Commission Implementing Regulation (EU) 2016/2214 of 8 December 2016 amending Regulation (EC) No 474/2006 as regards the list of air carriers which are subject to an operating ban within the Union (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2214

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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 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)] established the list of air carriers which are subject to an operating ban within the Union, referred to in Chapter II of Regulation (EC) No 2111/2005.

(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 communicated 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 for 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 list.

(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 on-going joint consultations, in the framework of Regulation (EC) No 2111/2005 and Commission Regulation (EC) No 473/2006[(4)], with the competent authorities and air carriers of Afghanistan, Benin, India, Indonesia, Iran, Kazakhstan, Kyrgyz Republic, Libya,

Mozambique and Thailand. The Commission also provided information to the Air Safety Committee on the aviation safety situation in Cameroon, Democratic Republic of Congo, the Dominican Republic, Iraq, Lebanon, Nepal, the Philippines and Sudan and on the technical consultations with the Russian Federation.

(6) EASA presented to the Commission and the Air Safety Committee the results of the analysis of audit reports carried out by the International Civil Aviation Organisation ('ICAO') 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 ('SSC') 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 under Regulation (EC) No 2111/2005, the prioritization of ramp inspections will allow the acquisition of further information regarding the safety performance of the air carriers licensed in those states.

(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 states affected by measures or monitoring under Regulation (EC) No 2111/2005. It 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 any 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 underlined the usefulness of providing information to the international aviation community, particularly through ICAO's Safety Collaborative Assistance Network ('SCAN') database, on technical assistance provided by the Union and its 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. Greece informed the Commission and the Air Safety Committee about actions it had taken with regard to the air carrier *Olympus Airways*.

(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 Afghanistan

(12) By letter of 10 January 2016, the Civil Aviation Authority of the Islamic Republic of Afghanistan ('ACAA') informed the Commission about the progress in the implementation of the Afghanistan aviation law, the Afghanistan civil air regulations, the organisation of the ACAA, including the staffing and the training of inspectors, the procedure for certification of air carriers, results of the safety oversight activities conducted on air carriers certified in Afghanistan for the years 2014 and 2015, the reported safety occurrences and information on the accident investigations into recent accidents.

(13) This information shows that a basic safety oversight system has been established in Afghanistan, but that there needs to be further development in the actual implementation of all international civil aviation safety standards. The information provided by the ACAA on safety oversight activities is superficial. The ACAA showed that during audits and inspections findings and observations are raised, however no evidence has been provided on the resolution of those findings, including a root-cause analysis and proper follow up by the air carriers concerned.

(14) The ACAA indicated that the air carrier *Pamir Airlines* no longer holds an air operator certificate and that the passenger air carriers *Afghan Jet International Airlines* (AOC 008) and *East Horizon Airlines* (AOC 1013) have been certified by the ACAA. The ACAA did not provide evidence that the safety oversight of those two air carriers is ensured in compliance with international safety standards.

(15) In accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, it is therefore assessed that the Community list of air carriers which are subject to an operating ban within the Union should be amended to remove the air carrier *Pamir Airlines* from Annex A to Regulation (EC) No 474/2006 and to include the air carriers *Afghan Jet International Airlines* and *East Horizon Airlines* in Annex A to Regulation (EC) No 474/2006.

Air carriers from Benin

(16) By its letter of 20 July 2016, the Agence Nationale de l'Aviation Civile of Benin ('ANAC Benin') informed the Commission that the air operator certificate of the air carriers *Aero Benin*, *Benin Golf Air*, *Cotair*, *Royal Air Limited*, *Trans Air Benin*, *Alafia Jet*, *Benin Littoral Airways* and *Africa Airways* had been revoked.

(17) By its letter of 18 November 2016, the ANAC Benin informed the Commission that a new air carrier, namely *Air Taxi Benin* (AOC No. BEN 004 ATB-5), had been certified since the last update it provided to the Commission. However, the

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/2214. (See end of Document for details)*

ANAC Benin did not provide evidence that the safety oversight of that air carrier is ensured in compliance with international safety standards.

(18) In accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, it is therefore assessed that the Community list of air carriers which are subject to an operating ban within the Union should be amended to include *Air Taxi Benin* in Annex A to Regulation (EC) No 474/2006 and to remove *Aero Benin*, *Benin Golf Air*, *Cotair*, *Royal Air Limited*, *Trans Air Benin*, *Alafia Jet*, *Benin Littoral Airways* and *Africa Airways* from that Annex.

Air carriers from India

(19) On 8 November 2016, technical consultations were held between the Commission, EASA, a Member State and representatives from the Directorate-General of Civil Aviation of India ('Indian DGCA') and the air carrier *Air India*, certified in India. Those consultations were held within the context of the earlier agreement with the Indian DGCA, 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 Indian DGCA with regard to the certification and surveillance of the air carriers it has certified.

(20) During those consultations, the Indian DGCA provided information, which included analysis from its ramp inspection unit, on the performance of Indian air carriers under the SAFA programme, including that of *Air India*. In particular, the Indian DGCA provided detail on its interaction with *Air India* and other air carriers certified in India, within the context of its certification and surveillance obligations. In this regard the Indian DGCA provided an overview of surveillance activities, which included a summary of data for 2015 and 2016. The Indian DGCA also provided an update on its database management development programme.

(21) *Air India* provided updated information with respect to its SAFA management programme, including specific information on how it manages reoccurring SAFA trend information. As regards its safety and quality management system, *Air India* reported on its internal meeting and organisational structure, on how flight safety information is disseminated and on its engagement with internal and external stakeholders.

(22) During those consultations, the Commission reiterated to the Indian DGCA a number of elements with respect to the Indian DGCA's certification and surveillance obligations. In particular, whilst taking account of the transparent manner in which the Indian DGCA has provided safety related information to the Commission, that there is a continued need for a proactive approach by the Indian DGCA to the further development of its internal processes regarding certification and surveillance, including the tracking and monitoring of safety oversight as well as the follow up of findings.

(23) In respect to *Air India*, whilst taking note of the level of detail *Air India* was able to provide, and the transparent manner in doing so, the Commission reiterated that sustainable improvements under the SAFA programme must remain a focused priority.

(24) The Commission takes note of the information provided by the Indian DGCA and *Air India.* It is considered that, on the basis of all information currently available, including the detailed information provided by both the Indian DGCA and *Air India* at the technical consultation meeting of 8 November 2016, as well as the granting by EASA of Third Country Operator ('TCO') authorisations under Commission Regulation (EU) No 452/2014[(6)] to several air carriers certified in India, including *Air India*, there are at this stage no grounds for imposing an operating ban or operational restrictions on air carriers certified in India.

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

(26) The Commission intends to continue its official consultations with the Indian DGCA, pursuant to the provisions laid down in Article 3(2) of Regulation (EC) No 473/2006, in particular in order to discuss the safety measures implemented by both the Indian DGCA and air carriers certified in India, including *Air India*, on an ongoing basis.

(27) 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 Indian air carriers, pursuant to Regulation (EU) No 965/2012.

(28) 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 Indonesia

(29) Consultations with the Directorate-General of Civil Aviation of Indonesia ('DGCA Indonesia') continue with the aim of monitoring the progress of the DGCA Indonesia in ensuring that the aviation safety oversight system in Indonesia is brought in compliance with international safety standards. In that context, by letter of 15 November 2016, the DGCA Indonesia provided the Commission with additional information.

(30) That letter included information on the decision on 15 August 2016 by the United States Federal Aviation Administration ('FAA') to upgrade the status of Indonesia to category 1 of the FAA's International Aviation Safety Assessment. The DGCA Indonesia expects an ICAO Coordinated Validation Mission in 2017 to verify the progress. The assessment by the Commission of the information that was provided by the DGCA Indonesia shows that the effective implementation of international safety standards is still at a low level and the DGCA Indonesia needs to continue to work on the implementation of corrective actions.

(31) Through that letter the DGCA Indonesia also informed the Commission that four new air carriers had been certified since the last update provided by the DGCA