Commission Implementing Regulation (EU) 2015/2322 of 10 December 2015 amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community (Text with EEA relevance)

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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 Community 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, some 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 certain third countries. On the basis of that information, the Community 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 on them an operating ban within the Union or to modify the conditions of an operating ban imposed on an air carrier which is included in the Community 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)] (the '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 Regulation (EC) No 473/2006[(4)], with the competent authorities and air carriers of Botswana, the

Republic of Guinea, India, Indonesia, Iran, Iraq, Kazakhstan, Lebanon, Madagascar, Mozambique, Nepal, the Philippines, Sudan, Taiwan, Thailand and Zambia. The Commission also provided information to the Air Safety Committee on the aviation safety situation in Georgia, Libya, São Tomé and Príncipe, Tajikistan and Yemen 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 ('USOAP'). In this context, Member States were invited to prioritize 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. In this context, 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. Malta informed the Commission and the Air Safety Committee about certain actions it had taken with regard to a number of Maltese air carriers and Estonia reported

on the situation of the air carrier *AS Avies*. Prior to the meeting of the Air Safety Committee, Greece provided information about certain actions it had taken with regard to a number of Greek air carriers.

(11) 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, Member States reiterated their readiness to act as necessary.

Air carriers from Botswana

(12) The Civil Aviation Authority of Botswana ('CAAB') provided information on the progress of the resolution of the SSCs and other ICAO findings in a letter of 27 August 2015. The CAAB demonstrated that it has made further progress with respect to the implementation of international safety standards. The CAAB is engaged with the ICAO Regional Office to receive further assistance in the resolution of the SSCs and other findings. The CAAB has invited ICAO to perform an ICAO Coordinated Validation Mission ('ICVM') before the end of 2015 in order to verify the resolution of the SSCs.

(13) The improved implementation of international safety standards and the available safety information do not support a decision to impose a ban or operational restrictions on air carriers certified in Botswana. However, the Commission considers that the situation should continue to be closely monitored.

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

Air carriers from the Republic of Guinea

(15) As agreed in the technical meeting with the Commission, held in Brussels in January 2013, the competent authorities of the Republic of Guinea, the Direction nationale de l'aviation civile ('DNAC'), have regularly provided the Commission with information on the on-going implementation of the Corrective Action Plan, which was approved by ICAO in December 2012, as well as on all the activities linked to it.

(16) The latest progress report submitted by the DNAC, received by the Commission on 10 August 2015, sets out the most recent activities and developments regarding the implementation of the Corrective Action Plan, which currently concentrate on the status of the certification process of the air carriers and the registration of aircraft. All previously existing Air Operator Certificates ('AOCs') were suspended at the end of March 2013. The full ICAO-compliant (5-phase) certification of the air carriers *Eagle Air* and *PROBIZ Guinée* has been concluded and those air carriers obtained their AOCs respectively on 10 April 2015 (AOC no. 1/DNAC/2015) and 4 August 2015 (AOC no. 2/DNAC/2015). Four other air carriers, namely *Konair, Sahel Aviation Guinée, Fly Nimba Airlines* and *Ijet Aviation*, also initiated the certification process.

(17) The registration of aircraft has progressed and DNAC reported that five new aircraft have been added to the aircraft registry.

(18) The gradual implementation of the Corrective Action Plan, in accordance with what was approved by ICAO in December 2012, and the available safety information do not justify, at present, a decision to impose a ban or operational restrictions on air carriers certified in the Republic of Guinea. However, the situation should continue to be closely monitored.

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

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

Air carriers from India

(21) On 20 October 2015, technical consultations were held between the Commission, EASA, Member States and representatives from the Directorate General of Civil Aviation of India ('Indian DGCA') and the air carrier *Air India*. The Indian DGCA provided details with respect to ongoing sustainability measures that it has implemented with respect to its safety oversight capability. The technical consultations were also used as an opportunity to discuss with the Indian DGCA the interaction of Indian air carriers with the SAFA programme.

(22) These consultations made clear that, even though certain measures have been implemented by the Indian DGCA to ascertain the sustainability of the improvements in aviation safety taken so far, a need for further action in various areas has been identified. On the other hand, the Indian DGCA is making use of the SAFA database to monitor the performance of Indian air carriers under the SAFA programme. That is evident *inter alia* from the fact that the Indian DGCA reported that in June 2015 it had met with *Air India* to discuss the processes in place within *Air India* pertaining to how *Air India* manages its performance under the SAFA programme.

(23) *Air India* provided an overview of its safety management system, a summary of SAFA statistical information by fleet, examples of its safety management programme communication strategy and details of the SAFA process it has deployed for continuous improvement.

(24) In letters dated 29 October 2015, as a follow-up to the technical consultations, the Commission reiterated to the Indian DGCA a number of messages, including that the SAFA performance of Indian air carriers should be monitored more carefully. The Commission also indicated to *Air India* that progress as regards SAFA process management must be demonstrated through its performance under the SAFA

programme. Both the Indian DGCA and *Air India* were made aware of the responsibility EASA has pursuant to Commission Regulation (EU) No 452/2014[6] (Part TCO) to conduct safety assessments of third country operators and that performance under the SAFA programme is one of the key elements which EASA takes into account when conducting those assessments.

(25) The Commission took note of the information provided by the Indian DGCA and *Air India*. It was assessed that, on this occasion, no ban or operational restrictions on air carriers certified in India are necessary, but that further technical consultations remain necessary in order to ensure that safety-related matters can be discussed on an ongoing basis.

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

(27) 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.

(28) 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.

Air carriers from Indonesia

(29) Consultations with the competent authorities of Indonesia, the Directorate General of Civil Aviation of Indonesia (‘Indonesian DGCA’), continue with the aim of monitoring the progress of the Indonesian DGCA in ensuring that the safety oversight of all air carriers certified in Indonesia is brought in compliance with international safety standards. Following the ICAO audit of May 2014, the Indonesian DGCA has finalised the Corrective Action Plan and is in the process of completing the corrective actions set out therein. At the request of the Indonesian DGCA, a technical meeting was organised on 29 October between the Commission, EASA, certain Member States and the Indonesian DGCA, as well as the air carriers *Citilink*, *Lion Air* and *Batik Air*. This meeting made clear that the necessary corrective actions to rectify the findings from previous audits are being prepared, but those actions are still only in varying stages of implementation. The main weakness that was identified is the conduct of inspections on air carriers and aircraft. The procedures to perform this work are in place, but they are not always followed in practice. The number of findings during inspections remains low and the reporting of findings to the companies that are inspected does not always take place in accordance with the applicable procedures. Adequate procedures for the follow-up of findings are missing and the actual follow-up of findings remains weak and deadlines are not respected, nor are they always enforced. The Indonesian DGCA has to deal with around 59 AOCs and a number of these air carriers are growing at a very high pace. It is essential that the Indonesian DGCA keeps up with these developments.