Commission Implementing Regulation (EU) No 1197/2011 of 21 November 2011 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 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) in the framework of the comprehensive USOAP programme as well as technical assistance projects carried out in countries 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 any non compliance with applicable international standards

(6) Regulation (EC) No 474/2006 should be therefore amended accordingly,

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

European Union air carriers

(8) 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 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: Cyprus decided to revoke on 5 August 2011 the AOC of the air carrier Eurocypria Airlines; Italy informed the air transport license held by the air carriers Livingston and ItaliAirlines remain suspended; France decided to revoke the AOC of Blue Line on 6 October 2010. Greece decided to revoke the AOC of First Airways on 21 October 2010, to revoke the AOC of Athens Airways on 20 July 2011, to revoke the AOC of Air Go Airlines on 2 September 2011, to revoke the AOC of Argo Airways on 9 September 2011, to limit the validity of the license of the air carrier Hellenic Imperial Airways to five months until 2 February 2012 as a result of the on-going heightened surveillance of its air operations and its maintenance; the United Kingdom confirmed that the enhanced surveillance activity of the air carriers Jet2.com, Oasis and Titan Airways has not revealed further safety concerns; the Netherlands decided to suspend the AOC of Solid-air on 28 September and to suspend the AOC of Amsterdam Airlines on 4 November 2011; Germany decided to revoke the AOC of ACH Hamburg GmbH on 29 June 2011. Furthermore, pending the expected reinforcement of the staffing of the LBA in 2012, the LBA are continuing to focus their oversight on those air carriers identified as presenting higher risks; Portugal informed that the AOC of the air carrier Luzair expired on 19 September 2011 and is in the process of recertification, and that, as the enhanced surveillance of White Airways has not revealed safety concerns, the air carrier has returned under normal surveillance; finally Sweden decided to suspend on 16 September 2011 the AOCs of the air carrier Flyg Centrum AB and the air carriers Nova Air and AirSweden Aviation AB have submitted corrective action plans which are being examined by the competent authorities of Sweden; in the meantime these air carriers remain under enhanced surveillance.

Air carriers from Spain

(9) Following the adoption of Commission Implementing Regulation (EU) No390/2011 on 19 April 2011[(4)], two subsequent regular analyses of SAFA inspection

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data by EASA continues to show a high number of air carriers licensed in Spain with results from SAFA inspections of more than one major finding per inspection. As a result the Commission continued the formal consultations with the competent authorities of Spain (AESA) which were launched on 14 March 2011.

(10) At a meeting on 19 October 2011, AESA briefed the Commission on the actions taken to date to address the identified safety issues with Spanish air carriers in a sustainable manner. In particular, AESA informed the Commission that the air carrier Flightline, following corrective actions by the company, had its AOC renewed, but limited to exclude the aircraft of type Metro III. In the case of the air carrier Zorex S.A., AESA had launched suspension action and provisional measures to prevent operations in May 2011. After remedial actions by the company the measures were lifted. However, following further evidence that the air carrier was not satisfactorily addressing safety concerns a new suspension procedure was commenced on 7 October 2011. Concerning the air carrier Alba Star, AESA had already detected issues with the safety performance of this air carrier and were increasing oversight. AESA, from their own audits and inspections, had determined that the other Spanish air carriers that had had some poor results from SAFA inspections did not present any immediate safety risk but would continue to be subject to enhanced oversight.

(11) AESA also briefed that the AOCs of Baleares Link Express and Eurocontinental had been revoked on 27 June 2011.

(12) During the meeting of the Air Safety Committee AESA updated the Committee on further actions taken. They informed that the AOC of Zorex S.A. had been suspended on 7 November 2011, that the air carrier Alba Star had been subject to specific inspections on 24 October 2011 with no significant discrepancies detected, and that the last two SAFA inspections had no findings. Furthermore, the air carrier IMD Airways S.L. had been subject to a series of inspections on 20, 24 October and 3, 4 November 2011 with no significant findings.

(13) Given the actions undertaken by AESA in addressing the identified safety deficiencies of Spanish air carriers it is assessed that, currently, the operations of these air carriers are sufficiently controlled by that authority to avoid any serious risks to safety and therefore no further action is necessary. Meanwhile the Commission, in co-operation with EASA, will continue to monitor the safety performance of Spanish air carriers.

Air carriers from Albania

(14) ICAO carried out a comprehensive safety audit of Albania under its Universal Safety Oversight Audit Programme (USOAP) in December 2009. This audit reported a large number of significant deficiencies with regard to the capability of the competent authorities of Albania to discharge their air safety oversight responsibilities. At the time of the issuance of the final report stemming from this audit, more than 59 % of ICAO standards were considered by ICAO as not effectively implemented. On certain critical elements such as the resolution of safety concerns, more than 80 % of ICAO standards were not effectively implemented. In addition, the competent authorities of

Albania failed to propose adequate corrective action plans, as demonstrated by the fact that more than 90 % of the corrective actions submitted by these authorities to ICAO in August 2010 in the fields of legislation, organisation, licensing, operations, airworthiness and accident/incident investigation have not been considered acceptable by ICAO. Furthermore, the competent authorities of Albania have failed to report the implementation of the above mentioned corrective action plans.

(15) EASA carried out a comprehensive standardisation inspection of Albania in January 2010. The final report of this inspection revealed significant deficiencies in all areas audited that needed to be immediately remedied. EASA informed however that the competent authorities of Albania (ACAA) had presented a comprehensive action plan that had been found acceptable and had been agreed on 29 April 2010 and a series of remedial actions to be implemented progressively until the end of 2011, with immediate actions to address the safety deficiencies. Further to the hearings of the ACAA before the Air Safety Committees held in March[(5)] and June 2010[(6)] respectively, the competent authorities of Albania were urged to take the necessary actions to continue to implement effectively and timely the action plans agreed with EASA, with priority to the resolution of the deficiencies identified that raise safety concerns if not promptly corrected. It was in particular indicated that it was of utmost importance to accelerate the capacity building of the authority and to ensure the safety oversight of all air carriers certified in Albania in accordance with the applicable safety regulations and to take enforcement measures as necessary.

(16) EASA continued actively the consultations with the competent authorities of Albania to follow-up the corrective action plans presented by these authorities in order to remedy the significant deficiencies identified by EASA during the comprehensive standardisation inspection of Albania carried out in January 2010. To that end, EASA carried out in July 2011 follow-up inspections in the fields of airworthiness and air operations. The final reports arising from these inspections, which were addressed to the ACAA on 10 August and 2 September 2011 respectively, reveal not only that the corrective action plans agreed have not been timely implemented, but that also new deficiencies had been reported. In the field of airworthiness, EASA concludes that three non-compliance findings stemming from the inspection of January 2010 were not adequately addressed by the competent authorities of Albania and that three additional ones were not satisfactorily closed contrary to previous statements of the competent authorities of Albania[(7)], four of these findings being classified by EASA as affecting the safety. Accordingly, the ACAA have not been in a position to discharge their responsibilities regarding the oversight of airworthiness as ACAA does not hired qualified staff for that purpose and that the contracts established previously with external staff to compensate this situation have expired since January 2011. Consequently, there was no oversight neither of the airworthiness legislation in force in Albania nor of the certificate holders at the time of the inspection. In the field of air operations, EASA concludes that four non-compliance findings stemming from the inspection of January 2010 were not adequately addressed by the competent authorities of Albania and that two additional were not satisfactorily closed contrary to previous statements of the competent authorities of Albania[(8)], five of these findings being

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classified by EASA as affecting the safety. Accordingly, the competent authorities of Albania have not been in a position to discharge effectively their responsibilities regarding the oversight of air operations as ACAA has not hired sufficient qualified staff for that purpose and that the contracts established previously with external staff to compensate this situation have been disrupted. Consequently, the implementation of the air operations' legislation in force in Albania and the oversight of the certificate holders is not robust and many safety critical elements are not overseen.

(17) The competent authorities of Italy, which had embarked on an extensive twinning project with the competent authorities of Albania since September 2010, informed that these authorities, due to a lack of competent personnel, did make so far little use of the assistance offered to build up their technical and administrative capacity.

(18) Given what precedes, the Commission continued actively the consultations with ACAA, requesting information regarding the safety oversight of air carriers licensed in Albania to be submitted in writing by 11 October 2011. Further consultations were held on 21 October 2011 with the competent authorities of France and Italy and the support of EASA. The ACAA were also invited to the Air Safety Committee and heard on 9 November 2011. ACAA did not provide further information on the actions undertaken to resolve the deficiencies reported by ICAO, nor evidence that all the deficiencies identified by EASA in its standardisation inspections had been timely resolved or were subject to corrective actions acceptable to EASA. EASA confirmed that only a limited number of actions were considered acceptable and only in the field of operations. The competent authorities of Albania confirmed that they do not have any qualified inspectors and continue to rely solely on three external consultants, contracted indirectly, working part time only and on short term basis until December 2011, to discharge on their behalf their oversight responsibilities. ACAA failed however to demonstrate the continuity of oversight as well as the absence of conflict of interest of the contracted agents. ACAA also failed to provide the extent of surveillance activities carried out in the field of airworthiness and acknowledged that the safety oversight had been disrupted for several months in 2010/2011 due to difficulties experienced with the contracts of these experts.

(19) The competent authorities of Albania however declared that the basic law establishing the ACAA was modified on 10 November 2011 to allow for more substantial financial independence and better employments conditions for the staff and that subsequently an international call for tender for technical assistance over five years is being organised, with a view to have contracts signed early 2012. They recognised that the use of externally contracted staff does not replace the need to recruit full time qualified inspectors within the authority to enable it to control the safety oversight functions and committed to recruit such staff as soon as practically possible.

(20) The air carrier Albanian Airlines certified in Albania was invited to the Air Safety Committee and heard on 9 November 2011 in the presence of ACAA. Whilst the AOC was extended on 17 June 2011 to add a third aircraft of type BAE-146 with registration mark ZA-MAN, no evidence was provided that ex-ante verifications had been conducted by the competent authorities of Albania prior to the issuance of the