Commission Implementing Regulation (EU) No 390/2011 of 19 April 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)

COMMISSION IMPLEMENTING REGULATION (EU) No 390/2011

of 19 April 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)

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/EC[(1)], and in particular Article 4 thereof,

Whereas:

(1) Commission Regulation (EC) No 474/2006[(2)] 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 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 3922/91 of 16 December 1991 on the harmonization of the technical requirements and administrative procedures in the field of civil aviation[(3)].

(5) The authorities with responsibility for regulatory oversight over the air carriers concerned have been consulted by the Commission as well as, in specific cases, by some Member States.

(6) The Air Safety Committee has heard presentations by the European Aviation Safety Agency (EASA) and the Commission about the technical assistance projects carried out in the 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.

(7) The Air Safety Committee has also been informed about enforcement actions taken by EASA and Member States to ensure the continuing airworthiness and maintenance of aircraft registered in the Union and operated by air carriers certified by civil aviation authorities of third countries.

(8) The Air Safety Committee has also heard presentations by EASA about the categorisation of findings when carrying out ramp inspections in the framework of the of the EU Safety Assessment of Foreign Aircraft (SAFA) programme and has endorsed the Agency's proposals for a new categorisation of non-compliances with ICAO English Language Proficiency (ELP) requirements for pilots in the interest of guaranteeing full compliance with ELP standards without further delay. In accordance with such proposal, a category 2 finding should be raised in case of no ELP compliance but where the licensing state has filed an action plan with ICAO to bring itself to compliance. Furthermore, a category 3 finding should be raised in case of no ELP compliance and where the licensing state has not filed an action plan with ICAO or has notified full compliance without effectively respecting this requirement. Finally, a general remark (category G) should be recorded where formal ELP compliance can be attested even though actual communication during the ramp inspection process is very difficult because of the clear lack of English command of the pilots. The Air Safety Committee agreed to seek to apply these proposals in a harmonised way. EASA undertook to publish shortly relevant guidance material.

(9) The Air Safety Committee also endorsed the Agency's proposal for Member States to establish functional links with the relevant Air Navigation Service Providers to report communication difficulties with aircraft crews due to the insufficient command of English of the pilots. Finally, the Air Safety Committee requested EASA to report at the next meeting of the Committee on the SAFA results regarding the implementation of the ELP requirements for pilots as well as on the implementation of the proposed categorisation.

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

European Union air carriers

(11) Following the analysis of the European Aviation Safety Agency of information resulting from SAFA ramp checks carried out on aircraft of certain Union air carriers, 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 on 26 November 2010 to suspend the Air Operator Certificate (AOC) of the air carrier Eurocypria Airlines following the stop of operations and the lack of

financial means of the air carrier to operate in safe conditions; Italy decided to suspend on 24 October 2010 the air transport licence held by the air carrier Livingston and that held by the air carrier ItaliAirlines on 11 March 2011; Lithuania decided to revoke the AOC of the air carrier Star 1 Airlines on 11 November 2010; following the liquidation of the air carrier Blue Line and the subsequent suspension of its operating licence, France decided to suspend the AOC of this air carrier on 6 October 2010. Furthermore, France decided not to renew the AOC of Strategic Airlines on 16 September 2010; Greece decided to revoke the AOC of Hellas Jet in November 2010, had suspended the AOC of Athens Airways in January 2011, and had placed Hellenic Imperial Airways under heightened surveillance; Sweden decided not to renew the AOC of the air carrier Viking Airlines AB on 31 December 2010 and the United Kingdom had increased their surveillance activity of the air carriers Jet2.com, Oasis and Titan Airways.

Portugal

(12) Following-up the review of the situation of certain air carriers licensed in Portugal at the Air Safety Committee held in November 2010[(4)], the competent authorities of Portugal (INAC) informed about the results of the enhanced safety oversight of the air carriers Luzair and White. Regarding Luzair, INAC reported that following a change of fleet, Luzair's AOC was suspended on 11 February 2011. Regarding White, INAC reported that it had undertaken 29 inspections in the field of operations as well as 5 inspections in the field of airworthiness, which did not reveal significant deficiencies. In addition, EASA reported that the air carriers were inspected in November 2010 and that neither inspection revealed significant deficiencies. In the context of a general change of policy in the company, two aircraft of type A320 with registration marks CS-TQO and CS-TQK were phased out in 12 November 2010 and 22 February 2011 respectively.

Germany

(13) Following the analysis of SAFA inspection data by EASA and the identification of an increased number of certain German air carriers with results from SAFA inspections of greater than a major finding per inspection, the Commission launched formal consultations with the competent authorities of Germany (Luftfahrtbundesamt — LBA) and held a meeting on 10 March 2011.

(14) The root cause analysis of the performance of these air carriers revealed particular weaknesses in the oversight of these carriers as also directly evidenced in a standardisation inspection carried out by EASA from 26-29 May 2009 in the field of operations which also pointed at an insufficient numbers of qualified personnel within the LBA, thus impacting upon Germany's ability to ensure continuous oversight and limiting the LBA's ability to increase the level of oversight where necessary.

(15) The particular situation of Bin Air, an air carrier certified in Germany, was discussed at the meeting of 10 March where the air carrier attended and made presentations indicating the actions it had taken to address verified safety deficiencies identified during SAFA inspections. Also, the competent authorities of Germany informed the Commission of the suspension of the AOC of the air carrier ACH Hamburg GmbH.

(16) Germany confirmed to the Air Safety Committee that the AOC of ACH Hamburg GmbH remained in suspension and the situation would be reviewed in May 2011, and if no progress had been made by this air carrier by that date the AOC would be revoked. Germany also informed that the oversight activities regarding the air carrier Bin Air had been intensified, the aircraft of type Cessna C550, registration D-IJJJ, had been removed from the AOC of air carrier Advance Air Luftfahrtgesellschaft, and that the LBA had intensified its oversight of other air carriers where poor results from ramp checks had highlighted safety deficiencies. The LBA stated that they had made it clear to these air carriers that suspension of their AOCs could be the consequence if no improvements were noted.

(17) In terms of the lack of qualified staff, Germany informed the Air Safety Committee that no improvement in the situation would occur in 2011. However, an assessment of the LBA's personnel resources was underway and should conclude in spring 2011, therefore an improvement in the personnel situation is to be anticipated from 2012 onwards.

(18) The Commission and the Air Safety Committee noted the efforts made by the competent authorities of Germany in resolving the identified safety deficiencies of certain air carriers, and the work underway to address the shortfall in personnel resources within the LBA. However, the Commission also emphasised that, without prejudice to the enforcement powers conferred on it by the Treaty, if such actions are ineffective in improving the performance of air carriers certified in Germany, action would be necessary to ensure that identified safety risks have been adequately controlled.

Spain

(19) Following the analysis of SAFA inspection data by EASA and the identification of an increased number of Spanish air carriers with results from SAFA inspections of greater than a major finding per inspection, the Commission launched formal consultations with the competent authorities of Spain (AESA) and held a meeting on 14 March 2011.

(20) The particular situation of Flightline, an air carrier certified in Spain was discussed at the meeting. The air carrier attended and made a presentation on actions taken to address identified safety deficiencies noted during SAFA inspections. In addition the air carrier detailed the actions taken following the accident to aircraft of type Fairchild Metro 3, registration EC-ITP. Flightline explained that they had entered into a business arrangement with the company Air Lada, not a certified air carrier, to operate two Fairchild Metro 3 aircraft, registrations EC-GPS and EC-ITP, using pilots provided by Air Lada. The Commission pointed out to Flightline that the same aircraft had been previously operating within the AOC of Eurocontinental, another air carrier certified in Spain, and that as a result of SAFA inspections and significant safety incidents with the operation of these aircraft, AESA had suspended Eurocontinental's AOC.

(21) Flightline stated they had conducted all the required conversion training of the pilots and had carried out quality checks of the operation of the aircraft in the Isle of Man. The Commission requested further details concerning the air carrier's corrective action plan and copies of the internal audit reports of the Fairchild Metro 3 operation. Following receipt of the information on 22 March, the Commission invited the air carrier Flightline to make presentations to the Air Safety Committee.

(22) At the meeting on 14 March 2011 AESA briefed the Commission that they decided to limit the AOC of Flightline to prevent operation of the Fairchild Metro 3s, and that they had initiated the process to suspend the AOC.

(23) The Commission invited AESA to provide further clarification on enforcement action concerning four other air carriers certified in Spain which had been identified by EASA as having poor SAFA results. AESA subsequently informed the Commission on 28 March 2011 that, following recent audits of Air Taxi and Charter International, and Zorex, significant safety discrepancies had been noted and, therefore, the procedure to suspend the AOCs of both air carriers had been initiated. In terms of the air carrier Jetnova, AESA awaited the response of the air carrier to specific findings made by AESA and if found to be inadequate will initiate the suspension procedure. With respect to the air carriers Aeronova, Tag Aviation and Alba Star, AESA was continuing its oversight but considered specific regulatory action was not required at this stage. The air carrier Flightline was heard by the Air Safety Committee on 5 April 2011. They briefed that they had introduced revised procedures to enhance the operational control of Flightline flights, particularly those operating away from their main base, had amended their Operations Manual to include guidance on the use of alternate aerodromes, had amended their training programme to reinforce pilot knowledge of operating procedures, and had revised their pilot selection procedures.

(24) Spain informed the Air Safety Committee that following discrepancies found during inspections of Flightline, AESA had initiated on 14 March 2011 a procedure to suspend the AOC of Flightline and had introduced precautionary measures to address the immediate safety concern. AESA confirmed that Flightline had subsequently taken action to address the immediate safety concern and also provided a Corrective Action Plan which was being evaluated by AESA.

(25) In light of the actions undertaken by the competent authorities of Spain in resolving the identified safety deficiencies of Flightline and other Spanish air carriers it is assessed that, at this time, no further action is necessary. However, the Commission underlined that if such actions are ineffective in improving the performance of air carriers certified in Spain, action would be necessary to ensure that identified safety risks have been adequately controlled. In the meantime, the Commission, in cooperation with EASA, will continue to monitor the safety performance of Spanish air carriers.

Air carriers from Angola

(26) INAVIC reported further progress in the resolution of the remaining deficiencies identified by ICAO during its mission on site carried out in January 2010.