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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
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2011 Annual Report on the implementation of Regulation (EC) No. 300/2008  
on common rules in the field of Civil Aviation Security

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

**2011 ANNUAL REPORT ON THE IMPLEMENTATION OF REGULATION (EC) No.  
300/2008 ON COMMON RULES IN THE FIELD OF CIVIL AVIATION SECURITY**

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

This report covers the period 1 January – 31 December 2011

## **INTRODUCTION**

2011 was the first full year of implementation of Regulation (EC) No 300/2008 and its implementing provisions since the revised aviation security rules entered into force in April 2010. Throughout the year, the Commission worked steadily with Member States and the industry to ensure a consistent implementation of this new legal framework. The inspection regime implemented by the Commission provided useful feedback on the main implementing challenges and allowed identifying areas that needed small adaptations to further increase the clarity of this new legal framework.

The report describes the Commission's inspection activity during 2011 and recalls developments in the area of legislation, trials and studies, and international relations.

## **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 airports, operators and entities. Switzerland is also covered by the Union programme, while Norway and Iceland (and Liechtenstein) are inspected against parallel provisions by the EFTA Surveillance Authority (ESA). To carry out its inspection work, the Commission has a team of 10 aviation security inspectors. This inspection work is supported by a pool of currently 87 national inspectors nominated by Member States, Iceland, Norway and Switzerland. A chart summarising all Commission and ESA compliance monitoring activity to date is attached in an Annex.

#### **2. INSPECTIONS OF NATIONAL APPROPRIATE AUTHORITIES**

The Commission monitored 10 appropriate authorities during 2011, all of which had been subject to previous Commission inspections. For several Member States these inspections showed significant improvements from the past. The deficiencies most commonly found in 2011 were similar to those in 2010 and related to the yet outstanding full alignment of the National Aviation Security Programmes and the National Quality Control Programmes to the new legal framework of Regulation (EC) 300/2008.

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 Member States had failed to monitor all required aspects of the legislation and follow-up activities were sometimes inadequate. Sanctions were foreseen in the legislation of all Member States, but were not always applied in case deficiencies were not corrected swiftly.

The financial crisis and resulting pressure on public budgets also affected the resources available for national compliance monitoring activities in certain Member States.

### **3. INITIAL INSPECTIONS AT AIRPORTS**

Nineteen (19) initial inspections of airports were conducted during 2011, the same number as carried out in 2010. All chapters were covered (although not during each inspection). The overall percentage of core measures found to be in compliance in 2011 was 80% and thus identical to the compliance rate in 2010.

The deficiencies which were found in the area of traditional measures<sup>1</sup> tended, by and large, to stem from human factor issues and did not change significantly from previous years. Non-compliances in the area of traditional measures at the airports inspected during 2011 mainly related to the quality of staff screening as well as to certain cargo security requirements. In particular, the inadequate quality of hand searches of staff continued to be a challenge. In the area of cargo, most non-compliances related to the selection of the most suitable methods for screening, given the nature of the consignment, and standards for applying them. These human factor issues require careful attention and, until new technological and/or procedural alternatives are available, should be addressed through intensified training and supervision.

Furthermore, certain additional measures introduced under the new regulatory framework had not yet been fully implemented at the airports inspected in 2011. Non-compliances arose in relation to methods and standards of screening of in-flight and airport supplies (where a secure supply chain had not yet been fully deployed) and missing risk assessments in order to establish adequate means and frequencies of patrols at airports. Member States' appropriate authorities should actively pursue the implementation of these new provisions.

### **4. FOLLOW-UP INSPECTIONS**

In accordance with Article 13 of Regulation 72/2010, the Commission routinely carries out a limited number of follow-up inspections. Such follow-up inspections are frequently carried out in cases where several serious deficiencies have been identified during the initial inspection but also, although to a lesser extent, on a random basis to verify the accuracy of national compliance monitoring activities and reporting. Five such activities were carried out during 2011 and mostly confirmed the adequate rectification of identified deficiencies.

### **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. 30 files (18 airport and 12 appropriate authorities) were closed during 2011. In all, 12 appropriate authority and 12 airport inspection files remained open at the end of the year.

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

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 Union, the Commission will activate Article 15 of Regulation (EU) No. 72//2010<sup>2</sup>. 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. During 2011 no such activation was necessary.

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. In 2011, two infringement proceedings were initiated following inspections of national administrations. In both cases, the concerned Member State failed to maintain its national aviation security programme. During the same year three other infringement cases were closed following rectification of the identified shortcomings.

## **6. MEMBER STATES' OWN EVALUATIONS**

Point 18 of the Annex to Commission Regulation 18/2010<sup>3</sup> 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 Jan-Dec of the preceding year. The Member States' contributions for the reporting period Jan-Dec 2010 were all submitted on time and all followed the Commission template.

The analysis of these reports showed that several Member States did not respect in full the requirements relating to scope and frequencies of national monitoring activities. In addition, a significant number of Member States declared that they had not yet developed standard protocols for covert testing of aviation security requirements. The Commission has taken up these issues in the agenda of the working group on inspections set up under the Regulatory Committee for aviation security in order to assist Member States to reach compliance with the common requirements.

## **PART TWO**

### **THE LEGISLATION AND SUPPLEMENTARY TOOLS**

#### **1. GENERAL**

New aviation security legislative acts adopted during 2011 mainly related to the deployment of security scanners and new requirements for cargo and mail arriving from third countries.

Following the completion of a full impact assessment, legislation governing the deployment of security scanners was adopted. This ensures that security scanners are used in a harmonised manner ensuring a high level of security while respecting passengers' fundamental rights, in particular as regards health, privacy and data protection and passengers entitlement to opt out from the security scanner procedure. The Commission will pay particular attention to ensure that these rules are fully respected by Member States.

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<sup>2</sup> 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

<sup>3</sup> Commission Regulation (EU) No 18/2010 of 8 January 2010 amending Regulation (EC) No 300/2008 of the European Parliament and of the Council as far as specifications for national quality control programmes in the field of civil aviation security are concerned OJ L7 of 12.1.2010, p. 3.

In response to the Yemen cargo incident in late October 2010 the Commission together with Member States and involving stakeholders also swiftly developed appropriate legal requirements for cargo flown into the EU from third countries.

In addition, anticipated implementation difficulties to screen liquids required changes to the implementation date for the first phase of mandatory liquids screening at EU airports. A working group was set up and a study to analyse all relevant factors connected to the deployment of liquid screening equipment at EU airports was commissioned. Finally, an extension of the time span for the use of Standard 2 explosive detection systems became necessary and was adopted in the autumn of 2011.

## 2. SUPPLEMENTARY LEGISLATION ADOPTED

The new legislative texts adopted during 2011 were:

- Regulation (EU) 720/2011<sup>4</sup> supplementing the common basic standards on civil aviation security as regards the phasing-in of the screening of liquids, aerosols and gels at EU airports;
- Regulation (EU) 859/2011<sup>5</sup> laying down detailed measures for the implementation of the common basic standards on aviation security in respect of air cargo and mail;
- Regulation (EU) 1087/2011<sup>6</sup> laying down detailed measures for the implementation of the common basic standards on aviation security in respect of explosive detection systems;
- Regulation (EU) 1141/2011<sup>7</sup> supplementing the common basic standards on civil aviation security as regards the use of security scanners at EU airports;
- Regulation (EU) 1147/2011<sup>8</sup> laying down detailed measures for the implementation of the common basic standards on aviation security in respect of security scanners;
- Decision 2011/5862/EU<sup>9</sup> laying down detailed measures for the implementation of the common basic standards on aviation security in respect of air cargo and mail;
- Decision 2011/8042/EU<sup>10</sup> laying down detailed measures for the implementation of the common basic standards on aviation security in respect of security scanners;

These texts were finalised during 6 regular meetings and 2 special meetings of the Aviation Security Regulatory Committee as well as 6 meetings of the Stakeholders' Advisory Group on Aviation Security.

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<sup>4</sup> Commission Regulation (EU) No 720/2011 of 22 July 2011 amending Regulation (EC) No 272/2009, OJ L 193, 23.7.2011, p. 19–21

<sup>5</sup> Commission Implementing Regulation (EU) No 859/2011 of 25 August 2011 on amending Regulation (EU) No 185/2010, OJ L 220, 26.8.2011, p. 9–15

<sup>6</sup> Commission Implementing Regulation (EU) No 1087/2011 of 27 October 2011 amending Regulation (EU) No 185/2010, OJ L 281, 28.10.2011, p. 12–13

<sup>7</sup> Commission Regulation (EU) No 1141/2011 of 10 November 2011 amending Regulation (EC) No 272/2009, OJ L 293, 11.11.2011, p. 22–23

<sup>8</sup> Commission Implementing Regulation (EU) No 1147/2011 of 11 November 2011 amending Regulation (EU) No 185/2010, OJ L 294, 12.11.2011, p. 7–11

<sup>9</sup> Commission Decision 2011/5862/EU of 17 August 2011 addressed to all Member States; not published in the OJ (restricted and confidential material)

<sup>10</sup> Commission Decision 2011/8042/EU of 14 November 2011 addressed to all Member States; not published in the OJ (restricted and confidential material)

### **3. REGULATED AGENT AND KNOWN CONSIGNOR DATABASE**

To strengthen the secure supply chain in air cargo and air mail as well as to facilitate its homogenous implementation in the EU, the regulated agent and known consignor (RAKC) database was developed and has been maintained since its full deployment on 1<sup>st</sup> June 2010 under a Commission framework contract. The RAKC database contained at the end of 2011 about 8,500 records of regulated agents and (independently validated) known consignors. It is the only legal primary tool to be used by regulated agents for consultation when accepting consignments from another regulated agent or known consignor.

Following the entry into force of new requirements for air carriers transporting cargo into the EU from third countries, work to enlarge the database in order to include also these air carriers has started.

### **4. EU AIRPORT INSPECTIONS – HANDBOOKS**

Regulations (EC) No. 300/2008 and (EU) No. 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 set up and maintains two comprehensive handbooks with detailed prompts and guidance for EU inspectors in the field. These handbooks are subject to regular review.

## **PART THREE**

### **TRIALS AND STUDIES**

#### **1. TRIALS**

A 'trial' in the sense of the EU aviation security legislation<sup>11</sup> 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, provided that, in particular, such trials do not negatively affect the overall level of security being attained.. 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.

New trials were initiated during 2011 in Spain and the United Kingdom. These concerned the use of explosive trace detection and hand held metal detectors for screening of religious headgear worn by passengers. In addition, a number of trials of security scanners continued during 2011 before the formal adoption of EU legislation for the deployment of such security scanners. One of these trials is still ongoing in the UK.

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<sup>11</sup> See Article 12.8."Methods of screening using new technologies" of the Annex of the Commission Regulation (EU) No. 185/2010 laying down detailed measures for the implementation of the common basic standards on aviation security, OJ L 55, 5.3.2010, p.1

## **2. STUDIES**

EU rules on aviation security require all liquids (duty-free and taken from home) to be screened (instead of rejected) as of 29 April 2013. In order to ensure that appropriate and concrete steps are taken in view of the 2013-deadline, at the end of 2011 the Commission set up a 2013-Liquid Working Group and launched a study to assess the operational impact of liquids screening at EU airports.

Furthermore, a study on Threat Image Projection (TIP) technology used in screening of cabin baggage and hold baggage was conducted throughout the year. The final report, due in 2012, will base itself on the analysis of results from covert test activities at TIP and non-TIP airports.

Finally, the Commission launched a study on the impact of new EU security rules for inbound cargo at the end of 2011. The final report, due towards the end of 2012, is expected to provide timely input before the end of the transitional period for independent validations of air carriers transporting cargo from third countries into the EU, which expires on 30 June 2014.

## **PART FOUR**

### **DIALOGUE WITH INTERNATIONAL BODIES AND THIRD COUNTRIES**

#### **1. GENERAL**

The Commission is fully engaged with international bodies and key third country partners in preparing and participating in international meetings having a security dimension. The Commission is heavily involved in co-ordinating the EU position and often making presentations and submitting papers. Dialogues are also opened, as appropriate, with individual third countries on issues of bilateral concern or shared interest. Fostering such relations with international bodies and key third countries ensures that the EU is well informed and positioned to influence global policy on aviation security, both from the rule-making perspective and from the implementation perspectives where capacity-building is important in some regions of the world.

#### **2. INTERNATIONAL BODIES**

In representing the EU, the Commission participates in the annual meeting of the ICAO Aviation Security Panel. At the 2011 meeting of the Panel (Montreal, 21-25 March), the European Commission and EU Member States presented papers to the Panel on air cargo security – concerning both forthcoming EU rules and the need for strengthened international rules – and on EU rules concerning screening of liquids.

The Commission also regularly takes part in meetings of the European Civil Aviation Conference (ECAC), notably the ECAC Security Forum and the ECAC Technical Task Force which leads on technology issues. In some cases, ECAC's work has assisted in the work of the EU Regulatory Committee for Civil Aviation Security.

#### **3. THIRD COUNTRIES**

The Commission actively continued the dialogue on aviation security issues with the US in a number of fora, in particular the EU-US Transportation Security Cooperation Group, which

progressed work towards one-stop security, applicable as from 1 April 2011, thus allowing passengers and their baggage arriving from US airports to transfer through EU airports onto a connecting flight without necessarily having to be subjected to security controls again<sup>12</sup>. In 2011, the Commission took part in inspections of US airports in relation to the application of one-stop security.

The Commission also intervened on a number of occasions when Member States raised concerns about additional security measures imposed by the US on EU air carriers, in particular with regard to air cargo security where requests by the US appeared to duplicate the application of security controls under the EU aviation security regime. In that respect, the Commission agreed on a programme for cargo recognition whereby the US would work towards recognising EU security measures in lieu of equivalent US measures. Work on this initiative was intensified in the latter half of 2011 with the aim of finalisation in 2012.

## **CONCLUSION**

While, overall, a high level of security continues to be ensured in the EU, Commission inspections have revealed some shortcomings. In traditional measures shortcomings identified in the areas of staff and cargo screening tended, by and large, to stem from human factor issues. In additional measures implemented under the new legal framework of Regulation (EC) 300/2008 further non-compliances found were related to patrols at airports, risk assessment and screening of in-flight supplies and airport supplies. Commission recommendations for corrective action were on the whole followed up satisfactorily and 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, using its established peer review system as well as instigating formal infringement procedures if necessary.

On the legislative front, further detailed implementing rules were adopted during 2011 mainly to permit the deployment of security scanners under certain conditions and to increase security of cargo and mail being transported into the EU. These and other measures are also being taken forward on the international front in contacts with international organisations and third countries in order to increase global aviation security standards.

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<sup>12</sup> Commission Regulation (EU) No 983/2010 of 3 November 2010, amending Regulation (EU) 185/2010, OJ L286 of 4.11.2010, p.1

## Annex

### Commission inspections as at 31.12.2011

State	Number of inspections 01/2011 -12/2011 (including follow-ups)	Total number of inspections 2004-2011 (including follow-ups)
Austria	0	9
Belgium	1	10
Bulgaria	1	6
Cyprus	1	6
Czech Republic	2	7
Denmark	2	9
Estonia	1	5
Finland	1	8
France	3	15
Germany	3	17
Greece	1	13
Hungary	2	7
Ireland	0	8
Italy	3	15
Latvia	1	5
Lithuania	0	4
Luxembourg	0	6
Malta	0	3
Netherlands	0	7
Poland	2	9
Portugal	0	8
Romania	0	3
Slovakia	0	4
Slovenia	1	5
Spain	2	14
Sweden	2	11
United Kingdom	4	17
<b>Non EU Members :</b>		
Switzerland	1	5
<b>TOTAL</b>	<b>34</b>	<b>236</b>

**EFTA Surveillance Authority inspections as at 31.12.2011**

<b>State</b>	<b>Number of inspections 01/2011-12/2011 (including follow-ups)</b>	<b>Total number of inspections 2004-2011 (including follow-ups)</b>
Iceland	2	9
Norway	4	35
<b>TOTAL</b>	<b>6</b>	<b>44</b>