespective of further delegations of the controller role within the Agency to reflect operational responsibilities for specific personal data processing operations.
- (7) The personal data are stored securely in an electronic environment or on paper preventing unlawful access or transfer of data to persons who do not have a need to know. The medical files are stored by the doctor of the external service provider used by the Agency. The personal data processed are retained for no longer than necessary and appropriate for the purposes for which the data are processed for the period specified in the data protection privacy statements or records of the Agency.
- (8) The internal rules should apply to all processing operations carried out by the Agency in the performance of administrative inquiries, disciplinary proceedings, preliminary activities related to cases of potential irregularities reported to OLAF, whistleblowing procedures, (formal and informal) procedures for cases of harassment, processing internal and external complaints, internal audits, the investigations carried out by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725, (IT) security investigations handled internally or with external involvement (e.g. CERT-EU), as well as in the handling of requests for access to own medical file.
- (9) They should apply to processing operations carried out prior to the opening of the procedures referred to above, during these procedures and during the monitoring of the follow-up to the outcome of these procedures. It should also include assistance and cooperation provided by the Agency to national authorities and international organisations outside of its administrative investigations.
- (10) In the cases where these internal rules apply the Agency has to give justifications explaining why the restrictions are strictly necessary and proportionate in a democratic society and respect the essence of the fundamental rights and freedoms.
- (11) Within this framework the Agency is bound to respect, to the maximum extent possible, the fundamental rights of the data subjects during the above procedures, in particular, those relating to the right of provision of information, access and rectification, right to erasure, restriction of processing, right of communication of a personal data breach to the data subject or confidentiality of communication as enshrined in Regulation (EU) 2018/1725.
- (12) However, the Agency may be obliged to restrict the information to data subject and other data subject's rights to protect, in particular, its own investigations, the investigations and proceedings of other public authorities, as well as the rights of other persons related to its investigations or other procedures.
- (13) The Agency may thus restrict the information for the purpose of protecting the investigation and the fundamental rights and freedoms of other data subjects.
- (14) The Agency should periodically monitor that the conditions that justify the restriction apply and lift the restriction as far as they do no longer apply.
- (15) The Controller should inform the Data Protection Officer at the moment of deferral and during the revisions,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter and scope

1. This Decision lays down rules relating to the conditions under which the Agency in the framework of its procedures set out paragraph 2 may restrict the application of the rights enshrined in Articles 14 to 21, 35 and 36, as well as Article 4 thereof, following Article 25 of Regulation (EU) 2018/1725.

2. Within the framework of the administrative functioning of the Agency, this Decision applies to the processing operations on personal data by the Agency for the purposes: conducting administrative inquiries, disciplinary proceedings, preliminary activities related to cases of potential irregularities reported to OLAF, processing whistleblowing cases, (formal and informal) procedures of harassment, processing internal and external complaints, conducting internal audits, investigations carried out by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725, (IT) security investigations handled internally or with external involvement (e.g. CERT-EU), the enforcement of civil law claims as well as the handling of requests for access to own medical file.

3. The categories of data concerned are hard data ('objective' data such as identification data, contact data, professional data, administrative details, data received from specific sources, electronic communications and traffic data) and/or soft data ('subjective' data related to the case such as reasoning, behavioural data, appraisals, performance and conduct data and data related to or brought forward in connection with the subject matter of the procedure or activity).

4. Where the Agency performs its duties with respect to data subject's rights under Regulation (EU) 2018/1725, it shall consider whether any of the exemptions laid down in that Regulation apply.

5. Subject to the conditions set out in this Decision, the restrictions may apply to the following rights: provision of information to data subjects, right of access, rectification, erasure, restriction of processing, communication of a personal data breach to the data subject or confidentiality of communication.

Article 2

Specification of the controller and safeguards

1. The safeguards in place to avoid data breaches, leakages or unauthorised disclosure are the following:

- (a) Paper documents shall be kept in secured cupboards and only accessible to authorised staff;
- (b) All electronic data shall be stored in a secure IT application according to the Agency's security standards, as well as in specific electronic folders accessible only to authorised staff. Appropriate levels of access shall be granted individually;
- (c) The database shall be password-protected under a single sign-on system and connected automatically to the user's ID and password. Replacing users is strictly prohibited. E-records shall be held securely to safeguard the confidentiality and privacy of the data therein;
- (d) The doctor of the external service provider storing the medical files is bound by specific contractual clauses on confidentiality and processing of personal data;
- (e) All persons having access to the data are bound by the obligation of confidentiality.

2. The controller of the processing operations is the Agency, represented by its Executive Director, who may delegate the function of the controller. Data subjects shall be informed of the delegated controller by way of the data protection privacy statements or records published on the website and/or the intranet of the Agency.

3. The retention period of the personal data referred to in Article 1(3) shall be no longer than necessary and appropriate for the purposes for which the data are processed. It shall in any event not be longer than the retention period specified in the data protection privacy statements or records referred to in Article 5(1).

4. Where the Office considers to apply a restriction, the risk to the rights and freedoms of the data subject shall be weighed, in particular, against the risk to the rights and freedoms of other data subjects and the risk of cancelling the effect of the Agency's investigations or procedures for example by destroying evidence. The risks to the rights and freedoms of the data subject concern primarily, but are not limited to, reputational risks and risks to the right of defence and the right to be heard.

*Article 3***Restrictions**

1. Any restriction shall only be applied by the Agency to safeguard:
 - (a) the national security, public security or defence of the Member States;
 - (b) the prevention, investigation, detection and prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;
 - (c) other important objectives of general public interest of the Union or of a Member State, in particular the objectives of the common foreign and security policy of the Union or an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters, public health and social security;
 - (d) the internal security of Union institutions and bodies, including of their electronic communications networks;
 - (e) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
 - (f) a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in the cases referred to in points (a) to (c);
 - (g) the protection of the data subject or the rights and freedoms of others;
 - (h) the enforcement of civil law claims.

2. As a specific application of the purposes described in paragraph 1 above, the Agency may apply restrictions in relation to personal data exchanged with Commission services or other Union institutions, bodies, agencies and offices, competent authorities of Member States or third countries or international organisations, respectively in the following circumstances:

- (a) where the exercise of those rights and obligations could be restricted by Commission services or other Union institutions, bodies, agencies and offices on the basis of other acts provided for in Article 25 of Regulation (EU) 2018/1725 or in accordance with Chapter IX of that Regulation or with the founding acts of other Union institutions, bodies, agencies and offices;
- (b) where the exercise of those rights and obligations could be restricted by competent authorities of Member States on the basis of acts referred to in Article 23 of Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽¹⁾, or under national measures transposing Articles 13(3), 15(3) or 16(3) of Directive (EU) 2016/680 of the European Parliament and of the Council ⁽²⁾;
- (c) where the exercise of those rights and obligations could jeopardise the Agency's cooperation with third countries or international organisations in the conduct of its tasks.

Before applying restrictions in the circumstances referred to in points (a) and (b) of the first subparagraph, the Agency shall consult the relevant Commission services, Union institutions, bodies, agencies, offices or the competent authorities of Member States unless it is clear to the Agency that the application of a restriction is provided for by one of the acts referred to in those points.

3. Any restriction shall be necessary and proportionate taking into account the risks to the rights and freedoms of data subjects and respect the essence of the fundamental rights and freedoms in a democratic society.
4. If the application of restriction is considered, a necessity and proportionality test shall be carried out based on the present rules. It shall be documented through an internal assessment note for accountability purposes on a case by case basis.
5. Restrictions shall be lifted as soon as the circumstances that justify them no longer apply. In particular, where it is considered that the exercise of the restricted right would no longer cancel the effect of the restriction imposed or adversely affect the rights or freedoms of other data subjects.

⁽¹⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽²⁾ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

*Article 4***Review by the Data Protection Officer**

1. The Agency shall, without undue delay, inform the Data Protection Officer of the Agency ('the DPO') whenever the controller restricts the application of data subjects' rights, or extends the restriction, in accordance with this Decision. The controller shall provide the DPO access to the record containing the assessment of the necessity and proportionality of the restriction and document the date of informing the DPO in the record.
2. The DPO may request the controller in writing to review the application of the restrictions. The controller shall inform the DPO in writing about the outcome of the requested review.
3. The controller shall inform the DPO when the restriction has been lifted.

*Article 5***Provision of information to data subject**

1. In duly justified cases and under the conditions stipulated in this decision, the right to information may be restricted by the controller in the context of the following processing operations:
 - (a) the performance of administrative inquiries and disciplinary proceedings;
 - (b) preliminary activities related to cases of potential irregularities reported to OLAF;
 - (c) whistleblowing procedures;
 - (d) (formal and informal) procedures for cases of harassment;
 - (e) processing internal and external complaints;
 - (f) internal audits;
 - (g) the investigations carried out by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725;
 - (h) (IT) security investigations handled internally or with external involvement (e.g. CERT-EU).

The Agency shall include in the data protection privacy statements or records in the sense of Article 31 of Regulation (EU) 2018/1725, published on its website and on the intranet informing data subjects of their rights in the framework of a given procedure, information relating to the potential restriction of these rights. The information shall cover which rights may be restricted, the reasons and the potential duration.

2. Without prejudice to the provisions of paragraph 3, the Agency, where proportionate, shall also inform individually all data subjects, which are considered persons concerned in the specific processing operation, of their rights concerning present or future restrictions without undue delay and in a written form.
3. Where the Agency restricts, wholly or partly, the provision of information to the data subjects referred to in paragraph 2, it shall record the reasons for the restriction, the legal ground in accordance with Article 3 of this Decision, including an assessment of the necessity and proportionality of the restriction.

The record and, where applicable, the documents containing underlying factual and legal elements shall be registered. They shall be made available to the European Data Protection Supervisor on request.

4. The restriction referred to in paragraph 3 shall continue to apply as long as the reasons justifying it remain applicable.

Where the reasons for the restriction no longer apply, the Agency shall provide information to the data subject on the principal reasons on which the application of a restriction is based. At the same time, the Agency shall inform the data subject of the right of lodging a complaint with the European Data Protection Supervisor at any time or of seeking a judicial remedy in the Court of Justice of the European Union.

The Agency shall review the application of the restriction every six months from its adoption and at the closure of the relevant inquiry, procedure or investigation. Thereafter, the controller shall monitor the need to maintain any restriction every six months.

*Article 6***Right of access by data subject**

1. In duly justified cases and under the conditions stipulated in this decision, the right to access may be restricted by the controller in the context of the following processing operations, where necessary and proportionate:

- (a) the performance of administrative inquiries and disciplinary proceedings;
- (b) preliminary activities related to cases of potential irregularities reported to OLAF;
- (c) whistleblowing procedures;
- (d) (formal and informal) procedures for cases of harassment;
- (e) processing internal and external complaints;
- (f) internal audits;
- (g) the investigations carried out by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725;
- (h) (IT) security investigations handled internally or with external involvement (e.g. CERT-EU);
- (i) handling of requests for access to own medical file.

Where data subjects request access to their personal data processed in the context of one or more specific cases or to a particular processing operation, in accordance with Article 17 of Regulation (EU) 2018/1725, the Agency shall limit its assessment of the request to such personal data only.

2. Where the Agency restricts, wholly or partly, the right of access, referred to in Article 17 of Regulation (EU) 2018/1725, it shall take the following steps:

- (a) it shall inform the data subject concerned, in its reply to the request, of the restriction applied and of the principal reasons thereof, and of the possibility of lodging a complaint with the European Data Protection Supervisor or of seeking a judicial remedy in the Court of Justice of the European Union;
- (b) it shall document in an internal assessment note the reasons for the restriction, including an assessment of the necessity, proportionality of the restriction and its duration.

Restrictions imposed in relation to access to own medical file shall only concern requests for direct access in relation to personal medical data of psychological or psychiatric nature, where access to such data is likely to represent a risk for the data subject's health. This restriction shall be proportionate to what is strictly necessary to protect the data subject. Access to such information shall be given through an intermediary physician of the data subject's choice. This physician should be given access to all the information and discretionary power to decide how and what access to provide to the data subject.

The provision of information referred to in point (a) may be deferred, omitted or denied if it would cancel the effect of the restriction in accordance with Article 25(8) of Regulation (EU) 2018/1725.

The Agency shall review the application of the restriction every six months from its adoption and at the closure of the relevant investigation. Thereafter, the controller shall monitor the need to maintain any restriction every six months.

3. The record and, where applicable, the documents containing underlying factual and legal elements shall be registered. They shall be made available to the European Data Protection Supervisor on request.

*Article 7***Right of rectification, erasure and restriction of processing**

1. In duly justified cases and under the conditions stipulated in this decision, the right to rectification, erasure and restriction may be restricted by the controller in the context of the following processing operations, where necessary and appropriate:

- (a) the performance of administrative inquiries and disciplinary proceedings;
- (b) preliminary activities related to cases of potential irregularities reported to OLAF;
- (c) whistleblowing procedures;
- (d) (formal and informal) procedures for cases of harassment;

- (e) processing internal and external complaints;
- (f) internal audits;
- (g) the investigations carried out by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725;
- (h) (IT) security investigations handled internally or with external involvement (e.g. CERT-EU).

2. Where the Agency restricts, wholly or partly, the application of the right to rectification, erasure and restriction of processing referred to in Articles 18, 19(1) and 20(1) of Regulation (EU) 2018/1725, it shall take the steps set out in Article 6(2) of this Decision and register the record in accordance with Article 6(3) thereof.

Article 8

Communication of a personal data breach to the data subject and confidentiality of electronic communications

1. In duly justified cases and under the conditions stipulated in this decision, the right to the communication of a personal data breach may be restricted by the controller in the context of the following processing operations, where necessary and appropriate:

- (a) the performance of administrative inquiries and disciplinary proceedings;
- (b) preliminary activities related to cases of potential irregularities reported to OLAF;
- (c) whistleblowing procedures;
- (d) (formal and informal) procedures for cases of harassment;
- (e) processing internal and external complaints;
- (f) internal audits;
- (g) the investigations carried out by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725;
- (h) (IT) security investigations handled internally or with external involvement (e.g. CERT-EU).

2. In duly justified cases and under the conditions stipulated in this decision, the right to confidentiality of electronic communications may be restricted by the controller in the context of the following processing operations, where necessary and appropriate:

- (a) the performance of administrative inquiries and disciplinary proceedings;
- (b) preliminary activities related to cases of potential irregularities reported to OLAF;
- (c) whistleblowing procedures;
- (d) formal procedures for cases of harassment;
- (e) processing internal and external complaints;
- (f) (IT) security investigations handled internally or with external involvement (e.g. CERT-EU).

3. Where the Agency restricts the communication of a personal data breach to the data subject or the confidentiality of electronic communications referred to in Articles 35 and 36 of Regulation (EU) 2018/1725, it shall record and register the reasons for the restriction in accordance with Article 5(3) of this decision. Article 5(4) of this Decision shall apply.

Article 9

Entry into force

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Bilbao, 11 December 2019.

For the European Agency for Safety and Health at Work
Christa SCHWENG
Chairperson of the Management Board

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