Commission Implementing Regulation (EU) No 295/2012 of 3 April 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 295/2012

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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 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[(3)].

(5) 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 have been identified by ICAO or for which EASA concluded there are significant deficiencies in the safety oversight system. Notwithstanding consultations undertaken by the Commission under Regulation (EC) No 2011/2005, this will permit to acquire further information regarding the safety performance on the air carriers licensed in that States.

(6) The Air Safety Committee has heard presentations by EASA about the technical assistance projects carried out in States affected by Regulation (EC) No 2111/2005. It has been 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.

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

Air carriers from the European Union

(8) Following the analysis by EASA of information resulting from ramp checks carried out on aircraft of certain air carriers licensed in the European Union or from standardisation inspections carried out by EASA as well as area specific inspections and audits carried out by their national aviation authorities, some Member States have taken certain enforcement measures. They informed the Commission and the Air Safety Committee about these measures: Germany informed that several German air carriers are under re-inforced oversight, including Air Alliance Express and Air Traffic GmbH Dusseldorf, Latvia informed that the Air Operator Certificate (AOC) of Inversija was revoked on 19 January 2012; Italy informed that the AOC of ItaliAirlines was revoked and that the air transport license held by the air carrier Livingston remains suspended; Greece informed that the commercial license of the air carrier Hellenic Imperial Airways was lifted from suspension on 28 February 2012 but remains under heightened surveillance, and that additional surveillance had also been introduced for the air carriers Sky wings Airlines and Hermes Airlines; the Netherlands informed that the AOC of Solid-air was revoked on 28 December 2011 and the AOC of Amsterdam Airlines on 6 February 2012; Spain informed that the AOC of Zorex remains suspended since 7 November 2011; Sweden informed that the AOC of AirSweden Aviation AB was revoked on 10 January 2012, that the AOC of the air carrier Flyg Centrum AB was revoked on 16 December 2011 and the air carrier Nova Air remains under heightened surveillance; Romania informed that by 20 March 2012 the AOC of Direct Aero Services had been revoked.

Air carriers from the Republic of Albania

(9) Following the decision taken at the last Air Safety Committee in November 2011[(4)], the competent authorities of Albania reported they are progressing in the implementation of their action plan, however with some delay regarding the long-term procurement of qualified inspectors. Albania is urged to speed-up measures to

develop the capacity of its safety oversight authority. EASA will continue to monitor the progress of corrective actions and will carry out a comprehensive follow-up inspection in October 2012 to verify the satisfactory implementation of actions plans. The Air Safety Committee will re-assess the situation depending on the results of this inspection.

Comlux Aruba N.V.

(10) The competent authorities of France reported that they could not issue an authorisation to Comlux Aruba N.V., an air carrier certified in Aruba, due to the existence of safety deficiencies identified during the assessment of the technical questionnaire submitted by the operator for the purpose of receiving landing authorisation in that Member State, and notified their conclusion to Member States via the SAFA database[(5)].

(11) The Commission, having regard to those deficiencies, has entered into consultation with the competent authorities of Aruba and the air carrier, expressing concerns about the safety of the operations of Comlux Aruba N.V. in the EU and asking for clarifications regarding the actions undertaken by the competent authorities as well as the carrier to respond to these deficiencies.

(12) The competent authorities of Aruba and the air carrier made written submissions and attended to a meeting with the Commission, EASA and some members of the Air Safety Committee on 20 February 2012. Based on the information provided, although the safety concerns identified by France appear to have been addressed, further concerns were identified with regard to the operator's principal place of business. The carrier stated that its office in Aruba is limited to two secretaries only and that the head office where the operational control of the flight operations and the continuing airworthiness are exercised is not located in Aruba. However, the competent authorities of Aruba informed that they have undertaken a review of the civil aviation legislation to ensure that air carriers certified in Aruba have their principle place of business established in that State and that Comlux Aruba was requested to demonstrate the principal place of business is established in Aruba no later than 1 August 2012.

(13) The Commission takes note and will further monitor the administrative and legal actions undertaken by the competent authorities of Aruba to ensure that air carriers certified in that State have their principle place of business established in that State.

Air carriers from the Democratic Republic of Congo

(14) Air carriers certified in the Democratic Republic of Congo have been listed in Annex A since March 2006[(6)]. Information was received that the competent authorities of the Democratic Republic of Congo had issued a new license to the air carrier Jet Congo Airways. The competent authorities of the Democratic Republic of Congo failed to respond to a request for information by the Commission and failed to provide evidence that the safety oversight of new air carrier complies fully with applicable international safety standards. Therefore, on the basis of the common criteria, it is assessed that this carrier should be equally included in Annex A.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 295/2012. (See end of Document for details)*

(15) Several fatal accidents were reported involving air carriers certified in the Democratic Republic of Congo since the last Air Safety Committee. On 30 January 2012, an aircraft of type Antonov 28 with registration mark 9Q-CUN operated by TRACEP Congo Aviation crashed, leading to the total loss of the aircraft and to 4 fatalities. On 12 February 2012, an aircraft of type Gulfstream IV, with registration mark N25A, operated by Katanga Express crashed, leading to the total loss of the aircraft and to 6 fatalities. The competent authorities of the Democratic Republic of Congo however did not respond to requests for information by the Commission on the preliminary findings of the accident investigations.

Air carriers from Equatorial Guinea

(16) All air carriers certified in Equatorial Guinea have been listed in Annex A since March 2006[7]. The Commission and EASA held a consultation meeting with the competent authorities of Equatorial Guinea (DGAC) on 22 February 2012. During this meeting, DGAC 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 2007 in the framework of the Universal Safety Oversight Audit Program (USOAP).

(17) DGAC provided the Commission with evidence of the withdrawal of the Air Operator's Certificates of the following air carriers: GETRA, Guinea Airways, UTAGE, Euroguineana de Aviacion y Transportes, General Work Aviacion, Star Equatorial Airlines and EGAMS. Since these air carriers certified in Equatorial Guinea have consequently ceased their activities, they should be withdrawn from Annex A.

(18) DGAC provided the Commission with information indicating that an Air Operator Certificate was granted to the air carrier Punto Azul. However, DGCA did not provide the evidence that the safety oversight of this air carrier is ensured in compliance with international safety standards, on the basis of the common criteria, it is assessed that this air carrier should be included in Annex A.

(19) The Commission noted the progress made by the competent authorities of Equatorial Guinea 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 Republic of Indonesia

(20) Consultations with the competent authorities of Indonesia (DGCA) continue with the view to monitor the progress of the DGCA in ensuring the safety oversight of all air carriers certified in Indonesia in compliance with the international safety standards. On 7 February 2012 a videoconference was held between the Commission, EASA and the DGCA. The DGCA confirmed they continue to progress and informed of further enforcement actions regarding certain air carriers under their oversight: in particular the AOCs of Kartika Airlines, Mimika Air, Riau Airlines and Survei Udara Penas had been suspended.

(21) DGCA also informed and provided confirmation that the AOC of Megantara had been revoked on 13 August 2010. Therefore, on the basis of the common criteria, it is assessed that this air carrier should be removed from Annex A.

(22) DGCA further informed that new AOCs had been issued to TransNusa Aviation Mandiri on 19 August 2011, Enggang Air Service on 1 March 2010, Surya Air on 8 April 2011, Ersa Eastern Aviation on 9 September 2011 and Matthew Air Nusantara on 20 September 2011. However, DGCA 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 carriers should be equally included in Annex A.

(23) The Commission noted the continued progress made by the competent authorities of Indonesia and encourages them to continue the sound work in establishing a civil aviation oversight system fully in compliance with international safety standards, and will review the case in advance of the next meeting of the Air Safety Committee.

Air carriers from Libya

(24) On the basis of the fatal accident to an aircraft of type Airbus A330 operated by Afriqiyah Airways on 13 May 2010 and verified evidence of safety deficiencies identified by the SAFA programme concerning Afriqiyah Airways[(8)] and United Aviation[(9)], the Commission entered into discussions with the Competent Authorities of Libya (LCAA) in October 2010. These discussions were interrupted by the Libyan civil war.

(25) The consultations were resumed in October 2011 and the LCAA informed that they had suspended all Libyan Air Operator's Certificates (AOC) and would conduct a recertification process before lifting the suspension of the AOCs. During the audits as part of this re-certification process the LCAA detected significant safety issues concerning Afriqiyah Airways, notably in the area of pilot training, a lack of maintenance staff, and insufficient equipment to perform maintenance tasks. Nonetheless, shortly after the audit, the LCAA issued an AOC to Afriqiyah Airways.

(26) The Commission, EASA and several members of the Air Safety Committee held further consultations with the LCAA, Afriqiyah Airways, Libyan Airlines and Global Aviation on 22 February 2012. However, LCAA failed to provide the information requested to date, in particular the list of air carriers certified in Libya, all corresponding AOCs and attached operations specifications, the audit reports made prior to lift the suspensions, together with evidence that the deficiencies identified in the course of these audits were satisfactorily closed. In addition, they indicated that the investigations into the Afriqiyah Airways accident had encountered difficulties and have not led to conclusions so far.

(27) The Minister of Transport of Libya, the LCAA, Afriqiyah Airways and Libyan Airlines made presentations to the Air Safety Committee on 20 March 2012. The Minister acknowledged that the Libyan aviation safety system was not conforming to