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COVER NOTE

From:	European Commission
date of receipt:	24 July 2015
To:	General Secretariat of the Council
Subject:	COMMISSION REGULATION (EU) No .../.. of XXX amending Regulation (EU) No 965/2012 as regards requirements for flight recorders, underwater locating devices and aircraft tracking systems

Delegations will find attached document D040413/02.

Encl.: D040413/02

EN

ANNEX

1. Annex I to Regulation (EU) No 965/2012 is amended as follows:

(a) The following points are inserted:

‘(8a) 'aircraft tracking' means a ground based process that maintains and updates, at standardised intervals, a record of the four dimensional position of individual aircraft in flight;

(8b) 'aircraft tracking system' means a system that relies on aircraft tracking in order to identify abnormal flight behaviour and provide alert;’.

2. Annex IV to Regulation (EU) No 965/2012 is amended as follows:

(a) In CAT.GEN.MPA.105 (a), item (10) is replaced by the following:

‘(10) ensure that:

(i) flight recorders are not disabled or switched off during flight;

(ii) in the event of an occurrence other than an accident or a serious incident that shall be reported according to ORO.GEN.160(a), flight recorders’ recordings are not intentionally erased; and

(iii) in the event of an accident or a serious incident, or if preservation of recordings of flight recorders is directed by the investigating authority:

(A) flight recorders’ recordings are not intentionally erased;

(B) flight recorders are deactivated immediately after the flight is completed; and

(C) precautionary measures to preserve the recordings of flight recorders are taken before leaving the flight crew compartment.’.

(b) CAT.GEN.MPA.195 is amended as follows:

(i) the title is replaced by the following:

‘CAT.GEN.MPA.195 **Handling of flight recorder recordings: preservation, production, protection and use**’.

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

‘(a) Following an accident, a serious incident or an occurrence identified by the investigating authority, the operator of an aircraft shall preserve the original recorded data for a period of 60 days or until otherwise directed by the investigating authority.’.

(iii) point (f) is replaced by the following:

‘Without prejudice to Regulation (EU) No 996/2010 of the European Parliament and of the Council¹:

(1) Except for ensuring the CVR serviceability, CVR recordings shall not be disclosed or used unless:

(i) a procedure related to the handling of CVR recordings and of their transcript is in place;

(ii) all crew members and maintenance personnel concerned have given their prior consent; and

(iii) they are used only for maintaining or improving safety.

(1a) When a CVR recording is inspected for ensuring the CVR serviceability, the operator shall ensure the privacy of the CVR recording and the CVR recording shall not be disclosed or used for other purposes than ensuring the CVR serviceability.

(2) FDR recordings or data link recordings shall only be used for purposes other than for the investigation of an accident or an incident which is subject to mandatory reporting, if such records are:

(i) used by the operator for airworthiness or maintenance purposes only;
or

(ii) de-identified; or

(iii) disclosed under secure procedures.’.

(c) The following point CAT.GEN.MPA.205 is inserted:

‘CAT.GEN.MPA.205 Aircraft tracking system - Aeroplanes

¹ Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (OJ L 295, 12.11.2010, p. 35).

(a) By [date of publication + 3 years] at the latest, the operator shall establish and maintain, as part of the system for exercising operational control over the flights, an aircraft tracking system, which includes the flights eligible to (b) when performed with the following aeroplanes:

- (1) aeroplanes with an MCTOM of more than 27 000 kg, with an MOPSC of more than 19, and first issued with an individual CofA before [date of publication + 3 years], which are equipped with a capability to provide a position additional to the secondary surveillance radar transponder; and
- (2) all aeroplanes with an MCTOM of more than 27 000 kg, with an MOPSC of more than 19, and first issued with an individual CofA on or after [date of publication + 3 years];
- (3) all aeroplanes with an MCTOM of more than 45 500 kg and first issued with an individual CofA on or after [date of publication + 3 years].

(b) Any flight shall be tracked by the operator from take-off to landing, except when the planned route and the planned diversion routes are fully included in airspace blocks where:

- (1) ATS surveillance service is normally provided which is supported by ATC surveillance systems locating the aircraft at time intervals with adequate duration; and
- (2) the operator has provided to competent air navigation service providers necessary contact information.'

(d) The following point CAT.GEN.MPA.210 is inserted:

'CAT.GEN.MPA.210 Location of an aircraft in distress – Aeroplanes

The following aeroplanes shall be equipped with robust and automatic means to accurately determine, following an accident where the aeroplane is severely damaged, the location of the point of end of flight:

- (1) all aeroplanes with an MCTOM of more than 27 000 kg, with an MOPSC of more than 19 and first issued with an individual CofA on or after 01 January 2021; and
- (2) all aeroplanes with an MCTOM of more than 45 500 kg and first issued with an individual CofA on or after 01 January 2021.'

(e) In CAT.IDE.A.185, points (b) to (h) are replaced by the following:

'(b) Until 31 December 2018, the CVR shall be capable of retaining the data recorded during at least:

- (1) the preceding 2 hours in the case of aeroplanes referred to in (a)(1) when the individual CofA has been issued on or after 1 April 1998;

- (2) the preceding 30 minutes for aeroplanes referred to in (a)(1) when the individual CofA has been issued before 1 April 1998; or
 - (3) the preceding 30 minutes, in the case of aeroplanes referred to in (a)(2).
- (c) By 1 January 2019 at the latest, the CVR shall be capable of retaining the data recorded during at least:
 - (1) the preceding 25 hours for aeroplanes with an MCTOM of more than 27 000 kg and first issued with an individual CofA on or after 1 January 2021; or
 - (2) the preceding 2 hours in all other cases.
- (d) By 1 January 2019 at the latest, the CVR shall record on means other than magnetic tape or magnetic wire.
- (e) The CVR shall record with reference to a timescale:
 - (1) voice communications transmitted from or received in the flight crew compartment by radio;
 - (2) flight crew members' voice communications using the interphone system and the public address system, if installed;
 - (3) the aural environment of the flight crew compartment, including without interruption:
 - (i) for aeroplanes first issued with an individual CofA on or after 1 April 1998, the audio signals received from each boom and mask microphone in use;
 - (ii) for aeroplanes referred to in (a)(2) and first issued with an individual CofA before 1 April 1998, the audio signals received from each boom and mask microphone, where practicable;
 - (4) voice or audio signals identifying navigation or approach aids introduced into a headset or speaker.
- (f) The CVR shall start to record prior to the aeroplane moving under its own power and shall continue to record until the termination of the flight when the aeroplane is no longer capable of moving under its own power. In addition, in the case of aeroplanes issued with an individual CofA on or after 1 April 1998, the CVR shall start automatically to record prior to the aeroplane moving under its own power and continue to record until the termination of the flight when the aeroplane is no longer capable of moving under its own power.
- (g) In addition to (f), depending on the availability of electrical power, the CVR shall start to record as early as possible during the cockpit checks prior to engine start at the beginning of the flight until the cockpit checks immediately following engine shutdown at the end of the flight, in the case of:

- (1) aeroplanes referred to in (a)(1) and issued with an individual CofA on or after 1 April 1998; or
 - (2) aeroplanes referred to in (a)(2).
- (h) If the CVR is not deployable, it shall have a device to assist in locating it under water. By [date of publication + 30 months] at the latest, this device shall have a minimum underwater transmission time of 90 days. If the CVR is deployable, it shall have an automatic emergency locator transmitter.’.
- (f) In CAT.IDE.A.190, point (e) is replaced by the following:
- ‘(e) If the FDR is not deployable, it shall have a device to assist in locating it under water. By [date of publication + 30 months] at the latest, this device shall have a minimum underwater transmission time of 90 days. If the FDR is deployable, it shall have an automatic emergency locator transmitter.’.
- (g) In CAT.IDE.A.195, point (d) is replaced by the following:
- ‘(d) If the recorder is not deployable, it shall have a device to assist in locating it under water. By [date of publication + 30 months] at the latest, this device shall have a minimum underwater transmission time of 90 days. If the recorder is deployable, it shall have an automatic emergency locator transmitter.’.
- (h) CAT.IDE.A.280 is amended as follows:
- (i) point (a) is replaced by the following:
 - ‘(a) Aeroplanes with an MOPSC of more than 19 shall be equipped with at least:
 - (1) two ELTs, one of which shall be automatic, or one ELT and one aircraft localisation means meeting the requirement of CAT.GEN.MPA.210, in the case of aeroplanes first issued with an individual CofA after 1 July 2008; or
 - (2) one automatic ELT or two ELTs of any type or one aircraft localisation means meeting the requirement of CAT.GEN.MPA.210, in the case of aeroplanes first issued with an individual CofA on or before 1 July 2008.’.
 - (ii) point (b) is replaced by the following:
 - ‘(b) Aeroplanes with an MOPSC of 19 or less shall be equipped with at least:
 - (1) one automatic ELT or one aircraft localisation means meeting the requirement of CAT.GEN.MPA.210, in the case of aeroplanes first issued with an individual CofA after 1 July 2008; or
 - (2) one ELT of any type or one aircraft localisation means meeting the requirement of CAT.GEN.MPA.210, in the case of aeroplanes first issued with an individual CofA on or before 1 July 2008.’.
- (i) In CAT.IDE.A.285, the following point is inserted :

- (f) By 1 January 2019 at the latest, aeroplanes with an MCTOM of more than 27 000 kg and with an MOPSC of more than 19 and all aeroplanes with an MCTOM of more than 45 500 kg shall be fitted with a securely attached underwater locating device that operates at a frequency of $8.8 \text{ kHz} \pm 1 \text{ kHz}$, unless:
- (1) the aeroplane is operated over routes on which it is at no point at a distance of more than 180 NM from the shore; or
 - (2) the aeroplane is equipped with robust and automatic means to accurately determine, following an accident where the aeroplane is severely damaged, the location of the point of end of flight.’
- (j) In CAT.IDE.H.185, points (c) to (f) are replaced by the following:
- (c) By 1 January 2019 at the latest, the CVR shall record on means other than magnetic tape or magnetic wire.
- (d) The CVR shall record with reference to a timescale:
- (1) voice communications transmitted from or received in the flight crew compartment by radio;
 - (2) flight crew members’ voice communications using the interphone system and the public address system, if installed;
 - (3) the aural environment of the flight crew compartment, including without interruption:
 - (i) for helicopters first issued with an individual CofA on or after 1 August 1999, the audio signals received from each crew microphone;
 - (ii) for helicopters first issued with an individual CofA before 1 August 1999, the audio signals received from each crew microphone, where practicable;
 - (4) voice or audio signals identifying navigation or approach aids introduced into a headset or speaker.
- (e) The CVR shall start to record prior to the helicopter moving under its own power and shall continue to record until the termination of the flight when the helicopter is no longer capable of moving under its own power.
- (f) In addition to (e), for helicopters referred to in (a)(2) issued with an individual CofA on or after 1 August 1999:
- (1) the CVR shall start automatically to record prior to the helicopter moving under its own power and continue to record until the termination of the flight when the helicopter is no longer capable of moving under its own power; and

- (2) depending on the availability of electrical power, the CVR shall start to record as early as possible during the cockpit checks prior to engine start at the beginning of the flight until the cockpit checks immediately following engine shutdown at the end of the flight.
- (g) If the CVR is not deployable, it shall have a device to assist in locating it under water. By 1 January 2020 at the latest, this device shall have a minimum underwater transmission time of 90 days. If the CVR is deployable, it shall have an automatic emergency locator transmitter.’
- (k) In CAT.IDE.H.190, point (e) is replaced by the following:
 - ‘(e) If the FDR is not deployable, it shall have a device to assist in locating it under water. By 1 January 2020 at the latest, this device shall have a minimum underwater transmission time of 90 days. If the FDR is deployable, it shall have an automatic emergency locator transmitter.’
- (l) In CAT.IDE.H.195, point (d) is replaced by the following:
 - ‘(d) If the recorder is not deployable, it shall have a device to assist in locating it under water. By 1 January 2020 at the latest, this device shall have a minimum underwater transmission time of 90 days. If the recorder is deployable, it shall have an automatic emergency locator transmitter.’

3. Annex VI to Regulation (EU) No 965/2012 is amended as follows:

- (a) In NCC.GEN.106 (a), item (9) is replaced by the following:
 - ‘(9) ensuring that:
 - (i) flight recorders are not disabled or switched off during flight;
 - (ii) in the event of an occurrence other than an accident or a serious incident that shall be reported according to ORO.GEN.160(a), flight recorders’ recordings are not intentionally erased; and
 - (iii) in the event of an accident or a serious incident, or if preservation of recordings of flight recorders is directed by the investigating authority:
 - (A) flight recorders’ recordings are not intentionally erased;
 - (B) flight recorders are deactivated immediately after the flight is completed; and
 - (C) precautionary measures to preserve the recordings of flight recorders are taken before leaving the flight crew compartment.’
- (b) NCC.GEN.145 is amended as follows:
 - (i) the title is replaced by the following:

'NCC.GEN.145 Handling of flight recorder recordings: preservation, production, protection and use'.

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

'(a) Following an accident, a serious incident or an occurrence identified by the investigating authority, the operator of an aircraft shall preserve the original recorded data for a period of 60 days or until otherwise directed by the investigating authority.'

(iii) Point (f) is replaced by the following:

'Without prejudice to Regulation (EU) No 996/2010:

(1) Except for ensuring the CVR serviceability, CVR recordings shall not be disclosed or used unless:

(i) a procedure related to the handling of CVR recordings and of their transcript is in place;

(ii) all crew members and maintenance personnel concerned have given their prior consent; and

(iii) they are used only for maintaining or improving safety.

(1a) When a CVR recording is inspected for ensuring the CVR serviceability, the operator shall ensure the privacy of the CVR recording and the CVR recording shall not be disclosed or used for other purposes than ensuring the CVR serviceability.

(2) FDR recordings or data link recordings shall only be used for purposes other than for the investigation of an accident or an incident which is subject to mandatory reporting, if such records are:

(i) used by the operator for airworthiness or maintenance purposes only;
or

(ii) de-identified; or

(iii) disclosed under secure procedures'.

(c) NCC.IDE.A.160 is amended as follows:

(i) point (b) is replaced by the following:

'(b) The CVR shall be capable of retaining data recorded during at least:

- (1) the preceding 25 hours for aeroplanes with an MCTOM of more than 27 000 kg and first issued with an individual CofA on or after 1 January 2021; or
- (2) the preceding 2 hours in all other cases.’.

(ii) point (f) is replaced by the following:

‘(f) If the CVR is not deployable, it shall have a device to assist in locating it under water. By 1 January 2020 at the latest, this device shall have a minimum underwater transmission time of 90 days. If the CVR is deployable, it shall have an automatic emergency locator transmitter.’.

(d) In NCC.IDE.A.165, point (e) is replaced by the following:

‘(e) If the FDR is not deployable, it shall have a device to assist in locating it under water. By 1 January 2020 at the latest, this device shall have a minimum underwater transmission time of 90 days. If the FDR is deployable, it shall have an automatic emergency locator transmitter.’.

(e) In NCC.IDE.A.215, point (a) is replaced by the following:

‘(a) Aeroplanes shall be equipped with:

- (1) an ELT of any type or an aircraft localisation means meeting the requirement of Annex IV (Part CAT), CAT.GEN.MPA.210, to Regulation (EU) No 965/2012, when first issued with an individual CofA on or before 1 July 2008;
- (2) an automatic ELT or an aircraft localisation means meeting the requirement of Annex IV (Part CAT), CAT.GEN.MPA.210, to Regulation (EU) No 965/2012, when first issued with an individual CofA after 1 July 2008.’

(f) In NCC.IDE.A.170, point (d) is replaced by the following:

‘(d) If the recorder is not deployable, it shall have a device to assist in locating it under water. By 1 January 2020 at the latest, this device shall have a minimum underwater transmission time of 90 days. If the recorder is deployable, it shall have an automatic emergency locator transmitter.’.

(g) In NCC.IDE.H.160, point (f) is replaced by the following:

‘(f) If the CVR is not deployable, it shall have a device to assist in locating it under water. By 1 January 2020 at the latest, this device shall have a minimum underwater transmission time of 90 days. If the CVR is deployable, it shall have an automatic emergency locator transmitter.’.

(h) In NCC.IDE.H.165, point (e) is replaced by the following:

‘(e) If the FDR is not deployable, it shall have a device to assist in locating it under water. By 1 January 2020 at the latest, this device shall have a minimum

underwater transmission time of 90 days. If the FDR is deployable, it shall have an automatic emergency locator transmitter.’.

(i) In NCC.IDE.H.170, point (d) is replaced by the following:

‘(d) If the recorder is not deployable, it shall have a device to assist in locating it under water. By 1 January 2020 at the latest, this device shall have a minimum underwater transmission time of 90 days. If the recorder is deployable, it shall have an automatic emergency locator transmitter.’.

4. Annex VIII to Regulation (EU) No 965/2012 is amended as follows:

(a) In SPO.GEN.107 (a), item (9) is replaced by the following:

‘(9) ensuring that:

- (i) flight recorders are not disabled or switched off during flight;
- (ii) in the event of an occurrence other than an accident or a serious incident that shall be reported according to ORO.GEN.160(a), flight recorders’ recordings are not intentionally erased; and
- (iii) in the event of an accident or a serious incident, or if preservation of recordings of flight recorders is directed by the investigating authority:
 - (A) flight recorders’ recordings are not intentionally erased;
 - (B) flight recorders are deactivated immediately after the flight is completed; and
 - (C) precautionary measures to preserve the recordings of flight recorders are taken before leaving the flight crew compartment.’.

(b) SPO.GEN.145 is amended as follows:

(i) the title is replaced by the following:

‘SPO.GEN.145 Handling of flight recorder recordings: preservation, production, protection and use – operations with complex motor-powered aircraft’

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

‘(a) Following an accident, a serious incident or an occurrence identified by the investigating authority, the operator of an aircraft shall preserve the original recorded data for a period of 60 days or until otherwise directed by the investigating authority.’.

(iii) point (f) is replaced by the following:

‘(f) Without prejudice to Regulation (EU) No 996/2010 and except for ensuring the CVR serviceability, CVR recordings shall not be disclosed or used unless:

- (i) a procedure related to the handling of CVR recordings and of their transcript is in place;
- (ii) all crew members and maintenance personnel concerned have given their prior consent;’ and
- (iii) they are used only for maintaining or improving safety.’.

When a CVR recording is inspected for ensuring the CVR serviceability, the operator shall ensure the privacy of the CVR recording and the CVR recording shall not be disclosed or used for other purposes than ensuring the CVR serviceability.’.

(c) SPO.IDE.A.140 is amended as follows:

(i) point (b) is replaced by the following:

‘(b) The CVR shall be capable of retaining data recorded during at least:

- (1) the preceding 25 hours for aeroplanes with an MCTOM of more than 27 000 kg and first issued with an individual CofA on or after 1 January 2021; or
- (2) the preceding 2 hours in all other cases.’.

(ii) point (f) is replaced by the following:

‘(f) If the CVR is not deployable, it shall have a device to assist in locating it under water. By 1 January 2020 at the latest, this device shall have a minimum underwater transmission time of 90 days. If the CVR is deployable, it shall have an automatic emergency locator transmitter.’.

(d) In SPO.IDE.A.145, point (e) is replaced by the following:

‘(e) If the FDR is not deployable, it shall have a device to assist in locating it under water. By 1 January 2020 at the latest, this device shall have a minimum underwater transmission time of 90 days. If the FDR is deployable, it shall have an automatic emergency locator transmitter.’.

(e) In SPO.IDE.A.150, point (d) is replaced by the following:

‘(d) If the recorder is not deployable, it shall have a device to assist in locating it under water. By 1 January 2020 at the latest, this device shall have a minimum underwater transmission time of 90 days. If the recorder is deployable, it shall have an automatic emergency locator transmitter.’.

(f) In SPO.IDE.A.190, point (a) is replaced by the following:

‘(a) Aeroplanes shall be equipped with:

- (1) an ELT of any type or an aircraft localisation means meeting the requirement of Annex IV (Part CAT), CAT.GEN.MPA.210, to Regulation

(EU) No 965/2012, when first issued with an individual CofA on or before 1 July 2008;

(2) an automatic ELT or an aircraft localisation means meeting the requirement of Annex IV (Part CAT), CAT.GEN.MPA.210, to Regulation (EU) No 965/2012, when first issued with an individual CofA after 1 July 2008; or

(3) a survival ELT (ELT(S)) or a personal locator beacon (PLB), carried by a crew member or a task specialist, when certified for a maximum seating configuration of six or less.'

(g) In SPO.IDE.H.140, point (f) is replaced by the following:

'(f) If the CVR is not deployable, it shall have a device to assist in locating it under water. By 1 January 2020 at the latest, this device shall have a minimum underwater transmission time of 90 days. If the CVR is deployable, it shall have an automatic emergency locator transmitter.'

(h) In SPO.IDE.H.145, point (e) is replaced by the following:

'(e) If the FDR is not deployable, it shall have a device to assist in locating it under water. By 1 January 2020 at the latest, this device shall have a minimum underwater transmission time of 90 days. If the FDR is deployable, it shall have an automatic emergency locator transmitter.'

(i) In SPO.IDE.H.150, point (d) is replaced by the following:

'(d) If the recorder is not deployable, it shall have a device to assist in locating it under water. By 1 January 2020 at the latest, this device shall have a minimum underwater transmission time of 90 days. If the recorder is deployable, it shall have an automatic emergency locator transmitter.'