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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**2010 ANNUAL REPORT ON THE IMPLEMENTATION OF REGULATION (EC) No.
300/2008 ON COMMON RULES IN THE FIELD OF CIVIL AVIATION SECURITY**

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2010 ANNUAL REPORT ON THE IMPLEMENTATION OF REGULATION (EC) No. 300/2008 ON COMMON RULES IN THE FIELD OF CIVIL AVIATION SECURITY

This report covers the period 1 January – 31 December 2010

INTRODUCTION

29 April 2010 marked the date at which Regulation (EC) No 300/2008 and its implementing provisions entered into force. This new regulatory framework consolidated and repealed for clarification reasons European legal acts adopted under the former framework of Regulation (EC) No 2320/2002. Furthermore, it took into account technical developments and procedural evolutions and provided more detail on such in response to recent unlawful acts in the area of civil aviation security. As a result, standards for certain types of screening equipment and screening procedures were refined and additional new screening methods based on common basic standards were adopted. Additionally, rules and conditions for passengers carrying liquids on to aircraft were completed.

Throughout the year, the Commission worked steadily with Member States and the industry to harmonise a smooth and homogenous implementation of the aforementioned new legal framework. The scientific community and manufacturers focussed on releasing technologies which would allow passengers to carry liquids on to aircraft. First trials on such equipment were implemented at European airports. Further trials took place on the use of security scanners. On the wider stage, regular discussions continued with international organisations to find global solutions to common problems.

With the Yemen cargo incident and the EU mail parcel incidents in late October 2010 attention was once again, and forcibly, directed towards a new threat. This was yet another reminder – less than a year after the incident on Northwest Airlines flight 253 from Amsterdam Schiphol to Detroit on Christmas 2009 – that extremist groups continue to regard civil aviation as an attractive target and continue to seek ways to avoid detection by the current screening techniques. It served to underline the vital nature of the work being done by the Commission and its partners towards protecting travellers and the European aviation industry as a whole and triggered the establishment of a report and action plan to strengthen air cargo security that was endorsed by the Transport Council and the JHA Council in December 2010. As internal and external security are inseparable, addressing threats even far away from our continent is essential to protecting Europe and its citizens. The Commission is working closely with the new established EEAS to this effect.

PART ONE

THE INSPECTIONS

1. GENERAL

The Commission is required, under the terms of Regulation (EC) 300/2008 to conduct inspections of Member States' aviation security administrations (the 'appropriate authorities') and of EU airports. Switzerland is also covered by the Union programme, while Norway and Iceland (and Liechtenstein) are inspected against parallel provisions by the EFTA Surveillance Authority (ESA). To carry out its inspection work, the Commission has a team of 11 aviation security inspectors. This inspection work is supported by a pool of national inspectors nominated by Member States, Iceland, Norway and Switzerland who were re-certified by the Commission in course of the year 2010 under the new legal framework. 46 of these national inspectors took part in the 2010 inspections. A chart summarising all Commission and ESA compliance monitoring activity to date is attached in an Annex.

2. INSPECTIONS OF NATIONAL APPROPRIATE AUTHORITIES

The Commission monitored 5 appropriate authorities during 2010, all of which had been subject to a previous Commission inspection. The deficiencies most commonly found in 2010 were related to the yet outstanding full alignment of the National Aviation Security Programmes and the National Quality Control Programmes to the new legal framework of Regulation (EC) 300/2008.

As regards implementation of the measures, there was still evidence in some Member States of a lack of capacity to detect and correct failures swiftly. Some Member States had failed to monitor all aspects of the legislation and some airports went uninspected for long periods. Follow-up activities were sometimes inadequate or not carried out, and it was not unusual to find significant delays before deficiencies were corrected. Sanctions were available to all Member States, but were not always strong enough or always used in such a way as to provide a deterrent effect.

3. INITIAL INSPECTIONS AT AIRPORTS

Nineteen (19) initial inspections of airports were conducted during 2010, the same number as carried out in 2009. All chapters were covered (although not during each inspection). The overall percentage of core measures found to be in compliance in 2010 was almost 80%.

The deficiencies which were found in the area of traditional measures¹ tended, by and large, to stem from human factor issues. Non-compliances in the area of traditional measures at the airports inspected during 2010 mainly related to the quality of staff and passenger screening as well as to cargo security requirements. In particular, the hand searches of staff and passengers did not always meet the common basic standards, which had been for clarification reasons set out in detail in the new regulatory framework. In the area of cargo, most non-compliances related to the selection of the most suitable methods for screening, given the nature of the consignment, and standards for applying them. These human factor issues should be addressed through better training and supervision.

¹ Measures are defined as 'traditional' if already applicable under the legal framework of Regulation (EC) 2320/2002

Furthermore, certain additional measures introduced under the new regulatory framework had not yet been fully implemented at the airports inspected in period June – December 2010. Non-compliances arose in relation to methods and standards of screening of in-flight supplies and of airport supplies (where a secure supply chain had not yet been fully deployed), accreditation procedures for staff to be exempted from screening and missing risk assessment for the frequency of patrols at airports. Member States' appropriate authorities should actively pursue the implementation of these new provisions.

Finally, some issues were found at airports inspected in course of the year 2010 in the areas of access control to security restricted zones, reconciliation of hold baggage, screening methods for unaccompanied baggage and standards of security screening equipment .

4. FOLLOW-UP INSPECTIONS

In accordance with Article 13 of Regulation 72/2010, the Commission routinely carries out a limited number of follow-up inspections. Where several serious deficiencies have been identified during the initial inspection at an airport, a further visit will certainly be scheduled. Two such activities were judged necessary during 2010 and the conclusion in both cases was that most, but not all, of the reported deficiencies had been rectified.

5. OPEN FILES, ARTICLE 15 CASES AND LEGAL PROCEEDINGS

Inspection files remain open until the Commission is satisfied that appropriate rectification action has been taken. 27 files (21 airport and 6 appropriate authorities) were closed during 2010. In all, 11 appropriate authority and 17 airport inspection files remained open at the end of the year.

If deficiencies found at an airport are considered so serious as to present a significant threat to the overall level of civil aviation security in the Union, the Commission will activate Article 15 of Regulation (EU) No. 72//2010². This means that all other appropriate authorities are alerted to the situation and additional measures would have to be considered in respect of flights from the airport in question. One Article 15 case was initiated in mid July 2010, which was closed again 4 months later when the deficiencies had been satisfactorily addressed.

The other possible sanction in the most serious cases, or in cases of prolonged non-rectification or reoccurrence of deficiencies, is to open infringement proceedings respectively EU-Pilots against Member States that have notified to the Commission Services to participate in that procedure. In 2010, two infringement proceedings and one EU-Pilot were initiated following inspections of national administrations. In one case, the concerned Member State failed to maintain its national aviation security programme. The second case related to the application of the EU rules at small airports. The third case was linked to lack of human resources for compliance monitoring. During the year two infringement cases and one EU-Pilot could be closed following rectification of the identified shortcomings. In total five infringement cases were still in progress at the end of 2010.

² Commission Regulation (EU) No 72/2010 of 26 January 2010 laying down procedures for conducting Commission inspections in the field of civil aviation security, OJ L23 of 27.1.2010, p.1

6. MEMBER STATES' OWN EVALUATIONS

Article 6 of Commission Regulation 1217/2003³ obliged Member States to submit an annual report to the Commission by the end of February each year, covering the results of their national compliance monitoring for the period Jan-Dec of the preceding year. The Member States' contributions for the reporting period Jan-Dec 2009 were all submitted on time and all followed the Commission template. The deficiencies identified mainly related to low numbers of man days in the field, failures to cover all requirements, insufficient follow-up activities and failure to use the available enforcement measures.

Harmonisation of these compliance monitoring regimes in the EU has in fact proved difficult since the programme began in 2003. This has been because the different Member States varied in their understanding of terms, development of methodologies and reporting requirements. This situation has largely improved over time, but could still be better. A certain number of discrepancies between the results of national compliance monitoring and the findings of Commission inspections stem from the lack of harmonisation of the inspection methodology, with the latter often indicating a lower level of compliance than the national reports might suggest.

PART TWO

THE LEGISLATION AND SUPPLEMENTARY TOOLS

1. GENERAL

New aviation security legislative acts published during 2010 mainly aimed at completing and refining the new legal framework under Regulation (EC) 300/2008 applicable as from 29 April 2010. Furthermore, common basic standards for two new screening methods in aviation security were defined:

- Explosive detection dogs for primary screening of hold baggage as well as of cargo and mail (and as supplementary screening method for other chapters) and
- Metal detectors for primary screening of certain specialised types of cargo and mail.

Finally, the legal base for the implementation of a one-stop security arrangement with the United States of America was introduced.

2. SUPPLEMENTARY LEGISLATION ADOPTED

The new legislative texts adopted during 2010 were:

- Regulation (EU) 18/2010⁴ concerning specifications for national quality control programmes in the field of civil aviation security;

³ Commission Regulation (EC) No 1217/2003 of 4 July 2003 laying down common specifications for national civil aviation quality control programmes OJ L169 of 8.7.2003, p. 44. Since repealed and replaced by Commission Regulation (EU) No 18/2010 of 8 January 2010, amending Regulation (EC) 300/2008, OJ L7 of 12.1.2010, p.3

⁴ Commission Regulation (EU) No 18/2010 of 8 January 2010, amending Regulation (EC) 300/2008, OJ L7 of 12.1.2010, p.3

- Regulation (EU) 72/2010⁵ laying down procedures for conducting Commission inspections in the field of aviation security;
- Regulation (EU) 185/2010⁶ laying down detailed measures for the implementation of the common basic standards on aviation security;
- Regulation (EU) 357/2010⁷ laying down detailed measures for the implementation of the common basic standards on aviation security (security tamper evident bags);
- Regulation (EU) 358/2010⁸ laying down detailed measures for the implementation of the common basic standards on aviation security (liquids, aerosols and gels; exemption of screening for liquids, aerosols and gels obtained at certain airports in third countries);
- Regulation (EU) 573/2010⁹ laying down detailed measures for the implementation of the common basic standards on aviation security (explosive detection dogs);
- Regulation (EU) 983/2010¹⁰ laying down detailed measures for the implementation of the common basic standards on aviation security (one stop security for aircraft, passengers and their cabin baggage and hold baggage arriving from the United States of America);
- Decision C(2010)774¹¹ laying down detailed measures for the implementation of the common basic standards on aviation security (implementing decision);
- Decision C(2010)2604¹² laying down detailed measures for the implementation of the common basic standards on aviation security (supplies);
- Decision C(2010)3572¹³ laying down detailed measures for the implementation of the common basic standards on aviation security (explosive detection dogs);
- Decision C(2010)9139¹⁴ laying down detailed measures for the implementation of the common basic standards on aviation security (metal detection equipment).

These texts were finalised during 6 regular meetings and 2 special meetings of the Aviation Security Regulatory Committee, 6 meetings of the Stakeholders' Advisory Group on Aviation Security and a number of focussed working group sessions in which both Member States and industry were involved.

⁵ Commission Regulation (EU) No 72/2010 of 26 January 2010, OJ L23 of 27.1.2010, p.1

⁶ Commission Regulation (EU) No 185/2010 of 4 March 2010, OJ L55 of 5.3.2010, p.1

⁷ Commission Regulation (EU) No 357/2010 of 23 April 2010, amending Regulation (EU) 185/2010, OJ L105 of 27.4.2010, p.10

⁸ Commission Regulation (EU) No 358/2010 of 23 April 2010, amending Regulation (EU) 185/2010, OJ L105 of 27.4.2010, p.12

⁹ Commission Regulation (EU) No 573/2010 of 30 June 2010, amending Regulation (EU) 185/2010, OJ L166 of 1.7.2010, p.1

¹⁰ Commission Regulation (EU) No 983/2010 of 3 November 2010, amending Regulation (EU) 185/2010, OJ L286 of 4.11.2010, p.1

¹¹ Decision C(2010)774 final, issued to all Member States on 13.4.2010 ; not published in the OJ (restricted and confidential material)

¹² Decision C(2010)2604 final, issued to all Member States on 23.4.2010 ; not published in the OJ (restricted and confidential material)

¹³ Decision C(2010)3572 final, issued to all Member States on 30.6.2010; not published in the OJ (restricted and confidential material)

¹⁴ Decision C(2010)9139 final, issued to all Member States on 20.12.2010; not published in the OJ (restricted and confidential material)

3. REGULATED AGENT AND KNOWN CONSIGNOR DATABASE

To strengthen the secure supply chain in air cargo and air mail as well as to facilitate its homogenous implementation in the EU, the regulated agent and known consignor (RAKC) database was developed and has been maintained since its full deployment on 1st June 2010 under a Commission framework contract. The RAKC database contained at the end of 2010 about 7,500 records of regulated agents and (independently validated) known consignors. It is the only legal primary tool to be used by regulated agents for consultation when accepting consignments from another regulated agent or (independently validated) known consignor. Since its operational start date, its contractually agreed availability rate of 99.5% has been continuously met.

4. EU AIRPORT INSPECTIONS – HANDBOOKS

Regulations (EC) No. 300/2008 and (EU) No. 72/2010 require that compliance monitoring by the Commission Services on civil aviation security requirements shall be objective and using a standard methodology.

To contribute to this aim the Commission set up and maintains two comprehensive handbooks with detailed prompts and guidance for EU inspectors in the field. One handbook was elaborated for all chapters other than air cargo and air mail, the other one for air cargo and mail only, due to the complexity of compliance monitoring in the latter two areas.

PART THREE

REPORTS, TRIALS AND STUDIES

1. REPORTS

In response to the air cargo incidents in late October 2010 (Yemen cartridge bombs and incendiary devices sent through EU mail courier services) and following a special meeting of the Aviation Security Regulatory Committee on 5th November 2010, the Council meeting on 8th November 2010 requested the EU Presidency representing the EU Council and the Commission to set up a High Level Working Group (HLWG) to look at ways to strengthen air cargo security. The HLWG presented their report and action plan to the Transport Council and the JHA Council on 2nd December 2010, who endorsed the report and its action plan.

Historically, transfer cargo and mail have been associated with a low degree of risk when transferring at EU airports because air cargo and mail should have already been subject to security measures at the airport of departure according to ICAO¹⁵'s principle of host state security responsibility.

This principle was also reflected in the current version of the new legal framework, where transfer cargo and transfer mail arriving by air are exempted from screening (provided that they are protected from unauthorised interference from arrival until the departure of the aircraft on which they are to be carried).

In the light of aforementioned Yemen incidents, the report recommended to accelerate the adoption of measures enhancing aviation security for air cargo and mail originating from

¹⁵ International Civil Aviation Organisation

outside the EU, favouring a risk-based approach and taking into account the supply chain security regulated in EU legislation and as a global principle under ICAO rules.

In reaction to the abovementioned incidents with incendiary devices sent through EU mail courier services, the report furthermore recommended to enhance and further harmonise the existing EU cargo and mail security regime.

Both of latter actions proposed should be completed by a) examining ways to extend the EU scheme on regulated agents and known consignors by including the possibility to approve or independently validate such industry located in third countries, by b) further analyzing and where necessary improving screening methods and technologies, by c) harnessing intelligence and law enforcement cooperation that should lead to a common EU threat assessment on aviation security and by d) enhancing global standards on legal frameworks and capacity building.

2. TRIALS

A 'trial' in the sense of the EU aviation security legislation is conducted when a Member State agrees with the Commission that it will use a particular means or method not recognised under the terms of the legislation to replace one of the recognised security controls, for a limited period of time on condition that such trials do not prejudice the overall levels of security. The term does not, in the legal sense, apply when a Member State or entity is conducting an evaluation of a new security control deployed in addition to one or more of those already covered by the legislation.

A number of trials in both of latter two senses were conducted during 2010 in Germany, Spain, France, Italy, the Netherlands, Sweden, the United Kingdom, Switzerland and in Norway. These concerned the use of security scanners for passenger and staff screening (including millimetre wave equipment), the use of liquid explosive detection systems for screening of cabin baggage and the use of explosive trace detection for screening of headgear worn by passengers.

3. STUDIES

End 2010 a study report on the legal situation regarding security of flights from third countries to the EU was delivered. It proposed a number of recommendations to enhance the ability of the EU to monitor and enforce security standards in respect of flights from third countries.

Furthermore, the Commission launched end 2010 two studies on a) the usage of the EU database for regulated agents and known consignors and on b) Threat Image Projection technology used in screening of cabin baggage and hold baggage.

PART FOUR

DIALOGUE WITH INTERNATIONAL BODIES AND THIRD COUNTRIES

1. GENERAL

The Commission is fully engaged with international bodies and key third country partners and is regularly represented at international meetings, generally co-ordinating the EU position and often making presentations or submitting papers. Dialogues are also opened, as appropriate, with individual third countries on issue of local concern or shared interest, such as exemptions from the normal requirements governing the carriage of liquids purchased in duty free outlets. Such contacts enable the EU to both keep abreast of and disseminate good practice as well as to influence global decision making. The link and coherence between the internal and external security needs to be ensured. According to new legal framework set up by the Lisbon Treaty, the EEAS will be fully consulted in the engagement with international bodies and third countries in order to ensure as well coherence and complementarity with specific political dialogues launched by the EEAS.

2. INTERNATIONAL BODIES

The Commission attends the annual ICAO aviation security panel and during 2010 presented papers on liquids screening and air cargo security. These were well received.

The Commission also regularly takes part in meetings of the ECAC Technical Task Force and Training Task Force. Conclusions drawn by each of these groups have subsequently formed the basis of discussions during meetings of the Regulatory Committee and its associated working groups.

3. THIRD COUNTRIES

The Commission actively continued the dialogue with aviation security issues with the US in a number of fora, in particular the EU-US Transportation Security Cooperation Group, which progressed work towards one-stop security¹⁶. The Commission also intervened on a number of occasions when Member States raised particular concerns about additional US security demands, which appeared to give inadequate consideration to the robust EU systems already in place. This sometimes involved the continued US practice of issuing, without prior consultation, Emergency Amendments to airlines operating from the EU, sometimes causing significant difficulties for EU stakeholders.

The Commission took part in one inspection at an airport in the United States of America to assess the possibility of a future one-stop agreement.

CONCLUSION

While, overall, a high level of security continues to be ensured in the EU, Commission inspections have revealed some shortcomings. In traditional measures shortcomings identified

¹⁶ Applicable as from 1.4.2011 for aircrafts, passengers and their cabin baggage and hold baggage arriving from the US – Commission Regulation (EU) No 983/2010 of 3 November 2010, amending Regulation (EU) 185/2010, OJ L286 of 4.11.2010, p.1

in the areas of staff and passenger screening as well as of cargo processing and screening requirements tended, by and large, to stem from human factor issues. In additional measures implemented under the new legal framework of Regulation (EC) 300/2008 further non-compliances found were related to patrols at airports, risk assessment and screening of in-flight supplies and airport supplies. Commission recommendations for corrective action were on the whole followed up satisfactorily, but the inspectors' findings confirm the importance of a robust EU inspection regime and of adequate quality assurance at Member State level. The Commission will continue its efforts to ensure that all legal requirements are fully and correctly implemented, instigating formal infringement procedures if necessary.

On the legislative front, further detailed implementing rules were adopted during 2010 to ensure that the new basic Regulation (EC) 300/2008 is applied in a harmonised way. The Yemen cargo incident and the EU mail parcel incidents in late October 2010 served as reminders that civil aviation continues to be targeted in new and innovative ways, which should be addressed with adequate and risk based protection measures. As mandated in the air cargo security action plan, the Commission has extended its action in this area.

Annex

Commission inspections as at 31.12.2010

State	Number of inspections 01/2010 -12/2010 (including follow-ups)	Total number of inspections 2004-2010 (including follow-ups)
Austria	1	9
Belgium	2	9
Bulgaria	2	5
Cyprus	0	5
Czech Republic	0	5
Denmark	1	7
Estonia	0	4
Finland	0	7
France	2	12
Germany	2	14
Greece	1	12
Hungary	1	5
Ireland	2	8
Italy	1	12
Latvia	0	4
Lithuania	1	4
Luxembourg	0	5
Malta	0	3
Netherlands	1	7
Poland	1	7
Portugal	1	8
Romania	1	3
Slovakia	0	4
Slovenia	0	4
Spain	2	12
Sweden	2	9
United Kingdom	2	13
Switzerland	0	4
TOTAL	26	202

EFTA Surveillance Authority inspections as at 31.12.2010

State	Number of inspections 01/2010-12/2010 (including follow-ups)	Total number of inspections 2004-2010 (including follow-ups)
Iceland	1	7
Norway	3	31
TOTAL	4	38