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(Acts whose publication is obligatory)

**REGULATION (EC) No 849/2004 OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL
of 29 April 2004**

amending Regulation (EC) No 2320/2002
establishing common rules in the field of civil aviation security

(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,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ²,

¹ Opinion delivered on 28 January 2004 (not yet published in the Official Journal).

² Opinion of the European Parliament of 11 March 2004 (not yet published in the Official Journal), Council Decision of 29 April 2004.

Whereas:

- (1) Regulation (EC) No 2320/2002¹ establishes harmonised common rules in the field of civil aviation security.
- (2) The application of Regulation (EC) No 2320/2002 has demonstrated that there is a need for technical amendments. These amendments do not seek to change the scope of the Regulation, nor do they prejudice in any way the security of civil aviation passengers.
- (3) Regulation (EC) No 2320/2002 permits different but adequate levels of security to be set at the smallest airports. It is consistent to permit the same adequate levels of security at both ends of a flight.
- (4) Regulation (EC) No 2320/2002 should be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) 2320/2002 is hereby amended as follows:

- 1) The following definition shall be added to Article 2:

"(4) "demarcated area" shall mean an area that is separated from other security restricted areas of an airport by means of access control.";

¹ OJ L 355, 30.12.2002, p. 1.

2) Article 4 shall be amended as follows:

– paragraph 3 shall be replaced by the following:

"3. The appropriate authority of a Member State may, on the basis of a local risk assessment, and where the application of the security measures specified in the Annex may be disproportionate, or where they cannot be implemented for objective practical reasons, adopt national security measures to provide an adequate level of protection, at airports,:

- (a) with a yearly average of no more than 2 commercial flights per day; or
- (b) with only general aviation flights; or
- (c) with commercial activity limited to aircraft with less than 10 tonnes of Maximum Take Off Weight (MTOW) or fewer than 20 seats,

taking into account the particularities of such small airports.

The Member State concerned shall inform the Commission of these measures.";

– the following paragraph shall be inserted:

"3(a) Paragraph 3 may also apply to demarcated areas of airports with:

- (a) only general aviation flights; or
- (b) with commercial activity limited to aircraft with less than 10 tonnes MTOW or fewer than 20 seats.

A demarcated area shall be indicated in the airport security programme.

Each flight originating from a demarcated area of an airport shall indicate this fact to the destination airport in advance of the arrival of the flight.";

- 3) in Article 7 the words "audited", "audits", "auditors" and "audit reports" shall be replaced by "monitored", "compliance monitoring activities", "persons" and "compliance monitoring reports" respectively.;

4) the Annex shall be amended as follows:

- in point 5.2 the following paragraph shall be added:

"3. Exemptions

Hold baggage of those parties listed under point 4.1, paragraph 3, may be subject to special screening measures or exempt from screening.";

- in point 7.3, paragraph 1(b), the final phrase shall be replaced by:

"so as reasonably to ensure that it does not contain any prohibited article as listed in points (iv) and (v) of the Attachment, unless it has been declared and properly subjected to applicable safety measures; and".

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

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

Done at Strasbourg, 29 April 2004.

For the European Parliament

The President

P. COX

For the Council

The President

M. McDOWELL