Commission Regulation (EC) No 619/2009 of 13 July 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 619/2009

of 13 July 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 of 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 establishing 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 of the European Parliament and of the Council[(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) Regulation (EC) No 474/2006 should therefore be amended accordingly.

Community carriers

(7) 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 Greece informed that the Air Operator Certificate (AOC) of the carrier EuroAir Ltd had been withdrawn on 8 May 2009; the competent authorities of Sweden informed that they had withdrawn on 23 January 2009 the AOC of the carrier of Nordic Airways AB ('Regional') and on 31 March 2009 that of the carrier Fly Excellence AB.

One Two Go Airlines and Orient Thai Airlines

One Two Go Airlines

(8) On 8 April 2009, the competent authorities of Thailand (the Thai Department of Civil Aviation — Thai DCA) informed the Commission that they have revoked the AOC of the carrier One Two Go. Although One Two Go had filed appeal against the revocation order, the Thai DCA has re-affirmed such order on 4 May 2009.

(9) Therefore, taking into account that the operator has lost its AOC, and that as a consequence its operating licence cannot be considered as valid, on the basis of the common criteria, it is assessed that the One Two Go is no longer an 'air carrier' as defined by Article 2 of Regulation (EC) No 2111/2005, and should therefore be removed from Annex A.

Orient Thai Airlines

(10) Pursuant to the provisions of Commission Regulation (EC) No 298/2009 of 8 April 2009 amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community[(4)], the Thai DCA provided the Commission with information regarding the effectiveness of the corrective actions taken by the carrier Orient Thai, as well as measures taken by the Thai DCA to resolve the safety deficiencies detected previously, and which led to the suspension of the carrier's operations with aircraft of type MD-80 for a period of 75 days until 7 October 2008.

(11) The Commission considers that, on the basis of this information, no further action is needed.

Air carriers from Ukraine

Overall safety oversight of air carriers from Ukraine

(12) Following the adoption of Regulation (EC) No 298/2009 a team of European experts carried out a visit in Ukraine from 25 to 29 May 2009 to verify the status of

implementation of the action plan submitted by the competent authorities of Ukraine to enhance oversight as well as the safety situation of the two carriers whose operations are subject to an operating ban in the Community — Ukraine Cargo Airways and Ukrainian Mediterranean Airlines. Also, with a view to verifying the exercise of oversight by the State Aviation Administration of Ukraine, the EC team of experts met with two carriers — South Airlines and Khors Air Company, which operate in to the Community and have been subject to ramp checks in the Community and in other ECAC states.

(13) The State Aviation Administration has made limited progress in the implementation of its action plan. All actions (12/12) identified by the State Aviation Administration in its action plan submitted on 31 May 2008 to enhance the exercise of oversight remain open so far. No certification according to the requirements announced by the State Aviation Administration has taken place, the corresponding legislation has not been enacted and the completion of the corrective actions will not be completed before July 2011 at the earliest, for some implementation has slipped to 2015.

(14) The implementation of the action plan is directly linked to the complexity of the legal system of Ukraine which does not permit to identify clearly the standards used for approval of aircraft and operators and whether they actually comply with annexes of the International Civil Aviation Organisation (ICAO). This was confirmed during meetings with the four operators.

(15) Also, the report of the visit reveals that the competent authorities of Ukraine do not have sufficient qualified personnel to carry out the oversight of 74 AOC holders (airworthiness and operations). The implementation of the continuing oversight activities could not be fully demonstrated and the comments presented by the competent authorities of Ukraine after the visit could not clarify these matters. Also, careful review of the AOC system used by the competent authorities of Ukraine shows that this system does not provide for clear identification of the regulations/standards applied for certification nor for certainty about the exact fleet authorised for operations and the exact authorisations held.

(16) The competent authorities of Ukraine submitted comments which were not sufficient to remove the findings raised during the visit. The various corrective actions announced by these authorities will need to be closely monitored and evaluated on a regular basis taking also into account the results of the ICAO USOAP visit carried out in June 2008. Also, following the visit, the competent authorities of Ukraine submitted a new corrective action plan, whose implementation depends on the adoption of a new aviation law in Ukraine the adoption of which is planned for 2010. Hence the adoption of various implementing rules will not be completed before the second half of 2011 for aircraft operations, end 2012 for flight crew licensing and end of 2015 for continuing airworthiness.

(17) In the light of the results of the visit, and presentations made during the meeting of the Air Safety Committee on 1 July 2009, the Commission will continue to monitor closely the implementation of these actions and cooperate with the competent authorities of Ukraine to assist them in enhancing oversight and in addressing any

non-compliances. Furthermore, Member States will verify systematically the effective compliance with relevant safety standards through the prioritisation of ramp inspections to be carried out on aircraft of carriers licensed in Ukraine pursuant to Commission Regulation (EC) No 351/2008[5].

Motor Sich JSC Airlines

(18) Following the adoption of Regulation (EC) No 298/2009 the carrier was invited to present any relevant information including corrective actions to redress the previously detected safety deficiencies. The competent authorities of Ukraine submitted information clarifying the actions taken on the AOC of the carrier. Motor Sich submitted documentation on 4 June 2009 stating that the company had carried out a root cause analysis and had drawn up corrective actions to resolve any safety deficiencies. Its analysis and corrective actions were approved by the competent authorities of Ukraine. Also, the company addressed on 15 June correspondence including corrective actions to the competent authorities of France which had performed an inspection[6] on the aircraft AN-12 (UR-11819). The corrective action plan indicates that the manuals and documentation of the company (operation manual and flight manual) have been modified to bring them into conformity with ICAO standards and allowing for a correct flight preparation.

(19) However, the training of pilot and crew to ensure that the revised manuals and procedures are effectively applied is not sufficient to ensure appropriate coverage of the broad range of changes. Furthermore, the Commission has not received any information from the competent authorities of Ukraine indicating the verification of the status of implementation and the effective closure of these actions with a view to resolving in a sustainable manner the detected safety deficiencies.

(20) In the light of these findings, and on the basis of the common criteria, the Commission considers that at this stage, the carrier Motor Sich does not meet the relevant safety standards and should therefore be retained in Annex A.

Ukraine Cargo Airways

(21) Following the adoption of Regulation (EC) No 298/2009 the carrier was visited by the EC team of experts on 27 May 2009. The report of the visit indicates that the fleet of Ukraine Cargo Airways (UCA) has been considerably reduced in one year, declining from 20 aircraft at the beginning of 2008 (ten IL-76, three AN-12, three AN-26, three MIL-8 helicopters and one Tupolev Tu-134), to four aircraft at the time of the visit (two IL-76, one AN-12 and one AN-26). Out of 4 aircraft on the AOC, only one aircraft, an IL-76 (UR-UCC) is in airworthy condition, the other three aircraft on the AOC having expired certificates of airworthiness. The carrier stated that all other aircraft are not airworthy anymore and are not operated in any manner.

(22) According to the report UCA has made significant progress in the implementation of its corrective action plan submitted on 1 April 2008 to the Commission. Out of the 22 actions scheduled, 19 are indicated as completed and closed. Safety policy and documentation were revised and improved. An internal safety inspection department was established. The aircraft technical condition was improved.

The crew training procedures were revised and improved. However, three actions proposed in this corrective action plan still remain open, the most problematic one being the absence of quick donning masks for IL-76, AN-12 and AN-26 as required by ICAO for flights above a certain altitude.

(23) The report also points out to significant safety deficiencies in the areas of flight operations, training and checking, continuing airworthiness and maintenance. Furthermore, the quality management system is deficient as there is no assurance that findings raised by internal audit or by the competent authorities of Ukraine are corrected and verified prior to closure, neither does it ensure that there is systematic analysis of deficiencies. These findings raise doubts about the sustainability of corrective measures put in place by the company after the imposition of the operating ban.

(24) The company was invited to present comments. UCA submitted documentation on 10 June to the findings raised during the visit. Out of 16 new findings raised during the visit, one could be effectively closed after examination of documentation by the company. For two findings concerning the manual of operations and its AOC, the company indicated that it had submitted to the approval of the competent authorities of Ukraine changes to its manual of operations and had requested a flight level limitation in its AOC regarding aircraft AN-12 (UR-UCN) and AN-26 (UR-UDM).

(25) The Commission did not receive any information regarding the approval of the changes (limitations) requested by the company. Also, the carrier requested to be heard and made representations to the Commission and the Air Safety Committee on 1 July indicating that out of a total of 51 corrective actions 15 were still to be implemented by the end of August 2009 following which verification by the competent authorities of Ukraine would take place. The Commission reserves the right to proceed to verification of the implementation of corrective measures by this carrier.

(26) In the light of these findings the Commission considers that at this stage, on the basis of the common criteria, the company does not meet the relevant safety standards and should therefore be retained in Annex A.

Ukrainian Mediterranean Airlines

(27) Following the adoption of Regulation (EC) No 298/2009 the carrier was visited by the EC team of experts on 28 May 2009. The report of the visit indicates that UMAir has made significant improvements in its documentation system which has been completely reviewed. A safety department was established and a focal point for SAFA inspections nominated. The training procedures were also revised and improved. Nevertheless, while UMAir contends having completed the implementation of its corrective action plan, as verified by the competent authorities of Ukraine, sampled corrective actions by the team show that some deficiencies remain: Corrective actions undertaken by UMAir in relation to the load-sheet/dry operating index do not appear to be effectively applied for all aircraft types on the AOC. Some remedial actions for deficiencies noted during SAFA inspection are not being systematically