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 (Text with EEA relevance)

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

(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/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 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) 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 Sweden have revoked the Air Operator Certificate (AOC) of the carrier Nordic Regional and suspended those of the carriers Fly Excellent and Aero Syncro; the competent authorities of Spain have revoked the AOC of the carrier Bravo Airlines and its operating licence; the competent authorities of Portugal lifted the suspension of the AOC of the carrier Luzair on 22 January 2009 following verification of successful completion of corrective actions by the carrier; the competent authorities of Greece lifted the suspension of the AOC of the carrier Hellenic Imperial Airways on 18 December 2008 following verification of successful completion of corrective actions by the carrier and suspended on 28 January 2009 the AOC of the carrier Euroair Ltd following a request of this carrier and the suspension of the approval of the continuing airworthiness management organisation of the carrier.

Air carriers from the Republic of Kazakhstan
Starline KZ

(8) There is verified evidence of serious safety deficiencies on the part of Starline KZ certified in Kazakhstan. These deficiencies have been identified by Bulgaria as well as other ECAC states during ramp inspections performed under the SAFA programme[(4)]. The repetition of these non-compliances shows systemic safety deficiencies in the area of operations and maintenance.

(9) Starline KZ did not respond adequately and in a timely fashion to an enquiry by the civil aviation authority of Bulgaria regarding the safety aspect of its operation showing a lack of communication, as demonstrated by the absence of adequate response to correspondence from this Member State. Starline KZ demonstrated a lack of ability to address these safety deficiencies, which remain unresolved.

(10) The Commission, having regard to the above mentioned deficiencies, has entered on 27 January 2009 in consultation with the competent authorities of Kazakhstan, expressing serious concerns about the safety of the operations of Starline KZ and asking pursuant to Article 7 of Regulation (EC) No 2111/2005 for clarifications regarding the actions undertaken by the competent authorities as well as the carrier to respond to these deficiencies.

(11) These authorities did not respond adequately and in a timely fashion to an enquiry by the Commission regarding the safety oversight of Starline KZ, since by the required date the Commission did not receive the requested information, in particular the carrier's AOC together with the complete operations specifications, requirements and restrictions attached thereto.

(12) Starline KZ requested to be heard by the Air Safety Committee and was heard on 24 March 2009. The hearing however, did not provide sufficient evidence of satisfactory completion of the remedial actions. During the hearing the competent authorities of Kazakhstan presented to the Commission their decision of 4 February 2009 to restrict the operations of Starline KZ to outside the European airspace.

(13) In view of the above, on the basis of the common criteria, it is assessed that Starline KZ does not meet the relevant safety standards and should therefore be included in Annex A.

East Wing

(14) There is verified evidence of serious safety deficiencies on the part of East Wing certified in Kazakhstan. These deficiencies have been identified by France and Romania during ramp inspections performed under the SAFA programme[(5)]. The repetition of these inspection findings shows systemic safety deficiencies.

(15) East Wing did not respond adequately to an enquiry by the civil aviation authority of France regarding the safety aspect of its operation showing a lack of communication, as demonstrated by the absence of adequate response to correspondence from this Member State. East Wing demonstrated a lack of ability to address these safety deficiencies, which remain unresolved.

(16) The Commission, having regard to the above mentioned deficiencies, has entered into consultation with the competent authorities of Kazakhstan, expressing serious concerns about the safety of the operations of East Wings and asking for clarifications regarding the actions undertaken by the competent authorities as well as the carrier to respond to these deficiencies.

(17) Evidence exists that East Wing has taken over operations from the air carrier GST Aero, an air carrier which was put on Annex A on 22 March 2006[(6)] and which was withdrawn after the competent authorities of Kazakhstan informed the Commission of the withdrawal of the AOC in March 2007[(7)].

(18) The competent authorities of Kazakhstan informed that they restricted on 4 February 2009 the operations of East Wing to outside the European airspace. These authorities, however, did not respond adequately and in a timely fashion to an enquiry by the Commission regarding the safety oversight of East Wing, failing to provide appropriate evidence regarding the carrier's AOC together with the complete operations specifications, requirements and restrictions attached thereto.

(19) East Wing requested to be heard by the Air Safety Committee and was heard on 24 March 2009. However, the hearing did not provide sufficient evidence of satisfactory completion of the remedial actions and revealed that the carrier is not aware of limitations to its operations into the European airspace. In view of the above, on the basis of the common criteria, it is assessed that East Wing does not meet the relevant safety standards and should therefore be included in Annex A.

ATMA Airlines

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 298/2009. (See end of Document for details)*

(20) There is verified evidence of serious safety deficiencies on the part of ATMA Airlines certified in Kazakhstan. These deficiencies have been identified by Germany, Norway and Turkey during ramp inspections performed under the SAFA programme[8]. The repetition of these inspection findings shows systemic safety deficiencies.

(21) ATMA Airlines did not respond adequately to an enquiry by the civil aviation authority of Germany and Norway regarding the safety aspect of its operation showing a lack of communication, as demonstrated by the absence of adequate response to correspondence from these States. ATMA Airlines demonstrated a lack of ability to address these safety deficiencies, which remain unresolved.

(22) The Commission, having regard to the above mentioned deficiencies, has entered into consultation with the competent authorities of Kazakhstan, expressing serious concerns about the safety of the operations of ATMA Airlines and asking for clarifications regarding the actions undertaken by the competent authorities as well as the carrier to respond to these deficiencies.

(23) The competent authorities of Kazakhstan informed that they restricted on 4 February 2009 the operations of ATMA Airlines to outside the European airspace. However, these authorities did not respond adequately and in a timely fashion to an enquiry by the Commission regarding the safety oversight of ATMA Airlines, failing to provide appropriate evidence regarding the carrier's AOC together with the complete operations specifications, requirements and restrictions attached thereto.

(24) ATMA Airlines requested to be heard by the Air Safety Committee and was heard on 24 March 2009. The hearings however did not provide sufficient evidence of satisfactory completion of the remedial actions.

(25) In view of the above, on the basis of the common criteria, it is assessed that ATMA Airlines does not meet the relevant safety standards and should therefore be included in Annex A.

Berkut Air

(26) There is verified evidence of serious safety deficiencies on the part of Berkut Air certified in Kazakhstan. These deficiencies have been identified by France and Romania during ramp inspections performed under the SAFA programme[9]. The repetition of these inspection findings shows systemic safety deficiencies.

(27) Berkut Air did not respond adequately and in a timely fashion to an enquiry by the civil aviation authority of Romania regarding the safety aspect of its operation showing a lack of communication, as demonstrated by the absence of adequate response to correspondence from this Member States. Berkut Air demonstrated a lack of ability to address these safety deficiencies, which remain unresolved.

(28) The Commission, having regard to the above mentioned deficiencies, has entered into consultation with the competent authorities of Kazakhstan, expressing serious concerns about the safety of the operations of Berkut Air and asking for

clarifications regarding the actions undertaken by the competent authorities to respond to these deficiencies.

(29) The competent authorities of Kazakhstan informed that they suspended in February 2009 the AOC of BEK Air, previously Berkut Air. These authorities however did not respond adequately and in a timely fashion to an enquiry by the Commission regarding the safety oversight of Berkut Air, as they failed to provide the requested documentation and demonstrated by the absence of communication of documentary evidence of enforcement actions undertaken.

(30) In view of the above, on the basis of the common criteria, it is assessed that Berkut Air does not meet the relevant safety standards and should therefore be included in Annex A.

Air Company Kokshetau

(31) There is verified evidence of serious safety deficiencies on the part of Air Company Kokshetau certified in Kazakhstan. These deficiencies have been identified by Italy during ramp inspections performed under the SAFA programme[10]. These deficiencies concern aircraft of type IL-62 which are not equipped with TAWS (E-GPWS), not equipped with harness, not equipped with quick donning oxygen masks for flight above FL 250 and not equipped with appropriate system for illuminating the escape path.

(32) Air Company Kokshetau did not respond adequately and in a timely fashion to an enquiry by the civil aviation authority of Italy regarding the safety aspect of its operation showing a lack of communication, as demonstrated by the absence of adequate response to correspondence from this Member State. Air Company Kokshetau demonstrated a lack of ability to address these safety deficiencies, which remain unresolved.

(33) The Commission, having regard to the above mentioned deficiencies, has entered into consultation with the competent authorities of Kazakhstan, expressing serious concerns about the safety of the operations of Air Company Kokshetau, and asking for clarifications regarding the actions undertaken by the competent authorities to respond to these deficiencies.

(34) The competent authorities of Kazakhstan informed the Commission that they decided to remove on 13 February 2009 the aircraft of type IL-62M with serial numbers 1138234 and 1748445 from the AOC of Air Company Kokshetau, and that they further intended to recall as of 24 March the AOC of this carrier due to bankruptcy. However, these authorities did not respond adequately to an enquiry by the Commission regarding the communication of documentary evidence on the revocation of the AOC.

(35) In view of the above, on the basis of the common criteria, it is assessed that Air Company Kokshetau does not meet the relevant safety standards and should therefore be included in Annex A.

Sayat Air