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

**SECOND REPORT ON THE IMPLEMENTATION OF REGULATION (EC)
No 2320/2002 ON CIVIL AVIATION SECURITY**

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1. INTRODUCTION

Terrorism still poses a real threat to air transport. The unsuccessful plot in the United Kingdom in August 2006, involving the use of liquid explosives smuggled in hand luggage to blow up several aircraft in flight, show – if proof were needed – that it would be foolhardy for the European Union to relax its efforts in the field of aviation security. It is still essential to ensure that the security measures adopted by the EU in Regulation (EC) No 2320/2002¹ are applied properly.

In September 2005, the Commission adopted its first report² on the implementation of Regulation (EC) No 2320/2002 covering the period February 2004-June 2005. This second report covers the period July 2005-December 2006 and is based more particularly on the conclusions drawn from some fifty new inspections carried out by the Commission. It enables a comprehensive evaluation to be made of the state of security in the European Union four years after the entry into force of the European legislation.

This report confirms in particular that the introduction of Community rules has significantly improved security at EU airports. Air travellers enjoy a high level of security. The EU system has proven capable of maintaining and developing common rules which facilitate travel by minimising cumbersome variations of security rules between Member States.

LESSONS TO BE LEARNT FROM THE COMMISSION'S INSPECTIONS IN 2005/2006

Since February 2004 when inspections began, the Commission has carried out 89 inspections, including 47 new inspections conducted between July 2005 and December 2006 in EU-25 and Switzerland³ (see Annex 1). To date, all Member States have been inspected between two and five times, with visits either to the national appropriate authorities for civil aviation security or to airports themselves⁴.

2.1. Inspections of national appropriate authorities

It is now possible to provide a full picture of how all Member States fulfil their quality control obligations since the 10 national authorities of the new Member States, which had not been

¹ 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 security. OJ L 355, 30.12.2002, p. 1.

² COM(2005) 428 of 22 September 2005. First report on the implementation of Regulation (EC) No 2320/2002 on civil aviation security.

³ The Commission has powers to conduct inspections in Switzerland under a bilateral EU-Switzerland agreement. A total of 11 inspections similar to those conducted by the Commission have also been carried out in Norway and Iceland by the EFTA Surveillance Authority.

⁴ Bulgaria and Romania, which joined the EU on 1 January 2007, will be inspected for the first time in 2007.

inspected when the first report was drawn up, have now been inspected⁵. The initial conclusions drawn in 2005 can be confirmed: while transposition of the regulatory obligations is more or less satisfactory, the effectiveness of the Member States' national quality control is not.

2.1.1. Transposition of regulatory obligations in national regulations

The national civil aviation security authorities are inspected to check that regulatory obligations have been properly transposed in national regulations, in other words that a Member State's national civil aviation security programme⁶, its national quality control programme⁷, its airports' and air carriers' security programmes⁸ and its national training programme⁹ properly comply with European legislation. The inspections have in particular revealed that:

- the national civil aviation security programmes, some of whose provisions have occasionally needed adjusting, should be regularly brought into line with the new Community requirements arising from the amendment of Regulation No 622/2003;
- the overall contents of the national control programmes conform to Community requirements in legal terms;
- requirements regarding the common methodology to be used for national audits (whether or not unannounced, diversity of audits, classification of results) are properly provided for in most Member States;
- the airports' security programmes are being satisfactorily validated; most of the programmes examined by the Commission's inspectors have been revised following the entry into force of the new European legislation;
- the airlines' security programmes are not being uniformly monitored by all Member States and priority is going to companies whose licence is issued by the State concerned;
- the development and implementation of national security training programmes are generally satisfactory.

2.1.2. Effectiveness of national quality control

However, the operational implementation of national quality programmes has been found to have numerous deficiencies which are often considered by inspectors to be serious; the effectiveness of national quality control is at present structurally inadequate in ten or so Member States.

⁵ Luxembourg has not been the subject of an inspection by the national authority as it has no national quality control programme; infringement proceedings have therefore been initiated.

⁶ Article 5(1) of Regulation (EC) No 2320/2002.

⁷ Article 5(3) and Article 7(1) of Regulation (EC) No 2320/2002 and Commission Regulation (EC) No 1217/2003 of 4 July 2003 laying down common specifications for national civil aviation security control programmes, OJ L 169, 8.07.03, p.44.

⁸ Article 5(4) of Regulation No 2320/2002.

⁹ Article 5(5) of Regulation No 2320/2002.

- In many Member States, audits are neither regular enough nor comprehensive enough to respond to the challenge of security on the ground, to encourage operators to apply procedures in full and to give an objective and complete view of the situation at national level. Some national authorities do not use the powers they have been granted to vary the audit methods used (security audits, inspections, tests, follow-up actions).
- Many of the Member States do not have enough national inspectors to carry out quality control tasks with adequate frequency¹⁰; too many inspectors, for example, are assigned for a significant part of their working time to other tasks, in particular regulatory issues. This has a direct adverse impact in terms of the level of compliance, the number of audits and areas covered, and the risk that auditors will have little experience.
- The performance of the rectification process, i.e. the speed at which deficiencies found are required to be put right, varies. In most Member States, the implementing powers conferred on the national authority are not applied with adequate force. In some Member States, sanctions are imposed only in exceptional circumstances, even when no rectifications are made. This weakness is paralleled by the insufficient number of follow-up inspections on the ground.

This finding obviously has an impact on the level of compliance found during Commission inspections at airports.

2.2. Inspections at airports

2.2.1. A representative sample

Since February 2004, the Commission has carried out 65 airport inspections in all the Member States and Switzerland. These inspections took place in 49 different airports, corresponding to about 10% of the 500 or so airports which have commercial traffic. 16 of these initial inspections led to follow-up inspections to check that deficiencies previously identified had been rectified. During the period July 2005-December 2006, 36 new airport inspections were carried out (generally airports which play a key role in the airport system of the Member States concerned), 13 of them being follow-ups. This sample is clearly small in total, but it is in keeping with the plan for Community quality control of the Member States, as provided for in Regulation (EC) No 2320/2002.

To conduct these inspections, the Commission had ten or so full-time inspectors at its disposal, but it could also call upon the services of national auditors who were made available on specific occasions¹¹.

2.2.2. Overview of deficiencies found

The results of the 23 new initial inspections carried out since July 2005 confirm the main points highlighted in the Commission's first report. In overall terms, the level of security in the European Union is high. This is because the European legislation in several areas is more demanding and more detailed than the international regulations laid down by the International

¹⁰ Broadly speaking, there are today about 350 national security inspectors (full-time and part-time) drawn from the competent national authorities (EUR 25).

¹¹ On the basis of Article 5 of Regulation (EC) No 1217/2003, some 70 national auditors are now qualified to take part in one-off Commission inspections. During the period July 2005-December 2006, 58 national auditors were thus able to take part in initial inspections; during the period February 2004-June 2005, the number was 32.

Civil Aviation Organisation (ICAO)¹². However, the level of security is not uniform throughout the Union as there are substantial differences between airports: Europe is therefore not totally protected against threats. The basic principles, such as 100% screening of passengers, hand luggage and hold luggage, are being soundly applied.

The inspections carried out in 2006 also confirm that the trend towards improvement has continued: overall, the cases of non-compliance observed fell by 21 % and their seriousness by 17% compared with 2004¹³. However, measures are not always applied in compliance with the European legislation and deficiencies are still regularly found which compromise the general quality of the security measures. It is therefore a question of doing better rather than more.

- Recurring deficiencies of minor or average seriousness were found in respect of essential procedures concerning access control, aircraft protection, the screening of passenger and the protection of hold luggage.
- The cases of non-compliance with European regulations are often more serious as regards the screening of staff, aircraft searches, and the screening of hand luggage and cargo. Within the same airport, for example, identical procedures might not be used for the screening of staff and passengers, the methods applied to staff being more flexible and not allowing the systematic detection of prohibited articles.
- The tests carried out during inspections confirm the need for technical harmonisation of security equipment; this process has been initiated and 2 regulations have been approved (see section 3.1).
- Lastly, some operators find the regulations unclear, and further provisions have been drafted in this respect too (see section 3.2).

There are several reasons for these deficiencies: the human factor clearly explains many of the cases of non-compliance, e.g. failure to detect prohibited articles when cabin baggage is subjected to X-ray examination. Continuous supervision, training and raising of awareness about the terrorist threat is therefore needed. The need to carry out the various security checks in a minimum of time and the fast pace of aircraft rotations, which are also major operational constraints, also explain many of the deficiencies. Finally, some of the deficiencies are directly attributable to the inadequacy and sometimes the simple lack of national quality control since the European legislation entered into force, given that effective quality control does require checks on the ground.

2.2.3. Seriousness of deficiencies and activation of Article 15 of Regulation No 1486/2003

The seriousness of the deficiencies found must not be underestimated: nine initial inspections out of ten are still pointing to serious deficiencies which have repercussions on the security chain. Given the principle of one-stop security which underpins Regulation No 2320/2002, the deficiencies are often likely to have a direct negative impact on security at other European Union airports.

¹² Annex 17 to the Montreal Convention.

¹³ These statistics take account of the security areas listed in the Annex to Regulation (EC) No 2320/2002.

This is why, in accordance with the rules¹⁴, the Commission requires the Member States concerned to rectify the situation immediately if the seriousness of a deficiency warrants this. If deficiencies are not rectified immediately, all other Member States have to take compensatory measures, often costly ones, at their airports. Article 15 of Regulation (EC) No 1486/2003 has thus been activated by the Commission on 17 occasions since 2004, but only 4 of these were during the period covered by this report. This confirms that the Member States are now more willing to rectify the most serious deficiencies as quickly as possible once they have been detected. This is a major achievement.

2.2.4. Follow-up inspections and rectification process

As noted in the 2005 report, it is pleasing to see that the Member States welcome the Commission's inspection reports. With a view to measuring the performance of the process of rectifying cases of non-compliance found during inspections, this being the last phase of each inspection, the Commission carried out 13 follow-up inspections in 13 Member States during the eighteen-month period covered by this report. These inspections allow the following conclusions to be drawn:

- the level of rectification is far too low: Member States announce that rectifications requested by the Commission have been made and national audits are carried out, but it is often found that only some of the serious deficiencies have actually been rectified in a satisfactory manner;
- the security measures that most difficult to rectify are often those relating to the screening of staff and aircraft security;
- the average time taken to rectify deficiencies is quite long, at just over one year; sometimes this period is much shorter, though, often reflecting the determination shown by the competent national authority and the operators concerned.

If the rectification process is found to be unsatisfactory (level of compliance too low, rectification period too long), it is only right, once all other means have been exhausted, that the Commission should initiate infringement proceedings against the Member State concerned. The Commission had to take such action twice in 2005 and 2006 to prompt the national appropriate authorities concerned to use the implementing powers at their disposal under their national quality control programmes¹⁵.

3. REGULATORY DEVELOPMENTS IN 2006

Article 4(2) of Regulation 2320/2002¹⁶ provides that the Commission shall adopt the necessary measures for the implementation and technical adaptation of the common basic standards laid down in the annex to that regulation in accordance with the comitology procedure provided in Article 5 of Council Decision 1999/468/EEC¹⁷ (Regulatory Committee procedure). The Commission is assisted by a Committee of representatives of the Member

¹⁴ Article 15 of Commission Regulation (EC) No 1486/2003 of 22 August 2003 laying down procedures for conducting Commission inspections in the field of civil aviation security states that "if an inspection discloses a serious deficiency which is deemed to have significant impact on the overall level of civil aviation security in the Community, the Commission shall immediately inform the appropriate authorities". OJ L 213, 23.08.2003, p.3.

¹⁵ Proceedings initiated against Luxembourg and Finland.

¹⁶ OJ L355, 30.12.2002, p.1.

¹⁷ OJ L184, 17.7.1999, p.23.

States established under Article 9 of Regulation 2320/2002. This procedure allows measures to be taken swiftly as and when needs arise.

This Committee met on 12 occasions between July 2005 and December 2006, assisting the Commission in preparing aviation security legislation. During 2006 in the course of its work the Committee gave favourable opinions on the adoption by the Commission of six implementing regulations. As part of the adoption process, the European Parliament was informed in accordance with the requirements of Article 7 of Council Decision 1999/486/EC¹⁸.

3.1. Standards for all major types of security equipment

Two regulations were part of the Commission's on-going work to include in Regulation 622/2003 performance standards for all major types of security equipment used at EU airports. Such requirements will ensure a baseline standard for such equipment in use throughout the EU and contribute to improving the results of tests carried out during inspections.

- Commission Regulation (EC) No 1448/2006¹⁹, which was adopted on 29 September 2006 and came into force on 20 October 2006, lays down performance standards for explosive detection systems (EDS) used at Community airports.
- Commission Regulation (EC) No 1862/2006²⁰, which was adopted on 15 December 2006 and came into force on 5 January 2007, lays down performance standards for walk-through metal detectors (WTMDs) used at Community airports.

3.2. Gaps in the existing legislation highlighted by Commission inspections

Two regulations stemmed in part from the results of Commission inspections highlighting deficiencies or weaknesses in the existing legislation. In this regard feedback from Commission inspectors and analysis of inspection results by the Commission has highlighted the need for more precise requirements in a number of cases.

- Commission Regulation (EC) No 240/2006²¹, adopted on 10 February and which came into force on 3 March 2006, gives greater precision on security procedures for those vehicles that are entering 'security restricted areas' of airports;
- Commission Regulation (EC) No 831/2006²², which was adopted on 2 June 2006 and came into force on 1 January 2007, lays down more harmonised rules on air cargo security.

3.3. Technological development in the field of aviation security

Technological developments in the field of aviation security should not be hindered by the Community legal requirements. A regulatory solution was instigated at the wishes of industry, with the full support of the Commission and the Member States. Commission Regulation (EC) No 65/2006²³ allows, under defined conditions, for Member States to deviate from the technical standards laid down in the legislation in order to trial new technologies. Such trials

¹⁸ OJ L 184, 17.7.1999, p.23.

¹⁹ OJ L271, 30.09.2006, p.31.

²⁰ OJ L358, 16.12.2006, p.36.

²¹ OJ L40, 11.2.2006, p.3.

²² OJ L150, 3.6.2006, p.4.

²³ OJ L11, 17.1.2006, p.4.

would be permitted for an absolute maximum of 30 months, after which a decision should be taken whether or not to incorporate the new technology into Community law as an accepted security method.

3.4. Risk of liquid explosives

Commission Regulation (EC) No 1546/2006²⁴, which was adopted on 4 October 2006 and came into force on 6 November 2006, arose from the events of 10 August 2006 in the United Kingdom. On that date, the UK intelligence services detected a plan by terrorists to blow up several aircraft during flight using liquid explosives that were home-made from household chemicals.

The Commission's services then consulted with Europe's leading technical and scientific experts in aviation security on how best to address the threat. Dialogue took place with the Member States and the stakeholder associations representing airports, airlines and airport retailers in order to minimise the negative effects that any new rulemaking on this subject could have on air travel in the Community. Of particular concern was the absence on the market of any form of proven equipment/technology that could swiftly and accurately analyse the contents of a sealed bottle for liquid explosives. This Regulation, which limits the individual quantities of liquids allowed to be carried by passengers to 100 ml per container and requires that the number of containers fit in one transparent re-sealable plastic bag of a maximum size of 1 litre, should be reviewed every 6 months in the light of technical developments, operational implications at airports and the impact on passengers.

Studies on the creation of an air cargo database for known consigners, the use of sniffer dogs and a 'trusted traveller' concept have also been launched by the Commission in order to undertake preparatory technical work.

4. ISSUES FOR THE FUTURE

In 2007, several lines of action in particular should be pursued:

- Action to strengthen the performance of quality control by the appropriate authorities of the Member States

Member States' performance of quality control has so far been identified as the weak link in the civil aviation security chain. Strengthening it should therefore have a lever effect. It is in particular essential that Member States carry out quality control in line with Community requirements and make the lessons drawn known at all their airports. This means combining the mobilisation of human resources in the form of the inspectors needed with the use of adequate implementing powers. Cooperation between Member States on auditing with a view to the regular evaluation of operators with business activities throughout the EU should also be encouraged. The Commission for its part will continue to conduct inspections and infringement proceedings will be brought where necessary.

- Actions to improve the present regulatory framework

In order to strengthen the complementarity between Community and national audits, Regulations (EC) Nos 1486/2003 and 1217/2003 should be revised. Requirements regarding

²⁴ OJ L286, 17.10.2006, p.6.

national audit procedures, the rectification of deficiencies and the proportionality of quality control with the national airport system will have to be defined more clearly.

Secondly, given the importance of the human factor for the quality of the security control process, the Commission is examining proposals for improving training requirements for security staff.

Finally it is the Commission's intention that Regulation (EC) No 622/2003 should be developed further on a regular basis in order to revise security requirements either whenever technical developments or the need for additional precision at the Community level justifies it.

More generally, the Commission intends to re-assess the continued necessity of the range of regulatory requirements in the field of aviation security based on operational experience and on updated risk assessments. Successive incidents over past years have necessitated emergency action to respond to immediate threats, putting considerable strains on available security control resources and on operational requirements at airport level. It is clear, however, that reviewing and subsequently removing or redefining some of the current requirements will necessitate prior adoption of the Commission's proposal for a new, simplified and more flexible framework Regulation which is currently in the legislative process.

There would be considerable potential for operational facilitation if ways could be found to extend the intra-EU concept of one-stop security to like-minded third countries with equivalent high standards of security. The Commission is actively working on this concept and is expecting first results in due course following adoption of the new framework Regulation.

Annex 1. Commission inspections by Member State on 31.12.2006

Member State	Number of inspections 2004 - 06/2005 (including follow-ups)	Number of inspections 07/2005 - 12/2006 (including follow-ups)	Total number of inspections 2004/2006 (including follow-ups)
Belgium	2	1	3
Czech Republic	1	1	2
Denmark	2	2	4
Germany	3	3	6
Estonia	-	2	2
Greece	3	3	6
Spain	3	1	4
France	3	3	6
Ireland	2	2	4
Italy	2	3	5
Cyprus	1	2	3
Latvia	1	2	3
Lithuania	1	2	3
Luxembourg	2	-	2
Hungary	1	1	2
Malta	1	1	2
Netherlands	2	1	3
Austria	3	2	5
Poland	1	3	4
Portugal	2	1	3
Slovenia	1	2	3
Slovakia	-	2	2
Finland	1	3	4
Sweden	2	1	3
United Kingdom	2	2	4
Switzerland	-	1	1
TOTAL:	42*	47*	89

* These data do not take account of the two technical evaluations which took place in Bulgaria and Romania one after the other as part of the preparation of these countries' accession to the European Union on 1 January 2007.