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COMMISSION STAFF WORKING DOCUMENT

On the report from the Commission to the Council and the European Parliament regarding 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

{COM(2009) 710 final}

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1. THE NEED FOR COMMON RULES

The need to adopt these rules resulted from weaknesses in the enforcement of the internationally agreed safety standards – those of the 1944 Chicago Convention (creating ICAO - the International Civil Aviation Organisation) and its annexes. For this reason, the Regulation provided for the imposition of a total or a partial ban where substantiated evidence from objective, transparent and quantifiable criteria showed that ICAO safety standards were not being followed by air carriers.

Over the three years since it came into existence, its application has served as a clear demonstration of the value-added by the Community system in the field of air safety. Rather than being employed as a punitive instrument, the EC list has proved to be an efficient dissuasive measure, which, above all, seeks to identify *ex ante*, serious air safety deficiencies with potentially disastrous repercussions. It has also functioned as a strong incentive to air carriers and civil aviation authorities to continuously improve safety.

Where a ban was agreed it was always a temporary measure which would last only until the air carriers and where appropriate, their regulatory authorities could prove that they had addressed the identified shortcomings and were meeting the relevant safety standards.

2. ANALYSIS OF THE COMMON CRITERIA FOR DECIDING THE IMPOSITION OF AN OPERATING BAN

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.

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

Four main verifiable sources of information are used to substantiate evidence:

1. Reports showing serious safety deficiencies or persistent failure by the carrier to address deficiencies identified by ramp inspections performed under the EC SAFA programme

Reports of ramp inspections on aircraft of air carriers conducted under the EC SAFA programme (Safety Assessment of Foreign Aircraft) are a primary source of information when investigating cases related to the list. As an indication of the scale of the SAFA programme in 2008 alone 10,337 ramp checks of aircraft were conducted on 1,067 carriers from 131 different states; a continuous increase compared to the ramp checks conducted in previous years.

The conduct, reporting and follow-up of SAFA ramp inspections are carried out according to common procedures established at Community level by Directive 2004/36/EC¹ (the 'SAFA Directive').

As provided under Regulation (EC) 768/2006, the European Aviation Safety Agency (EASA) conducts regular (every four months) in-depth analyses of all reports entered into the SAFA database in order to identify as early as possible any potential negative safety trends and advises the Commission accordingly. Additionally, since 2007, EASA has been carrying out ad-hoc analyses on the performance of air carriers, which have been subject to investigations to ensure close monitoring and timely evaluation of their performance. The results of these analyses have, since 2007, been presented by EASA and the Commission to the Air Safety Committee and have contributed to steering the investigations and the decisions of the Committee.

The continuous cooperation with EASA and the Member States in the evaluation of the information available in the database has helped the Commission construct a system which is reliable and successful. Given the increasing importance of the programme as a key source of information for investigations related to the EC list, as well as a stand-alone preventive instrument, supplementary legislation enacted during 2008 (Commission Directive 2008/49/EC)² further harmonised these procedures together with training and qualification requirements for SAFA inspectors.

Implementing legislation (Commission Regulation 351/2008)³ was also enacted to permit the prioritisation of ramp inspections ("targeting") on aircraft of air carriers suspected to pose potential safety hazards in order that a closer snapshot may be obtained of such cases prior to proceeding further, possibly leading to inclusion in the list.

As provided in the "SAFA Directive", apart from ramp inspections, substantiated information related to serious safety deficiencies identified in relation to particular carriers may reach the Commission from various other sources, such as collaboration with other non-EU national aviation authorities (e.g. the United States Federal Aviation Authority), or other third parties.

Finally, cooperation with Eurocontrol has enabled Member States and the Commission in many instances to ensure that aircraft and operators banned from European Airspace would not reach Community airports or fly over the territory of Member States in breach of the ban.

2. Serious safety deficiencies identified within the framework of the provisions for the gathering of information under Article 3 of Directive 2004/36/EC on the safety of third-country aircraft

In the course of the application of the common criteria the information (provided for in article 3 of Directive 2004/36) listed below is correlated with the results and follow-up of ramp checks

- (a) important safety information accessible, in particular, through: pilot reports, maintenance organisation reports, incident reports, other organisations independent from the competent authorities of the Member States, complaints;
- (b) information on action taken subsequent to a ramp inspection, such as: aircraft grounded, corrective action required, contacts with the operator's competent authority;

¹ OJ L 143, 30.4.2004, p.76

² OJ L 109, 19.4.2008, p. 17

³ OJ L 109, 19.4.2008, p. 7

- (c) follow-up information concerning the operator, such as: corrective action implemented, recurrence of discrepancies.

The analysis of the results of ramp inspections and the above mentioned collected information, leads to the decision to monitor the performance of air carriers through targeted ramp checks on their aircraft to verify whether safety deficiencies are isolated cases or whether they are systemic deficiencies requiring wide-reaching remedial and corrective actions.

Targeted ramp checks are also carried out after the (total or partial) operating ban has been removed. This ensures continuous monitoring of an air carrier's performance with a view to confirm that previous safety deficiencies do not re-occur, that the air carriers concerned maintain a high level of safety of their operations into the Community, and that they continue to comply with the relevant safety standards.

3. Operating ban imposed on a carrier by a non-EU country because of substantiated deficiencies related to international safety standards

Outside the EU, several other States have in place mechanisms for imposing operating bans on air carriers based on safety grounds. Through closer growing ties of cooperation between the Community and non-EU countries, important safety information is exchanged with the civil aviation authorities of these countries, such as the US and Canada. Exchanges of safety information are made possible through bilateral Community safety specific agreements, where the respective certification systems have been verified and a high level of mutual trust is maintained in each others' system of safety oversight and enforcement.

There is also close cooperation with those civil aviation authorities with which the Community is negotiating safety specific agreements or comprehensive aviation agreements, to ensure that safety information regarding the performance of air carriers operating to these countries and the Community exchanged in a timely manner in order to allow for informed decisions on the continuation of their operations.

In the event that an operating ban is imposed by a non-EU country the case is analysed closely, and where possible in collaboration with the relevant regulatory authorities, in order to assess whether the circumstances warrant consideration of a similar ban in Europe. In addition close cooperation with the relevant regulatory authorities is actively pursued to ensure that any decisions made by the Community relaxing a ban can be coordinated with decisions by the non-EU country.

4. Substantiated information concerning accidents or serious incidents indicating latent systemic safety deficiencies.

The Commission closely monitor the occurrence, investigation and reporting of air accidents and serious incidents. Where substantiated information is available and upon the conclusion of any formal investigations the information is considered, together with any other relevant safety information, in order to identify any negative safety trends or more immediate safety hazards requiring urgent action. Particular attention is given to the implementation of safety recommendations made by the relevant accident investigation bodies to ensure that lessons from accidents are applied. To this end particular attention is paid to the performance of the safety management systems and accident prevention and flight safety programme of the air carriers.

B. Lack of ability and/or willingness of an air carrier to address safety deficiencies

Two verifiable sources of information are used to substantiate evidence:

- (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 regarding the safety aspect of its operation.
- (b) Inappropriate or insufficient corrective action plan presented in response to an identified serious safety deficiency.

Whenever serious safety deficiencies on the part of an air carrier are identified by Member States or the Commission, the carrier concerned - together with the regulatory authority responsible for its safety oversight - is informed by the Commission and invited to present comments as well as any other relevant information (in the form of documented evidence) regarding its safety performance. Many cases are subsequently resolved at this stage by Member States and the Commission being satisfied, on the basis of documented evidence, that the carrier has identified the root cause of the safety concerns and taken appropriate remedial and corrective actions to prevent recurrence.

Accordingly, a proposal for banning may be considered in those cases where transparency and communication are lacking and/or where inappropriate or insufficient corrective actions have been taken by the air carrier(s) concerned. In particular, absence of communication or incomplete and untimely communication on the part of the carrier(s) and/or the aviation authority with regulatory oversight for the carrier(s), have led to the imposition of partial or total bans as precautionary measures to ensure that safety is guaranteed.

C. Lack of ability and/or willingness of the authorities responsible for the oversight of an air carrier to address safety deficiencies

Three verifiable sources of information are used to substantiate evidence:

1. Lack of cooperation

Whenever serious safety deficiencies on the part of an air carrier are identified, the reaction of its national authority responsible for its safety oversight is equally considered. The Commission has therefore requested that air carriers under investigation or subject to a partial or total ban present remedial and corrective measures only after these have been approved by the authority responsible for the safety oversight of the air carrier(s) concerned and after the authority has verified implementation of such measures.

Also cooperation with the authority responsible for the safety oversight of a State's air carriers is even more important in cases where such deficiencies are identified in more than one air carrier certified in the same state. In such cases lack of cooperation and transparency on the part of that authority may lead to a proposal for the banning of several or all air carriers certified in that State.

2. Insufficient ability of the authority

A number of factors may lead to the conclusion that the competent authority of a State with responsibility for the regulatory oversight of its air carriers is not able to exercise its responsibilities to the relevant international standards:

a. ICAO regularly conducts audits designed to assess its Contracting States' civil aviation authorities' oversight capabilities as part of its comprehensive Universal Safety Oversight Audit Programme (USOAP). The Commission as an observer to ICAO, constantly monitors the results of these audits and in order to provide a method of prioritisation of cases warranting closer investigation created a dedicated working group composed of experts from the Member States to analyse the results of the USOAP audits. The result of this analysis is used for the following purposes:

- Launching dedicated technical assistance projects to the countries concerned
- Launching investigations related to the list
- The prioritisation of SAFA ramp inspections

b. Previous refusal of the operating authorisation or technical permission of any carrier under the oversight of one State by another State is taken into account as possible indications of a weak or flawed safety oversight regime. Such information is obtained through close cooperation with, not only the civil aviation authorities of non-EU countries which have decided to apply the EC list (e.g. the Republic of Korea, Bahrain and the Kingdom of Saudi Arabia), but also those with whose States the Community has concluded a safety specific or a comprehensive aviation agreement.

Annex 6 to the Chicago Convention requires that an operator must have its principle place of business in the State that issues its Air Operators Certificate (AOC). That State is responsible for the oversight, both operational and airworthiness, of the operator unless it has agreed to transfer some of the responsibilities under a lease agreement. Where it is found that the principle place of business of an operator is not in the State that issued the AOC investigations are immediately launched to verify whether the safety oversight of the air carrier is being correctly discharged by the State that issued its certificate. This is of particular importance since, for obvious logistical and organisational reasons, it is generally difficult for a certifying State to exercise its oversight responsibilities remotely, particularly if that State is already proven to have a weak safety oversight regime.

3. Insufficient ability of the competent authorities of the State of registry of aircraft to oversee those aircraft used by air carriers in accordance with its obligations under the Chicago Convention.

Annex 8 to the Chicago Convention sets out the standards for the certification of aircraft and the issuance and subsequent oversight of the Certificate of Airworthiness by the State of Registry. Where, through the results of ICAO USOAP audits, such States are reported to have significant non-compliances in the area of Annex 8 the Commission, with the unanimous support of the Air Safety Committee, has included on the EC list all carriers which have their fleet registered in such States.

3. COOPERATION WITH THIRD COUNTRIES IN THE FRAMEWORK OF REGULATION 2111/2005

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.

In this context, besides its ever growing ties with ICAO Secretariat, the Commission has established several lines of communication with a number of States and organisations (e.g. Australia, Brazil, Canada, Iran, Japan, Morocco, Tunisia, the Russian Federation, Saudi Arabia, and the United States of America) for the exchange of safety-related information. Close liaisons are also maintained with the International Air Transport Association (IATA) in order to ensure a better mutual understanding regarding the EC list.

Also, the Commission has been actively contributing to various ICAO led projects:

The Commission has been participating in the following projects – in North Asia (440,000 Euro for China, North Korea, Mongolia and Korea), in South Asia (350,000 Euro for Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka) and in Central America (615,000 Euro for Belize, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua). The

Commission is also leading certain projects with contribution from the aeronautical industry: for instance the EU Russia Aviation Cooperation project for 800,000 Euros, the Euromed Aviation project for 5 million Euro linked to the Commission's Neighbourhood Policy, as well as its strategy programme TRACECA towards beneficiary countries in the Caucasus, and in Central Asia for 5 million Euros (Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Ukraine and Uzbekistan). There are also individual projects, such as the one for the Democratic Republic of Congo, for 5 million Euros as well as those for Indonesia and Cambodia aiming at strengthening the administrative and technical capacity of the civil aviation authorities to allow them to discharge correctly their obligations as regulatory and oversight authorities.

Until 2007 the Commission had also contributed to two Africa specific COSCAP project: COSCAP –UEMOA (Benin; Burkina Faso; Côte d'Ivoire; Guinea-Bissau; Mali; Mauritania; Niger; Senegal; Togo) and COSCAP –SADEC (Angola; Botswana; Democratic Republic of the Congo; Lesotho; Malawi; Mauritius; Mozambique; Namibia; Seychelles; South Africa; Swaziland; Tanzania; Zambia; Zimbabwe) aiming at resolving regional safety oversight issues and harmonization of regulations in these countries.

Upholding the Commission's philosophy of enhancing the preventive and dissuasive potential of the Regulation the European Commission launched a framework contract on prevention and technical assistance in the framework of Regulation 2111/2005 EC in 2008. The project was awarded to EASA in 2009. This initiative is intended to support positive ex ante prevention actions as well as ex post technical cooperation to assist efforts made by States at implementing corrective action plans to address identified serious safety deficiencies.

4. FUTURE PERSPECTIVES

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 seen 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.

The various areas where the Commission intends to further develop its policy both in terms of internal and external measures are presented in the Commission's report on the application of Regulation (EC) No 2111/2005.