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**REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN
PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND
THE COMMITTEE OF THE REGIONS**

**THIRD REPORT ON THE IMPLEMENTATION OF REGULATION (EC) No.
2320/2002 ESTABLISHING COMMON RULES IN THE FIELD OF CIVIL
AVIATION SECURITY**

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¹ OJ L355 of 30.12.2002, p1.

1. INTRODUCTION

In spite of the progress made, terrorism continues to be a threat to our society. Civil aviation is at particular risk and can be vulnerable to attack by a variety of methods. The Commission's work to ensure that appropriate legislation is in force, and fully implemented across the Community, therefore remains essential for the proper protection of EU citizens. There can be little doubt that this work has helped to prevent successful attacks during the period covered by this report. However, the threat is still real and it is important to remain vigilant.

We need to ensure the effective protection of our citizens, while at the same time establishing the framework for the good functioning of the internal aviation market. In this context, Regulation (EC) 2320/2002 can be seen as the first landmark on a continuing route. The planning of this route must, however, take full account of technological advances, be subject to regular review and be promoted worldwide through international negotiations. Every effort must be made to assist airport and airline staff, minimise inconvenience for the travelling public and streamline processes while maintaining high levels of security.

This is the Commission's third report on the implementation of Regulation (EC) 2320/2002 and covers the period January-December 2007. It falls into two parts. Part One first gives an analysis of Commission inspection reports compiled during 2007, including the follow up actions. Part Two sets out the steps taken to rationalise the process of putting the rules into operation, taking greater account of the needs of passengers and the industry.

The report confirms continuing progress in the implementation of common rules for civil aviation security, from a strong global base - although there is certainly still room for improvement. It also details the proactive approach being taken by the Community in developing a flexible, practical and harmonised system, designed to facilitate the movement of passengers and cargo through a secure airport environment.

PART ONE

COMMISSION INSPECTIONS

1. Overview

The Commission is required to monitor Member States' compliance with the aviation security legislation and accordingly carries out:

- inspections of national appropriate authorities;
- airport inspections; and
- follow-up inspections, to confirm the implementation of remedial actions.

Altogether, 117 inspections were undertaken between February 2004 and December 2007, including 28 during the 12 months covered by this report. Between 1 and 6 airport inspections have been completed in each Member State (except Bulgaria) and all Member States' appropriate authorities (except Rumania) have been monitored at least once. Switzerland has also been included in the Community programme, while since December 2005 Norway and

Iceland have been inspected against parallel provisions by the EFTA Surveillance Authority. (See Annex 1 for details of all inspections.)

2. Inspections of national appropriate authorities

Each Member State is required to adopt a national aviation security programme and nominate a single appropriate authority to co-ordinate and monitor its implementation. All 27 have done so. Appropriate authorities must:

- develop and implement a quality control programme;
- monitor airport and airline security programmes; and
- develop and implement an aviation security training programme.²

During 2007, the Commission inspected 10 appropriate authorities. The inspections involved an examination of documentary evidence, supported by interviews and - for the first time in 2007 - on-site verifications at an airport implementing the national measures.

The findings of the inspections were consistent with those from previous monitoring exercises, essentially:

- there is a good level of compliance as regards the establishment of an adequate legal framework;
- there is a less satisfactory achievement as regards the effectiveness of implementation of the common standards.

2.1. *Legal framework*

As a general rule, the contents of Member States' **national aviation security programmes** accurately reflect the requirements of European legislation. However, the updating of the programmes to reflect changes in Community law has not always been carried out as promptly as would have been desirable.

Most Member States have established satisfactory national **quality control programmes**, clearly setting out the recruitment, training, duties and powers of the national inspectors, the priorities and methodology for the inspection programme. Sometimes, however, the programmes fail to meet all requirements, for instance they do not make provision for a test programme or omit frequencies for monitoring activities. There is a clear case for improved sharing of best practice and generally for greater harmonisation of national programmes.

Airport security programmes are in most cases up to date and monitored by Member States. **Airline security programmes** are less likely to be compliant and are less well monitored, especially in respect of airlines registered outside the EU, and in particular as regards check and search procedures.

National security training programmes generally meet requirements, with the most common failing being an absence of provisions governing general awareness training for non

² All requirements under Article 5 of Regulation 2320/2002.

security specialist staff and no specifications concerning recurrent training to keep security specialists up to date with developments.

2.2 *Implementation of legal requirements*

While the standard of implementation of the national quality control programme is high in some States, it unfortunately remains unsatisfactory in many others, with a significant incidence of serious deficiencies. Even in the Member States with the most well-developed programmes, the inspection process identifies regularly deficiencies.

In some cases, inadequate record keeping has made it difficult for Commission inspectors (and indeed national authorities themselves) to assess how well the requirements on implementation are being met. However, the following general conclusions may be drawn:

- the appropriate authority does not always hold all the information necessary to adequately plan inspection activities (e.g. they are not always aware of all the entities involved in the security chain);
- a number of Member States do not use the full range of monitoring techniques (i.e. in depth security audits, more narrowly focussed inspections and tests) and so cannot make a complete assessment of all aspects of implementation;
- a significant number of Member States do not have enough human resources dedicated to monitoring all airports and all Chapters of the legislation with a frequency sufficient to ensure the swift detection and rectification of deficiencies;
- where deficiencies are found, the enforcement of swift rectification is inadequate.

Nonetheless, a positive consequence of Commission inspection findings in some Member States has been the allocation of greater resources to aviation security and an increase in the number of national inspectors. There are signs that this development will continue.

3. **Inspections at airports**

3.1. *Selecting the airports and inspection teams*

Between February 2004 and December 2007, the Commission carried out 83 airport inspections (including follow up inspections). The inspection programme is determined on a risk assessment basis, but has encompassed some of the smallest commercial operations falling under the provisions of Regulation 2320/2002 as well as most of the largest airports in the Community: of the 20 EU airports with close to and more than 20 million passengers per year, 17 have already been inspected by the Commission. 24 of the initial evaluations led to follow-up inspections to assess the rectification actions taken.

EU inspections are carried out by members of the Commission team of 10 inspectors supported by a pool of national auditors. All but three Member States have nominated at least one national auditor to take part in Commission inspections, in accordance with Article 5 of Commission Regulation 1486/2003.³

³ Commission Regulation (EC) No. 1486/2003 laying down procedures for conducting Commission inspections in the field of civil aviation security, OJ L213 of 23.8.2003, p3.

3.2 *Overview of deficiencies found*

In general terms, the level of security at European airports is high – especially when measured against global standards and practices. The level of compliance has improved by almost 40% since inspections began and the number of serious deficiencies continues to fall. At only one airport inspected by the Commission was the lack of compliance considered serious enough to present a significant threat to the overall level of civil aviation security in the Community (Article 15 of Regulation 1486/2003) and all Member States notified accordingly. While further effort is clearly required, it should not be forgotten that the assessments are being made against some of the most stringent standards in the world.

The 2007 findings tend to repeat the pattern of earlier inspections. As regards what may be regarded as the core areas of aviation security - airport security, aircraft security, passenger and cabin baggage screening and hold baggage screening – the results are certainly improving; but there nonetheless remain significant areas of non compliance. These relate in particular to areas where the human factor is key, but other relevant issues would be:

- overly prescriptive requirements in parts of the current legislation;
- lead times required for adjusting to new requirements;
- insufficient monitoring at national level; and
- lack of enforcement powers at the level of the appropriate authorities.

The 2007 inspections also initiated EU monitoring of areas which were rarely included in previous reports – catering, cleaning, company mail and material and technical requirements for equipment. Although there is still insufficient data in these areas to provide meaningful conclusions, Commission inspectors have expressed some concerns about the monitoring of standards for equipment. This may reflect a lack of available technical expertise in some Member States.

3.3 *Follow up inspections*

8 follow up inspections were conducted at EU airports during 2007. In these cases, it has generally been found that at least a third of the serious deficiencies identified during the initial inspection were rectified within a reasonable time frame; but no airport was able to remedy all serious deficiencies before the follow up inspection was carried out. In some cases, this was because the deficiency could only be addressed by reconfiguring ground facilities and the necessary construction work could not be quickly completed.

The most intractable difficulties appear to involve staff screening (human factors, the inappropriate use of hand held metal detectors) and aircraft security.

3.4 *Member States' own evaluations*

Under Article 6 of Commission Regulation 1217/2003,⁴ Member States are obliged to submit an annual report to the Commission by the end of February each year, covering the results of

⁴ Commission Regulation (EC) No. 1217/2003 laying down common specifications for national civil aviation quality control programmes OJ L169 of 8.7.2003, p.44.

their national compliance monitoring for the period Jan - Dec of the preceding year. Generally speaking, these reports show a higher level of compliance than is found during Commission inspections. This indicates that requirements are not being enforced in a sufficiently harmonised manner.

4. Position at the end of 2007

4.1 Open files

Covering the whole period of inspections 2004-7, 43 inspection files remain open by end 2007, meaning that rectification of the deficiencies reported by the Commission has still not been confirmed - although rectification action plans have, in most cases, been provided. 16 of the open files relate to appropriate authority and 27 to airport inspections, including 20 from 2007.

4.2 Infringement proceedings

During 2007, the Commission opened infringement proceedings under Article 226 of the Treaty against Luxembourg following its failure to adequately rectify deficiencies identified during an inspection and against the Slovak Republic as a result of its failure to supply an action plan following a follow up inspection of an airport and for failing to dedicate adequate resources to aviation security.⁵

PART TWO

STREAMLINING THE PROCESS

5. Overview

The results of the Commission inspections have indicated a number of difficulties in connection with implementation of the Regulations. Annual reports and other information from Member States and the industry have flagged up similar problems. The main issues appear to be:

- **lack of clarity or over-onerous requirements** in the current legislation;
- variations between Member States' requirements, leading to a **lack of harmony** across the Community;
- lack of **transparency** and proper **review**;
- a perception that **operational requirements** are not sufficiently taken into account;
- lack of **standardisation** on technological requirements;
- variations between Community requirements and those of **third countries**, particularly the US; and

⁵ The Luxembourg case has since been resolved. The Slovak case has been resolved in respect of the action plan.

- excessive demand on Member States resources arising from **duplication of requirements**, especially in relation to different inspection regimes (ICAO and TSA in addition to EU).

Considerable efforts were made to address each of these issues in 2007, with the express aim of facilitating passenger movements through Community airports and easing the burden on the industry, without compromising security standards.

6. Regulatory Developments

6.1 The 2007 programme

2007 saw a heavy programme of legislative development, including:

- the Second Reading and conciliation stage of the adoption of the framework regulation to replace Regulation 2320/2002⁶;
- further development of the planned new implementing Regulation to replace Commission Regulation 622/2003⁷;
- further work on new texts to replace Regulations 1217/2003 (national quality control) and 1486/2003 (Commission inspections of Member States);
- a new layer of legislation to give the European Parliament greater powers of scrutiny for implementing legislation in the field of aviation security;
- agreement on technical standards for threat image projection; and
- review and amendment of the legislation addressing the threat from liquid explosives (cabin bag size, third country agreements).

6.2 The new framework and implementing legislation: Better Regulation

Based on a Commission proposal from September 2005 Council, Parliament and Commission continued during 2007 discussions on a new framework regulation through the conciliation procedure. An agreement was finally reached early 2008. Anticipating its adoption, the Commission, working with the Member States in the Aviation Security Committee set up under Article 9 of Regulation 2320/02, continued to prepare new implementing legislation and produced initial drafts of most Chapters. These were specifically drafted with a view to clarifying existing stipulations and removing requirements no longer considered necessary or appropriate, thus facilitating implementation.

The Aviation Security Committee met 8 times between January and December 2007 and was itself supported by a number of working groups. In addition, there were 8 meetings of the Stakeholders' Advisory Group on Aviation Security (SAGAS), giving industry representatives the opportunity of debating their views with the Commission and Member States. A clause

⁶ Since adopted as Regulation (EC) No. 300/2008 of the European Parliament and of the Council of 11 March 2008, OJ L 97 of 9.4.2008, p.72.

⁷ Commission Regulation (EC) No. 622/2003, laying down measures for the implementation of the common basic standards on aviation security, OJ L 89 of 5.4.2003, p.9.

formalising this stakeholder committee was written into the new framework Regulation, which also included a commitment to further consider the issue of security funding.

6.3 *Quality control – greater harmonisation*

Work on the revisions of Regulations 1217/2003 and 1486/2003 – both of which implement Regulation 2320/2002 - has continued in working group sessions throughout 2007, with a view to achieving greater consistency of implementation across the Community and enshrining best practice in legislation. This is expected to facilitate the future development of one stop security, both within the Community and beyond.

6.4 *Parliamentary scrutiny and public information – greater transparency*

While the European Court of Justice gives consideration to case number C-345/06 (Heinrich)⁸, the Commission and the Committee have also undertaken a review of the existing legislation, to consider which elements might be put into the public domain without any risk to security. They have discussed a draft Regulation to this effect and will consider how in the future to achieve the best balance between transparency and protection from threat. This will mean that passengers have access to the maximum amount of information possible before taking a flight.

6.5 *Technical standards – increasing standardisation*

2007 saw agreement on a new regulation on standards for threat image projection (TIP), although this was not in fact published in the Official Journal until January 2008⁹. (TIP is a system designed to improve and monitor the performance of staff involved in cabin bag screening.)

6.6 *Liquids and the review procedure – regular review and working with third countries*

Regulation 1546/2006¹⁰, introducing measures to address the threat from liquid explosives, is reviewed at six monthly intervals, specifically with a view to easing requirements as new technology becomes available. In this context, the proposed restriction on cabin baggage size was first deferred and then lifted in the light of the conclusions drawn by the ECAC Technical Task Force after trials conducted on behalf of the Commission.

Steps to address the problems caused for transfer passengers from third countries by the restrictions on liquids were also taken via Regulations 915/2007¹¹ and 1477/2007¹², providing for Community recognition of the security measures taken at third country airports.

⁸ OJ. C281 of 18.11.06, p19.

⁹ Commission Regulation (EC) No. 23/2008 of 11 January 2008, amending Regulation (EC) No. 622/2003 laying down measures for the implementation of the common basic standards on aviation security, OJ L9 of 12.1.2008, p12.

¹⁰ Commission Regulation (EC) No. 1546/2006 of 4 October 2006, amending Regulation (EC) No. 622/2003 laying down measures for the implementation of the common basic standards on aviation security, OJ L286 of 17.10.2006, p6.

¹¹ Commission Regulation (EC) No. 915/2007 of 31 July 2007, amending Regulation (EC) No. 622/2003 laying down measures for the implementation of the common basic standards on aviation security, OJ L200 of 1.8.2007, p3.

In addition, the Commission began to work with Member States on a roadmap – aspirationally, a staged, two-year process - towards an easing of the restrictions on liquids by identifying, setting standards for and deploying new screening technology.

7. Equipment trials and studies

7.1 Trials – looking for new solutions

Under Regulation 65/2006¹³, Member States wishing to conduct trials of new equipment or procedures may do so for a limited period after notifying, and receiving agreement, from the Commission and Committee. This procedure only applies where the equipment or procedures being trialled replace those specified in the European legislation. (Member States of course may at any time conduct trials of equipment or methods when these are *in addition to* those covered by the Regulations.)

A number of trials have been progressed during 2007, involving the use of body scanners (millimetre wave and backscatter) and dogs. At the end of the trial period, the Commission will decide whether the new method should be included in EU legislation. It is highly likely that this will soon be the case for body scanning equipment, which is expected to considerably facilitate passenger flow through screening points as well as raising standards.

7.2 Studies – identifying the problems, proposing the answers

In addition to these trials, a number of Commission-sponsored studies were continued during 2007, in particular those considering the use of sniffer dogs, factors affecting the performance of security staff and the 'registered passenger' concept. The reports are currently being considered by stakeholders and may form the basis of future implementing legislation.

The Commission has also made particular efforts to remain fully informed about the research carried out by industry and the ECAC Technical Task Force into liquids testing, with a view to introducing legislation to allow for the deployment of this new technology as soon as it is sufficiently developed for deployment at airports.

In addition, the Commission pursued work on a database to facilitate the air cargo industry by providing a tool enabling quick verification of the security status of the main industry entities – regulated agents and known consignors.

8. Progress with third countries

8.1 Developing one stop security with third countries

Under Article 10 of Regulation 2320/2002, the Commission is required to give consideration to the development of global one stop security. This means that the Community concept of each Member State's recognising the security measures implemented in another - so that, for instance, passengers do not have to be rescreened when transferring to another flight at a

¹² Commission Regulation (EC) No. 1477/2007 of 13 December 2007 amending Regulation (EC) No. 622/2003 laying down measures for the implementation of the common basic standards on aviation security OJ L329 of 13.12.2007, p22.

¹³ Commission Regulation (EC) No. 65/2006 of 13 January 2006 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security OJ L11 of 17.1.2006, p4.

second EU airport - may be extended to some third countries. Such mutual recognition of measures can only be agreed where the third country is able to demonstrate that it takes an equivalent approach to aviation security as that set out in the EU Regulations. Priority is also given to progressing agreements which would provide genuine benefits to the industry and passengers - that is, those representing a high volume of traffic, such as the US.

The Commission has been active in several fora to prepare the way for more intensive co-operation on security, most particularly through bilateral discussions with the US and with ICAO. These negotiations have already led to a number of real improvements for passengers and Member States through the reduction of duplication and extraterritorial demands (for instance, the US has lifted its requirement for baggage screening at the last point of departure, now recognising the Community as a single block, while the US Transport Security Agency and ICAO are both likely to reduce the number of inspections they carry out in the EU, in recognition of the robust Community regime).

Given this encouraging progress, and the additional impetus given by third country concerns arising from the recent restrictions on liquids, closer co-operation agreements with non EU states is now high on the Commission's agenda.

8.2 *Liquid explosives – transfer passengers*

The concerns surrounding the possible terrorist use of liquid explosives have created particular difficulties for passengers from third countries transferring at Community airports – and also for Community passengers transferring at some third country airports. The Commission has therefore taken a pivotal role both in developing international legislation to address the current threat and in seeking short and long term solutions to facilitate passenger flow at airports while maintaining adequate levels of security. This has led to the adoption of a regulation, allowing sales of duty free liquids at Singapore's Changi airport to be exempted from further controls during transfers at EU airports. Discussions on similar arrangements are progressing with several other States, but take-up has on the whole been disappointing, indicating a clear need to develop other solutions.

9. **Issues for the future**

The Commission has a clear programme of work for 2008:

- finalising the new implementing legislation;
- finding better ways of addressing the threat from liquid explosives;
- considering the most appropriate approach to the funding of aviation security;
- continuing the inspection programme (including involvement as observers in some inspections in the US);
- introducing new technical standards;
- assisting Member States to improve and harmonise national quality control programmes;
- analysing the results of studies; and

- advancing agreements with third countries.

While security considerations must always be paramount, the active involvement of stakeholder groups, rigorous appraisal of new proposals and regular review of existing legislation will ensure that this programme will be developed in a way which takes full consideration of practical concerns and benefit from the lessons of experience.

CONCLUSION

Progress since 2002 has been substantial. The future programme will build on this achievement, enhancing security on flights in to and out of the Community, protecting European interests and maintaining public confidence in the air transport system. It will lead to a further, and significant, stage in the development of a comprehensive air transport security regime, taking full account of the needs of passengers and the industry. In many respects Europe leads the world in setting standards for aviation security. It should continue to do so.

ANNEX
Commission Inspections at 31.12.2007

Member State	Number of inspections 2004 -12/2006 (including follow-ups)	Number of inspections 01/2007 -12/2007 (including follow-ups)	Total number of inspections 2004-2007 (including follow-ups)
Austria	5	1	6
Belgium	3	1	4
Bulgaria		1	1
Cyprus	3	1	4
Czech Republic	2	1	3
Denmark	4	1	5
Estonia	2	1	3
Finland	4		4
France	6	1	7
Germany	6	2	8
Greece	6	2	8
Hungary	2		2
Ireland	4	1	5
Italy	5	2	7
Latvia	3		3
Lithuania	3		3
Luxembourg	2	2	4
Malta	2		2
Netherlands	3	1	4
Poland	4	1	5
Portugal	3		3
Romania		1	1
Slovakia	2	1	3

Slovenia	3	0	3
Spain	4	2	6
Sweden	3	2	5
United Kingdom	4	3	7
Switzerland ¹⁴	1		1
TOTAL	89	28	117

EFTA Surveillance Authority inspections as at 31.12.2007

EEA EFTA state	Number of inspections 2005 -12/2006 (including follow-ups)	Number of inspections 01/2007 -12/2007 (including follow-ups)	Total number of inspections 2004-2007 (including follow-ups)
Iceland	2	2	4
Norway	9	10	19
TOTAL	11	12	23

¹⁴ The Commission has powers to conduct inspections in Switzerland under a bilateral EU-Switzerland agreement.