Commission Regulation (EC) No 715/2008 of 24 July 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 715/2008

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(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(2) of Regulation (EC) No 2111/2005 and Article 2 of Commission Regulation (EC) No 473/2006 of 22 March 2006 laying down implementing rules for 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[(3)], a Member State requested to update the Community list.

(3) 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.

(4) 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.

(5) 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[4].

(6) 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.

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

Mahan Air

(8) As envisaged in recital 41 of Commission Regulation No 331/2008 and following the invitation of the carrier Mahan Air, a team of European experts conducted a fact-finding mission to the Islamic Republic of Iran from 16 to 20 June 2008 to verify the implementation by the carrier of corrective actions meant to address the previously identified safety deficiencies. The report shows that significant progress has been made by the carrier following its inclusion in the Community list, and confirmed that the carrier has completed the corrective actions needed to address all safety deficiencies which led to the ban.

(9) The report also shows that some other deficiencies could still affect the continuing airworthiness of parts of the fleet of the carrier, with the exclusion of the two aircraft of type Airbus A-310 registered in France (F-OJHH and F-OJHI). A number of ongoing measures, such as the introduction of new software, and the appointment of a new engineering manager and a new quality manager, are meant to prevent such anomalies to reoccur in the future. The Commission also took note of the intention of the carrier to operate to the Community the two French-registered aircraft only.

(10) On the basis of the common criteria, it is assessed that Mahan Air has implemented all necessary measures to conform to relevant safety standards and therefore may be withdrawn from Annex A. The Commission will continue to monitor closely the performance of the carrier. 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 this carrier pursuant to Commission Regulation (EC) No 351/2008 of 16 April 2008 implementing Directive 2004/36/EC of the European Parliament and of the Council as regards the prioritisation of ramp inspections on aircraft using Community airports[5].

Air carriers from the Republic of Gabon

(11) There is verified evidence of serious safety deficiencies on the part of certain air carriers certified in the Republic of Gabon. ICAO carried out a Universal Safety Oversight Audit in 2007 and has reported a large number of significant deficiencies with regards to the capability of the civil aviation authorities of the Republic of Gabon to perform their air safety oversight responsibilities. More than 93 % of ICAO standards were not implemented at the time of the completion of the ICAO audit.

(12) There is verified evidence of repeated significant safety deficiencies on the part of air carriers certified in the Republic of Gabon and operating into the Community.

These deficiencies have been identified by the competent authorities of France during ramp inspections performed under the SAFA programme[(6)].

(13) The United Kingdom has communicated to the Commission that, having regard to the results of the ICAO audit report, it has refused operating permission to Gabon Airlines Cargo on 4 April 2008 taking into account the common criteria, in accordance with Article 6(1) of Regulation (EC) No 2111/2005. In addition, in view of the doubt thrown by ICAO on the ability of the Republic of Gabon to exercise proper safety oversight of the carriers licensed by them, the United Kingdom has submitted on 7 April 2008 a request to update the Community list in accordance with Article 4(2) of Regulation (EC) No 2111/2005 and Article 6 of Regulation (EC) No 473/2006, in view of imposing an operating ban on all carriers certified by the competent authorities of the Republic of Gabon.

(14) The Commission, having regard to the results of the ICAO audit and the request of the United Kingdom, has consulted the competent authorities of Gabon on the actions undertaken by them to remedy the deficiencies observed by ICAO and by Member States. The competent authorities of Gabon have reacted promptly to these concerns, indicating their commitment to take all measures necessary to implement applicable ICAO standards and enforce compliance with these standards as soon as possible. In addition, the competent authorities of Gabon provided evidence to the Commission of the adoption of a new civil aviation code in May 2008, of the development of specific operating regulations for airworthiness and operations, and informed that the decision to establish an independent civil aviation agency (ANAC) was taken and should be promulgated in July 2008. These major initiatives, which have been taken quickly and effectively by the Republic of Gabon, provide for a completely new civil aviation system which could be implemented by December 2008. The competent authorities of Gabon have also informed the Commission and the Air Safety Committee that ICAO has been contracted from July 2008 and for a period of one year to assist Gabon in the development of its new civil aviation oversight system.

(15) In the interim period, before ANAC becomes fully operational and the air carriers are re-certified under the new legislative and institutional framework, the Republic of Gabon informed the Commission and the Air Safety Committee that a series of immediate measures were taken: the withdrawal of the Air Operator Certificate ('AOC') of Gabon Airlines Cargo on 13 June 2008; limitations have been imposed to the operations of those Gabonese air carriers flying into the Community so as to prohibit them from using aircraft registered outside the Republic of Gabon; mandatory pre-flight inspections of all aircraft departing from Gabonese airports to the Community are to be carried out, those being found in unsatisfactory condition being grounded until safety deficiencies are rectified.

(16) A review by the Commission of the situation of the AOCs of the air carriers Solenta Aviation Gabon, Sky Gabon, Nouvelle Air Affaires Gabon, SCD Aviation, Nationale et Régionale Transport, Air Services SA, Air Tourist (Allegiance) reveals concerns with regard to the operations specifications. In particular, the area of operations permits worldwide operations, even though the competent authorities of

Gabon affirm that these are limited to Gabon and/or the sub-region. Furthermore, the operations appear to be limited to visual flight rules (VFR), which would be inadequate to operate safely in Europe. The competent authorities of Gabon have indicated that they intend to clarify the situation rapidly. The Commission considers that, pending review of the safety situation of the Republic of Gabon at the next meeting of the Air Safety Committee and following the re-certification of these carriers in compliance with ICAO standards, they should be subject to an operating ban and therefore included in Annex A on the basis of the common criteria.

(17) Taking into account the results of ramp inspections performed at Community airports under the SAFA programme, as well as the commitment of the competent authorities of Gabon to contract external inspectors to carry out systematic ramp inspections prior to the departure of international flights to the Community and the decision of the Government of Gabon to prohibit any such flight in case safety deficiencies would be observed, the Commission considers that the operations into the Community of the remaining two air carriers, Gabon Airlines and Afrijet, should be permitted, provided that they are strictly limited to their present level with the aircraft currently used. On the basis of the common criteria, they should therefore be included in Annex B.

(18) The Commission will continue to monitor closely the performance of these two carriers. 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 these carriers pursuant to Regulation (EC) No 351/2008. The Commission, in cooperation with the Member States, intends to verify the satisfactory implementation of the announced measures by means of an on-site visit in due time.

Air carriers from the Kyrgyz Republic

(19) The authorities of the Kyrgyz Republic have provided the Commission with information indicating that they granted an AOC to the following air carriers: Valor Air and Artik Avia. 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.

(20) The authorities of the Kyrgyz Republic have provided the Commission with evidence of the withdrawal of the AOCs of the following air carriers: Botir Avia; Intal Avia; Air Central Asia. Since these carriers have consequently ceased their activities, they should be withdrawn from Annex A.

Cubana de Aviación SA

(21) As envisaged in recital 24 of Regulation No 331/2008 the competent authorities of the Republic of Cuba informed the Commission on 19 June 2008 that E-GPWS equipment has been installed on the aircraft of type Ilyushin IL-62 with registration marks CU-T1284 and CU-T1280 of the carrier Cubana de Aviación. The aircraft of type IL-62 with registration CU-T1283 was retired from service since it had reached its life-limit. Moreover, the competent authorities of the Republic of Cuba

informed the Commission that they have verified that all previously detected safety deficiencies have been efficiently addressed by that air carrier.

(22) The Commission has examined this information and considers that the measures are appropriate to address all safety deficiencies found previously on aircraft operated by Cubana de Aviación into the Community. 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 this carrier pursuant to Regulation (EC) No 351/2008.

Iran Air

(23) There is verified evidence of non-compliances with specific safety standards established by the Chicago Convention on the part of the carrier Iran National Airlines ('Iran Air') operating into the Community. These deficiencies have been identified by the competent authorities of Austria, France, Germany, Italy, the Netherlands, Sweden, the United Kingdom, and Switzerland, during ramp inspections performed under the SAFA programme[7].

(24) The carrier presented a series of corrective actions which have been proposed to the competent authorities of the above mentioned Member States, as well as a plan of corrective actions designed to address in a systematic way deficiencies which affected various areas within the carrier responsibility. Following the invitation of the carrier and of the competent authorities of the Islamic Republic of Iran, a team of European experts conducted a fact-finding mission from 16 to 20 June 2008 to verify the implementation by the carrier of the various corrective actions. The report shows that the carrier has put in place, within its Quality Assurance department, a division with the purpose to follow-up and rectify the identified safety deficiencies, and to analyse their root cause in order to prevent their reoccurrence.

(25) On the basis of the common criteria, it is assessed that Iran Air is continuously implementing all necessary measures to resolve satisfactorily all previously detected safety deficiencies in compliance with relevant safety standards. Therefore, there is at this stage no need for further action. The Commission will continue to monitor closely the performance of the carrier. 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 this carrier pursuant to Regulation (EC) No 351/2008.

Yemenia — Yemen Airways

(26) There is verified evidence of non-compliances with specific safety standards established by the Chicago Convention on the part of the carrier Yemenia — Yemen Airways when operating into the Community. These deficiencies have been identified by the competent authorities of France, Germany, and Italy, during ramp inspections performed under the SAFA programme[8].

(27) Yemenia has concluded a contract with the aircraft manufacturer Airbus whereby the latter will provide technical experts and auditors to train staff (pilots and engineers) and monitor the performance of the carrier in two specific areas: maintenance