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

COMMISSION REGULATION (EU) No 18/2010

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on European Union and 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 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002[(1)], and in particular Article 11(2) thereof,

Whereas:

(1) The development and implementation of a national quality control programme by each Member State is essential to ensure the effectiveness of its national civil aviation security programme in accordance with Article 11(1) of Regulation (EC) No 300/2008.

(2) Specifications for the national quality control programme to be implemented by the Member States should ensure a harmonised approach in this respect.

(3) To be effective, compliance monitoring activities to be undertaken under the responsibility of the appropriate authority should be carried out regularly. They should not be restricted as to the subject, stage or moment at which they are carried out. They should take the most suitable forms to ensure their effectiveness.

(4) Priority should be given to the development of a common methodology for compliance monitoring activities.

(5) It is necessary to develop a harmonised way of reporting on the measures taken to fulfil the obligations under this Regulation and on the aviation security situation in the territories of the Member States.

(6) National quality control programmes should be based on best practices. Such best practices should be shared with the Commission and communicated to all Member States.

(7) Regulation (EC) No 300/2008 should therefore be amended accordingly.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Civil Aviation Security,

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 18/2010. (See end of Document for details)*

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 300/2008

Regulation (EC) No 300/2008 is amended as follows:

1. The title ‘Annex’ is replaced by ‘Annex I’.

2. The text set out in the Annex to this Regulation is added as Annex II.

Article 2

Entry into force

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 the date specified in the implementing rules adopted in accordance with the procedure referred to in Article 4(3) of Regulation (EC) No 300/2008, but not later than 29 April 2010.

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

Done at Brussels, 8 January 2010.

For the Commission

The President

José Manuel BARROSO

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EU) No 18/2010. (See end of Document for details)*

ANNEX

ANNEX IICommon specifications for the national quality control programme to be implemented by each Member State in the field of civil aviation security1.DEFINITIONS1.1.For the purposes of this Annex, the following definitions shall apply:

(1) “annual traffic volume” means the total number of passengers arriving, departing and in transit (counted once);

(2) “appropriate authority” means the national authority designated by a Member State pursuant to Article 9 to be responsible for the coordination and monitoring of the implementation of its national civil aviation security programme;

(3) “auditor” means any person conducting national compliance monitoring activities on behalf of the appropriate authority;

(4) “certification” means a formal evaluation and confirmation by or on behalf of the appropriate authority that a person possesses the necessary competencies to perform the functions of an auditor to an acceptable level as defined by the appropriate authority;

(5) “compliance monitoring activities” means any procedure or process used for assessing the implementation of this Regulation and the national aviation security programme;

(6) “deficiency” means a failure to comply with an aviation security requirement;

(7) “inspection” means an examination of the implementation of security measures and procedures in order to determine whether they are being carried out effectively and to the required standard and to identify any deficiencies;

(8) “interview” means an oral check by an auditor to establish whether specific security measures or procedures are implemented;

(9) “observation” means a visual check by an auditor that a security measure or procedure is implemented;

(10) “representative sample” means a selection made from amongst possible options for monitoring which is sufficient in number and range to provide a basis for general conclusions on implementing standards;

(11) “security audit” means an in-depth examination of security measures and procedures in order to determine if they are being fully implemented on a continual basis;

(12) “test” means a trial of aviation security measures, where the appropriate authority simulates intent to commit an act of unlawful interference for the purpose of examining the effectiveness of the implementation of existing security measures;

(13) “verification” means an action taken by an auditor to establish whether a specific security measure is actually in place;

(14) “vulnerability” means any weakness in the implemented measures and procedures which could be exploited to carry out an act of unlawful interference.

2.POWERS OF THE APPROPRIATE AUTHORITY2.1.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 18/2010. (See end of Document for details)*

Member States shall provide the appropriate authority with the necessary powers for monitoring and enforcing all requirements of this Regulation and its implementing acts, including the power to impose penalties in accordance with Article 21.
2.2.

The appropriate authority shall perform compliance monitoring activities and have the powers necessary to require any identified deficiency to be rectified within set timeframes.
2.3.A graduated and proportionate approach shall be established regarding deficiency correction activities and enforcement measures. This approach shall consist of progressive steps to be followed until correction is achieved, including:

(a) advice and recommendations;

(b) formal warning;

(c) enforcement notice;

(d) administrative sanctions and legal proceedings.

The appropriate authority may omit one or more of these steps, especially where the deficiency is serious or recurring.
3.OBJECTIVES AND CONTENT OF THE NATIONAL QUALITY CONTROL PROGRAMME3.1.

The objectives of the national quality control programme are to verify that aviation security measures are effectively and properly implemented and to determine the level of compliance with the provisions of this Regulation and the national civil aviation security programme, by means of compliance monitoring activities.
3.2.The national quality control programme shall include the following elements:

(a) organisational structure, responsibilities and resources;

(b) job descriptions of, and qualifications required for auditors;

(c) compliance monitoring activities, including scope of security audits, inspections, tests and, following an actual or potential breach of security, investigations, frequencies for security audits and inspections and also classification of compliance;

(d) surveys, where there is cause to reassess security needs;

(e) deficiency correction activities providing details concerning deficiency reporting, follow-up and correction in order to ensure compliance with aviation security requirements;

(f) enforcement measures and, where appropriate, penalties, as specified in points 2.1 and 2.3 of this Annex;

(g) reporting of compliance monitoring activities carried out including, where appropriate, information exchange between national bodies on compliance levels;

(h) monitoring process of the airport, operator and entity internal quality control measures;

(i) a process to record and analyse the results of the national quality control programme to identify trends and steer future policy development.
4.COMPLIANCE MONITORING4.1.

All airports, operators and other entities with aviation security responsibilities shall be regularly monitored to ensure the swift detection and correction of failures.
4.2.

Monitoring shall be undertaken in accordance with the national quality control programme, taking into consideration the threat level, type and nature of the operations, standard of implementation, results of internal quality control of airports, operators and entities and other factors and assessments which will affect the frequency of monitoring.
4.3.

Monitoring shall include the implementation and effectiveness of the internal quality control measures of airports, operators and other entities.
4.4.

Monitoring at each individual airport shall be made up of a suitable mixture of compliance monitoring activities and provide a comprehensive overview of the implementation of security measures in the field.
4.5.

The management, setting of priorities and organisation of the quality control programme shall be undertaken independently from the operational implementation of the measures taken under the national civil aviation security programme.
4.6.

Compliance monitoring activities shall include security audits, inspections and tests.
5.METHODOLOGY5.1.

The methodology for conducting monitoring activities shall conform to a standardised approach, which includes tasking, planning, preparation, on-site activity, the classification of findings, the completion of the report and the correction process.
5.2.

Compliance monitoring activities shall be based on the systematic gathering of information by means of observations, interviews, examination of documents and verifications.
5.3.

Compliance monitoring shall include both announced and unannounced activities.
6.SECURITY AUDITS6.1.A security audit shall cover:

(a) all security measures at an airport; or

(b) all security measures implemented by an individual airport, terminal of an airport, operator or entity; or

(c) a particular part of the National Civil Aviation Security Programme.
6.2.The methodology for conducting a security audit shall take into consideration the following elements:

(a) announcement of the security audit and communication of a pre-audit questionnaire, if appropriate;

(b) preparation phase including examination of the completed pre-audit questionnaire and other relevant documentation;

(c) entry briefing with airport/operator/entity representatives prior to beginning the monitoring activity on-site;