Commission Regulation (EU) No 1071/2010 of 22 November 2010 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 REGULATION (EU) No 1071/2010

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

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)].

(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 3922/1991 of 16 December 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 and by the Commission on the main operational conclusions agreed in the course of the last meeting of the European SAFA Steering Group (ESSG) held in Vienna on the 28 and 29 October 2010. In particular, it has been informed about the endorsement by the ESSG of the introduction on a voluntary basis of a minimum annual quota of inspections to be carried out by Member States as of 2011.

(7) The Air Safety Committee has heard presentations on the analysis of reports of comprehensive safety audits carried out by the International Civil Aviation Organisation (ICAO) in the framework of the Universal Safety Oversight Audit Programme (USOAP) and on the results of cooperation activities between the Commission and ICAO in the areas of safety and in particular on the possibilities to the exchange safety information regarding the level of compliance with international safety standards and recommended practices.

(8) Following the conclusions of ICAO general assembly, the Commission mandated the European Aviation Safety Agency (EASA) to coordinate the regular analysis of the reports of comprehensive safety audits carried out by the International Civil Aviation Organisation (ICAO) in the framework of the Universal Safety Oversight Audit Programme (USOAP) carried out with experts of Member States in the framework of a working group set up by the Air Safety Committee. Member States are invited to nominate experts to contribute to this important task.

(9) 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.

(10) 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.

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

European Union air carriers

(12) Following 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: Greece informed about the revocation of the Air Operator Certificate (AOC) and of the operating license of Hellas Jet on 2 November 2010 following the stop of operations on 30 April 2010. Germany informed about the suspension of the AOC of the air carrier ACH Hamburg on 27 October 2010 and about the limitation of the AOC of the air carrier Advance Air Luftfahrtgesellschaft on 30 September 2010 to exclude an aircraft with registration mark D-CJJJ. Spain confirmed

that the AOC of Baleares Link Express continues to be suspended since 9 June 2010; Sweden informed that the AOC of Viking Airlines AB was suspended on 29 October 2010.

(13) Portugal informed that following serious concerns about the safety of operation and the continuing airworthiness of aircraft operated by two Portuguese air carriers – Luzair and White and consultations with the Commission held on 25 October 2010, they decided to increase the continuing oversight of these carriers to ensure adequate corrective action plan are timely implemented by these. Portugal informed the Air Safety Committee about some improvement of the performance of the air carrier White. The Commission took note of the announced measures. A standardisation inspection will be carried out in Portugal by EASA in the framework of Regulation (EC) No 216/2008. The Air Safety Committee will be informed as appropriate about the results of this visit at its next meeting.

Air carriers from the Islamic Republic of Afghanistan

Kam Air

(14) There is verified evidence of safety deficiencies on the part of Kam Air certified in the Islamic Republic of Afghanistan. On 11 August 2010 a Kam Air aircraft of type DC8, registration YA-VIC, struck its tail on the runway and the grass surface beyond the runway before becoming airborne during take-off from Manston Airport (United Kingdom). Investigations of this serious incident by the United Kingdom concluded that there were serious deficiencies with the operational control of the DC8 fleet of Kam Air. The United Kingdom therefore imposed a national ban on Kam Air DC 8 operations as of 2 September 2010.

(15) Furthermore, the Competent Authorities of Austria detected a significant number of serious safety deficiencies during a SAFA ramp inspection of a Kam Air aircraft of type Boeing B767, registration number YA-KAM, on 16 September 2010[(4)]. The results of this SAFA ramp inspection lead Austria to conclude that there were serious failures on the part of Kam Air in the areas of operational procedures, equipment, system handling and cargo loading. In view of the deficiencies identified during the investigation in the United Kingdom and the convergence of these deficiencies with those detected during the SAFA ramp inspection performed at Vienna airport, Austria imposed a national ban on all Kam Air operations as from 17 September 2010.

(16) Pursuant to Article 6 of Regulation No 2111/2005 the Air Safety Committee was informed of the measures decided by the two Member States.

(17) On 6 October 2010 the Competent Authorities of the Islamic Republic of Afghanistan (MoTCA) and representatives from Kam Air met with the Commission and representatives from Member States to discuss the circumstances surrounding the Manston incident and the SAFA inspection in Austria.

(18) At the meeting the air carrier was unable to demonstrate that it is capable of complying with the relevant international safety standards. As regards the aircraft

of type DC8, it had been introduced into service in March 2010 without adequate management oversight and without any adequate training given to the crews recruited to operate the aircraft. Furthermore, these crews had yet to complete the relevant training even though the aircraft continued to be used for international commercial flights. In addition, the air carrier did not provide any evidence that the flight crew were current in their flying duties at the time of the serious incident in the United Kingdom. As regards the aircraft of type Boeing B-767, Kam Air explained that the aircraft with registration mark YA-KAM which was subject to the ramp inspection in Austria, was on its first flight after having been parked for a long period, and had not been adequately prepared for operation before being employed on the flight to Vienna. Furthermore, the air carrier explained that, because of the introduction of the DC8, their management resources had been overstretched and had been unable to ensure the correct safety activities were conducted prior to the dispatch of the aircraft.

(19) The air carrier Kam Air requested to be heard by the Air Safety Committee and made a presentation on 9 November 2010. Kam Air informed the Committee that it no longer operated the aircraft of type DC 8. Also, whilst Kam Air had reviewed the events leading to the bans by the United Kingdom and Austria, it failed to identify any systemic deficiencies within the air carrier which would explain the identified non-compliances with ICAO Standards.

(20) At the meeting on 6 October 2010, the MoTCA were unable to explain the existence of two different Operations Specifications for Kam Air signed on the same day (29 September 2010) one of which showed the DC8 and the other which had the DC8 removed. It was therefore unclear whether Kam Air was approved to conduct operations with aircraft of type DC8 from that date. Furthermore, MoTCA was not able to demonstrate the results of any certification and surveillance activities carried out on Kam Air.

(21) In view of these findings, on the basis of the common criteria it is assessed that the air carrier Kam Air does not comply with the common criteria and should be therefore placed on Annex A.

Overall safety oversight of air carriers from Afghanistan

(22) There is verified evidence that the competent authorities of the Islamic Republic of Afghanistan are currently not capable to implement and enforce the relevant safety standards and to oversee the aircraft used by the air carriers under its regulatory authority in accordance with its obligations under the Chicago Convention. As presented by MoTCA on 6 October 2010, the authority has currently considerable difficulties to comply with its international obligations in all critical elements of a safety system. It is currently totally reliant on the expertise provided by ICAO to conduct inspections, and stated that, because of that lack of qualified staff, it had issued Certificates of Airworthiness to some aircraft without conducting the relevant inspections. In addition, primary legislation concerning aircraft operations was outdated (1972); a draft law had been submitted to the Government for approval without any indication of date of adoption. Furthermore operational regulations had only non-binding nature (advisory circulars).

(23) The MoTCA requested to be heard by the Air Safety Committee and made a presentation on 9 November 2010. They accepted that their oversight to date had not adequately ensured that ICAO Standards were met by the air carriers certified in Afghanistan. However, the MoTCA informed the Committee that they had decided to refrain from issuing any further Air Operator Certificates, that they had changed the management structure within the MoTCA and that they had banned the operation of aircraft of type AN 24. In addition, a new set of Aviation Regulations had just been introduced into law and MoTCA were preparing to re-certify all air carriers in Afghanistan to these new Regulations.

(24) The Commission noted the extremely difficult conditions that the MoTCA were operating under, and welcomed the commitment by the competent authority to improve the situation in the future. However, the Commission noted that, at present, the MoTCA is unable to discharge correctly its responsibilities as certification authority and to ensure that their international carriers comply with the international safety standards.

(25) In view of these findings, on the basis of the common criteria, it is assessed that all air carriers certified in the Islamic Republic of Afghanistan should be placed in Annex A.

Air carriers from the Republic of Ghana

(26) Following the measures imposed by Regulation (EU) No 791/2010 of 6 September 2010[(5)] on two air carriers certified in Ghana – Meridian Airways and Airlift International (GH) Ltd, the competent authorities of the Republic of Ghana (GCAA) requested to be heard at the Air Safety Committee and did so on 10 November 2010.

(27) During their presentation, the GCAA detailed the actions taken to date to address the shortcomings identified with Meridian Airways, Air Charter Express and Airlift International, and described the improvements they were putting in place to the oversight regime in Ghana, including the requirement that all air carriers certified in Ghana should conduct their activities in Ghana. The GCAA also informed the Committee that it had conducted an inspection of aircraft of type DC 8, registration 9G-RAC operated by Airlift International and confirmed that the non-compliances identified by the United Kingdom had been addressed.

(28) The Commission noted the willingness of the GCAA to address the shortcomings in their oversight by the investment in additional resources, and welcomed the decision to require air carriers certified in Ghana to relocate to Ghana and to maintain their principal place of business in Ghana to enable the CAA to ensure proper oversight. In an effort to support the work of the GCAA in achieving improvements to their oversight system, the Commission has requested the European Aviation Safety Agency to provide technical assistance by means of a visit during the early part of 2011.

Airlift International (GH) Ltd.

(29) The air carrier Airlift International (GH) Ltd requested to be heard by the Air Safety Committee and made a presentation on 10 November 2010. The air