



## Safety recommendation no. 564

<b>Date of the publication</b>	22.12.2020
<b>Number of the final report</b>	2370
<b>Safety deficit</b>	<p>The safety investigation demonstrated that on numerous occasions, the flight crews violated rules and took high risks during the operation of historic aircraft. This high-risk behaviour was detected by neither the air operator nor the supervisory authority due to a lack of effective management, monitoring and oversight. Numerous other safety-related incidents were neither detected by the operator nor the regulatory body, and, where they had been detected, were not addressed in a manner that enhanced safety.</p>
<b>Safety recommendation</b>	<p>The Federal Office of Civil Aviation, together with organisations which operate historic aircraft primarily for the transport of passengers, should define effective risk-based management and supervisory measures which are capable of identifying and correcting the specific problems with this type of operation at an early stage.</p>
<b>Addressees</b>	BAZL Bundesamt für Zivilluftfahrt; BAZL Bundesamt für Zivilluftfahrt; BAZL Bundesamt für Zivilluftfahrt
<b>Stage of the implementation</b>	<p>Implemented – The FOCA announces the completion of the implementation process in a letter dated 21 July 2023</p> <p>Legal basis Based on Article 76 paragraph 1 of the Ordinance of 14 November 1973 on Aviation, the Federal Department of the Environment, Transport, Energy and Communications (DETEC) has issued the Ordinance on Implementing the Provisions relating to Air Operations in Regulation (EU) No 965/2012 and on the relationship of these provisions to other provisions on air operations. The new Ordinance refers to the version of the Regulation relevant to Switzerland as outlined in paragraph 3 of the Agreement between the European Community and the Swiss Confederation on Air Transport, signed on 21 June 1999. It results from a decision taken on 25 May 2023, which came into force on 1 July 2023.</p> <p>Extending the scope of Regulation (EU) No 965/2012 to non-EASA aircraft EU aviation legislation only applies to aircraft that fall within the scope of EASA Basic Regulation (EU) 2018/1139. Aircraft groups listed in Annex I of the EASA Basic Regulation are exempted from this. This includes in particular:</p> <ul style="list-style-type: none"><li>• Experimental Aircraft (e.g. Solar Impulse, aircraft for measuring volcanic ash)</li><li>• Homebuilt aircraft</li><li>• Historic aircraft (e.g. Super Constellation)</li><li>• Ultralight aircraft</li></ul>

The flight operation provisions of Regulation (EU) No 965/2012 therefore do not apply to these aircraft. This means that national regulations must be created to govern their operation. Rather than create a special set of regulations and undermine the uniformity of the legislation, Regulation (EU) No. 965/2012 will be declared applicable.

Some general exceptions to this are made in the relevant provision for the following groups of aircraft:

- Aircraft in special categories (e.g. hang gliders, drones, parachutes): National regulations continue to apply to these.
- Experimental aircraft: These aircraft are subject to rules to be determined on a case-by-case basis. General rules would mostly make it impossible for these aircraft to perform their specialised functions.
- Ultralight aircraft: The Regulation generally applies to these, but operation always follows the non-commercial rules. The legal situation is thus comparable to that in neighbouring countries.

In addition, the Ordinance on Implementing the Provisions relating to Air Operations in Regulation (EU) No 965/2012 allows for case-specific exemptions. Regulation (EU) No 965/2012 is aimed at modern aircraft certified to international standards. Some of the aircraft affected are unable to fulfil the relevant requirements in all respects. These aircraft would no longer be legal to operate if the provisions applied without restriction. Exemptions should therefore be made from the provisions of Regulation (EU) No 965/2012, provided that an at least equivalent safety standard can be guaranteed by taking additional measures. This exemption does not allow exemptions from the provisions of other legislation (such as an exemption from the ban on the commercial use of historic aircraft). Finally, the Ordinance provides that additional restrictions and measures for safe flight operations may be introduced in individual cases because of the technical or operational characteristics of an aircraft or its special purpose. This takes into account the fact that these aircraft often do not meet current technical and internationally recognised certification standards. Based on this provision, the FOCA may enforce any conceivable and objectively necessary safety requirements.

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**Investigation report concerning  
the safety recommendation**

Final report  
Schlussbericht  
Rapport final  
Rapporto finale

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