

EVALUATION AND FITNESS CHECK (FC) ROADMAP			
TITLE OF THE EVALUATION/FC	Evaluation of Regulation (2111/2005) on the establishment of a Community list of air carriers subject to an operating ban in the Community		
LEAD DG – RESPONSIBLE UNIT	MOVE/E3	DATE OF THIS ROADMAP	04/05/2016
TYPE OF EVALUATION	Evaluation Ex-post Mixed	PLANNED START DATE	Q1 / 2016
		PLANNED COMPLETION DATE	Q1 / 2017
		PLANNING CALENDAR	http://ec.europa.eu/smart-regulation/evaluation/index_en.htm
This indicative roadmap is provided for information purposes only and is subject to change.			

A. Purpose
(A.1) Purpose
<p>The purpose is to perform an ex-post evaluation of the 'Air Safety List' Regulation (Regulation (EC) 2111/2005¹) in order to assess whether the main objectives have been met, these being a high level of protection for EU passengers from safety risks and enabling consumers to make informed air travel choices, whilst considering the wider objective of improving aviation safety.</p> <p>The evaluation will review the objectives and the performance of the intervention compared to the initial expectations and to the current situation. The following evaluation criteria will be applied: effectiveness, efficiency, coherence, relevance and the EU added value of the intervention. Based on the evaluation it will be decided whether changes are necessary to improve the application of the Air Safety List Regulation or its Implementing Regulations and to ensure coherence with other safety related regulatory instruments.</p>
(A.2) Justification
<p>In 2009 the Commission assessed the application of the Air Safety Regulation in accordance with Article 14; it published a report² and concluded that at the time no amendment of the Regulation was necessary.</p> <p>In view of the fact that the Air Safety List Regulation implementing measures have been in operation since 2006 and taken into account the previous assessment, it is considered that now is the time to perform a complete evaluation as announced in the Aviation Strategy for Europe³ of 7 December 2015 to ensure the delivery of EU objectives in the best possible way.</p> <p>Of further note is that in 2014 the 'Third Country Operator Regulation'⁴ entered into force, completing the strategic package of instruments designed to regulate the safety of third country air carriers.</p>

¹ 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.

² [COM (2009) 710 final] Report on the application of Regulation (EC) No 2111/2005 and the associated Commission Staff Working Document [SEC (2009) 1735 final].

³ [COM(2015) 598 final] COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, An Aviation Strategy for Europe

⁴ COMMISSION REGULATION (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council

Taking account of the above state of play, the proposed evaluation is intended to ensure the coherence and fitness of the existing strategic and legal policy approach taken by the Commission with respect to the improvement of aviation safety and the protection of EU passengers and to ensure that the instruments available work together well in a seamless and coordinated manner.

B. Content and subject of the evaluation

(B.1) Subject area

The evaluation will focus on the Air Safety List Regulation (Regulation (EC) 2111/2005) and its Implementing Regulations.

The EU Air Safety list ('blacklist of airlines') is a list of third country air carriers that are banned from entering EU Airspace or landing at EU Airports. It was first established in March 2006 through implementing Regulation 474/2006⁵ There have been 26 updates since its first publication, as changes are made to the list of carriers banned from operating in EU airspace or landing at EU Airports.

Rules and procedures for establishing and updating the EU Air Safety List are set out in Regulation (EC) 2111/2005 and are further detailed in Implementing Regulation 473/2006⁶. The legislation also defines the interaction with air carriers from a third country, as well as their 'right of defence'.

The publication of the Air Safety List provides passengers with information on the safety risks of air carriers banned from European airspace. The air carriage contractor (i.e. a ticket seller, an airline, a tour operator, etc.) is obliged to inform the passenger of the identity of the operating air carrier. In the event that the operating air carrier is put on the EU Air Safety List, the air carriage contractor must offer the passenger the right to reimbursement and re-routing.

Work on the Air Safety List was triggered by a number of fatal accidents with air carriers from outside the EU that resulted in the deaths of a significant number of European citizens in the early 2000s. Analysis of the accidents revealed that causal factors were not only safety failings by the air carriers themselves but also resulted from the inadequate safety oversight by the responsible aviation authorities. These safety concerns led to demands for a harmonised approach at EU level to prevent unsafe airlines from operating into, from and within the EU, by imposing operational bans on these unsafe airlines. Furthermore, it was determined that the travelling public should be informed of the air carriers that are subject to an EU operating ban, in order to make the public aware of the safety risks associated with such airlines when they travel outside of the EU. A harmonised EU level approach appeared beneficial, also in light of the fact that individual national bans could easily be circumvented by the third country operators whilst making European air carriers vulnerable to reciprocal action by the third countries concerned.

Against this background Regulation 2111/2005 was adopted and entered into force in December 2005. It gave the Commission the competence to establish and update the EU Air Safety List, as well as stating that appropriate action⁷ should be taken with a view to assisting air carriers in remedying the deficiencies which gave rise to the operating ban.

The coherence of the Air Safety List Regulation with other regulatory instruments

Third Country Operator Regulation (Part-TCO)

In April 2014 a single European process to authorise safe third country commercial airlines to operate

⁵ COMMISSION REGULATION (EC) No 474/2006 of 22 March 2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council

⁶ COMMISSION REGULATION (EC) No 473/2006 of 22 March 2006 laying down implementing rules for the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council

⁷ Recital 7 of Regulation 2111/2005

in the EU was adopted through the Third Country Operator Regulation (Part-TCO). This authorisation issued by the European Aviation Safety Agency (EASA) provides for prior verification of safety standards of Third Country air carriers, it is valid in all 32 EASA Member States and replaces the previous national approaches to the safety assessment of third country air carriers.

Whilst there are similarities between the mandates of Part TCO and the Air Safety List Regulation, there are also marked differences such as: Part TCO focuses on air carrier operations to the EU and therefore only covers airlines landing at EU airports and does not cover the entry into EU airspace nor overflight of EU territory; Part TCO has no passenger information element and as a result applies specifically to airlines only (and not also to the ticket seller). Furthermore, although the baseline for assessment (international safety standards) is similar with both instruments, the related rules and procedures differ.

The EU Safety Assessment of Foreign Aircraft (SAFA) Programme

Aircraft of third country air carriers are subject to inspections on EU territory in order to assess safety aspects, against internationally recognised aviation safety standards. The EU Safety Assessment of Foreign Aircraft (SAFA) programme, coordinated by EASA, is a component of the EU wide Ramp Inspections Programme⁸, which monitors the application of safety standards. The results from the SAFA programme provide information for decisions on imposing bans under the Air Safety List Regulation, as well as input for the assessment under Part-TCO for Third Country operator authorizations.

The EU Air Safety List Regulation, Part-TCO and the EU Safety Assessment of Foreign Aircraft (SAFA) programme, are all strategic aviation safety pillars, that protect and inform EU and other citizens that travel to, from and within the EU as well as within third countries. They are all instruments in the European toolbox that are applicable to the assessment of third country operator safety performance and their compliance with international safety standards.

(B.2) Original objectives of the intervention

The original general objectives of the intervention were to ensure a high level of protection for passengers from the safety risks associated with travelling on unsafe air carriers and to enable consumers to make informed air travel choices.

In order to achieve these general objectives and to improve aviation safety as a whole, the specific objectives were to deny access to the EU to unsafe air carriers, to provide information to consumers on the safety of third country air carriers and to improve the safety standards of third country air carriers.

In order to enable consumers to make informed choices, the passenger should receive information on air carriers.

(B.3) How the objectives were to be achieved

The underlying problems were that with the expected continuous rapid growth of air traffic the number of accidents and victims could increase if nothing was done to improve the then existing safety systems. European passengers were booking flights all over the world, without always receiving information on the air carrier that was actually performing the flight and sometimes there were a number of changes in the actual operating air carrier. There was no comprehensive information on the safety of third country air carriers available and if it was known that a certain air carrier was unsafe, there were no common actions against such a carrier in the Union. Therefore, it was proposed to make it compulsory to inform passengers of the identity of the operating air carrier, to deny access to the EU airspace to unsafe air carriers and to publish this as a 'blacklist' of air carriers. The results that were to be achieved were a better protection of (EU) passengers from safety risks of third country air carriers and that consumers were enabled to make informed choices while booking flights. In general, these measures would improve aviation safety, not only in European airspace, but also worldwide.

In order to deny access to the EU to unsafe air carriers the following process was envisaged.

Air carriers should be assessed against 'common criteria' to determine whether they are unsafe and

⁸ COMMISSION REGULATION (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, Subpart RAMP

thus be included in the Air Safety List. The criteria should be based primarily on internationally recognised safety standards but also on factors such as the ability and the willingness of an air carrier or the authorities responsible for its safety oversight to address safety deficiencies. Information from Member States and EASA should feed into this assessment. As part of this process air carriers should be given a right of defence, through hearings or appearances by air carriers before the EU Air Safety Committee.

In order to enable passengers to make informed choices the following process was envisaged.

The air carriage contractor should inform passengers of the identity of the air carrier(s) that actually will carry out their booked flight(s) which needed to be reflected in the general terms of sale of the air carrier contractors.

C. Scope of the evaluation/FC

(C.1) Topics covered

The scope of the evaluation will be the Air Safety List Regulation, including its Implementing Regulations, since its introduction in 2006 until the present day.

Since third country air carriers worldwide operations are targeted by the legislation, the scope of the evaluation will also focus on the worldwide aspects of the regulation. Third countries and their air carriers are affected by the measures taken under the Air Safety List Regulation and thus other international and regional stakeholders like ICAO, IATA, the travel industry and others are affected as well. This international dimension will be taken into account in the evaluation, in conjunction with an assessment of the impact that the regulation has within the EU.

In terms of the information to passenger elements of the Air Safety List Regulation, the scope of the evaluation will be limited to the scope as defined in Chapter III (articles 10 to 13) of the Regulation. In particular the operational articles will be examined, but account will be taken of the fact that there is a wider package of regulations on air passenger rights, which will be reviewed under other initiatives⁹.

(C.2) Issues to be examined

The evaluation will review the implementation of Regulation 2111/2005 and determine to what extent the original objectives of Regulation 2111/2005 have been met.

The following 5 evaluation criteria will be used:

Effectiveness

- 1) To what extent do the outcomes or observed effects in terms of protection of and information to EU passengers correspond to the objectives?
- 2) To what extent has the Air Safety List Regulation contributed to improving aviation safety standards in third countries and how proportionate has the intervention been in terms of effectively addressing prevalent safety risks both within third countries and third country air carriers
- 3) What have been the unintended or unforeseen consequences of the establishment of the EU Air Safety List?

Efficiency

- 4) To what extent has the intervention been cost effective?
- 5) Have the costs being attributable to different stakeholders been proportionate?

Relevance

- 6) To what extent are the objectives of Regulation 2111/2005 still relevant, taking into account the developments in the EU and third country air carrier policy area?
- 7) To what extent have the original objectives been appropriate for the original intervention?
- 8) How well do the original objectives still correspond to the current needs of the EU citizen as they make travel choices both within the EU and beyond?

Coherence

- 9) To what extent is the intervention coherent with EU aviation safety policy, including the external

⁹ The Aviation Strategy Indicative Action Plan (see footnote 3) announces the Revision of Regulation N°261/2004 on passenger rights and the publication of Guidelines on air passenger rights

dimension of EU aviation policy as well as other EU instruments relating to the assessment of third country air carrier safety standards, e.g. examining gaps, overlaps or inconsistencies between different regulations

- 10) Are there particular synergies and/or inconsistencies related to the intervention that have effected EU aviation policy

EU Added Value

- 11) What is the added value of the regulation compared to what national action and international agreements could achieve?
 12) To what extent do the actions addressed by the Air Safety List Regulation continue to require action at EU level?

(C.3) Other tasks

As part of the evaluation study, the baseline situation, before the Air Safety List Regulation came into being, will need to be described.

With respect to the unintended effects of the intervention, there will be a wide approach to this evaluation question, including for example how the regulation's measures have had an effect on certain insurance aspects in relation to air carriers and air passengers. Indications of this include that the insurance premiums and other costs for third country air carriers that were put on the Air Safety List have increased, and that Insurance companies have certain policies on payment after an accident with a banned air carrier.

D. Evidence base

(D.1) Evidence from monitoring

Safety List Information

1. Data on air carriers on the Air Safety List over the period 2006 – 2016, based on the recitals of the Implementing Regulations amending the Air Safety List

Air Safety List 'Indicators'

1. Performance 'Indicators' used to assess inclusion in and release from Air Safety List measures, as defined in the common criteria and as described in the recitals of the Implementing Regulations amending the Air Safety List.
2. Accident data, available in EASA annual safety reports and ICAO and other databases on aviation accidents, covering the period from 2000 to 2016.

Monitoring Measures

1. EUROCONTROL 'EU Air Safety List Alarm function' data since the start of operation of the alarm function
2. Safety Assessment of Foreign Aircraft data since 2006 from the EASA database

(D.2) Previous evaluations and other reports

1. 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, COM(2009)710 of 11.1.2010
2. Commission Staff Working Document on the 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 of 11.1.2010
3. EASA Notice of Proposed Amendment 2011-05 of 1 April 2011 on 'Third Country Operators Authorizations'
4. EASA Comment Response Document of 26 January 2012 to Notice of Proposed Amendment 2011-05

(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)

There were no infringement procedures.

(D.4) Consultation

The goal of the consultation is to collect views and opinions relating to the implementation of the Air Safety List

Regulation, including the coherence with other third country air carrier safety regulations. There will be a focus on the impact that measures taken under the regulation have had on the EU and on the international aviation system, as well as an assessment of whether it is fit for purpose and in particular meets the needs of EU citizens.

With this in mind, the main stakeholders that are affected by the Air Safety List Regulation are the European Citizens, third country air carriers and their associated aviation authorities, third country aviation authorities that consult and/or apply the EU Air Safety List, the travel and tourism industry, international and regional aviation organisations (ICAO, AFCAC), EASA, airline associations (IATA, AAPA). Furthermore, the following stakeholders have an influence on the Air Safety List: Air Safety Committee Members and Observers, EU National Aviation Authorities, the European Parliament, the European External Action Service. Consumer associations are interested in the Air Safety List.

A 12-week internet-based open public consultation will be part of the evaluation, to be carried out in the period May – July 2016. This open public consultation will mainly gather the views of the 'non-specialist' larger groups of stakeholders, such as the European Citizens, EU Member States, travel and tourism industry and consumer associations, although other stakeholders can make use of this opportunity as well. This open public consultation will be made available on the "Your Voice in Europe" –website (http://ec.europa.eu/yourvoice/consultations/index_en.htm) and on the DG MOVE web pages (http://ec.europa.eu/transport/index_en.htm).

With respect to third country air carriers and their associated aviation authorities, targeted questionnaires will be used in view of their experience of the Air Safety List (air carriers that have been consulted but are not put on the list, air carriers that are on the list, air carriers that are removed from the list). Based on the replies to the questionnaires, additional consultations with these stakeholders can be organised to get further background information and analyse their experiences.

As part of the wider evaluation work, targeted questionnaires will also be used, in the form of interviews for other specific stakeholders, these are likely to be mostly individual organisations and limited as necessary in number (such as international and regional organisations, airline associations, travel industry associations).

A workshop will be organised during the third quarter of 2016 to actively consult and interactively discuss with Member States and other relevant stakeholders on the relevance, coherence and EU added value of the original intervention in the Air Safety List Regulation.

In order to guide the evaluation from the Member States' perspective, a focus group of interested MS participants and other stakeholders, including EASA, will be constituted. This focus group will meet in Brussels two to three times during the evaluation to discuss the results up to that date of the evaluation activities and to discuss whether or not adjustments need to be made to the proposed activities.

The results of the consultation activities will be summarised in a 'Synopsis Report', which will be published on the consultation web page.

(D.5) Further evidence to be gathered

In order to describe the baseline situation that existed before 2006, data pertaining to that time period will be gathered.

E. Other relevant information/ remarks

