Commission Implementing Regulation (EU) No 368/2014 of 10 April 2014 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[(2)],

Whereas:

(1) Commission Regulation (EC) No 474/2006[(3)] 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 the Community list. Relevant information was also communicated by 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 to the air carriers concerned the opportunity to consult documents provided by 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 (the 'Air Safety Committee')[(4)].

(5) The Air Safety Committee has received updates from the Commission about the ongoing joint consultations, in the framework of Regulation (EC) No 2111/2005 and its implementing Commission Regulation (EC) No 473/2006[(5)], with competent authorities and air carriers of the states of Georgia, the Republic of Guinea, India, Indonesia,

Kazakhstan, Lebanon, Madagascar, the Islamic Republic of Mauritania, Mozambique, Nepal, Philippines, Sudan, the Kingdom of Swaziland, Yemen and Zambia. The Air Safety Committee also received information from the Commission on Afghanistan, Iran and Kirgizstan. The Air Safety Committee also received from the Commission updates about technical consultations with the Russian Federation and concerning the monitoring of Libya.

(6) The Air Safety Committee has heard presentations by EASA about 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). 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 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) The Air Safety Committee has heard presentations by EASA about 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[(6)].

(8) The Air Safety Committee has heard presentations by EASA about the technical assistance projects carried out in states affected by measures or monitoring under Regulation (EC) No 2111/2005. It was informed about the plans of EASA 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 standards. Member States were also invited to respond to those 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 SCAN database, on technical assistance provided by the Union and by its Member States, to improve aviation safety around the world.

(9) The Air Safety Committee has also heard a presentation by ICAO on its ongoing work in relation to the monitoring of the safety performance of its member states, including through ICAO's USOAP programme, demonstrating also the information technology tools which have been developed in this framework. Referring to Assembly Resolution A38-5 (‘Regional cooperation and assistance to resolve safety deficiencies, establishing priorities and setting measurable targets’), ICAO called upon the Air Safety Committee to avoid, where possible, duplication of the activities under Regulation (EC) No 2111/2005 and ICAO's USOAP programme, and encouraged continued collaboration, which could eventually lead to a review of the mandate of the Air Safety Committee.

(10) The Air Safety Committee has also heard a presentation by Eurocontrol providing an update on the status of the SAFA alarming function. In addition to the statistics for alert messages for banned carriers, Eurocontrol focussed on the importance of a correctly

filed flight plan in relation to the SAFA alert. Initial actions have been taken to improve the quality of flight plan filing. Aiming at continuous improvement of the notification and alarming function, further steps are under preparation in close cooperation with the Commission.

Union air carriers

(11) Following the analysis by EASA of information resulting from SAFA ramp checks 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. With regard to the air carrier *Bingo Airways*, Poland informed that it is checking the actual implementation by the air carrier of its corrective action plan, and that it has increased inspections. With regard to the air carrier *Sonnig*, Switzerland informed that a revocation procedure had been initiated against *Sonnig*, following which the air carrier renounced its Air Operator's Certificate (AOC) and its operating license.

(12) 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 Georgia

(13) As a result of findings identified during the ICAO Comprehensive System Audit (CSA) of Georgia in October 2013, ICAO notified to all Contracting States to the Chicago Convention one SSC related to Aircraft Operations.

(14) Having regard to this notification, the Commission entered into formal consultations with the competent authorities of Georgia (GCAA) to seek details of what actions they had taken to address the safety deficiencies identified by the ICAO audit.

(15) To that end, a meeting took place on 17 March 2014 between GCAA, the Commission and EASA. GCAA explained the root-cause of the SSC as well as the details of the Corrective Actions Plan (CAP) submitted to ICAO. The information submitted during the meeting showed the strong commitment of GCAA to implement and enforce the relevant safety standards in accordance with the requirements of the Chicago Convention. GCAA declared during the meeting that all actions which were part of the corrective action plan submitted to ICAO were completed and that they were now waiting for a verification mission to be conducted by ICAO later this year.

(16) On the basis of the information provided by GCAA, the Commission did not deem it necessary to ask the GCAA to appear before the Air Safety Committee. The Commission reported to the Air Safety Committee about the implementation of the CAP developed by GCAA.

(17) In accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005 and in view of the actions taken by the GCAA, it is 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 Georgia. However, should the results of the close monitoring of the implementation by GCAA of the corrective actions plan, on which the Commission will report at the next meeting of the Air Safety Committee, be considered unsatisfactory, the Commission would be forced to take further action in accordance with Regulation (EC) No 2111/2005.

Air carriers from the Republic of Guinea

(18) As agreed in the meeting held in Brussels in January 2013, the competent authorities of the Republic of Guinea (DNAC) have regularly provided information on the ongoing implementation of the Corrective Action Plan (CAP), approved by ICAO in December 2012, as well as all the activities linked to it.

(19) The latest progress report, received on 27 February 2014, details the most recent activities and developments regarding the implementation of the CAP. The revised Civil Aviation Act has been adopted by the Parliament on 5 November 2013 and entered into force on 28 November 2013. A number of draft implementing acts have been transmitted to the government for adoption. A joint ICAO/World Bank mission (2 to 6 December 2013) was conducted to assess the implementation of the CAP and to identify the remaining needs in terms of safety and security. The translation into French of the manuals of procedures for OPS, AIR and AGA is ongoing and should also help raising the safety levels. A number of specific training actions for inspectors have taken place in the areas of resolution of safety concerns, approval of AOC's operational specifications and air navigation services.

(20) The CAP has been updated to reflect these latest developments and submitted to ICAO, using the online CMA tool. Validation of these actions by ICAO is pending.

(21) All previously existing air operator's certificates having been suspended at the end of March 2013, full ICAO-compliant (5-phase) certification of a national air carrier (*PROBIZ Guinée*, with 1 aircraft of type BE90) is still ongoing, with the help and support of a specific CAFAC/BAGASOO mission and simultaneous on-the-job training of DNAC's inspectors on the whole process. The certification process is currently awaiting the approval of the maintenance programme by the FAA which is the authority of the state of registration of the aircraft. *PROBIZ Guinée* does not operate to the Union.

(22) DNAC had requested an ICVM in order to validate the progress in the implementation of the CAP and ICAO was planning to conduct it in May 2014. Recent senior management changes at the Ministry of Transport have caused a delay and the ICVM is tentatively planned for the second half of September 2014.

(23) It is therefore assessed, in accordance with the common criteria set out in the Annex to Regulation (EC) No 2111/2005, 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. 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 would be forced to take action in accordance with Regulation (EC) No 2111/2005.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 368/2014. (See end of Document for details)*

Air carriers from India

(24) The Commission provided the Air Safety Committee with details of recent developments in regard to the oversight of air carriers certified in India by its competent authorities. Of direct relevance is the fact that as a result of the United States Federal Aviation Administration's (FAA) International Aviation Safety Assessment (IASA) visit of September 2013, the FAA on 31 January 2014 announced a downgrade of India's compliance category from Level 1 to 2 as a result of deficiencies identified in the IASA audit.

(25) Previously, in November 2013, the Commission had provided the Air Safety Committee with details in respect to the ability of the competent authorities of India to carry out their oversight obligations in accordance with international standards including that of the Chicago convention. Specific reference was made to the ICAO Coordinated Validation Mission (ICVM) of December 2012 and the follow up ICVM of August 2013. In addition, reference was made to correspondence the Commission had previously sent to the Indian authorities with reference to safety concerns. Following the August 2013 ICVM, ICAO formally closed the two Significant Safety Concerns, which was reported to the November 2013 Air Safety Committee. The final published report of the ICVM provides details of the corrective actions taken by the Indian Directorate General of Civil Aviation (DGCA) to resolve the outstanding issues.

(26) Following the announcement by the FAA to downgrade India's IASA compliance category, the Commission on 12 February 2014 met the Director General of Civil Aviation and expressed its concerns with regard to the downgrading. The Commission requested the Indian authorities to explain clearly the corrective actions they were undertaking in relation to the FAA IASA downgrade. In addition, the meeting was used to reiterate the measures which could need to be taken under the auspices of Regulation (EC) No 2111/2005.

(27) As a follow up to the earlier meeting of 12 February 2014, the Director General of Civil Aviation wrote to the Commission on 17 February 2014. This letter included detail of the actions the DGCA had taken in respect to the downgrade. The information provided included that actions had been taken in relation to the majority of findings and that there was a corrective action plan for the outstanding areas of concern.

(28) The Commission wrote on 6 March 2014 informing the Indian DGCA that it was instigating official consultations with the authorities that have responsibility for regulatory oversight over the air carriers certified in India, pursuant to the provisions laid out in Article 3(2) of Commission Regulation (EC) No 473/2006. The letter reiterated the need for continued engagement and requested a technical meeting to allow the Commission and Member States to evaluate matters further. On 18 March 2014, the DGCA replied, indicating its agreement to such a meeting.

(29) In view of the preparedness of the DGCA to engage with the Commission and the assessment of the information received so far, it was assessed, in accordance with the common criteria, that at this stage the Community list of air carriers should not be