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From : General Secretariat

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No. Cion prop. : 12588/05 AVIATION 129 CODEC 787

Subject : Proposal for a Regulation of the European Parliament and of the Council on
common rules in the field of civil aviation security

Delegations will find in the Annex the draft Regulation as it results from the meeting of the Working Party on Aviation on 21 November 2005. Comments by delegations are included in footnotes. Changes to the previous text (doc. 14419/05) are highlighted by **bold** characters; where drafting suggestions by Member States are already inserted in the text, these are also highlighted by **bold** characters while being explicated by a footnote.

All delegations have a general scrutiny reserve on the text; DK, FR, MT, SI and UK also have a Parliamentary scrutiny reserve.

Draft

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on common rules in the field of civil aviation security ¹
(Text with EEA relevance)

EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission ²,

Having regard to the opinion of the European Economic and Social Committee ³,

Having regard to the opinion of the Committee of the Regions ⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁵,

Whereas: ⁶

- (1) In order to protect persons and goods within the European Union, acts of unlawful interference with civil aircraft should be prevented by establishing common rules for safeguarding civil aviation. This objective should be achieved by setting common rules and common standards on aviation security as well as mechanisms for monitoring compliance.

¹ Comments of a general nature:

- ER wonders whether the legal basis as indicated by the Commission - Article 80(2) - is sufficient for this draft Regulation, in view notably of the provisions on in-flight security officers;
- Further to comments by delegations, CION stated that it is currently preparing a communication on the funding aspects;
- CION observed that an impact assessment is not necessary in respect of the present draft Regulation, since this is merely an "remake" of an existing Regulation on which Member States have already agreed in the past.

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ OJ C [...], [...], p. [...].

⁶ The recitals have not yet been examined.

- (2) It is desirable, in the interests of civil aviation security generally, to provide the basis for a common interpretation of the April 2002 issue of Annex 17 to the Chicago Convention on International Civil Aviation of 7 December 1944.
- (3) Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security⁷ was adopted as a result of the events of 11 September 2001 in the United States.
- (4) The content of Regulation (EC) No 2320/2002 should be revised in the light of the experience gained, and the Regulation itself should be replaced by a new act seeking the simplification, harmonisation and clarification of the existing rules and the improvement of the levels of security.
- (5) Given the need for more flexibility in adopting security measures and procedures in order to meet evolving risk assessments and to allow new technologies to be introduced, the new act should lay down the basic principles of what has to be done in order to safeguard civil aviation against acts of unlawful interference without going into technical and procedural details on how they are to be implemented.
- (6) The new act should apply to airports serving civil aviation located in the territory of a Member State, to operators providing services at such airports and to entities providing goods and/or services to or through such airports.
- (7) Without prejudice to the Convention on offences and certain other acts committed on board aircraft, Tokyo, 1963, the Convention for the suppression of unlawful seizure of aircraft, The Hague, 1970 and the Convention for the suppression of unlawful acts against the safety of civil aviation, Montreal 1971, the new act should cover security measures that apply on board an aircraft, or during a flight, of Community air carriers.
- (7a) It is recognised that the decision to deploy in-flight security officers is for individual Member States to determine.⁸**

⁷ OJ L 355, 30.12.2002, p. 1.

⁸ New recital suggested by CION.

- (8) The various types of civil aviation do not necessarily present the same level of threat. In setting common standards on aviation security, the size of the aircraft, the nature of the operation and/or the frequency of operations at airports should be taken into account with a view to permitting the grant of derogations.
- (9) Member States should also be allowed, on the basis of a risk assessment, to apply more stringent measures than those to be laid down. However, it should be possible for the Commission to examine those more stringent measures and to decide whether a Member State may continue to apply them.
- (10) Third countries may require the application of measures that differ from those laid down in this act in respect of flights from an airport in a Member State to, or over, that third country. However, without prejudice to any bilateral agreements to which the Community is a party, it should be possible for the Commission to examine the measures required by the third country and to decide whether a Member State, operator or other entity concerned may continue to apply the measures required.
- (11) Even though, within a single Member State, there may be two or more bodies or entities involved in aviation security, each Member State should designate a single authority responsible for the coordination and monitoring of the implementation of security standards.
- (12) In order to define responsibilities for the implementation of the common standards and to describe what measures are required by operators and other entities for this purpose, each Member State should draw up a national civil aviation security programme. Furthermore, each airport operator, air carrier and entity applying aviation security standards should draw up, apply and maintain a security programme in order to comply both with the new act and with whichever national civil aviation security programme is applicable.
- (13) In order to monitor compliance with the new act and with the national civil aviation security programme, each Member State should draw up and ensure the implementation of a national programme to check the quality of civil aviation security.

- (14) In order to monitor the application by Member States of the new act, and also to identify weak points in aviation security, the Commission should conduct inspections, including unannounced inspections.
- (15) Implementing acts setting out common measures and procedures for the implementation of the common standards and containing sensitive security information, together with Commission inspection reports and answers of national authorities should be regarded as “EU classified information” within the meaning of Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure⁹. Those items should not be published; they should only be made available to those operators and entities with a legitimate interest.
- (16) The measures and procedures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹⁰.
- (17) For the purpose of allowing transfer passengers and transfer baggage to be exempted from screening when arriving on a flight from a third country, which is known as the concept of “one-stop security”, as well as for allowing passengers arriving on such a flight to mix with screened departing passengers, it is appropriate to encourage agreements between the Community and third countries, recognising that the security standards applied in the third country are equivalent to Community standards.
- (18) Penalties should be provided for infringements of the provisions of this Regulation. These penalties, **which may be of a civil or administrative nature**¹¹, should be effective, proportionate and dissuasive.

HAVE ADOPTED THIS REGULATION:

⁹ OJ L 317, 3.12.2001, p. 1.

¹⁰ OJ L 184, 17.7.1999, p. 23.

¹¹ Text in bold has been inserted following a request by DE. See in the same line recital 23 of Regulation (EC) 2111/2005 (JO L 344/15, 27.12.2005). CION has a scrutiny reserve.

Article 1
Objectives

1. This Regulation establishes common rules for safeguarding civil aviation against acts of unlawful interference.

It also provides the basis for a common interpretation of Annex 17 to the 1944 Chicago Convention on International Civil Aviation.

2. The means of achieving the objectives set out in paragraph 1 shall be:
 - a) the setting of common rules and common **basic** standards on aviation security;
 - b) mechanisms for monitoring compliance.

Article 2
Scope

1. This Regulation shall apply to the following:
 - a) all airports **or parts of airports** serving civil aviation located in the territory of a Member State ¹²;
 - b) all operators, including air carriers, providing services at airports referred to in point (a);
 - c) all entities ¹³ operating from premises located inside or outside airport premises and providing goods and/or services to or through airports referred to in point (a) ¹⁴.

¹² FR, IT and PL would like to specify that the Regulation only applies to those parts of the airports of the Member States that are handling 'civil aviation'. See also the alternative drafting suggested by HU at the next page.

¹³ NL felt that "all entities" is too broad.

¹⁴ SE suggested referring in this context to "impact on security".

[¹⁵]

2. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.
3. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.

Article 3

Definitions

For the purpose of this Regulation:

- (1) 'civil aviation' means any air transport operation, both commercial and non-commercial, as well as both scheduled and non-scheduled operations, but excluding operations carried out by state aircraft referred to in Article 3 of the 1944 Chicago Convention on International Civil Aviation;
- (2) 'aviation security' means the combination of measures and human and material resources intended to safeguard civil aviation against acts of unlawful interference;

¹⁵ HU suggested reformulating the scope as follows (and adding a new definition of 'civil aviation', see at the end of Article 3):

"This Regulation shall apply to the following:

- a) **all civil aviation operations;***
- b) all airports or parts of airports serving civil aviation located in the territory of a Member State;*
- c) all operators, including air carriers, providing services at airports referred to in point (b);*
- d) all entities operating from premises located inside or outside airport premises and providing goods and/or services to or through airports referred to in point (b)."*

- (2a) **'airport' means any area of land [or water] especially adapted for the landing, taking-off and manoeuvres of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services.** ¹⁶
- (3) 'operator' means a person, organisation or enterprise engaged, or offering to engage, in an air transport operation;
- (4) 'air carrier' means an air transport undertaking holding a valid operating licence or equivalent;
- (5) 'Community air carrier' means an air carrier holding a valid operating licence granted by a Member State in accordance with Council Regulation (EC) No 2407/92 ¹⁷;
- (6) 'prohibited articles' means weapons, explosives or other dangerous devices, articles or substances that may be used to commit an act of unlawful interference;
- (7) 'screening' means the application of technical or other means which are intended to identify and/or detect prohibited articles;
- (8) 'security control' means the application of means by which the introduction of prohibited articles may be prevented;
- (9) 'access control' means the application of means by which the entry of unauthorised persons or unauthorised vehicles, or both, may be prevented;

¹⁶ This new definition originates from Directive 96/67/EC ('Groundhandling Directive', OJ L 25.10.1996). The insertion between brackets is a CION suggestion. CION also wondered if the words at the end [*including services*] could be deleted.

¹⁷ OJ L 240, 24.8.1992, p. 1.

- (10) ‘airside’ means the movement area of an airport, adjacent terrain and buildings or portions thereof, access to which is restricted;
- (11) ‘landside’ means those parts of an airport, adjacent terrain and buildings or portions thereof that are not airside;
- (12) ‘security restricted area’ means that area of airside where, in addition to access being restricted, access control **and the required level of security control** is applied;¹⁸
- (13) ‘demarcated area’ means an area that is separated by means of access control either from security restricted areas, or, if the demarcated area itself is a security restricted area, from other security restricted areas of an airport;
- (14) ‘background check’ means a verifiable check of a person’s identity, including any criminal history, as part of the assessment of an individual’s suitability for unescorted access to security restricted areas;
- (15) ‘transfer passengers, baggage or cargo’ means passengers, baggage or cargo departing on an aircraft other than that on which they arrived;
- (16) ‘transit passengers, baggage or cargo’ means passengers, baggage or cargo departing on the same aircraft as that on which they arrived;
- (17) ‘potentially disruptive passenger’ means a passenger who is either a deportee, a person deemed to be inadmissible for immigration reasons or a person in lawful custody;
- (18) ‘cabin baggage’ means baggage intended for carriage in the cabin of an aircraft;

¹⁸ EL would like to have a more open definition.

- (19) 'hold baggage' means baggage intended for carriage in the hold of an aircraft;
- (20) 'accompanied hold baggage' means baggage accepted for carriage in the hold of an aircraft on which the passenger who checked it in is on board; ¹⁹
- (21) 'air carrier mail' means mail whose origin and destination are both an air carrier;
- (22) 'air carrier materials' means materials either whose origin and destination are both an air carrier or that are used by an air carrier;
- (23) 'cargo' means any property intended for carriage on an aircraft other than baggage, air carrier mail and air carrier materials, and in-flight supplies; ²⁰
- (24) 'regulated agent' means an air carrier, agent, freight forwarder or any other entity who **ensures** the security controls in accordance with this Regulation in respect of cargo;
- (25) 'known consignor' means a consignor who originates cargo and whose procedures meet common security rules and standards sufficient to allow carriage of that cargo on any aircraft;
- (26) 'account consignor' means a consignor who originates cargo and whose procedures meet common security rules and standards sufficient to allow carriage of that cargo on all-cargo aircraft;

¹⁹ UK suggested adding a definition of "unaccompanied hold baggage". According to CION, this is however already covered by paragraph 5.3.1, second sentence, of the Annex.

²⁰ SE requested using the same definition as in Annex 17, but indicated that it will look at it again.

- (27) 'aircraft security check' means an inspection of those parts of the interior of the aircraft to which passengers may have had access, together with an inspection of the hold of the aircraft in order to detect prohibited articles and unlawful interferences with the aircraft;
- (28) 'aircraft security search' means an inspection of the interior and accessible exterior of the aircraft in order to detect prohibited articles and unlawful interferences with the aircraft;
- (29) 'in-flight security officer' means a person who is employed by a Member State to travel on an aircraft of the air carrier licensed by it with the purpose of protecting that aircraft and its occupants against acts of unlawful interference;

[²¹]

²¹ FR suggested the following additional definition, which IE can accept:
"entity" means a person, organization or enterprise other than operators referred to in Article 3(3), undertaking security controls or otherwise contributing to the security of an airport.'

The following additional definition, which originates from the draft Regulation on passengers with reduced mobility (2005/0007(COD)), was also proposed:

"managing body of the airport" means a body which notably has as its objective under national legislation the administration and management of the airport infrastructures, and the coordination and control of the activities of the different operators present in the airport or airport system concerned.'

HU suggested inserting the following additional definition: *"civil aviation" means any air operation, excluding operations carried out by state aircraft referred to in Article 3 of the 1944 Chicago Convention on International Civil Aviation'*

DE would like to have a definition of 'airport operator'.

RO suggested inserting a definition of 'mail', because there are still many companies which provide only mail delivery service. Since special security controls apply to mail, and since excluding 'mail' from the Regulation might give a negative signal to the public - one could think that no security controls are being applied to 'mail' - a definition of mail would be appropriate.

RO also suggested inserting a definition of 'unruly passengers', since security controls should also be directed to them; see also text suggestions by this delegation at points 4.3 and 10(2) in the Annex.

Article 4

Common basic standards

1. The common **basic** standards for safeguarding civil aviation against acts of unlawful interference shall be as laid down in the Annex.
2. ²² Detailed measures and procedures for the implementation of the common **basic** standards referred to in paragraph 1 shall be laid down in accordance with the procedure referred to in Article 16(2).

These measures shall, in particular, address:

- a) methods of screening, access control and other security ~~measures~~ **controls**;
- b) methods of performing aircraft checks and aircraft searches;
- c) prohibited articles;
- d) performance criteria and acceptance tests for equipment;
- e) staff recruitment and training requirements;
- f) the definition of critical parts of security restricted areas;
- g) the obligations of, and the validation procedures for, regulated agents, known consignors and account consignors;
- h) categories of persons, goods and aircraft that for objective reasons shall be subject to special security procedures or shall be exempted from screening, access control or other security controls. ²³

²² FR and FI have a special scrutiny reserve on this Article, since they would like to avoid that too 'heavy' procedures be imposed upon them.

²³ DE would like to delete this subparagraph.

By way of derogation from the common basic standards referred to in paragraph 1, the measures and procedures may also address screening, access control or other security controls that provide an adequate level of protection at airports, or demarcated areas thereof. Such alternative measures shall be justified by reasons relating to the size of the aircraft, the nature of the operation and/or the frequency of operations at the airports concerned.²⁴

²⁴ In respect of this last subparagraph of Article 4.2, DE, DK, ES, FR, IE, LI and NL would like to maintain the text of Article 4.3 of Regulation 2320/2002, reading as follows (DE suggested renumbering it as new paragraph 4.3, giving current paragraph 4.3 the number 4.4):

'The appropriate authority of a Member State may, on the basis of a local risk assessment, and where the application of the security measures specified in the Annex to this Regulation may be disproportionate, or where they can not be implemented for objective practical reasons, adopt national security measures to provide an adequate level of protection, at airports:

(a) with a yearly average of 2 commercial flights per day; or

(b) with only general aviation flights; or

(c) with commercial activity limited to aircraft with less than 10 tonnes of Maximum Take Off Weight (MTOW) or less than 20 seats,

taking into account the particularities of such small airports.

The Member State concerned shall inform the Commission of these measures.'

- Alternatively, FR suggested using the following text:

'The appropriate authority of a Member State may, on the basis of a local risk assessment, and where the application of the security measures specified in the Annex to this Regulation may be disproportionate or where they cannot be implemented for objective practical reasons, adopt national security measures to provide an adequate level of protection for airports, operators or entities. Such alternative measures shall be justified by reasons relating to the size of the aircrafts, the nature of the operations and/or the frequency of operations at the airports concerned. The Member States shall inform the Commission of these measures.'

- CION asked to maintain the text as in its proposal, and offered to make the following 'non-declaration' in respect of small airports:

'The Commission recognises that Member States seek to have assurances as regards the existing derogations contained in Article 4(3) of Regulation (EC) 2320/2002, as amended by Regulation (EC) 849/2004, on the date of coming-into-force of the legislative proposal. It is the intention of the Commission to continue and to allow the possibility of these derogations under the new framework Regulation, but that the criteria would be laid down in an implementing act.

To this end the Commission gives a commitment that it will bring forward a legislative proposal for adoption at the first meeting of the Regulatory Committee that will be created by the new framework Regulation in order to continue to allow these derogations.

In particular, the proposal will allow for the continuation of the current approach permitting Member States to adopt national security measures, on the basis of local risk assessments.'

3. Member States shall ensure the application of the common basic standards referred to in paragraph 1. **Where they have reason to believe that the level of security has been compromised, Member States shall ensure that appropriate and prompt action is taken to rectify the security breach and ensure the continuing security of civil aviation.**²⁵

*Article 4a*²⁶

Weapons carried on board aircraft

1. **Weapons shall not be carried in the cabin of an aircraft, unless:**
 - a. **an authorisation has been given by the State granting the operating licence to the air carrier; and**
 - b. **approval has been given by the State of arrival and, where applicable, by any State where intermediate stops are made**²⁷.
2. **Paragraph 1 shall also apply to in-flight security officers if they carry weapons.**

²⁵ Addition inserted on suggestion by UK. IE agreed in principle, but suggested rewording as follows:

"Where there is reason to believe that the application of the common basic standards has been compromised, the Member State concerned shall ensure that appropriate and prompt action is taken to ensure the continuing security of civil aviation."

²⁶ New Article suggested by CION, which should be read together with Chapter 10 of the Annex. All Member States have a scrutiny reserve. First reactions were mixed: some (BE, LU, PT, FI) took a positive view, others (DK, FR) questioned the added value of this Article.

²⁷ HU felt that approval should also be given by States that are overflown. In the same line, IE requested rewording this subparagraph as follows: *'approval has been given by the State of arrival and, where applicable, by any State **which is overflown** or where intermediate stops are made'*. IE referred in this context to national legislation, in particular the 'Air Navigation (Carriage of Munitions of War, Weapons and Dangerous Goods) Order 1973 (SI 224/1973)'.

More stringent measures applied by Member States

1. Member States may apply more stringent measures than the common basic standards as laid down in Article 4. In doing so, they shall act on the basis of a risk assessment and in compliance with Community law. More stringent measures shall be relevant, objective, non-discriminatory and proportional to the risk that is being addressed.

Member States shall **inform** ~~notify~~ the Commission of such measures as soon as possible after their application. **Upon reception of such information, the Commission shall transmit this information to the other Member States** ²⁹.

Member States are not required to inform the Commission if the measures **concerned** are limited to a given flight on a specific date.

2. [Deleted, as well as paragraph 3 ³⁰]

²⁸ DE has a scrutiny reserve on this Article.

²⁹ CION has a scrutiny reserve on this sentence.

³⁰ CION has a scrutiny reserve on the deletion of paragraphs 2 and 3.

Article 6

Security measures required by third countries

1. Without prejudice to any bilateral agreements to which the Community is a party, a Member State shall **inform** ~~notify~~ the Commission of measures required by a third country if they differ from the common basic standards as laid down in Article 4 in respect of flights from an airport in a Member State to, or over, that third country.
2. At the request of the Member State concerned or on its own initiative, the Commission shall examine the application of any measures notified under paragraph 1 and may, in accordance with the procedure referred to in Article 16(2), draw up an appropriate response to the third country concerned.
3. Paragraphs 1 and 2 shall not apply if:
 - a) the Member State concerned applies the measures concerned in accordance with Article 5; or
 - b) the requirement of the third country is limited to a given flight on a specific date.

Article 7

Appropriate authority

Where, within a single Member State, two or more bodies or entities are involved in aviation security, that Member State shall designate a single authority (hereinafter referred to as “the **appropriate authority**”) to be responsible for the coordination and monitoring of the implementation of the common basic standards referred to in Article 4.

Article 8

[Deleted]

Article 9

National civil aviation security programme

1. Every Member State shall draw up, apply and maintain a national civil aviation security programme.

That programme shall define responsibilities for the implementation of the common basic standards referred to in Article 4 and shall describe the measures required by operators and other entities for this purpose.

2. The **appropriate** authority shall make available in writing on a 'need to know' basis the appropriate parts of its national civil aviation security programme to operators and entities which it deems to have a legitimate interest.

Article 9a [former Article 13]

National quality control programme

1. Every Member State shall draw up, **apply and maintain** ~~and ensure the implementation of~~ a national quality control programme.

That programme shall enable the Member State to check the quality of civil aviation security in order to monitor compliance both with this Regulation and with its national civil aviation security programme.

2. The specifications for the national quality control programme shall be adopted in accordance with the procedure referred to in Article 16(2).

The programme shall allow for the swift detection and correction of deficiencies. It shall also provide that all airports, operators and other entities responsible for the application of security standards that are located in the territory of the Member State concerned shall be regularly monitored directly by, or under the supervision of, the national authority.

Article 10

Airport security programme

1. Every airport operator shall draw up, apply and maintain an airport security programme.
That programme shall describe the methods and procedures which are to be followed by the airport operator in order to comply both with this Regulation and with the national civil aviation security programme of the Member State in which the airport is located.
The programme shall **include an internal quality control programme describing** how compliance with these methods and procedures is monitored by the airport operator.
2. The airport security programme shall be submitted to the **appropriate** authority.

Article 11

Air carrier security programme

1. Every air carrier shall draw up, apply and maintain an air carrier security programme.

That programme shall describe the methods and procedures which are to be followed by the air carrier in order to comply both with this Regulation and with the national civil aviation security programme of the Member State from which it provides services.

The programme shall **include an internal quality control programme describing** how compliance with these methods and procedures is monitored by the air carrier.

2. Upon request ³¹, the air carrier security programme shall be submitted to the **appropriate** authority.
3. **Where a Community air carrier security programme has been validated by the appropriate authority of the Member State granting the operating licence, it shall be recognised by all other Member States. This shall not apply for those parts of the programme that relate to more stringent measures that have to be applied in the territory of other Member States.**

³¹ HU and LI requested deletion of '*on request*', here and in Article 12.

Article 12

Security programme of an entity applying aviation security standards

1. Every entity required under the national civil aviation security programme referred to in Article 9 to apply aviation security standards shall draw up, apply and maintain a security programme.

That programme shall describe the methods and procedures which are to be followed by the entity in order to comply with the national civil aviation security programme of the Member State [in which it is located ³²].

The programme shall **include an internal quality control programme describing** how compliance with these methods and procedures is to be monitored by the entity itself.

2. Upon request, the security programme of the entity applying aviation security standards shall be submitted to the **appropriate** authority.

[³³]

Article 13

[renumbered as Article 9a]

³² IE prefers putting '*in which it operates*' in order to ensure that the phrase in brackets is not taken to mean the Member State in which the company is registered.

³³ IE recommends to add a paragraph so that it is made clear that 'known consignors' and 'account customers' are not required to draw up, apply and maintain a security programme. The following text is proposed:-
'Member States are not required to apply this Article to known consignors or account consignors'.

Article 14

Commission inspections

1. The Commission, acting in cooperation with the **appropriate** authority of the Member State concerned, shall conduct inspections -including inspections of airports, operators and entities applying aviation security standards- in order to monitor the application by Member States of this Regulation **and, as appropriate, to identify weak points in aviation security**³⁴. For this purpose, the **appropriate** authority shall inform the Commission in writing of all airports in its territory serving civil aviation other than those covered by the third subparagraph of Article 4(2).³⁵

The procedures **and the methodology**³⁶ for conducting Commission inspections shall be adopted in accordance with the procedure referred to in Article 16(2).

2. Commission inspections of airports, operators and other entities applying aviation security standards shall be unannounced.
3. Each Commission inspection report shall be communicated to the **appropriate** authority of the Member State concerned, which shall, in its answer, set out the measures taken to remedy any identified deficiencies.

The report, together with the answer of the **appropriate** authority, shall subsequently be communicated to the **appropriate** authorities of all other Member States.

³⁴ IE would prefer to delete the last words in bold.

³⁵ DE, referring to Article 7(3), third sentence of Regulation 2320/2002, would like the following sentence to be added: *'The Commission shall in good time before an inspection inform the Member State concerned thereof.'* See however recital 14, where it is said that *'the Commission could conduct inspections, including unannounced inspections'*.

³⁶ CION has a reserve on this addition.

*Article 15*³⁷

Dissemination of information

The following documents shall be regarded as “EU classified documents” for the purposes of Decision 2001/844/EC, ECSC, Euratom, and shall not be placed in the public domain:

- a) measures and procedures as referred to in Article 4(2), if containing sensitive security information;
- b) Commission inspection reports and answers of national authorities, as referred to in Article 14(3).

Article 16

Committee

- 1. The Commission shall be assisted by a committee (hereinafter referred to as “the Committee”).
- 2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period referred to in Article 5(6) of Decision 1999/468/EC shall be set at one month.

- 3. The Committee shall adopt its rules of procedure.

³⁷ Scrutiny reserve by SE on this Article.

[*Article 17*

Third countries

Agreements recognising that the security standards applied in a third country are equivalent to Community standards may be concluded between the Community and a third country in accordance with Article 300 of the Treaty.] ³⁸

Article 18

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 19

Repeal

Regulation (EC) No 2320/2002 is repealed.

³⁸ DK and NL considered that the concept of 'equivalence to Community standards' could be confusing, given the possibilities offered by Article 5. In the light of the explanations by CION, FR keeps a reserve on this Article. The question was raised whether the Article could be deleted altogether. CION has a scrutiny reserve on such possible deletion.

Article 20

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [two years], with the exception of Articles 4(2), 13(2), 14(1) and 16, which shall apply from the date of entry into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

COMMON BASIC STANDARDS FOR SAFEGUARDING CIVIL AVIATION AGAINST ACTS
OF UNLAWFUL INTERFERENCE (ARTICLE 4)

1. AIRPORT SECURITY

1.1 Airport planning requirements

1. When designing and constructing new airport facilities or altering existing airport facilities, requirements for the implementation of the common basic standards referred to in this Annex and implementing acts shall be fully taken into account.
2. At airports the following areas shall be established:
 - a) landside;
 - b) airside;
 - c) security restricted areas; and
 - d) critical parts of security restricted areas.

1.2 Access control

1. Access to airside shall be restricted in order to **prevent** unauthorised persons and vehicles from entering these areas.
2. Access to security restricted areas shall be controlled in order to ensure that no unauthorised persons and vehicles enter these areas.
3. Persons and vehicles may only be granted access to airside and security restricted areas if they fulfil the required security conditions.

4. [Before being issued with a crew identification card,³⁹] a flight crew member of a Community air carrier shall have successfully completed a background check carried out by the licensing Member State.⁴⁰
5. Before being issued with an airport identification card that authorises access to security restricted areas, a staff member⁴¹ shall have successfully completed a background check carried out by the Member State in which the airport is located.⁴² This shall not apply to flight crew members that have been issued with crew identification cards as referred to in paragraph 4⁴³.

1.3 Screening of persons other than passengers and items carried

1. Persons other than passengers, together with items carried, shall be screened on a continuous random basis upon entering security restricted areas in order to prevent prohibited articles from being introduced into these areas.
2. All persons other than passengers, together with items carried, shall be screened upon entering critical parts of security restricted areas in order to prevent prohibited articles from being introduced into these parts.

³⁹ DE suggested deleting these words.

⁴⁰ DE suggested rephrasing the text as follows: *'Flight crew members of a Community air carrier must have successfully completed a background check'*.

⁴¹ HU suggested using the word *'person'* instead of *'staff member'*. According to HU, *'staff member'* is not appropriate since it does not cover all persons entering a security restricted area, such as national police officers, customs, border guards, who may enter the critical part of a security restricted area to fulfil their tasks (with an airport identification card), but are not considered to be a *'staff member'* since they are not employed by the airport operators.

⁴² IE recommends that Member States should have discretion and an entitlement to recognise a background check completed by another Member State. Flexibility is desirable for persons on temporary assignments at airports and to facilitate the movement of aircraft engineers etc within the EU. IE suggests the following wording for an additional paragraph:

'By way of derogation from the preceding paragraph, a Member State may accept a background check carried out by another Member State for the purposes of this Regulation'.

⁴³ NL hesitated regarding the mutual recognition of such identification cards implied here. DE suggested the following alternative text, for consistency with proposed amendment to 1.2.4: *'This shall not apply to flight crew members who have already successfully completed a background check as referred to in paragraph 4.'*

1.4 Examination of vehicles

Vehicles entering a security restricted area shall be **examined** in order to prevent prohibited articles from being introduced into these areas.

1.5 Surveillance, patrols and other physical controls

There shall be surveillance, patrols and other physical controls in the security restricted areas and all adjacent areas with public access, in order to identify suspicious behaviour of persons, to identify vulnerabilities which could be exploited to carry out an act of unlawful interference and to deter persons from such acts.

2. DEMARCATED AREAS OF AIRPORTS

Aircraft parked in demarcated areas of airports to which alternative measures referred to in the third subparagraph of Article 4(2) apply, shall be separated from aircraft to which the common basic standards as laid down in the Annex apply in full, in order to ensure that security standards applied to aircraft, passengers, baggage and cargo of the latter are not compromised.

3. AIRCRAFT SECURITY

1. If passengers disembark an aircraft, the aircraft shall be subjected to an aircraft check before departure in order to ensure that no prohibited articles are present on board. ⁴⁴
2. ⁴⁵ Every aircraft shall be protected from unauthorised interference.
3. Every aircraft that has not been protected from unauthorised interference shall be subjected to an aircraft search.

⁴⁴ UK wished to exclude technical stops.

⁴⁵ UK, supported by FR, suggested moving paragraphs 2 and 3 to implementing legislation.

4. PASSENGERS AND CABIN BAGGAGE

4.1 Screening of passengers and cabin baggage

1. All originating, transfer and transit passengers and their cabin baggage shall be screened in order to prevent prohibited articles from being introduced into security restricted areas and on board an aircraft.
2. Transfer passengers and their cabin baggage may be exempted from screening, if:
 - a) they arrive from a Member State, unless the Commission or that Member State has provided information that those passengers and their cabin baggage cannot be considered as having been screened to the common standards; or
 - b) they arrive from a third country with which the Community has an agreement as referred to in Article 17 that recognises that these passengers and their cabin baggage have been screened to security standards equivalent to Community standards.
3. Transit passengers and their cabin baggage may be exempted from screening, if:
 - a) they remain on board the aircraft ⁴⁶; or
 - b) they do not mix with screened departing passengers other than those who board the same aircraft; or

⁴⁶ RO suggested deleting paragraph a), because it is self-evident, as well as paragraph b), because it induces the idea that, in transit, certain screened departing passengers could be embarked without knowing their security status. No authority could take responsibility for something like this to happen.

- c) they arrive from a Member State, unless the Commission or that Member State has provided information that those passengers and their cabin baggage cannot be considered as having been screened to the common standards; or
- d) they arrive from a third country with which the Community has an agreement as referred to in Article 17 that recognises that these passengers and their cabin baggage have been screened to security standards equivalent to Community standards.

4.2 Protection of passengers and cabin baggage

1. Passengers and their cabin baggage shall be protected from unauthorised interference from the point at which they are screened until departure of the aircraft on which they are carried.
2. Screened departing passengers shall not mix with arriving passengers, unless:
 - a) the passengers arrive from a Member State, provided that the Commission or that Member State has not provided information that those arriving passengers and their cabin baggage cannot be considered as having been screened to the common standards; or
 - b) the passengers arrive from a third country with which the Community has an agreement as referred to in Article 17 that recognises that these passengers have been screened to security standards equivalent to Community standards.

4.3 Potentially disruptive passengers⁴⁷

Before departure potentially disruptive passengers shall be subjected to appropriate security measures.

⁴⁷ RO suggested adding after '*Potentially disruptive passengers*' (in title and in text): '*/ unruly passengers*'.

5. HOLD BAGGAGE

5.1 Screening of hold baggage

1. All hold baggage shall be screened prior to being loaded onto an aircraft. ⁴⁸
2. Transfer hold baggage may be exempted from screening, if:
 - a) it arrives from a Member State, unless the Commission or that Member State has provided information that this hold baggage cannot be considered as having been screened to the common standards; or
 - b) it arrives from a third country with which the Community has an agreement as referred to in Article 17 that recognises that this hold baggage has been screened ⁴⁹ to security standards equivalent to Community standards.
3. Transit hold baggage may be exempted from screening if it remains on board the aircraft.

5.2 Protection of hold baggage

Hold baggage to be carried on an aircraft shall be protected from unauthorised interference from the point at which it is screened [or accepted into the care of the air carrier, whichever is earlier ⁵⁰], until the departure of the aircraft on which it is to be carried.

⁴⁸ FR wished to add "to prevent prohibited articles etc." to align with the wording of Article 4.1. CION considered this would create an unrealistic expectation of the efficiency of screening equipment used for hold baggage.

⁴⁹ PL suggested adding the words "and protected". PL thinks that hold baggage screened in a third country should still be adequately protected.

⁵⁰ DE suggested deleting the words between brackets, since this paragraph already provides for protection of hold baggage once it has been accepted into the care of the air carrier. It is not clear what would be gained in terms of safety by having it checked again subsequently. Only protection after screening needs to be specified, according to DE.

5.3 Baggage reconciliation ⁵¹

1. Each item of hold baggage shall be identified as accompanied or unaccompanied. The hold baggage of a passenger who has checked in for a flight but who is not on board the aircraft shall be identified as unaccompanied.
2. Unaccompanied hold baggage shall not be transported, unless that baggage has been either separated due to factors beyond the passenger's control or subjected to additional security controls.

6. CARGO ^{52 53}

6.1 Security controls for cargo

1. All cargo shall be subjected to security controls prior to being loaded on an aircraft. An air carrier shall not accept cargo for carriage on an aircraft unless the application of security controls is confirmed and accounted for by a regulated agent, a known consignor or an account consignor.
2. Transfer cargo shall be subjected to security controls as detailed in an implementing act. ⁵⁴
3. Transit cargo may be exempted from security controls if it remains on board the aircraft. ⁵⁵

⁵¹ AT wondered whether there should be a derogation for very small numbers of passengers.

⁵² RO suggested adding in this chapter, in the title and in the text, the words '*and mail*' after every word '*cargo*'.

⁵³ Points 6, 7, 8, 9, 11 and 12 of this Annex have yet to be examined.

⁵⁴ DE suggested the following alternative text for this paragraph: '*Transshipment cargo may be exempted from security controls if it is protected from unauthorised interference at the point of transit.*'

⁵⁵ DK wished to add "provided the aircraft is protected from unauthorised interference"; CION felt this was superfluous given point 3.2.

6.2 Protection of cargo

1. Cargo to be carried on an aircraft shall be protected from unauthorised interference from the point at which security controls are applied until the departure of the aircraft on which it is to be carried.
2. Cargo that is not adequately protected from unauthorised interference after security controls have been applied shall be screened.

7. AIR CARRIER MAIL AND AIR CARRIER MATERIALS

Air carrier mail and air carrier materials shall be subjected to security controls and thereafter protected until loaded onto the aircraft in order to prevent prohibited articles from being introduced on board an aircraft.

8. IN-FLIGHT SUPPLIES

In-flight supplies, including catering, intended for carriage or use on board an aircraft shall be subjected to security controls and thereafter protected until loaded onto the aircraft in order to prevent prohibited articles from being introduced on board an aircraft.

9. AIRPORT SUPPLIES

Supplies intended to be sold or used in security restricted areas of airports, including supplies for duty-free shops and restaurants, shall be subjected to security controls in order to prevent prohibited articles from being introduced into these areas.

10. IN-FLIGHT SECURITY MEASURES ⁵⁶

1. Without prejudice to the applicable aviation safety rules, unauthorised persons shall be prevented from entering the flight crew compartment during a flight.
2. Without prejudice to the applicable aviation safety rules, potentially disruptive passengers shall be subjected to appropriate security measures during a flight.
3. ⁵⁷ If, during a flight, a passenger seeks to commit an act of unlawful interference, appropriate security measures shall be taken to prevent such an act.
4. Weapons shall not be carried on board an aircraft, unless ~~an authorisation has been given by the Member State concerned and~~ the required security conditions have been fulfilled. ⁵⁸

⁵⁶ A number of delegations (DK, DE, FR, IE, EL, IT, NL, SI and SK in particular) had significant (legal) problems with this chapter. Most concern focussed on paragraphs 4 and 5, which some delegations feel infringe on national areas of competence. Of particular difficulty is the issue of applicable law (authorisation by "the Member State concerned" in paragraph 4 and the licensing Member State in paragraph 5) where the text proposed seems to run counter to the territorial principle followed by many Member States.

At the meeting, CION presented new suggestions to address these concerns, see notably the new recital 7a and the new Article 4a. Also, on suggestion by CION, some text has been deleted in this chapter (indicated by ~~striketrough~~).

The UK Presidency concluded by suggesting that in order for this chapter to be acceptable to delegations, the wording should be closer aligned to that of Annex 17 to the Chicago Convention. The Presidency also suggested to separate the provisions on *in-flight security officers* from the rest of the text. CION indicated that it was willing to cooperate in order to find a solution that could be acceptable to all, but underlined that it was important to keep this chapter 10 in place.

⁵⁷ UK, supported by IE, suggested the deletion of this paragraph.

⁵⁸ DK presented the following alternative drafting: *'Weapons shall not be permitted in aircraft flying to, from or above a Member State unless authorization has been given by that Member State and the required security conditions have been fulfilled.'*

5. In-flight security officers may only be deployed on board an aircraft if the required security conditions and training have been fulfilled. ~~Member States retain the right not to authorise the use of in-flight security officers on flights of air carriers licensed by them.~~⁵⁹
6. Paragraphs 1 to 5 shall apply only to Community air carriers.

[⁶⁰]

⁵⁹ DK suggestion for alternative drafting of the second sentence: '*A Member State retains the right not to authorize the use of in-flight security officers on board aircraft flying to, from or above that Member State.*' NB: See the new recital 7a, which also addresses this issue.

⁶⁰ RO suggested rephrasing this chapter as follows:

10. IN-FLIGHT SECURITY MEASURES

1. *Without prejudice to the applicable aviation safety rules, **during a flight** unauthorised persons shall be prevented from entering the flight crew compartment **of an aircraft**.*
2. *Without prejudice to the applicable aviation safety rules, potentially disruptive/**unruly passengers** shall be subjected to appropriate security measures during a flight.*
3. ***Member States may, according to the threat assessment of the competent authorities within their administrations, decide to deploy in-flight security officers in order to prevent an act of unlawful interference during a flight.***
4. *Weapons shall not be carried **by in-flight security officers** on board an aircraft, unless an authorisation has been given by the Member State **of the airport of destination** and the required security conditions have been fulfilled.*
5. *In-flight security officers may only be deployed on board an aircraft if the required security conditions and training have been fulfilled.*
6. *Paragraphs 1 to 5 shall apply only to Community air carriers.*

RO provided the following explanatory statement: '*The current text induces (especially from text of paragraph 3) the idea that using in-flight security officers is the regular rule and not an exceptional one. The proposed changes to the text are in line with the ICAO proposal for a new amendment to Annex 17 (see ICAO State letter AS 8/2.1-05/63, proposed standards no. 4.7.5, 4.7.6 and 4.7.8), which is to become the Amendment no. 11. Among aviation security community is wide spread the idea that using in-flight officers on board aircraft poses, in itself, a serious danger to the safety of that aircraft. Consequently, the use of in-flight security officers might be considered by a State only when the outcome of a threat assessment, made by that State, indicates a specific threat.*'

11. STAFF RECRUITMENT AND TRAINING

1. Persons implementing, or responsible for implementing, screening, access control or other security controls shall be recruited, trained and certified so as to ensure that they are suitable for employment and competent to undertake the duties to which they will be assigned.⁶¹
2. Persons other than passengers requiring access to security restricted areas shall, before either an airport identification card or crew identification card is issued, receive security training.
3. Training as referred to in paragraphs 1 and 2 shall be conducted on initial and recurrent basis.
4. Instructors engaged in the training of the persons mentioned in paragraphs 1 and 2 shall be qualified.

12. SECURITY EQUIPMENT

Equipment used for screening, access control and other security controls shall be capable to perform the security controls concerned.

⁶¹ RO suggested the following alternative text for this paragraph:

*'Persons implementing, or responsible for implementing, screening, access control or other security controls shall be recruited and trained so as to ensure that they are suitable for employment and competent to undertake the duties to which they will be assigned. **In addition security screening staff shall be approved or certified by the national appropriate authority.**'*

RO provided the following explanatory statement: *'According to Regulation 2320/2002 only security screening staff must be certified. The certification process of this category of staff is very complex and difficult. Requiring that all persons implementing or responsible for implementing security controls must be certified would put an additional burden on national appropriate authorities concerning the number of people involved, human and material resources allocated and complexity of the certifying activities. This might jeopardise the most important process – certifying of security screening staff.'*