

# SafetyFocus

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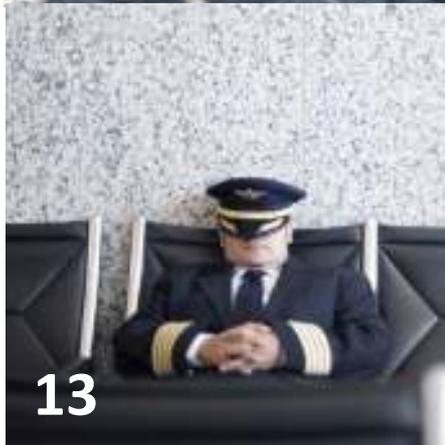
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# Insight into the EU Blacklist

In October 2005, the European Parliament voted to create a blacklist of unsafe airlines and to ban those on the list from operating to and in Europe. The birth of the blacklist was accelerated by a trio of deadly air carrier accidents two months earlier. The accidents took place with aircraft registered outside the European Union but carried mostly European citizens as their passengers. At the time of the accidents, the EU had no properly coordinated system for identifying & sharing safety oversight concerns with non-EU airlines.

With 14 out of the 21 countries with airlines affected by the EU blacklist being African countries, this article aims to provide insight into the background and operation of the EU blacklist. It operates along with safety assessments conducted by the International Air Transport Association (IATA), the International Civil Aviation Organization (ICAO) and the U.S. Federal Aviation Administration (FAA).

Better insight in the operation of the blacklist may assist airlines and countries in staying off the blacklist and may help airlines on it to get off. It may also enable

regional bodies to better assist those airlines in the related processes.

## US Federal Aviation Administration - Evaluating CAAs

The FAA International Aviation Safety Assessment (IASA) Program, established in 1992, aims to improve aviation safety by evaluating the Civil Aviation Authorities (CAAs) of countries with air carriers that operate — or want to start operating — in or to the United States. It does not focus on airlines.

The detailed criteria inherent in IASA and in ICAO's Universal Safety Oversight Audit Programme (USOAP) provide "the value and the power" of such programs, said former FAA associate administrator Sabatini in April 2009's *Aerosafety World*. Sabatini recalled that the creation of the FAA IASA system happened in the aftermath of the 1990 crash of an Avianca Boeing 707 near New York. The airplane ran out of fuel after repeatedly being placed in weather-related holding patterns toward the end of a flight from Bogotá, Colombia, to New York. Seventy-three of the 158 people

in the airplane were killed. Following that accident, the FAA began to formulate a program to address concerns on foreign air carrier operations into the US.

"Before that, no one assessed other ICAO member states to determine their compliance with ICAO Annexes 1, 6 and 8 (dealing with personnel licensing, aircraft operation and airworthiness), the results of which would indicate the effectiveness of their oversight of their air carriers," he said.

The evaluations result in issuance of either a Category 1 or Category 2. Upon receiving a category 1 rating, a country's civil aviation authority has been assessed by FAA inspectors and has been found to license and oversee air carriers in accordance with ICAO aviation safety standards. If a country receives a Category 2 rating, its air carriers may continue any existing operations in the United States but may not expand service as long as the Category 2 rating remains in effect. When a country receives a category 2 status before any of its operators fly to the United States, airlines from these countries will not be permitted to start services to the United States.

“It is up to the CAA in that country to remedy the findings and ask for a reassessment when the CAA is ready,” said FAA spokeswoman Alison Duquette, “the whole idea is that they work to improve on what we found. Some CAAs can do this rather quickly and some cannot, depending on many economic and political factors in that country.”

## ICAO Audits

The ICAO USOAP (Universal Safety Oversight Audit Program) audits how effectively national civil aviation administrations have implemented the eight critical elements of a safety oversight system. The ICAO audits check the status of the implementation of ICAO’s safety-related standards and recommended practices.

- A USOAP audit focuses on the same eight critical elements (CE) evaluated by the FAA IASA system:
- primary aviation legislation
- specific operating regulations
- state civil aviation system and safety oversight functions
- technical personnel qualification and training
- technical guidance, tools and provision of safety critical information
- licensing, certification, authorization and approval obligations
- resolution of safety concerns



The mandatory ICAO program, which began in 1999, conducts about 40 audits every year — a pace that requires each member state to host a USOAP audit at least once every six years.

In 2006, ICAO pressed its member states for consent to allow the posting of at least portions of their USOAP audits on the ICAO Web site. By the end of 2008, audit results comprised at least a one-page chart from 161 of 190 member states that had been posted on ICAO’s website. Unlike IASA, USOAP does not assign a pass/fail rating to supplement the posted information. But the status charts as published by ICAO on its public website do leave little need for interpretation. Countries receive a rating from 1-10 in relation to the eight critical elements (CE) of safety oversight.

ICAO USOAP audits will end in December 2010 when they will be replaced by a new review program involving the continuous monitoring of CAA actions. The continuous monitoring will incorporate the principles of safety management. Focusing on a systematic identification of deficiencies in the state safety oversight capability, assessment of associated safety risks and implementation of strategies to rectify deficiencies and mitigate risks.

### IATA's IOSA – Auditing Airlines

About two years before the first publication of the EU blacklist, IATA established its IATA Operational Safety Audit (IOSA) program, designed to evaluate airline operational management and control systems.

In those two years, the IOSA program had conducted more than 700 audits and listed more than 300 airlines on the IOSA Registry. Beginning in 2008, listing on the IOSA Registry became a requirement for membership in IATA, and about 20 operators were removed or voluntarily withdrew from membership for failing to meet IOSA standards or, in some cases, failing to undergo an audit.

When compared to the EU blacklist “the EC blacklist is driven more by the results of ramp inspection programs (where an individual airline is concerned) or because of concerns about state oversight capability. ... IOSA is a fundamental examination of an airline’s operational safety practices conducted largely at the airline headquarters. Each program is looking at different things.” said IATA Corporate Communications Specialist Martine Ohayon.



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The European Union and its Member States are working with safety authorities in other countries to raise safety standards across the world. However, according to the European Commission’s Vice-President Siim Kallas, the EU “cannot afford to compromise on air safety. Where we have evidence that air carriers are not performing safe operations or where regulators fail in their obligation to enforce safety standards, we must act to guarantee safe skies for our citizens when they travel. We are ready to support those countries which need and want to build up their technical and administrative capacity to guarantee the highest standards of safety of civil aviation. The Commission is working closely with the European Aviation Safety Agency to further strengthen its efforts in providing technical assistance.” The EU blacklist is also meant to let the European citizens know on which airlines they can fly safely, even if these airlines do not operate to the EU.

The decision to include or remove an airline (or a group of airlines certified in the same state) from the blacklist is taken on the basis of the common safety criteria annexed to the “basic regulation” (Regulation 2111/2005/EC establishing a European Community list of banned carriers). Those criteria are analysed on the basis of the information mentioned below.

The EU blacklist is run under the auspices of the European Commission. All 27 EU Member States and the European Aviation Safety Agency (EASA) have the obligation to communicate to the European Commission all information which may be relevant to updating the list. This may include:

- Reports showing serious safety deficiencies of an airline (such as reports of Safety Assessment of Foreign Aircraft (SAFA) inspections performed at airports within the European Community). SAFA inspections are mostly random ramp inspections performed by European aviation authorities during the turn-around time of an aircraft when it visits a European airport. The reports will have to demonstrate the inability of the airlines involved to rectify the shortcomings identified during the inspections. This is evidenced by a repetition of the same deficiencies over a period of time and the inability of the authority responsible for overseeing the airline to perform this task, ensuring that the international safety standards are at all times respected.
- Audit reports drawn up by the ICAO following safety inspections of the civil aviation authorities of the 189 ICAO Contracting States. The findings of these ICAO audits have become increasingly significant in recent updates of the EU blacklist.
- Accident-related information or other serious incident-related information.

The European Commission takes the decision to impose a complete or partial ban on an airline or all airlines from a country only after it has analysed these different factors on a case-by-case basis. Prior to listing an airline, the Commission will have given the airline in question the right to explain its position and will usually have held detailed consultations with the oversight authority of the airline concerned, all involving the so-called Air Safety Committee of experts.

## **EU blacklist – how is it updated - role of the Air Safety Committee**

In its work, the European Commission is assisted by the Air Safety Committee (ASC) that is composed of air safety experts from all the 27 EU Member States (plus Iceland, Norway and Switzerland which, however, have no voting rights). The Air Safety Committee is chaired by the European Commission. Acting on a proposal by the Commission, the Air Safety Committee members study all information on a particular airline that has been submitted by the airline or its overseeing authority prior to a ASC meeting. If an airline feels it's ready to request removal from the blacklist, it can make a presentation to the Air Safety Committee with evidence of its improvements. Where relevant, it may be useful for a civil aviation administration to present the Air Safety Committee with evidence as to how it has brought its safety oversight in line with ICAO requirements.

Following its two days of meetings and hearings, the Air Safety Committee then adopts its opinion on all of the cases under consideration by qualified majority. That decision is then submitted to the European Parliament before final adoption by the Commission and subsequent publication in the EU Official Journal and global news media.

In accordance with “the basic regulation”, the list may be updated whenever the Commission deems it necessary, or upon request of an EU Member State. In any case, at least every three months the Commission verifies whether it is appropriate to update the list. However, where an airline or civil aviation administration has not presented any documentation or evidence to the ASC to show it's on top of its safety oversight, the ASC may not even discuss that particular case.

## **Informing the public on updating of EU blacklist**

The latest version of the list is made available to the public online at the European Union's website. The press releases of the European Commission are also closely monitored by European and international travel agent associations such as the European Travel Agents' and Tour Operators' Associations (ECTAA). As a result, each time changes are made to the blacklist, travel agents may be in the best possible position to assist their clients – the passengers – in making informed decisions when making their travel

arrangements. Insurance policies of travel agents as well as attempts by travel agents to avoid liability may lead to travel agents informing their clients that a particular airline has been blacklisted by the EU. This advice will also be posted on numerous websites around the world. This may lead to significant economic damage to a country, even if its airline(s) do not fly to the EU. It may mean that tourists and businessmen may avoid using airlines in that country for regional or domestic flights.

## **Blacklist critique**

The African Airlines Association (AFRAA) has criticised the European Commission's blacklist for doing little to help improve aviation safety in Africa. “While the EU list may be well-intended, its main achievement has been to undermine international confidence in the African airline industry”, said former AFRAA Secretary-General Nick Fadugba in April 2010. “The ultimate beneficiaries of the ban are European airlines which dominate the African Skies. If the international aviation community believes a list is necessary, it should be published by the International Civil Aviation Organisation, which has a “known track record of impartiality”, he said. Many of those airlines are not operational, or have never operated scheduled flight to Europe, have no plans to do so and “have no aircraft with the range to fly to any EU state” the AFRAA said.

The African Civil Aviation Commission (AFCAC) presented a paper to the recent ICAO High Level Safety Conference on the sharing of safety information. AFCAC stated that African States realise the critical need for the availability of safety information in support of the ICAO's safety oversight programmes. However, AFCAC stated that it feels that the intention of the collection and usage of safety data should remain in line with the philosophy of a just culture. AFCAC voiced that the information should not be used for purposes other than to improve the safety of the air transportation system. AFCAC asked ICAO to define a code of conduct with respect to the use of safety information by all parties. Following acceptance by the High Level Safety Conference, ICAO is presently working at addressing that recommendation which would tackle inappropriate use of shared safety information.

### Way forward? – Better communication & regional co-operation

To remedy its presence on the EU blacklist, a more systematic effort may be needed by the African aviation community to improve safety oversight. That may not always be easy as aviation safety in quite some African states has to compete with many primary needs that governments have to address. At the same time, the aviation community has to do a much better job in making critical aviation outsiders appreciate the unique nature of aviation with its international regulatory regime. In those cases where the safety oversight of a country is a major issue in its airlines featuring on the blacklist, regional safety oversight could be part of the solutions.

ICAO supports the view that the level of aviation activity in many African countries is too low to generate the necessary funds to support an effective and sustainable safety oversight system. Regional organisation offers the most economically efficient way to pool resources towards effective oversight capabilities. AFRAA and AFCAC may want unite their forces in co-ordination with ICAO and work towards implementation of (sub-) regional safety oversight agencies or safety teams. It is puzzling to see why no serious buy-in took place into a now dormant IATA initiative from 2005 to launch ASET – the African Safety Enhancement Team. ASET was set to follow highly successful regional safety teams in other regions. However, there is no widespread tradition of genuine safety co-operation between governments and industry in the African region – something that was crucial to successful regional safety teams elsewhere in the world. At present, competition for credits on safety issues seems to be more important than constructive.

The ICAO meeting on African continent (AFIRAN meeting) in November 2008 seemed to indicate a careful trend towards regional safety oversight gaining genuine support. In East and Southern Africa, which is the area that the AviAssist Foundation is currently active, there seems to be little progress with regional safety oversight. The only real progress on regional safety oversight is made by the five states of the East African Community (EAC). Burundi, Kenya, Rwanda, Tanzania and Uganda have come together under the Civil Aviation Safety & Security Oversight Agency (CASSOA). Some hopeful signs are coming from the ICAO COSCAP program for the 15 states in the Southern African Development Community (SADC) as described elsewhere in this issue of SafetyFocus. Looking at other successful

regional solutions around the world, some of Africa's regional economic communities may prove too big to tackle regional safety oversight in the foreseeable future.

At the same time, there is room for improvement in the dialogue on safety issues between Africa and its institutions (African Union, AFRAA, AFCAC, national civil aviation authorities etc.) on the one side and the European Union on the other. The EU may seem to be failing to engage fully with the African aviation community. A constructive dialogue could be developed in the future, for example, by working towards organising an African version of the Flight Safety Foundation's successful aviation safety seminars. This may assist the region in starting a tradition of sharing safety data and knowledge. With the organisation of a conference on Regional Aviation Safety Agencies (RASAs) jointly with AFCAC and the AviAssist Foundation in July 2009 in Zambia, Europe has indicated it is willing to support the development of regional efforts as one of the solutions for some countries on the African continent. AFCAC has a dormant co-operative relationship with its European counterpart, the European Civil Aviation Conference (ECAC) that it may wish to revive for this purpose.

The AviAssist Foundation is working on making aviation safer by reducing the risk of an accident. It also works on increasing the political understanding of adequate safety oversight. Political understanding is needed to assist in adequate safety oversight by civil aviation administrations. That may avoid airlines getting on the blacklist in the first place.

#### Footnotes:

The August 2005 accidents involved a Helios Boeing 737-300, a West Caribbean MD82 and a TANS Peru Airlines Boeing 737-200.

European Union, Memo/10/112, 30 March 2010,

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/112&format=HTML&aged=0&language=EN>

Europe - Airlines Banned From European Skies: Commission Updates Its Blacklist. July 6, 2010.

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/892&format=HTML&aged=0&language=en>

Europe – Regulation 2111/2005/EC of the European Parliament (...) on the establishment of a community list of air carriers subject to an operating ban (...)

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l\\_344/l\\_34420051227en00150022.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_344/l_34420051227en00150022.pdf)