Commission Implementing Regulation (EU) No 1146/2012 of 3 December 2012 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)

COMMISSION IMPLEMENTING REGULATION (EU) No 1146/2012

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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[(3)] of 22 March 2006 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 (hereinafter '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 this basis, the Community list should be updated.

(3) The Commission informed all air carriers concerned either directly or, when this was not practicable, through the authorities responsible for their regulatory oversight, indicating 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) Opportunity was given by the Commission to the air carriers concerned to consult documents provided by Member States, to submit written comments and to make an oral presentation to the Commission within 10 working days and to the Air Safety Committee established by Council Regulation (EEC) No 3922/1991 of 16 December 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 opened in the framework of Regulation (EC) No 2111/2005 and its implementing Regulation (EC) No 473/2006[(5)], with competent authorities and air carriers of the following States: Algeria, Aruba, Bangladesh, Burkina Faso, Cameroon, Central African Republic, China, Comoros, Cuba, Curacao, Egypt, Ethiopia, Georgia, Guinea-Bissau, Lesotho, Malawi, Mali, Nepal, Pakistan, Russian Federation, St Maarten, Ukraine, Yemen; Eritrea, Libya; Afghanistan, Angola, Benin, Congo-Brazzaville, Democratic Republic of Congo, Djibouti, DPR of Korea, Equatorial Guinea, Gabon, Ghana, Honduras, Indonesia, Iran, Jordan, Kazakhstan, Kyrgyzstan, Liberia, Madagascar, Mauritania, Mozambique, Philippines, Rwanda, Sao Tome and Principe, Sierra Leone, Sudan, Suriname, Swaziland, Venezuela and Zambia.

(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 hereafter) in the framework of ICAO's Universal Safety Oversight Audit Programme (USOAP). Member States were invited to prioritize ramp inspections on air carriers licensed on States for which significant safety concern(s) have been identified by ICAO or for which EASA concluded that there are significant deficiencies in the safety oversight system. Notwithstanding consultations undertaken by the Commission under Regulation (EC) No 2111/2005, this will permit to acquire further information regarding the safety performance on the air carriers licensed in these 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[(6)].

(8) The Air Safety Committee has also heard presentations by EASA about the technical assistance projects carried out in States affected by measures under Regulation (EC) No 2111/2005. It was informed about the requests for further technical assistance and cooperation to improve the administrative and technical capability of civil aviation authorities with a view to resolving non compliances with applicable international standards. Member States were invited to respond to these requests on a bilateral basis in coordination with the Commission and EASA.

(9) Regulation (EC) No 474/2006 should be therefore amended accordingly.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Air Safety Committee.

European Union air carriers

(11) 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. They informed the Commission and the Air Safety Committee about these

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measures: Greece informed that the Air Operator Certificate (AOC) of Sky Wings was suspended further to the suspension of its continuous airworthiness management organisation approval on 7 October 2012; Luxembourg informed that the AOC of Strategic Airlines was revoked on 8 October 2012 and that the air carrier has ceased to exist; Spain informed that the air carrier IMD Airways has successfully implemented corrective actions and remains on heightened surveillance; and Slovenia informed that the AOC of Linxair Business Airlines was revoked on 2 October 2012.

Air Algérie

(12) Having regard to the results of the ramp inspections carried out in 2008 and 2009 on the aircraft operated by the air carrier Air Algérie in the framework of the SAFA programme, the Commission had entered into formal consultations with the competent authorities of Algeria (DACM) in December 2009 as detailed in Regulations (EC) No 590/2010[(7)] and (EC) No 1071/2010[(8)]. These formal consultations resulted in the implementation of satisfactory solutions to redress the identified safety deficiencies in the short term as well as in the development of a solid corrective and preventive action plan by DACM and the air operator Air Algérie for sustainable solutions. The safety performance of the air carrier Air Algérie continued to be verified through the results of the SAFA programme along with the monthly reports sent by DACM to the Commission on the results of their surveillance activities on the air operator as well as on the progress made in the implementation of the aforementioned corrective and preventive plans.

(13) Considering the favourable trend observed on the results of the SAFA inspections since November 2010, the absence of serious safety deficiencies and the implementation of the corrective and preventive actions in accordance with the planning, the Commission decided in July 2012 to close the formal consultations with DACM under Regulation (EC) No 2111/2005

Comlux Aruba N.V.

(14) In February 2012 the competent authority of Aruba committed to introduce amendments in the national legal system and to take administrative action *vis-à-vis* Comlux Aruba to ensure that by 1 August 2012 the operational control of this air carrier would be exercised from Aruba.

(15) In order to obtain updated information on this issue, the Commission, EASA and certain Members of the Air Safety Committee conducted on 15 October 2012 in Brussels consultations with the competent authority of Aruba. These authorities informed and provided evidence that the flight operations legislation has been amended to strengthen the requirements regarding the establishment of the principal place of business in Aruba. These authorities also confirmed that the operational control of Comlux Aruba N.V. had been established in Aruba to their satisfaction. Changes in the organisation and accountabilities of this carrier have been implemented in that respect. Furthermore, the AOC was limited to one aircraft of type B767 and will be renewed on a year basis only, subject to satisfactory results of the continuous oversight to ensure that the organisational changes are effective.

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(16) The Commission noted the progress made by the competent authorities of the Aruba and encourages them to continue their efforts towards strengthening their civil aviation oversight system in compliance with international safety standards.

Air carriers from the Republic of Congo

(17) All air carriers certified in the Republic of Congo have been listed in Annex A since November 2009. The Commission and EASA held a consultation meeting with the competent authorities of the Republic of Congo (ANAC) on 12 October 2012, during which ANAC presented the progress made to date in order to alleviate the safety concerns identified by the International Civil Aviation Organisation (ICAO) at the occasion of the audit carried out in 2008 in the framework of ICAO's Universal Safety Oversight Audit Program (USOAP).

(18) ANAC provided the Commission with evidence of the expiration of the AOC of the air carrier Société Nouvelle Air Congo and confirmed that the air carrier has ceased its activities. Consequently, on the basis of the common criteria, it should be withdrawn from Annex A.

(19) ANAC provided the Commission with information indicating that an AOC was granted to the following air carriers: Canadian Airways' Congo, Eméraude, Equajet and Mistral Aviation. However, ANAC did not provide the evidence that the safety oversight of these air carriers are ensured in compliance with international safety standards, on the basis of the common criteria, it is assessed that these air carriers should be included in Annex A.

(20) The Commission noted the progress made by the competent authorities of the Republic of Congo and encourages them to continue their efforts towards the establishment of a civil aviation oversight system in compliance with international safety standards.

Air carriers from the Democratic Republic of Congo

(21) Air carriers certified in the Democratic Republic of Congo have been listed in Annex A since March 2006[9].The competent authorities of the Democratic Republic of Congo have taken the initiative of re-establishing active consultations with the Commission and EASA, indicating their firm intention of conducting a thorough review and a complete overhaul of the aviation industry as well as of the national regulatory oversight authority.

(22) The competent authorities of the Democratic Republic of Congo informed that an AOC was granted to the following air carriers: Air Fast Congo, Fly Congo, Katanga Express, Katanga Wings, Mango Airlines, and Will Airlift. However, since ANAC did not provide the evidence that the safety oversight of these air carriers is ensured in compliance with international safety standards, on the basis of the common criteria, it is assessed that these air carriers should be included in Annex A.

(23) The competent authorities of Democratic Republic of Congo have not provided evidence that the other air carriers mentioned in Annex A have ceased

operations. Consequently, on the basis of the common criteria, it is assessed that these air carriers should remain in Annex A.

(24) The Commission noted the progress made by the competent authorities of the Democratic Republic of Congo 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 further develop the constructive dialogue re-established recently.

Air carriers from Curaçao and St Maarten

(25) ICAO conducted an audit of the Netherlands Antilles[10] in 2008 and made a number of findings on all the critical elements of their safety oversight system. In particular, the competent authorities of the Netherlands Antilles did not have sufficient technical staff in the areas of personnel licensing, aircraft operations, air navigation services and aerodromes to carry out their safety oversight functions.

(26) In addition, following an assessment by the Federal Aviation Administration (FAA) of the United States under the IASA programme in September 2011, Curaçao and St Maarten were downgraded from Category 1 to Category 2 because the FAA considers that they did not sufficiently comply with international safety standards.

(27) Finally, ramp checks conducted under the auspices of the SAFA programme[11] during the period May 2011 to May 2012 identified findings amounting to an average of over one major finding per inspection.

(28) As a result, the Commission entered into consultations with the competent authorities of Curaçao and St Maarten and wrote to them in July 2012 seeking details of what corrective actions had been put in place or are being planned. These consultations are on-going.

(29) The Competent Authorities of both Curaçao and St Maarten responded to the Commission and detailed the corrective actions underway and planned to address the ICAO and FAA audit findings.

(30) The Netherlands informed the Air Safety Committee that they were active in providing technical assistance to both Curaçao and St Maarten to assist them in their efforts to establish a safety oversight system that is in compliance with ICAO standards.

(31) The Commission takes note of the actions by the competent authorities of Curaçao and St Maarten and encourages them to continue with determination with their efforts to address the shortcomings in their aviation safety oversight system, failing which the Commission will be compelled to take action under Regulation (EC) No 2111/2005. Member States will continue to closely monitor, via prioritised ramp checks in the framework of the SAFA programme, that the corrective actions are effective.

Air carriers from Equatorial Guinea

(32) All air carriers certified in Equatorial Guinea are subject to an operational ban within the EU and listed in Annex A since March 2006. The competent authorities of the