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Safety Recommendation:

The Director-General for Mobility and Transport, European Commission should review the role of the ticket seller when engaged in providing air passenger services and restrict ticket sellers from exercising operational control of air carriers providing such services, thus ensuring that a high and uniform level of safety is achieved for the travelling public.

Response:

- Response from European Commission (15 April 2014):

The Director General for Mobility and Transport, European Commission, advised the AAIU by letter dated 15 April 2014 that:

“The report considers that the role of a ticket seller in the provision of passenger air services is inadequately defined and that such providers should be restricted from exercising operational control of air carriers in the provision of such services. The definition in Regulation (EC) No 2111/2005 states that a ticket seller is not an air carrier or tour operator, and that its role is limited to the sale of air tickets. When drafting the Regulation, legislators considered that no activity in relation to the operation of a flight or the safety oversight of an operation would form part of the role of a ticket seller.

In order to enable European citizens to make informed decisions, the Regulation already provides for high information standards to passengers, specifically on safety grounds. In particular, ticket sellers are required in advance of travel to advise passengers of the identity of the operating air carrier; i.e. the air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger.

Bearing in mind existing regulations, DG MOVE understands the rationale for this safety recommendation as the final report describes well the complex interrelationship between the ticket seller (Manx2), the Air Operator's Certificate (AOC) holder (Flightline S.L.) and the aircraft owner (Air Lada). The final report also states that the ticket seller was nominated as a joint 'Service Provider' in the Public Service Obligation (PSO) Air Service Compensation Agreement granted according to Regulation (EC) No 1008/2008. This position as the joint 'Service Provider', when taken in parallel with the fact that the ticket seller had several other arrangements with other operators to sell tickets on other routes in addition to the Belfast City to Cork route under the Manx2 brand, could have given the impression that Manx2 was an airline in its own right. This combination of Air Lada (which did not have an AOC) and the ticket seller appearing to a passenger to be an airline, was facilitated by

Flightline S.L. in providing an air service through the use of its Operating License and AOC.

The report also highlights that, in 2006, Manx2 had made arrangements with Air Lada to use its aircraft under the AOC of a Spanish air carrier, Eurocontinental Air. This arrangement ceased in 2009 when the UK authorities suspended the Airline Operating Permit (AOP) for the operation, following safety concerns. The UK authorities had also requested Manx2 to amend its website and marketing, as it was giving the impression to the public that it was a licensed airline in its own right. The Spanish authority started the process to suspend the AOC of Eurocontinental Air on 30 October 2009 and finally revoked it on 27 June 2011.

In 2010, the same aircraft recommenced flying for Manx2 under the AOC of Flightline S.L. and permission to operate services was granted by the UK Secretary of State for Transport. Two permits were issued by the Secretary of State who was acting in two capacities; one in respect to the UK and the second in respect to the Isle of Man.

Nevertheless, it is important to note that this operation was very specific and that in addition, the 'ticket seller' was based in the Isle of Man, a Crown Dependency that is not part of the United Kingdom or the European Union. Therefore, Regulation (EC) No 1008/2008 did not apply. Article 16 of Regulation (EC) No 1008/2008 only refers to Community air carriers. On balance, after careful consideration, DG MOVE considers that the existing rules applicable to Community carriers include sufficient safeguards, in particular for the deliverance of authorisations on PSO routes. The question remains to be clarified whether there has been a breach of the existing rules or a lack of enforcement which contributed to the ticket seller acting as, or being perceived as, an airline.

DG MOVE also considers that the role of the 'ticket seller' does not need to be reviewed in EU legislation. Nevertheless, this safety recommendation highlights the particular attention to this aspect that should be given by authorities, especially with regard to risk-based oversight for new air carriers or undertakings having had safety concerns. Regulation (EU) No 965/2012 (ARO.GEN.305(b)) will represent a useful tool for oversight authorities when it is applied by Member States from October 2014. In particular, it requires that a competent authority oversight programme for an AOC be developed, taking into account the specific nature of the organisation, the complexity of its activities, the results of past certification and/or oversight activities and shall be based on the assessment of associated risks.

This safety recommendation also underlines the importance of sharing safety related information between authorities.

Further improvement of risk-based oversight and the lessons learned from this situation will be taken into account in the Commission's policy initiative on aviation safety that is highlighted at the end of this letter.”

“From a general perspective, the lessons learned from this valuable report will be used in future legislative activities. More specifically, the safety Recommendations will also be exploited during the process with regard to the Commission’s policy initiative on aviation safety and a possible revision of Regulation (EC) No 216/2008 on common rules in the field of civil aviation and establishing a European Aviation

Safety Agency. Under this initiative, the roadmap includes considering a possible strengthening of the oversight system to better respond to today's needs, such as the growing share of remote operations. Among the options to be examined will be the expansion of mechanisms for cooperative oversight, including the possibility to delegate oversight duties to other National Aviation Authorities or to EASA, where appropriate."

- AAIU Reply to European Commission (1 July 2014):

"The AAIU notes that a 'ticket seller' is defined in EU legislation that dates from 2005. In the meantime, commercial air transport has changed substantially with the role of the ticket seller not solely confined to seat-only sales. The AAIU notes that the original intention of EU legislators was that 'no activity in relation to the operation of a flight or the safety oversight of an operation would form part of the role of a ticket seller'. During the investigation of this accident it has become clear that the intention of the EU legislators, as contained in Regulation (EC) No 2111/2005, was subverted by the complexity of this intra-community air service. The ticket seller function, as envisaged by Regulation (EC) No 2111/2005, has increasingly been replaced by bundled services with unclear responsibilities. While the AAIU welcomes and appreciates the closing remarks made by the Commission regarding its policy on aviation safety and future legislative activities, the AAIU is concerned that the scope of a ticket seller's activity is not adequately constrained by current EU legislation. Consequently, the AAIU remains of the view that the definition of a ticket seller and its role should be reviewed thus ensuring that a high and uniform level of safety is achieved for the travelling public."

- Response from European Commission (24 November 2014):

"Your main comment deals with the definition of the ticket seller that you consider outdated as it was introduced in Regulation (EC) No 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. You have asked the Commission to review this definition, as the scope of its activities is not adequately constrained by the current EU legislation, given the growing complexity of intra- community air service.

The current definition of 'ticket seller' in the above-mentioned regulation is the following: "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".

While this definition dates back to 2005, it should be noted that Regulation (EC) No 2111/2005 contains an article regarding its implementation and functioning. According to Article 14, the Commission had to report on the application of this Regulation to the European Parliament and to the Council by 16 January 2009. This was done through a Communication (COM(2009)710)2, which did not highlight difficulties with regard to the role of the ticket seller nor with the definition provided.

There have been since then no indications pointing to the fact that this definition, nor the role assigned to the ticket seller, would no longer be fit for the purpose of ensuring a high and uniform level of safety.

Regarding the complexity of intra-community air service, the AAIU accident report highlighted the complex interrelationship between the ticket seller (Manx2), the Air Operator's Certificate (AOC) holder (Flightline S.L.) and the aircraft owner (Air Lada). In our original reply, the Commission noted that this operation was not only very specific, but that, in addition, the 'ticket seller' was based in the Isle of Man, a Crown Dependency that is not part of the United Kingdom nor the European Union, and where the Union legislation is in principle not applicable.

Based on the preceding, I hope to have better explained why DG MOVE considers that the role and the definition of the 'ticket seller' do not need to be reviewed in EU legislation.

Nevertheless, I would like to confirm that the issues that you raised in your final report have been discussed on a regular basis within my services in the context of future legislative activities. The lessons learned from this tragic accident will not be forgotten”.

AAIU Comment:

The AAIU considers that the status of this Safety Recommendation is 'Not accepted, Closed'.