

## Aviation - European Union

### A guide to the EU Blacklist

Contributed by [Katten Muchin Rosenman LLP](#)

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#### Introduction

In 2006 the European Commission prohibited a group of air carriers from operating with their aircraft or personnel in the European Union and from entering the airspace of any EU member state. Known as the 'Community List', the 'EU Air Safety List' or the 'EU Blacklist', it was initially based on bans already in force in member states and in response to the crash of an aircraft operated by Cyprus's Helios Airways near Athens, killing all 121 people on board.<sup>(1)</sup>

The list is composed of Annex A (airlines that are banned from operating in the European Union) and Annex B (airlines that are permitted to operate in the European Union only under specific conditions).<sup>(2)</sup> At least every three months, the commission considers whether to update the list based on the recommendations of the EU Air Safety Committee, which is composed of air safety experts from all member states. The commission publishes the updates in the *Official Journal of the European Union*.<sup>(3)</sup>

#### Background

Airlines are held to the safety standards promulgated by the International Civil Aviation Organisation (ICAO), an agency of the United Nations. The ICAO carries out safety audits through its Universal Safety Oversight Audit Programme. EU air carriers must comply with EU safety rules, which are based on ICAO standards, but carry stricter procedures and penalties. An individual airline may be blacklisted by the European Union because it is deemed unable to respect ICAO standards or because its civil aviation authorities have technical and regulatory deficiencies. An entire country may be blacklisted if it does not satisfactorily perform checks on its airlines. The process by which an air carrier is listed is set forth in EU Regulation 2111/2005. It involves consultation among the regulatory agencies of member states, EU institutions (including the EU Air Safety Committee), the authorities with responsibility for regulatory oversight of the air carrier concerned and the airline to be listed.

Airlines have every incentive to stay off the blacklist. Listing can adversely affect an airline's public perception, commercial relationships and profits from both EU and non-EU operations. Ticket sales may fall and commercial relationships with other airlines may be damaged, because a blacklisted airline's code-sharing partners in the European Union are required to notify passengers at the time of sale or booking that the airline is blacklisted. Aircraft insurance may be harder to obtain or more expensive. Aircraft finance or leasing opportunities may be more limited.

Given these significant consequences, each blacklisted air carrier is given the right to appeal to the European Aviation Safety Agency. Although no airline so far has overturned a ban through appeal, an airline can be removed from the list if it satisfies the safety requirements at a later time.

Before the EU Blacklist was established, most European countries had their own aviation blacklists. The United States and certain other countries outside the European Union exercise similar safety oversight of the operations of foreign airlines.

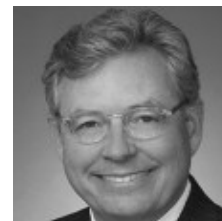
#### Recent changes to Air Safety List

The EU Blacklist was most recently updated on June 25 2015.<sup>(4)</sup> All airlines from the Philippines, banned since March 2010, were released from the list and allowed to operate in European airspace. This is the first time that all airlines of one country have been released from the list. The release came in three steps:

- Flag carrier Philippine Airlines was released in 2013;
- Cebu Pacific, the country's largest airline, was released in 2014; and

#### Authors

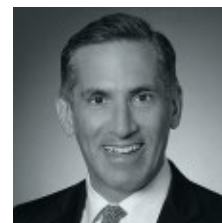
Timothy J Lynes



Jonathan C Goldstein



Stewart B Herman



- The latest decision lifts the ban on the remaining seven Philippine carriers, on the grounds of improved safety oversight provided by the Philippine authorities.

Although the seven carriers currently serve routes mostly inside Asia, the move is expected to benefit them by providing the option of expanding into Europe. Philippine Airlines now flies to London and is planning to add more European destinations, while Cebu Pacific is applying to fly to Italy.<sup>(5)</sup>

This latest update stands in sharp contrast to the prior update, on December 11 2014, which added all airlines from Libya to the EU Blacklist and released no air carriers from the list. Violeta Bulc, EU commissioner for transport, explained the ban:

*"Recent events in Libya have led to a situation whereby the Civil Aviation Authority is no longer able to fulfil its international obligations with regard to the safety of the Libyan aviation sector. My priority in aviation is passenger safety, which is non-negotiable, and we stand ready to help the Libyan aviation sector as soon as the situation on the ground will allow for this."*<sup>(6)</sup>

Two months after being banned from Europe, all Libyan carriers were banned from Egyptian and Moroccan airspace because of the deteriorating security situation.

### **Pre-ban red flag**

In addition to imposing a complete ban in Europe, the EU Blacklist prompts airlines to rectify their safety or regulatory deficiencies both before and after they are listed. Airlines or countries are often 'red-flagged' by the ICAO before they are added to the list. Earlier this year, the ICAO issued Thailand with a warning after an audit raised questions about the sufficiency of regulatory oversight of commercial air safety. Thailand was given 90 days to address the concern. On June 25 2015 the ICAO issued Thailand with a red flag for failing to adequately handle the situation within the timeframe.

Twelve other nations are also red-flagged: Angola, Botswana, Djibouti, Eritrea, Georgia, Haiti, Kazakhstan, Lebanon, Malawi, Nepal, Sierra Leone and Uruguay. Thailand is facing an audit with the US Federal Aviation Authority which may affect the European Union's determination as to whether to include it on the EU Blacklist. In response to the ICAO red flag, Charamporn Jotikasthira, president of flag carrier Thai Airways, noted that "a significant safety concern does not necessarily indicate a particular safety deficiency in the air navigation service providers, airlines (air operators), aircraft or aerodrome; but, rather, indicates that the country is not providing sufficient safety oversight to ensure the effective implementation of applicable ICAO Standards".

### **Status quo of EU Blacklist**

Following the latest changes, Annex A now includes all airlines certified in 20 states, for a total of 231 airlines:

- Afghanistan;
- Angola (with the exception of TAAG Angola Airlines, which is in Annex B);
- Benin;
- Republic of the Congo;
- Democratic Republic of the Congo;
- Djibouti;
- Equatorial Guinea;
- Eritrea;
- Gabon (with the exception of Afrijet, which is in Annex B);
- Indonesia (with the exception of Garuda Indonesia, Airfast Indonesia, Ekspres Transportasi Antarbenua and Indonesia Air Asia);
- Kazakhstan (with the exception of Air Astana, which is in Annex B);
- Kyrgyzstan;
- Liberia;
- Libya;
- Mozambique;
- Nepal;
- São Tomé and Príncipe;
- Sierra Leone;
- Sudan; and
- Zambia.

The list also includes one individual airline: Blue Wing Airlines (Suriname). Annex B contains eight airlines which are subject to operational restrictions and only fly to Europe only with specific aircraft types: Air Astana (Kazakhstan), Afrijet and SN2AG (Gabon), Air Koryo (Democratic People's Republic of Korea), Air Service Comores (the Comoros), Iran Air (Iran), TAAG Angolan Airlines (Angola) and Air Madagascar (Madagascar).

A banned airline may nevertheless offer services into Europe by entering into an aircraft, crew,

maintenance and insurance agreement as lessee – otherwise known as a wet lease – with an airline that is not banned as lessor. In such an operation the airline lessor is the operator of the flight, not the banned airline. The wet-leased aircraft may be branded as if it belongs to the fleet of the banned airline. For example, Libyan carrier Afrigivah Airways has wet leased a pair of aircraft from the United Arab Emirates-based Aerovista for flights to Turkey, Jordan and possibly elsewhere in Europe. The aircraft will operate under the Air Operators Certificate of Aerovista's Georgian subsidiary, Vista Georgia. Similarly, Air Libya reached a similar agreement with Aerovista in December 2014 for both scheduled and charter flights.

A blacklisted airline may also try to persuade the authorities to ease restrictions, but these efforts are not always successful. On July 6 2010 the European Commission announced that it would ban all of Iran Air's Airbus A320, Boeing 727 and Boeing 747 fleet from the European Union due to "a series of accidents suffered by this airline and serious deficiencies revealed during ramp inspections of its aircraft".<sup>(7)</sup> In June 2015 Iran Air provided the commission with information on its current fleet and requested that its Airbus A320 be excluded from operation restrictions. However, the commission found no grounds at this stage for amending the list with respect to air carriers certified in Iran, as the Air Safety Committee was unable to "verify the evidence provided through a technical meeting or on-site assessment visit". The commission declined to resume the services of Iran Air A320.

## Comment

The European Union has updated the EU Blacklist much less frequently since the first version was published in March 2006 and seems to have shifted from banning individual airlines to banning countries. By taking the blanket approach, the European Union may be pressuring national civil aviation authorities to enforce their oversight responsibilities. The list has been criticised for its political bias and lack of transparency. The African Airlines Association objects to the blanket ban approach as "a blunt instrument that constrains the development of a viable air transport industry in Africa".<sup>(8)</sup>

On the other hand, the EU Blacklist serves as a practical guide for worldwide travellers and aviation policy makers. For example, the European Union warned the Indonesian aviation regulators in early December 2014 by naming 62 Indonesian carriers in its updated blacklist, just 17 days before the disastrous AirAsia crash.

The recent release of all Philippines airlines may encourage airlines and regulators to work collaboratively and proactively with the European Union in growing aviation businesses in compliance with international standards. As Bulc pointed out: "Today's result can serve as an example for other countries which have difficulty to match their safety oversight capabilities with the growth of their industry."<sup>(9)</sup>

*For further information on this topic please contact [Timothy Lynes](mailto:timothy.lynes@kattenlaw.com), [Jonathan Goldstein](mailto:jonathan.goldstein@kattenlaw.com) or [Stewart Herman](mailto:stewart.herman@kattenlaw.com) at Katten Muchin Rosenman LLP by telephone (+1 202 625 3500) or email ([timothy.lynes@kattenlaw.com](mailto:timothy.lynes@kattenlaw.com), [jonathan.goldstein@kattenlaw.com](mailto:jonathan.goldstein@kattenlaw.com) or [stewart.herman@kattenlaw.com](mailto:stewart.herman@kattenlaw.com)). The Katten Muchin Rosenman LLP website can be accessed at [www.kattenlaw.com](http://www.kattenlaw.com).*

## Endnotes

(1) The first EU Blacklist is available at

<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006R0474>.

(2) The current list is available at [http://ec.europa.eu/transport/modes/air/safety/air-ban/index\\_en.htm](http://ec.europa.eu/transport/modes/air/safety/air-ban/index_en.htm).

(3) *Official Journal of the European Union*, Commission Implementing Regulation (EU) 2015/1014 of June 25 2015 amending EU Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL\\_2015\\_162\\_R\\_0006](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_162_R_0006).

(4) List of airlines subject to an operating ban or operational restrictions within the European Union, European Commission for Transport, European Commission, July 3 2015, available at [http://ec.europa.eu/transport/modes/air/safety/air-ban/doc/list\\_en.pdf](http://ec.europa.eu/transport/modes/air/safety/air-ban/doc/list_en.pdf).

(5) "EU confirms lifting safety ban on all Philippine airlines", Agence France-Presse, June 25 2015, available at [www.abs-cbnnews.com/business/06/25/15/eu-confirms-lifting-safety-ban-all-philippine-airlines](http://www.abs-cbnnews.com/business/06/25/15/eu-confirms-lifting-safety-ban-all-philippine-airlines).

(6) "Aviation: Commission Updates the EU Air Safety List", December 11 2104, European Commission Transport, available at [http://ec.europa.eu/transport/modes/air/news/2014-12-11-air-ban\\_en.htm](http://ec.europa.eu/transport/modes/air/news/2014-12-11-air-ban_en.htm).

(7) "Latest EU blacklist bans Iran Air A320s and 747s", Reed Business Information Limited.

(8) "Africa Calls for a New Approach to EU blacklist", November 20 2012, available at [www.lexology.com/library/detail.aspx?g=6c8c198a-7e9b-49a4-830a-998d037b0c80](http://www.lexology.com/library/detail.aspx?g=6c8c198a-7e9b-49a4-830a-998d037b0c80).

(9) Jennifer Meszaros, "Philippines Removed from EU Air Safety Blacklist", available at <https://www.ainonline.com/aviation-news/air-transport/2015-06-26/philippines-removed-eu-air-safety-blacklist>.

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