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**REPORT FROM THE COMMISSION**

***FIRST REPORT ON THE IMPLEMENTATION OF REGULATION (EC) 2320/2002  
ON CIVIL AVIATION SECURITY***

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### ***FIRST REPORT ON THE IMPLEMENTATION OF REGULATION (EC) 2320/2002 ON CIVIL AVIATION SECURITY***

**(Text with EEA relevance)**

#### **EXECUTIVE SUMMARY**

1. This report meets the requirement that the Commission should publish each year a report on the implementation of the common rules in the field of civil aviation security and on the situation in the Community as far as aviation security is concerned, drawing conclusions on inspections conducted by the Commission.
2. Regulation (EC) 2320/2002 entered into force on 19 January 2003. The Member States have had to adopt their national quality control programmes by 19 July 2003.
3. The Commission's inspections started in February 2004 and a total of 43 Commission inspections have been conducted since (as at 30 June 2005).
4. On this basis, the report notes that the level of security at the airports of the European Union has been considerably enhanced through the implementation of the Community rules. The combined effect of the implementation of European security standards and the various quality control actions, including the Commission's inspections, has made it possible to harmonise and redouble the efforts made by the Member States since 11 September 2001.
5. The inspections which the Commission has carried out at national administrations and airports are a very efficient tool for verifying the proper application of the Community rules and encouraging the Member States as well as air carriers to take measures in this regard. The report points out that although the basic requirements are properly implemented, there is still room for improvement. The Commission should continue to encourage Member States and air carriers to take the necessary measures.
6. Finally, the report stresses that the regulatory framework also requires improvement. Consequently, this report is followed up by a proposal for amending Regulation 2320/2002.

## 1. INTRODUCTION

Following the tragic events of 11 September 2001 an emergency meeting of the EU Transport Council was held on 14 September 2001. The Commission and the Transport Ministers of the Member States concluded that it was necessary, *inter alia*, to implement fully the essential measures on aviation security that had been developed as recommendations by the European Civil Aviation Conference (ECAC)<sup>1</sup> since 1989. On the basis of this policy conclusion, on 10 October 2001 the Commission adopted a legislative proposal for a framework Regulation of the European Parliament and the Council establishing common rules in the field of civil aviation security<sup>2</sup>. This proposal was finally adopted on 16 December 2002 by the co-decision procedure<sup>3</sup>. It came into force on 19 January 2003.

Article 11 of the Regulation states that *Subject to Regulation (EC) No 1049/2001<sup>4</sup> the Commission shall publish each year a report on the implementation of this Regulation and on the situation in the Community as far as aviation security is concerned, drawing conclusions from the inspection reports.*

Given that Commission inspections in the field of civil aviation security commenced early in 2004 this is, therefore, the report of the first year of implementation of all elements of Regulation (EC) 2320/2002.

## 2. THE NEW REGULATORY FRAMEWORK FOR CIVIL AVIATION SECURITY

### 2.1. The contents of Regulation 2320/2002

The security standards are becoming compulsory and the specific tasks of the Member States and the Commission are defined.

#### 2.1.1. *Obligatory provisions*

As the first piece of Community legislation in the field of civil aviation security Regulation (EC) 2320/2002 simultaneously sought to address several different issues.

The Regulation first of all specifies the main provisions and common standards governing the Community approach to civil aviation security. There is especially a detailed annex laying down the technical aviation security requirements to be covered by Community rules. These provisions became applicable on 19 January 2003.

The legislation applies in full to all but the smallest of the about 700 civil aviation airports within the enlarged European Community. Small airports do not have a blanket exemption from applying aviation security procedures. Rather, each Member State may adopt levels of

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<sup>1</sup> The European Civil Aviation Conference comprises of 41 European States (including all EU Member States and Accession States) and sets voluntary standards, including security standards, in aviation.

<sup>2</sup> COM (2001) 575 of 10.10.2001

<sup>3</sup> (EC) No 2320/2002 of the European Parliament and the Council establishing common rules in the field of civil aviation security. OJ L355, 30.12.2002, p.1.

<sup>4</sup> Regulation 1049/2001 pertains to the public access to documents and permits restrictions on the access to sensitive information. Certain information on aviation security is, clearly, sensitive.

security that are different from those laid down in Community legislation, but only on the basis of local risk assessments.

Whilst Community legislation lays down common basic standards, it also allows Member States (or individual airports) to set higher standards. Given the variable level of risk from terrorist attack, specific airports or airlines must always have the possibility to increase security whenever objective risk assessments suggest such action is necessary, either on a temporary or permanent basis.

Moreover Regulation 2320/2002 created a Committee (using the standard comitology rules laid down in Council Decision 1999/468/EEC<sup>5</sup>) enabling the swift development of additional, more detailed harmonised technical requirements in the field of civil aviation security, as and when needs arise.

### *2.1.2. Responsibilities of the Member States and the Commission*

EC legislation on civil aviation security is above all addressed to the Member States. The Framework Regulation obliges each of them to have a National Civil Aviation Security Programme in order to ensure the application of the common standards laid down in the annex to the Regulation. Each Member State has also to ensure the development and implementation of a national civil aviation security quality control programme so as to ensure the effectiveness of its national civil aviation security programme. This is a key requirement for effective control of correct application of Regulation 2320/2002.

The Regulation authorises the Commission to monitor the Member States' application of the Regulation and, in particular, to conduct inspections<sup>6</sup> of national administrations and of a suitable sample of airports to ensure that Community rules on aviation security are being complied with.

### *2.1.3. Community Legislative work undertaken to June 2005 on the implementation of Regulation 2320/2002*

A total of seven Commission Regulations have been adopted to date, in order to complement Regulation 2320/2002.

Commission Regulation (EC) No 622/2003 laying down measures for the implementation of the **common basic standards on aviation security**<sup>7</sup> came into force on 19 April 2003. This Regulation adds more detailed aviation security requirements in order to complement the general requirements laid down in the framework Regulation.

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<sup>5</sup> OJ L184 of 17.1.1999, p.23

<sup>6</sup> Historically, a rather precise vocabulary defining controls has developed in the field of aviation security and the terms 'inspection', 'audit', 'control' and 'test' have very specific meaning. Since this report is for general readership that may not be familiar with this technical vocabulary and the nuances behind these specific words the term 'inspection' shall be used throughout to refer to all types of controls undertaken by appropriate authorities.

<sup>7</sup> OJ L89 of 5.4.2003, p.9

Commission Regulation (EC) No 1217/2003 laying down **common specifications for national civil aviation security quality control programmes**<sup>8</sup> came into force on 28 July 2003.

Commission Regulation (EC) No 1486/2003 laying down **procedures for conducting Commission inspections** in the field of civil aviation security<sup>9</sup> came into force on 12 September 2003.

Commission Regulation (EC) 68/2004<sup>10</sup>, which came into force on 5 February 2004, was the first amendment to Regulation 622/2003 and adds more detailed aviation security requirements complementing the general requirements laid down in the framework Regulation, specifically as regards **prohibited items**.

Commission Regulation (EC) No 1138/2004 establishing a common definition of critical parts of security restricted areas at airports<sup>11</sup> came into force on 1 July 2004. This regulation requires that within five years, and in three phases, **all airport staff** that come into contact with screened passengers and screened baggage **shall themselves have been screened**. The first phase, for staff in airport terminal buildings, became effective immediately upon adoption of the Regulation. The five year timescale, which may seem generous, reflects an obligation laid down in Regulation 2320/2002.

Commission Regulation (EC) 781/2005<sup>12</sup>, was the second amendment to Regulation 622/2003 and adds more detailed aviation security requirements complementing the general requirements laid down in the framework Regulation, specifically as regards **performance standards for x-ray machines** used for security purposes at EU airports. It comes into force on 1 July 2006. It is the intention of the Commission to include in Regulation 622/2003 performance standards for all major types of security equipment used at EU airports. Such performance standards will ensure a baseline standard for such equipment in use throughout the EU and will also enable EU inspectors to have an objective means by which to measure whether or not airport security equipment is performing adequately.

Commission Regulation (EC) 857/2005<sup>13</sup>, was the third amendment to Regulation 622/2003 and adds more detailed aviation security requirements regarding the **searching of passengers by hand**.

In the case of Regulations 781/2005 and 857/2005 it should be noted that they stemmed in part from the results of Commission inspections of EU airports, where Commission inspectors had highlighted deficiencies or weaknesses in the existing legislation. In this regard feedback from Commission inspectors and analysis of inspection results by the Commission will be a major tool to ensure that the EU legislation on aviation security is meaningful, whilst the comitology process is the correct forum to enable such technical (and security sensitive) amendments to be debated in detail and adopted swiftly.

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<sup>8</sup> OJ L169 of 8.7.2003, p.44

<sup>9</sup> OJ L213 of 23.8.2003, p.3

<sup>10</sup> O.J. L10 of 16.1.2004, p.14.

<sup>11</sup> OJ L221 of 22.6.2004, p.6

<sup>12</sup> OJ L131 of 25.5.2005, p.24

<sup>13</sup> OJ L143 of 7.6.2005, p.9

In addition, one important non-legislative initiative concluded in 2004 was a Commission-funded study on the **financing of aviation security measures**. This has been placed in the public domain via the website of the Commission and can be found at [http://europa.eu.int/comm/transport/air/safety/studies\\_en.htm](http://europa.eu.int/comm/transport/air/safety/studies_en.htm). It is the Commission's intention to incorporate the results of the factual study as part of a broader Communication highlighting the issue of financing of security across all transport modes. This Communication is scheduled for publication in the second half of 2005.

### **3. LESSONS TO BE LEARNT FROM THE COMMISSION'S INSPECTIONS IN 2004/2005**

#### **3.1. The inspections**

Under the Commission's inspection programme, 43 inspections were conducted between February 2004 and June 2005 (see Annex 1), of which 27 in 2004 and 16 during the first six months of 2005. On 30 June 2005, 23 Member States had already been inspected by the Commission at least once. All the Member States of the EU 15 had been inspected at least once in 2004. Since December 2004 the inspections have been extended to the 10 new Member States.

##### *3.1.1. Inspection of national authorities*

The purpose of inspections of national authorities responsible for civil aviation security is to verify that each Member State applies, or ensures the application of, all its Community obligations laid down in the national quality control programme<sup>14</sup>, the national civil aviation security programme<sup>15</sup>, the airport and air carrier security programmes<sup>16</sup> and the national training programme<sup>17</sup>. Particular attention has also been given to the control activities carried out by the Member States themselves at airports within their territory.

By the end of June 2005, 14 national authorities had been inspected. The main conclusions from these inspections are as follows:

- National civil aviation security programmes have been formally adopted by the Member States and their contents are on the whole consistent with the Community requirements. However, a number of Member States have been asked to ensure full compliance with the Community requirements.
- National quality control programmes have been adopted in almost all the Member States. However, inspections in two Member States have had to be postponed because they had not yet adopted a quality control programme and infringement proceedings have been instituted against these Member States. The contents of these programmes are in general in accordance with the Community requirements and are well on the way to being fully compliant. For instance, appropriate implementation powers have in all cases been entrusted to the competent authority and only in one country have these powers been judged to be insufficiently established.

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<sup>14</sup> Articles 5(2) and 7(1) of Regulation 2320/2002 and Regulation 1217/2003

<sup>15</sup> Article 5(1) of Regulation 2320/2002

<sup>16</sup> Article 5(4) of Regulation 2320/2002

<sup>17</sup> Article 5(5) of Regulation 2320/2002

- Validation of the airport security programmes is undertaken in a satisfactory manner.
- Validation of air carrier security programmes is being given priority for those whose licence comes under the State inspected.
- Overall, the development and implementation of national security training programmes are satisfactory even though adaptations are necessary on some details.
- The screening of transit passengers from third countries and their luggage should be improved in some Member States.
- The requirements for common methods for national checks (unannounced or not, type of checks, classification of results) are relatively well implemented in most Member States. However, in the absence of adequate harmonisation, it is still impossible to make any European comparison of the results of national checking activities. Accordingly, the question of strengthening these requirements should be examined.
- The number and type of inspections conducted by the national competent authorities varies substantially from one Member State to another. Some national authorities do not make use of the powers they have to carry out tests or simulations of unlawful acts designed to assess the efficacy of the existing measures. In most cases, checks are not sufficiently regular to be fully effective.
- In more than half of the Member State inspected, the number of national inspectors (full-time or part-time) has been judged insufficient to properly execute the tasks entrusted to the competent national authority.
- The performance of the rectification process, i.e. the speed with which any shortcomings recorded are rectified, varies between the Member States. Fines are sometime imposed by some Member States, which acts as a strong incentive.

### *3.1.2. Inspections of a suitable sample of airports*

A total of 29 airport inspections were carried out in the 22 Member States between February 2004 and June 2005<sup>18</sup>. The sample was chosen on a random and objective basis (airport size and structure, level of traffic, number of airlines present on the platform, geographic balance). The sample included the following:

- 11 inspections of airports handling more than 10 million passengers a year, including several of Europe's largest airports;
- 13 inspections of airports with between 1 and 10 million passengers, including 2 airports with very strongly seasonal traffic in southern Europe;
- 1 inspection of an airport with less than 1 million passengers;
- 1 inspection of a small regional airport;
- 3 inspections of airports mainly handling freight, from among the 10 largest ones.

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<sup>18</sup> of which three follow-up inspections

Given of the obligatory standards constraining the air carriers, the security level in the European Union is quite high on the whole, although it is not uniform. The essential common requirements are in general properly complied with, for instance the need to screen 100% of passengers and their hand and hold baggage. This is significant progress compared with the situation prior to the entry into force of Regulation 2320/2002. However, it has become apparent in the inspections that improvements are still necessary and that there are still non-conformities with particular requirements of the Regulation.

Some non-conformities have been found repeatedly at several airports. For example the screening of staff showed noticeable variations in the extent of such controls. Significant harmonisation and improvement of security standards in this area can be expected upon entry into force on 1 January 2006 of the second phase foreseen in Regulation 1138/2004 requiring the screening of all staff entering any area to which screened passengers have access. In addition, a lack of harmonisation in certain technical requirements for security equipment has been identified as a consequence of tests carried out during inspections. Implementing legislation to improve this situation is underway and the first Regulation ensuring harmonised standards for x-ray equipment has already been adopted on 24 May 2005<sup>19</sup>. Finally, certain non-conformities in the areas of access control to security restricted areas have been identified. Rapid rectification processes have been launched to address this problem.

Similarly, the performance of the air carriers is not always homogenous, with some complying better with the requirements than others. Verification and protection of aircraft should in particular be improved.

Non-conforming practices have also been observed with regard to freight, where there seems to be a strong need for a more harmonised common approach.

Finally, particular provisions of the regulations are sometimes considered insufficiently unclear by the air carriers concerned.

Internal quality control mechanisms among all air transport operators – in particular airport authorities, air carriers and freight managers – would enable them to measure their own performance with regard to security and their conformity with the European standards.

After the Commission has made them more aware of the situation, the Member States should therefore pay particular attention to ensuring that these non-conformities do not or no longer occur. Otherwise the Commission will make use of its right to take action pursuant to the Treaty.

### **3.2. Rectification process**

The rectification of non-conformities in relation to Community rules is of course the Commission's immediate objective. The Commission has been pleased that the Member States gave a favourable reception to its inspection reports, which have given rise to very little contestation.

It is too early at this juncture to assess the performance of the process of rectifying non-conformities discerned during inspections. However, it would seem that the rate at which corrections have been made in the field has been speeded up significantly during the reference

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<sup>19</sup> Regulation (EC) No 781/2005



period, confirming the view that the establishment of a Community inspection scheme for civil aviation security is particularly useful.

#### **4. GENERAL CONCLUSIONS**

The inspection process and the development of implementing legislation by comitology have permitted that policy and practice in the field of civil aviation security are aligned. This approach has ensured that the security level has been substantially raised and that it is now desirable that Regulation 2320/2002 be revised.

##### **4.1. The security level has been enhanced**

Inspections have been particularly valuable in allowing the implementation of the legislation to be examined objectively. In this regard it can be concluded that, in general, the sum total of Regulation 2320/2002 and its associated implementing legislation is helping to ensure a satisfactory level of security throughout the EU. In the absence of data on the actual level of security before the Community legislation entered into force, it is certainly difficult to assess the scope of progress made in each of the Member States and at the airports inspected. Despite a number of areas of non-conformity repeatedly detected during inspections of Community airports it can be concluded that the introduction of binding Community legislation in the field of aviation security has contributed to a significant improvement of the protection of European citizens from acts of unlawful interference against civil aviation.

The existing legal system including the powers to ensure proper enforcement rules as well as legal requirements more demanding than the obligations and recommendations laid down in Annex 17 to the Convention of International Civil Aviation allows for the conclusion that the quality of aviation security in the EU is standard-setting in a global context.

The Commission intends to continue exercising its new competence in the field of inspection. Particular attention should be given to the performance of the national authorities in regularly monitoring airports and air carriers and quickly rectifying any deficiencies recorded during national audits. The sample of airports inspected should also be enlarged. All Member States should be inspected with appropriate frequency, giving some priority to those with a wide-ranging provision of air transport services, those where a security policy has only recently been introduced and those where deficiencies have been encountered.

##### **4.2. The need to develop Reg. 2320/2002**

Overall there is still some room for improving the protection of European citizens further without compromising the operators' legitimate interests in facilitation of security procedures at European airports by means of developing the framework Regulation (EC) 2320/2002 as well as a number of implementing rules. These improvements should in particular contribute to a higher performance of the system as a whole.

These improvements, which have been highlighted as part of the Commission's inspection activity, should be addressed by means of a revision of Regulation 2320/2002.

This revision is necessary to meet various needs connected with the simplification of procedures for adapting existing specifications, technical harmonisation, clarification of particular provisions, improvement of the level of security, and determination of mechanisms for cooperation with third countries.

**Annex 1 Overview of Commission inspections per Member State**  
**(situation on 30 June 2005)**

<b>MS</b>	<b>Number of inspections</b>
Belgium	2
Czech Republic	1
Denmark	2
Germany	3
Estonia	-
Greece	3
Spain	3
France	3
Ireland	2
Italy	2
Cyprus	1
Latvia	1
Lithuania	1
Luxemburg	2
Hungary	1
Malta	1
The Netherlands	2
Austria	3
Poland	1
Portugal	2
Slovenia	1
Slovakia	-
Finland	2
Sweden	2
United Kingdom	2
<b>TOTAL :</b>	<b>43</b>