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Q&A

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Questions and Answers: Commission adopts new EU Air Safety List

What is the EU Air Safety List?

The EU Air Safety List (ASL) is a list of air carriers, which do not fulfil international safety standards. The carriers on the ASL are banned from operating to, in and from the EU (including the overflight). Carriers that do not operate to the EU can also be put on the ASL, in order to warn the public travelling outside of the EU about safety concerns. If the safety authorities of a third country are not able to fulfil their international safety oversight obligations, all the carriers of that country can be put on the ASL.

The ASL, while not popular with the affected countries and carriers, has developed into a strong, and internationally recognised tool to help improve the safety of international aviation. This is the case both for flights to the EU, but also for aviation outside of the EU. ASL is also seen as a strong preventive tool, because when under scrutiny, countries tend to improve their safety oversight to avoid seeing their air carriers on the list.

Which carriers are currently on the EU Air Safety List?

After the update of June 2022, the 40th update, 118 air carriers are banned from EU skies:

- 90 airlines certified in 15 states¹, due to a lack of safety oversight by the aviation authorities in these states;
- 22 airlines certified in Russia, as well as 6 individual airlines, based on safety concerns with regard to these airlines themselves: Avior Airlines (Venezuela), Blue Wing Airlines (Suriname), Iran Aseman Airlines (Iran), Iraqi Airways (Iraq), Med-View Airlines (Nigeria) and Air Zimbabwe (Zimbabwe).

An additional two airlines are subject to operational restrictions and can only fly to the EU with specific aircraft types: Iran Air (Iran) and Air Koryo (North Korea).

Who is responsible for the updates to the EU Air Safety List?

In updating the list, the Commission is assisted by the EU Air Safety Committee (ASC), which comprises aviation safety experts from all the EU Member States and is chaired by the Commission, with support from the European Union Aviation Safety Agency (EASA). Acting on a proposal by the Commission, the ASC delivers its opinion by qualified majority. The resulting proposed measures are then submitted to the European Parliament and the

¹ Afghanistan, Angola (with the exception of 2 airlines), Armenia, Congo (Brazzaville), Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Kyrgyzstan, Liberia, Libya, Nepal, São Tomé and Príncipe, Sierra Leone and Sudan.

Contacts :

[Adalbert JAHNZ](#) (+32 2 295 31 56)

[Anna WARTBERGER](#) (+32 2 298 20 54)

EU Council before final adoption by the Commission, and subsequent publication in the Official Journal. To date, all decisions taken by the Commission to impose or to lift restrictions have been reached with unanimous support from the ASC members and by the European Parliament's Transport Committee.

What is the procedure for updates to the EU Air Safety List?

All EU Member States and EASA are obliged to communicate information that may be relevant for the update of the ASL to the Commission. The European Commission and the ASC use a variety of information sources when assessing whether or not international safety standards are respected. These include sources like the International Civil Aviation Organisation (ICAO), the United States Federal Aviation Administration, EASA, SAFA[2] and TCO[3] reports, as well as information gathered by individual EU Member States and the Commission itself. It is important to note that this assessment is made against international safety standards (and not the EU safety standards, which are sometimes more stringent), and notably the standards promulgated by the ICAO.

To whom does it apply?

The rules establishing the list of banned carriers apply to all air carriers, irrespective of their nationality – EU and non-EU. They apply only to commercial air transport, i.e. to the air transport of passengers and cargo for remuneration or hire. The rules do not apply to private and non-commercial flights (e.g. positioning flights for maintenance purposes).

How often is the list updated and what is the timeframe for this? Is there not a risk that it will quickly become obsolete?

The ASL may be updated whenever the Commission deems it is necessary, or upon request of an EU Member State. The ASC normally meets two or three times every year, as necessary. For emergencies, a specific procedure is in place.

How can an airline be cleared and taken off the list?

If an airline considers that it should be taken off the list because it complies with the relevant safety standards, it can address a request to the Commission, either directly or through its civil aviation authority. For a ban to be lifted, sufficient evidence must be provided to the EU, to prove that the capacity of the airline and of its oversight authority to implement international safety standards is of a sufficient level. The Commission services will then assess the evidence presented by the airline and/or its oversight authority to substantiate its request. If the result of the assessment is positive, the Commission will make a proposal to the ASC.

Notwithstanding the case of individual air carriers, if the underlying reason for an air carrier being on the ASL is a poor level of compliance with ICAO standards by its safety oversight authorities, it will require the state to address the significant non-compliances before that air carrier can be removed from the list.

In practical terms, this involves the air carrier and its state providing written information, attending meetings with the Commission and EU Member States, sometimes being subject to an on-site visit led by the Commission, and taking part in hearings in front of the ASC.

How is an airline added to the list?

If the Commission or an EU Member State acquires and confirms evidence indicating serious safety deficiencies on the part of an airline or its oversight authority anywhere in the world, the list will be updated to include this airline or all the airlines of the country in question.

Does the inclusion of an airline in the EU Air Safety List always mean that it is no longer allowed to fly in Europe?

YES. As long as the air carrier is subject to a total ban, neither its aircraft nor its personnel can operate in the European Union's airspace. The airline is included in Annex A to the regulation. Equally, as long as an air carrier is subject to a partial ban it can operate only with the aircraft stipulated in the Regulation. The airline is included in Annex B of the regulation.

Banned airlines can, however, use the aircraft and personnel of other airlines, which are not on the ASL, on the basis of contracts called 'wet-lease agreements'. In this way, passengers and cargo can still be transported on the basis of tickets sold by a banned airline, and the flight is operated by airlines that fully comply with the safety rules. Furthermore, aircraft used for government or state purposes (e.g. transport of the heads of state and/or government, humanitarian flights), do not fall under the safety requirements of ICAO. Such aircraft are considered to be operating 'state flights' and can fly into the EU even if commercial flights are banned. However, such flights do need special authorisation ('diplomatic clearance') from all the EU Member States that the state aircraft overflies, as well as from the state of destination.

In essence, banned airlines cannot enter the sovereign airspace of any EU Member State and fly over their territory while they are banned (totally or partially).

Does the list prevent EU Member States from taking individual safety measures at a national level?

NO. The general principle is that whatever measure is considered at national level must also be examined at European Union level. When an air carrier is considered unsafe and therefore banned in one EU Member State, there is an obligation to examine this measure at EU level with a view to applying it throughout the European Union. Nevertheless, even where a ban is not extended to the EU, there is scope for EU Member States to continue to act at national level in certain exceptional cases, particularly in emergencies or in response to a safety issue specifically affecting them.

What are airlines' 'rights of defence'?

Airlines that have been banned, or that are being investigated in view of a potential ban, have the right to express their points of view, submit any documents that they consider appropriate for their defence, and make oral and written presentations to the ASC and the Commission. This means that they can submit comments in writing, add new items to their file, and ask to be heard by the Commission or to attend a hearing before the ASC, which then formulates its opinion based on these proceedings and the materials submitted prior to or during the hearing.

Is the Commission approach a punitive one?

The Commission's sole aim is to improve aviation safety, which is in everyone's interest, and in no way to affect a country's economic or social development. Countries affected can put in place technical assistance measures to help airlines achieve a satisfactory level of aviation safety. While in the past the focus has been to put countries and carriers on the ASL, the Commission is now also working with affected states to help them improve their safety situation so that they may be released from the ASL once the necessary safety levels have been reached.

How is the public informed about the EU Air Safety List?

The latest version of the list is available to the public online at https://transport.ec.europa.eu/transport-themes/eu-air-safety-list_en. The Commission also liaises closely with European and international travel agent associations each time that any changes are made to the list so that they are in the best possible position to assist their clients – the passengers – in making informed decisions when making travel arrangements. Moreover, the ASL Regulation also obliges national civil aviation authorities, EASA and airports in the territory of the EU Member States to bring the ASL to the attention of passengers, both via their websites and, where relevant, in their premises.

In what way does the EU Air Safety List provide rights to European travellers?

The ASL Regulation establishes the right of any passenger to know the identity of every airline they fly with throughout their trip. To this effect, the contracting carrier is required to inform passengers of the identity of the operating air carrier or carriers when making a reservation, however the booking is made. The passenger must also be kept informed of any change of operating carrier, either at check-in or, at the latest, when boarding. The Regulation also gives passengers the right to reimbursement or re-routing if a carrier with which a booking has been made is subsequently added to the ASL, resulting in the cancellation of the flight concerned.

In what way does the publication of the EU Air Safety List help European citizens travelling beyond EU territory?

The ASL does not only ban unsafe airlines from operating to, from and in the EU. The publication of the list also provides useful information to people wishing to travel outside the European Union, so that they may avoid flying with these airlines if they wish. The list also safeguards the rights of consumers who have bought a trip at a travel agent, which includes a flight operated by an airline on the ASL.

What is the safety problem linked to Russian aircraft?

In the aftermath of Russia's unprovoked and unjustified invasion of Ukraine, more than 500 western built and owned aircraft under lease to Russian companies were not returned to their rightful owners, but were de facto seized and unlawfully re-registered on the Russian aircraft Registry. The airworthiness of these aircraft had been guaranteed, through a Certificate of Airworthiness, by Bermuda and Ireland, as States of Registry. As a result of Russia's actions, the aircraft no longer have valid Certificates of Airworthiness, and the Russian authorities are unable to guarantee their airworthiness. Operating these aircraft is unsafe and therefore any Russian airline operating one or more of these aircraft is being put on the EU Air Safety List.