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 (Text with EEA relevance)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)], in the light of the joint text approved by the Conciliation Committee on 16 January 2008.

Whereas:

(1) In order to protect persons and goods within the European Union, acts of unlawful interference with civil aircraft that jeopardise the security of civil aviation should be prevented by establishing common rules for safeguarding civil aviation. This objective should be achieved by setting common rules and common basic standards on aviation security as well as mechanisms for monitoring compliance.

(2) It is desirable, in the interests of civil aviation security generally, to provide the basis for a common interpretation of Annex 17 to the Chicago Convention on International Civil Aviation of 7 December 1944.

(3) Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security[(3)] was adopted as a result of the events of 11 September 2001 in the United States. A common approach is needed in the field of civil aviation security and consideration should be given to the most effective means of offering assistance following terrorist acts that have a major impact in the transport field.

(4) The content of Regulation (EC) No 2320/2002 should be revised in the light of the experience gained, and the Regulation itself should be repealed and replaced by this Regulation seeking the simplification, harmonisation and clarification of the existing rules and the improvement of the levels of security.

Changes to legislation: *There are outstanding changes not yet made to Regulation (EC) No 300/2008 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) Given the need for more flexibility in adopting security measures and procedures in order to meet evolving risk assessments and to allow new technologies to be introduced, this Regulation should lay down the basic principles of what has to be done in order to safeguard civil aviation against acts of unlawful interference without going into the technical and procedural details of how they are to be implemented.

(6) This Regulation should apply to airports serving civil aviation located in the territory of a Member State, to operators providing services at such airports and to entities providing goods and/or services to or through such airports.

(7) Without prejudice to the Convention on offences and certain other acts committed on board aircraft, Tokyo, 1963, the Convention for the suppression of unlawful seizure of aircraft, The Hague, 1970, and the Convention for the suppression of unlawful acts against the safety of civil aviation, Montreal, 1971, this Regulation should also cover security measures that apply on board an aircraft, or during a flight, of Community air carriers.

(8) Each Member State retains the competence to decide whether to deploy in-flight security officers on aircraft registered in that Member State and on flights of air carriers licensed by it as well as to ensure, in accordance with paragraph 4.7.7 of Annex 17 to the Chicago Convention on International Civil Aviation and under the terms of that Convention, that such officers are government personnel who are specially selected and trained, taking into account the required security and safety aspects on board an aircraft.

(9) The various types of civil aviation do not necessarily present the same level of threat. In setting common basic standards on aviation security, the size of the aircraft, the nature of the operation and/or the frequency of operations at airports should be taken into account with a view to permitting the grant of derogations.

(10) Member States should also be allowed, on the basis of a risk assessment, to apply more stringent measures than those laid down in this Regulation.

(11) Third countries may require the application of measures that differ from those laid down in this Regulation in respect of flights from an airport in a Member State to, or over, that third country. However, without prejudice to any bilateral agreements to which the Community is a party, it should be possible for the Commission to examine the measures required by the third country.

(12) Even though, within a single Member State, there may be two or more bodies involved in aviation security, each Member State should designate a single authority responsible for the coordination and monitoring of the implementation of security standards.

(13) In order to define responsibilities for the implementation of the common basic standards on aviation security and to describe what measures are required by operators and other entities for this purpose, each Member State should draw up a national civil aviation security programme. Furthermore, each airport operator, air carrier and entity implementing aviation security standards should draw up, apply and maintain a security programme in order to comply both with this Regulation and with whichever national civil aviation security programme is applicable.

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(14) In order to monitor compliance with this Regulation and with the national civil aviation security programme, each Member State should draw up and ensure the implementation of a national programme to check the level and quality of civil aviation security.

(15) In order to monitor the application by Member States of this Regulation, and also to make recommendations to improve aviation security, the Commission should conduct inspections, including unannounced inspections.

(16) As a general rule, the Commission should publish measures that have a direct impact on passengers. Implementing acts setting out common measures and procedures for the implementation of the common basic standards on aviation security which contain sensitive security information, together with Commission inspection reports and the answers of the appropriate authorities should be regarded as EU classified information within the meaning of Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure[(4)]. Those items should not be published and should be made available only to those operators and entities with a legitimate interest.

(17) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(5)].

(18) In particular, the Commission should be empowered to adopt general measures amending non-essential elements of the common basic standards by supplementing them, set criteria allowing Member States both to derogate from the common basic standards and to adopt alternative security measures, and adopt specifications for national quality control programmes. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(19) When, on imperative grounds of urgency, the normal time-limits for the regulatory procedure with scrutiny cannot be complied with, the Commission should be able to apply the urgency procedure provided for in Article 5a(6) of Decision 1999/468/EC for the adoption of common rules for safeguarding civil aviation.

(20) The goal of ‘one-stop security’ for all flights within the European Union should be advanced.

(21) Furthermore, it should not be necessary to rescreen passengers or their baggage arriving on flights from third countries that have aviation security standards equivalent to those laid down by this Regulation. Therefore, without prejudice to the right of each Member State to apply more stringent measures, or to the respective competences of the Community and Member States, decisions of the Commission, and, where necessary, agreements between the Community and third countries, which recognise that the security standards applied in the third country are equivalent to the common standards, should be encouraged since these further one-stop security.

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(22) This Regulation is without prejudice to the application of rules on aviation safety, including those relating to the transport of dangerous goods.

(23) Penalties should be provided for infringements of the provisions of this Regulation. Those penalties, which may be of a civil or administrative nature, should be effective, proportionate and dissuasive.

(24) The Ministerial Statement on Gibraltar Airport, agreed in Cordoba on 18 September 2006 during the first Ministerial meeting of the Forum of Dialogue on Gibraltar, will replace the Joint Declaration on Gibraltar Airport made in London on 2 December 1987, and full compliance with it will be deemed to constitute compliance with the 1987 Declaration.

(25) Since the objectives of this Regulation, namely to safeguard civil aviation against acts of unlawful interference and to provide a basis for a common interpretation of Annex 17 to the Chicago Convention on International Civil Aviation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Objectives

1 This Regulation establishes common rules to protect civil aviation against acts of unlawful interference that jeopardise the security of civil aviation.

It also provides the basis for a common interpretation of Annex 17 to the Chicago Convention on International Civil Aviation.

2 The means of achieving the objectives set out in paragraph 1 shall be:

a the setting of common rules and common basic standards on aviation security;

b mechanisms for monitoring compliance.

Article 2

Scope

1 This Regulation shall apply to the following:

a all airports or parts of airports located in the territory of a Member State that are not exclusively used for military purposes;

b all operators, including air carriers, providing services at airports referred to in point (a);

c all entities applying aviation security standards that operate from premises located inside or outside airport premises and provide goods and/or services to or through airports referred to in point (a).

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2 The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

Article 3

Definitions

For the purposes of this Regulation:

1. ‘civil aviation’ means any air operation carried out by civil aircraft, excluding operations carried out by State aircraft referred to in Article 3 of the Chicago Convention on International Civil Aviation;

2. ‘aviation security’ means the combination of measures and human and material resources intended to safeguard civil aviation against acts of unlawful interference that jeopardise the security of civil aviation;

3. ‘operator’ means a person, organisation or enterprise engaged, or offering to engage, in an air transport operation;

4. ‘air carrier’ means an air transport undertaking holding a valid operating licence or equivalent;

5. ‘Community air carrier’ means an air carrier holding a valid operating licence granted by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers[(6)];

6. ‘entity’ means a person, organisation or enterprise, other than an operator;

7. ‘prohibited articles’ means weapons, explosives or other dangerous devices, articles or substances that may be used to commit an act of unlawful interference that jeopardises the security of civil aviation;

8. ‘screening’ means the application of technical or other means which are intended to identify and/or detect prohibited articles;

9. ‘security control’ means the application of means by which the introduction of prohibited articles may be prevented;

10. ‘access control’ means the application of means by which the entry of unauthorised persons or unauthorised vehicles, or both, may be prevented;

11. ‘airside’ means the movement area of an airport, adjacent terrain and buildings or portions thereof, access to which is restricted;

12. ‘landside’ means those parts of an airport, adjacent terrain and buildings or portions thereof that are not airside;

13. ‘security restricted area’ means that area of airside where, in addition to access being restricted, other aviation security standards are applied;

14. ‘demarcated area’ means an area that is separated by means of access control either from security restricted areas, or, if the demarcated area itself is a security restricted area, from other security restricted areas of an airport;