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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**

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

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FOURTH REPORT ON THE IMPLEMENTATION OF REGULATION (EC) No 2320/2002 ESTABLISHING COMMON RULES IN THE FIELD OF CIVIL AVIATION SECURITY¹

This report covers the period 1 January – 31 December 2008

1. INTRODUCTION

2008 marked a significant stage in the building of an effective aviation security regime in the European Community. It was the year of lessons learned, a time for fundamental reassessment, drawing on 5 years' experience of implementing and inspecting the regime adopted in 2002 after the 9/11 terrorist attacks. It was also a year of enhanced international co-operation and further technological development.

The reassessment process revealed much that was positive. The main requirements of the legislation were clearly understood and generally well implemented at European airports. Levels of compliance continued to move – albeit slowly – upwards and several Member States had increased their compliance monitoring resources. However, it was also evident that some provisions did require adjustment, to achieve a common understanding, address recurring deficiencies or take account of other developments. The inspection regimes themselves were equally in need of fine-tuning.

The Community response to new and emerging threats was similarly challenged, following the considerable disruption caused by the 2006 liquid explosives alert. This led to increased efforts to collaborate with manufacturers and international partners in the development of security screening procedures. It added impetus to the drive towards reaching agreement with third countries on recognition processes. Throughout, the EU demonstrated its willingness and ability to make an effective contribution towards facilitating passenger movements and finding global solutions.

Finally, and fundamental to the whole process, was a recognition of the need for greater transparency. The restrictions on access to much of the implementing legislation had come to be judged as excessive, with members of the public not able to retrieve the facts necessary for making informed decisions. In response, there was an immediate restructuring of the original provisions and a commitment to ensure appropriate levels of access in the future.

In all, 2008 was a year of considerable achievement towards the establishment of a mature aviation security environment. Member States, the aviation industry and manufacturers demonstrated a high level of commitment in working together to find security solutions and minimise inconvenience to passengers. However, at the end of the twelve month period, none would remain in any doubt about the considerable amount of work still to be done.

PART ONE

THE INSPECTIONS

¹ OJ L355 of 30.12.2002, p. 1.

1. General

Under Regulation 2320/2002, the Commission is required to carry out inspections to determine Member States' level of compliance with the legal provisions on aviation security. Switzerland is also included in the programme while Norway and Iceland are inspected against identical provisions by the EFTA Surveillance Authority.

There are three types of inspection:

- national appropriate authority;
- airport; and
- follow-up, to assess deficiency correction activities.

These are carried out by the Commission's team of 11 aviation security inspectors, working with national inspectors nominated by Member States. A chart summarising all Commission inspections to date, separating out those conducted during 2008, is attached at Annex 1.

2. Inspections of national appropriate authorities

Each Member State is required to designate an appropriate authority to be responsible for coordinating and monitoring its national civil aviation security programme. The Commission inspected 9 appropriate authorities during 2008. These inspections involved an evaluation of the national civil aviation security programme, the national civil aviation security quality control programme and its implementation, the national training programme and airport and airline security programmes.

7 of the 9 authorities had been subject to a previous Commission inspection. The 2008 exercise demonstrated high standards in 5 and reasonable standards in 2 states; but the remaining 2 reports were unsatisfactory. National civil aviation security programmes generally covered the legal requirements well, despite a few omissions and outdated references. Provisions for small airports for which an exemption had been claimed under the terms of the Regulation were fairly frequently omitted from national civil aviation security programmes, along with some requirements for air cargo. Frequencies for monitoring activities and provision for security audits within the EU definition of the term were often missing from national quality control programmes. A number of national security training programmes failed to include adequate provisions for general awareness and recurrent training.

Most deficiencies, however, were found in respect of the capacity to detect and correct failures swiftly. Common failings, even in some of the best performing Member States, were lack of security audits, few tests and poor follow-up. Much more seriously, but also more rarely, inspectors found airports not visited at all during long periods, brief and infrequent inspections or seriously delayed rectification action.

Almost all airport security programmes were up to date and monitored by the Member States. The monitoring of airline security programmes appeared less rigorous, especially in respect of airlines registered outside the EU. Checks revealed that these often failed to include all the requirements, even when the appropriate authority had validated them.

3. Initial inspections at airports

10 initial inspections of airports were conducted during 2008 and the findings were by and large consistent with those from earlier inspections. However, results in the four areas generally considered as the most crucial for maintaining the security of civil aviation (airport security, aircraft security, passengers and cabin baggage and hold baggage) indicated some improvement, even if this is not entirely empirically based. (A different set of airports will be

selected each year, so no direct comparison can be made.) Over a longer timescale, there has been a year on year improvement in these key areas, with levels of compliance rising from 50% in 2004 to 78% in 2008.

The weakest areas at the 10 airports inspected during 2008 related to access control and staff screening. Overall, air carriers' standards of compliance were less robust than those of airports, although there was a greater overall improvement between 2007 and 2008. The areas needing most additional effort were search and check of aircraft and aircraft protection.

Compliance with the provisions covering passengers and cabin baggage was mostly high although serious deficiencies stemming from human factors were reported at some of the inspected airports. Compliance in the area of hold baggage screening was extremely high, with no deficiencies at all recorded against a good number of the provisions.

4. Follow-up inspections

As part of the Commission's monitoring of implementation standards and deficiency rectification - and practically always in relation to airports where a number of serious deficiencies have been found - the Commission will conduct a follow-up inspection. 8 such inspections were conducted at EU airports during 2008.

The findings revealed that a greater number of deficiencies had been remedied by the time of the follow-up inspection than had been the case in previous years. However, a number of serious deficiencies (about 13% of those found) had not been adequately addressed by the time the Commission inspectors returned. In general terms, deficiencies that could be remedied by structural changes had been addressed very effectively, while those involving human factors were proving particularly intractable.

5. Open files, Article 15 cases and legal proceedings

Each inspection generates a file, which remains open until the Commission is satisfied that appropriate rectification action has been taken. The file will normally be closed on the basis of progress reports and assurances received from the appropriate authority, unless a follow-up inspection is considered necessary. 2008 was a particularly successful year for file closure, with 36 cases being satisfactorily concluded. In all, 15 appropriate authority and 16 airport inspection files remained open at the end of the year.

Article 15 of Regulation 1486/2003² is activated when the lack of compliance is considered serious enough to present a significant threat to the overall level of civil aviation security in the Community. In these cases, all other appropriate authorities are alerted. One Article 15 process initiated in October 2007 remained open until July 2008 but no new cases arose.

During 2008, the Commission closed 2 infringement procedures started in 2007 and opened 4 others, generally because of insufficient monitoring activities and lack of national auditors. One of these infringement procedures was closed within months, but the 3 others remained open at the end of the year.

6. Member States' own evaluations

Under Article 6 of Commission Regulation 1217/2003³, Member States are obliged to submit an annual report to the Commission by the end of February each year, covering the results of

² Commission Regulation (EC) No 1486/2003 laying down procedures for conducting Commission inspections in the field of civil aviation security, OJ L 213 of 23.8.2003, p. 3.

³ Commission Regulation (EC) No 1217/2003 laying down common specifications for national civil aviation quality control programmes, OJ L 169 of 8.7.2003, p. 44.

their national compliance monitoring for the period Jan - Dec of the preceding year. Some of the 2008 national reports indicated a low number of man days in the field, failures to cover all requirements, a lack of security audits or insufficient follow-up activities. As in previous years, the reports showed a higher level of compliance than is found during Commission inspections, but generally identified the same pattern of deficiencies. For the first time, all reports submitted followed the Commission template.

PART TWO

THE LEGISLATION

1. General

Since the adoption of Regulation (EC) 2320/2002, the Commission has worked continuously with Member States and industry to develop and, where necessary, revise the legal provisions governing aviation security. 2008 was a period of particularly intense activity, during which details were added or amendments made to existing provisions, with the texts also being recast in appropriate legal forms, against the background of a fundamental revision of the whole legislative package, building on the experience of the last five years.

2. Legislation adopted and proposed

Legislative developments during 2008 included:

- the adoption of Regulation (EC) No 23/2008⁴ on the use of Threat Image Projection;
- the adoption of Regulation (EC) No 358/2008⁵ removing the restriction on cabin bag size;
- the adoption of Regulation (EC) No 820/2008⁶ and Decision (EC) No 4333/2008⁷ replacing and repealing Regulation (EC) No 622/2003⁸;
- the adoption of Regulation (EC) No 300/2008⁹, the new framework Regulation which will replace Regulation (EC) No 2320/2002 when this is repealed in April 2010;
- the amendment of Regulation (EC) No 820/2008 to allow exemptions from further screening for duty free liquids purchased at 6 airports in Croatia;
- the conclusion of work on new texts to replace Regulations (EC) No 1217/2003 (national quality control) and (EC) No 1486/2003 (Commission inspections of Member States);
- the conclusion of work on the new 'second layer' legislation which will sit between Regulation (EC) No 300/2008 and the projected new implementing legislation¹⁰; and

⁴ 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 L 9 of 12.1.2008, p. 12.

⁵ Commission Regulation (EC) No 358 of 22 April 2008, amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security, OJ L 111, 23.4.2008, p. 5.

⁶ Commission Regulation (EC) No 820/2008 of 8 August 2008 laying down measures for the implementation of the common basic standards on aviation security, OJ L 221, 19.8.2008, p. 8.

⁷ Not published in the OJ.

⁸ 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.

⁹ 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.

- most significantly, intensive work on preparing the new detailed implementing Regulation and Decision to replace Commission Regulation (EC) No 820/2008 and Decision (EC) No 4333/2008 from April 2010.

The texts were developed during 8 meetings of the Aviation Security Regulatory Committee, at which all Member States plus Norway, Iceland and Switzerland are represented, 8 meetings of the Stakeholders' Advisory Group on Aviation Security, which brings together industry bodies representing airports, airlines, air cargo and pilots, and a number of focussed working group sessions in which both Member States and industry were involved. There were also separate, dedicated meetings on the liquid explosives issue.

3. Adding detail and amending

In terms of specific achievements, adding new detail to existing provisions formed a relatively small part of the legislative programme during 2008. Just one new Regulation, (EC) No 23/2008 on Threat Image Projection (TIP), was published at the beginning of the year, the related work having effectively been completed in 2007. (TIP is a system that generates electronic images of threat objects in items of baggage to assist with staff training and sustaining concentration.)

The aviation security legislation was adjusted by two amending measures during the period covered by this report, one removing a planned provision and the other granting a new exemption. The removal, in Regulation (EC) No 358/2008, concerned the planned limitation on cabin bag size agreed in the wake of the August 2006 liquid explosives alert, subsequently judged as unnecessarily restrictive, while the new exemption allowed liquid duty free items purchased at 6 airports in Croatia to be accepted at EU transfer points by listing them in the Annex to Regulation (EC) No 820/2008.

4. Changing the legal instrument

Following a legal challenge¹¹ concerning access to information, the Commission reassessed the elements of aviation security legislation that had previously been kept out of the public domain.

The Commission decided to publish a new Regulation, made available through the Official Journal in order to facilitate public access, notably to details of prohibited articles.

5. New framework and implementing package

This represents by far the greatest commitment of time and effort in respect of legislative developments, on the part of Member States, industry and the Commission. The new framework Regulation, (EC) No 300/2008, which will repeal and replace Regulation (EC) No 2320/2002 in April 2010, was published in March 2008. Work on the second and third levels of implementing rules and new inspection texts had reached an advanced stage by the end of the year.

The second level¹² elaborates the framework by, inter alia, listing screening techniques that may be used for passengers, baggage or cargo, categories of prohibited articles and criteria for making agreements with third countries. Based on positive results from trials (see Part 3) the Commission originally proposed including provisions to allow the use of body scanning

¹⁰ Now Commission Regulation (EC) No 272/2009 of 2 April 2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008 of the European Parliament and of the Council OJ L 91, 3.4.2009, p. 7.

¹¹ ECJ Case, C-345/06, the so-called Heinrich case.

¹² See footnote 10.

equipment, within parameters yet to be defined. The European Parliament, however, felt that a number of questions regarding human rights, health and data protection would have to be answered before this could be accepted. The Commission accordingly amended the draft legislation to remove this possibility, pending further study.

The third level will provide the detailed implementation requirements and address the issues of overly onerous provisions in some areas of the current legislation and security gaps in others. Amongst the issues discussed were possible modifications in the aircraft search and check requirements, lifting the requirement for all airlines to submit security programmes to Member States for approval, providing an updated, internationally agreed prohibited article list, developing more detailed rules for catering and cleaning supplies and elaborating policies for staff recruitment and training.

PART THREE

TRIALS, STUDIES, PILOTS

1. Trials

Member States may conduct trials of new equipment and methodologies at any time, if these are used in conjunction with existing legislative requirements. Where trials involve the replacement of these requirements by new technical methods or processes, approval must first be sought from the Commission and the trial must be restricted to a maximum of 30 months.

A limited number of trials were conducted during 2008. These involved the use of millimetre wave and backscatter body scanners for staff and passenger screening and dogs for hold baggage and cargo screening. Studies were also conducted on the effectiveness of screening laptop computers inside hand luggage, as distinct from the current requirement to take it out.

The results of the dog trials led the Commission and Member States to agree that legislation should be developed on conditions for their use. The laptop trials were temporarily halted as the results proved inconclusive.

2. Studies

Two studies conducted on behalf of the Commission were concluded during this time, respectively on the use of dogs for passenger and cargo screening and human factors affecting security screening performance. Recommendations from these studies led to a number of provisions being added to the training Chapter of the new draft legislation and fed in to working group discussions on future provisions governing the use of dogs.

3. Pilots

In addition, the Commission concluded the work on its pilot cargo database study, intended to support secure movements of airfreight. This was considered successful and a project to build a mandatory usage database, to be hosted and managed by the Commission, was initiated.

PART FOUR

DIALOGUE WITH INTERNATIONAL BODIES AND THIRD COUNTRIES

1. General

The Commission is regularly involved in aviation security discussions with international bodies and third countries on a bilateral and multilateral basis. This provides opportunities to share best practice, pool expertise and find global solutions to security problems.

2. International bodies

The Commission regularly takes part in meetings of the International Civil Aviation Organisation (ICAO) AvSec panel, presenting papers and working closely with other members to develop strategies, with current focus strongly on the liquids problem. The Commission has also worked with some third countries – principally the US, Canada and Australia – to agree a joint position, or present joint papers at ICAO. On a bilateral basis, the Community has reached agreement with ICAO on a Memorandum of Co-operation on inspections, with a view to reducing ICAO inspections in Europe, already covered by national and the Commission's own inspection programmes.

Co-operation with the European Civil Aviation Conference (ECAC) is also good, with the Commission taking part in meetings of the ECAC Technical Task Force and Training Task Force. Conclusions reached in these groups have, after further discussion in the Regulatory Committee, been incorporated into the draft implementing legislation and liquids roadmap.

3. Third countries

Other bilateral efforts with third countries essentially fall into two categories: work towards future one-stop agreements and preparations for liquids exemptions. The one-stop element is by far the most advanced with the US, which has similar high standards of security as the EU. An EU-US transport co-operation group was set up in 2008 to discuss the related issues and a detailed comparison between the measures implemented on each side of the Atlantic has been drawn up. Significant differences are few and Member States have indicated considerable interest in reaching an agreement. A protocol providing for reciprocal airport inspections is already in force: 12 national auditors from EU Member States have been trained by the Transport Security Administration (TSA) to act as observers in their inspections and TSA inspectors have taken part on the same terms in Commission inspections.

The Commission also continued to progress duty free liquids agreements and was able to recommend an exemption for duty free items bought at Croatian airports, as referred to above. Some advance has been made with other third countries, but no others met all requirements in time to schedule an inspection visit before the end of 2008.

PART FIVE

FINANCING AVIATION SECURITY

The issue of financing aviation security has been raised regularly during discussions on aviation security measures. Member States generally take the view that the industry should meet the costs, with the freedom to pass them on to passengers, while the industry and some MEPs argue for a greater State contribution. In the context of adopting the new framework Regulation (EC) No 300/2008, the Commission undertook to produce a report¹³ on the subject. This is intended to identify principles which could form the basis for a future legislative initiative.

PART SIX

FUTURE WORK

The Commission's work programme for 2009 will include:

- finalising the new implementing legislation;
- finding better ways of addressing the threat from liquid explosives;
- advancing one stop security agreements with third countries;

¹³ COM(2009) 30 final of 2.2.2009.

- continuing the inspection programme (including involvement as observers in some inspections in the US);
- assisting Member States to improve and harmonise national quality control programmes;
- analysing the results of studies; and
- considering the most appropriate approach to the funding of aviation security.

CONCLUSION

Although there was much legislative development during 2008, there were few legislative changes. This gave Member States the opportunity to consolidate progress made in previous years, especially in respect of newer provisions, such as those relating to cargo. At the same time, the consistency of the inspection results enabled the Commission to identify weaknesses and analyse the causes. It could then propose the necessary new legislation, or identify areas for future study or research. At the same time, legal challenges resulted in a much greater focus on transparency, communicating with the public and providing opportunities for debate. The agenda was fortunately uninterrupted by any major new terrorist attempts directed against European airports or the discovery of any new terrorist techniques likely to pose a threat to civil aviation.

At the same time, dealing with the potential threat from liquid explosives has strengthened international co-operation and links with manufacturers. This should pave the way towards a more seamless aviation security environment for travellers moving between continents, while raising the awareness of legislators concerning future technological possibilities.

In all, 2008 was a year of much hard work and much progress. It was the year in which the foundations were laid for the aviation security regime in the new decade.

ANNEX
Commission Inspections by Member State as at 31.12.2008

Member State	Number of inspections 01/2008 - 12/2008 (including follow-ups)	Total number of inspections 2004 - 2008 (including follow- ups)
Austria	0	6
Belgium	2	6
Bulgaria	1	2
Cyprus	0	4
Czech Republic	1	4
Denmark	1	6
Estonia	0	3
Finland	2	6
France	1	8
Germany	2	10
Greece	1	9
Hungary	1	3
Ireland	0	5
Italy	2	9
Latvia	0	3
Lithuania	0	3
Luxembourg	0	4
Malta	0	2
Netherlands	2	6
Poland	1	6
Portugal	2	5
Romania	1	2
Slovakia	0	3
Slovenia	1	7

Spain	1	4
Sweden	1	6
United Kingdom	3	10
Switzerland ¹⁴	1	2
TOTAL	27	144

EFTA Surveillance Authority inspections as at 31.12.2008

EEA EFTA state	Number of inspections 01/2008 - 12/2008 (including follow-ups)	Total number of inspections 2004 - 2008 (including follow- ups)
Iceland	1	5
Norway	4	23
TOTAL	5	28

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