Commission Regulation (EU) No 72/2010 of 26 January 2010 laying down procedures for conducting Commission inspections in the field of aviation security (Text with EEA relevance)

COMMISSION REGULATION (EU) No 72/2010

of 26 January 2010

laying down procedures for conducting Commission inspections in the field of aviation security

(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 11 March 2008 of the European Parliament and of the Council on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002[(1)], and in particular Article 15 thereof,

Whereas:

(1) In order to monitor the application by Member States of Regulation (EC) No 300/2008 the Commission should conduct inspections. The organisation of inspections under the supervision of the Commission is needed to verify the effectiveness of national quality control programmes.

(2) The Commission and Member States should work cooperatively together during the preparation and conduct of Commission inspections.

(3) The Commission should have the possibility of including qualified national auditors made available by Member States in its inspection teams.

(4) Commission inspections and their reporting should be carried out according to a set procedure, including a standard methodology.

(5) Member States should ensure the swift rectification of deficiencies identified during Commission inspections.

(6) The Commission should be able to conduct follow-up inspections to verify the rectification of deficiencies.

(7) There should be a process for dealing with deficiencies deemed so serious as to have a significant impact on the overall level of aviation security in the Community.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Committee instituted by Article 19(2) of Regulation (EC) No 300/2008,

HAS ADOPTED THIS REGULATION:

Changes to legislation: *Commission Regulation (EU) No 72/2010 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*

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Regulation lays down procedures for conducting Commission inspections to monitor the application by Member States of Regulation (EC) No 300/2008. Commission inspections shall cover appropriate authorities of Member States and selected airports, operators and entities applying aviation security standards. The inspections shall be conducted in a transparent, effective, harmonised and consistent manner.

Article 2

Definitions

For the purpose of this Regulation the following definitions shall apply:

1. ‘appropriate authority’ means the national authority designated by a Member State pursuant to Article 9 of Regulation (EC) No 300/2008;

2. ‘Commission inspection’ means an examination by Commission inspectors of existing quality controls and civil aviation security measures, procedures and structures to determine levels of compliance with Regulation (EC) No 300/2008;

3. **[**[F1]‘Commission inspector’ means a person selected by the Commission to take part in Commission inspections, who is a Union citizen or a national of a Member State of the European Free Trade Association (EFTA) and who is employed by either of the following:
   - — the Commission,
   - — a Member State of the Union, as a national auditor,
   - — a Member State of EFTA, as a person charged with conducting compliance monitoring activities at national level on behalf of that Member State,
   - — the EFTA Surveillance Authority,
   - — the European Civil Aviation Conference Secretariat;**]**

4. ‘Committee’ means the Committee instituted by Article 19(1) of Regulation (EC) No 300/2008;

5. ‘deficiency’ means failure to comply with the requirements laid down in Regulation (EC) No 300/2008;

6. ‘national auditor’ means a person employed by the Member State to conduct compliance monitoring activities at national level on behalf of the appropriate authority;

7. ‘test’ means a trial of aviation security measures, where intent to commit an act of unlawful interference is simulated for the purpose of testing the effectiveness of the implementation of existing security measures;

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8. ‘compensatory measure’ means a temporary measure or range of measures aimed at limiting to the maximum extent practicable the impact of a deficiency identified during the conduct of an inspection before full correction can take place.

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2016/472 of 31 March 2016 amending Regulation (EU) No 72/2010 as regards the definition of the term ‘Commission inspector’ (Text with EEA relevance).

CHAPTER II

GENERAL REQUIREMENTS

Article 3

Cooperation of Member States

1 Without prejudice to Commission responsibilities, Member States shall cooperate with the Commission in the accomplishment of its inspection tasks. This cooperation shall be effective during the preparatory, monitoring and reporting phases.

2 Member States shall take all necessary steps to ensure that notification of an inspection is kept confidential in order to ensure that the inspection process is not compromised.

Article 4

Exercise of Commission powers

1 Each Member State shall ensure that Commission inspectors are able to exercise their authority to inspect the civil aviation security activities of the appropriate authority under Regulation (EC) No 300/2008 and of any airport, operator and entity subject to that Regulation.

2 Each Member State shall ensure that, upon request, Commission inspectors have access to any relevant documentation necessary to assess compliance with the common standards.

3 Wherever Commission inspectors encounter difficulties in the execution of their duties, the Member States concerned shall by any means within their legal powers assist the Commission to accomplish its task in full.

Article 5

Qualification criteria for Commission inspectors

In order to qualify for Commission inspections, Commission inspectors shall have relevant theoretical and practical experience and shall have successfully completed training:

This training shall:

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(a) be delivered by the Commission services;

(b) be initial and recurrent;

(c) ensure a standard of performance adequate for the purposes of establishing whether security measures are implemented in accordance with Regulation (EC) No 300/2008.

Initial training shall include an examination.

Article 6

Participation of national auditors in Commission inspections

1 Member States shall make available to the Commission national auditors able to participate in Commission inspections as well as in related preparatory and reporting phases.

2 Member States shall provide the Commission with details of at least one and not more than five national auditors who may be called upon to participate in Commission inspections.

3 A list of all national auditors nominated by Member States and fulfilling the criteria set out in Article 5 shall be annually communicated to the Committee.

4 A national auditor shall not participate in Commission inspections in the Member State where he is employed.

5 Requests for national auditors to participate in Commission inspections shall be communicated to the appropriate authority in good time, normally at least two months before the inspection is due to take place.

6 Expenses arising from the participation of national auditors in Commission inspection shall, in compliance with Community rules, be met by the Commission.

CHAPTER III

PROCEDURES FOR THE CONDUCT OF COMMISSION INSPECTIONS

Article 7

Notification of inspections

1 The Commission shall give at least two months' notice of an inspection to the appropriate authority in whose territory it is to be conducted.

2 A pre-inspection questionnaire for completion by the appropriate authority shall, where appropriate, be communicated at the same time as the notice of the inspection, along with a request for any relevant documentation. The completed questionnaire and any requested documentation shall be submitted to the Commission at least two weeks before the inspection is scheduled to begin.

3 Where the Commission has information suggesting the existence at an airport of deficiencies which may have a significant impact on the overall level of aviation security in the Community, the appropriate authority of the Member State concerned shall be consulted and the period of prior notice of an inspection may then be reduced to two weeks. In this case, paragraphs 1 and 2 of this Article shall not apply.

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Article 8

Preparation of inspections

1 Commission inspectors shall undertake preparatory activities in order to ensure efficiency, accuracy and consistency of inspections.

2 The appropriate authority shall be provided with the names of the Commission inspectors mandated to conduct an inspection, along with other details as appropriate.

3 For each inspection the appropriate authority shall designate a coordinator who shall make the practical arrangements associated with the inspection activity to be undertaken. Member States shall provide the name and contact details of the coordinator to the Commission within three weeks of receipt of the inspection notification.

Article 9

Conduct of inspections

1 Commission inspectors shall conduct inspections in an efficient and effective manner, with due regard for their own and others' safety and security. Commission inspectors whose behaviour during an inspection fails to meet these standards may be excluded from further Commission inspections.

2 A standard methodology shall be used to monitor compliance with the civil aviation security requirements laid down in Regulation (EC) No 300/2008.

The conduct of inspections shall be based on a systematic gathering of information using one or more of the following techniques:

a observations;
b verifications;
c interviews;
d examination of documents; and
e tests.

3 Commission inspectors shall be accompanied by a representative of the appropriate authority when carrying out inspection activities. The conduct of the escort shall not prejudice the efficiency or effectiveness of the inspection activities.

4 Commission inspectors shall carry an identity card authorising inspections on behalf of the Commission and an airport identification card allowing access to all areas required for the inspection. The format of the airport identification card shall not prejudice the efficiency or effectiveness of the inspection activities.

5 Tests shall only be performed after advance notification to and in close coordination with the appropriate authority.

6 Member States shall ensure that Commission inspectors are authorised to carry items to be used for testing purposes, including those that are, or have the appearance of, prohibited articles, in any area to which access is required during the course of an inspection and when in transit to or from an inspection, in accordance with any agreed protocols.