Commission Implementing Regulation (EU) No 859/2011 of 25 August 2011 on amending Regulation (EU) No 185/2010 laying down detailed measures for the implementation of the common basic standards on aviation security in respect of air cargo and mail (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) No 859/2011

of 25 August 2011

on amending Regulation (EU) No 185/2010 laying down detailed measures for the implementation of the common basic standards on aviation security in respect of air cargo and mail

(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 the Council of 11 March 2008 on 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 rules for cargo and mail being carried to Union airports from third countries. It is necessary to introduce such rules in order to protect civil aviation carrying such cargo from acts of unlawful interference.

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

(3) When assessing aviation security in third countries, consideration will be given to cooperation and partnership agreements concluded between the Union or individual Member States and third countries that provide a basis for guaranteeing the proper implementation of aviation security standards.

(4) When concluding Air Transport Agreements with third countries, the Commission and Member States should work towards achieving enhanced cooperation on aviation security supporting the implementation and application of standards and principles in third countries equivalent to those of the Union where this is effective to meet global threat and risk.

(5) By July 2013 the Commission should, together with Member States and stakeholders, examine the practical consequences and feasibility of the implementation of independent validation for air carriers carrying cargo from third country airports into the EU and the regulated agents and known consignors from which they directly accept consignments, and make any adjustments to the system, including amendments to this Regulation, where necessary.

Changes to legislation: Commission Implementing Regulation (EU) No 859/2011 is up to date with all changes known to be in force on or before 27 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

(6) Building on the International Civil Aviation Organisation (ICAO) contracting states' responsibility to meet at least ICAO standards for cargo security, the Commission and the Member States should reach out to authorities in third countries to cooperate with and, where possible and requested, provide assistance with capacity building in relation to the implementation of requirements to secure air cargo and mail being carried into the EU.

(7) The Commission will coordinate and take an active part in Union action for facilitating the implementation of aviation security requirements in respect of operations into the Union from third country airports and provide non-EU bodies with access to relevant information on a strict need to know basis and on the condition that sufficient guarantees are in place.

(8) 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

The Commission will assess and evaluate the application of the measures provided for in this Regulation and if appropriate make a proposal by 1 July 2015 at the latest.

The Commission will, at the latest by 31 December 2012, assess the likely impact of the requirements set out in this Regulation, in particular the independent validation requirements. The results shall be submitted to the Committee on Civil Aviation Security. Where appropriate, the Commission will propose adjustments to the requirements by 1 July 2013.

Article 3

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply as from 1 February 2012.

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

Done at Brussels, 25 August 2011.

For the Commission

The President

José Manuel BARROSO

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ANNEX

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

A. Point 6.1.2 is replaced by the following:

6.1.2. Where there is any reason to believe that a consignment to which security controls have been applied has been tampered with or has not been protected from unauthorised interference from the time that those controls were applied, it shall be screened by a regulated agent before being loaded on to an aircraft. Consignments which appear to have been significantly tampered with or which are otherwise suspect shall be treated as high risk cargo or mail (HRCM) in accordance with point 6.7.

B. Point 6.3.2.6(d) is replaced by the following:

(d) the security status of the consignment, stating:
- "SPX", meaning secure for passenger, all-cargo and all-mail aircraft, or
- "SCO", meaning secure for all-cargo and all-mail aircraft only; or
- "SHR" meaning secure for passenger, all-cargo and all-mail aircraft in accordance with high risk requirements.

C. In Chapter 6, the following points are added:

6.7. HIGH RISK CARGO AND MAIL (HRCM)

Provisions for high risk cargo and mail are laid down in a separate Commission Decision.

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. Requirements until 30 June 2014:

(a) 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):
- by the appropriate authority of the Member State listed in the Annex to Commission Regulation (EU) No 394/2011[(3)] amending Regulation (EC) No 748/2009[(4)] on the list of aircraft operators that performed an aviation activity listed in Annex I to Directive 2003/87/EC of the European Parliament and of the Council[(5)],
- by the appropriate authority of the Member State that issued the air carrier's Operator's Certificate for air carriers not listed in the Annex to Regulation (EU) No 394/2011,
- by the appropriate authority of the Member State where the air carrier has its major base of operations within the Union, or any other appropriate authority of the Union by agreement with that appropriate authority, for air carriers not listed in the Annex to Regulation (EU) No 394/2011 and not holding an Air Operator's Certificate issued by a Member State;

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(b) in order to be designated as an ACC3, the carrier shall:

— ensure that its security programme covers all points listed in Attachment 6-G in respect of cargo and mail being loaded on to its aircraft at any third country airport for carriage into the Union, and

— submit a "Declaration of commitments — ACC3" as set out in Attachment 6-H to the appropriate authority concerned. This declaration shall be signed by the carrier's legal representative or by the person responsible for security, and

— nominate a person to have overall responsibility for implementation of cargo or mail security provisions in third countries on its behalf and provide details of this person to the appropriate authority concerned;

(c) either the original or a copy of the signed "Declaration of commitments — ACC3" shall be retained by the appropriate authority concerned. Where the original is retained by the air carrier it shall be available for inspection at least during its period of validity;

(d) the appropriate authority concerned shall communicate the necessary details of the carrier to the Commission which shall make them available to all Member States.

(e) an ACC3 notified to the Commission in accordance with point (d) shall be recognised in all Member States for all operations from the specified third country airport into the Union.

6.8.1.2. Requirements to be fulfilled by 1 July 2014:

(a) in addition to the requirements set out in point 6.8.1.1(b), by 1 July 2014 at the latest, the air carrier shall ensure that an on-site verification of its cargo and mail operations at the relevant third country airport has been carried out by an independent validator;

(b) the independent validator shall examine the air carrier's security programme and ensure that it covers all the points set out in Attachment 6-G, verify compliance with the programme at the third country airport by using the checklist in Attachment 6-C3 and submit a report:

— to the appropriate authority of the Member State listed in the Annex to Regulation (EU) No 394/2011 amending Regulation (EC) No 748/2009 on the list of aircraft operators that performed an aviation activity listed in Annex I to Directive 2003/87/EC,

— to the appropriate authority of the Member State that issued the air carrier's Operator's Certificate for air carriers not listed in the Annex to Regulation (EU) No 394/2011,

— to the appropriate authority of the Member State where the air carrier has its major base of operations within the Union, or any other appropriate authority of the Union by agreement with that appropriate authority, for air carriers not listed in the Annex to Regulation (EU) No 394/2011 and not holding an Air Operator's Certificate issued by a Member State;