

# Air transport: common rules for civil aviation security

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The Commission presents its **fourth report** on the implementation of Regulation (EC) No 2320/2002 establishing common rules in the field of civil aviation security.

This report covers the period 1 January – 31 December 2008. It notes that 2008 marked a significant stage in the building of an effective aviation security regime in the EC. It was a time for fundamental reassessment, drawing on 5 years' experience of implementing and inspecting the regime adopted in 2002 after the 9/11 terrorist attacks. It was also a year of enhanced international co-operation and further technological development. The reassessment process revealed much that was positive.

The main requirements of the legislation were clearly understood and generally well implemented at European airports. Levels of compliance continued to move – albeit slowly – upwards and several Member States had increased their compliance monitoring resources. However, it was also evident that some provisions did require adjustment, to achieve a common understanding, address recurring deficiencies or take account of other developments. The inspection regimes themselves were equally in need of fine-tuning.

The Community response to new and emerging threats was similarly challenged, following the considerable disruption caused by the 2006 liquid explosives alert. This led to increased efforts to collaborate with manufacturers and international partners in the development of security screening procedures. It added impetus to the drive towards reaching agreement with third countries on recognition processes.

Lastly there was recognition of the need for greater **transparency**. The restrictions on access to much of the implementing legislation had come to be judged as excessive, with members of the public not able to retrieve the facts necessary for making informed decisions. In response, there was an immediate restructuring of the original provisions and a commitment to ensure appropriate levels of access in the future.

In all, 2008 was a year of **considerable achievement** towards the establishment of a mature aviation security environment. Member States, the aviation industry and manufacturers demonstrated a high level of commitment in working together to find security solutions and minimise inconvenience to passengers. However, at the end of the twelve month period, none would remain in any doubt about the considerable amount of work still to be done.

The Commission draws attention to the following points:

**Inspections:** under Regulation 2320/2002, the Commission is required to carry out inspections to determine Member States' level of compliance with the legal provisions on aviation security. Switzerland is also included in the programme while Norway and Iceland are inspected against identical provisions by the EFTA Surveillance Authority. There are three types of inspection:

- **national appropriate authority:** the Commission **inspected 9 appropriate authorities** during 2008. The 2008 exercise demonstrated high standards in 5 and reasonable standards in 2 states; but the remaining 2 reports were unsatisfactory. National civil aviation security programmes generally covered the legal requirements well, despite a few omissions and outdated references. Provisions for

small airports for which an exemption had been claimed under the terms of the Regulation were fairly frequently omitted from national civil aviation security programmes, along with some requirements for air cargo. Frequencies for monitoring activities and provision for security audits within the EU definition of the term were often missing from national quality control programmes. A number of national security training programmes failed to include adequate provisions for general awareness and recurrent training. Most deficiencies, however, were found in respect of the capacity to detect and correct failures swiftly;

- **initial inspections at airports: 10 initial inspections of airports were conducted** during 2008. The weakest areas at the 10 airports related to access control and staff screening. Overall, air carriers' standards of compliance were less robust than those of airports, although there was a greater overall improvement between 2007 and 2008. The areas needing most additional effort were search and check of aircraft and aircraft protection. Compliance with the provisions covering passengers and cabin baggage was mostly high although serious deficiencies stemming from human factors were reported at some of the inspected airports. Compliance in the area of hold baggage screening was extremely high, with no deficiencies at all recorded against a good number of the provisions;
- **follow-up, to assess deficiency correction activities:** 8 follow-up inspections were conducted at EU airports during 2008. The findings revealed that a greater number of deficiencies had been remedied by the time of the follow-up inspection than had been the case in previous years. However, a number of serious deficiencies (about 13% of those found) had not been adequately addressed by the time the Commission inspectors returned. In general terms, deficiencies that could be remedied by structural changes had been addressed very effectively, while those involving human factors were proving particularly intractable.

**The consistency of the inspection results enabled the Commission to identify weaknesses and analyse the causes.** It could then propose the necessary new legislation, or identify areas for future study or research.

**Legislation:** although there was much legislative development during 2008, there were few legislative changes. This gave Member States the opportunity to **consolidate progress made in previous years**, especially in respect of newer provisions, such as those relating to cargo. Following a **legal challenge concerning access to information**, the Commission reassessed the elements of aviation security legislation that had previously been kept out of the public domain. It decided to publish a new Regulation order to facilitate public access, notably to details of prohibited articles. The report notes that legal challenges resulted in a much greater focus on **transparency**, communicating with the public and providing opportunities for debate. The agenda was fortunately uninterrupted by any major new terrorist attempts directed against European airports or the discovery of any new terrorist techniques likely to pose a threat to civil aviation.

The main requirements of the legislation were clearly understood and generally well implemented at European airports.

#### **New framework and implementing package:**

- [The new framework Regulation \(EC\) No 300/2008](#), which will repeal and replace Regulation (EC) No 2320/2002 in April 2010, was published in March 2008. Work on the second and third levels of implementing rules and new inspection texts had reached an advanced stage by the end of the year.
- **The second level** elaborates the framework by, inter alia, listing screening techniques that may be used for passengers, baggage or cargo, categories of prohibited articles and criteria for making agreements with third countries. Based on positive results from trials, the

Commission originally proposed including provisions to allow the use of body scanning equipment, within parameters yet to be defined. The European Parliament, however, felt that a number of questions regarding human rights, health and data protection would have to be answered before this could be accepted. The Commission accordingly amended the draft legislation to remove this possibility, pending further study.

- **The third level** will provide the detailed implementation requirements and address the issues of overly onerous provisions in some areas of the current legislation and security gaps in others. Amongst the issues discussed were possible modifications in the aircraft search and check requirements, lifting the requirement for all airlines to submit security programmes to Member States for approval, providing an updated, internationally agreed prohibited articlelist, developing more detailed rules for catering and cleaning supplies and elaborating policies for staff recruitment and training.

**Dialogue with third countries:** bilateral efforts with third countries essentially fall into two categories: work towards future one-stop agreements and preparations for liquids exemptions. The one-stop element is the most advanced with the US, which has similar high standards of security. An EU-US transport co-operation group was set up in 2008 and a detailed comparison between the measures implemented on each side of the Atlantic has been drawn up. Significant differences are few and Member States have indicated considerable interest in reaching an agreement.

**Potential threats:** the Community response to new and emerging threats was similarly challenged, following the considerable disruption caused by the 2006 liquid explosives alert. This led to increased efforts to collaborate with manufacturers and international partners in the development of security screening procedures. It added impetus to the drive towards reaching agreement with third countries on recognition processes. Throughout, the EU demonstrated its willingness and ability to make an effective contribution towards facilitating passenger movements and finding global solutions. The Commission notes that dealing with the **potential threat from liquid explosives** has strengthened international co-operation and links with manufacturers. This should pave the way towards a more seamless aviation security environment for travellers moving between continents, while raising the awareness of legislators concerning future technological possibilities.

**Financing aviation security:** this issue has been raised regularly during discussions on aviation security measures. Member States generally take the view that the industry should meet the costs, with the freedom to pass them on to passengers, while the industry and some MEPs argue for a greater State contribution. In the context of adopting the new framework Regulation (EC) No 300/2008, the Commission undertook to produce a report on the subject, in order to identify principles which could form the basis for a future legislative initiative.

**Future work:** the Commission's work programme for 2009 will include:

- finalising the new implementing legislation;
- finding better ways of addressing the threat from liquid explosives;
- advancing one stop security agreements with third countries;
- continuing the inspection programme (including involvement as observers in some inspections in the US);
- assisting Member States to improve and harmonise national quality control programmes;
- analysing the results of studies;
- considering the most appropriate approach to the funding of aviation security.