

## 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 <sup>(1)</sup> 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 <sup>(2)</sup> 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.

- (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.

<sup>(1)</sup> OJ L 97, 9.4.2008, p. 72.

<sup>(2)</sup> OJ L 55, 5.4.2010, p.1.

*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 (\*) 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 of the European Parliament and of the Council (\*\*\*),
  - 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;
- (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;
- (c) if satisfied with the report of the independent validator, the appropriate authority concerned shall ensure that the necessary details of the ACC3 are entered into the Union database of regulated agents and known consignors;
- (d) when making the database entry, the appropriate authority concerned shall allocate a unique alphanumeric identifier in the standard format identifying the carrier and the third country airport from which it is carrying cargo into the Union. The unique alphanumeric identifier shall appear on documentation accompanying the consignments carried, either in electronic format or in writing;
- (e) if the appropriate authority concerned is not satisfied with the information provided by the air carrier or with the report of the independent validation then the reasons shall promptly be notified to the carrier seeking designation as an ACC3;
- (f) an ACC3 listed on the Union database of regulated agents and known consignors in accordance with this point 6.8.1.2 shall be recognised in all Member States for all operations from the third country airport into the Union;
- (g) an ACC3 listed in the Union database of regulated agents and known consignors shall be re-validated at intervals not exceeding 5 years at the third country airport for which it has been designated and resubmit a Declaration of Commitments at the time of each revalidation.

#### 6.8.2. Security controls for cargo and mail arriving from a third country

##### 6.8.2.1. 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 a regulated agent and the consignment has been protected from unauthorised interference from the time that those security controls were applied and until loading; or

- (b) the required security controls have been applied to the consignment by a known consignor and the consignment has been protected from unauthorised interference from the time that those security controls were applied and until loading; or
  - (c) the required security controls have been applied to the consignment by an account consignor, the consignment has been protected from unauthorised interference from the time that those security controls were applied and until loading, and it is not carried on a passenger aircraft; or
  - (d) the consignment is exempted from screening in accordance with point 6.1.1(d) and protected from unauthorised interference from the time that it became identifiable air cargo or identifiable air mail and until loading.
- 6.8.2.2. Until 30 June 2014, the requirements of point 6.8.2.1 shall, as a minimum, meet ICAO standards. Thereafter, cargo and mail carried into the Union shall be:
- (a) screened by one of the means or methods listed in point 6.2.1 to a standard sufficient to reasonably ensure that it contains no prohibited articles; or
  - (b) subject to security controls by a regulated agent, known consignor or account consignor designated in accordance with point 6.8.3; or
  - (c) exempted from screening in accordance with point 6.1.1(d) and protected from unauthorised interference from the time that it became identifiable air cargo or identifiable air mail and until loading.
- 6.8.2.3. The security status of the consignment shall be indicated in the accompanying documentation, either in the form of an air waybill, equivalent postal documentation or in a separate declaration and either in an electronic format or in writing.
- 6.8.3. Designation of third country regulated agents, known consignors and account consignors**
- 6.8.3.1. Until 30 June 2014, the ACC3 shall set out details of security controls implemented by regulated agents, known consignors and account consignors from which it directly accepts consignments in its security programme. Thereafter, the ACC3 shall in addition:
- (a) ensure that such third country regulated agents and known consignors are independently validated in accordance with the checklists in Attachments 6-C2 and 6-C respectively at intervals not exceeding 5 years;
  - (b) ensure that completed checklists are available for inspection by the appropriate authority or the Commission;
  - (c) maintain a database giving the following information for each such regulated agent, known consignor and account consignor:
    - the company details, including the bona fide business address,
    - the nature of the business, excluding business sensitive information,
    - contact details, including those of the person(s) responsible for security,
    - the company registration number, if applicable.
- The database shall be available for inspection.
- 6.8.3.2. For third country account consignors from which it directly accepts consignments the ACC3 shall ensure that the requirements of points 6.5.2 to 6.5.6 are met. Third country Authorised Economic Operator — AEO certificates may only be recognised for third countries with which the Union has concluded an AEO Mutual Recognition agreement.
- 6.8.4. Non-compliance**
- 6.8.4.1. If the Commission or an appropriate authority identifies a serious deficiency relating to an ACC3 operation which is deemed to have a significant impact on the overall level of aviation security in the Union it shall:
- (a) inform the ACC3 concerned promptly and request comments;
  - (b) promptly inform the Commission and other Member States, as appropriate.

6.8.4.2. The Commission may, in accordance with the regulatory procedure referred to in Article 19(2) of Regulation (EC) No 300/2008 then decide that the carrier may no longer be recognised as an ACC3, either for specific or for all routes from third countries into the Union. In such cases, details of the ACC3 shall be removed from the Union database of regulated agents and known consignors.

6.8.4.3. An air carrier whose recognition as an ACC3 has been withdrawn in accordance with point 6.8.4.2 shall not be reinstated or included in the Union database of regulated agents or known consignors until an independent validator has confirmed that the serious deficiency has been rectified and the Committee on Civil Aviation Security has been informed thereof by the relevant appropriate authority.

(\*) OJ L 107, 27.4.2011, p. 1.

(\*\*) OJ L 219, 22.8.2009, p. 1.

(\*\*\*) OJ L 275, 25.10.2003, p. 32, as amended by Directive 2008/101/EC (OJ L 8, 13.1.2009, p. 3).'

D. Attachment 6-F is replaced by the following:

**'ATTACHMENT 6-F**

CARGO AND MAIL

6-Fi

*THIRD COUNTRIES RECOGNISED AS APPLYING SECURITY STANDARDS EQUIVALENT TO THE COMMON BASIC STANDARDS*

6-Fii

*THIRD COUNTRIES FOR WHICH ACC3 DESIGNATION IS NOT REQUIRED*

Third countries for which ACC3 designation is not required are listed in a separate Commission Decision.'

E. The following attachments are added:

**'ATTACHMENT 6-G**

PROVISIONS RELATING TO THIRD COUNTRY CARGO AND MAIL

The ACC3 security programme shall set out, as applicable and either for each third country airport individually or as a generic document specifying any variations at named third country airports:

- (a) description of measures for air cargo and mail;
- (b) procedures for acceptance;
- (c) regulated agent scheme and criteria;
- (d) known consignor scheme and criteria;
- (e) account consignor scheme and criteria;
- (f) standard of screening and physical examination;
- (g) location of screening and physical examination;
- (h) details of screening equipment;
- (i) details of operator or service provider;
- (j) list of exemptions from security screening or physical examination;
- (k) treatment of high risk air cargo and mail.

**ATTACHMENT 6-H**

DECLARATION OF COMMITMENTS — ACC3

I declare that,

- to the best of my knowledge, the information contained in the company's security programme in respect of consignments being carried into the European Union from third countries is true and accurate,

- the practices and procedures set out in the security programme in respect of consignments being carried into the European Union from third countries will be implemented and maintained at all sites covered by the programme,
- the security programme will be adjusted and adapted to comply with all future changes to European Union legislation specifying requirements for air cargo/air mail being brought into the European Union from third countries, unless [name of air carrier] informs [name of appropriate authority] that it no longer wishes to carry consignments into the Union from any third country,
- [name of air carrier] will inform [name of appropriate authority] in writing of any changes to the relevant parts of its security programme within 10 days,
- the company has nominated [name of responsible individual] to have overall responsibility for security measures in respect of air cargo/mail operations at [names of third country airports] on its behalf,
- from 1 July 2014 [name of air carrier] will maintain a database of third country regulated agents, known consignors and account consignors and make this available for inspection,
- [name of air carrier] will cooperate fully with all inspections, as required, and provide access to all documents and the above-mentioned database, as requested by inspectors,
- [name of air carrier] will inform [name of appropriate authority] of any serious security breaches and of any suspicious circumstances which may be relevant to air cargo/air mail security in the third country, in particular any attempt to conceal prohibited articles in consignments, and
- [name of air carrier] will inform [name of appropriate authority] if:
  - (a) it ceases trading or changes name;
  - (b) it no longer deals with air cargo/air mail; or
  - (c) it can no longer meet the requirements of the European Union legislation specifying requirements for air cargo/air mail being brought into the European Union from third countries.

I accept full responsibility for this declaration.

Name:

Position in company:

Date:

Signature:

#### **ATTACHMENT 6-I**

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

#### **ATTACHMENT 6-J**

Provisions for the use of screening equipment are laid down in a separate Commission Decision.'

F. In Chapter 11, the following point is added:

'11.0.5. For the purposes of this Regulation, any of the following may act as an independent validator:

- a representative of the national authority of a Union Member State,
  - any other physical or legal person recognised by a Member State or the Commission for this purpose.'
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