COMMISSION DELEGATED REGULATION (EU) 2023/660

of 2 December 2022

laying down detailed rules for the list of air carriers banned from operating or subject to operational restrictions within the Union referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council and repealing Regulation (EC) No 473/2006 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 of the European Parliament and of the Council

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 ([1]), and repealing Article 9 of Directive 2004/36/EC, and in particular Article 8 thereof,

Whereas:

(1) Chapter II of Regulation (EC) No 2111/2005 lays down procedures for updating the list of air carriers that are banned from operating or subject to operational restrictions within the Union ('the Union list'), as well as procedures allowing Member States, in certain circumstances, to adopt exceptional measures imposing operating bans within their territory.

(2) It is appropriate to supplement Regulation (EC) No 2111/2005 with detailed rules in respect of these procedures.

(3) In particular, it is appropriate to specify the information to be provided by the Member States when they request the Commission to adopt a decision under Article 4(2) of Regulation (EC) No 2111/2005 to update the Union list by imposing a new operating ban, lifting an existing ban or modifying the attached conditions.

(4) It is necessary to lay down conditions for the exercise of the rights of defence of the carriers subject to the decisions adopted by the Commission in order to update the Union list. The procedures with regard to the right of defence of the air carriers should be clarified. Therefore, this Regulation sets down detailed rules with respect to the exercise of air carriers' right of defence when the Commission is considering whether to adopt a decision under Article 4(2) or Article 5 of Regulation (EC) No 2111/2005.

(5) In the context of updating the Union list, Regulation (EC) No 2111/2005 requires the Commission to take due account of the need for decisions to be taken swiftly and, where appropriate, provide a procedure for urgent cases.

(6) The Commission should receive adequate information on any operating ban imposed by the Member States as exceptional measures under Articles 6(1) and 6(2) of Regulation (EC) No 2111/2005.

(7) In order to adapt to the current means of communication, it is necessary to allow for more flexibility in the way the information is disseminated to the relevant services of the Commission.

(8) For purpose of clarity in the terms used, it is necessary to ensure consistency when referring to the authority that is responsible for the oversight of the air carrier concerned.

([1]) OJ L 314, 27.12.2005, p. 15.

(9) Regulation (EU) 2019/1243 of the European Parliament and of the Council [2] amended Article 8 of Regulation (EC) No 2111/2005. That Article empowers the Commission to adopt delegated acts. In order to ensure smooth functioning of the procedures for updating the Union list in the new legal framework, certain rules have to be adopted by means of such acts. Those acts should replace Commission Regulation (EC) No 473/2006 [3], which should therefore be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down detailed rules in respect to the following procedures referred to in Chapter II of Regulation (EC) No 2111/2005:

(a) Establishment of the Union list;

(b) Updating of the Union list;

(c) Exceptional measures adopted by a Member State;

(d) Exercise of air carriers' right of defence;

(e) Enforcement of the Union list by Member States.

Article 2

Requests by Member States to update the Union list

1. A Member State that requests that the Commission updates the Union list in accordance with Article 4(2) of Regulation (EC) No 2111/2005 shall provide to the Commission the information set out in Annex I to this Regulation.

2. The request mentioned in paragraph 1 shall be addressed to the Secretariat-General of the Commission. In addition, the information set out in Annex I shall be communicated simultaneously to the competent services of the Directorate-General for Mobility and Transport of the Commission.

3. The Commission shall inform the other Member States of the request mentioned in paragraph 1 through their representatives in the Air Safety Committee in accordance with the procedures provided in the Committee's internal rules. The Commission shall also inform the European Union Aviation Safety Agency ('the Agency').

Article 3

Joint consultation with the authorities responsible for the oversight of the air carrier concerned

1. A Member State that is considering making a request to the Commission under Article 4(2) of Regulation (EC) No 2111/2005 shall invite the Commission, the Agency, and the other Member States to participate in any consultations with the authorities responsible for the oversight of the air carrier concerned.

2. The adoption of the decisions referred to in Article 4(2) and Article 5 of Regulation (EC) No 2111/2005 shall be preceded, when appropriate and feasible, by consultations with the authorities responsible for the oversight of the air carrier concerned. Whenever possible, consultations shall be held jointly by the Commission, the Agency, and the Member States.

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[2] Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (OJ L 198, 25.7.2019, p. 241).

[3] 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 of the European Parliament and of the Council (OJ L 84, 23.3.2006, p. 8).

3. In cases where urgency so requires, joint consultations may be held after the adoption of the decisions referred in Article 4(2) and Article 5. In that case, the Commission shall inform the authority concerned that a decision is about to be adopted under Article 4(2) or Article 5(1).

4. Joint consultations may be conducted through correspondence and take place during on-site visits in order to permit the collection of evidence, where appropriate.

Article 4

Exercise of air carriers' right of defence

1. Before the Commission adopts a decision under Article 4(2) or Article 5 of Regulation (EC) No 2111/2005, it shall disclose to the air carrier concerned the essential facts and considerations that form the basis for such decision. The air carrier concerned shall be given an opportunity to submit written comments to the Commission within 10 working days from the date of disclosure. When the decision concerns more than one air carrier certified in the same State, it is considered that the submission of written comments to the Commission within 10 working days has been met once the Commission has disclosed the essential facts and considerations it receives to the authorities responsible for the oversight of these air carriers.

2. The Commission shall inform the Agency and the Member States through their representatives in the Air Safety Committee in accordance with the procedures provided in the Committee's internal rules. At the request of the air carrier concerned, it shall be permitted to present its position orally in front of the Air Safety Committee before a decision under Article 4(2) or Article 5 of Regulation (EC) No 2111/2005 is adopted. During the presentation, the air carrier concerned may be assisted by the authorities responsible for its oversight if it so requests.

3. In cases of urgency, the Commission shall not be required to fulfil the disclosure obligation referred to in paragraph 1 of this Article before adopting a provisional measure in accordance with Article 5(1) of Regulation (EC) No 2111/2005.

4. When the Commission adopts a decision under Article 4(2) or Article 5 of Regulation (EC) No 2111/2005, it shall immediately inform the carrier concerned and the authorities responsible for its oversight.

Article 5

Enforcement

Member States shall inform the Commission of any measures taken to implement the decisions adopted by the Commission under Article 4(2) or Article 5 of Regulation (EC) No 2111/2005.

Article 6

Exceptional measures adopted by a Member State

1. When a Member State has subjected an air carrier to an immediate operating ban in its territory as permitted by Article 6(1) of Regulation (EC) No 2111/2005, it shall immediately inform the Commission of that fact and communicate to the Commission the information set out in Annex II.

2. When a Member State has maintained or imposed an operating ban on an air carrier in its territory as permitted by Article 6(2) of Regulation (EC) No 2111/2005 it shall immediately inform the Commission of that fact and communicate to the Commission the information set out in Annex III.

3. The information set out in Annex II and III shall be addressed to the Secretariat-General of the Commission. In addition, the information described in Annex II or III shall be communicated simultaneously to the competent services of the Directorate-General for Mobility and Transport of the Commission.

4. The Commission shall inform the Agency and the other Member States through their representatives in the Air Safety Committee in accordance with the procedures provided in the Committee's internal rules.

Article 7

Repeal of Regulation (EC) No 473/2006

Regulation (EC) No 473/2006 is repealed.

Article 8

Entry into force

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

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 I

Information to be provided by a Member State making a request under Article 4(2) of Regulation (EC) No 2111/2005

A Member State that requests an update of the Union list under Article 4(2) of Regulation (EC) No 2111/2005 shall provide the following information to the Commission:

1. Concerning the Member State making the request:
   (a) name and function of official contact;
   (b) email or telephone number of official contact.
2. Concerning the carrier(s) and aircraft:
   (a) identification of concerned carrier(s), including legal entity name (indicated on Air Operator Certificate ('AOC') or equivalent), trading name (if different from legal entity name), AOC number (if available), International Civil Aviation Organisation ('ICAO') airline designation number (if known) and full contact details;
   (b) name(s) and full contact details of the authority or authorities with responsibility for regulatory oversight of the air carrier(s) concerned;
   (c) details of the aircraft type(s), State(s) of registry, registration number(s) and, if available, construction serial numbers of the aircraft affected.
3. Concerning the decision requested:
   (a) type of decision requested: specify if it imposes an operating ban, removes an operating ban or modifies the conditions of an operating ban;
   (b) scope of the requested decision: indicate specific carrier(s) or all carriers subject to a particular overseeing authority, identify specific aircraft or type(s) of aircraft.
4. Concerning the request for the imposition of an operating ban:
   (a) detailed description of the safety concern (e.g. inspection results) which led to the request for a total or partial ban (related in order to each of the relevant common criteria set out in the Annex to Regulation (EC) No 2111/2005);
   (b) broad description of recommended condition(s) allowing the proposed ban to be cancelled/waived for use as the basis for preparing a corrective action plan in consultation with the authority or authorities with responsibility for regulatory oversight of the air carrier(s) concerned.
5. Concerning the request for the lifting of an operating ban or the modification of attached conditions:
   (a) date and details of agreed corrective action plan, if applicable;
   (b) evidence of subsequent compliance with the agreed corrective plan, if applicable;
   (c) explicit written endorsement by the authority or authorities with responsibility for regulatory oversight of the air carrier(s) concerned that the corrective action plan has been implemented.
6. Concerning publicity:

   information on whether the Member State has made its request public.

ANNEX II

Communication by a Member State of exceptional measures taken under Article 6(1) of Regulation (EC) No 2111/2005 to impose an operating ban in its territory

A Member State reporting that an air carrier has been made subject to an operating ban in its territory in accordance with Article 6(1) of Regulation (EC) No 2111/2005 shall provide the following information to the Commission:

1. Concerning the Member State making the report
   (a) Name and function of the official contact;
   (b) Email or telephone number of the official contact.
2. Concerning carrier(s) and aircraft
   (a) Identification of concerned carrier(s), including legal entity name (indicated on AOC or equivalent), trading name (if different from legal entity name), AOC number (if available), ICAO airline designation number (if known) and full contact details;
   (b) Name(s) and full contact details of the authority or authorities with responsibility for regulatory oversight of the air carrier(s) concerned;
   (c) Details of the aircraft type(s), State(s) of registry, registration number (s) and, if available construction serial number(s) of the aircraft affected.
3. Concerning the decision
   (a) Date, time and duration of the decision;
   (b) Description of the decision to refuse, suspend, revoke or impose restrictions on an operating authorisation or technical permission;
   (c) Scope of the decision: indicate specific carrier(s) or all carriers subject to a particular overseeing authority, specific aircraft or type(s) of aircraft;
   (d) Description of condition(s) allowing the refusal, suspension, revocation or restrictions of the operating authorisation or technical permission delivered by the Member State to be cancelled/waived.
4. Concerning the safety concern

   Detailed description of the safety concern (e.g. inspection results) that lead to total or partial ban decision (related to the order of each of the common criteria laid out in the Annex to Regulation (EC) No 2111/2005).
5. Concerning publicity

   Information on whether the Member State has made its ban public.

ANNEX III

Communication by a Member State of exceptional measures taken as permitted by Article 6(2) of Regulation (EC) No 2111/2005 to maintain or impose an operating ban in its territory when the Commission has decided not to include similar measures in the Union list

A Member State reporting that an operating ban on an air carrier in its territory has been maintained or imposed as permitted by Article 6(2) of Regulation (EC) No 2111/2005 shall provide the following information to the Commission:

1. Concerning the Member State making the report
   (a) Name and function of the official contact;
   (b) Email or telephone number of the official contact.
2. Concerning the carrier(s) and aircraft

   Identification of concerned carrier(s), including legal entity name (indicated on AOC or equivalent), trading name (if different from legal entity name), AOC number (if available), ICAO airline designation number (if known).
3. Concerning the reference to the Commission decision
   (a) Date of and reference to any relevant Commission documents;
   (b) Date of Commission or Air Safety Committee decision.