

COMMISSION REGULATION (EC) No 1138/2004**of 21 June 2004****establishing a common definition of critical parts of security restricted areas at airports****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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⁽¹⁾, and in particular Article 4(2) thereof and point 2.3(a) of the Annex thereto,

Whereas:

- (1) Pursuant to Regulation (EC) No 2320/2002 the Commission is required to establish a common definition of the critical parts of security restricted areas. Such a definition should cover at least those parts of an airport to which departing passengers, after screening, have access and those parts through which departing hold baggage, after screening, may pass or in which it may be held.
- (2) All staff, including flight crews, and the items they carry, should be screened before being allowed access to the critical parts of security restricted areas.
- (3) An exemption should be allowed for parts of an airport through which departing hold baggage, after screening, may pass or in which it may be held, if the baggage, having been secured could be handled by unscreened staff without compromising the level of security. Measures should be taken to ensure that such secured baggage has not been tampered with before being loaded onto an aircraft.
- (4) At airports where very few staff have access to security restricted areas, a balance should be struck between the need to ensure security and the need to ensure operational effectiveness.
- (5) Unscreened staff should be allowed access into critical parts of security restricted areas of an airport only on condition that they are at all times escorted by screened and authorised staff.

(6) Where other unscreened persons may have had access to critical parts of security restricted areas, a full security search should be carried out in order to ensure that critical parts of security restricted areas do not contain prohibited articles. Where critical parts are not continuously maintained as such, then immediately before being re-established as such they should be subjected to a full security search.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Committee instituted by Article 9(1) of Regulation (EC) No 2320/2002,

HAS ADOPTED THIS REGULATION:

Article 1

1. At airports where more than 40 staff members hold airport identification cards giving access to security restricted areas, the critical parts of security restricted areas shall be at least the following:

- (a) any part of an airport to which departing passengers, including their cabin baggage, after screening, have access;
- (b) any part of an airport through which, after screening, departing hold baggage may pass or in which it may be held, if the baggage has not been secured.

2. For the purposes of paragraph 1, any part of an airport shall be regarded as a critical part of security restricted areas for as long as:

- (a) departing passengers, including their cabin baggage, after screening, are present in that part;
- (b) departing hold baggage, after screening, is passing through or being held in that part, if it has not been secured.

⁽¹⁾ OJ L 355, 30.12.2002, p. 1.

3. For the purposes of paragraphs 1 and 2, an aircraft, bus, baggage cart or other means of transport or a walkway or jetway shall be regarded as a part of an airport.

Article 2

For the purposes of this Regulation 'secured baggage' shall mean screened departing hold baggage physically protected so as to prevent the introduction of any objects.

Article 3

At airports where no more than 40 staff members hold airport identification cards giving access to security restricted areas, Member States may continue to identify the critical parts of security restricted areas in accordance with the second subparagraph of point 2.3(a) of the Annex to Regulation (EC) No 2320/2002.

Article 4

1. All staff, including flight crews, and the items they carry, shall be screened before being allowed access to the parts referred to in point (a) of Article 1(1) wherever these parts form part of the terminal building.

2. No later than 1 January 2006, Member States shall have introduced arrangements under which all staff, including flight crews, and the items they carry, shall be screened before being allowed access to the parts referred to in point (a) of Article 1(1).

3. No later than 1 July 2009, Member States shall have introduced arrangements under which all staff, including flight crews, and the items they carry, shall be screened before being allowed access to the parts referred to in point (b) of Article 1(1).

Article 5

No later than 1 July 2009, where secured baggage is handled by unscreened staff, measures shall be taken to ensure that that baggage has not been tampered with before being loaded onto an aircraft.

Article 6

1. By way of derogation from Article 4, staff need not be screened before being allowed access to critical parts of security restricted areas provided that they are escorted by a screened and authorised staff member.

The escort shall be responsible for any security breach committed by the staff member being escorted.

2. By way of derogation from Article 4, screened staff members who temporarily leave critical parts of security restricted areas need not be screened on their return provided that they have been under constant observation sufficient to ensure that they do not introduce prohibited articles into those critical parts of security restricted areas.

Article 7

Without prejudice to Article 6, whenever unscreened persons may have had access to critical parts of security restricted areas, a full security search of those parts shall be carried out.

Article 8

This Regulation shall enter into force on 1 July 2004.

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

Done at Brussels, 21 June 2004.

For the Commission

Loyola DE PALACIO

Vice-President
