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Safety Recommendation:

The Director-General for Mobility and Transport, European Commission should review the scope of the Air Safety Committee, and consider including oversight of Operating Licences issued by Member States and the processes by which such oversight is carried out.

Response:

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

“DG MOVE understands the rationale of this safety recommendation since the final report highlights the shortcomings of an undertaking whose financial health was questionable. The report notably includes an extract from a circular to Air Lada crew about on-going financial difficulties. This circular notably expresses thanks to the crew for their understanding and patience about the delayed payment of their monthly salaries. In the Manx2/Air Lada/Flightline case, the investigation report underlined the interrelation between the difficult financial situation and safety aspects.

Concerning the scope of the Air Safety Committee (ASC), the answer lies in several elements:

Article 4 'Conditions for granting an operating licence' of Regulation 1008/2008 on air services provides that "an undertaking shall be granted an operating licence by the competent licensing authority of a Member State provided that: [...] (b) it holds a valid AOC issued by a national authority of the same Member State whose competent licensing authority is responsible for granting, refusing, revoking or suspending the operating licence of the Community air carrier."

It is very clear that the AOC and licence of an airline must be delivered by the same Member State. Any other situation would be in breach of Regulation (EC) No 1008/2008. Whether, in a particular Member State, an AOC and an operating licence are granted by the same authority or two different authorities is another question that depends on the administrative structure of Member States. This is an area of national competence.

In answer to your specific safety recommendation, and the implied question herein (could this have helped prevent an accident like the one that occurred in Cork?) My answer is no. It is hard to envisage a system of Operating Licence oversight by the ASC that could have gone to a superior level of detail to identify the specific problems that arose in the Cork accident.

In terms of prevention, should these AOC and licencing authorities in a Member State be different, Regulation (EC) No 1008/2008 imposes a constant dialogue between them:

- Article 8(2): "(...) In case the competent licensing authority suspects that financial problems of a Community air carrier might affect the safety of its operations, it shall immediately inform the authority competent for the AOC."
- Article 9(1): "The competent licensing authority may at any time assess the financial performance of a Community air carrier which it has licensed. Based upon its assessment, the authority shall suspend or revoke the operating licence if it is no longer satisfied that this Community air carrier can meet its actual and potential obligations for a 12-month period. Nevertheless, the competent licensing authority may grant a temporary licence, not exceeding 12 months pending financial reorganisation of a Community air carrier provided that safety is not at risk, that this temporary licence reflects, when appropriate, any changes to the AOC, and that there is a realistic prospect of a satisfactory financial reconstruction within that time period."
- Article 9(5): "In case a Community air carrier's AOC is suspended or withdrawn, the competent licensing authority shall immediately suspend or revoke that air carrier's operating licence."

In the context of its Aviation Fitness check exercise, the Commission identified improvement of such monitoring as one of its priorities. In its Communication COM(2013)129 final dated 18 March 2013, the Commission committed to encourage the national authorities competent for the enforcement of Regulation (EC) 1008/2008 notably to coordinate their actions to ensure appropriate monitoring of the financial position of air carriers and where necessary adopt a coordinated approach to the suspension of their operations to minimise the impact on passengers, and to encourage greater cooperation and sharing of best practice and information between the regulatory authorities of Member States. The Commission will continue to closely monitor the application of these measures.

The Air Safety Committee that took place on 27 March 2014 was informed of this safety recommendation and DG MOVE's planned response.

DG MOVE takes note that the Irish safety investigation authority has appreciated the manner in which the ASC reacted through its prompt and decisive actions at its first scheduled meeting subsequent to the accident. DG MOVE agrees that good implementation by Member States of the rules mentioned above should be promoted. However, although the safety recommendation seems to consider the ASC as the most appropriate forum, DG MOVE does not at this stage consider it appropriate to refer the oversight of operating licences, or the process of granting licences, to the Air Safety Committee. The responsibility to verify overall correct implementation of the above-mentioned provisions by EU Member States falls on the Commission, with the help of EASA as regards the interaction with safety rules.

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 [see URL at footnote 1] 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.”

Footnote (1) http://ec.europa.eu/smart-regulation/impact/planned_ia/docs/2015_move_001_revision_easa_regulation_en.pdf

AAIU Comment:

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