Commission Implementing Regulation (EU) No 659/2013 of 10 July 2013 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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(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 thereof[(2)],

Whereas:

(1) Commission Regulation (EC) No 474/2006 of 22 March 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 Air Safety Committee established by Council Regulation (EEC) No 3922/1991 of 16 December 1991 on the harmonization of the technical requirements and administrative procedures in the field of civil aviation[(4)].

(5) The Air Safety Committee has received updates from the Commission about the on-going joint consultations, in the framework of Regulation (EC) No 2111/2005 and its implementing Regulation (EC) No 473/2006, with competent authorities and air carriers

of the states of Curaçao & St Maarten, Republic of Guinea, India, Iran, Kazakhstan, Kyrgyzstan, Mozambique and Nepal. The Air Safety Committee also received updates from the Commission about technical consultations with the Russian Federation and concerning monitoring of Bolivia, Tajikistan and Turkmenistan.

(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 on 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 of 5 October 2012 laying down the technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council[(5)].

(8) The Air Safety Committee has also 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 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 standards. Member States were invited to also respond to those requests on a bilateral basis in coordination with the Commission and EASA. On this occasion the Commission underlined the usefulness of providing information to the international aviation community, notably through ICAO's SCAN database, on technical assistance being provided by the Union and by its Member States to improve aviation safety around the world.

European Union air carriers

(9) Following the analysis by EASA of information resulting from SAFA ramp checks carried out on aircraft of certain Union air carriers or from standardisation inspections carried out by EASA as well as specific inspections and audits carried out by national aviation authorities, some Member States have taken certain enforcement measures and informed the Commission and the Air Safety Committee about those measures. Greece revoked the Air Operator Certificate ('AOC') of Sky Wings on 1 December 2012 and Spain revoked the AOC of Mint Lineas Aereas on 10 April 2013.

(10) In addition, Sweden brought to the attention of the Committee their concerns regarding an air carrier, AS Avies certified in Estonia, which had two serious incidents in Sweden in 2013, namely a runway excursion in February and a temporary loss of

power on both engines during climb out in May. The Competent Authorities of Estonia informed the committee that they have taken a number of actions including increased surveillance, requiring the air carrier to develop a Corrective Action Plan ('CAP'), and reviewing the acceptance of the Safety Manager and Accountable Manager.

Air carriers from the Democratic Republic of Congo

(11) Air carriers certified in the Democratic Republic of Congo have been listed in Annex A since March 2006[6]. Following a recent initiative by the competent authorities of the Democratic Republic of Congo ('ANAC') to re-establish active consultations with the Commission and EASA, they provided the necessary documentary evidence to allow for a comprehensive update of the air carriers listed in Annex A.

(12) The competent authorities of the Democratic Republic of Congo have informed the Commission by letter of 12 June 2013 that the air carriers Air Baraka, Air Castilla, Air Malebo, Armi Global Business Airways, Biega Airways, Blue Sky, Ephrata Airlines, Eagles Services, GTRA, Mavivi Air Trade, Okapi Airlines, Patron Airways, Pegasus, Sion Airlines and Waltair Aviation have been granted an operating licence. Since the competent authorities of the Democratic Republic of Congo did not provide evidence that the safety oversight of those air carriers is ensured in compliance with international safety standards, on the basis of the common criteria, it is assessed that all the air carriers of the updated list should be included in Annex A.

(13) The competent authorities of the Democratic Republic of Congo also informed by letter of 12 June 2013 that the air carriers Bravo Air Congo, Entreprise World Airways (EWA), Hewa Bora Airways (HBA), Mango Aviation, TMK Air Commuter and Zaabu International, previously listed in Annex A do not hold an operating licence. Consequently, it is assessed that those air carriers should be removed from Annex A.

(14) The competent authorities of the Democratic Republic of Congo also explained that, in accordance with the country's legal framework, air transport operations require both an operating licence and an AOC to conduct this type of operations, and that so far none of the existing operators complies with both requirements. The five-phase ICAO certification process has meanwhile been started in April 2013 for 5 operators (Korongo, FlyCAA, Air Tropiques, ITAB and Kinavia) and is expected to be completed by the end of September 2013. At the end of this certification process, ANAC will provide a list of all the air operators duly certified and in possession of a valid AOC.

(15) The Commission noted the commitment of the competent authorities of the Democratic Republic of Congo, in particular of the Minister for Transport, and encourages them to continue their efforts towards the establishment of a civil aviation oversight system in compliance with international safety standards, while remaining committed to develop further the active dialogue re-established recently.

Air carriers from the Republic of Guinea

(16) Formal consultations were initiated with the competent authorities of the Republic of Guinea in December 2012 following the safety findings raised by ICAO during its audit conducted in April 2012, which raised a SSC regarding the certification of air operators.

(17) As a result of the submission of a CAP, and its subsequent acceptance and validation by ICAO, ICAO announced on 29 May 2013 that it had removed the SSC.

(18) A consultation meeting took place in Brussels in January 2013 between the Commission, assisted by EASA, and the competent authorities of the Republic of Guinea. During that meeting, the competent authorities of the Republic of Guinea comprehensively briefed on the latest developments regarding the status of the implementation of the CAP filed with ICAO in December 2012.

(19) According to the competent authorities of the Republic of Guinea, the air carriers Sahel Aviation Service, Eagle Air, Probiz Guinée and Konair are in the process of recertification. None of them flies into the Union airspace. Those authorities also informed that the AOC of air carriers GR-Avia, Elysian Air, Brise Air, Sky Guinée Airlines and Sky Star Air have been suspended.

(20) The competent authorities of the Republic of Guinea agreed to keep the Commission informed about any significant development concerning progress in the implementation of ICAO standards, allowing for a regular monitoring of the situation.

(21) 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 will be forced to take action in accordance with Regulation (EC) No 2111/2005.

Air carriers from Indonesia

(22) Consultations with the competent authorities of Indonesia ('DGCA') continue with the aim of monitoring the progress of the DGCA in ensuring that the safety oversight of all air carriers certified in Indonesia is in compliance with international safety standards.

(23) Following the videoconference held between the Commission, EASA and the DGCA on 18 October 2012, the DGCA continued to work on improving the Indonesian aviation safety oversight system and on addressing the findings that were raised by the US Federal Aviation Administration ('FAA') during its Technical Assessment visit which took place in September 2012. Following the official publication of the FAA report, the DGCA met with the FAA and agreed on a 'CAP.

(24) In April 2013, the DGCA provided the Commission with a detailed copy of the CAP indicating the progress made, and informed that an Inspector Training System had been established, revisions to Aviation Safety Regulations had been made and inspecting staff instructions had been approved for Extended Range Twin Operations ('ETOPS') and Performance Based Navigation/Required Navigation Performance ('PBN/RNP') and drafted for All Weather Operations ('AWOPS').

(25) The DGCA confirmed that the certification of Citilink Indonesia's aircraft, routes, station facilities, ground handling, maintenance, manuals and crews were administratively still under Garuda Indonesia management.

(26) The DGCA also provided updated information regarding certain air carriers under their oversight. They informed that two new air carriers had been issued an Air Operator Certificate (AOC), namely Martabuana Abadion on 18 October 2012 and Komala Indonesia on 8 January 2013, and that Intan Angkasa Air Services had been re-certified. However, since DGCA did not provide the evidence that the safety oversight of those air carriers is ensured in compliance with international safety standards, on the basis of the common criteria, it is assessed that those carriers should be included in Annex A.

(27) In addition, the DGCA informed that the AOC of Sebang Merauke Air Charter had been temporarily suspended on 18 September 2012.

(28) The DGCA informed, and provided evidence confirming, that the AOC of Metro Batavia had been revoked on 14 February 2013. Consequently, Metro Batavia should be removed from Annex A.

(29) On 25 June 2013 the DGCA made a presentation to the Air Safety Committee. In addition to briefing the Committee on the information provided to the Commission in April 2013, the DGCA confirmed that any AOC holder wishing to expand its fleet required the approval of the DGCA and that they had, on occasions, refused such permission. However, the DGCA had not intervened with the expansion plans of Lion Air because they considered them to be adequately resourced and controlled. Concerning the accident to a Lion Air Boeing B737-800 on 13 April 2013 the DGCA briefed that the interim accident report had been published. The report made three recommendations concerning descent below minima, procedures regarding handing over control and the associated training. The DGCA detailed the actions they had taken to address the issues surrounding the accident, including conducting a safety audit of Lion Air and ensuring the air carrier had taken corrective actions as a result of the preliminary report.

(30) Lion Air attended the hearing and answered questions from the Commission and the Air Safety Committee. Lion Air stated that they were able to obtain adequate resources to manage the continuing expansion of their fleet, but accepted the minimum licensing requirements for both captains and first officers in crewing their aircraft and did not demand additional experience. Concerning the accident the company stated that it was implementing the interim accident report recommendations, but was awaiting the final report in order to identify the root causes. Lion Air stated that it carried out safety promotion and used data obtained from their Flight Operations Quality Assurance ('FOQA') programme to identify hazards. The company stated that it had not yet achieved the International Air Transport Association Operational Safety Audit (IOSA) registration.