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

**2013 ANNUAL REPORT ON THE IMPLEMENTATION OF REGULATION (EC) N°
300/2008 ON COMMON RULES IN THE FIELD OF CIVIL AVIATION SECURITY**

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2013 ANNUAL REPORT ON THE IMPLEMENTATION OF REGULATION (EC) N° 300/2008 ON COMMON RULES IN THE FIELD OF CIVIL AVIATION SECURITY

This report covers the period 1 January – 31 December 2013

INTRODUCTION

2013 can best be described as a year of consolidation of aviation security provisions and increased efforts to implement upcoming new rules for air cargo and the carriage of liquids in cabin baggage. The only remaining transitional period for the aviation security measures introduced by Regulation (EC) 300/2008 ended in April. This concerned the requirement for known consignors of air cargo and air mail to be approved by the appropriate authorities instead of a simple designation by an affiliated regulated agent. Commission inspections therefore put emphasis on verifying compliance with these new requirements.

Besides security alerts in August triggered by the United States, the year did not require any short term enhancements of aviation security controls in Europe. These security alerts also confirmed the need to improve cooperation between EU Member States and between States and Institutions. The High Level Report on the Strengthening of Air Cargo Security from 2010 already identified this need but further work in this area remains to be undertaken.

A key EU aviation security project is the phasing in of technology-based controls of liquids carried by passengers in their cabin baggage. Airport operators and security equipment manufacturers have enhanced cooperation throughout 2013 to best prepare for a partial lifting of the liquids restrictions as of 31 January 2014. The Commission is supporting this endeavor and other projects strengthening the detection performance of airport equipment and security measures with a Technology Roadmap first presented to stakeholders in 2013 and since continuously updated.

As regards EU inbound cargo and mail, another important EU aviation security project, the implementation date of 1 July 2014 is approaching. Throughout the second half of 2013 the Commission strengthened cooperation with Member States and industry to ensure a smooth implementation. Several efforts are under way to explain the enhanced EU system to third countries and to international organisations (European Civil Aviation Conference (ECAC), International Civil Aviation Organisation (ICAO)).

Throughout 2013 the Commission, together with Member States, continued its work on EU risk assessments in different areas by extending and adapting the methodology used for air cargo to other security areas with its first application focusing on passenger related risks.

On the international scene the Commission participated effectively in all relevant ICAO events where it increased the EU's visibility and influence as regards aviation security policy internationally. The Commission is also fully engaged with key third country partners, and during 2013 organised and participated in several bilateral and multi-lateral meetings.

Monitoring the implementation of aviation security measures by Member States and relevant operators through EU inspections is another area in which close cooperation between Member States and Commission took place throughout the year. Compliance levels remained stable and did not require any suspension of the EU's One Stop Security System in 2013.

PART ONE

THE INSPECTIONS

1. GENERAL

The Commission is required, under the terms of Regulation (EC) 300/2008, to conduct inspections of Member States' aviation security administrations (the 'appropriate authorities') and of EU airports. Switzerland is also covered by the Union programme, while Norway and Iceland are inspected against parallel provisions by the EFTA Surveillance Authority (ESA). To carry out its inspection work, the Commission has a team of 10 full and part time aviation security inspectors. This inspection work is supported by a pool of national auditors nominated by Member States, Iceland, Norway and Switzerland who qualify for participation in Commission inspections through a training provided by the Commission. 72 of these national auditors took part in the 2013 inspections. A chart summarising all Commission and ESA compliance monitoring activities to date is attached in Annex 1.

2. INSPECTIONS OF NATIONAL APPROPRIATE AUTHORITIES

During 2013, the Commission completed the third cycle of inspections of appropriate authorities and started with the fourth cycle. In total, seven inspections were carried out during 2013 of which four under the new cycle. For most Member States, these inspections showed significant improvements from the past. The deficiencies most commonly found in 2013 were similar to those identified in inspections in 2012 and mainly related to minor discrepancies in the full alignment of the National Aviation Security Programmes and the National Quality Control Programmes to the legal framework of Regulation (EC) 300/2008.

As regards the implementation of aviation security measures, most Member States inspected had the capacity to detect and correct failures in the core security areas swiftly. However, some Member States did not sufficiently monitor known suppliers of airport and in-flight supplies due to a lack of resources resulting from the pressure on public budgets and the high number of entities concerned. The regular monitoring of foreign air carriers also required improvement in a limited number of Member States inspected. The rectification process when deficiencies were identified was mostly adequate and sanctions were available to all Member States.

3. INITIAL INSPECTIONS AT AIRPORTS

Twenty-six initial inspections of airports were conducted during 2013, an increase by three inspections in comparison to 2012, mainly due to the fact that more cargo inspections were conducted and a number of smaller airports were covered, both kinds of inspections requiring a lower number of inspectors. All chapters were covered (although not during each inspection). The overall percentage of core measures found to be in compliance in 2013 was 80%; roughly the same as in previous years.

The deficiencies found in the area of traditional measures¹ mainly tended to stem, like in the past, from human factor issues. These mainly related to the quality of staff screening as well as to certain cargo security requirements. In particular, maintaining a high quality of hand searches when screening staff continues to be a challenge. In the area of cargo, most non-compliances concerned

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

the requirement to always apply the most adequate method of screening taking into account the nature of the consignment. These human factor issues should be addressed through increased training and supervision.

Furthermore, certain additional measures introduced under the regulatory framework of Regulation (EC) 300/2008 had not yet been satisfactorily implemented at the airports inspected in 2013. Non-compliances arose in relation to methods and standards of security controls of high-risk cargo and mail as well as of airport supplies, in-flight supplies and training. Certain requirements in the field of aircraft security also require attention in national quality control. Member States' appropriate authorities should actively pursue the implementation of these newer provisions. In addition, revisions to the legislation to improve clarity and consistency in some of these areas were prepared during 2013 and are expected to be adopted in the course of 2014. These should improve compliance levels significantly.

4. FOLLOW-UP INSPECTIONS

In accordance with Article 13 of Commission Regulation (EU) 72/2010², the Commission routinely carries out a limited number of follow-up inspections. A further visit will be scheduled where several serious deficiencies have been identified during the initial inspection, but also on a random basis to verify the accuracy of national compliance monitoring activities and reporting. Five such activities were carried out during 2013 and mostly confirmed the adequate rectification of identified deficiencies.

5. ASSESSMENTS

In course of the year, an assessment of a Croatian airport was carried out prior to accession of Croatia to the EU. Furthermore, an assessment of one US airport was conducted in the framework of the Working Arrangement with the USA.

Further assessments were carried out of one Canadian airport as well as of selected airports in Greenland, on the Faroe Islands, Guernsey, Jersey and on the Isle of Man in the context of an envisaged inclusion of certain airports located in those countries³ into the Union's One Stop Security system.

6. OPEN FILES, ARTICLE 15 CASES AND LEGAL PROCEEDINGS

Inspection files remain open until the Commission is satisfied that appropriate rectification action has been implemented. 45 files (32 airport and 13 appropriate authorities) were closed during 2013. In all, inspection files related to 9 appropriate authorities and 20 airports remained open at the end of the year.

If deficiencies found at an airport are considered to be so serious as to present a significant threat to the overall level of civil aviation security in the Union, the Commission will activate Article 15 of Commission Regulation (EU) 72/2010. This means that all other appropriate authorities are alerted to the situation and additional measures would have to be considered in respect of flights from the airport in question. No Article 15 case had to be initiated in 2013.

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

³ Realised for Greenland and Faroe Islands in the second semester 2013

The other possible enforcement measure particularly in the most serious cases, or in cases of prolonged non-rectification or reoccurrence of deficiencies, is to open infringement proceedings. In 2013, one infringement proceeding was initiated following the inspection of a national administration. The concerned Member State failed to ensure the availability of a sufficient number of auditors for performing regular compliance monitoring activities and failed to inform the Commission of the alternative security measures applied at small airports that derogate from the common basic standards. This case was still in progress at the end of 2013.

7. MEMBER STATES' OWN EVALUATIONS

Point 18.1 of Annex II to Regulation 300/2008, as amended by Commission Regulation (EU) 18/2010⁴, obliges Member States to submit an annual report to the Commission by the end of March each year, covering the results of their national compliance monitoring for the period January to December of the preceding year. The Member States' contributions for the reporting period January to December 2012 were submitted on time and all followed the Commission template. The main deficiencies identified related to the fact that some Member States still failed to cover all security measures, did not carry out sufficient covert testing and could further strengthen their follow-up activities and enforcement regime. Furthermore, a lack of national quality control of known suppliers was identified.

PART TWO

THE LEGISLATION AND SUPPLEMENTARY TOOLS

1. LEGISLATION

Recent incidents⁵ and constant risk assessment confirm that civil aviation continues to be targeted in new and inventive ways, which should be addressed with adequate and risk based protection measures. The Commission and Member States are therefore constantly adjusting the mitigation measures in order to achieve the highest level of security while minimising adverse effects on operations.

New aviation security legislative acts adopted in the year 2013 aimed firstly at supplementing and further refining the legal framework under Regulation (EC) 300/2008 and secondly at defining new common basic standards in respect of passenger screening, the phasing out of liquid restrictions in cabin baggage, air cargo security and EU aviation security validation in third countries.

As regards passenger screening, the new rules adopted in early 2013 allow the use of a new, innovative screening method using explosive trace detection equipment in combination with hand-held metal detection equipment for the screening of certain parts of passengers where a hand search can be considered inefficient and/or undesirable such as certain headgear, plaster casts or prosthesis.

On the restrictions in relation to carrying liquids, aerosols and gels (LAGs) as hand luggage on board an aircraft it became clear in the course of the year 2012 that replacing these restrictions with screening by the deadline of 29 April 2013 would not be feasible. This was mainly due to operational difficulties with screening equipment that would have resulted in a significant risk of further inconvenience for air passengers. Legislation to revise the approach by phasing in screening,

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

⁵ the 'underwear-bomber' during Christmas 2009, the Yemen cargo bombs in late 2010, the second 'underwear-bomber' plot in 2012

starting with duty-free LAGs and dietary products by 31 January 2014, was therefore adopted in the first quarter of 2013.

In July 2013 the Commission adopted supplementary rules for the compliance validation of secure supply chains for air cargo originating from outside the EU. These additional rules were part of the Commission's efforts to assist Member States and operators to comply with the July 2014 deadline. By that date, air carriers wishing to carry cargo into the EU from a foreign airport must have their air cargo and mail security operations validated in order to obtain or keep the ACC3 (*Air cargo or mail carrier operating into the Union from a third country airport*) designation. During 2013 Member States established a network of approved EU aviation security validators with the necessary skills and background to perform validations.

A list of all adopted legislation is provided in Annex 2. These acts were finalised during 5 regular meetings of the Regulatory Committee for Civil Aviation Security, 5 meetings of the Stakeholders' Advisory Group on Aviation Security and a number of focussed working group sessions, in which both Member States and industry were involved.

2. UNION DATABASE ON SUPPLY CHAIN SECURITY (UDSCS)

The "EC database of regulated agents and known consignors"⁶ has been the only legal primary tool to be used by regulated agents for consultation when accepting consignments from another regulated agent or from a known consignor since 1 June 2010. Since 1 February 2012, it has additionally been extended to include the list of air carriers authorised to carry cargo and mail into the EU from third country airports. In 2013, this database was legally extended to contain as well data on entities in the secure supply chain in other areas than cargo and mail, as well as the list of EU aviation security validators approved by the Member States. It was therefore renamed "Union database on supply chain security"⁷. It is operated under a Commission framework contract. At the end of 2013, the UDSCS contained approximately 16,500 records of regulated agents, (EU aviation security validated) known consignors and ACC3 entities. Its contractually agreed availability rate of 99.5% was continuously met in 2013 too.

3. EU AIRPORT INSPECTIONS – HANDBOOKS

Regulation (EC) 300/2008 and Commission Regulation (EU) 72/2010 require that compliance monitoring by the Commission services on civil aviation security requirements shall be objective and use a standard methodology.

To contribute to this aim the Commission has drawn up and maintains two comprehensive handbooks with detailed prompts and guidance for EU inspectors in the field. One handbook covers inspections in the field of air cargo security while the other one deals with airport inspections. In March 2013, both handbooks were revised to take account of the latest changes introduced to the implementing rules and to add additional prompts and guidance for inspectors. In order to assist Member States in the implementation of the common basic standards, these handbooks are also made available to national auditors.

⁶ The Commission set up this database, the use of which is mandatory for actors in the supply chain through Regulation (EU) No 185/2010 and Decision C(2010) 774.

⁷ Commission Regulation (EU) No 1116/2013 of 6 November 2013, amending Regulation (EU) No 185/2010, OJ L 299 of 9.11.2013, p.1

PART THREE

TRIALS, STUDIES AND NEW INITIATIVES

1. TRIALS

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

In the course of 2013, trials and evaluations were conducted in Luxemburg, France, the Netherlands and the United Kingdom. These concerned the use of simulation trace detection chambers (cargo and mail), shoe analyser metal detectors, the use of new generation equipment for screening of cabin baggage without having to remove laptops, heavy electrical items and liquids as well as the combined use of hand held metal detectors and explosive trace detection for screening of passengers in specific cases.

2. STUDIES AND REPORTS

End November 2013, the Commission received the final report of a study on passenger differentiation entitled "agenda for the future – screening of passengers and cabin baggage". This study was carried out by the consultant Leigh Fisher contracted by the Commission and mainly focused on different aspects of passenger differentiation such as on the concepts of known travellers, watch lists and risk profiles, and of airport real time assessment. The study analysed those concepts in terms of operational practicability, data exchange mechanisms, legal challenges, data protection and privacy as well as cost benefit. While the study did not make any recommendation on the way forward, it did highlight the numerous difficulties in implementing any kind of identity-based passenger differentiation concept in Europe.

3. NEW INITIATIVES

One of the main on-going rulemaking files in aviation security is the amendment of the EU legislation on the restrictions on the carriage of liquids, gels and aerosols (LAGs). Lifting of these restrictions has been an objective for many years and subject to previous revisions of legislation. In 2012, a detailed study led to the conclusion that the commencement of full liquid screening that was scheduled for April 2013 was not feasible, as the necessary equipment had not started to be deployed at EU airports. The Commission forwarded a report on these conclusions and its proposals for the way forward to the Council and the European Parliament in July 2012.

In reaction, the Regulatory Committee for Civil Aviation Security in late 2012 gave a positive opinion on the Commission proposals to implement a first phase of LAG screening by 31 January 2014 at the latest. This required the screening of duty-free LAGs in Security Tamper Evident Bags (STEBs) and of medicines and baby food for use during the trip. The relevant legislation was adopted in March 2013.

In early 2013, the Commission provided templates to Member States to enable them to report on the state of implementation of the liquids legislation. The exercise showed that the new deadline of 31 January 2014 remained feasible, although some Member States reported delays in placing orders for

the necessary equipment. To aid communication to passengers, the Commission produced an information notice regarding the introduction of the new rules. Subsequently in 2014 the screening of LAGs started as planned without any disruption at passenger security checkpoints reported.

To improve the defence against the threat of person-borne explosives, further amendments to the implementing acts under Regulation (EC) No 300/2008 were prepared in course of the second semester 2013. These proposals served to strengthen the use of dedicated means or methods for detecting explosives, such as the use of explosive trace detection, in passenger screening. The strengthened rules were adopted in early 2014 and shall be effective by 1 September 2015 at the latest.

As mandated in the EU Action Plan on Air Cargo Security⁸, the Commission had extended its action in this area by establishing the regulatory framework for cargo and mail being carried into the Union from Third Countries and an EU aviation security validation regime also applicable in originating airports outside the European Union. Its first phase entered into force on 1 February 2012.

Since that date, air carriers that wish to carry cargo and mail into the Union from third country airports have to be designated as "ACC3"⁹ by the appropriate authority of an EU Member State. To harmonise and ease the related registration and consultation mechanism in the Member States as well as for the Commission, new functionalities on ACC3 were deployed in the (renamed) "Union database on supply chain security" in the last quarter of 2012.

Air carriers that wish to carry cargo and mail into the Union after 1 July 2014 need to be validated by an EU aviation security validator before that date in order to be re-designated as ACC3. Other entities will need to be EU aviation security validated too if they wish to be involved in the related secure Third Country supply chain.

To these aims, detailed checklists for the validation of the related secure supply chain in Third Countries were adopted mid 2013 as a last preparatory step on the legislative side.

To support a sound and harmonised kick-off of related validation activities the Commission organised several working meetings with the Member States, stakeholders and EU aviation security validators in the second half of 2013.

Further close co-operation was pursued with customs authorities as regards the harmonisation of the AEO (Authorised Economic Operator) scheme with the Aviation Security validation regimes for regulated agents and known consignors of cargo and mail. The aim of this exercise is to avoid double validation for economic operators, where their core business within these two regulatory frameworks largely overlaps, and at the same time to identify any possible gaps that may weaken the air cargo security and proposed appropriate measures to close them. Related amendments in EU Customs and aviation security legal acts are envisaged for adoption by early 2014.

Furthermore, cooperation with Customs was agreed on a study on the so-called "Advanced Cargo Information (PRECISE)" covering freight forwarders and traditional air carriers with cargo operations, based on a model developed with the express courier industry.

⁸ Document 16271/1/10, Rev 1, limité, Council of the European Union

⁹ Commission Regulation (EU) No 859/2011 of 25 August 2011, amending Regulation (EU) No 185/2010, OJ L 220 of 26.8.2011, p. 9

PART FOUR

DIALOGUE WITH INTERNATIONAL BODIES AND THIRD COUNTRIES

1. GENERAL

The Commission is fully engaged with international bodies and key third country partners and is regularly represented at international meetings, generally co-ordinating the EU position and often making presentations or submitting papers. Dialogues are also held, as appropriate, with individual third countries on issues of local concern or shared interest. Such contacts enable the EU to both keep abreast of and disseminate good practices as well as to influence global decision making.

2. INTERNATIONAL BODIES

The Commission attends the annual meeting of the ICAO Aviation Security Panel. During its 2013 meeting (8 – 12 April 2013) four papers were presented outlining the views of the EU (two papers providing information on the revision of EU rules on liquids and on cargo respectively, a paper on possible international rules for air cargo security and one paper on measuring the effectiveness of capacity building). These papers were well received.

The EU and ICAO have concluded a Memorandum of Cooperation (MoC) providing for an enhanced framework for cooperation¹⁰. The MoC identifies security as one of the areas in which cooperation shall be established between the Parties and which shall be developed in a specific annex on Aviation Security to the MoC. In March 2013, the EU-ICAO Joint Committee under the MoC took the decision¹¹ to adopt such annex which now forms an integral part of the MoC and in doing so contribute to enhancing security in international aviation and cooperation that will, inter alia, take the form of exchanging relevant security information, posting experts and financing specific security actions.

The Commission undertook efforts in providing information on the EU aviation security validation in the area of cargo and mail being carried into the Union. This was achieved through the participation and active role in several international fora, also under the auspices of ICAO and other international and regional organisations.

The Commission also regularly takes part in meetings of the ECAC Security Forum and its related task forces. Conclusions drawn by each of these groups have subsequently formed the basis of discussions during meetings of the Regulatory Committee for Civil Aviation Security and its associated working groups. Within the framework of a cooperation agreement reached in late 2012, classified information on aviation security was exchanged between ECAC and the Commission.

An additional Memorandum of Understanding was signed late 2013 between the Commission and the EFTA Surveillance Authority (ESA) that carries out aviation security compliance monitoring in Iceland, Liechtenstein and Norway. Within this framework ESA and the Commission started exchanging their respective reports on closed inspections.

Finally, an interface between Eurocontrol's IT platform and the "Union Database on the Supply Chain Security", mentioned above in this report, has been established. This interface shall enable an alert system to inform Member States in time about planes arriving from airports located in Third Countries where the air carrier has not been designated as ACC3.

¹⁰ OJ L 232, 9.9.2011, p. 2 and OJ L 121, 8.5.2012, p.16.

¹¹ OJ L 172, 25.6.2013, p. 49.

3. THIRD COUNTRIES

The Commission actively continued the dialogue with aviation security issues with the United States in a number of fora, in particular the EU-US Transportation Security Cooperation Group (TSCG). The TSCG aims at fostering co-operation in a number of areas of mutual interest and ensure the continued functioning of one-stop security arrangements¹² and of the mutual recognition of the respective air cargo and mail regimes of the EU and the US.

The Commission furthermore intervened on a number of occasions when Member States raised particular concerns about requests made to their air carriers to apply additional security measures for flights to certain third countries. The Commission and the Member States worked together to ensure that the implementation of these measures took consideration of the existing EU aviation security measures to reduce the operational impact. An example is the system of issuing Emergency Amendments used by the US which, in 2013, required air carriers to implement extra measures at short notice and without prior consultation, thus often causing significant operational difficulties.

The Commission also worked closely with Canada with regard to concluding one stop security arrangements for flights between the EU and Canada. For this purpose, information on requirements for civil aviation security was exchanged and an assessment of a Canadian airport was conducted by the Commission.

CONCLUSION

A high level of security continues to be ensured in the EU. Commission inspections have shown a stable level of compliance with core regulatory provisions. In baseline measures, deficiencies identified in the areas of staff and cargo screening requirements tended, by and large, to stem from human factor issues. Further non-compliances found in the measures more recently adopted for implementation under the legal framework of Regulation (EC) 300/2008 were related to security controls of high risk cargo and mail as well as of airport/in-flight supplies and training. Commission recommendations for corrective action were overall followed up satisfactorily, but the inspectors' findings confirm the importance of a robust EU inspection regime and of adequate quality assurance at Member State level. The Commission will continue its efforts to ensure that all legal requirements are fully and correctly implemented, initiating infringement proceedings if necessary.

On the legislative front, further detailed implementing rules were adopted during 2013 to ensure that the framework set up by Regulation (EC) 300/2008 is applied in a way that is harmonised and that mitigates against existing and evolving threats.

¹² Applicable as from 1.4.2011 for aircrafts, passengers and their cabin baggage and hold baggage arriving from the US – Commission Regulation (EU) No 983/2010 of 3 November 2010, amending Regulation (EU) 185/2010, OJ L286 of 4.11.2010, p.1