
UPDATE OF SPANISH NATIONAL REGULATIONS ON AIR TRANSPORT.¹

Air transport and, in general, civil aviation, is an intensely regulated activity, in which international regulations, usually adopted within the framework of the International Civil Aviation Organization (ICAO), European and national regulations coexist.

Specifically, in the European Union, competence on air navigation is shared between the Union and the Member States, as provided for in Articles **4.2 (g)** and **100.2** of the **Treaty on the Functioning of the European Union (hereinafter TFEU)**, so that European and national regulations may coexist. Within this legal framework, the development of the common transport policy in the air transport mode has made it advisable to address at European level many aspects that were already regulated by the Member States, and to use the regulation as an instrument of harmonization.

Therefore, and notwithstanding the fact that the application of some of these regulations requires national rules to develop or complement them, it is becoming increasingly common for the various areas of civil aviation to be totally or partially regulated by the EU, and it was not possible for Spain, at the time such EU rules were enacted, to clean up the domestic legislation to bring it into line with the EU provisions. Therefore, an important part of these new regulations is aimed at making national regulations compatible and updating them in accordance with Community regulations.

An exercise that, as will be seen, is by no means unimportant or cosmetic.

Such is the case of Commission **Regulation (EU) No. 1178/2011** of 3 November 2011 laying down technical requirements and administrative procedures related to mobile staff in civil aviation pursuant to **Regulation (EC) No. 216/2008 of the European Parliament and of the Council; Commission Regulation (EU) No. 2015/340 of February 2015 laying down technical requirements and administrative procedures concerning the licensing and certification of air traffic controllers, No 216/2008** of the European Parliament and of the Council; Commission **Regulation (EU) 2015/340 of 20 February 2015** laying down technical requirements and administrative procedures for air traffic controllers' licenses and certificates under **Regulation (EC) No 216/2008** of the European Parliament and of the Council, amending Commission **Implementing Regulation (EU) No 923/2012** and repealing Commission **Regulation (EU) No 805/2011; Commission Regulation (EU) No. No 965/2012** of 5 October 2012 laying down technical requirements and administrative procedures in relation to air operations pursuant to **Regulation (EC) No 216/2008** of the European Parliament and of the Council; **Regulation (EU) No 598/2014** of the European Parliament and of the

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Council of 16 April 2014 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a balanced approach and repealing **Directive 2002/30/EC; and Regulation (EU) No. No. 748/2012** of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organizations.

Since the regulation is a legal act of general scope, binding in all its elements and directly applicable in each Member State, as provided for in **Article 288 of the TFEU**, the principle of the primacy of European Union law determines the non-application of national rules that are incompatible with the provisions of the regulation. However, as the Council of State has recalled, "*the principle of legal certainty requires that domestic legislation which is incompatible with European law must be definitively eliminated 'by means of binding domestic provisions having the same legal value as the domestic provisions to be amended'*" (judgments of the EU Court of Justice of 23 February 2006, *Commission v. Spain*; of 13 July 2000, *Commission v. France*; and of 15 October 1986, *Commission v. Italy*)".

The purpose of the Royal Decree under analysis is to comply with this doctrine and to purify the domestic legal system, expressly repealing those provisions that contemplate aspects already regulated by European Union regulations, and adapting those others that are still necessary to complement them.

Thus, the characteristics of the Spanish domestic legal system regarding flight crew qualifications and on-board mechanic licenses, aspects not covered by **Commission Regulation (EU) No. 1178/2011**, are kept updated; and, in the area of noise-related operating restrictions, the regime applicable to the advertising of such restrictions before they are introduced is maintained insofar as it complements the provisions of **Regulation (EU) No. 598/2014** of the European Parliament and of the Council.

The above provisions are completed with the repeal of the national regulations that have become inapplicable since their content has been rendered inapplicable as they have been covered by the European regulations. In addition, the administrative rulings issued in application of the repealed regulations have been rendered null and void by simplification.

However, the new regulations we are reviewing repeal very partial aspects of **Order FOM/2157/2003, of July 18, 2003**, determining the requirements and procedure for the designation and authorization of aeronautical medical centers and medical examiners, which, in general, will continue to be applicable as a complementary provision to EU regulations on the matter. Likewise, **Royal Decree 279/2007 of February 23rd**, which determines the requirements for the performance of commercial air transport operations by civil helicopters, and **Royal Decree 284/2002 of March 22nd**, which determines the conditions for the exercise of the functions of maintenance technicians and maintenance certifying personnel of civil aircraft, in relation to the operations and maintenance of aircraft excluded from the application of the European regulations, shall remain temporarily in force until the adoption of the specific national regulations on these aircraft.

With regard to **Royal Decree 660/2001, of June 22**, which regulates the certification of civil aircraft and related products and parts, its validity is maintained, adapting its scope of application to aircraft, products and parts related to them, excluded from the scope of application of European regulations, particularly

Commission **Regulation (EU) No. 748/2012**, as well as a number of other national regulations; among others, those on ultralight and amateur-built aircraft. Furthermore, given the obsolescence of the JAR 21 rules incorporated by this Royal Decree, such rules are replaced by the application of the technical requirements of Annex I, Part 21 of the aforementioned **Commission Regulation (EU) No. 748/2012**, which, in general, have replaced the JAR 21 rules. However, provision is made for the possibility of establishing exemptions, general or particular, from compliance with such technical requirements when these are incompatible or disproportionate in relation to the type of aircraft, its engines, propellers, components and non-installed equipment, or its design and production organizations.

Royal Decree 1952/2009, of December 18, 2009, adopting requirements regarding flight and duty time limitations and rest requirements for service crews on aircraft engaged in commercial air transport, is also maintained in force, adapting its scope of application to activities not covered by Commission **Regulation (EU) No. 965/2012**, in accordance with the provisions thereof.

As regards the air traffic controller licensing regime, it has been decided - a criterion that seems unnecessary to us and could lead to confusion - to maintain in force, although duly updated, **Royal Decree 1516/2009, of October 2**, which regulates the Community air traffic controller license, even though its substantive regime has been replaced by Commission **Regulation (EU) 2015/340** of 20 February 2015, in order to maintain the unitary legal regime in the provision of air traffic service to general air traffic, also when such service is provided by military air navigation service providers or military training providers. The amendment of this Royal Decree incorporates the subsisting regime of the **Order FOM/1841/2010 of July 5, 2010**, which develops the requirements for the certification of civilian providers of air traffic controller training, which is repealed.

Finally, the references of **Royal Decree 1133/2010, of September 10**, regulating the provision of the aerodrome flight information service (AFIS); and **Royal Decree 1238/2011, of September 8**, regulating the management service on the airport apron, are updated to the provisions applicable, respectively, for the issuance of the medical certificate or the certificate of psychophysical fitness required by those provisions.

We will be pleased to expand on or comment on any aspect of this new regulation.

Madrid, September 21, 2022 ///