Commission Implementing Regulation (EU) 2017/830 of 15 May 2017 amending Regulation (EC) No 474/2006 as regards the list of air carriers which are banned from operating or are subject to operational restrictions within the Union (Text with EEA relevance)

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(Text with EEA relevance)

THE EUROPEAN COMMISSION

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air passengers of the identity of the operating carrier, and repealing Article 9 of Directive 2004/36/CE[(1)], and in particular Article 4(2) thereof,

Whereas:

(1) Commission Regulation (EC) No 474/2006[(2)] establishes the list of air carriers which are subject to an operating ban within the Union.

(2) In accordance with Article 4(3) of Regulation (EC) No 2111/2005, certain Member States and the European Aviation Safety Agency ('EASA') communicated to the Commission information that is relevant in the context of updating that list. Relevant information was also provided by third countries and international organisations. On the basis of that information, the list should be updated.

(3) The Commission informed all air carriers concerned, either directly or through the authorities responsible for their regulatory oversight, about the essential facts and considerations which would form the basis of a decision to impose an operating ban on them within the Union or to modify the conditions of an operating ban imposed on an air carrier which is included in the lists in Annex A and B of Regulation (EC) No 474/2006.

(4) The Commission gave the air carriers concerned the opportunity to consult the documents provided by the Member States, to submit written comments and to make an oral presentation to the Commission and to the Committee established by Council Regulation (EEC) No 3922/1991[(3)] ('Air Safety Committee').

(5) The Commission has updated the Air Safety Committee on the ongoing joint consultations, within the framework of Regulation (EC) No 2111/2005 and Regulation (EC) No 473/2006[(4)], with the competent authorities and air carriers of Benin, Bolivia, India, Indonesia, Libya, Mozambique, Nigeria, Pakistan, Saint Vincent and

the Grenadines, Thailand, Ukraine and Zimbabwe. The Commission also provided information to the Air Safety Committee on the aviation safety situation in Afghanistan, Angola, Equatorial Guinea, Georgia, Kazakhstan, Lebanon and Nepal and on the technical consultations with the Russian Federation.

(6) EASA presented the results of the analysis of audit reports carried out by the International Civil Aviation Organisation ('ICAO') to the Commission and the Air Safety Committee, in the framework of ICAO's Universal Safety Oversight Audit Programme. In this context, Member States were invited to prioritise ramp inspections on air carriers licensed by states in respect of which Significant Safety Concerns have been identified by ICAO or in respect of which EASA concluded that there are significant deficiencies in the safety oversight system. In addition to the consultations undertaken by the Commission in accordance with Regulation (EC) No 2111/2005, the prioritisation of ramp inspections provides further information on the safety performance of the air carriers licensed in those third countries.

(7) EASA also informed the Commission and the Air Safety Committee of the results of the analysis of ramp inspections carried out under the Safety Assessment of Foreign Aircraft programme (SAFA) in accordance with Commission Regulation (EU) No 965/2012[(5)].

(8) In addition, EASA informed the Commission and the Air Safety Committee about the technical assistance projects carried out in third countries affected by measures or monitoring requirements laid down in Regulation (EC) No 2111/2005. EASA provided information on the plans and requests for further technical assistance and cooperation to improve the administrative and technical capability of civil aviation authorities, with a view to helping resolve non-compliance with applicable international civil aviation standards. Member States were invited to respond to such requests on a bilateral basis, in coordination with the Commission and EASA. In this regard, the Commission reiterated the usefulness of providing information to the international aviation community, particularly through ICAO's Safety Collaborative Assistance Network database, on technical assistance provided by the Union and Member States to improve aviation safety around the world.

(9) Eurocontrol provided the Commission and the Air Safety Committee with an update on the status of the SAFA alarming function and on the current statistics for alert messages for banned air carriers.

Union air carriers

(10) Following the analysis by EASA of information resulting from ramp inspections carried out on aircraft of Union air carriers or from standardisation inspections carried out by EASA, as well as specific inspections and audits carried out by national aviation authorities, several Member States have taken certain enforcement measures and informed the Commission and the Air Safety Committee about those measures. The United Kingdom informed the Commission and the Air Safety Committee about actions it had taken with regard to the air carrier *Blu Halkin Ltd.*

(11) Member States reiterated their readiness to act as necessary should any relevant safety information indicate that there are imminent safety risks as a consequence of a lack of compliance by Union air carriers with the appropriate safety standards.

Air carriers from Benin

(12) From 29 to 31 March 2017, a Union on-site assessment visit was conducted in Benin. Experts from the Commission, EASA and one Member State participated in that visit. During that visit, the Agence Nationale de l'Aviation Civile of Benin ('ANAC Benin') demonstrated that it has made strong progress in recent years in the implementation of ICAO standards and recommended practices.

(13) The ANAC Benin is established as a civil aviation authority with financial and functional autonomy by Benin's Aviation law adopted in 2013. Evidence indicates that the ANAC Benin is capable of maintaining and enforcing a sound regulatory system and it appears that the national regulations are continuously updated when new amendments to ICAO standards and recommended practices are adopted. However, during that visit certain areas for improvement were identified, notably with regard to the time needed for the completion of the amendment process of the national regulations. The ANAC Benin has provided evidence that it has put in place a solid process for the recruitment and training of its personnel. Since the number of fully qualified inspectors exceeds requirements in light of the current level of aviation activities in Benin, the ANAC Benin has concluded exchange programmes for its inspectors with its neighboring countries.

(14) During the visit, the ANAC Benin has provided evidence that the certification of air carriers is conducted in accordance with the ICAO process and that all activities are well documented. While evidence indicates that the ANAC Benin has the capabilities to oversee the aviation activities in Benin, the effectiveness of those oversight activities could be even further improved if they were more driven by the results of a solid safety risk assessment.

(15) On 26 April 2017, the ANAC Benin presented to the Commission and the Air Safety Committee the corrective actions taken to address the observations made during the Union on-site assessment visit. The ANAC Benin also informed on a number of measures it took to further improve aviation safety in Benin. Those measures include the strengthening of the implementation of the safety oversight critical elements, as well as the conclusion of a number of working arrangements with authorities from other countries for the provision of additional inspectors if the level of operations would require this.

(16) On the basis of all information available at present, including the results of the visit of March 2017, the Commission considers that the ANAC Benin have made sustained improvements over a continuous time period. It is also recognised that there has been no lack of willingness of the ANAC Benin to engage on an ongoing basis with the Commission. The information available leads to the conclusion that the ANAC

Benin has the ability to discharge its responsibilities with respect to the oversight of air carriers certified in Benin.

(17) In accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, the Commission therefore considers that the list of air carriers which are subject to an operating ban within the Union should be amended to remove all air carriers certified in Benin from Annex A to Regulation (EC) No 474/2006.

(18) Member States are to continue to verify the effective compliance with relevant safety standards through the prioritisation of ramp inspections to be carried out on air carriers certified in Benin, pursuant to Regulation (EU) No 965/2012.

(19) Should any relevant safety information indicate that there are imminent safety risks as a consequence of a lack of compliance with international safety standards, the Commission may be obliged to take further action, in accordance with Regulation (EC) No 2111/2005.

Air carriers from Bolivia

(20) No major safety problems were identified on air carriers registered in Bolivia in the past years. However, the fatal accident of the air carrier *LaMia*, on 29 November 2016, raised concerns on the manner in which the Bolivian authorities are conducting safety oversight on air carriers under their responsibility.

(21) On 23 March 2017, a technical consultation meeting was held between representatives of the Commission, EASA and a Member State and senior representatives from the Directorate General of Civil Aviation of Bolivia ('DGAC'). During that meeting, the DGAC explained the changes in terms of reorganisation and its plans to implement a robust safety culture, establish an overall and cross-domain safety system, create a comprehensive safety database to focus on risks and improve the oversight procedures and training of its staff.

(22) The DGAC explained that, already before the *LaMia* accident took place, the Bolivian government had adopted decisions improving the managerial structure of the DGAC in order to strengthen the civil character of the DGAC vis-a-vis the former military approach. Also, the government is currently investing in mechanisms to improve safety oversight and modify the national legal framework to better allow for the DGAC to take effective enforcement measures where necessary. Those measures demonstrate the willingness of the Bolivian authorities to strengthen their safety oversight capabilities, although their effectiveness will depend on their implementation and there remains considerable scope for the Bolivian authorities to further strengthen the safety oversight capabilities of the DGAC.

(23) At the Commission's request and further to the technical consultation meeting, the DGAC provided useful information on its licensing, certification and oversight activities and qualification and training of the staff in charge of safety oversight. The DGAC also provided information on the accidents and serious incidents that occurred in 2016 and 2017.

(24) Based on the information currently available, including the information provided during and after the technical consultation meeting of 23 March 2017, it is assessed that there is currently no lack of ability nor a lack of willingness on the part of the DGAC of Bolivia to address any safety deficiencies.

(25) In accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, the Commission therefore considers that, at this time, there are no grounds for amending the list of air carriers which are subject to an operating ban within the Union by including air carriers from Bolivia.

(26) Member States are to continue to verify the effective compliance with relevant safety standards through the prioritisation of ramp inspections to be carried out on air carriers certified in Bolivia, pursuant to Regulation (EU) No 965/2012.

(27) Should any relevant safety information indicate that there are imminent safety risks as a consequence of a lack of compliance with international safety standards, the Commission may be obliged to take further action, in accordance with Regulation (EC) No 2111/2005.

Air carriers from India

(28) On 28 March 2017, a technical consultation meeting was held between the Commission, EASA, Member States and representatives from the Directorate-General of Civil Aviation of India (‘DGCA India’). That meeting was held within the context of an earlier agreement with the DGCA India, pursuant to Article 3(2) of Regulation (EC) No 473/2006, to hold regular technical consultations with the Commission in order to discuss the obligations of the DGCA India with regard to the certification and surveillance of the air carriers it has certified.

(29) During that meeting, the DGCA India provided information on its analysis of the performance under the SAFA programme of air carriers certified in India, including a comparison of performance data from 2016 and 2017 and specific information on its surveillance of the air carrier *Air India*, certified in India. The DGCA India also provided information on developments as regards its surveillance capability, including the development of a ‘ramp inspection database’.

(30) During that meeting, the Commission reiterated to the DGCA India a number of elements with respect to the DGCA India's certification and surveillance obligations. In particular, while noting the transparent manner in which the DGCA India has provided safety-related information to the Commission, it stressed the importance of the continuous development of the DGCA India's certification and surveillance capability, including the recruitment and training of technical personnel, as well as the need to develop tools allowing for the systematic tracking and monitoring of safety oversight.

(31) Based on the information currently available, including the information provided by the DGCA India at the technical consultation meeting of 28 March 2017, it is assessed that there is currently no lack of ability nor a lack of willingness on the part of the DGCA India to address safety deficiencies.