Commission Regulation (EU) No 273/2010 of 30 March 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 273/2010

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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 European Union and on informing air transport passengers of the identity of the operating air 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 European 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 European 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 the 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 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 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 European Union and operated by air carriers certified by civil aviation authorities of third countries.

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

European Union carriers

(9) Following information resulting from SAFA ramp checks carried out on aircraft of certain European 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: the competent authorities of Spain launched the procedure on 12 March 2010 to suspend the Air Operator Certificate (AOC) of the air carrier Baleares Link Express and suspended the AOC of the air carrier Euro Continental on 12 January 2010; the competent authorities of Germany suspended the AOC of Regional Air Express as of 28 January 2010; the competent authorities of the UK informed that the AOC of the carrier Trans Euro Air Limited was suspended on 08 December 2009; the competent authorities of Slovakia informed in writing that the AOC of the carrier Air Slovakia was suspended on 01 March 2010.

(10) Finally, the competent authorities of Latvia informed the Air Safety Committee that following serious concerns about the safety of the operations and the continuing airworthiness of aircraft of type IL-76 operated by air carrier Aviation Company Inversija, they decided on 26 February 2010 to remove the aircraft from the AOC held by the air carrier Aviation Company Inversija and that the AOC was suspended on 16 March 2010.

Air Koryo

(11) Pursuant to Regulation (EC) 1543/2006 the Commission has obtained detailed information describing the actions taken by the competent authorities of the Democratic People's Republic of Korea (GACA) responsible for the regulatory oversight of Air Koryo and by Air Koryo in addressing the safety deficiencies outlined in Regulation (EC) 474/2006.

(12) In December 2008 the Commission communicated with GACA requesting a corrective action plan from Air Koryo demonstrating how they had corrected the serious safety deficiencies detected in the ramps inspections conducted prior to the carrier being placed in Annex A of the list of carriers banned from operating in the European Union. In addition the Commission requested relevant information demonstrating that

the GACA has exercised adequate oversight of Air Koryo in compliance with ICAO provisions.

(13) In June 2009 GACA formally responded and provided a set of documents which provided a comprehensive response to the requested information. There followed a series of communications between the Commission and the GACA which enabled clarification of the current aviation safety situation in the Democratic People's Republic of Korea to be achieved.

(14) The documents provided by GACA and the discussions between the Commission and GACA have shown that, for the Tupolev Tu 204-300 aircraft, Air Koryo is able to demonstrate that the aircraft can be operated in full compliance with international safety standards, including continuing airworthiness and operations, and that GACA is capable of providing oversight of the air carrier in accordance with international standards.

(15) For all other types of aircraft on the fleet of Air Koryo, GACA confirmed that they did not fully comply with international standards for aircraft equipment, notably EGPWS, and that these types were not authorised by GACA to conduct operations in European airspace.

(16) Throughout the period GACA reacted promptly and cooperatively to the Commission's requests for information. Air Koryo made presentations to the Air Safety Committee on 18 March 2010 confirming the positive developments within the company.

(17) Following the above, on the basis of the common criteria, it is assessed that Air Koryo should be allowed to operate the two aircraft type Tupolev Tu-204 with registration P-632 and P-633 into the European Union without operational restrictions. However, since the rest of the fleet does not comply with relevant ICAO requirements, they should not be allowed to operate into the European Union until such requirements are fully complied with. Therefore, on the basis of the common criteria, it is assessed that Air Koryo should be included in Annex B. It may only have access to the EU with the two aircraft of type Tupolev Tu-204.

Air carriers from Swaziland

(18) The competent authorities of Swaziland provided evidence by written submissions on 17 December 2009 of the withdrawal of the AOCs and of the operating licenses for the following air carriers: Aero Africa (PTY) Ltd, Jet Africa (PTY) Ltd, Royal Swazi National Airways, Scan Air Charter Ltd and Swazi Express Airways. These air carriers have ceased their activities since 8 December 2009.

(19) In view of the above, on the basis of the common criteria, it is assessed that the aforementioned air carriers licensed in Swaziland should be removed from Annex A.

Bellview Airlines

(20) There is verified evidence of serious deficiencies on the part of the air carrier Bellview Airlines certified in Nigeria, as demonstrated by the results of the

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 273/2010. (See end of Document for details)*

investigations carried out by the competent authorities of France and by European Aviation Safety Agency.

(21) The competent authorities of France (DGAC) informed the Commission that the above mentioned carrier had in its fleet two aircraft of type Boeing 737-200 registered in France with registration marks F-GHXK and F-GHXL, whose certificates of airworthiness expired in May and August 2008 respectively. Consequently, these aircraft are not in airworthy condition anymore.

(22) The European Aviation Safety Agency (EASA) reported to the Commission that the Part-145 approval ref. EASA.145.0172 it had issued to this organisation was suspended on 8 May 2009 with immediate effect due to unresolved safety deficiencies which lowers the safety standards and hazards seriously the flight safety and that revocation of this approval is being considered.

(23) Evidence exists that Bellview Airlines certified in Nigeria has taken over operations from the air carrier Bellview Airlines certified in Sierra Leone, an air carrier which was put on Annex A on 22 March 2006[(4)] and which was withdrawn on 14 November 2008[(5)] after the competent authorities of Sierra Leone informed the Commission of the revocation of its AOC.

(24) The aircraft of type Boeing B737-200 with registration mark 5N-BFN experienced a fatal accident in Lagos on 22 October 2005, leading to the total loss of the aircraft and 117 fatalities. The competent authorities of Nigeria failed to provide details about the accident and have not issued any accident investigation report yet.

(25) The Commission, having regard to the above mentioned deficiencies, has entered into consultations with the competent authorities of Nigeria, expressing serious concerns about the safety of the operations and the airworthiness of Bellview Airlines and asking for clarifications regarding the situation as well as the actions undertaken by the authorities as well as the air carrier to remedy the identified deficiencies.

(26) The competent authorities of Nigeria indicated on 19 February 2010 that the operator holds an AOC but had stopped operations. They however failed to provide the status of the certificates held by the air carrier and the status of its aircraft.

(27) Bellview Airlines requested to be heard by the Air Safety Committee and did so on 18 March 2010 assisted by the competent authorities of Nigeria (NCAA). Bellview Airlines provided an AOC stating validity until 22 April 2010 whilst mentioning that this AOC was suspended following the retirement of all aircraft mentioned on this AOC. The NCAA stated that according to the applicable Nigerian regulation the validity of this AOC had lapsed on 4 December 2009, 60 days after the end of the operations of the last aircraft but failed to provide evidence that the AOC was suspended or revoked as appropriate. Consequently, the NCAA was requested to provide urgently written confirmation of a) the administrative act of suspension or of revocation of the AOC of Bellview Airlines; b) confirmation that the company is in process of (re)certification by the Nigerian Civil Aviation Authority; c) the formal

undertaking of the Nigerian Civil Aviation Authority to notify to the Commission the results of the (re)certification audit before an AOC is issued.

(28) The competent authorities of Nigeria submitted the requested information on 25 March 2010. Therefore, on the basis of the common criteria, it is assessed that no further action is needed at this stage.

Air carriers from Egypt

(29) In accordance with Regulation (EC) No 1144/2009[(6)], the competent authorities of Egypt have submitted four monthly reports covering November and December 2009, as well January 2010 and February 2010 to show the status of implementation of the plan as verified by these authorities. Further to these reports which focused on ramp checks of aircraft of Egypt Air, on 18 November the audit reports for continued airworthiness, flight and ground operations were transmitted.

(30) The competent authorities of Egypt have also undertaken to continue providing information regarding the satisfactory closure of findings previously raised during ramp checks of aircraft of Egypt Air in the course of 2008, 2009 and 2010. To that end, they addressed relevant correspondence to certain Member States where aircraft of Egypt Air had been subject to ramp checks. The process of closure of these finding is ongoing and shall be verified on a regular basis.

(31) In accordance with Regulation (EC) No 1144/2009[(7)], a visit was carried out by the European Aviation Safety Agency with the assistance of Member States from 21 to 25 February 2010. During this visit an assessment of the oversight exercised by the Egyptian Civil Aviation Authority (ECAA) generally and in particular when following the implementation of the corrective action plan and the progressive closure of the findings by Egypt Air was also undertaken. The assessment visit provided evidence that the ECAA was capable of discharging its obligations under ICAO standards, for the oversight of operators to whom they issue an Air Operators Certificate, and identified areas for improvement: notably with regard to a consistent system to follow up on findings identified during the oversight activities carried out by the ECAA as well as in the training of personnel licensing staff.

(32) The assessment visit demonstrated that Egypt Air is in the process of implementing the corrective action plan. Overall, no significant breach of ICAO standards was identified. The Commission acknowledges the efforts made by the carrier towards completing the actions necessary to redress its safety situation. However given the scope and range of the corrective action plan of the air carrier and the need to provide for sustainable/permanent solutions to the numerous previously identified safety deficiencies, the Commission requests the competent authorities of Egypt to continue to send monthly reports on verification of the implementation of the corrective action plan including the corrective actions addressing findings identified during the assessment visit and to provide information on all oversight activities in the area of continuing airworthiness, maintenance and operations carried out by the ECAA on this air carrier.