Commission Implementing Regulation (EU) No 1082/2012 of 9 November 2012 amending Regulation (EU) No 185/2010 in respect of EU aviation security validation (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) No 1082/2012

of 9 November 2012

amending Regulation (EU) No 185/2010 in respect of EU aviation security validation

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 establishing common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002[(1)] and in particular Article 4(3) thereof,

Whereas:

(1) 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[(2)] does not contain detailed rules for EU aviation security validation. It is necessary to introduce such rules in order to harmonise the conditions by which compliance is established in respect of aviation security.

(2) Regulation (EU) No 185/2010 should therefore be amended accordingly.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Civil Aviation Security set up by Article 19(1) of Regulation (EC) No 300/2008,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EU) No 185/2010 is amended in accordance with the Annex to this Regulation.

Article 2

Member States shall demonstrate to the Commission how they contribute to the implementation of point 11.6 in respect of point 6.8 of the Annex to Regulation (EU) No 185/2010 by 31 January 2013 at the latest.

Independent validators certified before the entry into force of this Regulation remain qualified to perform EU aviation security validation of known consignors in Member States until the certification expires or for a period of five years, whichever is less.

Changes to legislation: Commission Implementing Regulation (EU) No 1082/2012 is up to date with all changes known to be in force on or before 24 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Article 3

The Commission will assess and evaluate the application of the measures provided for in this Regulation and if appropriate make a proposal by 30 June 2015 at the latest.

Article 4

This Regulation shall enter into force on the date of publication.

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

Done at Brussels, 9 November 2012.

For the Commission

The President

José Manuel BARROSO

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ANNEX

A.The Annex to Regulation (EU) No 185/2010 is amended as follows:

(1) point 6.3.1.2(b) is amended as follows:

(a) in the first subparagraph, 'independent validator' is replaced by 'EU aviation security validator';

(b) in the second subparagraph, 'independent validator' is replaced by 'EU aviation security validator';

(2) point 6.4.1.2(b) is amended as follows:

(a) in the first subparagraph, 'independent validator' is replaced by 'EU aviation security validator';

(b) in the second subparagraph, 'independent validator' is replaced by 'EU aviation security validator';

(c) in the third subparagraph, 'independent validator' is replaced by 'EU aviation security validator';

(d) in the fifth subparagraph, 'independent validator' is replaced by 'EU aviation security validator'.

B. Point 6.8 is replaced by the following:

6.8. PROTECTION OF CARGO AND MAIL BEING CARRIED INTO THE UNION FROM THIRD COUNTRIES

6.8.1. **Designation of air carriers**

6.8.1.1. Any air carrier carrying cargo or mail from an airport in a third country not listed in Attachment 6-F for transfer, transit or unloading at any airport falling within the scope of Regulation (EC) No 300/2008 shall be designated as an "Air Cargo or Mail Carrier operating into the Union from a Third Country Airport" (ACC3):

(a) by the appropriate authority of the Member State that issued the air carrier's Air Operator's Certificate;

(b) by the appropriate authority of the Member State listed in the Annex to Commission Regulation (EC) No 748/2009[(3)] as amended by Regulation (EU) No 394/2011[(4)] on the list of aircraft operators which had performed an aviation activity within the meaning of Annex I to Directive 2003/87/EC of the European Parliament and of the Council[(5)] on or after 1 January 2006, for air carriers that do not hold an Air Operator's Certificate issued by a Member State;

(c) by the appropriate authority of the Member State where the air carrier has its major base of operations in the Union, or any other appropriate authority of the Union by agreement with that appropriate authority, for air carriers not holding an Air Operator's Certificate issued by a Member State and not listed in the Annex to Regulation (EC) No 748/2009.

6.8.1.2. The designation of an air carrier as ACC3 in respect of its cargo and mail operations from an airport for which ACC3 designation is required (hereafter, the "relevant cargo operations") shall be based on

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(a) the nomination of a person with overall responsibility on the air carrier's behalf for the implementation of cargo or mail security provisions in respect of the relevant cargo operation; and

(b) until 30 June 2014, a "Declaration of commitments — ACC3" as set out in attachment 6-H confirming the implementation of the security programme covering the points as specified in Attachment 6-G. The declaration shall be signed on behalf of the air carrier by its legal representative or by the person responsible for security. Either a copy or the original shall be retained by the appropriate authority until the expiry date of the ACC3 designation;

(c) from 1 July 2014, an EU aviation security validation report confirming the implementation of security measures.

6.8.1.3. The appropriate authority shall allocate to the ACC3 designated a unique alphanumeric identifier in the standard format identifying the air carrier and the third country airport for which the air carrier has been designated to carry cargo or mail into the Union.

6.8.1.4. The designation shall be valid from the date the appropriate authority has entered the ACC3's details into the Union database of regulated agents and known consignors, for a maximum period of five years.

6.8.1.5. An ACC3 listed on the Union database of regulated agents and known consignors shall be recognised in all Member States for all operations from the third country airport into the Union.

6.8.2. **EU aviation security validation for ACC3**

6.8.2.1. The EU aviation security validation in respect of an air carrier's relevant cargo operations shall consist of

(a) an examination of the air carrier's security programme ensuring its relevance and completeness in respect of all points set out in Attachment 6-G; and

(b) verification of the implementation of aviation security measures in respect of the relevant cargo operations by using the checklist set out in Attachment 6-C3.

6.8.2.2. The EU aviation security validation's verification of the implementation shall be on-site, to one of the following degrees:

1. At the airport from which the air carrier has relevant cargo operations before ACC3 designation can be granted for that airport.

   If the EU aviation security validation thereupon establishes the non-implementation of one or more of the objectives listed in the checklist set out in Attachment 6-C3, the appropriate authority shall not designate the air carrier as ACC3 for the relevant cargo operations without proof of the implementation of measures by the air carrier rectifying the deficiency identified.

2. At a representative number of airports with relevant cargo operations of an air carrier before ACC3 designation is granted for all airports with relevant cargo operations of that air carrier. The following conditions apply:

   (a) this option is requested by an air carrier which operates several relevant air cargo operations;

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(b) the appropriate authority has verified that the air carrier applies an internal security quality assurance programme that is equivalent to EU aviation security validation;

(c) the representative number shall be at least 3 or 5 %, whichever is the higher, and all airports situated in a high risk origin;

(d) the appropriate authority has agreed to a roadmap that ensures EU aviation security validations for every year of the designation at additional airports for which ACC3 designation will be granted or until all airports are validated. Those validations shall each year be at least equal in number to those required in (c). The roadmap shall state the reasons underpinning the choice of additional airports;

(e) all ACC3 designations shall end on the same day;

(f) where one of the EU aviation security validations agreed under the roadmap establishes the non-implementation of one or more of the objectives listed in the checklist set out in Attachment 6-C3, the designating appropriate authority shall require proof of the implementation of measures rectifying the deficiency identified at that airport, and, depending on the seriousness of the deficiency, request:

— EU aviation security validation of all airports for which ACC3 designation is required in accordance with point 6.8.2.2.1 within a deadline set by the appropriate authority, or

— twice the number of the EU aviation security validations established under (d) per each of the remaining years of ACC3 designations.

6.8.2.3. The appropriate authority can designate an air carrier as ACC3 for a limited period, ending on 30 June 2016 at the latest, where an EU aviation security validation could not take place for objective reasons beyond the responsibility of the air carrier. Where such a designation is granted for a period of more than three months the appropriate authority shall have verified that the air carrier applies an internal security quality assurance programme that is equivalent to EU aviation security validation.

6.8.2.4. Where the EU aviation security validation of an ACC3 took place before 1 July 2014 and did not confirm implementation of the requirements of the second sentence of point 6.8.3.2, the ACC3 shall provide the appropriate authority with proof of implementation of these requirements, by 1 July 2014 at the latest. Proof shall consist of an update of the respective part of the security programme and may consist of a follow-up on-site verification.

6.8.2.5. The EU aviation security validation shall be recorded in a validation report consisting at least of the declaration of commitments as set out in Attachment 6-H1, the checklist set out in Attachment 6-C3 and a declaration by the EU aviation security validator as set out in Attachment 11-A. The EU aviation security validator shall submit the validation report to the appropriate authority and provide the validated air carrier with a copy.

6.8.3. **Security controls for cargo and mail arriving from a third country**

6.8.3.1. The ACC3 shall ensure that all cargo and mail carried for transfer, transit or unloading at a Union airport is screened, unless:

(a) the required security controls have been applied to the consignment by an EU aviation security validated regulated agent and the consignment has been protected from