Commission Regulation (EC) No 1131/2008 of 14 November 2008 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 1131/2008

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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 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) 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, the following carriers have been subject to enforcement measures by their national authorities with responsibility for oversight: the competent authorities of Germany having been satisfied by corrective measures implemented by the carrier MSR Flug Charter GmbH decided nevertheless to suspend on 31 October 2008 its operating license after this carrier filed for bankruptcy and the potentially ensuing difficulties to respect safety requirements; the competent authorities of Portugal suspended on 10 October 2008 the AOC of the carrier Luzair, pending its recertification in full compliance with the applicable Community rules; the competent authorities of Spain initiated on 28 October 2008 the procedure for suspension of the AOC of the carrier Bravo Airlines; the competent authorities of Greece suspended on 24 October 2008 for three months the AOC of the carrier Hellenic Imperial Airways. The latter requested to make presentations to the Air Safety Committee and did so on 3 November 2008.

Air carriers from Angola

(8) Following the adoption of Regulation (EC) No 715/2008, the Commission has received new information confirming the existence of systemic safety deficiencies within INAVIC. On 1 October 2008 ICAO published the final report of its audit on Angola conducted from 26 November to 5 December 2007 in the framework of its Universal Safety Oversight Audit Programme (USOAP). This report contains also the comments of the audited authority, as well as the corrective actions submitted to ICAO to resolve the findings. The number of findings in the relevant areas covered by Annexes to the Chicago Convention No 1, 6, 8 and 13 are forty-six (46). These findings indicate a high level of lack of effective implementation of the Standard and Recommended Practices (SARPs) of ICAO in all eight critical elements of a safety oversight system. In particular, the critical elements with more than 80 % lack of implementation are primary aviation legislation (84 %), specific operating regulations (89 %), qualification and training of technical staff (81 %), licensing and certification obligations (81 %), surveillance obligations (80 %) and resolution of safety concerns (100 %). Furthermore, there is significant safety concern expressed by ICAO in the area of aircraft operations certification and supervision, as to whether, even after the submission of a corrective action plan and actions implemented by INAVIC, ‘air operators conducting international operations can demonstrate meeting the regulations set forth by INAVIC to meet ICAO Annex 6 provision’. At the date of publication of the report, 50 % of the corrective actions should have been implemented.

(9) This situation confirms the report of the team of experts of the Commission and the Member States which conducted a fact-finding mission to Angola from 18 to 22 February 2008. Indeed, the USOAP audit report confirms that currently all carriers of Angola have AOCs which do not comply with Annex 6 of the Chicago Convention.

The completion of the certification of these carriers is not foreseen, according to the corrective action plan submitted to ICAO, before 31 May 2009.

(10) The Commission addressed a letter on 6 October 2008 to the competent authorities of Angola in accordance with Article 7 of Regulation (EC) No 2111/2005, whereby these authorities and each of the airlines certified in Angola were given the opportunity of consulting the relevant documentation before a decision is reached. In addition, each of these airlines was also invited at the same time to submit written comments and/or to make an oral presentation to the Commission and to the Air Safety Committee.

(11) The Commission acknowledges the efforts made by INAVIC towards progressively implementing the corrective actions proposed to ICAO. However, until evidence of satisfactory completion of the corrective action plan, in particular as regards the recertification of the air carriers in full compliance with Annex 6 of the Chicago Convention, the Commission, on the basis of the common criteria, considers that all air carriers certified in Angola should be subject to an operating ban and therefore included in Annex A. The Commission shall consult the authorities of Angola on this matter without delay.

Air carriers from the Kingdom of Cambodia

(12) There is verified evidence of insufficient ability of the authorities responsible for the oversight of air carriers certified in the in the Kingdom of Cambodia to address safety deficiencies, as showed by the USOAP audit conducted by ICAO in November-December 2007, which reported a large number of non-compliances with international standards. In addition, ICAO communicated to all contracting parties the existence of significant safety concerns with regards to the capability of the civil aviation authorities of Cambodia to carry out their air safety oversight responsibilities. Consequently, as envisaged in recital 35 of Regulation (EC) No 715/2008, the Commission invited on 3 October 2008 the competent authorities of Cambodia (SSCA) and all carriers certified in Cambodia to timely provide all relevant information regarding the implementation of corrective actions addressing the safety deficiencies identified by ICAO, and in particular the recertification of airlines.

(13) SSCA has informed the Commission that it has revoked the AOCs of the following air carriers: Sarika Air Services, Royal Air Services, Royal Khmer Airlines and Imtrec Aviation. In addition, the AOC of PMT Air has been suspended until 12 April 2009 due to non-compliance with Cambodian Civil Aviation Regulations.

(14) However, safety concerns remain regarding Siem Reap Airways International. The AOC of this carrier has been continued without any geographical limitation whilst evidence was obtained that the operator does not comply with Cambodian Civil Aviation Regulations and does not meet ICAO requirements. Therefore, on the basis of the common criteria, it is assessed that this carrier should be subject to an operating ban and therefore included in Annex A. The Commission is ready to provide technical assistance to the competent authorities of the Kingdom of Cambodia and will review

at the next Air Safety Committee the safety situation of this carrier on the basis of any documentation submitted by the competent authorities of the Kingdom of Cambodia.

Air carriers from the Republic of Philippines

(15) There is verified evidence of serious safety deficiencies on the part of all air carriers certified in the Republic of Philippines and of the insufficient ability of the authorities responsible for the oversight of air carriers certified in the in the Philippines to address safety deficiencies,, as showed by the continuation of the downgrading of the country's safety rating to category two by the U.S. Department of Transportation's Federal Aviation Administration (FAA) in the framework of its IASA programme, indicating that that the Republic of Philippines fails to comply with international safety standards set by ICAO.

(16) The Competent Authorities of the Philippines have however presented to the Commission on 13 October 2008 a detailed corrective action plan to redress the safety situation of the country's civil aviation, so that, when completed, the Philippines can demonstrate sustainable compliance with ICAO standards both in the State oversight system and in the operations of air carriers licensed by these authorities. According to that plan, approximately half of the corrective actions are to be completed by 31 December 2008, the remaining ones by 31 March 2009.

(17) In the framework of the USOAP, the competent authorities of Philippines have requested ICAO to delay its comprehensive inspection of their national Air Transportation Office, previously scheduled for November 2008, until October 2009.

(18) The European Commission intends to carry out, with the assistance of the Member States, a safety assessment of the competent authorities of the Philippines, including the verification of the implementation of the above-mentioned corrective actions plan, early 2009, to be able to decide the appropriate course of action at a next Air Safety Committee meeting.

Air Carriers from Equatorial Guinea

(19) The competent authorities of Equatorial Guinea have provided the Commission with information that they have granted AOCs to the following air carriers: EGAMS and Star Equatorial Airlines. Since the said authorities have shown a lack of ability to carry out adequate safety oversight of the carriers certified by them, these two carriers should be equally included in Annex A.

Air Carriers from Kyrgyzstan

(20) The authorities of the Kyrgyz Republic have provided the Commission with evidence of the withdrawal of the AOCs of the following air carriers: Asia Alpha Airways, Artik Avia, Esen Air, Kyrgyzstan Airlines, and Osh Avia. Since these carriers have consequently ceased their activities, they should be withdrawn from Annex A.

Air carriers from Sierra Leone

(21) The competent authorities of Sierra Leone have provided the Commission with evidence of the cancellation of the AOC of the air carrier Bellview Airlines (SL). Since this carrier has ceased its activities, it should be withdrawn from Annex A.

Yemenia — Yemen Airways

(22) Following the adoption of Regulation (EC) No 715/2008, the Commission received information from the competent authorities of the Republic of Yemen as well as the carrier Yemenia that the corrective actions plan was discussed and reviews with Airbus, which had carried out audits of the company in the area of maintenance and operations. The Commission received on 17 September 2008 the results of these discussions.

(23) The Commission has been following closely the safety performance of the carrier and considers that the results of ramp checks performed on aircraft operated by Yemenia into the Community since the adoption of Regulation (EC) No 715/2008, reveal that the company has been implementing its corrective action plan in the area of maintenance and operational discipline in a sustainable manner to avoid the recurrence of significant safety deficiencies. Following ramp checks of aircraft of Yemenia which included findings indicating serious non-compliances, the Commission heard the carrier on 15 October, where it received documentation demonstrating that the carrier reacted appropriately and in a timely manner to resolve the findings in a sustainable manner. Therefore, the Commission considers that, on the basis of this information, no further action is needed. Member States will verify systematically the effective compliance with relevant safety standards through the prioritisation of ramp inspections to be carried out on aircraft this carrier pursuant to Regulation (EC) No 351/2008.

Nouvelle Air Affaires Gabon

(24) The carrier Nouvelle Air Affaires Gabon requested to make a presentation to the Air Safety Committee and was heard on 3 November 2008. The Commission took note that this airline has undertook a reorganisation and has initiated a series of remedial actions in order to demonstrate, ultimately, compliance with international aviation safety standards. However, the carrier has not submitted documented evidence that the remedial action plan has been approved by the competent authorities of Gabon and verified as implemented.

(25) Regarding the exercise of safety oversight of this carrier, the competent authorities of Gabon have not provided evidence that the oversight activities with regard to aircraft operations are carried out in conformity with international standards nor that the measures referred to in recital (15) of Regulation (EC) No 715/2008 have been implemented for this carrier. On 5 November 2008 the competent authorities of Gabon transmitted information regarding the exercise of oversight activities on certain carriers certified in Gabon. This information did not contain any evidence regarding oversight in the area of aircraft operations.