MINISTRY OF TRANSPORT,
MOBILITY AND URBAN AGENDA

GENERAL
SECRETARIAT FOR
TRANSPORT AND
MOBILITY

DIRECTORATE-GENERAL
FOR CIVIL AVIATION

DRAFT MINISTERIAL ORDER LAYING DOWN THE ESSENTIAL AIRWORTHINESS REQUIREMENTS FOR ULTRALIGHT MOTORISED GLIDERS (ULM) AND AMENDING THE ORDER OF 31 MAY 1982 APPROVING A NEW REGULATION FOR THE CONSTRUCTION OF AIRCRAFT BY AMATEURS.

REGULATORY IMPACT ANALYSIS REPORT

EXECUTIVE SUMMARY

Proposing Ministry/Body	Ministry of Transport, Mobility and Urban Agenda.	**Date**	November 2023
Title of regulation	Draft Ministerial Order laying down essential airworthiness requirements for ultralight motorised gliders (ULM) and amending the Order of 31 May 1982 approving a new regulation for the construction of aircraft by amateurs.		
Report type	Normal ☐ Abbreviated ■		
SCOPE OF THE PROPOSAL			
Matter regulated	The initial and continued airworthiness of ultralight motorised gliders categorised in Article 1 of Royal Decree 765/2022, of 20 September 2022, regulating the use of ultralight motorised gliders (ULM).		

Objectives	1. To implement various recommendations of the Civil Aviation Accidents and Incidents Investigation Committee (CIAIAC); 2. To ensure greater reliability and quality of aeronautical products offered to the user of ULM gliders, seeking maximum safety in their use; 3. To encourage the development of the aeronautical industry associated with the engineering, design, production and maintenance of ULM gliders, taking into account the principles of proportionality derived from the policy emanating from the European regulation known as Part-21 Light; 4. To facilitate the use of foreign ULM gliders in Spain when the operational safety of type designs is safeguarded; 5. To comply with and facilitate the transition to the new unladen mass limit for ULM gliders provided for in Article 1.4 of Royal Decree 765/2022 of 20 September 2022; 6. To provide indefinite validity to restricted certificates of airworthiness of aircraft built by amateurs when their airworthiness is adequately maintained.
Main alternatives considered	1. Not to act. 2. To perform a timely alteration of the regime applicable to ultralight aircraft, through an amendment to the Order of 14 November 1988 establishing airworthiness requirements for Ultralight Motorised Gliders. 3. To fully address all technical airworthiness conditions of ULM gliders within the draft Royal Decree 'Non-EASA aircraft' or 'Annex I aircraft'. 4. To fully address all technical airworthiness conditions of ULM gliders in a separate and transitional regulatory initiative, until the 'non-EASA aircraft PRD' or 'Annex I aircraft PRD' can be adopted. The latter alternative has been chosen.
CONTENT AND LEGAL ANALYSIS	
Type of regulation	Ministerial Order.

Structure of the standard	A preamble, 41 articles structured into seven chapters, and a final part consisting of four additional provisions, two transitional provisions, one repeal, three final provisions, and one Annex.
Reports received	Report of the Technical Secretariat-General of the Ministry of Transport, Mobility and Urban Agenda ('MITMA').
Prior public consultation	The draft was subject to prior public consultation for a period of no less than 15 calendar days, from 9 April to 6 May 2019.
Hearing and Public Information	The draft has been submitted to the public for more than 15 working days, from 5 December 2022 to 13 January 2023, through its publication on the website of the Ministry of Transport, Mobility and Urban Agenda, and the organisations representing the sector have been heard. In addition, for any comments, the draft was transferred to the Spanish Aviation Safety and Security Agency (AESA), to the Civil Aviation Accidents and Incidents Investigation Committee (CIAIAC), to the Directorate-General of Armament and Material and to the Directorate-General of Infrastructure, both of the Ministry of Defence; to the Directorate-General for Consumer Affairs of the Ministry of Consumer Affairs; the Directorate-General for the Rights of Persons with Disabilities, Ministry of Social Rights and Agenda 2030; the Directorate-General for Industry and Small and Medium-sized Enterprises of the Ministry of Industry, Trade and Tourism; and to the Maritime Rescue and Safety Society (SASEMAR), of the Ministry of Transport, Mobility and Urban Agenda, without prejudice to obtaining subsequent reports that were mandatory. The draft has been subject to the procedure laid down in Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 and Royal Decree 1337/1999 of 31 July 1999, laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services.
IMPACT ANALYSIS	
Compliance with the distribution of powers	The draft is proposed under Article 149(1)(20) of the Constitution, which confers on the State exclusive jurisdiction over the control of airspace, traffic and air transport, and registration of aircraft.

Economic and budgetary impact	**On the economy in general**	No impact.
	From the point of view of the budget	It does not affect the budgets of the State Administration or other Administrations.
Gender impact	The regulation has no gender impact.	
Climate change impact	The regulation has zero climate-change impact.	
Other impacts	It has no impact, or not significantly so, on the family, childhood and adolescence, as well as on people with disabilities, social affairs, or the environment or market unity.	
OACI regulations	The regulation does not incorporate regulations of the International Civil Aviation Organisation.	
Sectoral impact	As a result of the adoption of the draft, it is generally expected that, in relation to ULM gliders, there will be: 1. An increase in operational safety in their use; and 2. An increase in the number of aircraft operating in Spain.	

REGULATORY IMPACT ANALYSIS REPORT

I. JUSTIFICATION OF ABBREVIATED REPORT.

Pursuant to the provisions of Article 3 of Royal Decree 931/2017 of 27 October 2017 regulating the Report of the Regulatory Impact Analysis, a report on the regulatory impact analysis is prepared in its abbreviated version, since the proposal does not result in, or not significantly so, impacts on the economy, budgets, gender, disability, family, childhood, adolescence, market unity, social affairs or environment or climate change.

The draft has no impact on the overall economy, because it only affects a very specific and mainly recreational sector, which means that its scope is reduced to a specific type of aircraft, and therefore it is targeted at a small number of recipients. In particular, according to the data available at the State Aviation Safety Agency as of July 2023, the number of ULM gliders registered in Spain amounts to 1 656.

The draft has no budgetary impact, because it does not affect the budgets of the State, the Autonomous Communities, Local Entities or other bodies, entities or authorities of the institutional public sector. It does not lead to an increase in public spending, nor an increase in revenue.

The draft has no gender impact, because its provisions are gender neutral, so there is no reason why its application could result in discriminatory treatment (i.e. differentiated and unjustified, without objective cause) against people on the basis of their gender, in addition to the fact that its scope is projected on impersonal objects, such as the airworthiness of ultralight motorised gliders (ULM) and aircraft constructed by amateurs. For the same reasons, the draft has no impact on family, childhood or adolescence. In particular, the draft does not contain any provision related to the family or the age of the recipients.

The impact on market unity is likewise zero, because it implements competences exclusively assigned to the State and uniformly for the entire national territory.

Nor is there any social affairs impact, since it does not affect the relations between employees and employers or the social security system.

Nor can an impact be noted on the environment or on climate change, because the object of the draft does not include matters related to the environment or climate change, nor is it the development of regulations in these material areas.

Finally, there is no impact on equal opportunities, non-discrimination and universal accessibility of persons with disabilities, because the draft regulates aspects related to the safety of aircraft, their airworthiness, and in no case on their accessibility. Nor does the purpose of the draft establish limitations on access for medical reasons or physical or motor capacity of persons to ULM gliders or to design or production organisations.

The draft also does not affect the distribution of competences between the State and the Autonomous Communities, because it is proposed under Article 149(1)(20) of the Constitution, which confers on the State exclusive jurisdiction over the control of airspace, traffic and air transport, and registration of aircraft.

II. TIMELINESS OF THE PROPOSAL

II.1.- MOTIVATION:

Law 48/1960 of 21 July 1960, on air navigation (hereinafter: **'LNA'**), provides in Article 36 that *'No aircraft, except those exempted in Article 151 of this Law, shall be authorised for flight without the prior issuance of a certificate of airworthiness'.*

Ultralight motorised gliders (hereinafter 'aircraft' or 'ULM gliders') were categorised in **Royal Decree 2876/1982, of 15 October 1982, regulating the Registration of Ultralight Motorised Gliders,** (as amended by the first single and final repeal provisions of Royal Decree 384/2015 of 22 May 2015, approving the Civil Aircraft Registration Regulation). As a development of this Royal Decree, on airworthiness, the **Order of 14 November 1988 establishing airworthiness requirements for Ultralight Motorised Gliders** was approved, detailing the conditions necessary for the issuance of a **Type-Certificate** (hereinafter, **'TC'**), without which the corresponding **Certificate of Airworthiness** (hereinafter, **'CoA'**) is not issued, and the operation of these aircraft is thus not permitted. This Order was amended by **Order/FOM/2003 of 28 July 2003**, allowing the replacement of a destructive test of those included in the original Order with alternative requirements.

Royal Decree 2876/1982 of 15 October 1982 has recently been repealed, and ULM gliders have been redefined and categorised by **Royal Decree 765/2022 of 20 September 2022, regulating the use of ultralight motorised gliders (ULM),** which also regulates their use.

This change has occurred mainly as a result of the enactment of **Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018**[1] (hereinafter referred to as **'Basic Regulation'**), where, according to its **Article 2(8)**, Member States have been given the possibility to exempt from compliance therewith, and consequently from delegated and implementing acts, certain ULM glidershaving no more than two seats and being capable of operating within maximum take-off mass limits (or '**MTOM**') and at relatively low speed.

Reasons for sectoral management have justified Spain having partially availed itself of this opt-out option of the basic Regulation, for aircraft referred to in Article 2(8)(a) (ultralight aircraft) and (b) (ultra-light helicopters) by adopting Royal Decree 765/2022 of 20 September 2022, where in Article 1.2 they are classified in categories A and B respectively.

On the other hand, the Basic Regulation, in Annex I (f), has excluded from its scope, without option for Member States, single-seater and two-seater autogyros with an MTOM not exceeding 600 kilograms, which, under national legislation, have also been included in the Royal Decree as one more category of ULM gliders (category C).

In this context, Royal Decree 765/2022 of 20 September 2022, has, among other aspects, updated the regulation of the operations of ULM gliders, and in it, its first final provision has provided the regulatory authorisation to the Minister of Transport Mobility and Urban Agenda to enact the necessary provisions for their development and implementation, in particular with regard to the airworthiness of these ULM gliders. This regulatory authorisation is the basis for this draft.

[1] 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.

The requirements for the initial and continuous type and airworthiness certification of ULM gliders have been the same since the promulgation of the Order of 14 November 1988 to the present, without taking into account the technical evolution of these aircraft, which, today, offer models manufactured in new materials, with more powerful engines, and instrumentation and performance that hardly differs from those of the light models of general aviation circumscribed within the scope of the Basic Regulation and its delegated and implementing acts.

Once Royal Decree 2876/1982 of 15 October 1982 has been replaced by the new Royal Decree 765/2022 of 20 September 2022, the increase in the performance, equipment and weights of these aircraft require the updating of the technical requirements in the certification regulations for ULM gliders, so that they take into account not only aspects of structural resistance and construction, but also other aspects related to flight qualities, motorisation, equipment, operational limitations, among other things.

On the other hand, the European Commission has recently amended the regulations applicable to the certification of the airworthiness of certain non-complex aircraft subject to European aeronautical regulation, normally used for the conduct of general aviation operations, i.e. other than commercial air transport operations and specialised operations, through **Commission Delegated Regulation (EU) 2022/1358 of 2 June 2022 amending Regulation (EU) No 748/2012 as regards the implementation of more proportionate requirements for aircraft used for sport and recreational aviation**[2], to consider the possibility for individuals, and alternative to ordinary type-certifications, that their type design can be recognised through the presentation of a **'design compliance declaration'** by the party concerned, once that declaration has been registered by the competent aeronautical authority, in that case the European Union Aviation Safety Agency or 'EASA', and the latter has notified the interested party of its registration, after that authority has carried out the checks provided for in this new European regulation, known as Part-21 Light. The new drafting of **Article 2.3** of **Commission Regulation (EU) 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 organisations**, following its amendment implemented by Commission Delegated Regulation (EU) 2022/1358, it has been formulated as follows:

> *'3. By way of derogation from paragraphs 1 and 2 of this Article, a **design compliance declaration**, as specified in Annex I b (Part-21 Light), may be issued for the following products as an alternative:*
>
> *a) an **aeroplane** having an MTOM of 1 200 kg or less, other than a jet aeroplane, and having a maximum operating seating configuration of two persons,*
>
> *b) a glider or a powered sailplane with an MTOM of 1 200 kg or less,*
>
> *c) a balloon designed for a maximum of four persons,*
>
> *d) a hot-air powered airship designed for a maximum of four persons.'*

This alternative of the design compliance declaration does not constitute a mandatory channel for validating the type design of the aircraft for which this design compliance declaration regime is foreseen, but is optional for those subject to the regulation in such cases, and interested parties may apply for an ordinary type-certification.

With regard to ULM gliders, it should also be noted that **the system of the design compliance declaration incorporated in Commission Regulation (EU) No 748/2012 does not apply to helicopters or to autogyros**, which remain under the ordinary type-

[2] Official Journal of the European Union of 5 August 2022.

certification system, although with more lax requirements according to their MTOM, so they are also part of Part-21 Light (new Article 2.2 of Commission Regulation (EU) No 748/2012). The design compliance declaration system, for ULM gliders, is only provided for **aeroplanes** with an MTOM equal to or less than 1 200 kg, which are not a jet aircraft and have a maximum operating configuration of seats of two persons; in addition to other aircraft that are not ULM, they do not serve as a reference for this draft, since they do not fall within its scope, which follows that of categories A, B and C of Royal Decree 765/2022 of 20 September 2022.

It should also be noted that, although in the name given to this new system of validating type designs subject to European legislation it appears as a declarative regime, the reality is that, as a means of administrative intervention, it remains a system of prior authorisation, since ultimately the mere submission of the design compliance declaration does not allow the interested party ('declarant' in Commission Regulation (EU) No 748/2012) to exercise a right or the start of any activity, but ultimately requires a prior act of an administration, which is the registration of that declaration by the European Union Aviation Safety Agency, or 'EASA', and its notification to the person concerned:

> *'21L.B.63 Registration of a design compliance declaration*
>
> *The Agency **shall register** a design compliance declaration for an aircraft, provided that:*
>
> *a) the declarant has declared compliance in accordance with point 21L.A.43(a);*
>
> *b) the declarant has provided the Agency with the documents required in accordance with point 21L.A.43(c);*
>
> *c) the declarant has undertaken to assume the obligations set out in point 21L.A.47;*
>
> *d) there are no pending incidents on the physical inspection and evaluation of the first item of the aircraft in its final configuration carried out in accordance with point 21L.B.62(b).'*

The difference between the ordinary certification procedure for these European regulated aircraft and the new European declarative system is, in short, in the procedure used to validate the type design. In the design compliance declaration procedure, although they require action by the aeronautical authority, their intervention is less intense.

By reason of proportionality with the provisions of European Union legislation, it has been considered consistent to extend a system similar to that of the design compliance declaration provided for in European regulations, for ULM gliders subject to national regulation, and in particular, **only for ULM gliders,** listed as category A in Article 1.2 of Royal Decree 765/2022 of 20 September 2022, since it would not appear proportionate to the fact that in European Union legislation, for aeroplanes between 1 200 and 600/650 kg MTOM there was the possibility of benefiting from the design compliance declaration system, and that at national level there was no such possibility for ULM gliders of less than 600/650 kg MTOM, nor would it be proportionate if the European Union legislation did not provide for the 'declarative' regime for helicopters and light autogyros and, however, if a similar 'declarative' system for helicopters and autogyros subject to national regulations were envisaged.

Aside from these regulatory changes, the reality is that the current state of technical evolution has allowed the industry to manufacture ultralight motorised gliders with new designs and materials, the performance and equipment of which hardly differ from those of light general aviation models, which also means updating the requirements on initial airworthiness, in order to take into account not only aspects of structural strength and construction, but also

those related, among others, to the qualities of flight, engine, equipment or operational limitations.

With industrial development, and as in other industrial sectors, the design and manufacture of ultralight motorised gliders has been the subject of progressive relocation or internationalisation, which has resulted, among other things, in technical standards existing and being recognised in Spain for the certification of type design previously adopted by other States or within certain international organisations, and so it is advisable that national regulations adequately address this reality. Among other measures, it is proposed to accept valid restricted type-certificates ('TCs') issued by any authority in the European Economic Area or a third country. In the latter case, recognition by AESA of certification schemes in those countries will always be necessary, so that they are recognised as equivalent to the national system. In addition to the TC recognition process, the draft ensures the maintenance of safety levels through the monitoring mechanisms of continued airworthiness.

In short, the technical evolution in the design and manufacture of ultralight motorised gliders, together with the regulatory changes produced both at national and European level, requires a review of the technical and administrative requirements established in the Order of 14 November 1988.

On the other hand, the draft is motivated by the accident investigations carried out by the Civil Aviation Accidents and Incidents Commission ('CIAIAC'), which have led to a series of recommendations in its technical reports indicating the need to take regulatory initiatives to modify the technical requirements required for these aircraft:

- In the **Technical Report ULM-A-009/2016**, regarding the accident that occurred on 25 March 2016, to the aircraft Avid Flyer Stol, registered EC-YEM, at the airfield of La Llosa (Castellón), in which the pilot suffered the breakage of four vertebrae, having to remain hospitalised for seven weeks, the following safety recommendations were made:

  > *'**REC 04/17**. AESA is recommended to take the regulatory initiative to improve the current regulation on the continued airworthiness of ultralight aircraft, and in particular; introduce the necessary requirements for the control and inspection of the maintenance and management of continued airworthiness performed by the owner of the aircraft.*
  >
  > ***REC 05/17**. The DGAC is recommended to adopt appropriate regulatory amendments, as proposed by AESA, to improve the current regulation on the continued airworthiness of ultralight aircraft, and in particular; introduce the necessary requirements for the control and inspection of the maintenance and management of continued airworthiness performed by the owner of the aircraft.'*

- In the **Technical Report ULM-A-012/2016**, regarding the accident that occurred on 12 May 2016, to the aircraft Tecnam P-92-Echo-Super, with registration EC-FG6, in the municipality of Ventalló (Girona), in which the pilot was unharmed, the following safety recommendations were made:

  > *'**REC 47/16**. The Directorate-General for Civil Aviation is recommended to amend the Order of 14 November 1988, which lays down the airworthiness requirements for Ultralight Motorised Gliders (ULM), so that those listed in Article 10 are similar to those laid down in EASA's basic certification standard CS-VLA in Subpart G on the Flight Manual of the aircraft.*

***REC 48/16**. The State Aviation Safety Agency is recommended to take the legislative initiative with a view to amending the Order of 14 November 1988 laying down airworthiness requirements for Ultralight Motorised Gliders (ULM), so that those defined in Article 10 thereof are similar to those laid down in EASA's basic CS-VLA certification standard in Subpart G on the Aircraft Flight Manual.'*

- In the **Technical Report ULM-A-003/2017**, regarding the accident that occurred on 8 February 2017, to the aircraft Tecnam P2002Sierra, with registration EC-FP6, at the airfield in Villaverde (Toledo), in which two people were killed and the aircraft was destroyed, the following safety recommendations were made:

  *'**REC 51/17**. The State Aviation Safety Agency (AESA) is recommended to review the certification criteria for aircraft TECNAM P2002 SIERRA, and consider whether they should remain within the group of ultralight aircraft with a maximum weight of 450 kg.*

  During the investigation of this accident it was discovered that, in Spain, the existence of the aircraft model TECNAM P2002 SIERRA DE LUXE had been omitted, and that they were being certified on the basis of the type airworthiness certificate of TECNAM P2002SIERRA, with which it has significant differences. To remedy this situation:

  REC 53 /17. The State Aviation Safety Agency (AESA) is recommended to issue a type airworthiness certificate for aircraft TECNAM P2002 SIERRA DE LUXE that is in accordance with their design, performance and operation characteristics.'.

- In the **Technical Report ULM-A-013/2017**, regarding the accident that occurred on 14 July 2017, to the aircraft TRIKE Volero, with registration EC-BL2, in the vicinity of the Llosa airfield (Castellón), in which the pilot suffered serious injuries that required hospitalisation, the following safety recommendations were made:

  'In order to reduce the risk of serious injury and/or death to the occupants of ultralight aircraft, the following recommendations are proposed:

  ***REC 29/18**: The Spanish Aviation Safety and Security Agency (AESA) is recommended to promote an amendment to the national regulations applicable to the minimum airworthiness requirements for ultralight aircraft, in order to specifically require the installation of four-point harness safety belts, except in those cases where the manoeuvrability of the aircraft may be affected, which may be of three anchorage points.*

  ***REC 30/18**: The Directorate-General for Civil Aviation (DGAC) is recommended to promote an amendment to the national regulations applicable to the minimum airworthiness requirements for ultralight aircraft, in order to specifically require the installation of four-point harness safety belts, except in cases where the manoeuvrability of the aircraft may be affected, which may be of three anchorage points.'.*

Based on the above factual and legal considerations, and considering the recommendations made by CIAIAC to AESA and DGAC, it is considered necessary to undertake a modernisation of the airworthiness requirements and obligations of ULMs.

In order to comply with CIAIAC's recommendations related to ULM gliders which, because they do not apply European Union regulations, are subject to national aeronautical regulations, and also in order to update, relax and order the national regulations applicable to these aircraft, at the end of 2017 development of a standard was started in AESA, aimed at regulating all aircraft excluded from the scope of application of the aeronautical standards of the European Union (known in the sector as 'non-EASA aircraft', 'non-EU aircraft', 'excluded aircraft' or, more recently, 'Annex I aircraft', in the latter case with reference to their inclusion in Annex I to the Basic Regulation).

At the same time as the preparation of this initiative began, the procedure of prior public consultation was carried out under Article 26.2 of Law 50/1997, of 27 November 1997, of the Government, with the aim of listening to the sector and collecting additional inputs and ideas from it. This consultation was published on the website of the then Ministry of Public Works between 10 and 30 November 2017 with the title of *'Previous public consultation on the draft Royal Decree regulating the airworthiness, operations and licences of flight personnel of aircraft included in Annex II to Regulation (EC) No 216/2008 of the European Parliament and of the Council'*. The beginning of the elaboration of this initiative was communicated to the CIAIAC, which even mentions it in some of its subsequent technical reports on ULM.

This draft provides, among other matters (licences and operations), for the in-depth revision of the Order of 14 November 1988 laying down the airworthiness requirements for Ultralight Motorised Gliders, to the point of repealing it and replacing it with a new, more up-to-date and comprehensive regime for type-certification, initial airworthiness (certificate of airworthiness) and continued airworthiness (or maintenance of airworthiness) of the ULM gliders applicable in that initiative, consistent with the CIAIAC recommendations set out above. In addition, it was also planned to determine the legal regime applicable to the initial and continued airworthiness of all manned aircraft subject to national regulation in accordance with Annex I of the Basic Regulation.

However, AESA decided to unlink this full-scope review of non-EASA aircraft or from Annex I, from the initial and continued airworthiness regime of ULM gliders from that other, more ambitious and comprehensive more subject-matter initiative, leading to an independent regulatory initiative for the revision of ULM glider certification regulations, due to three fundamental reasons:

1. Firstly, when the most ambitious initiative, known as 'non-EASA aircraft PRD' or 'Annex I aircraft PRD', was being developed, as is apparent from the title of that previous public consultation, Regulation (EC) No 216/2008 of the European Parliament and of the Council was in force, which is nothing other than the previous Basic Regulation replaced with the new Basic Regulation (Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018). Since AESA found that Annex II to Regulation (EC) No 216/2008, which included a list of non-EASA aircraft or aircraft excluded from its scope, was to undergo amendments in the new European framework, work on the drafting of that regulatory initiative was halted, until the publication of the new Basic Regulation in the OJEU of 22 August 2018 became known as the final version of Annex I to the latter (which takes over from Annex II to Regulation (EC) No 216/2008), as well as the final scope of the opt-out of Article 2(8) thereof. Following this publication, the work carried out in AESA until then had to be reconsidered for that regulatory initiative, the prior public consultation of which had already been launched.

2. Secondly, this initiative, which has not been abandoned, aims not only to address the issues of type-certification and the initial and continued airworthiness of ULMs, but also

to all manned aircraft in Annex I to the current Base Regulation, as well as flight crew operations and licences, including all aircraft listed in Annex I to the Base Regulation, which includes a variety of aircraft, both motorised (light and some heavy) and non-motorised, with very different technical characteristics: historic aircraft, aircraft specifically designed or modified for research or for experimental or scientific purposes, aircraft having been in the service of military forces, light aircraft, light helicopters, light autogyros, microgliders, paramotors, tube and fabric aircraft, amateur-built aircraft of up to 51 %, relatively small balloons and airships, as well as any other manned aircraft with a maximum unladen mass, including fuel, not exceeding 70 kg, among other things. This diversity in the typology of aircraft means that the airworthiness, operations and licensing work for all aircraft requires specific consideration for each case, which has required a much longer time than initially planned;

3. Finally, together with the two above reasons, the urgent review of the airworthiness requirements of ULM gliders, which follows from the CIAIAC technical reports set out above, as well as from the recent publication of Royal Decree 765/2022 of 20 September 2022, in addition to the new European Union regulation previously exposed for ULM gliders above 600/650 kg and up to 1 200 kg, is combined. **In particular, this draft is announced in the first transitional provision of Royal Decree 765/2022 of 20 September 2022, and the ULM aviation sector is pending the adoption of this draft to assess whether or not to request new type certificates, by approval or the submission of declarations of compliance with the design**.

As a result of these considerations, AESA has made the decision to prioritise the work to review and update the initial and continuous type and airworthiness certification scheme of ULM gliders through this draft, without prejudice to the fact that in the future both the requirements set out in the aforementioned Royal Decree 765/2022 of 20 September 2022 and in the present draft ministerial order, will be integrated into the corresponding part of that other more ambitious initiative aimed at regulating airworthiness, the operations and licences of all aircraft listed in Annex I of the Basic Regulation subject to national regulations, continuing the regime set out in this draft, perhaps with changes that may be made as a result of new recommendations of the CIAIAC, the experience gained by AESA in its implementation, or after addressing new claims of the sector that do not pose an unacceptable risk to the safety of these aircraft.

Considering this background, the present initiative of ministerial order aims to review the requirements of type-certification and initial and continued airworthiness of ULM gliders, as categorised in Royal Decree 765/2022, of 20 September 2022, to adapt them to the greater weights and technical characteristics that this type of aircraft will have, to provide an adequate regulatory response for new designs, to allow the adoption of internationally recognised certification technical standards, and to converge towards the regulations that will be established in our environment.

This regulation aims to guarantee greater reliability and quality of the products offered to the user and, consequently, to obtain maximum safety in their use both for their occupants and for third parties who may suffer damage due to an aircraft failure.

To this end, it is necessary to review the requirements for type-certification as well as the conditions for the continued validity of the certificates of airworthiness issued and the continued airworthiness requirements of ULM gliders.

Type-certification ('TC'):

A type-certificate is a document, issued by a supervising aeronautical authority, to indicate that the design of the aircraft type meets the airworthiness requirements established by the State of that aeronautical authority.

A type-design is the set of diagrams, specifications, technical documents, etc., which define the configuration of an aircraft.

In order to demonstrate the airworthiness of the aircraft type-design, it is necessary to demonstrate that the aircraft in question complies with technical requirements, called certification bases.

The certification bases are established by the supervising aeronautical authority at the request of the applicant, depending on the type of aircraft (aircraft, helicopter, autogyro, and its size, maximum take-off mass, use, motorisation, number of passengers, etc.), and whether the aircraft has special characteristics compared to the usual ones. In order to standardise the determination of the certification bases, the supervisory authorities, including those of Germany (LBA), the United Kingdom (CAA-UK), the United States (FAA), and the European authority itself (EASA), although the latter is not competent for these aircraft, developed a series of generic standards applicable to each type of aircraft, known as **certification specifications**. In each type-certification process, it is common for the supervisory authority to determine or approve the certification specification for which compliance has to be demonstrated, and which can be complemented by additional requirements to align it with the particular model. These additional requirements may add requirements to be met, demonstrations of compliance by alternative means, or even exemptions to a certain requirement.

The current standard defines construction and structural strength requirements in a generic way. In the proposed draft, these and other essential requirements are specified in the Annex and further detailed in the certification specifications and accepted industry standards applicable to each aircraft type.

In this way, it accommodates certification specifications issued by other civil aviation authorities whose light aviation is more developed, including for helicopters or autogyros which, due to their special characteristics, require adapted technical standards.

Therefore, both to provide greater legal certainty on the technical requirements that the authority will require to issue type certificates, and to allow amendments to certification specifications to be easily incorporated, it is deemed necessary for AESA to be able to declare acceptable those certification specifications published by other aeronautical authorities that are recognised as valid.

Design and production organisations:

It is deemed necessary that this order defines the minimum requirements that must be met by organisations that hold or wish to request a TC issued by AESA, that is, the Design Organisations, which must have the capacity to ensure that the design is safe and that they can provide the necessary support during the production and during the operational life of the aircraft in matters such as detection of design deficiencies, alterations, information to the owner of all necessary instructions, etc.

On the other hand, it is necessary to establish that aircraft are produced according to design data, based on means and resources, and that manufacturing records are maintained, so that the requirements and obligations of the mass-production organisations or manufacturers of ULM gliders are regulated.

Design compliance declaration:

A design compliance declaration is a document in which a natural or legal person states, under his or her responsibility, that the type-design included in that declaration meets the airworthiness requirements, referring to the documentation that accredits it.

For the purposes of the draft, design compliance declarations submitted to the State Aviation Safety Agency that meet the other requirements of the draft are considered to be a document equivalent to a restricted type certificate.

The difference between a restricted TC and a design compliance declaration would lie only in the procedure used to accept the type design, requiring for type-certification the verification by the aeronautical authority that compliance with the applicable requirements has been demonstrated, while in the procedure for submitting the declaration the proof that they are complied with is only declared by the interested party, that authority participating in the inspection of the prototype and the first mass-produced unit.

Conditions for issuing certificates of airworthiness ('CoAs'):

Article 36 of the LNA establishes that aircraft must have a certificate of airworthiness, except for those excepted in Article 151 of the same Law.

As defined in the aforementioned law, this certificate is the document that serves to technically identify the aircraft, define its characteristics, and express the qualification it warrants for its use, deduced from its ground inspection and the corresponding flight tests.

Article 12 of the Order of 14 November 1988 provides that, after registration in the Aircraft Registration Register, the corresponding CoA will be delivered to the holder, provided that the requirements of the order are met. However, the Order does not set out the form and manner of requesting and obtaining the CoA, the type of inspections to be performed for its issuance, the types or restrictions of the CoA, or the conditions for its suspension or revocation.

Therefore, it is deemed appropriate, for legal certainty, that the new order covers aspects that are not developed in the current Order.

It also provides for the possibility for AESA to issue a CoA for aircraft with a valid TC issued by any aeronautical authority of the European Economic Area (EEA), without further formality, or of a valid TC issued by any aeronautical authority of a third country whose type design certification system ensures levels of safety equivalent to that laid down in this order, and has previously been recognised by a decision of the competent body on the basis of the matter of the State Aviation Safety Agency.

The possibility of issuing a CoA based on a TC issued by the aeronautical authority of an EEA State has a double basis that covers both technical aspects derived from the concept and definition of what is an approved TC and safety aspects related to the difference between aircraft with European and Spanish registrations that can fly over the Spanish territory:

a) As regards technical aspects, we can highlight that a restricted TC issued by an aeronautical authority certifies that the design satisfies the relevant airworthiness requirements required in the State of that authority;

b) With regard to safety levels, the openness for an interested party to register a foreign aircraft in Spain allows for greater control and monitoring, as well as the application of the obligations regarding continued airworthiness, than aircraft based on a TC approved by the State Aviation Safety Agency.

Moreover, the issue of a CoA on the basis of a design compliance declaration or any system other than type-certification, whether issued by an EEA Member State or a third country, is not allowed.

In any case, AESA should be able to inspect the condition of aircraft to check their airworthiness conditions.

Where an aircraft does not retain the airworthiness conditions with which it was constructed, or the aircraft has been altered to the approved design without AESA approval, or following an inspection, it is determined that the aircraft is not in a position to operate safely, the validity of the CoA will be suspended. If, after a period of time after the suspension, it has not been demonstrated that the aircraft has recovered its airworthiness conditions and its compliance with the approved design, the CoA shall be revoked.

In relation to this question, the National High Court in its judgment of 26 November 2021, Legal Basis 5 (appeal 60.2021), in a dispute over the CoA of a ULM glider, has shared AESA's point of view, in reaching its same conclusion:

> *'The conclusion reached by the Administration is fully in accordance with the law: the certificate of airworthiness cannot be maintained because the aircraft is not in safe operating condition.'*

The CoA must also be revoked in the event that the aircraft causes deregistration from the Civil Aircraft Registration Register.

<u>Continued validity of certificates of airworthiness:</u>

Article 12 of the Order of 14 November 1988 provides that the owner is fully responsible for the maintenance and continuation of airworthiness of his or her aircraft. Since the aforementioned Order does not provide for renewals of the CoAs or airworthiness reviews, these are understood to be issued with indefinite validity.

As indicated above, the Civil Aviation Accidents and Incidents Investigation Committee (CIAIAC) has recommended in several ULM glider accident reports that AESA take the regulatory initiative to regulate the continued airworthiness of these aircraft.

For this purpose, it is defined, in line with the design established by EASA, what is meant by continued airworthiness (or maintenance of airworthiness) tasks, which is nothing other than the maintenance requirements necessary to be able to operate an aircraft once the certificate of airworthiness has been obtained.

Unlike European and national regulations for other aircraft, there are no approved maintenance centres for ULM gliders. The maintenance can be carried out by either the owner or the operator, provided that the tasks that the manufacturer recommends in its maintenance manual are carried out in a timely manner.

Therefore, it is considered necessary to introduce the obligation for the CoAs to have their validity conditional on the prior submission to AESA of a declaration of compliance, in which it is declared, in essence, that the aircraft retains the airworthiness conditions with which it was built, that no unapproved alterations have been made thereto, and that the maintenance tasks have been carried out.

The same argument must be maintained in relation to the validity of the CoA and the maintenance of aircraft built by amateurs, the Order of which is modified in this draft.

In any case, AESA may carry out the inspections it deems appropriate to verify that the conditions are maintained in accordance with the declarations submitted.

II.2.- PURPOSES AND OBJECTIVES PURSUED:

The amendments made to the draft aim:

1. To implement various recommendations of the Civil Aviation Accidents and Incidents Investigation Committee (CIAIAC);

2. To ensure greater reliability and quality of aeronautical products offered to the user of ULM gliders, seeking maximum safety in their use;

3. To encourage the development of the aeronautical industry associated with the engineering, design, production and maintenance of ULM gliders, taking into account the principles of proportionality derived from the policy emanating from the European regulation known as Part-21 Light;

4. To facilitate the use of foreign ULM gliders in Spain when the operational safety of type designs is safeguarded;

5. To comply with and facilitate the transition to the new unladen mass limit for ULM gliders provided for in Article 1.4 of Royal Decree 765/2022 of 20 September 2022;

6. To provide indefinite validity to restricted certificates of airworthiness of aircraft built by amateurs when properly maintaining their airworthiness.

All this is without prejudice to:

a) The exercise of AESA's inspection and sanctioning powers; and

b) Integrating the content of this draft into a future standard on airworthiness, operations and licensing of all aircraft not subject to the legal regime of the AESA Base Regulation and its delegated and implementing acts ('non-EASA Aircraft PRD' or 'Annex I').

II.3.- ANALYSIS OF ALTERNATIVES:

The alternatives to the proposal considered have been as follows:

II.3(a). Not to act.

It would, in the first place, continue with the current lag in the technical requirements required to certify aircraft, which makes it impossible to make a correct assessment of them according to the technology and building materials. Secondly, it would mean not taking advantage of the experience that other countries with a more developed industry may have in this field than in Spain. In addition, it would disregard the repeated recommendations of the CIAIAC addressed to AESA and DGAC regarding the certification of ULMs, ignoring the problems detected in terms of operational safety arising from the current regulation, assuming future accidents with ULM gliders with potential fatalities and serious injuries for this reason.

II.3(b). **To perform a timely amendment of the regime applicable to ultralight aircraft through an amendment to the Order of 14 November 1988, establishing the airworthiness requirements for Ultralight Motorised Gliders**.

This would mean leaving technical problems that are frequently being raised unresolved, which would mean an ineffective response to the reality of a sector that, although not very large, develops its construction techniques very quickly. It would also prevent approaches different from those of the Order of 14 November 1988, which would complicate the proposed new regulation. In other words, the scope of the proposed changes cannot be based on, or at least it would be difficult to reconcile them with, the approaches and outline of the Order of 14 November 1988. In addition, this option may not match well with the normative technique guideline 50:

> *'50. Restrictive nature. As a general regulation, the adoption of a new provision is preferable to the coexistence of the original regulation and its subsequent amendments. The amending provisions should therefore be used restrictively.'*

II.3(c). To fully address all technical airworthiness conditions of ULM gliders within the draft Royal Decree 'Non-EASA aircraft' or 'Annex I aircraft'.

It would risk taking too long to attend to the needs described in the section on the reasons for this draft, given that the final approval of the 'non-EASA Aircraft PRD' or 'Annex I' is expected at a later date, without having a foreseeable deadline for approval, given the technical difficulty of this draft.

II.3(d). To fully address all technical airworthiness conditions in a separate and transitional regulatory initiative, until the draft Royal Decree 'non-EASA aircraft PRD' or 'Annex I aircraft PRD' can be adopted.

This updates both the essential airworthiness requirements and the certification procedures, taking into account the current technical and constructive situation in order to make it more transparent, agile and appropriate to the current industry, without prejudice to incorporating this regime in the future 'Non-EASA Aircraft PRD' or 'Annex I'.

This option raises the question of whether it could result in legal uncertainty from adopting successive regulatory changes on the same subject. However, this scenario is considered more hypothetical than real, given that in the future, both the requirements set out in Royal Decree 765/2022, of 20 September 2022, and in the present draft Ministerial Order, would be integrated into the corresponding part of the 'PRD of non-EASA aircraft' or 'Annex I', giving continuity to the regime contained in this draft, since the provisions now provided herein are

collected there, incorporating, where appropriate, changes whose justification stems from new CIAIAC recommendations to be addressed, or from the experience gained by AESA in the implementation of this draft, or to address industry observations or claims that do not entail an unacceptable risk to the safety of these aircraft.

This being the option that justifies the draft.

II.4.- ADAPTATION TO THE PRINCIPLES OF GOOD REGULATION:

This Order complies with the principles of good regulation established in Article 129 of Law 39/2015, of 1 October 2015, on the Common Administrative Procedure of Public Administrations.

It complies with the principle of necessity by being motivated by safeguarding the safety of these aircraft and of general air traffic, as manifestations of aviation safety, in turn as part of the general interest of public safety, as well as of the public safety of the underlying persons and goods. In addition, the present Order addresses several safety recommendations of the Civil Aviation Accidents and Incidents Commission.

It respects the principle of effectiveness insofar as the aims pursued by the standard are achieved by establishing this regulation. In particular, the safety of the use of ultralight motorised gliders is increased, and it facilitates the issuance of restricted airworthiness certificates for aircraft with type-certificates issued by foreign aeronautical authorities, as well as importing them.

It also takes into account the principle of legal certainty, given its consistency with national legislation, in particular with the provisions of Royal Decree 765/2022 of 20 September 2022, and specifically in relation to its first transitional provision, which provides for the promulgation of that Order, as well as with European Union legislation, the scope of which it does not invade, while explicitly repealing the Order of 14 November 1988, which it replaces.

In view of the principles of proportionality and efficiency, the Order is limited to establishing the provisions indispensable for meeting the needs identified, in particular by providing, on the one hand, for a special and regulatory regime less demanding with regard to the initial and continuous airworthiness of single-seater ultralight motor gliders which, being covered by Royal Decree 765/2022 of 20 September 2022, have an unladen mass (excluding ballistic parachutes) not exceeding 120 kilograms, and on the other hand, seeking proportionality with the regulation of the European Union on the same subject, Part 21 Light, considering the possibility of proving the airworthiness of these aircraft by means of a ‘design compliance declaration’ registered by the State Aviation Safety Agency, and establishing a declarative regime for the continued airworthiness of ultralight motorised gliders. It also takes care of the efficient use of public resources, not entailing any increase in resources, salaries or other staff costs.

Finally, following the principle of transparency, the object and scope of the Order have been clearly defined, while allowing the participation of its recipients through consultations and public information and hearing of the sector.

II.5.- RELATIONSHIP TO THE ANNUAL REGULATORY PLAN.

Since it is a Ministerial Order, its inclusion in the Annual Regulatory Plan is not contemplated, so the draft does not appear in it.

III. CONTENTS AND LEGAL ANALYSIS.

III.1.- CONTENT OF THE DRAFT:

The draft is structured in a preamble, 41 articles structured in seven chapters, and a final part consisting of four additional provisions, two transitional provisions, one repeal, three final provisions, and one Annex.

In short, the content of the draft is as follows:

In the **preamble**, the background and motivation of the regulation, its content, as well as the analysis of the principles of good regulation in accordance with Article 129 of the LPA (Administrative Procedures Act), the indication of the prevailing competence title and the normative authorisation, ending with the promulgatory formula, is set out in a general way.

In **Chapter I**, the general provisions relating to their subject-matter, scope and definition of concepts used therein are covered.

Article 1 defines the subject-matter of the regulation and its scope.

With regard to its purpose, the latter merely establishes the regime applicable to the airworthiness, both initial and continuous, of ultralight motorised gliders, without introducing new provisions or other amendments related to that of their operations or that of the licences of their staff.

With regard to its scope, it follows, and does not go beyond, the scope of Royal Decree 765/2022 of 20 September 2022, which it implements.

However, a simplified special regime has been established with regard to the initial and continued airworthiness of ultralight single-seater motorised gliders which, being covered by Royal Decree 765/2022 of 20 September 2022, have an unladen mass (excluding ballistic parachute) that does not exceed 120 kg, consistent with the practice of neighbouring countries, as is the case with Germany or the United Kingdom, countries where aircraft below 260 kg and 300 kg respectively have a more lax or even non-certified regime, such as the United Kingdom.

This simplified special regime is the same as that of the ‘design compliance declaration’ for ULM gliders on an ordinary basis, albeit with exceptions which further lighten the scheme.

In **Article 2**, there are a number of definitions that have been considered appropriate for legal certainty as well as for the better understanding and application of the regulation, without prejudice to the fact that, in general, they are concepts widely known by the sector to which the draft is directed.

The substantive content of the Order opens with **Chapter II, on requirements and obligations of initial airworthiness organisations and holders of a registered design compliance declaration**, which regulates the requirements and obligations of the initial airworthiness organisations, as well as the holders of a declaration of compliance with the registered design, starting with the requirements to be met by design organisations requesting the issuance of a restricted type-certificate for ultralight motorised gliders as well

as the obligations for its maintenance once issued, in order to comply with the requirements to be met by organisations engaged in the mass production of ultralight motorised gliders.

Alternatively to the application for a restricted type-certificate, also considered for ultralight motorised **gliders** is the possibility of validating the type design by submitting a 'design compliance declaration', following the proportionality of Part 21 Light for European Regulatory Light aircraft, while reflecting the obligations of holders of a design compliance declaration that has been finally registered by the State Aviation Safety Agency.

In **Chapter III on airworthiness of type-design**, the essential airworthiness requirements are laid down, with reference to the Annex, and generally set out ways of validating the airworthiness of the type designs of ULM gliders to which the Order applies, which includes (i) the type-certification approved by AESA following an ordinary certification procedure by AESA; and (ii) the registration of a design compliance declaration only for ULM gliders, following the proportionality of Part-21 Light, and in particular the design compliance declaration system in Article 2.3 of Commission Regulation (EU) No 748/2012 of 3 August 2012, following its amendment by Commission Delegated Regulation (EU) 2022/1358, as set out in the statement of reasons.

For each type of way of validating the airworthiness of type designs, procedural specialities are included under Article 1.2 of the LPA.

Thus, **Article 14** sets out the essential airworthiness requirements to be met by all ULM glider type designs, regardless of the Order procedure that is applicable to validate them.

In **Articles 15 to 22, inclusive**, the specialities of procedure for ordinary type-certification by AESA are included.

In the drafting of the ordinary procedure for obtaining a restricted TC for ULMs, the procedure has been taken as a reference *'for the issue and amendment of certificates, approvals, authorisations and approvals and acceptances relating to aeronautical products, parts and instruments'* provided for in Article 4 of **Royal Decree 660/2001 of 22 June 2001, regulating the certification of civil aircraft and related products and parts**, although without imitating it, and requiring additional procedural specialities, among which it is worth mentioning:

1. The possibility for AESA, exceptionally and in a reasoned manner, to collect deviations in the compliance with the essential airworthiness requirements of the Annex provided that the type-design provides a level of operational safety appropriate to the use of the aircraft, considering (i) the technical development in civil airworthiness at the date on which the aircraft was originally designed; and (ii), the purposes for which the aircraft has been specifically designed and the type of operations for which it is intended.

   This is not a novel technique, and aims to preserve the regulation by trying to ensure that the normative provisions give rise to unjustified situations from a technical-aeronautical point of view, so that in this way it gives some flexibility to the standard, without the use of this technique entailing obligations, requirements or operational limitations that may affect the legal sphere of individuals, so that its use can not be considered an exercise of any regulatory power, but a relaxation or waiver of them allowed and expressly contemplated in the regulation itself and its application, if either it can be configured as a discretionary act (which is not arbitrary), having to be duly

reasoned in accordance with Article 35(1)(i) of Law 39/2015 of 1 October 2015 on the Common Administrative Procedure of Public Administrations ('LPA'):

> *'Article 35. Background.*
>
> *1. The following reasons shall be given, with a brief reference to facts and legal grounds:*
>
> *[...] (i) The acts taken in the exercise of* ***discretionary powers****, as well as* ***those who must be so by virtue of express legal or regulatory provision****.'*

With regard to the justification of this technique and its relationship with other exemptions already positivised, it is markedly different from the exemptions in the sixth additional provision of the LNA, which requires *'unforeseen urgent circumstances or urgent operational needs'*, and *'that it is not possible to address those circumstances or needs in an appropriate manner in compliance with the applicable requirements'*, among other conditions for its application. They are exemptions provided for in different factual situations.

In addition, the use of the exemption technique has not prompted comments from the Council of State regarding:

- Article 4.3 of Royal Decree 765/2022 (Opinions 49/2021 and 640/2022);
- The first final provision, paragraph 2, of Royal Decree 728/2022 of 6 September 2022, which gave the current wording to Article 2.2 of Royal Decree 660/2001 (Opinion 105/2022).

2. In the article dedicated to the *'Implementation of the certification and demonstration programme of certification bases'*, it provides for a suspension of the maximum period to decide during such execution, which will apply because it is thus provided for by law, without the need for an administrative act agreeing to such suspension.

   This suspension does not contradict Law 39/2015, of 1 October 2015, but is deemed to be covered in the case of Article 22(1)(e) thereof, which also does not determine by which person, act or document such a discretionary suspension *may be* carried out.

   This suspension is foreseen following the example of the original wording of Article 4(4) of Royal Decree 660/2001 of 22 June 2001:

   > *'4. At any time during the procedure, the Directorate-General for Civil Aviation may require further inspections, technical tests and flight and ground tests, if it deems it necessary to verify that all the requirements necessary for the issuance or, where appropriate, modification of the certificate, approval, authorisation or acceptance requested are actually met.* ***The expiry of the deadline for processing the application shall also be suspended until the completion and documentation of these inspections, technical tests and flight and ground tests****.'*

   The Council of State, in its **Opinion 748/2001**, did not comment on what would be Royal Decree 660/2001, of 22 June 2011, from whence this technique originates, when Article 22(1) of Law 39/2015, of 1 October 2015, has come to reflect the content of Article 42(5) of Law 30/1992 of 26 November 1992, on the Legal Regime of Public

Administrations and the Common Administrative Procedure, a regulation on administrative procedure applicable at the time of issue of that Opinion.

In any event, even if there may be any doubt that such suspension could be limited in the case referred to in Article 22(1)(e) of the LPA, in **Opinion 875/2021**, the Council of State, paragraph V(h), has admitted that a Ministerial Order may lay down formalities which entail the suspension of the procedure in addition to those laid down in Article 22 of the LPA, on the basis of the authorisation of Article 1(2) of the LPA itself:

> *'h.- Articles 15 and 16, which regulate the procedures of hearing the parties and of evidence, provide that these procedures shall be considered as an element of judgment necessary to resolve the proceedings and shall, in any case, suspend the maximum time limits to resolve provided for in Article 20 of Law 7/2017. The general regulation of alternative dispute resolution procedures for consumer disputes provided for in Law 7/2017 does not provide for the suspension of the period for deciding on the grounds of hearing and evidence procedures, nor in the specific regulations relating to procedures in the field of protection of air transport users contained in the second additional provision of that Law. If account is taken of the grounds for suspension of the maximum period for resolving the administrative procedures provided for in Article 22 of Law 39/2015, paragraph 1(e) allows the possibility of suspension "when conflicting technical tests or analyses proposed by the interested parties must be carried out, for the time necessary for the incorporation of the results into the file". However, there is no provision for a stay of proceedings for the parties to be heard.*
>
> *In any case, Article 1(2) of Law 39/2015 admits that "specialities of the procedure may be established as regards the competent bodies, time limits specific to the specific procedure due to the subject matter, methods of initiation and termination, publication and reports to be collected". Therefore, in view of the legal authority to regulate by Order the alternative dispute resolution procedure in the field of protection of air transport users,* ***it may be accepted that this legislative instrument may provide for specialities as regards the time limits specific to that procedure****. The possibility provided for in the draft of a second simultaneous hearing of the parties is also a procedural speciality.'*

Therefore, such suspension can be applied both if it is considered a case of application of Article 22(1)(e) of the LPA, or if it is considered a speciality of procedure in terms of time limits, by virtue of the authorisation of Article 1(2) LPA.

Finally, it is envisaged that the procedure will end with the corresponding decision, which, if considered, ends with the issue of the type certificate, followed by the publication of the corresponding data sheet on the EASA website.

The unlimited duration of type-certificates is then considered as long as the mandatory regulations of application to it are not violated and the conditions in which it was issued are maintained, also identifying specific causes that determine its invalidity, and a classification of changes in TCs into 'major' and 'minor' according to their relevance to operational safety is included for the first time, including the criteria necessary for discerning them. In the event that the change is 'major', a re-certification of the rate is required, although limited to the aspects affected by the change.

In this case, as in others where casuistry can be very varied, it is expected that, once the forecast has been established with an impact on the legal sphere of third parties such as requirement in the regulation, through the appropriate 'Acceptable Means of Compliance'

('AMC') provided for in the first additional provision, specific criteria or assumptions may be specified in which it will in any case understand a change as 'major' or 'minor', without prejudice to the fact that the holders may propose to AESA an 'Alternative Means of Compliance' (AltMoC), where the latter have been previously approved by the State Aviation Safety Agency on the grounds that they are in compliance with the applicable provisions of the Order.

Including the procedural specialities for type certification, the following is included; (i) the procedure for the design compliance statement, which, like the Part-21 Light design compliance statement for aircraft subject to European Union regulations, is a form of validating the type design that is optional for the interested parties and an alternative to type certification, and is only applicable to **ULM gliders of 'Category A'** as defined in Article 1(2) of Royal Decree 765/2022 of 20 September 2022, and it is not possible to apply this procedure for ULM helicopters and autogyros of categories B and C, respectively, of Article 1(2) of Royal Decree 765/2022 of 20 September 2022, (ii) the conditions for the continued validity of the declarations of design compliance; and (iii) the conditions for making changes to the design where there is a design compliance declaration registered in AESA under the draft, applying the same criteria as in the case of TC designs for the classification of minor or major changes, and the consequences depending on whether they are one or the other.

With regard to the design compliance declaration, and as for the system of the design compliance declaration for EASA aircraft, which it imitates, although in the name given to this new system of validating type designs subject to national legislation it is called a declarative regime, the reality is that as a means of administrative intervention it remains a regime of prior authorisation, since ultimately the mere submission of the design compliance declaration does not allow the interested party to exercise a right or the beginning of any activity, but ultimately requires a prior act of the administration, which is the registration of the above declaration by the State Aviation Safety Agency and its subsequent notification to the interested party.

In **Chapter IV, on airworthiness certification,** restricted certificates of airworthiness ('CoAs') for ULM gliders based on a restricted type certificate previously approved by AESA or on a design compliance declaration registered by AESA are regulated, along with flight authorisations, traditionally known in the sector, as well as permits to fly, or 'PtFs', which according to the definitions are a 'Special Airworthiness Certificate' for the performance of flights for any of the purposes set forth in the Order.

Either of the titles, the CoA or the permit to fly, allows the use of an already produced ULM glider, as long as it remains valid.

The Chapter opens, in accordance with the provisions of Article 36 of the LNA, with a declaration that no ULM glider will be authorised for flight if it does not have a restricted certificate of airworthiness valid for its operation, unless it has been issued a permit to fly of those regulated in the draft.

Below are the possibilities for issuing a CoA.

Until now, the issuance of a restricted CoA was only allowed for those ultralight motorised gliders the design of which had a restricted TC previously approved by the State Aviation Safety Agency.

With this Order, these restricted CoAs will also be able to be issued on the basis of:

(i) a design compliance declaration registered by the State Aviation Safety Agency;

(ii) a valid restricted TC issued by any aeronautical authority in the European Economic Area; or

(iii) a valid restricted TC issued by any aeronautical authority of a third country whose type design certification system ensures safety levels equivalent to that laid down in this Order, and has previously been recognised by decision of the competent body on the basis of the matter of the State Aviation Safety Agency.

Next, it regulates the way to apply for a CoA, depending on whether for new or used ULM gliders, and its relationship with the Register of Civil Aircraft Registration, also dependent on AESA, in accordance with Article 9(1)(b) of its Statute, approved by Royal Decree 184/2008 of 8 February 2008.

It establishes the indefinite validity or of unlimited duration in the time of the CoAs, conditional, among other circumstances, on compliance with the continued airworthiness requirements set out later in the draft and, in particular, on the validity of the airworthiness review certificate.

The cases in which AESA can be requested for a permit to fly, the purposes for which it may be requested, as well as its validity regime, which, unlike the CoA, will be limited in time, without prejudice to the fact that at the end of the period of validity of a permit to fly, or within three months before such end, the interested parties may apply for successive permits to fly. That is to say, it is possible to obtain successive permits to fly for the same aircraft, either for the same or different purpose from those obtained above, which has been clarified in the text of the draft following the public hearing.

Among the valid purposes for applying for a permit to fly, it should be noted, in particular, that one may be issued in the case of flights of certain aircraft or of certain types for which the issue or maintenance of the restricted certificate of airworthiness does not apply, especially where the restricted type certificate or the declaration of compliance with the registered design has lost its validity and the aircraft have satisfactory service experience.

This scenario is intended, among other options set out in the transitional provision on the *'Transitional period of validity of restricted certificates of airworthiness with excess unladen mass and forms of adaptation to the unladen mass limit'*, to provide the possibility to continue operating, under certain operational limitations, those ULM gliders the CoA of which is based on a TC that does not comply with the special regime provided for in the first additional provision of the same Royal Decree, or that although its TC conforms to that regime, the registered aircraft does not do so, so that in such cases, the owners or operators of ULM gliders affected by these limitations may avail themselves of the option of applying for a flight authorisation.

It also details the requirements for obtaining a permit to fly based on one of the purposes listed in the preceding Article.

Closing the chapter, alterations to ULM gliders are regulated, establishing a prior authorisation regime by AESA according to the magnitude of the change operated, to ensure that a major modification will not pose a risk to the aircraft's airworthiness. This may lead to

the result that a major alteration that is not approved by AESA carries with it the invalidity of the CoA and the inability to operate, if the aircraft is not returned to its previous condition.

Chapter V regulates what is known as 'continued airworthiness', or the maintenance of airworthiness.

This chapter begins by specifying who is responsible for the maintenance and continuation of airworthiness, which may be the owner of the aircraft as hitherto, or another person who is permitted to operate such aircraft under any legal title (referred to as 'party responsible for the maintenance and continuation of airworthiness'). This forecast is based on point (b) of Section M.A.201 Responsibilities of Annex I – Part M, of Commission Regulation (EU) No 1321/2014[3]:

> *'M.A.201 Responsibilities*
>
> *a) the owner is responsible for the continued airworthiness of the aircraft and shall ensure that it does not perform any flights, unless:*
>
> *1. the aircraft maintains airworthiness conditions,*
>
> *2. any operations and emergency equipment is properly installed and in conditions of service or clearly identified as out of service,*
>
> *3. the certificate of airworthiness remains valid; and*
>
> *4. maintenance of the aircraft is carried out in accordance with the maintenance programme specified in M.A.302.*
>
> *b) **When the aircraft is leased, the owner's responsibilities are transferred to the lessee if**:*
>
> ***1. the lessee is stipulated in the registration document; or***
>
> ***2. the lessee is detailed in the lease**.*
>
> *In this Part, when the term 'owner' appears, it shall refer to the owner or lessee, as the case may be.*

The tasks necessary for the maintenance of airworthiness are also set out; along with the requirements for performing maintenance; as well as the obligation to have a maintenance programme, and the minimum content thereof.

As a novelty with respect to the previous regime in the area of continued airworthiness, it is envisaged that, together with the issuance of the restricted certificate of airworthiness, an **airworthiness review certificate** will be issued, without which the restricted certificate of airworthiness will not be valid. The validity of the airworthiness review certificate is limited in time, but may be renewed by the person responsible for the maintenance and continuation of airworthiness by submitting a 'continued airworthiness declaration'; in short, stating under his or her responsibility that he or she has performed the tasks necessary for the maintenance of airworthiness contained in this Order, and has carried out a physical verification of the aircraft, so that he or she has satisfactorily verified that it remains in accordance with his or

[3] 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.

her restricted type certificate or in accordance with a declaration of compliance with the registered design.

The new period of validity for the airworthiness review certificate will be calculated from the date on which its loss of validity was expected prior to the submission of that continued airworthiness declaration if it is submitted within three months of the end of its validity. In another case, whether it is submitted before those three months or if it is submitted up to six months after the expiry of the period of validity of the airworthiness review certificate, the new validity of the certificate of airworthiness will be counted from the submission of the continued airworthiness declaration.

In the event that the declaration is submitted six months after the loss of validity of the airworthiness review certificate, its validity may not be renewed by the submission of the declaration, but the person responsible for the maintenance and continuation of airworthiness must apply to the State Aviation Safety Agency for a new airworthiness review certificate.

Following European and international practice, in **Chapter VI airworthiness directives are regulated** which may be adopted in response to evidence of defects in an aircraft and/or component, likely to affect other aircraft manufactured in accordance with the same restricted type certificate or declaration of design compliance, or which have such components installed, in order to correct them in order to guarantee the required safety standards.

The airworthiness directives are not a novelty in national legislation, but are referred to as obligations of air operators in Article 36(1)(2) of Law 21/2003 of 7 July 2003, obligations that in this field are transferable to ULM glider operators.

In addition, the airworthiness directives have a background in the national aeronautical sector regulations, both in Article 8 of Royal Decree 660/2001 of 22 June 2001, and in section TAE.AER.GEN.200(b)(6) of Royal Decree 750/2014 of 5 September 2014, regulating airborne fire-fighting and search and rescue activities, and establishing airworthiness and licensing requirements for other aeronautical activities.

Its purpose is to ensure aeronautical operational safety, which may involve adaptations or operational limitations on ULM gliders.

As regards their nature, the airworthiness directives have the nature of administrative acts, which, depending on the specific case, may have a single addressee or a plurality of recipients (varied administrative acts).

This conclusion has been reached because the airworthiness directives do not innovate the legal system in an abstract and general way, but are issued when a situation of uncertainty related to a purely technical issue is identified and detected in a particular aircraft, component or equipment model.

It would be unreasonable to understand that AESA could not issue airworthiness directives, understood as administrative acts, for type designs or for aircraft certified by it also through administrative acts, because this would be stating that AESA can issue type certificates to those designs and certificates of airworthiness for those aircraft, in both cases, through administrative acts and with full validity to build aircraft based on those type designs and to consider those aircraft as airworthy, but on the other hand that the same EASA that issued those administrative acts could not limit them or require modifications or adaptations to those

type designs or to those aircraft that it itself has certified when an unsafe situation has been established. This would mean stating that what the AESA can grant by means of an administrative act could only be limited or corrected by an administrative provision, i.e., that whoever could do the most, in this case the AESA, could not do the least.

Furthermore, it should not be forgotten that AESA itself can already limit, suspend, annul or revoke its own administrative acts by means of new administrative acts, including provisional (Article 56 LPA), precautionary (in sanctioning procedures, Article 63 LSA), or extraordinary measures (Article 30 LSA), therefore, to affirm that the AESA can adopt all these measures as part of its executive powers and yet not adopt airworthiness directives would be to affirm once again that the AESA could do the most in its power to issue authorisations, but could not do the least in the exercise of its executive powers of supervision, control and inspection of the authorisations that it itself has issued.

In the same vein, it is worth mentioning Constitutional Court Ruling 78/2017, Legal Basis 6(D)(a):

> *'In this sense, the doctrine of this Court has repeatedly held (for example, SSTC 5/2012, FFJJ 5 and 235/2012, FJ 8, and the judgments cited therein) that* ***the competence to grant the authorising title is what determines the ownership of the powers of an executive nature*** *referring to inspection, surveillance and control, the adoption of provisional measures and the investigation of sanctioning proceedings.'*

In this sense, and in accordance with the above, the airworthiness directives are not deemed part of any regulatory power, but are part of the executive powers of AESA in relation to the qualifying certificates of aeronautical activities that it has itself issued. The speciality of the airworthiness directives is that they could apply to one case or to several, if, in the latter case, they concern an aircraft model of which there are several productions under the supervision of AESA. In such cases, the airworthiness directive should be considered, within AESA's executive powers over the enabling certificates it has itself issued, as a varied administrative act.

With regard to the possibility of adopting administrative acts in implementation of administrative provisions, there is no doubt as to the legality of that possibility[4].

Supreme Court Ruling Administrative Litigation Chamber of 11 May 2011 (appeal 132/2009), Legal Basis 6:

> *'SIX.- In the judgment of this Chamber and Section of 23 February 2011, appeal 143/2009, it was stated that the agreements of 26 December 2008 of the Council of Ministers, contested therein, are not a regulatory rule. They constitute a development of Article 12(9) of Royal Decree 1393/2007* ***empowering the Government to establish the conditions*** *to which the curricula of the diplomas must be adapted,* ***enabling the exercise of regulated activities in Spain****.*

[4] In fact, it may be the case that there are administrative provisions that, although presented in an abstract and general way, apply to a few affected parties, because they deal with a very specific sectoral subject, and that, however, an administrative act may have thousands of addressees as interested, such as administrative acts calling for competitions.

It is therefore a matter of unambiguous governmental competence that must, therefore, take the form laid down in the Government Act.

It has no regulatory value. *It derives from the specific authorisation conferred by Article 12(9) of Royal Decree 1393/2007 without having to take the form of a Royal Decree.* ***It is a non-legislative act applying to a plurality of addressees, which in no way amendments Royal Decree 1293/2007****.'*

Opinion of the Council of State 259/2020 of 16 April 2020:

'IV. As regards status, Ministerial Order, and legal empowerment, the aforementioned Law 3/2001 of 26 March 2001, on State Maritime Fisheries (hereinafter, Law 3/2001), in its second final provision authorises the Government and, where appropriate, the Minister of Agriculture, Fisheries and Food, within the scope of its powers, to adopt all necessary provisions for its development and implementation. This is without prejudice to the specific authorisations per saltum set out in its articles.

In particular, 'for the management and distribution of fishing opportunities, censuses may be established by modalities, fisheries and fishing grounds, which will enable the vessels included in them to engage in maritime fishing in external waters' (Article 26(1)), and also 'the distribution of fishing opportunities among vessels or groups of vessels habitual in the fishery' (Article 27), 'transmissibility of these fishing opportunities' (Article 28), and ***regulating*** *'fishing plans for certain areas or fisheries providing for specific and individual measures, the exception of which is justified by the state of resources' (Article 31).*

The draft does indeed conform to the use of the power conferred per saltum by Law 3/2001 to the head of the Department, without any overreach being found in this regard. This is without prejudice to the fact that, in accordance with the doctrine of this Council of State sitting on this matter (Opinions 126/2019 and 207/2020), there may be ***acts implementing it by lower bodies****, typically the General Secretariat for Fisheries,* ***provided that the essential criteria to which they must conform are predefined in the text of the Order.****'*

Finally, it should be noted that the Council of State has not commented on the possibility that AESA, while lacking any regulatory powers, could nevertheless adopt airworthiness directives. In particular, the Council of State did not comment on this issue in the following Opinions:

- Opinion 748/2001, on the original wording of Article 8 on *'Airworthiness Directives'* of Royal Decree 660/2001 of 22 June 2001;

- Opinion 485/2014, in relation to Section AAE.AER.GEN.200(b)(4) and (6) of Royal Decree 750/2014 of 5 September 2014, when it was envisaged that AESA could approve changes to a type-design and approve airworthiness directives on these approvals.

- Opinion 105/2022, in relation to paragraph 5 of the first final provision of Royal Decree 728/2022 of 6 September 2022, which amended Article 8 of the aforementioned Royal Decree 660/2001 of 22 June 2001 and in which MAIN, in the version submitted to the

Council of State, already included an express justification for the possibility that AESA could adopt airworthiness directives.

Therefore, in short, **AESA does not need a regulatory rating to be able to adopt airworthiness directives, since they have the nature of administrative acts** without prejudice to the fact that the draft Order regulates specialities in relation to the adoption of such acts.

Finally, in **Chapter VII**, **common administrative provisions are laid down**, on administrative procedure, supervision and sanctioning regime.

The powers of AESA are considered, as well as the six-month period to notify the express resolution in the procedures for the approval and issue of restricted type-certificates obtained after a type-certification procedure, in accordance with Articles 1(2) and 21(2) of the LPA, the deadline for other proceedings being the default of three months of Article 21(3) of the same law.

Once the deadlines have elapsed without an express decision having been notified, applications may be deemed rejected by administrative silence, in accordance with the exception provided for in Article 24(1) of Law 39/2015 of 1 October 2015, read in relation to the **19th additional provision of the LSA** that after being amended by the **third final provision** of **Royal Decree-Law 14/2022 of 1 August 2022, on economic sustainability measures in the field of transport, on scholarships and study aid, as well as measures to save, energy efficiency and reducing energy dependence on natural gas**, is worded as follows:

> *'Nineteenth additional provision. Negative administrative silence.*
>
> *In civil aviation activities, whether with manned aircraft or unmanned, subject to national legislation for overriding reasons in the public interest relating to aviation safety, they will be considered included in the exception provided for in Article 24(1) of Law 39/2015 of 1 October 2015, the Common Administrative Procedure of Public Administrations, the procedures on authorisation of air operations, and use of airspace, on special operations, and **initial and continued airworthiness authorisations**, including those issued to personnel involved in this field.*
>
> *In addition, the derogation provided for in the preceding paragraph applies for the same overriding reasons in the public interest to the approval of aeronautical servitudes and to the certification of remote pilot training staff.'*

Finally, it introduces only clarifying paragraphs for those affected by the regulation, recalling, on the one hand, the applicability of Law 39/2015 of 1 October 2015, without prejudice to the procedural specialities established in the Order, and on the other, the existence of a sanctioning legal regime in the field of aviation safety.

The draft does not criminalise conduct, and does not establish infringements of any kind. It is stated, solely for the purpose of warning the addressees of the regulation, that any conduct that may constitute an infringement of those already included in Law 21/2003 of 7 July 2003, on Aviation Safety, in which case this penalty regime will apply to them, as it cannot be otherwise, and what the draft reminds or warns in certain cases, solely for the purpose of informing the addressees of the regulation, is that there is a sanctioning regime behind the Order that could be applied if their conduct complies with what is typified in the laws that

include such sanctioning regimes, not that non-compliance with what is included in the draft is punishable because it is provided for in the Order.

For example, Order TMA/692/2020 of 15 July 2020, laying down technical standards for the supply of fuel to civil aviation aircraft, contains a similar provision:

> *Where non-compliance with the provisions of this Order **may be regarded as equivalent** to one of the offences in the field of civil aviation covered by Law 21/2003 of 7 July 2003, the penalties laid down in that law shall apply thereto.*

This paragraph was drafted in accordance with the seventh observation made by the Council of State in its Opinion 487/2019 (underlined and bold added):

> *'7. Article 50 of the draft Order states in its second paragraph, after stating that the State Aviation Safety Agency shall exercise inspection and sanctioning powers for the supervision and control of compliance with the Order, that 'the breach of the provisions of this Order **constitutes** administrative infringement in the field of civil aviation in accordance with the provisions of the Aviation Safety Act, and its sanctioning regime shall apply to it'.*
>
> *The Council of State considers that it would be appropriate to amend the wording of this paragraph to clarify that the Ministerial Order does not create new infringements other than those provided for in Law 21/2003 of 7 July 2003, on Air Safety, such that only when the provisions of the draft Order are not complied with **may this be regarded as equivalent** to any of the offences provided for in that law, it would be possible to apply the penalty regime laid down therein.'*

Closing the chapter, procedural specialities are established in the monitoring of design and production organisations, as well as the holders of a declaration of compliance with the registered design, without prejudice to the application of the Aeronautical Inspection Regulation approved by Royal Decree 98/2009 of 6 February 2009, where applicable.

These specialities aim to ensure that the inspections are similar to those to be carried out in compliance with the relevant European Union regulations, so that the work procedures of AESA inspectors do not differ too greatly depending on the type of organisation inspected, and trying to establish precise guidelines that facilitate the identification of the seriousness of the non-compliances detected in a more uniform manner.

This is followed by the **additional, transitional, derogatory and final provisions**.

By means of the **first additional provision**, a special regime is included for the adaptation and modification of restricted TCs issued prior to Royal Decree 765/2022 of 20 September 2022 to comply with the limitation of the first additional provision thereof, so that they accept as certification bases the originals but with the deviations necessary according to new certification specifications that comply with the essential airworthiness requirements of Annex I to the draft and applicable in accordance with the procedure for ordinary type-certification also contained in the draft, and which the State Aviation Safety Agency considers technically justified.

In the **second additional provision**, it is envisaged that ULM gliders registered at the entry into force of this Order of which the unladen mass, both real and in accordance with the data contained in the Civil Aircraft Registration Register, does not exceed the unladen mass limit defined in the first transitional provision of this Order, will maintain the validity of their certificate of airworthiness unchanged.

In the **third additional provision**, the forecasts for the adoption by AESA of implementing measures, including the possibility to adopt AMC and guide material, or 'GM', as well as to authorise alternative means of compliance, or 'AltMoC', are included where they are considered to be in compliance with the relevant provisions of the Order, without prejudice to the other enforcement measures provided for by AESA in the Order.

In the **fourth additional provision**, no increase in public expenditure is envisaged.

In the **first transitional provision**:

- By means of its first paragraph, the transitional period for the adaptation of certificates of airworthiness is specified as **two years** based on type certificates that do not conform to the unladen mass limit of the first additional provision of Royal Decree 765/2022 of 20 September 2022, or that the aircraft individually does not comply with that provision. The fixing of this deadline in the draft is a determination based on the provisions of the first transitional provision of the Royal Decree.

- The rest of its sections provide for different measures to ensure that ULM gliders the CoA of which is based on a TC that does not adapt to the limitation of the first additional provision of Royal Decree 765/2022 of 20 September 2022 do not necessarily have to remain grounded, and can continue to operate therewith. Specifically, the following forms are considered, which are all alternatives among them, i.e. that only one of them is sufficient:

    - At the initiative of the TC holders, the adaptation of the restricted TC, generally based on the new relationship between the unladen mass and the MTOM established in Article 1(4) of Royal Decree 765/2022 of 20 September 2022, which has resulted in a substantial elevation of MTOM for ULM gliders that are subject to national regulations;

    - At the initiative of the owners or operators of ULM gliders affected by the unladen mass limit of the first additional provision of Royal Decree 765/2022 of 20 September 2022:

        - Carrying out appropriate actions on the aircraft to adjust its unladen mass to the unladen mass limit; or

        - Requesting a permit to fly from AESA, justifying that the aircraft is safe for flight with a maximum take-off mass higher than that indicated in the type certificate, and in that case complying with the unladen mass limit.

    - At the initiative of AESA, and before the end of the transition period, issue airworthiness directives, establishing the restrictions necessary to make acceptable the unladen mass of ULM gliders that have not adapted to the unladen mass limit during that period, the most likely being that of operating with a single person on board (the pilot).

With regard to this transitional provision, some individuals have argued that it would be in breach of the principle of legal certainty, in its aspect of non-retroactivity of the provisions restricting individual rights (arguments listed as **10.12** and **12.15** in the assessment report), considering that the new unladen mass limit cannot be complied with by all ULM gliders which, however, currently have a restricted type certificate already issued by the State Aviation Safety Agency, which will mean that they cannot continue operating these aircraft as hitherto despite having passed an already completed certification process, and without the nullity or harmfulness of the restricted type certificates that will not comply with this new limit of unladen mass.

This question of the non-retroactivity of the provisions restricting individual rights was already analysed during the processing of Royal Decree 765/2022 of 20 September 2022.

In that analysis, it was concluded that **TCs and CoAs have the nature of '*operating authorisations*', which give rise to a status of obligations payable on a permanent basis over time, without such authorisations being able to prevent a modification of the applicable regulations, and to which the authorisations must be adapted**.

In particular, the following was stated:

> *'**It is considered that we are facing an improper retroactivity, constitutionally permitted, and that what the individual intends in this case, is a petrification of the legal system to the detriment of the safety required of said ULM gliders**.*
>
> *It is considered that neither the TC nor the CoA generate a consecrated relationship or an exhausted situation, but that they are the basis of a living, dynamic, present relationship between the Administration and those administered, generating a statute of obligations for the holders of the CoA. It is that swiftness, that present validity that makes the TCs and the CoA useful, otherwise they would not serve to prove the present airworthiness of the ULM gliders.*
>
> *The TCs and the CoAs, as previous acts of the Administration for the exercise of an aeronautical activity, are limited to what the case-law of Chamber III of the TS has called '**operating authorisations**' or 'consecutive nature', subject to present and permanent control by the Administration during the period of its validity (Supreme Court Ruling of 8 October 1988; Supreme Court Ruling of 30 September 1991, Legal Basis 3; STJ ICAN of 23/03/2016, appeal 2/2015, Legal Basis 7) or in the words of the Supreme Court Ruling of 28/05/2001, appeal 9519/1995, Legal Basis 4(d) 'is in accordance with the case law of this Chamber, to take the view, as the Court of First Instance judgment does, that the RAM licences constitute a clear example of "operational authorisations", which enable the Administration to permanently monitor the activity through the corresponding inspections.*
>
> *This doctrine which is also reflected in the **Supreme Court Ruling of 28/10/2005, Legal Basis 4**, which states that "It is particularly significant, for this purpose, to distinguish between authorisations by operation and functional authorisations which, as in the case of improper taxi service, relate to the development of an activity. These correspond to the scheme of the acts-condition and are therefore legal titles that place the authorised party in an objective situation, defined abstractly by the applicable regulations constituting a complex status."*
>
> *Thus, with the issuance of a TC or a CoA for ULM gliders, the relationship between the holders of these certificates and the Administration is not exhausted, but, during their validity, they are subject to the decisions of the Administration, being able to be revoked, suspended, limited... in accordance with the applicable regulations.*

*That is, the TC and CoA, during their validity, generate a **pending** or **conditioned** right, in the words of STC 112/2006, FJ 17º, which the Court itself cites in the allegation.*

Constitutional Court Ruling 108/1986, Legal Basis 17:

*It must be noted, on the other hand, that according to the doctrine of this Court, **the invocation of the principle of non-retroactivity cannot be presented as a defence of an inadmissible petrification of the legal system.** (Constitutional Court Ruling 27/1981 of 20 July 1981; Constitutional Court Ruling 6/1983 of 4 February, among others). Hence the prudence that that doctrine has shown in the application of that principle, pointing out that it can only be affirmed that a regulation is retroactive, for the purposes of Article 9(3) of the Constitution, when it affects "consecrated relations" and affects "exhausted situations" (Constitutional Court Ruling 27/1981); and a recent Judgment (Constitutional Court Ruling 42/1986, of 10 April 1986), states that "what is prohibited in Article 9(3) is retroactivity, understood as an impact of the new Law on the legal effects already produced in previous situations, **so the impact on rights, in terms of their projection into the future, does not belong to the strict field of non-retroactivity**". Thus, even assuming that there is a subjective right to retirement age, that doctrine leads to the rejection of the alleged breach of the principle of non-retroactivity; since the contested provisions do not alter situations already exhausted or perfect, **they merely establish the legal consequence for the future** (retirement) **from a generic assumption** (to meet certain ages) **which has not yet taken place in respect of the subjects concerned**."*

Constitutional Court Ruling 126/1987, Legal Basis 11:

*'However, the principle of legal certainty cannot be established in absolute value in that it would lead to the freezing of the existing legal system, whereas the latter, by regulating relations of human coexistence, must respond to the social reality of each moment as an instrument of improvement and progress. The absolute interdiction of any kind of retroactivity would entail consequences contrary to the conception that flows from Article 9(2) of the Constitution, as this Court has shown, among others, in its Constitutional Court Rulings 27/1981 and 6/1983. For this reason, **the principle of legal certainty, enshrined in Article 9(3) of the Basic Law, cannot be understood as a right of citizens to maintain a particular tax regime**.*

*In this context, the degree of retroactivity of the contested regulation, as well as the specific circumstances prevailing in each case, become a key element in the prosecution of its alleged unconstitutionality. And, for this purpose, it is relevant to distinguish between those legal provisions that subsequently seek to tie effects to factual situations produced or developed prior to the Law itself, **and those that seek to influence current situations or legal relationships not yet concluded**. In the first case – genuine retroactivity – the prohibition of retroactivity would be fully operative, and only qualified requirements of the common good could exceptionally be imposed on that principle; **in the second – improper retroactivity – the legality or unlawfulness of the Provision would result from a weighting of assets carried out on a case-by-case basis taking into account, on the one hand, legal certainty and, on the other, the various imperatives that may lead to a change in the legal tax order**, and the specific circumstances of the case.'*

Constitutional Court Ruling 49/2015, Legal Basis 4:

*'(c) **What Article 9(3) EC prohibits is 'the impact of the new law on the legal effects already produced in previous situations**, **so the impact on rights, in terms of their projection into the future, does not belong to the strict field of non-retroactivity**' (Constitutional Court Ruling 42/1986 of 10 April 1986). As this Court has reiterated, 'the*

effectiveness and protection of individual law – arising from a public or private relationship – will depend on its nature and on its assumption more or less fully by the subject, on its entry into the property of the individual, so that non-retroactivity is only applicable to the rights consolidated, assumed and integrated into the property of the subject, ***and not to those pending, future, conditional or expected*** *[for all, Constitutional Court Rulings 99/1987 of 11 June 1987, Legal Basis 6(b), or 178/1989 of 2 November 1989, Legal Basis 9], it follows that a regulation can only be said to be retroactive, for the purposes of Article 9(3) EC, where it affects 'consecrated relations' and affects 'exhausted situations' (for all, Constitutional Court Rulings 99/1987 of 11 June 1987, Legal Basis 6(b))' (Constitutional Court Rulings 112/2006 of 5 April, Legal Basis 17).'*

The aforementioned constitutional doctrine, in the case of the modification of the regulations applicable to operating authorisations, finds a case of application similar to that of the first transitional provision of the draft in the Supreme Court Ruling of 2 January 1989, Legal Basis 4, based on a similar public interest assumption:

'Fourth: The study of the first transitional provision, points one and two, also makes it necessary to distinguish, on the one hand, the billboards themselves considered and, on the other, the licences relating to them:

A) In the first sense, it should be recalled that the licences relating to advertising billboards include authorisations for 'operation' – judgments of 9 February 1987, 20 January 1988, etc. ***Insofar as they enable an activity to be carried out over time, they generate a permanent relationship with the Administration, which is not limited to the initial moment when the sign is put up, but is maintained throughout the time the sign remains in place to ensure compliance with the requirements of the public interest****, so evident in signs which, being visible from the public highway, on the one hand, influence very important aspects of social life - traffic, aesthetics, etc. - and, on the other, give rise from the legal point of view to a special common use of property in the public domain.*

Such licences are therefore subject to the implicit condition of having to comply at all times with the requirements of the public interest, so that if they change the billboards will have to adapt to them, even, in extreme cases, by withdrawing them*.*

The first transitional provision, point one, of the Ordinance must therefore be understood as valid, ***which does nothing more than apply the doctrine set out above, and which ultimately does not develop its effectiveness in the field of the retroactivity of the regulations, but rather in that of maintaining the adaptation of the billboards to the new demands of the public interest, this maintenance being part of the institutional meaning of licences which generate a special situation of subjection****.'*

In other words, the holders of a TC or a CoA do not have the right for the rules applicable to such TCs or CoAs to remain immutable, petrified in time, even at the expense of the public interest represented by aviation safety.

Supreme Court Ruling 23 March 1992, Legal Basis 2:

'In conclusion; when the contested municipal decisions are reached, despite the undoubted delay in processing, there is no acquired right to exercise the activity of discotheque, because there has never been a licence. For the sake of completeness, and for the sole purpose of responding to all the appellant's arguments, ***it may be pointed out that the hypothetical existence of a licence which, as that remains, has not been given, would not have served to satisfy the arguments of the appeal,***

since it would not have conferred a full subjective right to the activity, but a weakened right that would give way to the regulation and the public interest *(Article 35 et seq. of the Regulation),* ***these operating authorisations must comply with the necessary and permanent requirements****, according to the case-law of the Chamber which, as it is known, does not have to be cited.'*

In short, it is rejected that the draft incurs in constitutionally prohibited retroactivity, but that in any case it incurs in improper retroactivity, which does not affect consolidated rights, but rather arises from the necessary modification of the applicable regime for reasons of operational safety, affecting future situations, contemplating a sufficient transitional period to allow the sector to adapt. The draft pre-determines a change in the regulations applicable to the operating or successive tract licences that are the TCs and CoAs of ULM gliders for when another draft Ministerial Order is approved, different to the current draft Royal Decree, and until a transitional period to be established in that other draft Ministerial Order. This change will be reduced to the minimum and essential, seeking alternatives with the sector, and with the sole purpose of promoting the public interest underlying air safety, in its operational safety aspect, in this case, in relation to the airworthiness of ULM gliders affected by the limitation of the first additional provision of the draft. It should not be forgotten that this change has been forced by industry practice in order not to ensure the effectiveness of an essential safety requirement, namely the maximum take-off weight of the aircraft for which the corresponding CoA is issued.'

Reasons why the arguments received on this issue have been rejected.

The **second transitional provision** provides for the non-application of the draft to the ongoing type-certification procedures, these being governed by the previous regulations.

The **single derogatory provision** repeals the Order of 14 November 1988 establishing airworthiness requirements for Ultralight Motorised Gliders.

The **first final provision** amends the Order of 31 May 1982 approving a new Regulation for the construction of aircraft by amateurs to clarify that the validity of restricted certificates of airworthiness issued to such aircraft shall be unlimited in duration, but conditional upon compliance at all times with the requirements for their issue, and that the holder or keeper by any valid title presents every two years a responsible statement (similar to the 'continuing airworthiness statement' foreseen in the draft Order for ULM gliders) stating that he or she has carried out a general overhaul of the aircraft, except for aeronautical material or equipment of its own potential, stating that the aircraft is in a state of maintenance such as to allow safe air operations.

According to this new wording, the 200 flight hours in the current wording of that article are replaced by the presentation, every two years, of a declaration of compliance to AESA that a general overhaul of the aircraft has been carried out, for the sole purpose of the organisation being aware of the aircraft in order to establish effective control and supervision over these aircraft.

In this regard, a general overhaul of the aircraft, except for aeronautical equipment or equipment having its own potential, such as engines, should not be confused with an AESA inspection. AESA inspectors never carry out this general overhaul of the aircraft constructed by an amateur, but it is rather carried out by, or on behalf of, the owner or keeper, since they are responsible for the maintenance of the aircraft, as is logical in an aircraft that has been constructed by an amateur.

In addition, the current ban on the transfer of ownership of aircraft constructed by amateurs for the first four years is abolished and replaced by a ban on **use**; with exceptions to this limitation, this limitation does not affect the ownership of the aircraft.

Finally, an additional provision is included to enable AESA to adopt implementing measures, including the possibility of adopting AMCs and guidance material, or 'GM'.

By means of the **second final provision**, the title of jurisdiction is included on the basis of which the Order is issued.

Finally, the **third final provision** establishes its entry into force on the day following that of its complete publication in the 'Official State Gazette'.

The **Annex** establishes the essential airworthiness requirements to be met by ULM glider type-designs.

III.2.- LEGAL ANALYSIS:

III.2(a) Prevailing title of competence:

The prevailing title of competence is that provided for in Article 149(1)(20) of the Constitution, which confers on the State exclusive competence in the field of control of airspace, traffic and air transport and the registration of aircraft (Constitutional Court Ruling 68/1984, Legal Basis 6 and 7; Constitutional Court Ruling 161/2014, Legal Basis 6(i)).

Opinion of the Council of State 485/2014, paragraph 3:

> *'That jurisdiction has been defined by the Constitutional Court in a number of rulings, including judgment 64/1984 of 11 June 1984, according to which the State has exclusive jurisdiction over control of airspace and airports of general interest and the exclusive competence to lay down air safety regulations. In this sense, the Constitutional Court has emphasised that 'the safety of navigation requires (...) a series of uniform guarantees throughout the national territory, which, in turn, derive from international standards that pursue the same purpose" (Constitutional Court Judgment 40/1998 of 19 February 1998)'*

III.2(b) Relationship with higher-ranking regulations and consistency with the rest of the legal system:

The draft extends its scope of application to light aircraft, light helicopters and light autogyros in development of Royal Decree 765/2022 of 20 September 2022, the first final provision of which includes the regulatory authorisation to the Minister of Transport Mobility and Urban Agenda *'to lay down the provisions necessary for its development and application, in particular with regard to airworthiness'* of ULM gliders.

Therefore, the draft covers a scope outside European law and, in particular, outside the scope of the Basic Regulation and its delegated and implementing acts.

The scope of the draft is a speciality in the field of initial airworthiness (in particular type-certification) and continued airworthiness at national level.

First, the draft is consistent with Law 48/1960, of 21 July 1960, on Air Navigation (LNA), and in particular with the provisions of Chapter VI, 'Prototypes and certificates of airworthiness'.

Article 34 of the LNA provides that *'Study and initiatives for the construction of prototypes of aircraft and engines and their accessories shall be free'*, understanding prototypes to be *'the first units built to practically verify the effectiveness of a technical conception'*, the others are considered to be mass produced. It is also envisaged that *'No prototype aircraft shall be qualified, nor shall it be authorised for flight, without its prior technical inspection by the Ministry of Air'*, and this latter reference should be understood today to be the State Aviation Safety Agency.

In relation to this Article, it should be noted that it does not specify that type-designs should be qualified as such and authorised for flight by the State Aviation Safety Agency in the case of foreign type designs, even if they are subsequently used for the manufacture of aircraft in Spain or to be used in Spain.

That is to say, that Article 34 of the LNA is only applicable when the validation of the type-design, either through certification or by means of the declaration of design compliance, must correspond territorially to the Spanish aeronautical authority, currently AESA.

Therefore, nothing prevents AESA from granting, as foreseen in the draft, a CoA for aircraft produced on the basis of a TC from a foreign country[5], even if AESA for that foreign TC has not qualified any prototype or authorised it to carry out flight tests which, where applicable, will have been carried out by the competent aeronautical authority of that other country.

The above clarifications have been made in relation to the **type-certification system** regulated in the draft, once the prototype has been manufactured, all the verifications, technical tests and tests necessary to demonstrate compliance with the certification bases as set out in the certification programme must be carried out, which may lead to in-flight tests for which the corresponding flight authorisations must necessarily be requested from AESA.

In relation to the **design compliance declaration system**, the procedure will be simpler, and will not require prior approval by AESA of a certification programme[6], but provision of the following documentation together with the declaration, including supporting reports demonstrating compliance with the applicable airworthiness requirements, including the results of any tests carried out:

> *'a) the type-design data, including diagrams, specifications, materials, manufacturing processes employed and installed equipment, enabling the configuration and design characteristics of the aircraft to be defined;*
>
> *b) The **compliance demonstration plan**, detailing the means by which compliance with the airworthiness requirements referred to in paragraph 2 has been demonstrated;*
>
> *c) Supporting reports, **including the relevant test results**, which demonstrate compliance with those requirements. It should be justified that the samples tested were representative, in form, material and production method, of the design data, and that the measurement equipment used in the tests was suitable for them and properly calibrated;*

[5] A valid restricted TC issued by any aeronautical authority in the European Economic Area; or a valid restricted TC issued by any aeronautical authority of a third country whose type-design certification system ensures safety levels equivalent to that laid down in this Order, and has previously been recognised by decision of the competent body on the basis of the matter of the State Aviation Safety Agency.

[6] Even if the compliance demonstration plan can be considered similar to a certification programme.

d) Flight and maintenance manuals.'

Where these tests consist of test flights with prototypes to be carried out in Spain, AESA will be the competent aeronautical authority to provide the corresponding flight authorisations.

However, it is possible that the tests have already been carried out with another foreign aeronautical authority, in which case that authority will have allowed them in accordance with the law of its State, so that AESA will not have to qualify any prototype or grant flight authorisations, but to analyse the adequacy or otherwise of the supporting reports by which it is intended to demonstrate compliance with the airworthiness requirements applicable to the type-design.

This is true both for the system of the declaration of compliance with the normal design, and for the special simplified regime introduced following the arguments received during the hearing and public information procedure, since in no case can test flights in Spain be carried out without having previously obtained the corresponding AESA flight authorisation.

On the other hand, **Article 36 of the LNA** provides that *'No aircraft, except those exempted in Article 151 of this Law, shall be authorised for flight without the prior issue of a certificate of airworthiness'*, which is expressly reflected in and understood by the text of the draft *'the document that serves to technically identify the aircraft, define its characteristics and express the qualification it warrants for its use, deducted from its ground inspection and the corresponding flight tests'.*

With regard to this last statement, it should be noted that, unlike the third paragraph of Article 34 of the same law, it is not required for the CoA that the ground inspection and corresponding flight tests (when applicable) of the aircraft already produced for which the CoA is requested must be carried out necessarily and exclusively by the Ministry of Air (currently the EASA); rather, the LNA does not predefine this.

In the event that a restricted CoA for ULM gliders is requested on the basis of a restricted TC issued by AESA or on the basis of a design compliance declaration registered by AESA, this ground inspection will have been carried out, respectively, by the production organisation listed in the restricted TC or by the holder of the registered design compliance declaration, in compliance with the requirements for each in Chapter II on '*requirements and obligations of initial airworthiness organisations and holders of a registered design compliance declaration*', and in any case on the basis of the documentary requirements provided for restricted CoA applications for **new aircraft** listed in Chapter IV on '*certification of airworthiness*'.

In the event that a restricted CoA for ULM gliders is requested on the basis of a restricted TC issued by any aeronautical authority of the European Economic Area, or by any aeronautical authority of a third country whose type design certification system ensures safety levels equivalent to that laid down in this Order, and has previously been recognised by decision of the competent body on the basis of the matter of the State Aviation Safety Agency, such inspection and, where appropriate, flight tests, shall also be accredited on the basis of the documentary requirements laid down for CoA applications restricted to **new aircraft** listed in Chapter IV on *'certification of airworthiness'.*

Moreover, the draft Order is consistent with the scope of Royal Decree 660/2001 of 22 June 2001 regulating the certification of civil aircraft and related products and parts, the scope of which has been duly clarified by the first final provision of Royal Decree 728/2022 of 6 September 2022 laying down supplementary provisions to European legislation on

certificates and licences for civil aircraft flight crew and operating restrictions due to noise, so that they have been expressly excluded from its scope (Article 1(3)). civil aircraft, their engines, propellers, components and non-installed equipment consisting of ULM gliders and aircraft constructed by amateurs.

Furthermore, the provisions of the draft Order on airworthiness directives are also consistent with Article 8 of Royal Decree 660/2001 of 22 June 2001 in the light of the last indent of Article 1(3) thereof.

The application of Royal Decree 660/2001, of 22 June 2001, is intended for aircraft of greater mass subject to national legislation, in particular those excluded from the Basic Regulation by virtue of Article 2(3)(a) and therefore regulated at national level, currently regulated by Royal Decree 750/2014 of 5 September 2014, in particular for aircraft used in such non-EASA activities without EASA type certificate, regulated in section TAE.AER.GEN.300, without prejudice to its application in addition to other aircraft without a specific regime.

III.2(c) Authorisations and regulatory status:

The draft Order is adopted by virtue of the regulatory authorisation made to the Minister of Transport, Mobility and Urban Agenda referred to in the first final provision of Royal Decree 765/2022 of 20 September 2022, since it is based on the regulation contained therein, in particular:

(i) Article 1(2) and Article 2 of Royal Decree 765/2022, which define the scope of that Royal Decree, **which is followed by Article 1(2) of the draft Order** therefore, the aforementioned articles of the Royal Decree **delimit the scope of the Order including aircraft to which both the Royal Decree and the Order are to be applied, and not to others,** the opt-out has been adopted by the aforementioned Royal Decree;

(ii) Article 1(2), (3) and (4) and the first additional provision of Royal Decree 765/2022, where **the basic rules for maximum take-off mass (MTOM) and unladen mass are set out that must be applied in any procedure for certification or declaration of type-designs and the airworthiness certification** of aircraft to which the draft Order proves to apply.

(ii) Of the second transitional provision of Royal Decree 765/2022, which determines the regime applicable to type-certification procedures under way, with regard to the first transitional provision, paragraph 2(a) of the draft Order.

It is therefore not possible to make a leap from Article 36 and the fourth final provision of the LNA *directly* towards the Order in process, but for the application of the Order must be *necessarily* to the provisions of the aforementioned provisions of Royal Decree 765/2022, from which it follows that the Order cannot be direct development of the LNA, since it has to go through the provisions of certain provisions of that Royal Decree, and specifically by its scope of application and by the **unladen mass of Article 1(4) of the Royal Decree cited**.

Its status is that of Ministerial Order, and seeks the replacement of a regulation of the same status, Article 24(2) of Law 50/1997, of 27 November 1997, of the Government.

The Council of State has repeatedly declared that the regulatory status of a regulatory rule that replaces a previous one of the same status is appropriate (Opinions 458/2019, 487/2019, 548/2019, among others).

III.2(d) Entry into force:

In the **third final provision**, its entry into force is set on the day following that of its complete publication in the 'Official State Gazette'.

The reasons for non-application of the dates of entry into force provided for in the first paragraph of Article 23 of Law 50/1997 of 27 November 1997, of the Government, as well as the 20 days of Article 2(1) of the Civil Code, consist of the following:

1. The draft seeks to address several of the recommendations issued by CIAIAC to try to promote operational safety in the use of ULM gliders, reasons which, moreover, have led to the promotion of this initiative apart from the more ambitious non-EASA aircraft. Safety, as part of aviation safety, is integral to the overriding reason in the general interest of public safety[7]. The provision to coincide with the date of entry into force on 2 January or 1 July following the adoption of the regulation in order to make it coincide with relevant dates for the accounting, taxation or accountability of those engaged in an economic or professional activity, must surrender to this overriding reason in the public interest.

2. The vast majority of ULM gliders are engaged in general aviation operations, i.e. operations other than those specialised (commercial or not) and commercial air transport, so the draft is aimed mainly at a mostly recreational or sports sector.

3. After the approval of Royal Decree 765/2022 of 20 September 2022, the entry into force of this Order, the adoption of which is provided for in the transitional provision, requires speed, since the part of the sector affected by the unladen mass limit of Article 1(4) and the first additional provision of the Royal Decree, is awaiting the determination of the new legal regime applicable to take the appropriate decisions.

4. In addition, the Order includes some facilities for the sector, such as the possibility of validating the type design of certain ULM gliders under the design compliance declaration regime once it is registered by AESA, or the possibility of issuing a CoA to foreign aircraft when they have a valid TC issued by the aeronautical authority of an EEA Member State, without further formality, or after recognition in the case of TC issued by the aeronautical authority of a third country that is not part of the EEA, which can generally help boost the sector.

III.2(e) Detailed list of regulations that will be repealed as a result of the entry into force of the regulation.

The Order of 14 November 1988 establishing airworthiness requirements for Ultralight Motorised Gliders is repealed.

IV. DESCRIPTION OF THE PROCEDURE:

[7] Article 3, definition 11 of Law 17/2009 of 23 November 2009, on free access to and exercise of services activities, to which Article 5 of Law 20/2013 of 9 December 2013 also refers, on the guarantee of market unity.

IV.1 Prior public consultation (Article 26(2) of Law 50/1997 of 27 November 1997, of the Government):

In accordance with the provisions of Article 133 of Law 39/2015 of 1 October 2015 and Article 26(2) of Law 50/1997 of 27 November 1997, the State Aviation Safety Agency submitted the initiative to prior public consultation for a period of not less than 15 calendar days, **from 9 April to 6 May 2019**, on the website of the then Ministry of Development.

During this, five contributions were submitted, namely:

- Three individuals related to the sector;

- The Association of Light Aircraft Pilots of the Canary Islands; and

- The Royal Flying Club of Seville.

In these hearings, the possibility of carrying out maintenance by the owner and the recognition of certificates issued in other countries was positively assessed, in addition to other considerations outside the object of the draft.

All proposals were analysed and taken into account by AESA.

IV.2 Public hearing.

The draft has been submitted to the public for more than 15 working days, **from 5 December 2022 to 13 January 2023**, through its publication on the website of the Ministry of Transport, Mobility and Urban Agenda, and the organisations representing the sector have been heard.

In addition, the draft was forwarded to the Spanish Aviation Safety and Security Agency (AESA), the Civil Aviation Accidents and Incidents Investigation Committee (CIAIAC), the Directorate-General of Armament and Material, and the Directorate-General of Infrastructure, both of the Ministry of Defence; to the Directorate-General for Consumer Affairs of the Ministry of Consumer Affairs; to the Directorate-General for the Rights of Persons with Disabilities of the Ministry of Social Rights and Agenda 2030; to the Directorate-General for Industry and Small and Medium-sized Enterprises of the Ministry of Industry, Trade and Tourism; and to the Maritime Rescue and Safety Society (SASEMAR) of the Ministry of Transport, Mobility and Urban Agenda, without prejudice to the mandatory reports that must subsequently be collected.

During this procedure, **comments were submitted by** Ineco (Engineering and Economy of Transport S.M.E. M.P. S.A.); AEPAL (Spanish Light Aircraft Association); RACE (Royal Spanish Flying Club); RFAE (Royal Spanish Aeronautical Federation), reproducing in full AEPAL's arguments; as well as various individuals. The CIAIAC has reported on the draft, making an assessment of which of its safety recommendations would be addressed by the draft, which would be only partially addressed, and which would remain unaddressed, without prejudice to the final decision that could be taken by the Plenary of the CIAIAC.

The report annexed to the present report reflects the assessment made of all the comments submitted on the draft.

In addition, **reporting the draft explicitly without comment were** the Directorate-General for the Rights of Persons with Disabilities; AENA (Aena, SME S.A.); ENAIRE E.P.E.; the Galician Innovation Agency; and the Directorate-General for Consumer Affairs.

On the other hand, **no comments have been submitted nor have they reported the draft without comment from the following: State Aviation Safety Agency**; the Directorate-General for Arms and Materials and the Directorate-General for Infrastructure, both of the Ministry of Defence; the Directorate-General for Industry and Small and Medium-sized Enterprises of the Ministry of Industry, Trade and Tourism; nor the Maritime Rescue and Safety Society (SASEMAR) of the Ministry of Transport, Mobility and Urban Agenda.

IV.3 Reports collected.

The draft must be reported by the Technical Secretariat-General of the Ministry of Transport, Mobility and the Urban Agenda, in accordance with Article 14(1)(b) of Royal Decree 645/2020 of 7 July 2020, which develops the basic organic structure of the Ministry of Transport, Mobility and the Urban Agenda.

The Opinion of the Council of State does not need to be obtained, since the regulatory rule representing the draft does not imply the execution, fulfilment or development of international treaties, conventions or agreements or European Community law, nor does it require the implementation of the draft legislation in the Laws, as well as their amendments (Article 22(2) and (3), of Organic Law 3/1980 of 22 April 1980, of the Council of State), but is a regulatory rule that develops another regulatory rule, in this case Royal Decree 765/2022 as explained in the section dedicated to justifying the authorisation and regulatory status of the draft.

IV.4 Notification to the European Commission

The draft constitutes a technical regulation, and therefore, in compliance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, it will be forwarded, through the regulatory framework, to the Commission services of the European Union.

V. IMPACT ANALYSIS.

V.1 Budgetary impact

The draft has no budgetary impact, because it does not affect the budgets of the State, the Autonomous Communities, Local Entities or other bodies, entities or authorities of the institutional public sector. It does not lead to an increase in public spending, nor an increase in revenue.

V.2 Gender impact:

The draft is considered gender neutral, meaning its impact is also considered zero, because its provisions are gender neutral, and so it does not conceive of any reason why its application could result in differential and unjustified treatment of people on the basis of their gender, in addition to the fact that its scope is projected on impersonal objects, such as the airworthiness of ultralight motorised gliders (ULM) and aircraft constructed by amateurs.

V.3 Impact on childhood, family and adolescence:

The draft is considered to have no impact in these areas, for the same reasons as those given in relation to gender impact. In particular, the draft does not contain any provision related to the family or the age of the recipients.

V.4. Impact on equal opportunities, non-discrimination and universal accessibility for persons with disabilities

There is no impact on equal opportunities, non-discrimination and universal accessibility of persons with disabilities, because the draft regulates aspects related to the safety of aircraft, their airworthiness, and in no case on their accessibility. Nor does the purpose of the draft establish limitations on access for medical reasons or physical or motor capacity of persons to ULM gliders, or to design or production organisations.

V.5 Environmental impact and climate change:

Nor can an impact be noted on the environment or on climate change, because the object of the draft does not include matters related to the environment or climate change, nor is it the development of regulations in these material areas.

V.6 Impact on market unity:

The impact on market unity is also zero, because it develops competences exclusively assigned to the State in a uniform manner for the entire national territory.

V.7 Social affairs impact:

Nor is there any social affairs impact, since it does not affect the relations between employees and employers or the social security system.

V.8 Other impacts:

The measures laid down in this draft do not have an impact on market unity because they develop competences conferred exclusively on the State in a uniform manner for the entire national territory.

Nor is there any social affairs impact, since it does not affect the relations between workers and employers, nor the Social Security regime, nor does it see a significant impact on the environment and climate change, beyond that the draft seeks to provide operational safety and promote the activity with ULM gliders.

Finally, there is no impact on equal opportunities, non-discrimination or universal accessibility for persons with disabilities.

The regulation does not incorporate regulations of the International Civil Aviation Organisation (ICAO).

In relation to real impact on the sector (mainly recreation and sport), it is expected that, as a result of the adoption of the draft, in general terms, and always in relation to ULM gliders, there will be:

1. An increase in safety of use, mainly linked to the introduction of continued airworthiness requirements; and

2. An increase in the number of aircraft operating in Spain, mainly due to:

    a. The possibility to accept type-designs based on declarations of design compliance; and due to

    b. The possibility of granting restricted CoAs on the basis of a restricted TC issued by any aeronautical authority in the European Economic Area, or by any aeronautical authority of a third country whose type design certification system ensures safety levels equivalent to that laid down in this Order, and has previously been recognised by decision of the competent body on the matter of the State Aviation Safety Agency.

In relation to the impact of the first transitional provision, it is necessary to start from the fact that, according to the data provided by AESA as of July 2023, there are **57 valid restricted TCs issued by AESA** and **1656 ULM gliders registered in Spain** (i.e. with a Spanish restricted CoA issued by AESA).

Of these 1656 ULM gliders, it has been calculated that **171 will be affected by the unladen mass limit of the first transitional provision**. That is, 171 ULM gliders will have to adapt to the new regulation in one of the ways provided for in the first transitional provision, or otherwise they will not be able to continue operating.

Regarding the number of ULM gliders that will opt for **carrying out an amendment of its restricted TC or a modification of the aircraft itself [option in paragraph 2(a) and (b) of first transitional provision]**, it is very difficult to make an estimate, although of those 171 aircraft, 27 are in the name of flying clubs, which, due to their greater capacity compared to non-associated individuals, may be more likely to adapt to the new regulation by one of these two routes. Moreover, the Flight Schools, in addition to their greater capacity compared to non-associated individuals, will be encouraged to adapt to the new regulation by one of these two routes, since in many cases they require the ability to board two occupants on their aircraft in order to carry out flight practice.

With regard to the option of **continuing to fly these aircraft but with a single occupant in compliance with a future airworthiness directive issued by AESA [option in paragraph 4 of first transitional provision]**, it is considered that they could be, if all, if at least the vast majority of ULM gliders affected by the unladen mass limit, since the 171 aircraft that in principle would not comply with the new regulation have been found to be all two-seater models.

Finally, on the aircraft for which there is a requirement of **issue of a permit to fly on grounds that the aircraft is safe for flight with a maximum take-off mass higher than that indicated in the restricted type certificate [option in paragraph 5 of first transitional provision]**, it is not possible to make a reliable estimate, but in any case it is considered that this option will be the one chosen mainly for those two-seater aircraft affected by the unladen mass limit (all are two-seater), where it cannot be chosen to carry out a modification of their restricted TC or in the aircraft itself [option in paragraph 2(a) and (b) of the first transitional provision], and nevertheless if the target is to continue operating with two occupants on board without adapting to a future AESA airworthiness directive establishing

such a limitation. The latter route is expected to be a minority, and AESA will have to assess the circumstances of each specific case, analysing in a reasoned manner the justification provided by the interested parties to attempt to demonstrate that the aircraft is nevertheless safe for flight with a maximum take-off mass greater than that indicated in the type-certificate.

Irrespective of the route used to adapt to the new regulation, **this process will require an evaluation by AESA**, therefore if the TC holder or the interested party (depending on the chosen track) is not able to demonstrate that the aircraft included in the TC or individual aircraft can adapt to the new regime, the only possible option to continue flying would be to do so with a single occupant, in compliance with a future airworthiness directive issued by AESA [option in paragraph 4 of the first transitional provision].

The expectation conveyed by AESA is that the 171 ULM gliders affected by the new unladen mass limit will end up fulfilling this unladen mass in one way or another and no aircraft will remain grounded. After the two years of the transition period, in the worst case some of these ULM gliders would be limited to operating as a single-seater, without prejudice to resorting, after the two years of the transition period, to the route of the flight authorisations which, although they are granted for a limited period of time, can be applied without limit for successive flight authorisations, or to proceed to the adaptation of the TCs or aircraft in accordance with the options for adaptation to the unladen mass provided for in the first transitional provision, since the adaptation routes to the unladen mass limit will remain available even after the two years of the transitional period.

In any case, no ULM glider of the 171 affected by the transition would inevitably remain on the ground without being able to operate in any way, but in the worst case scenario would be limited to only use by a single occupant (the pilot).

VI. EX POST EVALUATION.

Given the nature and content of the regulation, and having considered the provisions of Article 28(2) of the Government Act, and Article 3 of Royal Decree 286/2017 of 24 March 2017, regulating the Regulatory Annual Plan and the Regulatory Annual Evaluation Report of the General Administration of the State and establishing the Regulatory Planning and Evaluation Board, it is considered that it is not necessary to evaluate it for its results.