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

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

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This report covers the period 1 January – 31 December 2009

INTRODUCTION

2009 was a time of consolidation in the EU world of aviation security. Throughout the year, the Commission worked steadily with Member States and the industry to finalise the details of the new package of implementing legislation intended to complement Regulation (EC) 300/2008¹. The scientific community and manufacturers focussed on developing technologies which would allow passengers to carry liquids on to aircraft. The European Parliament continued its careful consideration of the issues surrounding the possible use of security scanners at European airports. On the wider stage, regular discussions were held with international organisations to find global solutions to common problems.

It was not until the final days of the year, with the incident on Northwest Airlines flight 253 from Amsterdam Schiphol to Detroit, that attention was once again, and forcibly, directed towards a new threat. This was yet another reminder that extremist groups continue to regard civil aviation as an attractive target and will always seek ways to avoid detection by the current screening techniques. It again served – if this were necessary - to underline the vital nature of the work being done by the Commission and its partners towards protecting travellers and the European aviation industry as a whole.

PART ONE

THE INSPECTIONS

1. GENERAL

The Commission is required, under the terms of Regulation (EC) 2320/2002 to conduct inspections of Member States' aviation security administrations (the 'appropriate authorities') and of EU airports. Switzerland is also covered by the Community programme, while Norway and Iceland are inspected against parallel provisions by the EFTA Surveillance Authority. To carry out its inspection work, the Commission has a team of 11 aviation security inspectors, supported by a pool of national inspectors nominated by Member States. 50 of these national inspectors took part in the 2009 inspections. A chart summarising all Commission and EFTA Surveillance Authority compliance monitoring activity to date is attached in an Annex.

¹ OJ L97 of 9.4.2008, p.72

2. INSPECTIONS OF NATIONAL APPROPRIATE AUTHORITIES

The Commission monitored 9 appropriate authorities during 2009, all of which had been subject to a previous Commission inspection. The deficiencies most commonly found in national quality control programmes followed the pattern of previous years.

As regards implementation of the measures, there was still evidence in some Member States of a lack of capacity to detect and correct failures swiftly. Some States had failed to monitor all aspects of the legislation and some airports went uninspected for long periods. Follow-up activities were sometimes inadequate or not carried out, and it was not unusual to find significant delays before deficiencies were corrected. Sanctions were available to all Member States, but were not always strong enough or always used in such a way as to provide a deterrent effect. One appropriate authority had still not brought its national civil aviation security programme into line with the latest EU legislative developments and still needed to separate the operational implementation of requirements from the management of the quality control programme, although these issues had been previously identified by the Commission as serious deficiencies. Of very particular concern, another authority had reneged on a written commitment to increase compliance monitoring resources in response to the findings of the previous Commission inspection.

3. INITIAL INSPECTIONS AT AIRPORTS

Nineteen (19) initial inspections of airports were conducted during 2009, almost double the number carried out in 2008. All chapters were covered (although not during each inspection). The overall percentage of core measures found to be in compliance rose once again by a small margin, to almost 85%. The deficiencies which were found tended, by and large, to occur in the same areas as for previous inspections, frequently stemming from human factor issues.

The weakest areas at the airports inspected during 2009 related to the quality of staff screening, the provisions governing staff use of prohibited articles and implementation of cargo security requirements. For instance, staff were not always required to remove their jackets before screening and hand searches of staff did not follow the same methodology as for passengers. Several airports also failed to implement adequate procedures for identifying staff members formally authorised to carry prohibited articles into the security restricted area. All seven inspections covering cargo security revealed a number of problem areas, including poor security programmes and failure to select the most appropriate screening method, given the nature of the consignment. Other common deficiencies concerned the requirements for taking liquids into the security restricted area (such as the use of proper tamper-evident plastic bags), failure to fully protect baggage in the make-up area, vehicle search and technical standards for equipment.

Compliance with the provisions covering passengers and cabin baggage was mostly high although sometimes continuous random search ratios were not observed and/or the quality of passenger hand search was not fully satisfactory. Compliance in the area of hold baggage screening was extremely high, although at one location dogs were used to screen hold

baggage, despite the fact that this was not allowed under the then existing legislative provisions².

There were some access control issues in relation to catering and cleaning premises. As regards air carriers, the areas needing most additional efforts were search and check of aircraft and procedures for dealing with rush bags.

4. FOLLOW UP INSPECTIONS

The Commission routinely carries out a limited number of follow up inspections. Where several serious deficiencies have been identified during the initial inspection, a further visit will certainly be scheduled. 4 such activities were judged necessary during 2009 and the conclusion in each case was that most, but not all, of the reported deficiencies had been rectified.

5. OPEN FILES, ARTICLE 15 CASES AND LEGAL PROCEEDINGS

Inspection files remain open until the Commission is satisfied that appropriate rectification action has been taken. 20 files (14 airport and 6 appropriate authorities) were closed during 2009. In all, 17 appropriate authority and 20 airport inspection files remained open at the end of the year.

If deficiencies found at an airport are considered so serious as to present a significant threat to the overall level of civil aviation security in the Community, the Commission will activate Article 15 of Regulation 1486/2003³. 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. There were no Article 15 cases open at the beginning of the year and none were initiated during 2009.

The other possible sanction in the most serious cases, or in cases of prolonged non-rectification or reoccurrence of deficiencies, is to open infringement proceedings. The Commission closed 1 infringement procedure in 2009, after a 14 month delay, when the key issues, relating to lack of resources and lack of enforcement, had been resolved. The Member State in question introduced new administrative arrangements and appointed additional inspectors. One new infringement procedure was initiated during the year, in respect of a Member State which had failed to increase resources and monitoring activities despite committing to doing so following a deficiency at a previous inspection. In total three infringement cases were pending at the end of 2009.

² Detailed provisions for the use of dogs in hold baggage screening have since been developed and included in Regulation (EU) 573/2010 of 30 June 2010 (OJ L166 of 1.7. 2010, p.1) and Decision 2010/3572/EU, issued to all Member States but not published in the OJ.

³ Commission Regulation (EC) No 1486/2003 of 22 August 2003 laying down procedures for conducting Commission inspections in the field of civil aviation security, OJ L213 of 23.8.2003, p.3. Since repealed and replaced by Commission Regulation (EU) 72/2010 of 26 January 2010, implementing Regulation (EC) 300/2008, OJ L23 of 27.1.2010, p.1

6. MEMBER STATES' OWN EVALUATIONS

Article 6 of Commission Regulation 1217/2003⁴ obliged Member States to submit an annual report to the Commission by the end of February each year, covering the results of their national compliance monitoring for the period Jan-Dec of the preceding year. The 2009 reports were all submitted on time and all followed the Commission template. The deficiencies identified related to low numbers of man days in the field, failures to cover all requirements, insufficient follow-up activities and failure to use the available enforcement measures.

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

7. ICAO AUDIT OF THE COMMISSION

During 2009, for the first time, ICAO conducted an audit of the Commission as the EU monitoring body and provided a very positive report, with no recommendations for change. The results of this inspection facilitated a reduction of ICAO monitoring activities at EU airports, as these were felt to be adequately covered by the European programme.

PART TWO

THE LEGISLATION

1. GENERAL

Few new aviation security legislative acts were published during 2009, although a great deal of work was done towards preparing the new package in order to meet the April 2010 deadline. Separately, work was also begun on new rules for the screening of liquids, the use of dogs in aviation security screening and the use of metal detectors for screening certain specialised types of cargo.

2. SUPPLEMENTARY LEGISLATION ADOPTED

The new legislative texts adopted during 2009 were:

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

- Regulation (EC) 272/2009⁵, supplementing the common basic standards on civil aviation security set out in the framework Regulation; and
- Regulation (EU) 1254/2009⁶ setting criteria to allow Member States to derogate from the common basic standards on civil aviation and to adopt alternative security measures.

These texts were finalised during 8 meetings of the Aviation Security Regulatory Committee, 8 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.

- Regulation (EC) 272/2009 is the 'second level' in the legislative package, supplementing Regulation (EC) 300/2008. It sets out the broad areas where implementing rules may be developed, listing, for instance, the various types of screening technologies allowed for passengers, baggage and cargo, but not specifying how these should be deployed.
- Regulation (EU) 1254/2009 deals with a specific aspect of aviation security – the types of aircraft operations which Member States may exempt from the rules which apply elsewhere, as they present a lesser risk. This would include, for instance, very small aircraft. In these cases, other, national rules must apply and be notified to the Commission.

3. AMENDING LEGISLATION ADOPTED

The aviation security legislation depending on Regulation (EC) 2320/2002 was adjusted by one amending measure⁷, during the period covered by this report. This concerned duty free liquids exemptions for South Korea – although the adjustment was in the end not generally implemented. Difficulties during other related negotiations with South Korea meant that, on the recommendation of the Commission, the exemptions allowed for that State were not activated at many EU airports.

4. NEW FRAMEWORK AND IMPLEMENTING PACKAGE DRAFTED

The greatest efforts of the Commission and Member States during 2009 were concentrated on the preparation of the detailed implementing package and the new inspection and quality control regulations. By the end of the year, the inspection and quality control texts had both been subject to positive votes in the Regulatory Committee and the larger implementing package was available in an almost complete draft form, already split, as intended into a draft

⁵ 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 L91 of 3.4.2009, p7.

⁶ Commission Regulation (EU) No 1254/2009 of 18 December 2009 setting criteria to allow Member States to derogate from the common basic standards on civil aviation security and to adopt alternative security measures, OJ L338 of 19.12.2009, p17.

⁷ Commission Regulation (EC) No 483/2009 of 9 June 2009 amending Regulation (EC) No 820/2008 laying down measures for the implementation of the common basic standards on aviation security, OJ L 145, 10.6.2009, p. 23.

Regulation⁸, containing information which could be made publicly available, and a draft Decision⁹, containing the more sensitive material.

5. PROVISIONS ON FINANCING

The Commission published its report¹⁰ on aviation security funding, as required by Article 22 of Regulation (EC) 300/2008, in February 2009. The Commission subsequently adopted a proposal for a Directive of the European Parliament and of the Council on aviation security charges¹¹, which defined the basic principles to be respected by airport operators when they determine their aviation security charges. These included non-discrimination between carriers or passengers, consultations between airport management and air carriers, transparency, cost-relatedness and the identification of a supervisory authority.

PART THREE

TRIALS AND STUDIES

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. The term does not, in the legal sense, apply when a Member State or entity is conducting an evaluation of a new security control deployed in addition to one or more of those already covered by the legislation.

A number of trials were conducted during 2009. These concerned the use of security scanners for passenger and staff screening and the use of dogs for security screening. Information from the scanner trials was passed to the Commission to assist with the preparation of the planned report on the use of this equipment. Information from the dog trials was considered in the work towards a future legislative proposal.

2. STUDIES

The QinetiQ study on human factors in aviation security screening was presented to the Aviation Security Regulatory Committee in January 2009. The recommendations fed, in particular, into discussions on the proposed new legislative chapter on training and recruitment.

⁸ Since published as Commission Regulation (EU) No 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on aviation security, OJ L55 of 5.3.2010, p1.

⁹ Subsequently Decision 2010/774/EU, issued to all Member States on 13.4.2010. Not published in the OJ.

¹⁰ COM(2009) 30 final of 2.2.2009

¹¹ COM (2009) 217 of 11 May 2009

PART FOUR

DIALOGUE WITH INTERNATIONAL BODIES AND THIRD COUNTRIES

1. GENERAL

The Commission is fully engaged with international bodies and key third country partners and is regularly represented at international meetings, generally co-ordinating the EU position and often making presentations or submitting papers. Dialogues are also opened, as appropriate, with individual third countries on issue of local concern or shared interest, such as exemptions from the normal requirements governing the carriage of liquids purchased in duty free outlets. Such contacts enable the EU to both keep abreast of and disseminate good practice.

2. INTERNATIONAL BODIES

The Commission attends the annual ICAO AvSec panel and during 2009 presented papers on liquids, one stop security and significant security threats. These were all well received. The Commission hosted an ICAO workshop on liquids in Brussels in November 2009, where there was international agreement on steps towards phasing out the current ban.

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

3. THIRD COUNTRIES

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

The Commission took part in inspections at a number of US and Canadian airports, with a view to granting exemptions from the requirements relating to duty free liquids purchased at their airside outlets when subsequently presented at transfer points in the EU and also to assess the possibility of future one-stop agreements. The Commission additionally carried out inspections in Singapore and at Dubrovnik airport, to monitor standards on duty free liquid processing, in view of the exemptions granted. An agreement was reached with South Korea on duty free liquids exemptions, but difficulties arose later, as referred to at point 3 of Part 2.

CONCLUSION

While, overall, a high level of security continues to be ensured in the EU, Commission inspections have – as in previous years – revealed some shortcomings. These most commonly related to staff screening and cargo processing requirements. Commission recommendations

for corrective action were on the whole followed up satisfactorily, but the inspectors' findings confirm the importance of a robust EU inspection regime and of adequate quality assurance at Member State level. The Commission will continue its efforts to ensure that all legal requirements are fully and correctly implemented, instigating formal infringement procedures if necessary.

On the legislative front, much solid work was done during 2009 to ensure that the new implementing texts would lead to a harmonised understanding and implementation of the rules. The groundwork was completed for their final adoption and plans laid for their further elaboration, particularly in respect of screening technologies and agreements with third countries. The security incident which occurred just days before the end of the year served as a reminder that the adequacy of screening options must constantly be reviewed and close co-operation with international partners continued. The Commission will maintain and, as necessary, extend its programme in these two key areas.

Annex

Commission inspections as at 31.12.2009

State	Number of inspections 01/2009 -12/2009 (including follow-ups)	Total number of inspections 2004-2009 (including follow-ups)
Austria	2	8
Belgium	1	7
Bulgaria	1	3
Cyprus	1	5
Czech Republic	1	5
Denmark	0	6
Estonia	1	4
Finland	1	7
France	2	10
Germany	2	12
Greece	2	11
Hungary	1	4
Ireland	1	6
Italy	2	11
Latvia	1	4
Lithuania	0	3
Luxembourg	1	5
Malta	1	3
Netherlands	0	6
Poland	1	7
Portugal	2	7
Romania	0	2
Slovakia	1	4
Slovenia	0	4
Spain	3	10

Sweden	1	7
United Kingdom	1	11
Switzerland	2	4
TOTAL	32	176

EFTA Surveillance Authority inspections as at 31.12.2009

State	Number of inspections 01/2009 -12/2009 (including follow-ups)	Total number of inspections 2004-2009 (including follow-ups)
Iceland	1	6
Norway	5	28
TOTAL	6	34