Commission Regulation (EC) No 1144/2009 of 26 November 2009 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 (EC) No 1144/2009

of 26 November 2009

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 COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 transport passengers of the identity of the operating air 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 of 22 March 2006 established the Community list of air carriers which are subject to an operating ban within the Community 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 Community 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 Community and operated by air carriers certified by civil aviation authorities of third countries.

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

Community carriers

(9) Following information resulting from SAFA ramp checks carried out on aircraft of certain Community 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 Lithuania revoked the Air Operator Certificate (AOC) of the air carrier FLYLAL Lithuanian Airlines and the competent authorities of Spain launched the procedure to suspend the AOC of the air carrier Euro Continental on 30 October 2009.

Albanian Airlines MAK

(10) There is verified evidence of serious safety deficiencies on the part of Albanian Airlines MAK certified in Albania. These deficiencies have been identified by France, Germany, Italy as well as other ECAC States during ramp inspections performed under the SAFA programme[(4)]. These deficiencies concern mainly aircraft of type MD82.

(11) Albanian Airlines MAK responded adequately and in a timely fashion to the enquiry by the civil aviation authority of France, Germany and Italy regarding the corrective actions undertaken to address these safety deficiencies.

(12) The competent authorities of Albania (DGCA) however confirmed that the deficiencies identified in SAFA inspections actually pointed to systemic deficiencies in the operations and the quality system of Albanian Airlines MAK. The DGCA carried out an in-depth investigation of the air carrier's compliance with the applicable safety standards, following which they decided to impose restrictions on the operation and structural changes to the air carrier. In particular the DGCA informed the Air Safety Committee that the fleet was reduced from 3 to 2 aircraft and that the aircraft of type MD-82 with registration ZA-ASA was withdrawn from the AOC of Albanian Airlines and deregistered on 1 October 2009. In addition, the DGCA limited on 23 October the operations of the air carrier to the level and destinations existing at that date and requested the air carrier to change, with immediate effect, its management and reinforce the quality management and safety management systems.

(13) The DGCA made presentations to the Air Safety Committee on 11 November which confirmed that these corrective actions have been implemented and are deemed to effectively address the safety deficiencies identified.

(14) The competent authorities of Albania have shown that they acted to ensure the safety oversight of Albanian Airlines MAK.

(15) The competent authorities of Albania are invited to expedite the implementation of the action plan referred to in recital (32) of Regulation (EC) No 787/2007[(5)], and reminded of their commitment referred to in recital (33) of the same Regulation, not to issue any further AOC until the restructuring programme has been satisfactorily implemented. In view of this, Albania is invited to accelerate the capacity building of the DGCA in order to ensure the continuing oversight of air carriers certified in Albania is carried out in a sustainable manner and in compliance with the applicable safety standards.

(16) The European Aviation Safety Agency will carry out a standardisation inspection of Albania in early 2010 to monitor the implementation of the applicable safety requirements by the competent authorities and by the undertakings under their oversight.

Egypt Air

(17) In accordance with Regulation (EC) No 619/2009[(6)] and following the presentation of the Corrective Action Plan in June 2009, the competent authorities of Egypt have submitted four monthly reports covering July, August, September and October 2009 to show the status of implementation of the plan as verified by these authorities. Further to these reports which have focused on ramp checks of aircraft of Egypt Air, the competent authorities of Egypt were requested to provide the audit reports for maintenance, continuing airworthiness and flight operations that they carried out on the air carrier. The competent authorities of Egypt transmitted on 10 November the report of the base inspection of Egypt Air in October 2009 which led to the renewal of the AOC of the air carrier. The audit reports for continued airworthiness, flight and ground operations were not transmitted. The documents provided show that, while significant progress has been made by the air carrier, further improvements in the areas of maintenance and engineering and operations are anticipated.

(18) The competent authorities of Egypt have also undertaken to provide information regarding the satisfactory closure of findings previously raised during ramp checks of aircraft of Egypt Air in 2008 and 2009. To that end, they addressed relevant correspondence to certain Member States where aircraft of Egypt Air had been subject to ramp checks in the period 1 January 2008 to 30 September 2009. The process of closure of these finding is ongoing and shall be verified on a regular basis.

(19) The Air Safety Committee acknowledges the efforts made by the carrier towards completing the actions necessary to redress its safety situation, as well as the strong disposition towards cooperation shown both by the carrier and the competent authorities of Egypt. However, given the scope and range of the corrective action plan

and the need to provide for sustainable solutions to the previously identified safety deficiencies, the competent authorities of Egypt are requested to continue sending monthly reports on verification of the implementation of that plan and closure of the findings identified during the SAFA inspections along with any other reports of audits that they carry out on Egypt Air.

(20) Upon completion of the corrective action plan, the competent authorities of Egypt should carry out a final audit and communicate the results to the Commission along with any recommendations. The Commission reserves the right to proceed to the verification of the implementation of corrective measures by the air carrier by means of a visit to be carried out by the European Aviation Safety Agency with the assistance of Member States. In the meantime, the Member States shall continue to ensure that the number of inspections of Egypt Air will be intensified in order to provide the basis for a reassessment of this case during the next Air Safety Committee.

Yemenia Yemen Airways

(21) Pursuant to Regulations (EC) No 715/2008 and 1131/2008[(7)], Member States continued to verify the effective compliance of Yemenia with the relevant safety standards through regular ramp checks of its aircraft landing on Community airports. In 2009, France, Germany, Italy and the United Kingdom reported such inspections. The Commission received documentation demonstrating that the air carrier reacted appropriately and in a timely manner to resolve the findings arising from these inspections.

(22) Following the adoption of Regulation (EC) No 619/2009 the Commission received additional information from the competent authorities of the Republic of Yemen as well as from the carrier Yemenia Yemen Airways on the implementation of the corrective actions plan in the areas of maintenance and operations.

(23) The competent authorities of the Republic of Yemen informed the Commission of the verification they carried out on the maintenance facilities of Yemenia after the suspension of its maintenance organisation approval EASA.145.0177 with a view to assess the compliance of Yemenia with the Yemenite standard YCAR-145. The competent authorities of the Republic of Yemen transmitted a revised corrective action plan from Yemenia dated 15 September 2009 following the audit by the Civil Aviation and Meteorology Authority (CAMA) of the maintenance organisation of Yemenia according to the national requirements (YCAR-145) together with a follow-up audit by CAMA dated 20 September 2009. Both documents showed that all findings have been closed. In addition, individual supporting documentation for the closure of findings were provided by CAMA during the meeting of the Air Safety Committee on 10 November 2009.

(24) Furthermore, the Air Safety Committee was informed of the positive assessment, at this stage, by EASA and the competent authorities of France of the implementation of corrective actions by Yemenia to regain its European maintenance approval.

(25) The efforts deployed by Yemenia to correct the identified safety deficiencies in the various audits are acknowledged. The completion by Yemenia of the corrective action plan in the field of maintenance as reported in the assessments carried out in this area by CAMA is noted. An on-site visit in Yemen will be organised by EASA and Member States as soon as practicable to verify the safety situation of Yemenia with a view to evaluating its actual compliance with international safety standards and to evaluate the capacity of CAMA to ensure the oversight of the safety of civil aviation in Yemen.

(26) Member States will verify systematically the effective compliance of Yemenia with the relevant safety standards through the prioritisation of ramp inspections to be carried out on aircraft of this carrier pursuant to Regulation (EC) No 351/2008. The Air Safety Committee will review this case in its next session.

Air carriers from Democratic Republic of Congo

(27) The Democratic Republic of Congo informed the Commission of the withdrawal of operating licences for the following air carriers: Virunga Air Charter, Air Navette, Air Beni, Air Boyoma, Butembo Airlines, Sun Air services, Rwakabika Bushi Express, Aigle Aviation, Kivu Air, Comair, Free Airlines, Great Lake Business Company, Air Infini, Bel Glob Airlines, Safari Logistics, Tembo Air Services, Katanga Airways, Cargo Bull, Africa One, Malila Airlift, Transport Aérien Congolais (TRACO), El Sam Airlift, Thom's Airways, Piva Airlines, Espace Aviation Service. These air carriers have ceased their activities since 30 July 2009.

(28) Furthermore, the competent authorities of the Democratic Republic of Congo informed of the withdrawal of operating licenses for air carriers of which the Commission had not been previously informed they had an operating license: Air Fox, Trans Kasai Air, Wetrafa, Adala Airways, Executive Aviation, Flight Express, Katana Airways, Showa Air Cargo, Gloria Airways, Soft Trans Air, Lomami Aviation, Pegassus Aviation, African Trading and Transport, Brooks Trading. These air carriers have ceased their activities since 30 July 2009.

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

Air carriers from Djibouti

(30) There is verified evidence of a lack of ability of the authorities responsible for the oversight of air carriers licensed in Djibouti to address safety deficiencies, as demonstrated by the results of the audit of Djibouti carried out by ICAO in the framework of the Universal Safety Oversight Audit Programme (USOAP) in March 2008. This audit reported a large number of significant deficiencies with regard to the capability of the civil aviation authorities of Djibouti to discharge their air safety oversight responsibilities. At the time of the completion of the ICAO audit, more than 96% of ICAO standards were not implemented.