COMMISSION IMPLEMENTING DECISION (EU) 2020/1501

of 14 October 2020

on the assessment made pursuant to Regulation (EU) 2018/1139 of the European Parliament and of the Council as regards a temporary exemption from certain provisions of Commission Regulation (EU) No 1321/2014 granted by Germany

(notified under document C(2020) 6891)

(Only the German text is authentic)

(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 71(2) thereof,

Whereas:

(1) On 25 February 2020, the competent authority Luftfahrt-Bundesamt ('LBA'), on behalf of Germany, notified the Commission, the European Union Aviation Safety Agency ('the Agency' or 'EASA')) and the other Member States that it had granted an exemption to Lufthansa Technik AG from compliance with point 145.A.42 of Annex II (Part-145) to Commission Regulation (EU) No 1321/2014 ([2]). Under that point an organisation approved under Part-145 is to ensure that only components which are in a satisfactory condition and released on an EASA Form 1 or equivalent are installed on aircraft or another component and the applicable maintenance data specifies the particular component, standard part or material.

(2) The exemption was granted by the LBA in the context of future Supplemental Type Certificate ('STC') projects and allows Lufthansa Technik AG not to comply, in certain instances, with point 145.A.42 of Annex II (Part-145) to Commission Regulation (EU) No 1321/2014 for certain components that are to be installed by Lufthansa Technik AG and which had been manufactured as a prototype component.

(3) The LBA explains that in the past some of the prototype components, which were installed by Lufthansa Technik AG on aircraft, could not have been subsequently re-certified by their manufacturer as conforming with the design data of the modification once the modification was approved with the issuance of an STC. The LBA refers to cases where the manufacturer was based in the United States and a re-certification was not possible after the component had left the manufacturer and to cases where the manufacturer became insolvent before the design data were approved. The LBA explains that in those cases the re-certification of those components was either not possible or created an administrative burden which delayed the return of aircraft into service, thus not allowing Lufthansa Technik AG to fulfil customer orders and creating a financial and economic risk.

(4) The exemption granted by the LBA does not specify the products or the projects in respect of which Lufthansa Technik AG has been exempted from compliance with point 145.A.42 of Annex II (Part-145) to Commission Regulation (EU) No 1321/2014 and for which it may accept the installation of non-compliant components. The LBA explains that Lufthansa Technik AG has a small number of upcoming STC projects, where such problems may occur and where Lufthansa Technik AG may not be able to comply with point 145.A.42 of Annex II (Part-145) to Commission Regulation (EU) No 1321/2014. The exemption was granted in anticipation of those possible problems to avoid delays to the return into service of modified aircraft in the future. The exemption is valid from 13 February 2020 to 31 December 2021 and thus exceeds a period of eight consecutive months.

([1]) OJ L 212, 22.8.2018, p. 1.

([2]) Commission Regulation (EU) No 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks (OJ L 362, 17.12.2014, p. 1).

(5) As a mitigation for the non-compliance with point 145.A.42 of Annex II (Part-145) to Commission Regulation (EU) No 1321/2014, the exemption provides that Lufthansa Technik AG is permitted to release aircraft with prototype components based on an alternative procedure involving a comparison of the certification status of each such component with the approved design data obtained after the corresponding STC approval process was completed.

(6) Following an assessment, the Agency issued on 16 July 2020 a negative recommendation on the exemption granted by the LBA.

(7) The Commission agrees with the Agency's recommendation.

(8) Pursuant to Article 71(1) of Regulation (EU) 2018/1139, a Member State is allowed to grant an exemption to any natural or legal person subject to that Regulation in the event of urgent unforeseeable circumstances affecting those persons or urgent operational needs of those persons and provided that all the conditions stipulated in points (a) to (d) of that Article are met.

(9) As regards 'urgent unforeseeable circumstances' or 'urgent operational needs', the Commission considers that the exemption is not justified by urgent unforeseeable circumstances affecting Lufthansa Technik AG or urgent operational needs of Lufthansa Technik AG as required by Article 71(1) of Regulation (EU) 2018/1139. The exemption is granted in anticipation of possible, future issues with re-certification of prototype components. While some of those issues may have indeed an unforeseeable character, such as supplier bankruptcy, or result in an operational need of putting an aircraft in service, those issues have neither materialized nor were about to materialize at the moment of the issuance of the exemption. In particular, Germany did not provide any evidence suggesting that certain manufacturers have indicated to *Lufthansa Technik AG* that they will not be in a position to provide components with the required certifying statements with respect to certain projects. As a result the Commission considers that the requirement of urgency is not in met in this case.

(10) Moreover, the Commission considers that the exemption does not meet the required limitations to its scope and duration as set out in point (d) of Article 71(1) of Regulation (EU) 2018/1139. While the exemption is issued only for the cases where the re-certification of a prototype component is not possible, the exemption effectively applies to any STC project carried out during its period of applicability and for an unlimited number of possible components to be installed in support of such STC project(s). Furthermore, the Commission notes that LBA has not demonstrated that the exemption is limited in duration to what is strictly necessary. While the exemption is due to expire on 31 December 2021, the LBA did not convincingly justified how this expiry date is linked to the circumstances or needs requiring this exemption.

(11) As a consequence, the exemption granted by the LBA does not meet the conditions set out in Article 71(1) of Regulation (EU) 2018/1139,

HAS ADOPTED THIS DECISION:

Article 1

The exemption from the requirements laid down in point 145.A.42 of Annex II (Part-145) to Regulation (EU) No 1321/2014, granted by Germany, and notified to the Commission, the European Union Aviation Safety Agency and the other Member States on 25 February 2020, which allows Lufthansa Technik AG not to comply, in certain instances, with point 145.A.42 for certain components that are to be installed by Lufthansa Technik AG and which had been manufactured as a prototype component, does not meet the conditions set out in Article 71(1) of Regulation (EU) 2018/1139.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 October 2020.

For the Commission
Adina VĂLEAN
Member of the Commission