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Taqsima B

L.N. 342 of 2013

AUTHORITY FOR TRANSPORT IN MALTA ACT (CAP. 499)
Civil Aviation (Air Traffic Flow Management Regulations) 2013

IN exercise of the powers conferred by article 43(1) of the Authority for Transport in Malta Act, the Minister for Transport and Infrastructure, in consultation with the Authority for Transport in Malta, has made the following regulations:-

Citation and scope.

1. (1) The title of these regulations is the Civil Aviation (Air Traffic Flow Management) Regulations, 2013.

(2) These regulations transpose the provisions of Commission Regulation (EU) No 255/2010 of 25 March 2010, laying down common rules on air traffic flow management.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires:

"airport managing body" means a body that has as its objective the administration and management of the airport infrastructure, and the co-ordination and control of the activities of the different operations present in the airport;

"ATFM" means air traffic flow management;

"ATFM measure" means the actions taken to perform air traffic flow management and capacity management;

"ATS" means air traffic services;

"ATS unit" means a Unit established for the purpose of receiving reports concerning ATS and flight plans submitted before the first delivery of an air traffic control clearance;

"authorised officer" means a person appointed as an authorised officer under regulation 5;

"Authority" means the Authority for Transport in Malta established by article 5 of the Authority for Transport in Malta Act; Cap. 499.

"defaulting party" means a party as described in the definition "party" but which *prima facie* looks to the Authority that it is in breach of any of the Articles of the Regulation mentioned in regulation 3(1);

"operator" means a person, organization, or enterprise engaged

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in or offering to engage in an aircraft operation;

"party" means a party, or agent acting on its behalf, involved in the ATFM process mentioned in Article (1)(3) of the Regulation;

"the Regulation" means Commission Regulation (EU) No 255/ 2010 of 25 March 2010, laying down common rules on air traffic flow management.

(2) Words or expressions used in the Regulation and reproduced in these regulations shall carry the same meaning unless the context requires otherwise.

Failure to comply with provisions of the Regulation.

3. (1) When the Authority deems that -

(a) an ATS unit is failing to comply with Article 6 of the Regulation; or

(b) an operator failed to comply with Article 7 of the Regulation; or

(c) an airport managing body failed to comply with Article 8 of the Regulation; or

(d) a party failed to comply with an ATFM measure or procedure the Authority is responsible to oversee under the Regulation,

it shall direct the defaulting party to comply with the Regulation or to comply with any instruction contained in the Authority's directions. The defaulting party shall, within one (1) month of the instructions of the Authority, submit to the Authority its own considerations in reply. The Authority shall reply to the defaulting party, after having considered any reply it may have received in this regard within two (2) months of receipt of the reply. Where the instructions of the Authority are confirmed, they shall enter into effect on the date the reply of the defaulting party was submitted to the Authority.

(2) Where the Authority has issued any instructions to a defaulting party which -

(a) has not submitted any considerations within the stipulated one (1) month period referred to in sub-regulation (1); or

(b) has submitted considerations and the Authority has replied by confirming its own instructions;

and the defaulting party fails to comply with the instructions issued

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by the Authority, the defaulting party shall be guilty of an offence against these regulations and shall be liable, on conviction, to a fine (*multa*) of not less than ten thousand euro (€10,000) and of not more than one hundred thousand euro (€100,000).

(3) Any directions or instructions given by the Authority shall be addressed to the defaulting party and shall be served in one of the following ways:

(a) by hand delivery directly to the defaulting party; or

(b) by registered post to the registered address or to the principal place of business of the defaulting party.

Authorised officers.

4. (1) The Authority may appoint persons to be authorised officers for the purposes of enforcing the Regulation.

(2) All persons so appointed shall be certified by the Authority and a certificate of their appointment shall be granted to them by the Authority. Before exercising the powers conferred upon them by sub-regulation (3), the Authority may issue further certification prior to any inspection, or if the party so requests.

(3) For the purposes of the exercise of the functions of the Authority under the Regulation, an authorized officer may:

(a) enter into any premises or places, at any reasonable time, owned or occupied by a party for the purposes of search and inspection of the premises or documents therein;

(b) require that such party or any persons employed therein produce any documentation whatsoever related to the provision of aviation services which are in the party's or persons' control, or, as the case may be, require the party or persons employed therein to secure intact possession of this documentation for later examination or investigation;

(c) secure the premises thereof in whole or part, for further inspection and investigation;

(d) examine on the spot or seize, for an indefinite period and for the purposes of later examination and investigation, any documentation found therein;

(e) require the party or persons employed therein to furnish any other information, be it oral or otherwise, and related to the provision of aviation services and which is under the control of the party or persons employed therein;

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(f) require that the party or persons employed therein give unhindered access to any equipment located in the premises or places being searched and inspected, and give all the necessary assistance for its operation, to the authorised officers conducting the search and inspection.

Offences and penalties.

5. Any party or person who -

(a) obstructs, impedes or assaults an authorised officer in the exercise of the powers granted under these regulations;

(b) fails or refuses to comply with any requirement under these regulations;

(c) alters, suppresses or destroys any documentation which he has been required to produce;

(d) gives misleading information or any other material to the Authority or its authorized officers;

(e) makes a false representation of its true self or pretends to be an Authority official including an authorized officer, or an official of the Government of Malta, or of any other legitimate authority,

shall be guilty of an offence against these regulations and shall be liable, on conviction, to a fine (*multa*) of not less than ten thousand euro (€10,000) and of not more than one hundred thousand euro (€100,000).

Applicability of the Authority for Transport in Malta Act. Cap. 499.

6. (1) Further to the provisions of article 6(2)(g) of the Authority for Transport in Malta Act, the offences committed under regulation 3(1) shall be considered to be administrative offences punishable directly by a decision of the Authority.

(2) Any person which may feel aggrieved by the decision of the Authority under sub-regulation (1) may appeal before the Administrative Review Tribunal.

(3) With regard to the offences under regulation 3, it shall be lawful for the person to bring forward in his defence the proof that the breach on its part occurred due to weather or *force majeure*, and it shall be lawful for an operator of an aircraft to bring forward in his defence proof that the breach took place without his or her actual default or knowledge.

(4) Proceedings against offences under regulation 5 shall be brought before the Criminal Court.

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