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► **B** 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)

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**REGULATION (EC) No 2111/2005 OF THE EUROPEAN
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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;

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- (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 operate air services to and from its airports or that an air carrier may operate in its airspace or that an air carrier may exercise traffic rights;
- (g) ‘operating ban’ means the refusal, suspension, revocation or restriction of an air carrier’s operating authorisation or technical permission for safety reasons, or any equivalent safety measures in respect of an air carrier which has no traffic rights in the Community but whose aircraft might otherwise be operated in the Community under a lease agreement;
- (h) ‘package’ means those services defined in Article 2(1) of Directive 90/314/EEC;
- (i) ‘reservation’ means the fact that the passenger has a ticket or other proof, which indicates that the reservation has been accepted and registered by the air carriage contractor;
- (j) ‘relevant safety standards’ means the international safety standards contained in the Chicago Convention and its Annexes as well as, where applicable, those in relevant Community law.

CHAPTER II

COMMUNITY LIST

*Article 3***Establishment of the Community List**

1. With a view to reinforcing air safety, a list of air carriers that are subject to an operating ban in the Community (hereinafter referred to as the Community list) shall be established. Each Member State shall enforce, within its territory, the operating bans included in the Community list in respect of the air carriers that are the subject of those bans.

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2. The common criteria for imposing an operating ban on an air carrier, which shall be based on the relevant safety standards, are set out in the Annex (and are hereinafter referred to as the common criteria). The Commission may modify the Annex, in particular in order to take account of scientific and technical developments. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(4).

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3. For the purpose of establishing the Community list for the first time, each Member State shall, by 16 February 2006, communicate to the Commission the identity of the air carriers that are subject to an operating ban in its territory, together with the reasons which led to the adoption of such bans and any other relevant information. The Commission shall inform the other Member States of these operating bans.

4. Within one month of receiving the information communicated by the Member States, the Commission shall, on the basis of the common criteria, decide on the imposition of an operating ban on the air carriers concerned and shall establish the Community list of air carriers on which it has imposed an operating ban, in accordance with the procedure referred to in Article 15(3).

*Article 4***Updating of the Community list**

1. The Community list shall be updated:
 - (a) to impose an operating ban on an air carrier and include this air carrier on the Community list, on the basis of the common criteria;
 - (b) to remove an air carrier from the Community list, if the safety deficiency or deficiencies that gave rise to the inclusion of the air carrier on the Community list have been remedied and there is no other reason, on the basis of the common criteria, to maintain the air carrier on the Community list;
 - (c) to modify the conditions of an operating ban imposed on an air carrier which is included on the Community list.
2. The Commission, acting on its own initiative or at the request of a Member State, shall decide to update the Community list as soon as this is required under paragraph 1, in accordance with the procedure referred to in Article 15(3) and on the basis of the common criteria. At least every three months, the Commission shall verify whether it is appropriate to update the Community list.
3. Each Member State and the European Aviation Safety Agency shall communicate to the Commission all information that may be relevant in the context of updating the Community list. The Commission shall forward all relevant information to the other Member States.

*Article 5***Provisional measures for updating of the Community list**

1. Where it is evident that the continued operation of an air carrier in the Community is likely to constitute a serious risk to safety, and that such a risk has not been resolved satisfactorily by means of urgent

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measures taken by the Member State(s) concerned in accordance with Article 6(1), the Commission may provisionally adopt the measures referred to in Article 4(1)(a) or (c), in accordance with the procedure referred to in Article 15(2).

2. As soon as possible, and at most within 10 working days, the Commission shall submit the matter to the Committee referred to in Article 15(1) and shall decide to confirm, amend, revoke or extend the measure which it has adopted under paragraph 1 of this Article, acting in accordance with the procedure referred to in Article 15(3).

*Article 6***Exceptional measures**

1. In cases of urgency, this Regulation shall not preclude a Member State from reacting to an unforeseen safety problem by imposing an immediate operating ban in respect of its own territory, taking into account the common criteria.

2. A decision by the Commission not to include an air carrier in the Community list in accordance with the procedure referred to in Article 3(4) or 4(2) shall not preclude a Member State from imposing or maintaining an operating ban on the air carrier concerned in view of a safety problem specifically affecting that Member State.

3. In either of the situations referred to in paragraphs 1 and 2, the Member State concerned shall immediately inform the Commission, which shall inform the other Member States. In the situation referred to in paragraph 1, the Member State concerned shall without delay submit a request to the Commission to update the Community list, in accordance with Article 4(2).

*Article 7***Rights of defence**

The Commission shall ensure that, when it adopts decisions as referred to in Articles 3(4), 4(2) and 5, the air carrier concerned is given the opportunity of being heard, taking into account the need, in some cases, for an urgency procedure.

*Article 8***Implementing measures****▼M1**

1. The Commission shall, where appropriate, adopt implementing measures in order to lay down detailed rules in respect of the procedures referred to in this Chapter. Those measures, designed to amend non-essential elements of this regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(4).

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2. In deciding these measures the Commission shall take due account of the need for decisions to be taken swiftly on updating the Community list and shall, where appropriate, provide the possibility of an urgency procedure.

▼B*Article 9***Publication**

1. The Community list and any modification thereto shall be published immediately in the *Official Journal of the European Union*.
2. The Commission and the Member States shall take the measures necessary to facilitate public access to the Community list, as most recently updated, in particular through the use of the Internet.
3. Air carriage contractors, national civil aviation authorities, the European Aviation Safety Agency and airports in the territory of the Member States shall bring the Community list to the attention of passengers, both via their websites and, where relevant, in their premises.

CHAPTER III

INFORMATION TO PASSENGERS*Article 10***Scope**

1. The provisions of this Chapter shall apply in respect of the carriage of passengers by air, where the flight is part of a contract of carriage and that carriage started in the Community, and
 - (a) the flight departs from an airport on territory of a Member State to which the Treaty applies;
 - or
 - (b) the flight departs from an airport in a third country and arrives at an airport on territory of a Member State to which the Treaty applies;
 - or
 - (c) the flight departs from an airport in a third country and arrives at another such airport.
2. The provisions of this Chapter shall apply whether the flight is scheduled or non-scheduled and whether the flight is part of a package or not.
3. The provisions of this Chapter shall not affect the rights of passengers under Directive 90/314/EEC and Regulation (EEC) No 2299/89.

*Article 11***Information on the identity of the operating air carrier**

1. Upon reservation, the air carriage contractor shall inform the passenger of the identity of the operating air carrier or carriers, whatever the means used to make the reservation.
2. Where the identity of the operating air carrier or carriers is not yet known at the time of reservation, the air carriage contractor shall ensure that the passenger is informed of the name or names of the air carrier or carriers that is or are likely to act as operating air carrier or carriers on the flight or flights concerned. In such case, the air carriage contractor shall ensure that the passenger is informed of the identity of the operating air carrier or carriers as soon as such identity is established.

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3. Wherever the operating air carrier or carriers is or are changed after reservation, the air carriage contractor shall, irrespective of the reason for the change, take immediately all appropriate steps to ensure that the passenger is informed of the change as soon as possible. In all cases, passengers shall be informed at check-in, or on boarding where no check-in is required for a connecting flight.

4. The air carrier or the tour operator, as the case may be, shall ensure that the relevant air carriage contractor is informed of the identity of the operating air carrier or carriers as soon as this is known, in particular in the event of a change of such identity.

5. If a ticket seller has not been informed of the identity of the operating air carrier, it shall not be responsible for not complying with the obligations provided for in this Article.

6. The obligation of the air carriage contractor to inform passengers of the identity of the operating air carrier or carriers shall be specified in the general terms of sale applicable to the contract of carriage.

*Article 12***Right to reimbursement or re-routing**

1. This Regulation shall not affect the right to reimbursement or re-routing as provided for in Regulation (EC) No 261/2004.

2. In cases where Regulation (EC) No 261/2004 does not apply, and

(a) the operating air carrier notified to the passenger has been entered on the Community list and is subject to an operating ban which has led to the cancellation of the flight concerned, or which would have led to such cancellation if the flight concerned had been operated in the Community

or

(b) the operating air carrier notified to the passenger has been replaced by another operating air carrier which has been entered on the Community list and is subject to an operating ban which has led to the cancellation of the flight concerned, or which would have led to such cancellation if the flight concerned had been operated in the Community,

the air carriage contractor which is party to the contract of carriage shall offer the passenger the right to reimbursement or re-routing provided for in Article 8 of Regulation (EC) No 261/2004, provided that, where the flight has not been cancelled, the passenger has chosen not to take that flight.

3. Paragraph 2 of this Article shall apply without prejudice to Article 13 of Regulation (EC) No 261/2004.

*Article 13***Penalties**

Member States shall ensure compliance with the rules set out in this Chapter and shall lay down penalties for infringement of these rules. The penalties shall be effective, proportionate and dissuasive.

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CHAPTER IV
FINAL PROVISIONS

Article 14

Information and amendment

By 16 January 2009, the Commission shall report to the European Parliament and to the Council on the application of this Regulation. The report shall be accompanied, where necessary, by proposals for the amendment of this Regulation.

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Article 15

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1. The Commission shall be assisted by a committee ('EU Air Safety Committee'). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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4. Where reference is made to this paragraph, Article 5a(1) to (4) and (5)(b) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The time-limits laid down in Article 5a(3)(c), (4)(b) and (4)(e) of Decision 1999/468/EC shall be one month, one month and two months respectively.

5. The Commission may consult the Committee on any other matter concerning the application of this Regulation.

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Article 16

Repeal

Article 9 of Directive 2004/36/EC is hereby repealed.

Article 17

Entry into force

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

Articles 10, 11 and 12 shall apply from 16 July 2006 and Article 13 shall apply from 16 January 2007.

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



ANNEX

Common criteria for consideration of an operating ban for safety reasons at Community level

Decisions on action at Community 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 Community level.

In considering whether an air carrier 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:
 - Reports showing serious safety deficiencies, or persistent failure by the carrier to address deficiencies identified by ramp inspections performed under the SAFA programme previously communicated to the carrier.
 - Serious safety deficiencies identified within the framework of the provisions for the gathering of information in Article 3 of Directive 2004/36/EC on the safety of third-country aircraft.
 - Operating ban imposed on a carrier by a third country because of substantiated deficiencies related to international safety standards.
 - Substantiated accident-related information or serious incident-related information indicating latent systemic safety deficiencies.
2. Lack of ability and/or willingness of an air carrier to address safety deficiencies as demonstrated by:
 - 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.
 - Inappropriate or insufficient corrective action plan presented in response to an identified serious safety deficiency.
3. Lack of ability and/or willingness of the authorities responsible for the oversight of an air carrier to address safety deficiencies as demonstrated by:
 - Lack of cooperation with the civil aviation authority of a Member State 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.
 - 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:
 - (a) audits and related corrective action plans established under ICAO's Universal Safety Oversight Audit Programme or under any applicable Community law;
 - (b) 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;
 - (c) the air operator's certificate has not been issued by the competent authority of the state where the carrier has its principle place of business.
 - 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.