

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.9.2005
COM(2005) 429 final

2005/0191 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on common rules in the field of civil aviation security

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Regulation (EC) No 2320/2002 of the European Parliament and of the Council establishing common rules in the field of civil aviation security has been in force since January 2003. Experience gained on the basis of Commission inspections and the daily application of the Regulation by Member States shows that the swift transformation into legislation of a set of non-binding recommendations developed by the Member States has led, due to the quick drafting and adoption of the Regulation as a response to the events of 11 September 2001, to a number of problems affecting its implementation in a more solid manner.

It is, therefore, appropriate to replace this Regulation. The objective is to clarify, simplify and harmonise further the legal requirements with the aim of enhancing the overall security in civil aviation. The new framework regulation should solely lay down the basic principles of what has to be done in order to safeguard civil aviation against acts of unlawful interference, whereas implementing acts should lay down the technical and procedural decisions on how this is to be achieved.

The Commission is of the view that a new regulation will be a clear case and leading example of Better Regulation.

- **General context**

Regulation (EC) No 2320/2002 was developed as a result of the terrible events of 11 September 2001 in the USA, when four passenger aircraft were hijacked with horrendous consequences. A legislative proposal was thus swiftly drafted and on 16 December 2002 following the procedure under Article 251 of the EC Treaty Regulation (EC) No 2320/2002 laying down basic requirements for aviation security was adopted.

This regulation has now been in force for some 2½ years and has been complemented by implementing legislation, developed through comitology, as envisaged by Articles 4 and 9 of the regulation. It has also had one minor revision - Regulation (EC) No 849/2004 - to rectify some small errors in the original text.

Experience over time has shown that the regulation is too detailed and is in need of simplification. Having such a high degree of detail in framework legislation adopted by co-decision makes legal revision to take into account technical or operational developments impractical. This is an over-prescriptive approach in a framework legislation, which should be replaced by general principles with details added, when necessary, in the implementing legislation.

Whilst recognising the principle of subsidiarity, the Commission is of the view that a greater degree of harmonisation than currently exists of security measures and procedures is desirable. In particular, industry (airlines, cargo shippers and freight forwarders, equipment manufacturers) has a legitimate interest in seeing greater levels of harmonisation for facilitation reasons. Indeed, there are situations where facilitation can be achieved through

more harmonisation without compromising in any way security. In this regard the Commission understands, supports and follows the needs and orientations of industry.

One example where there is a lack of harmonisation concerns air cargo security. Point 6.2(b) of the Annex to Regulation (EC) 2320/2002 allows the rules for regulated agents to be defined by the appropriate authority. This has resulted in 25 national systems being in place and a consequential potential distortion of competition and the inability of industry to benefit from the freedoms of the Single Market.

Further harmonisation can be developed in greater detail in the implementing legislation. In the example of cargo security it will then be possible to interlink security requirements for regulated agents and known shippers with the Authorised Economic Operator concept developed in the Community's customs legislation.

Increased harmonisation is also an integral element of 'one-stop security' - the concept whereby transfer- and transit passengers, bags and cargo need not be rescreened since there is confidence that baseline levels of security were met at the original departing airport. Again, this is an element that is of benefit to operators acting in a highly competitive market.

In addition to revising the regulation on the grounds of simplification and harmonisation, a revision of the regulation can ensure further clarity. The complexity of elements in the regulation has shown that there exists the possibility for different interpretations of the legal requirements. There is also ambiguity in parts of the text. Clarity will contribute to effective implementation of security standards and to legal certainty.

The proposed new regulation would seek to address such issues by improving the overall clarity and legal certainty (and thus quality) of the legislation and, with it, diminish the scope for misinterpretation.

Reference has already been made to the inflexibility that results from having detailed operational and technical standards in co-decision legislation. The Commission is of the view that the ability to (re)act swiftly in the light of risks that are constantly evolving over time is of major significance to improve the overall levels of security. This ability to (re)act swiftly, if necessary, should override potential concerns in relation to the institutional balance for developing legislation. Such an approach is, of course, without prejudice to the scrutiny reserve that the European Parliament has for implementation legislation that is adopted via the comitology process.

Finally, an issue of concern is that the current regulation is in the public domain. Consequently, any amendments made to it will also be in the public domain. In the view of the Commission it is not desirable to have detailed security measures and procedures placed in the public domain, as potential terrorists could use the information to seek out weaknesses in aviation security in order to perpetrate unlawful acts. Similarly, it is also not in the public interest to publicise new developments in security. By placing operational details in implementing legislation this issue can be addressed.

- **Existing provisions in the area of the proposal**

Regulation (EC) No 2320/2002 of the European Parliament and of the Council establishes common rules in the field of civil aviation security. The proposal seeks to replace this legislative act.

- **Consistency with other policies and objectives of the Union**

The proposal seeks to replace the existing regulation in order to bring forward better legislation, based on four principles: that of simplification, harmonisation, clarification and enhancing the levels of security.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

The key stakeholder organisations representing airlines, airports, pilots and cargo handlers were all actively involved in a working group that assisted the Commission in developing standards that are reflected in the Commission proposal.

Summary of responses and how they have been taken into account

The stakeholder organisations support, in general terms, the aim of reducing the level of detail in the framework legislation, provided that they can also play an active role in the development of the complementary implementing legislation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

Given that the proposal aims at replacing the existing framework regulation there will be no impact in itself from its adoption. Consequently, dialogue with stakeholder organisations rather than a formal impact assessment was deemed to be most appropriate in the circumstances.

The legislation has no social or environmental impact.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

With one exception it is not the wish of the Commission to change substantively its competences in the field of civil aviation security through a revision of Regulation (EC) No 2320/2002. Rather, what is proposed is a change in the balance of the legislative provisions between those that are laid down in the framework legislation (current Regulation (EC) No 2320/2002, as amended by Regulation (EC) No 849/2003) and those laid down in implementing legislation, of which there are currently seven acts: Commission Regulations (EC) Nos 622/2003, 1217/2003, 1486/2003, 68/2004, 1138/2004, 781/2005 and 857/2005.

Thus, Regulation (EC) No 2320/2002 would be replaced by a simplified, clearer regulation laying down general principles. Those details edited out of the framework legislation would,

instead, be introduced into the implementing legislation, which would be amended accordingly.

In this regard it should be noted that the proposal is approximately half the size of the current regulation.

The only additional competence sought relates to rules for in-flight security measures. It covers such diverse topics as access to the cockpit, unruly passengers and in-flight security officers ('sky marshals'). There currently does not exist Community legislation covering in-flight security measures. In the view of the Commission harmonised rules would be best addressed as an element of aviation security legislation, by means of implementing legislation. However, it should be stressed that such implementing legislation will be developed only as and when such rules are deemed necessary at the Community level. Also, it should be noted that the Commission has no intention of compelling any Member State to accept in-flight security officers on board aircraft and the proposal in no way seeks to change existing sovereignty on this matter.

- **Legal basis**

Article 80(2) of the EC Treaty

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

In view of the Community wide scale of aviation security issues and the very advanced nature of the internal aviation market, the objectives are better achieved at the level of the Community than at national level.

Community action will better achieve the objectives of the proposal for the following reason(s).

The current regulation has already demonstrated why action at community level is the most appropriate.

The current regulation has already demonstrated that a Community approach to aviation security raises both overall standards and mutual confidence between Member States.

As is the case with the existing legislation that this proposal seeks to replace the objectives of the proposed new act are better achieved at the level of the Community in view of the Community-wide scale of aviation security issues and the advanced nature of the internal aviation market.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

As is the case with the existing legislation, the proposed new act sets common baseline standards, but allows Member States to apply more stringent measures if the threat so warrants.

The proposal does not address the issue of financing security. Who should pay for security - industry or the State - was a major topic of discussion during the adoption of Regulation 2320/2002. The conclusion then was a commitment in an Interinstitutional Declaration that the Commission should undertake a study addressing "in particular the way the financing [of aviation security] is shared between the public authorities and the operators and to submit to the European Parliament and the Council the results and proposals if appropriate". Such a study was undertaken and the results published in September 2004 and placed on the Commission website at http://europa.eu.int/comm/transport/air/safety/studies_en.htm. The report's conclusions are to be used as the basis of a Commission Communication that will look at the funding of security across all modes of transport. This action is foreseen in the 2005 Work Programme of the Commission and its intended completion date is the end of 2005. The legislative initiative to replace Regulation 2320/2002 has thus been made without prejudging either the forthcoming Commission communication or the way that security is funded today across the Community.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason(s).

The proposal replaces an existing regulation. The regulation was originally deemed the most appropriate instrument a) to ensure uniform application of rules within the Community and b) to ensure the swiftest possible adoption of common rules after the events of 11 September 2001.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5. ADDITIONAL INFORMATION

- **Simplification**

The proposal provides for simplification of legislation.

Experience over time has shown that Regulation (EC) No 2320/2002 is too detailed and is in need of simplification. Having such a high degree of detail in framework legislation adopted by co-decision makes legal revision to take into account technical or operational developments very impractical.

As an example of this point 4.1.1 of the Annex to the regulation lays down two ways whereby passengers may be screened - by hand or by walk-through-metal-detector. However, in the foreseeable future new technology-based forms of passenger screening will offer a realistic and very accurate alternative way of detecting prohibited items. Unfortunately, technologies other than those described in 4.1.1 of the Annex to the regulation cannot be used for this

purpose until the annex is amended accordingly. Given that it requires co-decision procedure this cannot be done swiftly, with potentially negative effects on aviation as a consequence. This is only one example of many.

The adoption of the proposal would lead to the repealing of Regulation 2320/2002 and also Regulation 849/2004 which amended it. The proposal thus follows Commission's commitment to cutting "red tape" by first scrapping existing legislation - the principle of "new for old".

The proposal is included in the Commission's rolling programme for up-date and simplification of the acquis communautaire and its Work and Legislative Programme under the reference 2005/TREN/016.

- **Repeal of existing legislation**

The adoption of the proposal will lead to the repeal of existing legislation.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

- **Detailed explanation of the proposal**

Article 1 lays down the objectives, namely establishing common rules for safeguarding civil aviation against acts of unlawful interference. Article 1 does not differ in any significant way from Article 1 of Regulation (EC) No 2320/2002.

Article 2 addresses the scope. The text has been made clearer than in the current regulation to give legal certainty that the regulation applies both to Community airports serving civil aviation, to operators providing services at such airports and to entities performing aviation security functions for flights from such airports (for example catering or cargo facilities that do not lie within the airport perimeter).

Article 3 lays down definitions.

Article 4 refers to the common standards that are to be laid down in Community law, including those measures that should be addressed in implementing legislation.

Article 5 permits Member States to apply more stringent security measures. The principle is unchanged from Article 6 of Regulation (EC) No 2320/2002. However, the new proposal requires that Member States shall both undertake a risk assessment and that they shall be able to justify such action, in general terms, if requested to do so by the Commission. This is to address fears by stakeholders that national authorities can burden industry with additional security requirements without the need to justify their actions. Actions by Member States in response to specific threat information should not be prejudiced by this legislation and so heightened security requirements for individual flights would fall outside the requirements of this article.

Article 6 is new. It addresses the situation whereby a third country requires different security measures on flights from Community airports than those laid down by Community legislation.

Article 7 repeats the requirement (currently contained in Article 5(2) of Regulation (EC) No 2320/2002) that there should be a single authority in each Member State that is responsible for coordinating and monitoring the implementation of the aviation security requirements.

Articles 8-12 require that there shall be security programmes at national-, airport- and air carrier level, as well as for all other entities performing aviation security functions. The article is not substantively different from obligations in Articles 5(1) and 5(4) of the existing legislation, but does formally require for the first time in Community legislation a security programme by other entities such as cargo handling companies or airline catering companies. The requirement for security programmes reflects current best practice in the aviation sector and, as such, is not a significant burden on industry or administrations.

Article 13 lays down an obligation for each Member State to undertake compliance monitoring activities by means of a national quality control programme. This article contains the obligations laid down in Articles 5(3) and 7(1) of Regulation (EC) No 2320/2002.

Article 14 allows for Commission inspections of, inter alia, Community airports. It is generally unchanged from the provisions of current Article 7 (2 to 4) of Regulation (EC) No 2320/2002.

Article 15 addresses the dissemination of information.

Article 16 lays down the Committee to assist the Commission in the development of implementing legislation. It is substantively unchanged from Article 9 in Regulation (EC) No 2320/2002.

Article 17 replaces the existing Article 10 on security of flights from third countries. It foresees agreements between the Community and third countries that would allow for the possibility of passengers, bags and cargo transferring at Community airports without the need for rescreening and/or additional security controls.

Article 18 obliges to have penalties against those that fail to adhere to the Community requirements for aviation security. The requirement is unchanged from that currently laid down in Article 12 of Regulation (EC) No 2320/2002.

Articles 19 and 20 repeal the existing regulation and replace it with this new act. It allows a staggered implementation so that existing implementing legislation that complements Regulation (EC) No 2320/2002 can be updated by Committee procedure to bring it into line with the new act so as to avoid a lacuna when the existing Regulation would be repealed.

Turning to the Annex of the new act, this is structured in the same way as the Annex to Regulation (EC) No 2320/2002. However, the contents of each chapter of the Annex have been simplified into general sets of principles. Whilst rules are needed these shall be developed by means of implementing legislation. As an example the new chapter 4 on passengers and cabin baggage is approximately half the size of the existing chapter 4. Only chapter 10 on in-flight security measures did not exist in the current Regulation.

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on common rules in the field of civil aviation security

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Having regard to the opinion of the Committee of the Regions[3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[4],

Whereas:

(1) In order to protect persons and goods within the European Union, acts of unlawful interference with civil aircraft should be prevented by establishing common rules for safeguarding civil aviation. This objective should be achieved by setting common rules and common standards on aviation security as well as mechanisms for monitoring compliance.

(2) It is desirable, in the interests of civil aviation security generally, to provide the basis for a common interpretation of the April 2002 issue of Annex 17 to the Chicago Convention on International Civil Aviation of 7 December 1944.

(3) 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[5] was adopted as a result of the events of 11 September 2001 in the United States.

(4) The content of Regulation (EC) No 2320/2002 should be revised in the light of the experience gained, and the Regulation itself should be replaced by a new act seeking

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1 OJ C […], […], p. […].
2 OJ C […], […], p. […].
3 OJ C […], […], p. […].
4 OJ C […], […], p. […].
5 OJ L 355, 30.12.2002, p. 1.

the simplification, harmonisation and clarification of the existing rules and the improvement of the levels of security.

(5) Given the need for more flexibility in adopting security measures and procedures in order to meet evolving risk assessments and to allow new technologies to be introduced, the new act should lay down the basic principles of what has to be done in order to safeguard civil aviation against acts of unlawful interference without going into technical and procedural details on how they are to be implemented.

(6) The new act should apply to airports serving civil aviation located in the territory of a Member State, to operators providing services at such airports and to entities providing goods and/or services to or through such airports.

(7) Without prejudice to the Convention on offences and certain other acts committed on board aircraft, Tokyo, 1963, the Convention for the suppression of unlawful seizure of aircraft, The Hague, 1970 and the Convention for the suppression of unlawful acts against the safety of civil aviation, Montreal 1971, the new act should cover security measures that apply on board an aircraft, or during a flight, of Community air carriers.

(8) The various types of civil aviation do not necessarily present the same level of threat. In setting common standards on aviation security, the size of the aircraft, the nature of the operation and/or the frequency of operations at airports should be taken into account with a view to permitting the grant of derogations.

(9) Member States should also be allowed, on the basis of a risk assessment, to apply more stringent measures than those to be laid down. However, it should be possible for the Commission to examine those more stringent measures and to decide whether a Member State may continue to apply them.

(10) Third countries may require the application of measures that differ from those laid down in this act in respect of flights from an airport in a Member State to, or over, that third country. However, without prejudice to any bilateral agreements to which the Community is a party, it should be possible for the Commission to examine the measures required by the third country and to decide whether a Member State, operator or other entity concerned may continue to apply the measures required.

(11) Even though, within a single Member State, there may be two or more bodies or entities involved in aviation security, each Member State should designate a single authority responsible for the coordination and monitoring of the implementation of security standards.

(12) In order to define responsibilities for the implementation of the common standards and to describe what measures are required by operators and other entities for this purpose, each Member State should draw up a national civil aviation security programme. Furthermore, each airport operator, air carrier and entity applying aviation security standards should draw up, apply and maintain a security programme in order to comply both with the new act and with whichever national civil aviation security programme is applicable.

(13) In order to monitor compliance with the new act and with the national civil aviation security programme, each Member State should draw up and ensure the implementation of a national programme to check the quality of civil aviation security.

(14) In order to monitor the application by Member States of the new act, and also to identify weak points in aviation security, the Commission should conduct inspections, including unannounced inspections.

(15) Implementing acts setting out common measures and procedures for the implementation of the common standards and containing sensitive security information, together with Commission inspection reports and answers of national authorities should be regarded as "EU classified information" within the meaning of Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure[6]. Those items should not be published; they should only be made available to those operators and entities with a legitimate interest.

(16) The measures and procedures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[7].

(17) For the purpose of allowing transfer passengers and transfer baggage to be exempted from screening when arriving on a flight from a third country, which is known as the concept of "one-stop security", as well as for allowing passengers arriving on such a flight to mix with screened departing passengers, it is appropriate to encourage agreements between the Community and third countries, recognising that the security standards applied in the third country are equivalent to Community standards.

(18) Penalties should be provided for infringements of the provisions of this Regulation. Those penalties should be effective, proportionate and dissuasive.

HAVE ADOPTED THIS REGULATION:

Article 1
Objectives

1. This Regulation establishes common rules for safeguarding civil aviation against acts of unlawful interference.

   It also provides the basis for a common interpretation of the April 2002 issue of Annex 17 to the 1944 Chicago Convention on International Civil Aviation.

2. The means of achieving the objectives set out in paragraph 1 shall be:

   a) the setting of common rules and common standards on aviation security;

   b) mechanisms for monitoring compliance.

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6 OJ L 317, 3.12.2001, p. 1.
7 OJ L 184, 17.7.1999, p. 23.

Article 2
Scope

This Regulation shall apply to the following:

a) all airports serving civil aviation located in the territory of a Member State;

b) all operators, including air carriers, providing services at airports referred to in point (a);

c) all entities operating from premises located inside or outside airport premises and providing goods and/or services to or through airports referred to in point (a).

Article 3
Definitions

For the purpose of this Regulation:

(1) 'civil aviation' means any air transport operation, both commercial and non-commercial, as well as both scheduled and non-scheduled operations, but excluding operations carried out by state aircraft referred to in Article 3 of the 1944 Chicago Convention on International Civil Aviation;

(2) 'aviation security' means the combination of measures and human and natural resources intended to safeguard civil aviation against acts of unlawful interference;

(3) 'operator' means a person, organisation or enterprise engaged, or offering to engage, in an air transport operation;

(4) 'air carrier' means an air transport undertaking holding a valid operating licence;

(5) 'Community air carrier' means an air carrier holding a valid operating licence granted by a Member State in accordance with Council Regulation (EC) No 2407/92[8];

(6) 'prohibited articles' means weapons, explosives or other dangerous devices, articles or substances that may be used to commit an act of unlawful interference;

(7) 'screening' means the application of technical or other means which are intended to identify and/or detect prohibited articles;

(8) 'security control' means the application of means by which the introduction of prohibited articles may be prevented;

(9) 'access control' means the application of means by which the entry of unauthorised persons or unauthorised vehicles, or both, is prevented;

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[8] OJ L 240, 24.8.1992, p. 1.

(10) ‘airside’ means the movement area of an airport, adjacent terrain and buildings or portions thereof, access to which is restricted;

(11) ‘landside’ means those parts of an airport, adjacent terrain and buildings or portions thereof that are not airside;

(12) ‘security restricted area’ means that area of airside where, in addition to access being restricted, access control is applied;

(13) ‘demarcated area’ means an area that is separated by means of access control either from security restricted areas, or, if the demarcated area itself is a security restricted area, from other security restricted areas of an airport;

(14) ‘background check’ means a verifiable check of a person’s identity, including any criminal history, as part of the assessment of an individual’s suitability for unescorted access to security restricted areas;

(15) ‘transfer passengers, baggage or cargo’ means passengers, baggage or cargo departing on an aircraft other than that on which they arrived;

(16) ‘transit passengers, baggage or cargo’ means passengers, baggage or cargo departing on the same aircraft as that on which they arrived;

(17) ‘potentially disruptive passenger’ means a passenger who is either a deportee, a person deemed to be inadmissible for immigration reasons or a person in lawful custody;

(18) ‘cabin baggage’ means baggage intended for carriage in the cabin of an aircraft;

(19) ‘hold baggage’ means baggage intended for carriage in the hold of an aircraft;

(20) ‘accompanied hold baggage’ means baggage accepted for carriage in the hold of an aircraft on which the passenger who checked it in is on board;

(21) ‘air carrier mail’ means mail whose origin and destination are both an air carrier;

(22) ‘air carrier materials’ means materials either whose origin and destination are both an air carrier or that are used by an air carrier;

(23) ‘cargo’ means any property intended for carriage on an aircraft other than baggage, air carrier mail and air carrier materials, and in-flight supplies;

(24) ‘regulated agent’ means an air carrier, agent, freight forwarder or any other entity who provides the security controls in accordance with this Regulation in respect of cargo;

(25) ‘known consignor’ means a consignor who originates cargo and whose procedures meet common security rules and standards sufficient to allow carriage of that cargo on any aircraft without further screening;

(26) ‘account consignor’ means a consignor who originates cargo and whose procedures meet common security rules and standards sufficient to allow carriage of that cargo on all-cargo aircraft without further screening;

(27) ‘aircraft check’ means an inspection of those parts of the interior of the aircraft to which passengers may have had access, together with an inspection of the hold of the aircraft in order to detect prohibited articles and unlawful interferences with the aircraft;

(28) ‘aircraft search’ means an inspection of the interior and accessible exterior of the aircraft in order to detect prohibited articles and unlawful interferences with the aircraft;

(29) ‘in-flight security officer’ means a person who is employed by a Member State to travel on an aircraft of the air carrier licensed by it with the purpose of protecting that aircraft and its occupants against acts of unlawful interference.

Article 4
Common standards

1. The common standards for safeguarding civil aviation against acts of unlawful interference shall be as laid down in the Annex.

2. Detailed measures and procedures for the implementation of the common standards referred to in paragraph 1 shall be laid down in accordance with the procedure referred to in Article 16(2).

These measures shall, in particular, address:

a) methods of screening, access control and other security controls;

b) methods of performing aircraft checks and aircraft searches;

c) prohibited articles;

d) performance criteria and acceptance tests for equipment;

e) staff recruitment and training requirements;

f) the definition of critical parts of security restricted areas;

g) the obligations of, and the validation procedures for, regulated agents, known consignors and account consignors;

h) categories of persons and goods that for objective reasons shall be subject to special security procedures or shall be exempted from screening, access control or other security controls.

By way of derogation from the common standards referred to in paragraph 1, the measures and procedures may also address screening, access control or other security controls that provide an adequate level of protection at airports, or demarcated areas

thereof. Such alternative measures shall be justified by reasons relating to the size of the aircraft, the nature of the operation and/or the frequency of operations at the airports concerned.

3. Member States shall ensure the application of the common standards referred to in paragraph 1.

Article 5

More stringent measures applied by Member States

1. Member States may apply more stringent measures than the common standards as laid down in Article 4. In doing so, they shall act on the basis of a risk assessment and in compliance with Community law. More stringent measures shall be relevant, objective, non-discriminatory and proportional to the risk that is being addressed.

   Member States shall notify the Commission of such measures.

2. The Commission may examine the application of paragraph 1 and, after consulting the Committee referred to in Article 16(1), may decide whether the Member State is allowed to continue to apply the measures.

   The Commission shall communicate its decision to the Council and the Member States.

   Within one month of the decision being communicated by the Commission, a Member State may refer the decision to the Council. The Council, acting by qualified majority, may within a period of three months take a different decision.

3. The second subparagraph of paragraph 1, and paragraph 2, shall not apply if the more stringent measures are limited to a given flight on a specific date.

Article 6

Security measures required by third countries

1. Without prejudice to any bilateral agreements to which the Community is a party, a Member State shall notify the Commission of measures required by a third country if they differ from the common standards as laid down in Article 4 in respect of flights from an airport in a Member State to, or over, that third country.

2. At the request of the Member State concerned or on its own initiative, the Commission shall examine the application of paragraph 1 and, after consulting the Committee referred to in Article 16(1), may decide whether the Member State, operator or other entity concerned may continue to apply these measures.

   The Commission shall communicate its decision to the Council and the Member States.

3. Paragraphs 1 and 2 shall not apply if:

a) the Member State concerned applies the measures concerned in accordance with Article 5; or

b) the requirement of the third country is limited to a given flight on a specific date.

Article 7
National authority

Where, within a single Member State, two or more bodies or entities are involved in aviation security, that Member State shall designate a single authority (hereinafter referred to as "the national authority") to be responsible for the coordination and monitoring of the implementation of the common standards referred to in Article 4.

Article 8
Programmes

Member States, airport operators, air carriers and other entities applying aviation security standards shall be responsible for drawing up, applying and maintaining their respective security programmes in the manner set out in Articles 9 to 12.

Member States shall additionally perform the broad quality-control function defined in Article 13.

Article 9
National civil aviation security programme

1. Every Member State shall draw up, apply and maintain a national civil aviation security programme.

That programme shall define responsibilities for the implementation of the common standards referred to in Article 4 and shall describe the measures required by operators and other entities for this purpose.

2. The national authority shall make available in writing the appropriate parts of its national civil aviation security programme to operators and entities with a legitimate interest.

Article 10
Airport security programme

1. Every airport operator shall draw up, apply and maintain an airport security programme.

That programme shall describe the methods and procedures which are to be followed by the airport operator in order to comply both with this Regulation and with the

national civil aviation security programme of the Member State in which the airport is located.

The programme shall also describe how compliance with these methods and procedures is monitored by the airport operator.

2. The airport security programme shall be submitted to the national authority.

Article 11
Air carrier security programme

1. Every air carrier shall draw up, apply and maintain an air carrier security programme.

That programme shall describe the methods and procedures which are to be followed by the air carrier in order to comply both with this Regulation and with the national civil aviation security programme of the Member State from which it provides services.

The programme shall also describe how compliance with these methods and procedures is monitored by the air carrier.

2. Upon request, the air carrier security programme shall be submitted to the national authority.

Article 12
Security programme of an entity applying aviation security standards

1. Every entity applying aviation security standards shall draw up, apply and maintain a security programme.

That programme shall describe the methods and procedures which are to be followed by the entity in order to comply both with this Regulation and with the national civil aviation security programme of the Member State in which it is located.

The programme shall also describe how compliance with these methods and procedures is to be monitored by the entity itself.

2. Upon request, the security programme of the entity applying aviation security standards shall be submitted to the national authority.

Article 13
National quality control programme

1. Every Member State shall draw up, and ensure the implementation of, a national quality control programme.

That programme shall enable the Member State to check the quality of civil aviation security in order to monitor compliance both with this Regulation and with its national civil aviation security programme.

2. The specifications for the national quality control programme shall be adopted in accordance with the procedure referred to in Article 16(2).

The programme shall allow for the swift detection and correction of deficiencies. It shall also provide that all airports, operators and other entities responsible for the application of security standards that are located in the territory of the Member State concerned shall be regularly monitored by, or under the supervision of, the national authority.

Article 14
Commission inspections

1. The Commission, acting in cooperation with the national authority, shall conduct inspections -including inspections of airports, operators and entities applying aviation security standards- in order to monitor the application by Member States of this Regulation and to identify weak points in aviation security. For this purpose, the national authority shall inform the Commission in writing of all airports in its territory serving civil aviation other than those covered by the third subparagraph of Article 4(2).

The procedures for conducting Commission inspections shall be adopted in accordance with the procedure referred to in Article 16(2).

2. Commission inspections of airports, operators and other entities applying aviation security standards shall be unannounced.

3. Each Commission inspection report shall be communicated to the national authority of the Member State concerned, which shall, in its answer, set out the measures taken to remedy any identified deficiencies.

The report, together with the answer of the national authority, shall subsequently be communicated to all other national authorities.

Article 15
Dissemination of information

The following documents shall be regarded as "EU classified documents" for the purposes of Decision 2001/844/EC, ECSC, Euratom, and shall not be placed in the public domain:

a) measures and procedures as referred to in Article 4(2), if containing sensitive security information;

b) Commission inspection reports and answers of national authorities, as referred to in Article 14(3).

Article 16
Committee

1. The Commission shall be assisted by a committee (hereinafter referred to as "the Committee").

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

   The period referred to in Article 5(6) of Decision 1999/468/EC shall be set at one month.

3. The Committee shall adopt its rules of procedure.

Article 17
Third countries

Agreements recognising that the security standards applied in a third country are equivalent to Community standards may be concluded between the Community and a third country in accordance with Article 300 of the Treaty.

Article 18
Penalties

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 19
Repeal

Regulation (EC) No 2320/2002 is repealed.

Article 20
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from […], with the exception of Articles 4(2), 13(2), 14(1) and 16 which shall apply from the date of entry into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX

COMMON STANDARDS FOR SAFEGUARDING CIVIL AVIATION AGAINST ACTS OF UNLAWFUL INTERFERENCE (ARTICLE 4)

1. AIRPORT SECURITY

1.1 Airport planning requirements

1. When designing and constructing new airport facilities or altering existing airport facilities, requirements for the implementation of the common standards referred to in this Annex and implementing acts shall be fully taken into account.

2. At airports the following areas shall be established:

   a) landside;

   b) airside;

   c) security restricted areas; and

   d) critical parts of security restricted areas.

1.2 Access control

1. Access to airside shall be restricted in order to deter unauthorised persons and vehicles from entering these areas.

2. Access to security restricted areas shall be controlled in order to ensure that no unauthorised persons and vehicles enter these areas.

3. Persons and vehicles may only be granted access to airside and security restricted areas if they fulfil the required security conditions.

4. Before being issued with a crew identification card, a flight crew member of a Community air carrier shall have successfully completed a background check carried out by the licensing Member State.

5. Before being issued with an airport identification card that authorises access to security restricted areas, a staff member shall have successfully completed a background check carried out by the Member State in which the airport is located. This shall not apply to flight crew members that have been issued with crew identification cards as referred to in paragraph 4.

1.3 Screening of persons other than passengers and items carried

1. Persons other than passengers, together with items carried, shall be screened on a continuous random basis upon entering security restricted areas in order to prevent prohibited articles from being introduced into these areas.

2. All persons other than passengers, together with items carried, shall be screened upon entering critical parts of security restricted areas in order to prevent prohibited articles from being introduced into these parts.

1.4 Examination of vehicles

Vehicles entering a security restricted area shall be examined in order to prevent prohibited articles from being introduced into these areas.

1.5 Surveillance, patrols and other physical controls

There shall be surveillance, patrols and other physical controls in the security restricted areas and all adjacent areas with public access, in order to identify suspicious behaviour of persons, to identify vulnerabilities which could be exploited to carry out an act of unlawful interference and to deter persons from such acts.

2. DEMARCATED AREAS OF AIRPORTS

Aircraft parked in demarcated areas of airports to which alternative measures referred to in the third subparagraph of Article 4(2) apply, shall be separated from aircraft to which the common standards as laid down in the Annex apply in full, in order to avoid that security standards applied to aircraft, passengers, baggage and cargo of the latter are compromised.

3. AIRCRAFT SECURITY

1. If passengers disembark an aircraft, the aircraft shall be subjected to an aircraft check before departure in order to ensure that no prohibited articles are present on board.

2. Every aircraft shall be protected from unauthorised interference.

3. Every aircraft that has not been protected from unauthorised interference shall be subjected to an aircraft search.

4. PASSENGERS AND CABIN BAGGAGE

4.1 Screening of passengers and cabin baggage

1. All originating, transfer and transit passengers and their cabin baggage shall be screened in order to prevent prohibited articles from being introduced into security restricted areas and on board an aircraft.

2. Transfer passengers and their cabin baggage may be exempted from screening, if:

   a) they arrive from a Member State, unless the Commission or that Member State has provided information that those passengers and their cabin baggage cannot be considered as having been screened to the common standards; or

   b) they arrive from a third country with which the Community has an agreement as referred to in Article 17 that recognises that these passengers and their cabin

baggage have been screened to security standards equivalent to Community standards.

3. Transit passengers and their cabin baggage may be exempted from screening, if:

a) they remain on board the aircraft; or

b) they do not mix with screened departing passengers other than those who board the same aircraft; or

c) they arrive from a Member State, unless the Commission or that Member State has provided information that those passengers and their cabin baggage cannot be considered as having been screened to the common standards; or

d) they arrive from a third country with which the Community has an agreement as referred to in Article 17 that recognises that these passengers and their cabin baggage have been screened to security standards equivalent to Community standards.

4.2 Protection of passengers and cabin baggage

1. Passengers and their cabin baggage shall be protected from unauthorised interference from the point at which they are screened until departure of the aircraft on which they are carried.

2. Screened departing passengers shall not mix with arriving passengers, unless:

a) the passengers arrive from a Member State, provided that the Commission or that Member State has not provided information that those arriving passengers and their cabin baggage cannot be considered as having been screened to the common standards; or

b) the passengers arrive from a third country with which the Community has an agreement as referred to in Article 17 that recognises that these passengers have been screened to security standards equivalent to Community standards.

4.3 Potentially disruptive passengers

Before departure potentially disruptive passengers shall be subjected to appropriate security measures.

5. HOLD BAGGAGE

5.1 Screening of hold baggage

1. All hold baggage shall be screened prior to being loaded onto an aircraft.

2. Transfer hold baggage may be exempted from screening, if:

a) it arrives from a Member State, unless the Commission or that Member State has provided information that this hold baggage cannot be considered as having been screened to the common standards; or

b) it arrives from a third country with which the Community has an agreement as referred to in Article 17 that recognises that this hold baggage has been screened to security standards equivalent to Community standards.

3. Transit hold baggage may be exempted from screening if it remains on board the aircraft.

5.2 Protection of hold baggage

Hold baggage to be carried on an aircraft shall be protected from unauthorised interference from the point at which it is screened or accepted into the care of the air carrier, whichever is earlier, until the departure of the aircraft on which it is to be carried.

5.3 Baggage reconciliation

1. Each item of hold baggage shall be identified as accompanied or unaccompanied. The hold baggage of a passenger who has checked in for a flight but who is not on board the aircraft shall be identified as unaccompanied.

2. Unaccompanied hold baggage shall not be transported, unless that baggage has been either separated due to factors beyond the passenger's control or subjected to additional security controls.

6. CARGO

6.1 Security controls for cargo

1. All cargo shall be subjected to security controls prior to being loaded on an aircraft. An air carrier shall not accept cargo for carriage on an aircraft unless the application of security controls is confirmed and accounted for by a regulated agent, a known consignor or an account consignor.

2. Transfer cargo shall be subjected to security controls as detailed in an implementing act.

3. Transit cargo may be exempted from security controls if it remains on board the aircraft.

6.2 Protection of cargo

1. Cargo to be carried on an aircraft shall be protected from unauthorised interference from the point at which security controls are applied until the departure of the aircraft on which it is to be carried.

2. Cargo that is not adequately protected from unauthorised interference after security controls have been applied shall be screened.

7. AIR CARRIER MAIL AND AIR CARRIER MATERIALS

Air carrier mail and air carrier materials shall be subjected to security controls and thereafter protected until loaded onto the aircraft in order to prevent prohibited articles from being introduced on board an aircraft.

8. IN-FLIGHT SUPPLIES

In-flight supplies, including catering, intended for carriage or use on board an aircraft shall be subjected to security controls and thereafter protected until loaded onto the aircraft in order to prevent prohibited articles from being introduced on board an aircraft.

9. AIRPORT SUPPLIES

Supplies intended to be sold or used in security restricted areas of airports, including supplies for duty-free shops and restaurants, shall be subjected to security controls in order to prevent prohibited articles from being introduced into these areas.

10. IN-FLIGHT SECURITY MEASURES

1. Without prejudice to the applicable aviation safety rules, unauthorised persons shall be prevented from entering the flight crew compartment during a flight.

2. Without prejudice to the applicable aviation safety rules, potentially disruptive passengers shall be subjected to appropriate security measures during a flight.

3. If, during a flight, a passenger seeks to commit an act of unlawful interference, appropriate security measures shall be taken to prevent such an act.

4. Weapons shall not be carried on board an aircraft, unless an authorisation has been given by the Member State concerned and the required security conditions have been fulfilled.

5. In-flight security officers may only be deployed on board an aircraft if the required security conditions and training have been fulfilled. Member States retain the right not to authorise the use of in-flight security officers on flights of air carriers licensed by them.

6. Paragraphs 1 to 5 shall apply only to Community air carriers.

11. STAFF RECRUITMENT AND TRAINING

1. Persons implementing, or responsible for implementing, screening, access control or other security controls shall be recruited, trained and certified so as to ensure that they are suitable for employment and competent to undertake the duties to which they will be assigned.

2. Persons other than passengers requiring access to security restricted areas shall, before either an airport identification card or crew identification card is issued, receive security training.

3. Training as referred to in paragraphs 1 and 2 shall be conducted on initial and recurrent basis.

4. Instructors engaged in the training of the persons mentioned in paragraphs 1 and 2 shall be qualified.

12. SECURITY EQUIPMENT

Equipment used for screening, access control and other security controls shall be capable to perform the security controls concerned.