



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

**Issued by the Department of Transportation
on the 30th day of December, 2024**

Deutsche Lufthansa AG

Violations of 49 U.S.C. § 41301

Docket DOT-OST-2024-0001

Served December 30, 2024

CONSENT ORDER

This consent order concerns unauthorized foreign air transportation by Deutsche Lufthansa AG (Lufthansa) in violation of 49 U.S.C. § 41301. Lufthansa operated flights carrying United Airlines' (United) designator code (UA) in airspace in which a Federal Aviation Administration (FAA) flight prohibition for U.S. operators and airmen was in effect. This order directs Lufthansa to cease and desist from future similar violations of section 41301 and assesses the carrier a compromise civil penalty of \$220,000.

Applicable Law

Pursuant to 49 U.S.C. § 41301, a foreign air carrier may provide foreign air transportation only if the foreign air carrier holds a permit from the U.S. Department of Transportation (Department) authorizing the foreign air transportation or a valid exemption from that section. Any operation in violation of the terms, conditions, or limitations of a foreign air carrier permit is a violation of 49 U.S.C. § 41301.

In addition to this requirement, 14 CFR Part 212 requires U.S. and foreign air carriers that operate code-shared services to first obtain authorization from the Department in the form of a statement of authorization. Under 14 CFR 213.6, any violation by a foreign air carrier of the terms, conditions, or limitations applicable to the exercise of the privileges granted by its foreign air carrier permit shall constitute a failure to comply with the terms, conditions, and limitations of such permit.

As part of the terms, conditions, or limitations referenced above, the Department prohibits foreign air carriers from operating flights carrying the code of a U.S. air carrier in airspace in which the FAA prohibits U.S. operators and airmen from flying.¹ This prohibition is incorporated into Lufthansa's statement of authorization in which the Department granted Lufthansa the authority to display the UA code in conjunction with Lufthansa's foreign air transportation.² The condition states the following:

All operations must comply with . . . any amendments to the Department's regulations concerning code-share arrangements that may be adopted and are expressly conditioned upon the requirement[] that . . . the operator shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

The FAA issues flight prohibitions for U.S. civil aviation regarding flight operations in airspace other countries manage with respect to safety of flight because of the risks posed by weapons capable of targeting, or otherwise negatively affecting, U.S. civil aviation, as well as other hazards to U.S. civil aviation associated with fighting, extremist or militant activity, or heightened tensions. The FAA issues these flight prohibitions as emergency orders of the FAA Administrator via Notices-to-Air Missions (NOTAMs) and Special Federal Aviation Regulations (SFARs), as appropriate. The condition incorporated in Lufthansa's statement of authorization, as described above, makes such flight prohibitions applicable to Lufthansa when its operations are carrying a U.S. air carrier's code.

Facts and Conclusions

On October 16, 2020, the FAA amended and extended SFAR 77, 14 CFR 91.1605, Prohibition against Certain Flights in the Baghdad Flight Information Region (ORBB FIR), prohibiting all U.S. air carriers, all U.S. commercial operators, all persons exercising the privileges of airman certificates issued by the FAA (except when such persons are operating a U.S.-registered aircraft for a foreign air carrier), and all operators of civil aircraft registered in the United States (except when the operator of such aircraft is a foreign air carrier) from conducting flight operations in the ORBB FIR at altitudes below Flight Level (FL) 320.³ In connection with the Department's rules

¹ See Order 95-2-34 (Feb. 15, 1995) and Notice – Conflict Zone, DOT-OST-1998-20-0690 (Mar. 19, 2015); see also *Emirates Violations of 49 U.S.C. § 41301 and Order 2020-9-29*, Order 2024-6-9 (June 13, 2024).

² Lufthansa's statement of authorization is contained in DOT Order 98-4-8 (Apr. 8, 1998).

³ This SFAR is available online at <https://www.federalregister.gov/documents/2020/10/16/2020-23047/prohibition-against-certain-flights-in-the-baghdad-flight-information-region-fir-orbb>. On September 20, 2022, the FAA published a notice in the Federal Register extending the expiration date of this SFAR until October 26, 2024, without changing the boundaries of the flight prohibition for U.S. civil aviation. <https://www.federalregister.gov/documents/2022/09/20/2022-20318/extension-of-the-prohibition-against-certain-flights-in-the-baghdad-flight-information-region-fir>. On October 16, 2024, the FAA published a notice in the Federal Register further extending the expiration date of this SFAR until October 26, 2027, without changing the boundaries of the flight prohibition for U.S. civil aviation. <https://www.federalregister.gov/documents/2024/10/16/2024-23785/extension-of-the-prohibition-against-certain-flights-in-the-baghdad-flight-information-region-fir>.

and the condition imposed on Lufthansa's foreign air carrier permit and the statement of authorization for a codeshare arrangement with United, as described above, the prohibitions in SFAR 77 extend to Lufthansa's flights carrying the UA code.

An investigation by the Department's Office of Aviation Consumer Protection (OACP) revealed that, between March 2022 and April 2024, Lufthansa operated multiple flights carrying the UA code in the airspace described in SFAR 77. By operating flights carrying the UA code in airspace in which the FAA prohibited U.S. operators and airmen from flying, Lufthansa's operations violated the conditions of its statement of authorization. As a result, Lufthansa violated 49 U.S.C. § 41301.

Response

In response to this matter, Lufthansa asserts that it is committed to operating its flights with the safety of its passengers and crew as the paramount priority. Lufthansa states that it is proud of its long-standing safety record and its commitment to providing air transportation as safely and efficiently as possible. In addition, Lufthansa states that it is committed to compliance with all rules and regulations that govern the aviation industry and has protocols in place to assure that its pilot-crews are aware of and comply with all regulations that apply to flight operations.

Lufthansa asserts that many of its internal departments, including operations and security, work collaboratively together to ensure both safety and compliance with regulations, and that risks are monitored as they may relate to overflying in areas of conflict or potential conflict and international standards are followed. Lufthansa states that the regulation and restriction with respect to ORBB FIR was well known to Lufthansa and such information was readily available to its pilot-crews. Lufthansa further points out that flight plans were structured in compliance with such regulations and Lufthansa had every intention of adhering to the FL320 restrictions.

Lufthansa states that operating flights in the area in question is complex due to the rather narrow flight-corridors available and the ever-present air traffic congestion. Lufthansa asserts that the instances of noncompliance were inadvertent and resulted from the local air traffic control center not granting the authorization to aircraft to ascend to FL320 at ORBB FIR although such clearance was duly requested and firmly believes that flight safety was not compromised.⁴ Lufthansa states that it fully cooperated with the Department with its investigation and has implemented procedures to enhance pilot awareness and compliance with the relevant regulation.

Decision

OACP views seriously Lufthansa's violations of 49 U.S.C. § 41301. Accordingly, after carefully considering all the facts in this case, including those set forth above, OACP believes that enforcement action is warranted. To avoid litigation, and without admitting or denying the violations described above, Lufthansa consents to the issuance of this order to cease and desist

⁴ The Department emphasizes that the enforcement action being taken against Lufthansa under this order is a result of the carrier continuing to operate over an area where the carrier knew or should have known that it could not operate flights above FL320 as planned and as required when carrying the UA code. This action is not being taken for the carrier's adherence to the instructions of air traffic control once in the air to operate flights below FL320.

from future violations of 49 U.S.C. § 41301, and to the assessment of \$220,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent against future similar unlawful practices by Lufthansa and other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Deutsche Lufthansa AG violated 49 U.S.C. § 41301, as described above, by violating the condition of its statement of authorization prohibiting Deutsche Lufthansa AG from operating flights carrying the designator code of a U.S. carrier into airspace in which the FAA prohibits U.S. operators and airmen from flying, thereby engaging in foreign air transportation without the appropriate economic authority;
3. We order Deutsche Lufthansa AG and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41301;
4. We assess Deutsche Lufthansa AG \$220,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total amount, \$110,000 shall be due and payable within 30 days of the issuance date of this order. The remaining \$110,000 shall become due and payable if, within one year of the issuance date of this order, Deutsche Lufthansa AG violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Deutsche Lufthansa AG may be subject to additional enforcement action for failure to comply with this order; and
5. We order Deutsche Lufthansa AG to pay the penalty assessed in Ordering Paragraph 4, above, through Pay.gov, to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Deutsche Lufthansa AG to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

CLEREECE KROHA
Co-Team Lead, Unauthorized Operations and
Public Charters
Office of Aviation Consumer Protection

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