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 (Text with EEA relevance)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

Whereas:

(1) Action by the Community in the field of air transport should aim, as a priority, at ensuring a high level of protection for passengers from safety risks. Moreover, full account should be taken of the requirements of consumer protection in general.

(2) A Community list of air carriers that do not meet relevant safety requirements should be brought to the notice of passengers so as to ensure the utmost transparency. This Community list should be based on common criteria drawn up at Community level.

(3) Air carriers included in the Community list should be subject to an operating ban. The operating bans included in the Community list should apply throughout the territory of the Member States to which the Treaty applies.

(4) Air carriers that do not enjoy traffic rights in one or more of the Member States may nonetheless fly to and from the Community when their aircraft, with or without crew, are leased by companies that do enjoy such rights. Provision should be made for an operating ban included in the Community list to apply equally to such air carriers, since these air carriers could otherwise operate in the Community while not complying with the relevant safety standards.

Changes to legislation: *There are outstanding changes not yet made to Regulation (EC) No 2111/2005 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) An air carrier which is subject to an operating ban could be permitted to exercise traffic rights by using wet-leased aircraft of an air carrier which is not subject to an operating ban, provided that the relevant safety standards are complied with.

(6) The procedure for updating the Community list should allow for decisions to be taken swiftly, in order to provide adequate and up-to-date safety information to air passengers and to guarantee that air carriers that have remedied safety deficiencies are taken off the list as soon as possible. At the same time, the procedures should respect the air carrier's rights of defence and should be without prejudice to international agreements and conventions to which the Member States or the Community are parties, in particular the 1944 Chicago Convention on International Civil Aviation. The implementing measures on matters of procedure, to be adopted by the Commission, should notably cater for these requirements.

(7) When an operating ban has been imposed on an air carrier, appropriate action should be taken with a view to assisting that air carrier in remedying the deficiencies that gave rise to that ban.

(8) In exceptional cases, Member States should be allowed to take unilateral measures. In cases of urgency and when confronted with an unforeseen safety problem, Member States should have the possibility to impose immediately an operating ban in respect of their own territory. Moreover, where the Commission has decided not to include an air carrier in the Community list, Member States should also be able to impose or maintain an operating ban in view of a safety problem which does not exist in the other Member States. Member States should make restrictive application of these possibilities, taking account of the Community interest and with a view to presenting a common approach in respect of aviation safety. This should be without prejudice to Article 8 of Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation[(3)] and to Article 10 of Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency[(4)].

(9) Information on the safety of air carriers should be published in an effective manner, such as through use of the Internet.

(10) In order for the competitive framework in air transport to yield the greatest possible benefits for companies and passengers, it is important that consumers receive the necessary information to be able to make informed choices.

(11) The identity of the air carrier or carriers actually operating the flight is an essential piece of information. However, consumers concluding a contract of carriage, which could comprise both an outward and a return flight, are not always informed about the identity of the air carrier or carriers actually operating the flight or flights concerned.

(12) Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours[(5)] requires certain information to be made available to consumers, but that information does not include the identity of the operating air carrier.

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(13) Council Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computer reservation systems (CRS)[(6)] entitles consumers booking a flight via a computer reservation system to be informed of the identity of the operating air carrier. Nevertheless, even in scheduled air transport, industry practices exist, such as wet leasing, or code sharing if booked without a CRS, where the air carrier which has sold the flight under its name does not actually operate it and where there is currently no legal right for the passenger to be informed of the identity of the air carrier actually performing the service.

(14) These practices increase flexibility and allow a better provision of services to passengers. Moreover, a certain number of last-minute changes, in particular for technical reasons, is unavoidable and contributes to the safety of air transport. This flexibility should, however, be balanced by verification that the companies actually operating the flights meet safety requirements and by transparency for consumers in order to guarantee them the right of making an informed choice. A fair balance between the commercial viability of air carriers and passenger access to information should be sought.

(15) Air carriers should pursue a policy of transparency vis-à-vis passengers regarding safety-related information. Publishing such information should contribute to passenger awareness of the reliability of air carriers in safety terms.

(16) Air carriers are responsible for reporting safety deficiencies to the national air safety authorities as well as for addressing such deficiencies without delay. Air and ground crew are expected to take appropriate action when safety deficiencies are apparent to them. It would be contrary to the interests of aviation safety if staff were to be penalised for doing so, as follows from Article 8(4) of Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation[(7)].

(17) In addition to the situations covered by Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights[(8)], passengers should be offered the right to reimbursement or to re-routing in certain specific other situations falling within the scope of this Regulation, if there is a sufficiently close connection with the Community.

(18) In addition to the rules set out in this Regulation, the implications of changes to the identity of the operating carrier for the performance of the contract of carriage should be governed by the laws of the Member States applicable to contracts and by relevant Community law, in particular Council Directives 90/314/EEC and 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts[(9)].

(19) This Regulation is part of a legislative process pursuing an efficient and coherent approach to reinforcing air safety in the Community, in which the European Aviation Safety Agency plays an important role. With an extension of the competencies of this Agency, such as in respect of third-country aircraft, its role under this Regulation could

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be further expanded. Special attention should be given to further improving the quality and quantity of safety inspections of aircraft and to harmonising these inspections.

(20) Where there is a risk to safety that has not been adequately resolved by the Member State(s) concerned, the Commission should have the possibility of adopting immediate measures on a provisional basis. In such cases, the committee assisting the Commission in its work under this Regulation should act in accordance with the advisory procedure provided for in Article 3 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(10)].

(21) In all other cases, the committee assisting the Commission in its work under this Regulation should act in accordance with the regulatory procedure provided for in Article 5 of Decision 1999/468/EC.

(22) Since the relation between this Regulation and Article 9 of Directive 2004/36/CE of the European Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports[(11)] would otherwise be unclear, that Article should be repealed with a view to providing legal certainty.

(23) Member States should lay down rules on penalties applicable to infringements of the provisions of Chapter III of this Regulation and ensure that these penalties are applied. The penalties, which may be of a civil or administrative nature, should be effective, proportionate and dissuasive.

(24) The Commission should analyse the application of this Regulation and, after a sufficient period, report on the efficiency of its provisions.

(25) Any competent civil aviation authority in the Community may decide that air carriers, including those not operating in the territory of the Member States to which the Treaty applies, might lodge a request with that authority to subject the air carrier so requesting to systematic checks in order to verify its likelihood of compliance with the relevant safety standards.

(26) This Regulation should not preclude the Member States from introducing a quality labelling system for air carriers at national level, for which the criteria might include considerations other than minimum safety requirements, in accordance with Community law.

(27) Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries. Such arrangements have yet to enter into operation,

HAVE ADOPTED THIS REGULATION:

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CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1 This Regulation establishes rules:

a on the establishment and publication of a Community list, based on common criteria, of air carriers which, for safety reasons, are subject to an operating ban in the Community;

and

b on informing air passengers of the identity of the air carrier operating the flights on which they travel.

2 The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

3 Application of this Regulation to Gibraltar airport shall be suspended until the arrangements included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

(a) ‘air carrier’ means an air transport undertaking with a valid operating licence or equivalent;

(b) ‘contract of carriage’ means a contract for or including air transport services, including one where the carriage is composed of two or more flights operated by the same or different air carriers;

(c) ‘air carriage contractor’ means the carrier which concludes a contract of carriage with a passenger or, where the contract comprises a package, the tour operator. Any ticket seller shall also be deemed an air carriage contractor;

(d) ‘ticket seller’ means the seller of an air ticket who arranges a contract of carriage with a passenger, whether for a flight on its own or as part of a package, other than an air carrier or a tour operator;

(e) ‘operating air carrier’ means an air carrier that performs or intends to perform a flight under a contract of carriage with a passenger, or on behalf of another person, legal or natural, having a contract of carriage with that passenger;

(f) ‘operating authorisation or technical permission’ means any legislative or administrative act by a Member State, which provides either that an air carrier may