EUROPEAN
COMMISSION

Brussels, 9.7.2013
COM(2013) 523 final

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

2012 ANNUAL REPORT ON THE IMPLEMENTATION OF REGULATION (EC) N° 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 2012

INTRODUCTION

2012 marked the year in which the first transitional period for the new aviation security measures introduced by Regulation (EC) 300/2008 and its implementing provisions came to an end. This concerned the requirement to either establish a secure supply chain for in-flight supplies and airport supplies or to screen 100% of such supplies upon entry in security restricted areas at airports. In its inspections throughout the year 2012, the Commission therefore put a lot of emphasis on verifying compliance with these new requirements.

Furthermore, the supplementing provisions to Regulation (EC) 300/2008 were significantly amended. On one hand, the amendments aimed at fine-tuning or further clarifying the existing procedures for certain aviation security measures. On the other hand, complex new measures were introduced for air cargo and air mail being carried into the Union ("ACC3"). Finally, the regime on EU aviation security validation was significantly strenghthened. Two changes were later incorporated to ensure a secure supply chain and a reliable validation system at Third Country airports, at which air cargo and air mail bound to the Union shall be loaded onboard an aircraft, to be in place by mid 2014. This was in reaction to the Yemen air cargo bombs incident that took place in October 2010.

With regard to liquid explosives, a reappraisal on the present threat to civil aviation confirmed that the related risk must still be considered high and must be addressed by aviation security measures. However, it became clear in the course of the year that removing the current restrictions on carrying liquids, aerosols and gels (LAGs) as hand luggage by the deadline of 29 April 2013 would not be feasible due to operational difficulties with screening equipment that would likely result in significant inconvenience for air passengers. Draft legislation was prepared to revise the approach by phasing in screening, starting with duty-free LAGs by 31 January 2014.

Finally, arrangements for the mutual recognition of the respective air cargo and mail security regimes of the EU and the United States (U.S.) were concluded. This is an important achievement for EU exports and eliminates duplication in the application of security measures, and thus in turn translates into cost and time savings for air cargo and mail operators.

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 EU airports. Switzerland is also covered by the Union programme, while Norway and Iceland are inspected against parallel provisions by the EFTA Surveillance Authority (ESA). To carry out its inspection work, the Commission has a team of 10 full and part time aviation security inspectors. This inspection work is supported by a pool of national inspectors nominated by Member States, Iceland, Norway and Switzerland who were certified by the Commission under the new legal framework. 57 of these national inspectors took part in the 2012 inspections. A chart summarising all Commission and ESA compliance monitoring activities to date is attached in an Annex.

2.   INSPECTIONS OF NATIONAL APPROPRIATE AUTHORITIES

The Commission monitored eleven (11) appropriate authorities during 2012, all of which had been subject to a previous Commission inspection. For several Member States, these inspections showed significant improvements from the past. The deficiencies most commonly found in 2012 were similar to those identified in inspections in 2011 and mainly 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 the implementation of aviation security 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 aspects of the legislation and some airports went uninspected by the national authorities for long periods. Follow-up activities were sometimes inadequate or not carried out, and it was not unusual to find significant delays before deficiencies were corrected. Sanctions were available to all Member States, but were not always strong enough or used in such a way as to provide an effective deterrent effect.

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

3.   INITIAL INSPECTIONS AT AIRPORTS

Twenty-three (23) initial inspections of airports were conducted during 2012, an increase by 4 inspections in comparison to 2011 mainly due to the fact that a number of smaller airports requiring a lower number of inspectors were covered. All chapters were covered (although not during each inspection). The overall percentage of core measures found to be in compliance in 2012 rose to 83%.

The deficiencies which were found in the area of traditional measures[1] tended to stem, by and large, from human factor issues. These 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 standards for applying screening. These human factor issues should be addressed through better training and supervision.

Furthermore, certain additional measures introduced under the new regulatory framework of Regulation (EC) 300/2008 had not yet been satisfactorily implemented at the airports inspected in 2012. Non-compliances arose in relation to methods and standards of security controls of in-flight supplies and, in particular, of airport supplies (where a secure supply chain had not yet been fully deployed), missing risk assessment for the frequency of patrols at airports, re-certication of screeners operating x-ray or explosive detection system equipment and high risk cargo and mail. Member States' appropriate authorities should actively pursue the implementation of these newer provisions.

4. FOLLOW-UP INSPECTIONS

In accordance with Article 13 of Regulation 72/2010[2], the Commission routinely carries out a limited number of follow-up inspections. Where several serious deficiencies have been identified during the initial inspection, but also to a lesser extent on a random basis to verify the accuracy of national compliance monitoring activities and reporting, a further visit will be scheduled. Three (3) such activities were carried out during 2012 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 implemented. 24 files (14 airport and 10 appropriate authorities) were closed during 2012. In all, 14 appropriate authority and 27 airport inspection files remained open at the end of the year.

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. 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. One Article 15 case was initiated in May 2012, which was closed a month later when the deficiencies had been satisfactorily corrected.

The other possible enforcement measure in the most serious cases, or in cases of prolonged non-rectification or reoccurrence of deficiencies, is to open infringement proceedings. In 2012, one infringement proceeding was initiated following inspections of a national administration. The concerned Member State failed to maintain the national aviation security programme. During the year, three (3) infringement cases could be closed following rectification of the identified shortcomings. At the end of 2012, no infringement case was in progress.

---

[1]   Measures are defined as 'traditional' if already applicable under the legal framework of Regulation (EC) 2320/2002.

[2]   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

6. MEMBER STATES' OWN EVALUATIONS

Point 18.1 of the Annex II to Commission Regulation (EU) 18/2010[3] 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 January to December of the preceeding year. The Member States'contributions for the reporting period January to December 2011 were submitted on time and all followed the Commission template. The main deficiencies identified related to the fact that some Member States still failed to cover all security measures, did not carry out sufficient covert testing and could further strengthen their follow-up activities and enforcement regime. Furthermore, a lack of national quality control of regulated agents / suppliers and known consignors / suppliers – other than, where applicable, for validation purposes – was identified.

PART TWO

THE LEGISLATION AND SUPPLEMENTARY TOOLS

1. GENERAL

The underwear-bomber incident during Christmas 2009, the Yemen cargo bomb incident in late 2010, several laser pointer threats in early 2012 and potential cyber attacks as well as a remaining high vulnerability for liquid explosives all served as reminders that civil aviation continues to be targeted in new and innovative ways, which should be addressed with adequate and risk based protection measures.

New aviation security legislative acts adopted in the year 2012 aimed firstly at further refining the legal framework under Regulation (EC) 300/2008 and secondly at defining the new common basic standards for EU aviation security validation.

2. SUPPLEMENTARY LEGISLATION ADOPTED

The new legislative texts adopted during 2012 were:

- Regulation (EU) 173/2012[4] concerning clarification and simplification of certain specific aviation security measures;

- Regulation (EU) 711/2012[5] as regards methods used for screening persons other than passengers and items carried;

- Regulation (EU) 1082/2012[6] in respect of EU aviation security validation;

---

[3]   Commission Regulation (EU) No 18/2010 of 8 January 2010, amending Regulation (EC) 300/2008, OJ L7 of 12.1.2010, p.3

[4]   Commission Regulation (EU) No 173/2012 of 29 February 2012, amending Regulation (EU) No 185/2010, OJ L 59 of 1.3.2012, p.1

[5]   Commission Regulation (EU) No 711/2012 of 3 August 2012, amending Regulation (EU) No 185/2010, OJ L 209 of 4.8.2012, p.1

[6]   Commission Regulation (EU) No 1082/2012 of 9 November 2012, amending Regulation (EU) No 185/2010, OJ L 324 of 22.11.2012, p.25

- Decision C(2012)1228[7] concerning clarification and simplification of certain specific aviation security measures;

- Decision C(2012)5672[8] laying down detailed measures for the implementation of the common basic standards on aviation security in respect of air cargo and mail;

- Decision C(2012)5880[9] as regards the methods used for screening persons other than passengers and items carried.

These texts were finalised during 6 regular meetings of the Aviation Security Regulatory Committee, 6 meetings of the Stakeholders' Advisory Group on Aviation Security and a number of focussed working group sessions, in which both Member States and industry were involved.

3.   REGULATED AGENT AND KNOWN CONSIGNOR DATABASE

The "European database of regulated agents and known consignors" RAKCdb[10] has been the only legal primary tool to be used by regulated agents for consultation when accepting consignments from another regulated agent or from a (EU aviation security validated) known consignor since 1 June 2010 and, since 1 February 2012, contains the list of air carriers authorised to carry cargo and mail into the EU from Third country airports. It is operated under a Commission framework contract. At the end of 2012, the RAKCdb contained approximately 16,000 records of regulated agents, (EU aviation security validated) known consignors and ACC3 entities. Its contractually agreed availability rate of 99.5% was continuously met in 2012, too.

4.   EU AIRPORT INSPECTIONS – HANDBOOKS

Regulations (EC) 300/2008 and (EU) 72/2010 require that compliance monitoring by the Commission services on civil aviation security requirements shall be objective and using a standard methodology.

To contribute to this aim the Commission has set up and maintains two comprehensive handbooks with detailed prompts and guidance for EU inspectors in the field. One handbook covers inspections in the field of air cargo security while the other one deals with airport inspections. In April 2012, both handbooks were revised to take account of the latest changes introduced to the implementing rules and to add additional prompts and guidance for inspectors.

---

[7]   Decision C(2012)1228 final, notified to all Member States on 29.2.2012 ; not published in the OJ
[8]   Decision C(2012)5672 final, notified to all Member States on 10.8.2012 ; not published in the OJ
[9]   Decision C(2012)5880 final, notified to all Member States on 23.8.2012; not published in the OJ
[10]   The Commission set up this database, the use of which is mandatory for actors in the supply chain through Regulation (EU) No 185/2010 and Decision (2010) 774.

PART THREE

TRIALS, STUDIES AND NEW INITIATIVES

1.   TRIALS

A 'trial' in the sense of the EU aviation security legislation 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 on condition that such trial does not impact negatively on the overall levels of security. 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.

In the course of 2012, trials and evaluations were conducted in Luxemburg, Spain, France, the Netherlands and the United Kingdom. These concerned the use of simulation trace detection chambers (cargo and mail), shoe analyser metal detectors, backscatter security scanners, different algorithms for security scanners, auto clear screening of cabin baggage and the combined use of hand held metal detectors and explosive trace detection for screening of passengers in specific cases.

2.   STUDIES AND REPORTS

By mid 2012 the final report on the Threat Image Projection (TIP) that is largely used at EU airports in screening cabin baggage, items carried and hold baggage was submitted by the consultant Booz&Co. It mainly confirmed that, if adequatley deployed, TIP has the potential to positively impact screener performance. However, it also concluded that under the current legal deployment framework, no difference in the performance in detecting prohibited articles can be established between TIP and non-TIP airports. The consultant therefore made a number of recommendation to improve the current deployment framework.

Furthermore, the same contractor worked on a study assessing the impact of screening of liquids, aerosols and gels (LAGs) at airports with a view to the (former) 29 April 2013 deadline for lifting restrictions for LAGs carried on by passengers. The study was completed by a Commission reappraisal of the threat and risk of liquids explosives, which led to the conclusion that the risk posed by such substances remains high and must be adequately addressed through screening. Finally, data obtained in surveys and consultations with the industry and in intense working groups with Member States showed that should the aforementioned deadline be kept the demand would exceed the supply of liquid explosive detection systems (LEDS) under the full implementation of LAGs screening within the highly probable scenario of operational difficulties at European airports and severe inconvenience to the passengers concerned[11].

The Commission intensively discussed with Member States three major options included in the independent SCENIHIR (Scientific Committee on Emerging and Newly Identified Health Risks) report on health effects of x-ray scanners[12]: a) no changes to current legislation, b) adding backscatter security scanners to the list of allowed screening methods for passengers

---

[11]   The deadline for a full deployment of LAGs screening was postponed to 31/01/2014; Commission Regulation (EU) No 246/2013 of 19 March 2013, amending Regulation (EU) No. 185/2010, OJ L 77 of 20 March 2013, p. 8

[12]   http://ec.europa.eu/health/scientific_committees/emerging/docs/scenihr_o_036.pdf

and c) amending current legislation in a sense that already deployed x-ray security scanners emitting radiation below a certain ceiling could be used until the end of their economic lifetime. The report was a follow-up commitment by the Commission to a legislative proposal in aviation security and was approved on 26 April 2012

3.   NEW INITIATIVES

One of the main on-going rulemaking files in aviation security is the amendment of the current legislation on the restrictions on the carriage of liquids, gels and aerosols. Lifting of these restrictions has been planned for many years and been subject to several previous revisions of legislation. In 2012 the Commission together with MS, airports and the manufacturers of detection equipment engaged in trials and committed a study. This resulted in the conclusion that full liquid screening as of April 2013 is not feasible as necessary equipment has not started to be deployed at EU airports. In July 2012 the Commission forwarded a report on these conclusions and its proposals for the way forward to the Council and the European Parliament.

In November 2012 the EU Regulatory Committee for Civil Aviation Security gave its positive opinion on the Commission proposals to implement the first phase of liquid screening by 31 January 2014 at the latest and the legislation was finally adopted by the Commission in the month of March 2013.

As mandated in the air cargo security action plan, the Commission has extended its action in this area by establishing the regulatory framework for cargo and mail being carried into the Union from Third Countries and a robust EU aviation security validation also applicable outside the jurisdiction of the European Union. Its first phase entered into force on 1 Feburary 2012. Since that date air carriers that wish to carry cargo and mail into the Union from third country airports have to register as so-called "ACC3"[13]. To harmonise and ease the related registration and consultation mechanism in the Member States as well as for the Commission, new functionalities on ACC3 were deployed in the "European database of regulated agents and known consignors (RAKCdb)" in the last quarter of 2012.

Close co-operation was pursued with customs authorities as regards a possible harmonisation of AEO (Authorised Economic Operator) scheme to the Aviation Security validation regimes for regulated agents and known consignors of cargo and mail. 'The aim of this exercise is to avoid double validation for economic operators, where their core business within these two regulatory frameworks largely overlaps and at the same time to identify any possible gaps that may weaken the air cargo security and proposed appropriate measures to close them.'"

As part of the Commission's work programme on critical infrastructure protection and in the framework of the EU Reference Network for Critical Infrastructure (ERNCIP) a new thematic subgroup on aviation security technology was launched in early 2012.

A working group consisting of interested MS and industry has been established under the framework of the "agenda for the future". The group established an action plan to analyse possibilities to increase efficiency in aviation security. Work on two concrete actions has started in 2012: a) a risk assessment on passenger related risks and b) a study has been commissioned to analyse different concepts related to passenger differentiation. In the future it could be envisaged that the Aviation Security (AVSEC) Committee itself could steer future implementation of an action plan by including a standing item on its agenda.

---

[13]   Commission Regulation (EU) No 859/2011 of 25 August 2011, amending Regulation (EU) No 185/2010, OJ L 220 of 26.8.2011, p. 9

PART FOUR

DIALOGUE WITH INTERNATIONAL BODIES AND THIRD COUNTRIES

1.   GENERAL

The Commission is fully engaged with international bodies and key third country partners and is regularly represented at international meetings, generally co-ordinating the EU position and often making presentations or submitting papers. Dialogues are also opened, as appropriate, with individual third countries on issue of local concern or shared interest, such as exemptions from the normal requirements governing the carriage of liquids purchased in duty free outlets. Such contacts enable the EU to both keep abreast of and disseminate good practice as well as to influence global decision making. The link and coherence between the internal and external security needs to be ensured. According to the new legal framework set up by the Lisbon Treaty, the EEAS will be fully consulted in the engagement with international bodies and third countries in order to ensure coherence and complementarity with specific political dialogues launched by the EEAS.

2.   INTERNATIONAL BODIES

The Commission attends the annual ICAO aviation security panel and presented in its 2012 session (26 – 30 March 2012) four working papers (one on liquids, two on cargo and one on transparency of security measures). These were well received.

The Commission also regularly takes part in meetings of the ECAC Technical Task Force and Training Task Force. Conclusions drawn by each of these groups have subsequently formed the basis of discussions during meetings of the Regulatory Committee and its associated working groups. To avoid overlaps or duplication of work, a Memorandum of Understanding was signed between the Commission and ECAC in the second half of 2012.

Moreover, harmonised measures have been addressed in the follow-up of a EUROCONTROL seminar on laser threat. The main goal of this exercise was to bring together stakeholder groups with a vested interest in this issue, so that they could consider adopting a collective approach to reducing the growing threat of unauthorised laser interference in aviation.

3.   THIRD COUNTRIES

The Commission actively continued the dialogue with aviation security issues with the US in a number of fora, in particular the EU-US Transportation Security Cooperation Group within the framework of the reached one-stop security[14].

Additionally, the next milestone in the transatlantic co-operation on aviation security was passed mid-2012 with the mutual recognition of the respective air cargo and mail regimes of the European Union and the United States.

---

[14]   Applicable as from 1.4.2011 for aircrafts, passengers and their cabin baggage and hold baggage arriving from the US – Commission Regulation (EU) No 983/2010 of 3 November 2010, amending Regulation (EU) 185/2010, OJ L286 of 4.11.2010, p.1

The Commission furthermore intervened on a number of occasions when Member States raised particular concerns about additional security demands from third countries, which appeared to give inadequate consideration to the robust EU systems already in place. This sometimes involved the continued US practice of issuing, without prior consultation, Emergency Amendments to airlines operating from the EU, every so often causing significant difficulties for EU stakeholders.

The Commission took part in one inspection at an airport in the United States of America to monitor compliance in certain security measures within the framework of the aforementioned one-stop agreement.

The Commission also started negotiations with Canada and Israel with a view to establish an agreement regarding one-stop security with these countries.

CONCLUSION

A high level of security continues to be ensured in the EU. Commission inspections have shown a slightly increased level of compliance with main regulatory provisions. In traditional measures, deficiencies identified in the areas of staff and cargo screening requirements tended, by and large, to stem from human factor issues. Further non-compliances found in the additional measures implemented under the new legal framework of Regulation (EC) 300/2008 were related to security controls of airport supplies (where a secure supply chain had not yet been fully deployed), patrols at airports, re-certification of screeners operating certain security equipment and high risk cargo and mail. Commission recommendations for corrective action were on the whole followed up satisfactorily, but the inspectors' findings 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, instigating formal infringement procedures if necessary.

On the legislative front, further detailed implementing rules were adopted during 2012 to ensure that the new basic Regulation (EC) 300/2008 is applied in a harmonised way and in order to meet new threats or better mitigating existing threats.

Annex

Commission inspections as at 31.12.2012

State	Number of inspections 01/2012 -12/2012 (including follow-ups)	Total number of inspections 2004-2012 (including follow-ups)
Austria	0	9
Belgium	1	11
Bulgaria	1	7
Cyprus	1	7
Czech Republic	1	8
Denmark	1	10
Estonia	1	6
Finland	2	10
France	2	17
Germany	2	19
Greece	1	14
Hungary	1	8
Ireland	1	9
Italy	2	17
Latvia	2	7
Lithuania	1	5
Luxembourg	1	7
Malta	0	3
Netherlands	3	10
Poland	1	10
Portugal	2	10
Romania	3	6
Slovakia	1	5
Slovenia	1	5
Spain	1	15
Sweden	1	12
United Kingdom	3	20
Non-EU Members		
Switzerland	0	5
TOTAL	**37**	**272**

EFTA Surveillance Authority inspections as at 31.12.2012

State	Number of inspections 01/2012-12/2012 (including follow-ups)	Total number of inspections 2004-2012 (including follow-ups)
Iceland	0	9
Norway	5	40
TOTAL	**5**	**49**