EUROPEAN COMMISSION

Brussels, 11.1.2010
COM(2009)710 final

REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

On the application of Regulation (EC) N° 2111/2005 regarding the establishment of a Community list of air carriers subject to an operating ban within the Community and informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC

SEC(2009)1735

REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

On the application of Regulation (EC) N° 2111/2005 regarding the establishment of a Community list of air carriers subject to an operating ban within the Community and informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC

1. INTRODUCTION

Regulation (EC) 2111/2005[1] on the establishment of a Community list of air carriers subject to an operating ban within the Community (hereinafter referred to as the 'EC list') and on informing air transport passengers of the identity of the operating air carrier entered into force on 16 January 2006, and Regulation (Commission Regulation 473/2006)[2] laying down implementing rules for the EC list, the first such list based upon the commonly established criteria was adopted on 22 March 2006 coming into force on 24 March 2006 (Commission Regulation 474/2006)[3]. Since then, the list has been updated twelve times.

This report analyses the application of Regulation (EC) 2111/2005 establishing the EC list as required under Article 14 of the said Regulation.

Details regarding the application of the common criteria for deciding on the imposition of an operating ban (total or partial) on air carriers are presented in the Commission Staff Working Document SEC(2009) 1735.

2. 2006 - 2009: THREE YEARS OF IMPLEMENTATION AND ENFORCEMENT

To date, the application of Regulation 2111/2005 has led to 12 updates[4] of the EC list. The updates have been the result of continuous monitoring of the performance of air carriers irrespective of their nationality and of the geographic spread of their operations.

Since the establishment of the first list in March 2006, the Commission has investigated more than 400 air carriers from more than 30 countries.

As provided under Regulation (EC) 2111/2005, the list comprises two annexes: Annex A: containing air carriers whose commercial operations are subject to a total ban in the territory of Member States; and Annex B: containing air carriers whose commercial operations are subject to a partial ban or operating restrictions in Member States' territory.

---

1 OJ L 344, 27.12.2005, p. 15

2 OJ L 84, 23.3.2006, p. 8

3 OJ L 84, 23.3.2006, p.14

4 June 2006, October 2006, March 2007, July 2007, September 2007 (following the imposition of operating bans by certain Member States), November 2007, March 2008, July 2008, November 2008, April 2009, July 2009 and November 2009

At the time of its twelfth update (25 November 2009) the EC list comprised 5 individual carriers[5], as well as all carriers (at least 228) certified in 15 non - EU countries[6] in Annex A and 8 air carriers[7] in Annex B.

2.1. Establishing and maintaining the list

Decisions and opinions in relation to the Commission's proposals are based exclusively on safety considerations and have always been reached by consensus. With unfailing cooperation from the European Parliament and National Aviation Authorities of Member States, the Commission has subsequently always adopted the agreed draft within the shortest time possible, reducing to a minimum all procedural and administrative delays – aware of the direct and immediate importance of these measures on aviation safety and on EU citizens travelling around the world.

As provided under Article 7 of Regulation (EC) 2111/2005 together with Article 4 of the implementing Regulation (EC) 473/2006, air carriers concerned (together with their respective regulatory authority) are notified of the intention to propose their inclusion in the EC list and the facts leading to such a decision.

These air carriers (together with their respective regulatory authority) are invited to submit, within a stipulated deadline of ten days, any further comments or documents which they might deem as appropriate in their defence. This ensures fairness and full transparency of the process.

Most carriers have reacted promptly to such requests, even requesting to present and discuss the case in person with the relevant Commission services and representatives of Member States (as per article 3 of Regulation 473/2006). Moreover, such carriers are given the opportunity of a hearing before the Air Safety Committee prior to a final decision being taken on their inclusion in the EC list. To date all air carriers proposed for inclusion in the EC list have been heard before a decision was taken.

To date, no operating ban has been imposed without first according a hearing to the air carrier(s) concerned, even in cases of urgency - under articles 5(1) and 4(3) of Regulations (EC) 2111/2005 and 473/2006 respectively – where such decisions to update the EC list could be adopted without prior hearing. This is in particular the case where it has been determined that the continued operation of an air carrier in the Community is likely to constitute a serious risk to safety.

It must be noted that, although not required by the rules, the same opportunities are granted to air carriers whose operations are fully or partially banned. This is done by the process of

---

5 On 25 November 2009 as per Regulation [--]/2009 all operations of the following 5 air carriers are banned in the Community: Air Koryo from the Democratic People's Republic of Korea; Air West from Sudan; Ariana Afghan Airlines from Afghanistan; Silverback Cargo Freighters from Rwanda and Siem Reap Airways International from Cambodia

6 Benin, Djibouti, Equatorial Guinea, Indonesia, the Kyrgyz Republic, Liberia, Sierra Leone, Swaziland, the Democratic Republic of Congo (DRC), the Republic of Congo, Sao Tome & Principe, Zambia as well as Angola (save for the air carrier TAAG included in Annex B), Kazakhstan (save for the carrier Air Astana included in Annex B) and Gabon save for three carriers Gabon Airlines, Afrijet and SN2AG included in Annex B).

7 TAAG Angola Airlines, Air Astana from Kazakhstan, Gabon Airlines, Afrijet and SN2AG from Gabon, Air Bangladesh, Air Service Comores, Ukraine Mediterranean Airlines from Ukraine

periodic assessment of their ability to ensure a safe operation, with the final prospect of their removal from the list based upon verification of full compliance with the relevant safety standards.

Over the past three years several on-site fact-finding missions, conducted by teams of experts provided by Member States, the European Aviation Safety Agency (EASA) and the Commission, have been organised to verify the situation of civil aviation authorities (including air carriers certified by these authorities) in more than 10 countries. These missions have been organised both with regard to the inclusion in as well as the potential removal of air carriers from the list.

2.2. The criteria for imposing a total or partial operating ban

The common criteria for imposing a total or partial operating ban and for updating the list by removing an individual or group of air carriers are set out in the Annex to Regulation (EC) 2111/2005. Any one of these criteria, on its own, or in combination with others, may be used as the basis for proposing the inclusion or exclusion of a carrier, or a number of carriers, in the list.

The criteria themselves are all based upon the relevant international safety standards as defined in article 2 of Regulation (EC) 2111/2005 – namely those established by the Chicago Convention and its Annexes under the auspices of ICAO (the International Civil Aviation Organisation) where non-European carriers are concerned and the EC air safety *acquis* where Community carriers are involved.

As provided in Articles 1 and 2, the Regulation applies to all carriers which for safety reasons are banned from operating into the Community irrespective of their nationality and the network of operations. Also the Regulation applies only to air carriers engaged in commercial air transport. Hence, the Regulation does also apply to air carriers which do not operate into the Community, as the Regulation also requires that passengers be informed when they travel inside and outside the Community (Article 11) whether the airline with which they travel is banned from operating into the Community. In that way the Regulation pursues a twofold objective: ensuring that those airlines which do not meet the common criteria are banned from operating into the Community and informing European passengers about airlines banned and thus protecting them when they travel within and outside the Community.

The common criteria are grouped in three areas: a) objective evidence showing deficiencies on the part of the air carrier; b) lack of ability or willingness by an air carrier to address safety deficiencies and c) lack of ability or willingness of the civil aviation authority with responsibility of oversight of the air carrier(s) in question to address safety deficiencies.

2.3. Updating the List

Article 4 of EC Regulation 2111/2005 allows for the Commission, acting on its own initiative or at the request of a Member State, to update the Community list as soon as this is required. Article 4 also requires the Commission to decide at least every three months whether it is appropriate to update the Community list. 10 updates have been based on this regular cycle.

Article 6 of the Regulation allows, in cases of urgency, a Member State to react to an unforeseen safety problem by imposing an immediate operating ban in respect of its own territory. Where Member States impose operating (total or partial) bans in their territory the

Regulation requires them to immediately inform the Commission and request the update of the list in order to examine whether such partial or total operating bans should be extended to the Community. Exceptional measures in the form of partial or total bans at national level have been imposed 10 times with 1 update of the list being adopted in accordance with this exceptional procedure in September 2007,[8] and other bans having been extended to the Community during regular updates.

Article 5 of the Regulation allows for the situation where it is evident that the continued operation of an air carrier in the Community is likely to constitute a serious risk to safety. Where such a risk has not been resolved satisfactorily by means of urgent measures taken by the Member State(s) concerned in accordance with Article 6, the Commission may provisionally impose an operating ban on an air carrier or modify the conditions of an operating ban already imposed on an air carrier. To date no such situations have been identified and therefore no provisional measures have been imposed.

2.4. Communication and information to passengers

Regulation (EC) 2111/2005 attaches equal importance to the communication and information to passengers regarding such carriers in order that they may be in an informed position when making their air travel arrangements.

The regulation stipulates that all passengers must be informed about the identity of the air carrier (or carriers) operating a flight for which they are making a reservation when such flight is departing from or arriving at a Community airport or is part of a trip that starts or finishes in the territory of a Member State. Moreover, wherever the operating air carrier or carriers is or are changed after reservation, passengers must be informed as soon as possible regarding the identity of the new air carrier (or carriers) operating any part of the trip in question.

The Commission has taken various initiatives to inform passengers about their right to information established under Regulation (EC) 2111/2005 - such as through posters and leaflets distributed throughout Community airports.

In addition, in order to provide specific information concerning the identity of air carriers subject to an EC ban, the Commission has set up a dedicated website[9] which is updated whenever the EC list itself is updated. As obliged under the Regulation, Member States' national aviation authorities also undertake several initiatives to inform passengers about their rights and indeed provide various links to more detailed information on the Commission's website.

Furthermore over 40,000 travel agents in the EU are immediately notified of any changes in the EC list in order that they may inform their customers accordingly as required under EC law.This information also puts them in a better position to offer suitable alternatives to their clients whose itinerary has become affected by the banning of a carrier. Similar liaisons have been established with international travel agent lobbies, regional and international airline and airport organisations, non-European national aviation authorities and several sections of the media focussing on air transport (including a number of voluntary sites run by air safety

---

[8] Italy and Germany (with regard to Ukrainian Mediterranean Airlines - Ukraine) and the United Kingdom (with regard to Mahan Air - Iran)

[9] http://ec.europa.eu/transport/air-ban

enthusiasts), tourism and consumer rights. The Commission reiterates its gratitude to all these parties for their support in ensuring the widest possible dissemination of the EC list in the overall interest of European and international aviation safety.

Moreover, the new Regulation on a code of conduct for computerised reservation systems (CRS) adopted in January 2009 also complemented these provisions by ensuring that: a) flights operated by air carriers featured in the EC list must be clearly and specifically identified in CRS displays; and b) CRS system vendors must introduce a specific symbol in the CRS display which shall be identifiable by the users for the purposes of the informing passengers on the identity of the operating air carrier provided for in Regulation (EC) No 2111/2005.

Within this context the Commission has established channels of communication such that CRSs are briefed in detail, clearly and in a timely manner whenever the EC list is updated.

3. AN ASSESSMENT OF THE FUNCTIONING OF THE REGULATION IN PRACTICE

The creation and evolution of the EC list over the past three years can be described as a success story from every angle. It is now regarded internationally as an effective tool in ensuring a high level of safety to the benefit of the travelling public by the enforcement of the relevant air safety standards.

3.1. The temporary nature of a ban

There have been a number of cases where air carriers subject to a ban have acknowledged that their safety performance fell below the internationally accepted standards and embarked upon, and demonstrated the successful completion of, remedial and corrective actions. As a result these air carriers have been removed from the list. This shows that the ban is a temporary and proportionate measure, maintained only until a banned (or restricted) air carrier can demonstrate that it has addressed in a sustainable manner all previously identified serious safety deficiencies and is operating in compliance with the relevant safety standards. This has also been the case where air carriers had been included in the EC list following safety deficiencies identified by the civil aviation authority of their State. In these cases the progress achieved by both air carriers and their authorities in the certification and exercise of oversight of their operations led to the removal of the total ban on their operations and in certain cases to the transfer to Annex B.

The temporary nature of a total or partial ban is ensured by the continuous monitoring of the performance of banned air carriers. This is achieved by means of regular reporting from the banned air carriers and their authorities, exchange of information with the authorities of other non-EU countries and international organisations as well as fact finding missions to verify the completion of actions identified in recovery action plans. All this information is continuously put at the disposal of the Air Safety Committee thus allowing it to arrive at fully informed opinions about the level of safety of the carriers concerned as well as their authorities.

On a different but related note, a number of carriers are regularly 'removed' from the EC list as a result of their cessation of operations and the revocation of their air operator's certificate by their regulatory authorities, in many cases as a direct result of the EC ban.

3.2. Preventive and dissuasive effect

In a number of instances States, when presented with verified evidence of serious safety deficiencies by the Commission concerning one or more of their air carriers, have acted proactively by either suspending the Air Operator's Certificates of the relevant air carriers or imposing strict restrictions on their operation into the airspace of Member States. Subsequently these States initiated comprehensive remedial and corrective actions until they were able to verify that the air carriers had implemented adequate corrective actions which prevent a reoccurrence of the previously identified safety deficiencies. At this stage the suspension or strict restrictions have been lifted. This process, whereby cases are solved through a cooperative exchange between the Commission and the parties concerned without the need to resort to a ban as a punitive measure of last resort, have been an increasing trend.

3.3. Global relevance

A clear indication of the relevance ascribed to the EC list beyond Europe, is the decision by a number of non-European States to voluntarily follow the list as updated and issued by the Commission; implying that carriers included on the list are also considered as not complying with the relevant safety standards and are therefore also banned by these States from operating into their territory.

The increasing significance of results of ICAO USOAP audit reports for the update of the EC list has also demonstrated that the Community has been imposing operating bans on air carriers from States whose performance is characterised by a very high level of non-compliance with ICAO Standards and Recommended Practices (SARPS) or indeed where ICAO audits have resulted in the publication of significant safety concerns as per article 54 of the Chicago Convention. The application of Regulation 2111/2005 has demonstrated that the Community has strived to enforce international safety standards by requiring air carriers and the authorities responsible for their safety oversight to satisfactorily resolve the safety deficiencies identified in USOAP audit reports before they can resume (or begin) operations into the European Community.

Of note is that States, which have been shown by the ICAO USOAP process to have considerable problems fulfilling their safety oversight obligations (i.e. more than 75% lack of implementation of ICAO SARPS), including those for which ICAO has raised significant safety concerns, have seen their air carriers subject to a full operating ban in the Community. In that sense, where ICAO USOAP reports show a particularly high lack of implementation of safety standards combined with significant safety concerns, the inclusion on the EC list constitutes the common response of the EU Member States to apply those provisions of the Chicago Convention which require that certificates, licences and equipment are recognised by the Contracting States when these are issued according to requirements that are equal or above the minimum (ICAO) standards.

Through regular exchange of safety information with ICAO the Commission has been able to further refine its understanding of the safety situation in various regions in the world and be able to adapt, where necessary, its technical assistance projects.

Since the establishment of the first EC list, where continuous monitoring of the safety situation in any given country has shown that safety deficiencies persist despite the implementation of technical assistance projects by ICAO, other regional organisations or by

the Commission, banning the operations of air carriers has remained the precautionary measure of last resort.

3.4. Closer cooperation with third countries and international organisations

The EC list has fostered a closer cooperation between the Community and non-EU countries as well as international organisations, in order to verify compliance by air carriers with the relevant safety standards and therefore improve international air safety oversight in general.

Within this context, In addition the Commission cooperates closely with ICAO's Secretariat and the Air Navigation Commission to ensure a better understanding of the projects undertaken by ICAO in various regions of the world (COSCAP projects). This cooperation also enables the Commission to gain a better understanding of ICAO's evaluation of the safety situation of the various States audited in the framework of the USOAP programme and in particular to gain insight into the results of the continuous monitoring of developments in these States through their cooperation with ICAO's regional offices.

Also, since 2005 the Commission has been financially contributing in various projects led by ICAO (COSCAP Projects). In broad terms, the projects are mainly intended to improve air safety, promote the adoption of international air safety standards and the harmonisation/convergence of rules, provide training to civil aviation administration personnel and further assistance regarding operations, aerodromes, ATM, environment.

Overall, the Commission has been pursuing technical assistance projects having in mind ICAO's safety targets for 2008-2011 and with a view to also helping the civil aviation authorities of other ICAO Contracting States to consistently implement international standards by building up their capacity to exercise effectively regulatory oversight.

4. LESSONS FOR THE FUTURE

The application of the EC list has demonstrated, on the one hand, that it is a successful tool to contribute to ensuring a high level of safety in the Community. On the other hand this tool cannot be see as a blanket cover for the safety performance of airlines. It has twofold limitations: 1) inclusion on the EC list depends on available and verifiable information; 2) inclusion on the EC list constitutes an operating ban only to Europe, while banned airlines continue to fly to other regions of the world. Therefore, exchange of verifiable and reliable information needs to be promoted and further strengthened at the international level.

Indeed the application of the EC list over the last three years has shown that the objective of establishing and maintaining a high level of safety world-wide can only be reached if ICAO safety standards are actually complied with. Therefore appropriate actions need to be taken to ensure that these standards are effectively respected both at the level of the State and by individual air carriers.

There are therefore a number of areas where the Commission intends to further develop its policy both in terms of internal and external measures.

A. Internal measures

1. Refining the regulatory framework for imposing/removing operating bans

The valuable experience acquired over the past three years in applying Regulation 2111/2005 has also given rise to a number of instances regarding its application which require more detailed provisions.

The Commission will therefore launch, in parallel with its activities at international level, the formulation of more detailed provisions through an amendment to the implementing legislation. These proposals will clarify certain aspects of the Regulation such as: actions to be taken by Member States affected by an attempted breach of the EC ban (including over-flight); definitions of flights that are not affected by an operating ban (e.g. ferry flights, inspection flights, private flights, state flight, technical flights etc.); and a way to record the decision taken by countries around the world to limit the air operator certificates of their air carriers concerning flights into the EU.

2. Strengthening the EC SAFA Programme

Improvements in the functioning of the SAFA Programme in 2008, have helped the Commission and Member States to better understand the performance of various carriers. Such improvements included the regular analyses of the information in the database by EASA, the harmonisation of inspector training and qualifications, and the introduction of "targeted" inspections. Ramp inspections of aircraft performed under the EC SAFA programme, and in particular prioritisation of such inspections, have proven a powerful tool to detect safety deficiencies and allow Member States to react promptly to mitigate any risks. The Commission is therefore looking to further refine the existing legal instruments by introducing minimum number of inspections by Member States to strengthen the reliability of the results of such inspections.

3. Modernising the EC system for accident investigation

Information resulting from the investigation of accidents and incidents investigation is increasingly a source of information considered in the framework of updating the EC list. Since its enactment, Directive 94/56/EC concerning accident investigation has shown that there is much more divergence in the investigating capacity of EU Member States compared with the situation in 1994. The institutional and legal framework for aviation safety in the EU has changed substantially since the adoption of the Directive. Aircraft and their systems are increasingly complex, which also means that accident investigation requires substantially more diversified and specialised skills and equipment than a decade ago.

The Commission adopted on 29 October proposals (COM(2009) 611 final) to modernise the existing legal framework on accident investigation and strengthen the investigating capacity of Europe by proposing the creation of a network of accident investigation bodies, clarify the role of EASA in this area, strengthen the implementation of safety recommendations, strengthen the protection of sensitive safety information and establish common standards concerning the availability of passenger manifests.

4. Increasing technical assistance projects and activities

The application of Regulation 2111/2005 has shown that while the ban of an air carrier or a group of air carriers is necessary to mitigate risks to safety, appropriate measures through technical assistance can also be put in place to help the civil aviation authorities which have the responsibility to oversee such carriers.

The Commission remains committed and engaged in various technical assistance projects to help civil aviation authorities to overcome their problems in the most effective way. It intends to continue and further broaden its activities on technical assistance notably in the African continent with the support of EASA. This should also contribute to the establishment of privileged partnerships with civil aviation authorities to ensure a high and uniform level of aviation safety and reduce the administrative costs on the aviation industry.

At international level, the Commission intends to further support ICAO's efforts at addressing the needs of international civil aviation in the framework of the Global Aviation Safety Plan by improving the coordination of the global efforts to help countries to strengthen their safety, notably those for which ICAO publishes significant safety concerns and those where audit reports show a very high lack of implementation of international safety standards. This should lead to global harmonization in the area of safety and increase the efficiency of technical assistance projects through consistent coordination, including of major regional programmes such as the 'Comprehensive Regional Plan for Aviation Safety in Africa'.

B. International measures

1. Stronger ties with non-EU countries

The application of the EC list has shown that safety can be considered as a "catalyst" in the development of relations in the aviation sector with non-EU countries. The Community has benefited considerably through the continuous cooperation with partners. Therefore the Commission will seek to build strong ties with partners which share the same safety objectives.

The Commission intends to strengthen its ongoing cooperation with strategic partners in order to facilitate the exchange of safety data and establish a network of trusted interlocutors for evaluating not only the safety aspects of various organisations involved in the manufacture, operation, maintenance and training, but also the application of safety programmes at State level. Such cooperation should also include the exchange of comparable safety data relating to ramp inspections of aircraft, the objective being to align as much as possible the overall format of the reporting system of safety data to improve the capability of data used.

Beyond the cooperation in the field of information sharing, such ties should encourage further convergence between the assessment made and actions taken to remedy the deficiencies detected by third countries.

2. Broadening the exchange of safety data

Reliable and verifiable safety data have been at the heart of the application of Regulation 2111/2005. Exchanges of safety data relating to the performance of air carriers, the State of Registry of aircraft, and the level of oversight activities carried out by authorities has often enabled the adoption of measures in the Community to mirror those taken by other countries.

However, these exchanges have also shown that safety data need to be traceable, objective, quantifiable and based on a common understanding of the criteria that they are depending upon in order to be used as reliable performance indicators.

The relevant ICAO requirements (Annex 6, Part I, 4.2.2.2) have been modified since November 2008 to ensure that Contracting States have an obligation to establish a programme with procedures for the surveillance of the operation of foreign air carriers in their territory,

and for taking appropriate action. Hence, the results of the EC SAFA Programme as used in the application of Regulation 2111/2005 show that the Community is well equipped to cooperate with non-EU States by proposing to develop, at international level, a programme for ramp inspections of aircraft following procedures which are very familiar to the Community. This would allow information obtained from such inspections to be harmonised and standardised. This would render such important information interchangeable and would further promote the cooperation between States for the benefit of taking objective decisions on the safety performance of air carriers.

3. World-wide banning of unsafe air carriers

In the course of the application of Regulation (EC) 2111/2005 it has become evident how much Member States, EEA partners and Switzerland, are basing their safety decisions on the results of ICAO safety audits carried out in the framework of the USOAP programme.

It is precisely by following a continuous monitoring of the various remedies that air carriers and civil aviation authorities put in place that operating bans have not only been imposed but also lifted. Moreover, in countries where ICAO publishes significant safety concerns following a USOAP audit, or where audit reports reveal numerous and serious deficiencies, the Commission intends to continue to ensure that airlines certified in such countries are not allowed to fly in the Community until their authorities can guarantee conformity with ICAO standards. Banning (partial or total of some or all carriers licensed in a State) will remain the necessary course of action when cooperation is not sufficient to alleviate the risks to safety.

The application of Regulation (EC) 2111/2005 has demonstrated that the international community should consistently follow ICAO Standards and Recommended Practices (SARPS).To encourage respect for these standards, the Commission intends to propose that within the remit of its competencies under Article 54 of the Chicago Convention, the Council of ICAO proceeds to:

(a) The open publication of significant safety concerns raised after USOAP audits for the information of the public at large;

(b) The determination of an acceptable risk to safety beyond which it should recommend that States waive the acceptance of certificates of air carriers certified in States whose lack of implementation of ICAO standards places them above such threshold;

(c) A decision for ICAO to take a more active role to coordinate assistance activities of major "donors" to improve the safety situation following its audits.

Such a move should promote respect for international safety standards by all ICAO Contracting States thus ensuring a high level of safety throughout the world and not only where legal tools, such as the Regulation, apply. It would de facto act as an international list of banned carriers.

The proposals to reinforce international activities in all matters of aviation safety will be further developed and presented to the forthcoming International Safety Conference organised by ICAO in March 2010, as the European contribution to that event. This Conference should prepare the ground for the development of a new policy for safety and lead to ambitious

decisions in the framework of ICAO during its General Assembly meeting in September 2010.