

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 72/2010

of 26 January 2010

laying down procedures for conducting Commission inspections in the field of aviation security

(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 11 March 2008 of the European Parliament and of the Council on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 ⁽¹⁾, and in particular Article 15 thereof,

Whereas:

- (1) In order to monitor the application by Member States of Regulation (EC) No 300/2008 the Commission should conduct inspections. The organisation of inspections under the supervision of the Commission is needed to verify the effectiveness of national quality control programmes.
- (2) The Commission and Member States should work cooperatively together during the preparation and conduct of Commission inspections.
- (3) The Commission should have the possibility of including qualified national auditors made available by Member States in its inspection teams.
- (4) Commission inspections and their reporting should be carried out according to a set procedure, including a standard methodology.
- (5) Member States should ensure the swift rectification of deficiencies identified during Commission inspections.

(6) The Commission should be able to conduct follow-up inspections to verify the rectification of deficiencies.

(7) There should be a process for dealing with deficiencies deemed so serious as to have a significant impact on the overall level of aviation security in the Community.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Committee instituted by Article 19(2) of Regulation (EC) No 300/2008,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Regulation lays down procedures for conducting Commission inspections to monitor the application by Member States of Regulation (EC) No 300/2008. Commission inspections shall cover appropriate authorities of Member States and selected airports, operators and entities applying aviation security standards. The inspections shall be conducted in a transparent, effective, harmonised and consistent manner.

Article 2

Definitions

For the purpose of this Regulation the following definitions shall apply:

1. 'appropriate authority' means the national authority designated by a Member State pursuant to Article 9 of Regulation (EC) No 300/2008;

⁽¹⁾ OJ L 97, 9.4.2008, p. 72.

2. 'Commission inspection' means an examination by Commission inspectors of existing quality controls and civil aviation security measures, procedures and structures to determine levels of compliance with Regulation (EC) No 300/2008;
3. 'Commission inspector' means an appropriately qualified person employed by the Commission or a person employed by the Member State to conduct compliance monitoring activities at national level on behalf of the appropriate authority and selected to take part in Commission inspections;
4. 'Committee' means the Committee instituted by Article 19(1) of Regulation (EC) No 300/2008;
5. 'deficiency' means failure to comply with the requirements laid down in Regulation (EC) No 300/2008;
6. 'national auditor' means a person employed by the Member State to conduct compliance monitoring activities at national level on behalf of the appropriate authority;
7. 'test' means a trial of aviation security measures, where intent to commit an act of unlawful interference is simulated for the purpose of testing the effectiveness of the implementation of existing security measures;
8. 'compensatory measure' means a temporary measure or range of measures aimed at limiting to the maximum extent practicable the impact of a deficiency identified during the conduct of an inspection before full correction can take place.

CHAPTER II

GENERAL REQUIREMENTS

Article 3

Cooperation of Member States

1. Without prejudice to Commission responsibilities, Member States shall cooperate with the Commission in the accomplishment of its inspection tasks. This cooperation shall be effective during the preparatory, monitoring and reporting phases.
2. Member States shall take all necessary steps to ensure that notification of an inspection is kept confidential in order to ensure that the inspection process is not compromised.

Article 4

Exercise of Commission powers

1. Each Member State shall ensure that Commission inspectors are able to exercise their authority to inspect the

civil aviation security activities of the appropriate authority under Regulation (EC) No 300/2008 and of any airport, operator and entity subject to that Regulation.

2. Each Member State shall ensure that, upon request, Commission inspectors have access to any relevant documentation necessary to assess compliance with the common standards.

3. Wherever Commission inspectors encounter difficulties in the execution of their duties, the Member States concerned shall by any means within their legal powers assist the Commission to accomplish its task in full.

Article 5

Qualification criteria for Commission inspectors

In order to qualify for Commission inspections, Commission inspectors shall have relevant theoretical and practical experience and shall have successfully completed training:

This training shall:

- (a) be delivered by the Commission services;
- (b) be initial and recurrent;
- (c) ensure a standard of performance adequate for the purposes of establishing whether security measures are implemented in accordance with Regulation (EC) No 300/2008.

Initial training shall include an examination.

Article 6

Participation of national auditors in Commission inspections

1. Member States shall make available to the Commission national auditors able to participate in Commission inspections as well as in related preparatory and reporting phases.
2. Member States shall provide the Commission with details of at least one and not more than five national auditors who may be called upon to participate in Commission inspections.
3. A list of all national auditors nominated by Member States and fulfilling the criteria set out in Article 5 shall be annually communicated to the Committee.

4. A national auditor shall not participate in Commission inspections in the Member State where he is employed.

5. Requests for national auditors to participate in Commission inspections shall be communicated to the appropriate authority in good time, normally at least two months before the inspection is due to take place.

6. Expenses arising from the participation of national auditors in Commission inspection shall, in compliance with Community rules, be met by the Commission.

CHAPTER III

PROCEDURES FOR THE CONDUCT OF COMMISSION INSPECTIONS

Article 7

Notification of inspections

1. The Commission shall give at least two months' notice of an inspection to the appropriate authority in whose territory it is to be conducted.

2. A pre-inspection questionnaire for completion by the appropriate authority shall, where appropriate, be communicated at the same time as the notice of the inspection, along with a request for any relevant documentation. The completed questionnaire and any requested documentation shall be submitted to the Commission at least two weeks before the inspection is scheduled to begin.

3. Where the Commission has information suggesting the existence at an airport of deficiencies which may have a significant impact on the overall level of aviation security in the Community, the appropriate authority of the Member State concerned shall be consulted and the period of prior notice of an inspection may then be reduced to two weeks. In this case, paragraphs 1 and 2 of this Article shall not apply.

Article 8

Preparation of inspections

1. Commission inspectors shall undertake preparatory activities in order to ensure efficiency, accuracy and consistency of inspections.

2. The appropriate authority shall be provided with the names of the Commission inspectors mandated to conduct an inspection, along with other details as appropriate.

3. For each inspection the appropriate authority shall designate a coordinator who shall make the practical arrangements associated with the inspection activity to be undertaken. Member States shall provide the name and contact details of the coordinator to the Commission within three weeks of receipt of the inspection notification.

Article 9

Conduct of inspections

1. Commission inspectors shall conduct inspections in an efficient and effective manner, with due regard for their own and others' safety and security. Commission inspectors whose behaviour during an inspection fails to meet these standards may be excluded from further Commission inspections.

2. A standard methodology shall be used to monitor compliance with the civil aviation security requirements laid down in Regulation (EC) No 300/2008.

The conduct of inspections shall be based on a systematic gathering of information using one or more of the following techniques:

(a) observations;

(b) verifications;

(c) interviews;

(d) examination of documents; and

(e) tests.

3. Commission inspectors shall be accompanied by a representative of the appropriate authority when carrying out inspection activities. The conduct of the escort shall not prejudice the efficiency or effectiveness of the inspection activities.

4. Commission inspectors shall carry an identity card authorising inspections on behalf of the Commission and an airport identification card allowing access to all areas required for the inspection. The format of the airport identification card shall not prejudice the efficiency or effectiveness of the inspection activities.

5. Tests shall only be performed after advance notification to and in close coordination with the appropriate authority.

6. Member States shall ensure that Commission inspectors are authorised to carry items to be used for testing purposes, including those that are, or have the appearance of, prohibited articles, in any area to which access is required during the course of an inspection and when in transit to or from an inspection, in accordance with any agreed protocols.

7. The appropriate authority shall be informed as soon as practicable of any serious deficiencies identified during a Commission inspection. In addition and without prejudice to Article 10, Commission inspectors shall, wherever practicable, provide an informal oral summary of their findings on the spot at the conclusion of the inspection.

Article 10

Inspection report

1. Within six weeks of completion of an inspection, an inspection report shall be communicated by the Commission to the appropriate authority.

The appropriate authority shall promptly convey the relevant findings to the inspected airport, operators or entities.

2. The report shall set out the findings of the inspectors including any deficiencies identified. The report may contain recommendations for remedial action.

3. When assessing the implementation of Regulation (EC) No 300/2008, the following classifications shall apply:

- (a) fully compliant;
- (b) compliant, but improvement desirable;
- (c) not compliant;
- (d) not compliant, with serious deficiencies;
- (e) not applicable;
- (f) not confirmed.

Article 11

Answer of the appropriate authority

1. Within three months of the date of dispatch of an inspection report, the appropriate authority shall submit in writing to the Commission an answer to the report which:

- (a) addresses the findings and recommendations;

- (b) provides an action plan, specifying actions and deadlines, to remedy any identified deficiencies.

2. In case of a follow-up inspection, the answer of the appropriate authority shall be submitted within six weeks of the date of dispatch of the inspection report.

3. Where the inspection report identifies no deficiencies, no answer shall be required.

Article 12

Rectification of deficiencies

1. The rectification of deficiencies identified during inspections shall be implemented promptly. Where the rectification cannot take place promptly, compensatory measures shall be implemented.

2. The appropriate authority shall confirm the rectification of the deficiencies to the Commission in writing. Such confirmation shall be based on compliance monitoring activities performed by the appropriate authority.

3. The appropriate authority shall be informed when an inspection report is deemed to require no further action.

Article 13

Follow-up inspections

1. Following receipt of the appropriate authority's answer and any further clarification required, the Commission may conduct a follow-up inspection.

2. An appropriate authority shall be given at least two weeks' notice of a follow-up inspection to be conducted on its territory.

3. The main focus of follow-up inspections shall be the areas where deficiencies were identified during the initial Commission inspection.

CHAPTER IV

GENERAL AND FINAL PROVISIONS

Article 14

Information to the Committee

The Committee shall be regularly informed about the implementation of the Commission inspection programme and the results of its assessments.

*Article 15***Notification of serious deficiencies to appropriate authorities**

1. An appropriate authority shall be promptly informed if an inspection at an airport on its territory discloses a serious deficiency which is deemed to have a significant impact on the overall level of aviation security in the Community. This information shall also be communicated promptly to the appropriate authorities of all other Member States.

2. Appropriate authorities shall also be promptly informed when the Commission has credible information about rectification action, including compensatory measures, confirming

that deficiencies notified under this Article no longer have a significant impact on the overall level of aviation security in the Community.

*Article 16***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, 26 January 2010.

For the Commission

The President

José Manuel BARROSO
