COMMISSION DELEGATED REGULATION (EU) 2023/661

of 2 December 2022

amending Regulation (EC) No 2111/2005 of the European Parliament and of the Council on the common criteria to consider the implementation or lifting of an operating ban at Union level

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ([1]), and in particular Article 3(2) thereof,

Whereas:

(1) Regulation (EC) No 2111/2005 provides for the establishment of a Union list of air carriers that are subject to an operating ban in the territories to which the Treaties apply.

(2) The establishment of the Union list of air carriers is based on common criteria for imposing an operating ban on an air carrier drawn up at Union level. These common criteria are set out in the Annex to Regulation (EC) No 2111/2005.

(3) An assessment of Regulation (EC) No 2111/2005 performed by the Commission identified several areas where the implementation of that Regulation could be improved in order to take account of scientific and technical developments. In the last years, the management of air safety has been supported by new technical advancements that enabled the measurement of verifiable evidence as it pertains to the assessment of third country operators' capabilities and information stemming from ramp inspections to meet the relevant safety standards. Also, the collection of scientific knowledge, through the research activities of the European Union Aviation Safety Agency, enhances its ability to evaluate a safety management system of an operator. It is therefore necessary to amend the Annex to Regulation (EC) No 2111/2005 to take account of those developments.

(4) The common criteria set out in the Annex to Regulation (EC) No 2111/2005 list the elements to take into account when considering the imposition of a ban (or of operational restrictions). In line with Article 4(1)(b) of Regulation (EC) No 2111/2005, the Union list is to be updated to remove an air carrier from it when the safety deficiencies have been remedied and there is no other reason, on the basis of the common criteria, to maintain the air carrier on such list. For reasons of transparency, it is necessary to list the necessary elements for the assessment if the common criteria, the non-respect of which led to the identification of the aforementioned deficiencies, are no longer met.

(5) A number of improvements can be achieved by amending the Annex to Regulation (EC) No 2111/2005 on common criteria used to consider for imposing [or lifting of] an operating ban at Union level,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 2111/2005 is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

([1]) OJ L 344, 27.12.2005, p. 15.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 2 December 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

'ANNEX

Common criteria to consider for imposing an operating ban at Union level

Decisions on action at Union level shall be taken according to the merits of each individual case. Depending upon the merits of each case, a carrier or all the carriers certified in the same State might be eligible for action at Union level.

A. In considering whether an air carrier or all the carriers certified in the same state should be totally or partially banned, it shall be assessed whether the air carrier is meeting the relevant safety standards taking into account the following:

1. Verified evidence of serious safety deficiencies on the part of an air carrier:

(a) reports showing serious safety deficiencies, or persistent failure by the carrier to address deficiencies identified by ramp inspections performed under the EU Ramp Inspection programme ([1]) previously communicated to the carrier;

(b) shortcomings identified within the framework of the provisions for the gathering of information in Subpart RAMP of Annex II to Commission Regulation (EU) No 965/2012 ([2]);

(c) operating ban imposed on a carrier by a third country because of substantiated deficiencies related to relevant safety standards;

(d) substantiated accident-related or serious incident-related information indicating latent systemic safety deficiencies;

(e) information gathered through the Third Country Operators Authorisation process, whether initial or continuous monitoring performed by the European Union Aviation Safety Agency ('the Agency'), and notably as regards actions taken by the Agency with regards to the rejection of an application under point ART.200(e)(1) of Annex II to Commission Regulation (EU) No 452/2014 ([3]) or the suspension or revocation of an authorisation under point ART.235, for safety reasons.

2. Lack of ability and/or willingness of an air carrier to address safety deficiencies as demonstrated by:

(a) lack of transparency or adequate and timely communication on the part of a carrier in response to an enquiry by the civil aviation authority of a Member State or by the Commission or the Agency regarding the safety aspect of its operation;

(b) inappropriate or insufficient corrective action plan prepared in response to an identified serious safety deficiency.

3. Lack of ability and/or willingness of the authorities with responsibility for regulatory oversight of an air carrier to address safety deficiencies as demonstrated by:

(a) lack of cooperation with the civil aviation authority of a Member State, the Commission, or the Agency by the competent authorities of another State, when concerns about the safety of the operation of a carrier licensed or certified in that State have been raised;

(b) insufficient ability of the competent authorities with regulatory oversight of the carrier to implement and enforce the relevant safety standards. Particular account should be taken of the following:

(i) audits and related corrective action plans established under the International Civil Aviation Organisation's Universal Safety Oversight Audit Programme or under any applicable Union law;

([1]) European Programme regarding the performance of ramp inspections on aircraft used by third country operators (SAFA) or used by operators under the regulatory oversight of another EU Member State (SACA).

([2]) Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

([3]) Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 133, 6.5.2014, p. 12).

(ii) whether the operating authorisation or technical permission of any carrier under the oversight of that State has previously been refused or revoked by another State;

(iii) the air operator's certificate has not been issued by the competent authority of the State where the carrier has its principal place of business;

(c) insufficient ability of the competent authorities of the State in which the aircraft used by the air carrier is registered to oversee the aircraft used by the carrier in accordance with its obligations under the Chicago Convention.

B. In line with article 4(1)(b) of this Regulation, in considering whether the Union list is to be updated to remove an air carrier from the list because the safety deficiencies have been remedied and there is no other reason, on the basis of common criteria listed in section A, to maintain the air carrier on the Union list, the following elements may be considered as providing evidence thereof:

1. verifiable evidence that identified deficiencies have been rectified in a sustainable manner, indicating that the air carrier fully complies with and implements the relevant safety standards;
2. recertification of the air carriers conducted by the authorities responsible for regulatory oversight of the air carriers in accordance with the ICAO process, with evidence that all activities have been duly documented;
3. verifiable evidence of compliance with and effective implementation of relevant safety standards by the authorities responsible for regulatory oversight of the air carrier;
4. verifiable capability of the authorities responsible for regulatory oversight of the air carrier to enforce a sound regulatory system;
5. verifiable evidence that effective surveillance is conducted by the authorities responsible for regulatory oversight of the air carrier, which allows for the adequate enforcement and respect of the relevant safety standards;
6. information gathered through the TCO process, whether initial or continuous monitoring performed by the Agency;
7. information gathered through the ramp inspections.'