Commission Regulation (EC) No 331/2008 of 11 April 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 331/2008

of 11 April 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)

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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 331/2008. (See end of Document for details)*

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

Air carriers licensed in Ukraine
Albatross Avia Ltd

(7) France communicated to the Commission that it adopted an immediate operating ban on all operations of the carrier Albatross Avia Ltd certified in the Ukraine for reasons that this carrier is in reality the Ukrainian carrier Volare, which is already subject to an operating ban[(4)]. France has also submitted to the Commission 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.

(8) The carrier did not produce any appropriate evidence to dissipate the concerns raised by France.

(9) Following consultations with the Commission and some Member States, the competent authorities of Ukraine submitted to the Commission their decision whereby they revoked the Air Operator Certificate (AOC) of the carrier. Therefore, on the basis of the common criteria, no further action regarding Albatross Avia Ltd is needed.

(10) However, the Commission is concerned that the competent authorities of Ukraine have issued an AOC to an undertaking which is substantially an air carrier already subject to an operating ban. Repetition of such a situation could be considered as evidence that these authorities may not meet the common criteria set out in the Annex of Regulation (EC) No 2111/2005.
Ukraine Cargo Airways

(11) There is verified evidence of serious safety deficiencies on the part of the carrier Ukraine Cargo Airways certified in the Ukraine affecting all types of aircraft. These deficiencies have been identified by Austria, Hungary, France, Germany, Italy, Latvia, Luxembourg, Romania, Poland, Spain and the Netherlands[(5)] during ramp inspections performed under the SAFA programme.

(12) Austria communicated to the Commission that it adopted an immediate operating ban on the aircraft of type AN-12 of Ukraine Cargo Airways operating hitherto to Austria taking into account the common criteria, in the framework of Article 6(1) of Regulation (EC) No 2111/2005 and submitted to the Commission 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.

(13) The reasons for the imposition of that measure by Austria are the following: (a) verified serious safety deficiencies on the part of the air carrier by virtue of reports showing serious safety deficiencies and persistent failure by the carrier concerned to address these deficiencies raised in ramp inspection reports performed under the SAFA programme and previously communicated to the carrier; (b) lack of ability of the carrier to address these safety deficiencies demonstrated by inappropriate and insufficient corrective actions presented in response to identified serious safety deficiencies; (c) lack of ability and willingness of the authorities responsible for the oversight of the carrier

concerned to address the safety deficiencies demonstrated by their lack of cooperation with the competent authorities of Austria which performed the ramp inspections and their insufficient ability to implement and enforce the relevant safety standards.

(14) The safety deficiencies detected by Austria and other Member States on the aircraft of type AN-12, AN-26 and IL-76 were in the same areas. Furthermore, those deficiencies kept on reoccurring over the same period under consideration. This is evidence of the systemic nature of such deficiencies.

(15) During consultations with the Commission and some Member States, Ukraine Cargo Airways submitted a plan of corrective actions which according to the carrier addresses all safety deficiencies in the area of maintenance, engineering and operations identified on all three types of aircraft with which the carrier has been operating into the Community. However, during these consultations the carrier was not able to demonstrate the adequacy of the proposed corrective actions. In particular, the carrier was not able to demonstrate the appropriateness of the proposed actions regarding operational discipline and failed to explain how inspections of aircraft used by the carrier to fly into the Community still revealed the same deficiencies as before the imposition of Austria of an operating ban, despite that various measures in the proposed action plan appeared already completed in the areas of operations of all types of aircraft used by that carrier.

(16) During the same consultations, the competent authorities of Ukraine submitted information about their decision to restrict the AOC of the carrier by removing the aircraft AN-12 with registration marks UR-UCK, UR-UDD and UR-UCN with which Ukraine Cargo Airways has been operating into Austria and other Member States and placing them under maintenance as well as by prohibiting the operation of the aircraft IL-76 with registration marks UR-UCA, UR-UCC, UR-UCD, UR-UCH, UR-UCO, UR-UCQ UR-UCT, UR-UCU, UR-UCW and UR-UCX until 19 November 2008. The carrier has operated with some of these aircraft (UR-UCA, UR-UCO and UR-UCU) into the Community. Also, these authorities confirmed that they had endorsed the corrective action plan of the carrier and committed to verify the implementation of the corrective actions by Ukraine Cargo Airways before authorising the carrier to resume operations with its AN-12 aircraft into the Community.

(17) The Commission takes note of the measures taken by the competent authorities of Ukraine concerning the aircraft AN-12 and IL-76. However, it considers that the implementation of the corrective actions fail to address the systemic nature of the detected deficiencies which affect all types of aircraft so far used by the carrier in its operations into the Community. Moreover, the Commission considers that the results of ramp inspections[(6)] carried out on aircraft of type AN-26 after the consultations held with the carrier and its authorities and after the carrier had begun implementing corrective actions under the supervision of its authorities show that such actions do not provide for the appropriate resolution of the verified safety deficiencies on these type of aircraft or on any other type of aircraft operated by this carrier into the Community.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 331/2008. (See end of Document for details)*

(18) The carrier submitted on 1 April 2008 documentation containing a revised corrective actions plan reflecting the changes requested by the competent authorities of Ukraine following an audit of the company. The air carrier was also given the opportunity to make presentations to the Commission and the Air Safety Committee on 2 April; it was however, not able to demonstrate the appropriateness of the proposed revised actions regarding operational discipline and failed to explain how these actions would provide for sustainable solutions of all previously identified safety deficiencies. Therefore, this documentation will have to be further examined to ascertain whether the previously identified safety deficiencies have been appropriately addressed.

(19) Pending the completion of such examination, and in the absence of any corrective actions able to redress the recurrence of systemic safety deficiencies without delay, the Commission considers that the carrier should not be allowed to operate into the Community until it has been verified that adequate measures have been put in place to ensure compliance with the relevant safety standards of the operation of any aircraft used by Ukraine Cargo Airways.

(20) On the basis of the common criteria set out in the Annex to Regulation (EC) No 2111/2005, it is considered that Ukraine Cargo Airways does not meet the relevant safety standards. The air carrier should be subject to an operating ban of all its operations and should be included in Annex A.

Overall safety oversight

(21) The Commission considers that the overall exercise of safety oversight and in particular the implementation and enforcement of the relevant safety standards by the competent authorities of Ukraine needs to be strengthened in order to ensure for sustainable corrective actions by the carriers under its regulatory control. The growing number of carriers which are subject to exceptional measures by Member States and subsequently included in Annex A needs to be urgently addressed by the competent authorities of Ukraine. Therefore, these authorities are invited to present a plan of measures to enhance the exercise of safety oversight of operators under their regulatory control and of aircraft registered in the Ukraine which are used for operations in the Community. The Commission will closely monitor the implementation of these measures including those referred to under recitals 15 and 18 with a view to submitting draft appropriate measures at the next meeting of the Air Safety Committee.

Cubana de Aviación SA

(22) There is verified evidence of non-compliance with specific safety standards established by the Chicago Convention on the part of Cubana de Aviación. These deficiencies have been identified by the United Kingdom during a ramp inspection performed under the SAFA programme[7].

(23) The United Kingdom communicated to the Commission that it adopted an immediate operating ban on the aircraft of type Ilyushin IL-62 with registration marks CU-T1283 and CU-T1284 of Cubana de Aviación taking into account the common criteria, in the framework of Article 6(1) of Regulation (EC) No 2111/2005. These

aircraft are not currently fitted with EGPWS — Enhanced Ground Proximity Warning System, equipment necessary for operations into the Community in compliance with Annex 6 to the Chicago Convention.

(24) Following consultations with the Commission and some Member States, the competent authorities of the Republic of Cuba adopted a decision to limit the AOC of Cubana de Aviación to exclude the aircraft IL-62 from any operations of the carrier into the Community until EGPWS has been installed on such aircraft. Also, these authorities have undertaken to ensure that EGPWS will be installed by 15 June 2008 on all aircraft of that carrier operating to the Community. Finally, the competent authorities of the Republic of Cuba have committed themselves to verify that all detected safety deficiencies, including the installation of EGPWS, are efficiently addressed by Cubana de Aviación by that date and to transmit the results of such verification to the Commission before this carrier can resume operations with aircraft of type IL-62 into the Community.

(25) On the basis of the common criteria set out in the Annex to Regulation (EC) No 2111/2005 and in view of the actions taken by the competent authorities of the Republic of Cuba it is assessed that no further action is needed. The Commission shall report to the Member States about the implementation of the corrective actions at the next meeting of the Air Safety Committee. However, should the measures be considered unsatisfactory, the Commission will submit appropriate draft measures to the Committee.

Islands Development Company

(26) There is verified evidence that the aircraft of type Beech 1900 with registration mark S7-IDC of the carrier Islands Development Company licensed in Seychelles is not fitted with EGPWS — Enhanced Ground Proximity Warning System, equipment necessary for operations into the Community in compliance with Annex 6 to the Chicago Convention. In addition, the certified documents which the Chicago Convention prescribes to be kept on board could not be showed. These deficiencies have been identified by France during a ramp inspection performed under the SAFA programme[8].

(27) France communicated to the Commission that it adopted an immediate operating ban on the abovementioned aircraft of this carrier taking into account the common criteria, in the framework of Article 6(1) of Regulation (EC) No 2111/2005 and submitted to the Commission a request to update the Community list in accordance with Article 4(2) of Regulation (EC) No 2111/2005, and as prescribed by Article 6 of Regulation (EC) No 473/2006.

(28) By letter of 11 March 2008, the Civil Aviation Authority of Seychelles confirmed that the carrier Island Development Company licensed in Seychelles has taken action to install the EGPWS on its Beech 1900D aircraft with registration mark S7-IDC. The EGPWS has been ordered and installed on 26 March 2008. A certified confirmation of this installation has been delivered by the carrier during a meeting held with the Commission on 31 March 2008. In addition, the competent authorities