

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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**THE EU REGULATORY  
FRAMEWORK  
APPLICABLE TO  
CIVIL AVIATION SECURITY**

NOTE





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES**

**TRANSPORT AND TOURISM**

**THE EU REGULATORY FRAMEWORK  
APPLICABLE TO  
CIVIL AVIATION SECURITY**

**NOTE**

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## **AUTHOR**

Marc Thomas  
Policy Department Structural and Cohesion Policies  
European Parliament  
B-1047 Brussels  
E-mail: [poldep-cohesion@europarl.europa.eu](mailto:poldep-cohesion@europarl.europa.eu)

## **EDITORIAL ASSISTANCE**

Nora Revesz

## **LINGUISTIC VERSIONS**

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## **ABOUT THE EDITOR**

To contact the Policy Department or to subscribe to its monthly newsletter please write to:  
[poldep-cohesion@europarl.europa.eu](mailto:poldep-cohesion@europarl.europa.eu)

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DIRECTORATE GENERAL FOR INTERNAL POLICIES  
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TRANSPORT AND TOURISM

# THE EU REGULATORY FRAMEWORK APPLICABLE TO CIVIL AVIATION SECURITY

NOTE

## Abstract

This is a comprehensive digest of the current EU legislation on aviation security. It reminds notably of the obligations on the parties involved, the monitoring process, or the international aspects. The note also sheds light on the regime which applies to liquids on board, to the testing of body scanners or to the financing of security measures, which all give rise to recurrent significant debate.

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# THE EU REGULATORY FRAMEWORK APPLICABLE TO CIVIL AVIATION SECURITY

Aviation security aims for the prevention of acts of unlawful interference, mainly by keeping threat items such as arms and explosives away from aircraft. It had been high on the agenda for decades when it turned into a major cause for concern following the terrorist attacks of September 2001. Since then, international framework/cooperation in this field has expanded considerably, either through the International Civil Aviation Organisation<sup>1</sup> (ICAO) and Annex 17 to the Chicago Convention and the related Universal Security Audit Programme<sup>2</sup> (USAP), or by means of international agreements.

As for the European Union, since 2001 it has developed an appropriate policy which is regularly updated to address evolving risks and threats, and which is based on binding common standards and the following basic principles:

- Each Member State is responsible for the security of flights departing from its territory (*"Host State responsibility"* as set down by the ICAO).
- All passengers, staff, baggage shall be screened before boarding an aircraft. Cargo, mail, and in-flight supplies shall also be screened before being loaded, unless they have been subjected to appropriate security controls.
- Member States retain the right to apply more stringent security measures if they consider it to be necessary.

## 1. KEY PROVISIONS OF THE CURRENT REGULATORY FRAMEWORK

### 1.1 Adoption process:

- The common rules and basic standards on aviation security, as well as mechanisms for monitoring compliance are adopted by the Parliament and the Council<sup>3</sup>.

- The general measures aiming at supplementing the common basic standards, by specifying the methods/processes/criteria to be implemented, are adopted by the Commission through the comitology procedure (*regulatory procedure with scrutiny*)<sup>4</sup>. For instance, the introduction of "body scanners" as an additional method of screening passengers would fall into this category of measures<sup>5</sup>.

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<sup>1</sup> The International Civil Aviation Organisation (ICAO) is the specialized agency of the United Nations established by the Convention on International Civil Aviation (also known as Chicago Convention) signed on 7 December 1944 and to which 190 States are currently contracting. The ICAO notably lays down "standards and recommended practices" to be enforced by the Contracting States but there is no binding mechanism to guarantee their full and proper application.

<sup>2</sup> Annex 17 to the Chicago Convention lays down standards and recommended practices for the protection of the security of international air transport. The Universal Security Audit Programme (USAP) was launched in 2002 to monitor ICAO Contracting States' compliance with these standards.

<sup>3</sup> This is Regulation 300/2008, which entered into force on 29.4.2008 and applies in full since 29.4.2010.

<sup>4</sup> Commission regulations 272/2009 (amended by Reg. 297/2010), 1254/2009, and 18/2010.

<sup>5</sup> As an amendment to the Annex to Reg. 272/2009.

- The detailed measures needed for the implementation of the common basic standards and of the general measures supplementing them are adopted by the Commission through the comitology procedure (*regulatory procedure*)<sup>6</sup>. It is worth noting that the implementing rules "which contain sensitive security information"<sup>7</sup> are not published.

## **1.2 Scope:**

- The common rules on aviation security apply to all EU airports open to civil aviation, to all operators providing services at these airports, including air carriers, and to all other operators "applying aviation security standards" which provide goods or services to or through such airports. Security standards to be applied can nevertheless be proportioned to aircraft/operation/traffic involved<sup>8</sup>.

- The common rules cover all aspects of the air transport chain which can affect the security of the aircraft and/or the infrastructure: airport, aircraft, passengers, baggage, cargo, airport and in-flight supplies, security staff and equipment.

## **1.3 Obligations on Member States:**

### ***Each Member State shall:***

- Designate a single authority which is responsible for the coordination and the monitoring of the implementation of aviation security law.

- Draw up and implement a "national civil aviation security programme" which sets the roles and obligations of all operators concerned with the implementation of security law.

- Set up and implement a "national quality control programme" to determine the level of compliance from the operators with security law and to provide measures to correct deficiencies. Such programme shall notably fix the specifications as to security audits and inspections, including their frequency<sup>9</sup>.

- Impose penalties in case of infringements, through the above authority responsible for aviation security.

- Cooperate with and provide assistance to the Commission when it conducts inspections to monitor compliance with EU rules on aviation security.

### ***In addition, Member States may:***

- Derogate from the common standards to adopt alternative measures providing an "adequate"<sup>10</sup> level of aviation security. Such derogations are to be based on a risk assessment and they are subject to very restrictive criteria<sup>11</sup>.

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<sup>6</sup> Commission regulations 72/2010 and 185/2010 (amended by Reg. 357/2010, 358/2010, 573/2010, 983/2010, and 334/2011).

<sup>7</sup> Reg. 300/2008, Whereas 16.

<sup>8</sup> For instance Point 1.0.3 of the Annex to Reg. 185/2010 links the measures affecting the protection of airside areas to the volume of traffic.

<sup>9</sup> The common specifications for the "national quality control programme" are set by Reg. 18/2010. Airports over 10 million passengers a year shall be subject to a "comprehensive" security audit at least every 4 years. In addition, at airports over 2 million passengers a year the security measures relating to airport, aircraft, passengers, baggage and freight shall be inspected at least every 12 months.

<sup>10</sup> Reg. 300/2008, Art. 4(4).

- Test methods of screening, or for the examination of vehicles or aircraft, using new technologies which are not provided for by EU law<sup>12</sup>. The Commission shall make sure that such evaluations do not affect the overall level of security, and do not go on after 30 months. It is on this basis that some Member States have decided to test "body scanners"<sup>13</sup>.

- Apply more stringent measures than the common standards, on the basis of a risk assessment and in accordance with EU law<sup>14</sup>. It is worth noting that the deployment of in-flight security officers is specifically left to the sole decision of the Member States, under no condition<sup>15</sup>.

#### **1.4 Obligations on the operators concerned:**

- All airports, air carriers, and other operators "applying aviation security standards" shall draw up and implement a "security programme" in order to comply with EU law and the national civil aviation security programme of the Member State in which they are located.

- Airport security programmes shall be submitted to the national authority responsible for aviation security. The security programmes of air carriers or other operators concerned shall be submitted to this authority upon request.

- When an air carrier's security programme has been validated by the Member State which also granted the operating licence<sup>16</sup> to that carrier, the latter is deemed compliant with the requirements for security programmes throughout the Union.

#### **1.5 Monitoring by the European Commission:**

- To monitor the implementation of EU law the Commission shall carry out unannounced inspections<sup>17</sup> of airports and operators concerned, in cooperation with the national authorities responsible for aviation security. These authorities shall also be inspected as well<sup>18</sup>. In this context Commission's inspectors can also simulate acts of unlawful interference to test the effectiveness of security measures<sup>19</sup>.

- Member States shall by any means cooperate with the Commission so that it can properly carry out its inspection tasks in full. They shall notably ensure that the notification of an inspection is kept confidential and make "qualified auditors" available to participate in Commission inspections<sup>20</sup>.

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<sup>11</sup> These criteria are set by Reg. 1254/2009. Derogations can only apply when traffic is limited to helicopters, or to aircraft with a maximum take-off weight below 15 000 kg, or below 45 000 kg when flying with no fare-paying passenger, or to aircraft flying for specific purposes (law enforcement, fire fighting, research,...).

<sup>12</sup> Part A of the Annex to Reg. 272/2009, and Paragraph 12.8 of the Annex to Reg. 185/2010.

<sup>13</sup> According to the Commission 6 Member States were concerned with such evaluations till mid-2010.

<sup>14</sup> Reg. 300/2008, Art. 6. The Commission shall be informed unless the measures concerned are limited to a specific flight or date.

<sup>15</sup> Reg. 300/2008, Whereas 8.

<sup>16</sup> In the meaning of Article 2 of Regulation (EC) No 1008/2008 (OJ L 293, 31.10.2008).

<sup>17</sup> The national authority concerned shall nevertheless be notified beforehand.

<sup>18</sup> Reg. 72/2010, Art. 4.

<sup>19</sup> Since 2006 the Commission carries out about 30 inspections per year.

<sup>20</sup> National auditors shall participate in inspections in other Member States than where they are employed. The related expenses are met by the Commission.

- A classified inspection report is sent within 6 weeks by the Commission to the national authority concerned which shall provide actions and deadlines to remedy any deficiency (if need be) within 3 months. The Commission may conduct a follow-up inspection to monitor rectification of deficiencies<sup>21</sup>. It is worth noting that the competent authorities of all Member States are informed immediately by the Commission of any serious deficiency<sup>22</sup>.

- The Commission shall regularly inform the Member States of the results of the inspections<sup>23</sup>. In addition, it shall present an annual report on the implementation of common aviation security rules to the European Parliament, the Council and the Member States.

## 1.6 Cooperation with third countries:

- **Agreements between the Union and third countries:** Article 20 of Regulation 300/2008 states that provisions for the recognition of security standards could be "envisaged" in aviation agreements concluded by the EU with third countries in accordance with Article 218 TFEU. So far these provisions have not been implemented.

- **Equivalence of standards:** To facilitate air transport and contribute to the (objective of) "one-stop-security" the Commission can recognize the equivalence of aviation security standards of third countries.<sup>24</sup> Such recognition is formalised through an amendment to Regulation (EU) No 185/2010. Thus, Commission Regulation (EU) No 983/2010 amends Regulation 185/2010 to stipulate that US security standards concerning aircraft, passengers, and cabin and hold baggage are equivalent to those applied in the EU. It is worth noting that the reverse is not true: the USA does not recognize EU standards as equivalent to US standards.<sup>25</sup>

- **Specific requests by third countries:** When a third country requests that flights from a Member State to or over its territory are the subject of measures differing from the common standards, it is up to the Commission to assess these measures and, if need be, to "draw up an appropriate response to the third country concerned" through the comitology procedure (*regulatory procedure*)<sup>26</sup>.

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<sup>21</sup> If a deficiency is not remedied within the deadline set by the Commission the airport is excluded from the "one stop security area" and any flight arriving from it is treated as if originating from a third country.

*Note: The common regulatory framework on aviation security also aims at enabling the implementation of the "one-stop security" concept so that transfer passengers and their baggage arriving from a Member State, or from a third country with a recognized equivalent level of security, are not re-screened at the airport of transfer. The legislation contains no specific provision about "the one-stop security" which is referred to as "a goal" (Reg. 300/21008, Whereas 20). In fact, "the one-stop security" ensues from the proper and comprehensive implementation of the common standards and the resulting mutual trust. It is therefore applied by the vast majority of the Member States, and has been extended to Switzerland, Norway and Iceland, and to flights from the USA since April 2011. Of course this concept does not match "more stringent measures" that can be applied by Member States.*

<sup>22</sup> Reg. 72/2010, Art. 15

<sup>23</sup> Through the Committee instituted in accordance with Decision 1999/468/EC.

<sup>24</sup> In accordance with Part E of the Annex to Reg. 272/2009.

<sup>25</sup> There is no other such agreement with a third country. Reg. 185/2010 was nevertheless also amended by Reg. 358/2010 to alleviate the regime applicable to the liquids loaded at the airports of some third countries.

<sup>26</sup> Unless the request is limited to a given flight or, if appropriate, the Member State concerned decides to implement the measures required on the basis of its right to apply more stringent measures.

## 1.7 Cooperation with the ICAO:

To avoid duplicating monitoring of Member States' compliance with Annex 17 to the Chicago Convention,<sup>27</sup> the Commission has concluded a Memorandum of Understanding with ICAO in September 2008<sup>28</sup>. Under this agreement the latter only assesses Annex 17 standards which are not covered by EU law.

## 2. PROVISIONS GIVING RISE TO SIGNIFICANT DEBATE

### 2.1 Liquids, aerosols and gels:

- Restrictions on carrying liquids, aerosols and gels (commonly referred to as LAGs) in hand luggage were introduced in 2006<sup>29</sup> following the terrorist attempts at London-Heathrow concerning seven aircraft bound to the US. It was agreed then that the measures would be temporary, and reviewed regularly until technology allows liquid explosives to be detected through screening.

- Under the current regime<sup>30</sup> all LAGs in hand baggage shall be screened, with the exception of the following exemptions: their volume is less than 100 ml; they are to be used during the trip for medical or dietary requirements; they have been obtained at certain secured areas of an EU airport or on-board an aircraft of an EU carrier and they are packed in a "security tamper-evident bag" (STEB) as recommended by ICAO<sup>31</sup>. By virtue of Regulation 358/2010, the LAGs packed in STEB obtained at US or Canadian airports, or at some airports in Croatia, Malaysia or Singapore are also exempted from screening<sup>32</sup>.

- In actual fact, in the absence of appropriate liquid scanning equipment LAGs which are not exempted from screening are confiscated. The current law therefore also aims at progressively imposing the deployment at EU airports of methods, including technologies, for detection of liquid explosives, according to the following steps<sup>33</sup>:

- By 29 April 2011 LAGs obtained at third country airport or on-board an aircraft of a third country carrier shall be permitted into security-restricted areas and on-board aircraft on condition that they are packed in STEB<sup>34</sup> and that they are screened (according to implementing rules which are not published).
- By 29 April 2013 all EU airports shall screen all LAGs and the restrictions shall have been withdrawn.

- At expiration of the first period, however, it appeared that most of the Member States were not in a position/reluctant to modify the current regime on LAGs from third

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<sup>27</sup> By means of the USAP.

<sup>28</sup> In accordance with Article 8 of Reg. 300/2008.

<sup>29</sup> Commission Regulation (EC) No 1546/2006 of 4 October 2006 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security (OJ L 286, 17.10.2006).

<sup>30</sup> Mainly set by Commission regulations 272/2009, 297/2010, 358/2010 and 334/2011.

<sup>31</sup> A "security tamper-evident bag" (STEB) is a transparent plastic bag that conforms to the recommended security control guidelines of the ICAO.

<sup>32</sup> On condition that they have been purchased airside within the preceding 36 hours. The exemption is due to expire on 29 April 2013 as provided for by Reg. 334/2011.

<sup>33</sup> Annex to Reg. 297/2010.

<sup>34</sup> And that they have been purchased airside or on board within the preceding 36 hours.

countries<sup>35</sup>. Moreover a lot of them let it be understood that they would maintain it unchanged on the grounds of their right to apply "more stringent measures"<sup>36</sup>. In addition, it is worth noting that number of third countries including EU main aviation partners continue applying restrictions on LAGs. Thus, the USA still impose that LAGs purchased at third country airports are surrendered before embarking any US bound flight at a European airport, and they strongly oppose the relaxation of the EU regime.

- Considering this situation the Commission "advised" at first to defer the measure "for a limited period", and proposed to review it together with the Member States and in consultation with the United States<sup>37</sup>. In a second stage, the Commission should propose by Summer Holidays to amend Regulation 297/2010 to make the first step optional while maintaining the ultimate goal of 2013. This would certainly "clean out" the current legal confusion but it would also mean that until April 2013 two different regimes could be applied to LAGs from third countries transiting at EU airports.

## **2.2 Security costs:**

- The current legislative framework let Member States decide the way aviation security costs are covered<sup>38</sup>.

- Following its report on financing of February 2009<sup>39</sup> the Commission proposed a directive on aviation security charges<sup>40</sup> to ensure the application of key principles such as non-discrimination between carriers or passengers and cost-relatedness. The proposal however did not decide between public financing and user-pays principle, and let to subsidiarity to arrange who pays for security.

- The proposal is currently awaiting Council's first reading position. Even if Member States do not seem in a hurry to come to a decision, on the whole they should not object to it.

- Yet in May 2010 the Parliament required Member States that apply more stringent measures to bear the ensuing additional costs<sup>41</sup>, which does not correspond to the position taken up by the Council up to now.

## **2.3 Cargo and Mail from third countries:**

- The current regulatory framework already provides for a comprehensive set of rules on the security of air cargo and mail<sup>42</sup>. However, the October 2010 incident involving explosive devices concealed in air cargo consignments transferring in Europe from Yemen to the USA has shown that this framework and the way it is implemented had to be enhanced as regards freight from third countries.

- In November 2010 the Commission therefore proposed an "Action Plan strengthening air cargo security" which calls for new rules not only in the area of transfer cargo but on the

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<sup>35</sup> According to the Commission at least 18 Member States were not in a position to implement the relaxing measure.

<sup>36</sup> Even if only 2 Member States formally informed the Commission pursuant to Article 6(2) of Regulation 300/2008 of their intention to maintain the existing regime as a "more stringent measure".

<sup>37</sup> Commission's Press Release MEMO/11/262 of 29.4.2011.

<sup>38</sup> Reg. 300/2008, Art. 5.

<sup>39</sup> COM(2009) 30 final of 2.2.2009. The report on financing was required by Art. 22 of Reg. 300/2008.

<sup>40</sup> COM(2009) 217 final of 11.5.2009.

<sup>41</sup> Legislative Resolution of 5 May 2010 - P7-TA (2010) 0123.

<sup>42</sup> Notably Section 6 of the Annex to Reg. 300/2008, Parts A and F of the Annex to Reg. 272/2009, and Section 6 of the Annex to Reg. 185/2010.

whole question of air cargo brought into the EU from third countries - which is normally only subject to the requirements in place at the point of origin under the ICAO principle of "*Host State responsibility*". Right after that, discussions started with the Member States and the industry<sup>43</sup> about the related draft measures.<sup>44</sup>

- In this context of regulatory reinforcement some carriers and consignors speak on the contrary in favour of easing the implementation of the rules on transfer cargo. Indeed, under the current regime transfer cargo from third countries shall be screened when transferred onboard another aircraft at EU airports, which is demanding. The stakeholders concerned therefore urge the Commission to start the process of recognizing the equivalence of cargo security standards in (a lot of) third countries so as to do away with this screening at transfer airports. It appears however that this is not easy: up to now only US standards could be accepted as equivalent, and the process of recognition is ongoing with Canada and Australia. However it is very unlikely that this process make rapid progress with any other third country.

### **3. OVERVIEW OF THE REGULATORY FRAMEWORK (JUNE 2011)**

#### **3.1 Basic Regulation (Parliament and Council)**

- Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (OJ L 97, 9.4.2008)

#### **3.2 Supplementing regulations (Commission)**

- Commission Regulation (EC) No 272/2009 of 2 April 2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008 of the European Parliament and of the Council (OJ L 91, 3.4.2009), as amended by:
  - Commission Regulation (EU) No 297/2010 of 9 April 2010 (OJ L 90, 10.4.2010)
- Commission Regulation (EU) No 1254/2009 of 18 December 2009 setting criteria to allow Member States to derogate from the common basic standards on civil aviation security and to adopt alternative security measures (OJ L 338, 19.12.2009)
- Commission Regulation (EU) No 18/2010 of 8 January 2010 amending Regulation (EC) No 300/2008 of the European Parliament and of the Council as far as specifications for national quality control programmes in the field of civil aviation security are concerned (OJ L 7, 12.1.2010)

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<sup>43</sup> Within the "Air Cargo Working Group".

<sup>44</sup> The new legislative proposals would concern transfer cargo, recognition of equivalence of third countries standards, clarification of screening standards, high risk cargo and enforcing mechanisms.

### **3.3 Implementing regulations (Commission)**

- Commission Regulation (EU) No 72/2010 of 26 January 2010 laying down procedures for conducting Commission inspections in the field of aviation security (OJ L 23, 27.1.2010)
- Commission Regulation (EU) No 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on aviation security (OJ L 55, 5.3.2010), as amended by :
  - Commission Regulation (EU) No 357/2010 of 23 April 2010 (OJ L 105, 27.4.2010),
  - Commission Regulation (EU) No 358/2010 of 23 April 2010 (OJ L 105, 27.4.2010),
  - Commission Regulation (EU) No 573/2010 of 30 June 2010 (OJ L 166, 1.7.2010),
  - Commission Regulation (EU) No 983/2010 of 3 November 2010 (OJ L 286, 4.11.2010),
  - Commission Regulation (EU) No 334/2011 of 7 April 2011 (OJ L 94, 8.4.2011)



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