

## AVIATION SECURITY IN EUROPEAN UNION. EUROPEAN AVIATION SAFETY AGENCY

### Summary

Faced with a massive increase in air traffic resulting from the successful implementation of the single aviation market, the European Union ensures that all European citizens can enjoy the high level of safety in the sky. The European Commission developed a set of basic civil aviation security standards with the Regulation (EC) No 2320/2002, establishing common rules in the field of civil aviation security which was adopted on 16th December 2002 by the European Parliament. In 2008, Regulation (EC) No 300/2008 repealed this Regulation and introduced a series of new measures aimed to improve, streamline and simplify existing procedures. In 2002, the Regulation (EC) No 1592/2002 was the founding document of a new entity, the European Aviation Safety Agency. Areas of activity were Certification and Maintenance of aircraft. On 18 March the new Regulation (EC) No 216/2008, repealing the original Basic Regulation was published and applicable from 08 April on. By virtue of Regulation (EC) No 216/2008, the EU extended the common aviation safety rules and the corresponding responsibilities of EASA to aircraft operations and aircrew licensing and training.

**Key words:** aviation, security, European Aviation Safety Agency, Joint Aviation Authorities, Joint Aviation Requirements

### Introduction

One of the cornerstones of the European Union's functioning is the abolition of borders between all the Member States and the creation of a single internal market within them, guaranteeing the free movement of goods, persons, services and capital (Article 26 TFEU). (3) This principle also applies to the air transport market, which means that any airline registered in any of the Member States can fly anywhere in the EU. The existence of such regulations is very important for applying to common safety and security standards in the EU. This is particularly important in the context of air transport, as the overwhelming majority of air operations are carried out over several national borders. By applying common European standards for the protection of passengers, crews, freight and aircraft, and airport infrastructure, we can be sure that the same high standards will be introduced in all the Member States. This also helps to avoid passenger uncertainty and confusion, which can be generated by the need to comply with many different internal security regulations (e.g. airport security checks). To sum up, the application by the EU Member States of common security and safety standards improved the comfort and safety of air travel, shortened the pre-departure time, and, most importantly, lowered the cost of air travel.

Safety and security are two very different concepts. Aviation security is the set of measures and resources implemented to prevent malicious acts (terrorism) targeting aircraft, their passengers, and crew members. For example, X-ray and explosives trace-detection portal machines in airports contribute to security. Aviation safety relates to protection against all accidents, errors or unintentional defects in the design, construction, maintenance and operation of aircraft. (4)

**Aviation security policy in EU.** After the tragic attacks of 11 September 2001, The European Union understood the importance and the need to adopt a uniform system of Regulations for the prevention of unlawful acts in civil aviation. Before this date, in fact, each Member State was individually responsible for security legislation relating to air transport.

On 10 October 2001, a month after the tragic events of New York and Washington, the Commission, on the initiative of the European Parliament, proposed the adoption of a common Regulation in the field of security. This Proposal resulted in the adoption of Regulation (EC) No 2320/2002 of 16 December 2002, which was implemented at European Union airports from 19 January 2003. This Regulation, no longer in force today, is of fundamental importance since it made, for the first time, the control procedures on passengers and their baggage in airport access areas uniform under common aviation security rules. (2, p 59) In 2005 the Commission proposed a new Regulation to replace Regulation (EC) No 2320/2002, which aimed at strengthening while at the same time simplifying and harmonizing the procedures provided for in the original provision. This was also prompted by the fact that in the over 40 unannounced inspections carried

out in Member States' airports as from February 2004, serious shortcomings in security systems were discovered. Three years after this Proposal was presented, Regulation (EC) No 300/2008 was adopted. This Regulation introduced a series of new measures aimed to improve, streamline and simplify existing procedures. The new Annex to Regulation (EC) No 300/2008 is divided into 12 parts. The provisions are summarized below:

1. Aircraft Security. Regarding aircraft security Annex I to the Regulation provides that all aircraft, before departure, must be subjected to a security check or security search in order to ensure that no prohibited articles are present on board. Moreover, all aircraft will also have to be protected from any unauthorized interference. Further ad hoc measures may be implemented for aircraft in transit.

2. Airport Security. The Regulation provides for compliance with certain requirements in the planning and in the construction of new airports or the alteration of existing ones. The following must be provided at airports: (a) landside; (b) airside; (c) security-restricted areas; (d) critical parts of security-restricted areas. Access to security-restricted areas, critical parts, and airside must be controlled at all times so that no unauthorized persons may enter them. The Regulation also provides for the random screening of persons other than passengers, such as flight crew members, and providers of services, such as cleaning services and others having access to aircraft, and on items carried by them, before being cleared to enter security-restricted areas and critical parts thereof.

3. Air Carrier Mail and Air Carrier Materials. Air carrier mail and air carrier materials mean internal shipments of mail and materials such as, but not limited to: documents, supplies, maintenance spare parts, cleaning and catering supplies and other items to be delivered to the air carrier organization itself or to one of its subcontractor organizations, for limited use to the carrier's operations. These will also have to be subject to security controls and protected until loaded onto the aircraft.

4. Hold Baggage. The Regulation provides for the pre-emptive screening of each item of luggage before being loaded onto aircraft. As in provisions on screening cabin luggage, the Regulation provides for exceptions in this case, too. These include where the luggage remains on board the aircraft, or if it arrives from a Member State (unless according to the Commission or that Member State it cannot be considered as having been screened to the common basic standards), or it arrives from a third country where the security standards applied are recognized as equivalent to the common basic standards. Moreover, the Regulation emphasizes the duty to protect such baggage from unauthorized interference from the point at which it is screened or accepted into the care of the air carrier until the departure of the aircraft on which it is to be carried.

5. Airport Supplies. The obligation to be subject to security control is also required for all supplies intended to be sold in security-restricted areas of airports, including supplies for duty-free shops and restaurants.

6. In-flight Security Measures. Annex I to Regulation (EC) No 300/2008, without prejudice to the applicable aviation safety rules, prohibits unauthorized persons from entering the flight crew compartment during a flight and provides for the implementation of appropriate security measures against potentially disruptive passengers. Moreover, weapons (with the exception of those carried in the hold) cannot be carried on board an aircraft, unless authorization has been given by the states involved and the required security conditions have been fulfilled, in accordance with national laws. This last provision also applies to 'in-flight security officers'.

7. Staff Recruitment and Training. In addition, there are requirements to be complied with in the recruitment and training of staff responsible for implementing the above-mentioned security controls. The Regulation requires in addition to adequate selection and training that there should be, where appropriate, a certificate issued attesting to the level of training achieved and the kind of duties capable of being undertaken. The Regulation thus requires that training be conducted on an initial and recurrent basis by instructors with the necessary qualifications.

8. Demarcated Areas. The Regulation is very clear that, as regards placing or parking of aircraft within demarcated areas of airports, any aircraft to which common air security standards under Article 4(4) do not apply must be kept separate from aircraft to which the common basic standards apply in order to ensure that minimum security standards are not compromised.

9. Passengers and Cabin Baggage. This is one of the most sensitive aspects of rules on air transport security in view of the fact that instances of unlawful interference in the last years were made possible not least because there were gaps or even failings in control systems which allowed the introduction into security restricted areas and in particular airside, of forbidden and dangerous items.

10. In-flight Supplies. The latter will also be subject to all security controls necessary to avoid prohibited articles from being introduced in the supplies and provisions to be taken on board an aircraft.

11. Cargo and Mail. Cargo and mail are also to be subjected to a series of security controls prior to being loaded on an aircraft. An important provision is a prohibition on air carriers accepting cargo to transport unless they have applied such controls themselves, or unless their application 'has been confirmed and accounted for by a regulated agent, a known consignor or an account consignor'. Annex I to Regulation (EC) No 300/2008 thus provides for the possibility of alternative security controls for transfer cargo and mail provided they be detailed in a specific implementing act. There is no exemption from such controls unless transit cargo and mail remain on board the aircraft.

12. Security Equipment Annex I to Regulation (EC) No 300/2008 provides for adequate equipment to be used for security controls. The specifications of said equipment must comply with the defined criteria. (2, p 71)

The European Commission adopted Implementing Regulation (EU) 2015/1998 in November 2015. It establishes comprehensive procedures for implementing these security standards and repealed a previous regulation (Regulation (EU) No 185/2010) that had been revised more than 20 times.

**European Aviation Safety Agency.** European Union has a long tradition in rulemaking cooperation in aviation safety, with the first common standards developed around 1990 within the framework of the currently no longer existing Joint Aviation Authorities (JAA). At that time, the European aviation safety authorities collaborated in the development of the Joint Aviation Requirements (JAR) and related procedures, initially in the field of aircraft manufacturing and design, and later also in respect of flight operations, maintenance and crew licensing.

In 2002, the EU introduced the first set of new generation aviation safety rules based on Regulation (EC) No 1592/2002, which also created the EASA as the backbone of the European aviation safety system. The creation of this agency became necessary because of the significant problems that the JAAs encountered in carrying out their tasks. The immense restrictions under which the JAAs had to work, including because it lacked the power to have its Regulations immediately implemented and had no autonomous certifying power (which was still the preserve of the individual national authorities), demonstrated the need for new authority, at the Community level, endowed with wide regulating and certifying powers. (1)

In September 2000 the Commission proposed the institution of a 'Community Agency' which, having regard to the principle of subsidiarity, was to have all the necessary powers in the field of air safety whenever and wherever collective action was preferable to action at individual State level. This proposal resulted in the enactment of Regulation (EC) No 1592/2002 (currently Regulation (EC) No 216/2008) and in the establishment of the European Aviation Safety Agency. Established on the basis of the Regulation (EC) 1592/2002, EASA builds on the experiences and cooperation of the former group of European aviation regulators, known as the Joint Aviation Authorities, which ceased its activities in July 2009. It is a pan-European body, having a legal personality which, since 28 September 2003, functions as a one-stop-shop for the certification of airworthiness and safety for all aeronautical products. After a further transitional period of 42 months, it took over the functions and assignments of the Member States and the activities of the JAAs, that is to say, it replaced the National Aviation Authorities. As a result of this, from 28 June 2008, all JAR-OPS were substituted by the EU-OPS (with Regulations issued by EASA), and in 2009 the functions of the JAA agency were completely taken over by the European Aviation Safety Agency. (5)

This Regulation, the 'basic Regulation', was subsequently repealed and substituted by Regulation (EC) No 216/2008 which, in many important respects is immensely innovative.

Accordingly, the Union Agency EASA, based in Cologne, was given specific regulatory and executive duties in the matter of air safety. In particular, it gives professional advice to the European Union on the drawing-up of Regulations and on the conclusion of international agreements on air safety; on the other, it carries out operative tasks that were formerly the prerogative of the aeronautical authorities of the Member States, such as issuing type-certifications of aeronautical products and the emission of airworthiness certificates. The Agency's functions have then been further extended by the adoption of Regulation (EC) No 1108/2009, extending them to the field of aerodromes, air traffic management, and air navigation safety services. This regulation was implemented by the adoption of Commission Regulation (EU) No 139/2014 on 12 February 2014, and its provisions became applicable from 6 March 2014. Furthermore, to ensure the uniformity of the application of rules in force in the various Member States, Regulation (EC) No 736/2006 of 16 May 2006 established the working methods of the European Aviation Safety Agency for conducting standardization inspections of Member States' competent authorities according to the general rules under Article 16(1) and Article 45(1) of Regulation (EC) No 1592/2002. In this context, EASA has started a

standardization sample inspection program, carried out by means of a team of experts, with the aim of checking the level of conformity maintained by the Member States; this is both in the organization of State agencies, and aeronautical industries. These inspections are on a 2-year basis and concern the totality of activities regulated by the Agency. The results are then communicated to the Commission and, should there be any irregularities, the latter may decide to initiate infringement proceedings under EU law (Article 258 TFEU).

The Agency's executive director has the power to make decisions that are immediately applicable in the Member States. The 'Implementing rules' (IRs) are to be found in Community Regulations and consist of a number of provisions that establish the scope of the rules, their methods of implementation, the date of their entry into force, and the transition periods with the existing law. (2, p 17)

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Göndərilib: 05.04.2021

Qəbul edilib: 06.04.2021