

**COMMISSION IMPLEMENTING DECISION (EU) 2018/617****of 19 April 2018****authorising Portugal to grant an approval to derogate from point OPS 1.1100(1.1)(b) of Annex III to Council Regulation (EEC) No 3922/91***(notified under document C(2018) 2183)***(Only the Portuguese text is authentic)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation <sup>(1)</sup>, and in particular Article 8(3) thereof,

Whereas:

- (1) By letter dated 21 February 2017, Portugal notified the Commission, pursuant to Article 8(3) of Regulation (EEC) No 3922/91, of its intention to grant NETJETS – Transportes Aéreos, S.A. (hereafter: 'NETJETS') an approval to derogate from point OPS 1.1100(1.1)(b) of Annex III to Regulation (EEC) No 3922/91.
- (2) In its notification, Portugal explained that NETJETS is unable to comply with the requirements of point OPS 1.1100(1.1)(b) because, in order to carry out air taxi operations, in cases where a crew member of NETJETS is scheduled to operate on the seventh consecutive day, the cumulative limit of 60 hours laid down in that provision is reached and is already exceeded while that crew member is on positioning or other duty. The intended derogation would therefore extend the maximum total duty period in any seven consecutive days to 70 hours.
- (3) Portugal further explained that, after analysing the safety risk assessment presented by NETJETS, as well as the proposed mitigation actions, in this case a level of safety equivalent to that attained by the application of point OPS 1.1100(1.1)(b) can be achieved by other means. It also explained that the intended approval to derogate is conditional on NETJETS taking certain mitigating measures, which NETJETS already implemented in accordance with point ORO.FTL.120 of Annex III to Commission Regulation (EU) No 965/2012 <sup>(2)</sup>.
- (4) The Commission assessed, with the assistance of the European Aviation Safety Agency, the level of safety emerging from the intended derogation. The Commission found that the measure would achieve a level of safety equivalent to that attained by application of point OPS 1.1100(1.1)(b), provided certain conditions are met, for the following reasons.
- (5) NETJETS is an air taxi operator. The patterns of work of its pilots therefore differ from those of pilots involved in other types of commercial air transport operations. On average, air taxi pilots are subject to lower workload levels in terms of cumulative flying hours and consecutive days of duty. Conversely, positioning air taxi pilots before and after duties is much more common than in other types of commercial air transport operations, with typically a larger amount of time required for hotel standby away from home base and a relatively large number of hours required for commuting and positioning. However, the level of cumulative fatigue is higher following a duty period including a flight than during the time between flights. The intended derogation would only be used for the positioning duty of the pilots for the start of the extended recovery rest period and not for positioning between two flight duty periods.
- (6) In respect of an air taxi operator, it should be permitted to derogate from the requirements of point OPS 1.1100(1.1)(b) by extending the maximum total duty period in any seven consecutive days.

<sup>(1)</sup> OJ L 373, 31.12.1991, p. 4.

<sup>(2)</sup> Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

- (7) However, in order to ensure an equivalent level of safety, such derogation should only be permitted subject to certain limitations and conditions. In particular, the maximum total duty period in any seven consecutive days should remain limited to 70 hours, the additional hours should only be used for the positioning duty of the pilots concerned for the start of the extended recovery rest period and the air taxi operator concerned should take certain mitigating measures, in particular with a view to preventing, monitoring and addressing any risks which might emerge in connection to the extension.
- (8) In addition, the assessment indicated that the intended derogation would not entail discrimination on the grounds of nationality of the applicants and that it duly takes into account the need not to distort competition, considering in particular that the derogation would be granted irrespective of the place of establishment or principal place of business of the air taxi operator concerned, that the extension is limited and that the same derogation could be granted under the same conditions to other air taxi operators registered in the Union for the same operations.
- (9) Therefore, Portugal should be allowed to grant NETJETS approval for the intended derogation notified to the Commission, provided that NETJETS takes the necessary mitigating measures.
- (10) In accordance with Article 8(3) of Regulation (EEC) No 3922/91, a decision by the Commission that a Member State may grant an approval to derogate is to be notified to all Member States and all Member States are subsequently entitled to apply the measure in question. Therefore, this Decision should be addressed to all Member States and the description of the derogation, as well as the conditions attached to it, should be such as to enable other Member States to also apply that measure when they are in the same situation, without requiring a further decision by the Commission.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Air Safety Committee,

HAS ADOPTED THIS DECISION:

*Article 1*

Portugal may, by derogation from point OPS 1.1100(1.1)(b) of Annex III to Regulation (EEC) No 3922/91, allow the air taxi operator NETJETS – Transportes Aéreos, S.A. to extend the maximum total duty period in any seven consecutive days to 70 hours for the positioning duty of the pilots concerned for the start of the extended recovery rest period, provided that it takes the measures specified in the Annex.

*Article 2*

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 19 April 2018.

*For the Commission*  
Violeta BULC  
*Member of the Commission*

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## ANNEX

The operator concerned shall take all of the following measures in respect of its operations carried out on the basis of the derogation:

1. Integrate the bio-mathematical System for Aircrew Fatigue Evaluation (SAFE) or an equivalent fatigue risk model into its flight planning and flight and duty limitations of its pilots, in order to predict and prevent high levels of fatigue.
2. Establish appropriate schedule metrics and threshold values for the purpose of analysing flight crew rostering and submit those schedule metrics and threshold values to the competent authority for validation.
3. Provide fatigue management-related training to its pilots as referred to in point ORO.FTL.250 of Commission Regulation (EU) No 83/2014 <sup>(1)</sup>.
4. Extend the weekly rest period to a 72-hour rest period, including two local nights.
5. Continuously monitor the increase of the total duty period of its pilots as part of its management system.
6. Continuously monitor the time for commuting, positioning and travelling by its pilots before and during the block of seven consecutive duty days, as a potential source of cumulative fatigue.
7. Continuously monitor and control its pilots' accommodation away from base, in particular the likelihood for them to obtain sleep in sufficient quality and quantity during the block of seven consecutive duty days, by collecting the necessary data from its pilots in the form of sleep diaries and subjective alertness surveys.
8. Continuously analyse collected data stemming from data collection tools such as flight data monitoring (FDM), by correlating the events' rate to fatigue-related surveillance performance and interoperability requirements (SPI).
9. Continuously analyse its pilots' rostering against the schedule metrics and threshold values validated by the competent authority in accordance with point 2, by using the System for Aircrew Fatigue Evaluation (SAFE) or an equivalent fatigue risk model.
10. Continuously monitor all other aspects of the operations by way of a risk assessment with a view to identifying any risks to the safety of operations that may result from the implementation of the derogation. Such risk assessment must be acceptable to the competent authority.
11. Take all necessary measures to mitigate any risks to the safety of operations identified through the measures referred to in points 5 to 10, including the integration of those necessary measures in the planning and flight and duty limitations of its pilots.
12. Provide the outcomes of the measures referred to in points 5 to 10 to the competent authority on a regular basis and immediately inform that authority about any necessary measure it has taken in accordance with point 11.

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<sup>(1)</sup> Commission Regulation (EU) No 83/2014 of 29 January 2014 amending Regulation (EU) No 965/2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 28, 31.1.2014, p. 17).