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Datum 13 juni 2023
Betreft Application of the European rules on air operations for
search and rescue activities in the Netherlands

Bestuurskern

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Ons kenmerk

IENW/BSK-2023/155686

Uw kenmerk

Ares(2023)1483053 -
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Dear 5.1.2.e ,

In response to your letter of 1 March 2023 (Ref. Ares(2023)1483035) on the application of the European rules on air operations for search and rescue activities in the Netherlands, I would like to inform you on the current state of affairs. In your letter you requested us, in the context of the opt-in, to reconsider our approach to apply Section III ('Air Operations') of Chapter III of Regulation (EU) No 2018/1139, including Regulation (EU) No 965/2012, to SAR activities in the Netherlands.

Our initial assessment of the application of Regulation (EU) No 965/2012 led us to believe that Search and Rescue activities could be performed under a Commercial Air Transport Air Operator Certificate, with a limited number of exemptions for those instances where the operator would not be able to meet the requirements of the rules. We requested the Dutch CAA not to take enforcement actions on those specific requirements, when during certain SAR activities those requirements would be exceeded, up until the moment those specific exemptions are granted. The CAA can take enforcement actions on all other rules, for which an exemption is not foreseen.

A calibration of our policies and procedures has led to the conclusion that SAR should be assessed against the criteria of Part-SPO instead of the criteria of Part-CAT. The Netherlands has contracted out the Search and Rescue operation to a commercial civil provider and therefore the operation is considered a commercial operation. Although commercial, the nature of Search and Rescue operations is not the transport of passengers and goods as in Commercial Air Transport. The definition of 'Aerial Work' in ICAO Annex 6, Part III (An aircraft operation in which an aircraft is used for specialized services such as agriculture, construction, photography, surveying, observation and patrol, search and rescue, aerial advertisement, etc.), specifically mentions search and rescue operations as a specialized service or operation.

In article SPO.GEN.005 the scope of activities for which Part-SPO would apply does of course not contain search and rescue, since this has been excluded in article 2 of the Basic Regulation. We now have come to the conclusion that through the opt-in, we include search and rescue within the scope of Part-SPO and

we will apply the rules in Part-SPO to the search and rescue operations. This means that we expect the operator to comply with the rules in Part-SPO, including the determination through a risk assessment whether the SAR operation is posing a high risk to third parties on the ground in the event of an emergency and declaring its activities to the competent authority.

Our expectation is that under Part-SPO the necessity for exemptions will be much less than under Part-CAT, due to the less prescriptive nature of the rules in Part-SPO. Further assessment is underway to identify the exact number of exemptions. The applications for exemptions will be reviewed by the Dutch CAA and exemptions will only be granted if they meet the criteria of article 71 of the Basic Regulation. Exemptions will be in place until the moment the national regulations will be in force. The request to the Dutch CAA not to take enforcement action will be adapted to the new situation and will of course only apply to articles where an exemption is anticipated and will be applicable until the exemptions requests have been decided upon.

Based on this line of reasoning, we identified an article in our national regulations that could form the basis for a ministerial regulation regulating aerial work. We can opt for an new regulation specifically on search and rescue operations or amend an existing regulation to include specific operational rules for search and rescue. Either of these options will take approximately six to nine months before entry into force. However, for the time being we will not be able to require certification or declaration of the search and rescue operator, based on the current articles in our national aviation law and regulations, and therefore we will still need an amendment to the basic aviation law to do so, which requires a longer timeframe.

In conclusion, the opt-in leads to a declaration under Part-SPO with a to be identified number of exemptions and possibly alternative means of compliance, needed for the specific characteristics of the search and rescue operation. Therefore, we believe that we can effectively apply the aviation safety requirements of Regulation (EU) No 965/2012. We have started work on a ministerial regulation to include the operational rules for search and rescue operations. Once that ministerial regulation is in force, we expect to be able to withdraw the opt-in of Section III of Chapter III of the Basic Regulation for search and rescue operations. At the same time we will continue our preparations to amend our basic aviation law to enable a national certification or declaration system for search and rescue operators in the Netherlands.

Sincerely,

5.1.2.e

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Dir. Luchtvaart
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