

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2019/103

of 23 January 2019

amending Implementing Regulation (EU) 2015/1998 as regards clarification, harmonisation and simplification as well as strengthening of certain specific aviation security measures

(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 of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 ⁽¹⁾, and in particular Article 4(3) thereof,

Whereas:

- (1) Experience gained with the implementation of Commission Implementing Regulation (EU) 2015/1998 ⁽²⁾ has shown the need for minor amendments to the implementing modalities of certain common basic standards.
- (2) Certain specific aviation security measures should be clarified, harmonised or simplified in order to improve legal clarity, standardize the common interpretation of the legislation and further ensure the best implementation of the common basic standards on aviation security.
- (3) Furthermore, new developments in terms of airport and airline operations, technology and security equipment addressing the changes in the threat and risk picture, as well as the evolution of international Standards and Recommended Practices of International Civil Aviation Organisation (ICAO) require the implementing rules to be amended accordingly.
- (4) The amendments concern measures in the areas of airport security, the revision of the rules on background check in order to enhance security culture and resilience, and the introduction, definition of performance standards and use of Shoe Explosive Detection equipment (SED) and Explosive Vapour Detection equipment (EVD).
- (5) Implementing Regulation (EU) 2015/1998 should therefore be amended accordingly.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 19 of Regulation (EC) No 300/2008,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Implementing Regulation (EU) 2015/1998 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 February 2019. However, points 2, 20, 25, 26, 28 to 38, 44 and 45 of the Annex to this Regulation shall apply from 31 December 2020.

⁽¹⁾ OJ L 97, 9.4.2008, p. 72.

⁽²⁾ Commission Implementing Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security (OJ L 299, 14.11.2015, p. 1).

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

Done at Brussels, 23 January 2019.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

The Annex to Implementing Regulation (EU) 2015/1998 is amended as follows:

(1) Point 1.1.3.4 is replaced by the following:

‘1.1.3.4 A security search of those critical parts that could have been contaminated shall be carried out as soon as possible in order to reasonably ensure that they do not contain prohibited articles, wherever access to critical parts has occurred by any of the following:

- (a) unscreened persons;
- (b) passengers and crew members arriving from third countries other than those listed in Attachment 4-B;
- (c) passengers and crew members arriving from Union airports where the relevant Member State has derogated from the common basic standards as provided for in Article 1 of Commission Regulation (EU) No 1254/2009 (*), unless they are met upon their arrival and escorted outside those areas in accordance with point 1.2.7.3.

This point shall be considered to be met for aircrafts that are subject to an aircraft security search, and it shall not apply when persons covered by point 1.3.2 and point 4.1.1.7 have had access to critical parts.

As far as points (b) and (c) are concerned, this provision shall only apply to those critical parts that are used by screened hold baggage and/or screened departing passengers not departing on the same aircraft as these passengers and crew members.

(*) Commission Regulation (EU) No 1254/2009 of 18 December 2009 setting criteria to allow Member States to derogate from the common basic standards on civil aviation security and to adopt alternative security measures (OJ L 338, 19.12.2009, p. 17).’

(2) Point 1.2.3 is replaced by the following:

‘1.2.3 **Requirements for Union crew identification cards and airport identification cards**

1.2.3.1 A crew identification card of a crew member employed by a Union air carrier and an airport identification card may only be issued to a person who has an operational need and has successfully completed an enhanced background check in accordance with point 11.1.3.

1.2.3.2 Crew and airport identification cards shall be issued for a period not exceeding five years.

1.2.3.3 The identification card of a person who fails an enhanced background check shall be immediately disabled or withdrawn, as applicable, and returned to the competent authority, operator or issuing entity, as appropriate.

1.2.3.4 The identification card shall be worn in a visible place at least whenever the holder is in security restricted areas.

A person who is not displaying his identification card in security restricted areas other than those areas where passengers are present shall be challenged by persons responsible for the implementation of point 1.5.1(c) and, as appropriate, be reported.

1.2.3.5 The identification card shall be returned immediately in the following circumstances:

- (a) upon request of the competent authority, operator or issuing entity as appropriate;
- (b) upon termination of employment;
- (c) upon change of employer;
- (d) upon change of the need to have access to areas for which an authorisation has been given;
- (e) upon expiry of the card;
- (f) upon withdrawal of the card.

1.2.3.6 The issuing entity shall be notified immediately of the loss, theft or failure to return an identification card.

1.2.3.7 An electronic card shall be immediately disabled following return, expiry, withdrawal or notification of loss, theft or failure to return.’;

- (3) Point 1.2.6.3(b) is replaced by the following:
- ‘(b) be linked to the company or individual registered vehicle user through a secure vehicle registration database’;
- (4) In point 1.2.6.3, the last sentence is replaced by the following:
- ‘Electronic vehicle passes shall also be electronically readable airside.’;
- (5) Point 1.3.1.1(f) is replaced by the following:
- ‘(f) explosive trace detection (ETD) equipment combined with hand held metal detection (HHMD) equipment’;
- (6) In point 1.3.1.1, the following points (g) and (h) are added:
- ‘(g) shoe metal detection (SMD) equipment;
- (h) shoe explosive detection (SED) equipment.’;
- (7) At the end of point 1.3.1.1, the following sentence is added:
- ‘SMD and SED equipment may only be used as a supplementary means of screening.’;
- (8) Point 1.3.1.3 is replaced by the following:
- ‘1.3.1.3 Explosive detection dogs, ETD equipment and ETD equipment in combination with SED equipment may only be used as a supplementary means of screening of persons other than passengers or in unpredictable alternation with hand searches, hand searches in combination with SMD equipment, WTMD or security scanners.’;
- (9) The following sentence is added at the end of point 3.1.3:
- ‘Recording of the information as above, may be held in electronic format.’;
- (10) Point 4.0.3 is replaced by the following:
- ‘4.0.3 Passengers and their cabin baggage arriving from a Member State where the aircraft was in transit after having arrived from a third country not listed in Attachment 4-B or from a Union airport where the relevant Member State has derogated from the common basic standards as provided for in Article 1 of Regulation (EU) No 1254/2009, shall be considered as passengers and cabin baggage arriving from a third country, unless there is a confirmation that these passengers and their cabin baggage were screened in accordance with this Chapter.’;
- (11) The following point 4.0.6 is added:
- ‘4.0.6 Passengers and their cabin baggage arriving from a Union airport where the relevant Member State has derogated from the common basic standards as provided for in Article 1 of Regulation (EU) No 1254/2009 shall be considered as passengers and cabin baggage arriving from a third country, unless there is confirmation that these passengers and their cabin baggage were screened in accordance with this Chapter.’;
- (12) Point 4.1.1.2(f) is replaced by the following:
- ‘(f) ETD equipment combined with hand held metal detection (HHMD) equipment’;
- (13) In point 4.1.1.2, the following points (g) and (h) are added:
- ‘(g) shoe metal detection (SMD) equipment;
- (h) shoe explosive detection (SED) equipment.’;
- (14) Point 4.1.1.9 is replaced by the following:
- ‘4.1.1.9 Explosive detection dogs, ETD equipment, SMD equipment and SED equipment may only be used as a supplementary means of screening.’;
- (15) Point 4.1.3.1 is replaced by the following:
- ‘4.1.3.1 LAGs carried by passengers may be exempted from screening with LADS equipment upon entry to the SRA if the LAGs are in individual containers with a capacity not greater than 100 millilitres or equivalent in one transparent resealable plastic bag of a capacity not exceeding 1 litre, whereby the contents of the plastic bag fit comfortably and the bag is completely closed.’;
- (16) Point 4.1.3.2 is deleted;

(17) Point 5.0.3 is amended as follows:

'5.0.3 Hold baggage arriving from a Member State where the aircraft was in transit after having arrived from a third country not listed in Attachment 5-A or from a Union airport where the relevant Member State has derogated from the common basic standards as provided for in Article 1 of Regulation (EU) No 1254/2009 shall be considered as hold baggage arriving from a third country, unless there is a confirmation that the hold baggage was screened in accordance with this Chapter.';

(18) The following point 5.0.6 is added:

'5.0.6 Hold baggage arriving from a Union airport where the relevant Member State has derogated from the common basic standards as provided for in Article 1 of Regulation (EU) No 1254/2009 shall be considered as hold baggage arriving from a third country, unless there is a confirmation that the hold baggage was screened in accordance with this Chapter.';

(19) In Chapter 5, Attachment 5-A is replaced by the following:

'ATTACHMENT 5-A

HOLD BAGGAGE

THIRD COUNTRIES, AS WELL AS OTHER COUNTRIES AND TERRITORIES TO WHICH, IN ACCORDANCE WITH ARTICLE 355 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION, TITLE VI OF PART THREE OF THAT TREATY DOES NOT APPLY, THAT ARE RECOGNISED AS APPLYING SECURITY STANDARDS EQUIVALENT TO THE COMMON BASIC STANDARDS ON CIVIL AVIATION SECURITY

As regards hold baggage, the following third countries, as well as other countries and territories to which, in accordance with Article 355 of the Treaty on the Functioning of the European Union, Title VI of Part Three of that Treaty does not apply, have been recognised as applying security standards equivalent to the common basic standards on civil aviation security:

Canada

Faroe Islands, in regard to Vagar airport

Greenland, in regard to Kangerlussuaq airport

Guernsey

Isle of Man

Jersey

Montenegro

Republic of Singapore, in regard to Singapore Changi Airport

State of Israel, in regard to Ben Gurion International Airport

United States of America

The Commission shall notify without delay the appropriate authorities of the Member States if it has information indicating that security standards applied by the third country or other country or territory concerned with a significant impact on overall levels of aviation security in the Union are no longer equivalent to the common basic standards of the Union.

The appropriate authorities of the Member States shall be notified without delay when the Commission has information about actions, including compensatory measures, confirming that the equivalency of relevant security standards applied by the third country or other country or territory concerned is re-established.';

(20) Point 6.1.3 is deleted;

(21) Point 6.8.3.6(d) is replaced by the following:

'(d) the content of the consignment, or indication of consolidation where applicable; and';

(22) The following sentence is added at the end of Point 6.8.3.6:

'In the case of consolidations, the ACC3 or the EU aviation security validated regulated agent (RA3) who has performed the consolidation retains the information required above for each individual consignment at least until the estimated time of arrival of the consignments at the first airport in the European Union or for 24 hours, whichever is the longer.';

(23) The following point 6.8.3.8 is added:

‘6.8.3.8 Transit or transfer consignments arriving from a third country listed in Attachment 6-I whose accompanying documentation does not comply with point 6.8.3.6 shall be treated in accordance with Chapter 6.7 before the subsequent flight.’;

(24) The following point 6.8.3.9 is added:

‘6.8.3.9 Transit or transfer consignments arriving from a third country not listed in Attachment 6-I whose accompanying documentation does not comply with point 6.8.3.6 shall be treated in accordance with Chapter 6.2 before the subsequent flight. Accompanying documentation of consignments arriving from a third country listed in Attachment 6-F shall at least comply with the ICAO Consignment Security Declaration scheme.’;

(25) The following points 11.0.8 and 11.0.9 are added:

‘11.0.8 For the purposes of this Chapter, ‘radicalisation’ means the phenomenon of socialisation to extremism of people embracing opinions, views and ideas, which could lead to terrorism.

11.0.9 For the purposes of this Chapter and without prejudice to the applicable Union and national laws, in determining the reliability of an individual undergoing the process described in points 11.1.3 and 11.1.4, Member States shall consider at least:

(a) the offences referred to in the Annex II to the Directive (EU) 2016/681 of The European Parliament and of the Council (*);

and

(b) the terrorist offences referred to in the Directive (EU) 2017/541 of the European Parliament and of the Council (**).

The offences listed in point (b) shall be considered as disqualifying crimes.

(*) Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ L 119, 4.5.2016, p. 132).

(**) Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

(26) Point 11.1 is replaced by the following:

‘11.1 RECRUITMENT

11.1.1 Persons being recruited to implement, or to be responsible for the implementation of, screening, access control or other security controls in a security restricted area shall have successfully completed an enhanced background check.

11.1.2 Persons being recruited to implement, or to be responsible for the implementation of, screening, access control or other security controls elsewhere than a security restricted area, or having unescorted access to air cargo and mail, air carrier mail and air carrier material, in-flight supplies and airport supplies to which the required security controls have been applied, shall have successfully completed an enhanced or a standard background check. Unless otherwise specified in this Regulation, whether an enhanced or a standard background check has to be completed shall be determined by the appropriate authority in accordance with applicable national rules.

11.1.3 In accordance with the applicable rules of Union and national law, an enhanced background check shall at least:

(a) establish the person’s identity on the basis of documentary evidence;

(b) cover criminal records in all states of residence during at least the preceding 5 years;

(c) cover employment, education and any gaps during at least the preceding 5 years;

(d) cover intelligence and any other relevant information available to the competent national authorities that they consider may be relevant to the suitability of a person to work in a function which requires an enhanced background check.

11.1.4 In accordance with the applicable rules of Union and national law, a standard background check shall:

- (a) establish the person's identity on the basis of documentary evidence;
- (b) cover criminal records in all states of residence during at least the preceding 5 years;
- (c) cover employment, education and any gaps during at least the preceding 5 years.

11.1.5 A standard background check or points (a) to (c) of an enhanced background check shall be completed before the person undergoes initial security training involving access to information which is not publicly available due to its security sensitivity. Where applicable, point (d) of an enhanced background check shall be completed before a person is allowed to implement, or to be responsible for the implementation of, screening, access control or other security controls.

11.1.6 Enhanced or standard background checks shall be considered as failed if not all the elements specified in points 11.1.3 and 11.1.4 respectively, are completed satisfactorily, or if at any point in time these elements do not provide the necessary level of assurance as to the reliability of the individual.

Member States shall endeavour to establish appropriate and effective mechanisms in order to ensure information sharing at national level and with other States for the purposes of elaboration and evaluation of information relevant to background check.

11.1.7 Background checks shall be subject to the following:

- (a) a mechanism for the ongoing review of the elements specified in points 11.1.3 and 11.1.4 through the prompt notification to the competent authority, operator or issuing entity, as applicable, of any occurrence that may affect the reliability of the individual. Modalities for the notification, exchange of information and content thereof between the competent authorities, operators and entities, shall be established and monitored in accordance with the national law; or
- (b) a repeat at regular intervals not exceeding 12 months for enhanced background checks, or three years for standard background checks.

11.1.8 The recruitment process for all persons being recruited under points 11.1.1 and 11.1.2 shall include at least a written application and an interview stage designed to provide an initial assessment of abilities and aptitudes.

11.1.9 Persons being recruited to implement security controls shall have the mental and physical abilities and aptitudes required to carry out their designated tasks effectively and shall be made aware of the nature of these requirements at the outset of the recruitment process.

These abilities and aptitudes shall be assessed during the recruitment process and before completion of any probationary period.

11.1.10 Recruitment records, including results of any assessment tests, shall be kept for all persons recruited under points 11.1.1 and 11.1.2 for at least the duration of their contract.

11.1.11 In order to address the insider threat, and notwithstanding the respective staff training contents and competences listed in paragraph 11.2, the security programme of operators and entities referred to in Articles 12, 13 and 14 of Regulation (EC) No 300/2008 shall include an appropriate internal policy and related measures enhancing staff awareness and promoting security culture.

11.1.12 Background checks successfully completed before 31 December 2020 will remain valid until their expiry or at the latest until 30 June 2023, whichever date comes earlier.;

(27) The following sentence is added at the end of Point 11.1.2:

'Pre-employment checks shall be discontinued by 31 July 2019. Persons having completed a pre-employment check shall undergo a background check by 30 June 2020 at the latest.;

(28) In point 11.2.2, point (k) is replaced by the following:

'(k) ability to communicate clearly and confidently; and';

- (29) In point 11.2.2, the following point (l) is added:
- ‘(l) knowledge of elements contributing to the establishment of a robust and resilient security culture in the workplace and in the aviation domain, including, inter alia, insider threat and radicalisation.’;
- (30) In point 11.2.3.2, point (b) is replaced by the following:
- ‘(b) awareness of the relevant legal requirements and knowledge of elements contributing to the establishment of a robust and resilient security culture in the workplace and in the aviation domain, including, inter alia, insider threat and radicalisation.’;
- (31) In point 11.2.3.3, point (b) is replaced by the following:
- ‘(b) awareness of the relevant legal requirements and knowledge of elements contributing to the establishment of a robust and resilient security culture in the workplace and in the aviation domain, including, inter alia, insider threat and radicalisation.’;
- (32) In point 11.2.3.6, point (a) is replaced by the following:
- ‘(a) knowledge of the legal requirements for aircraft security searches and of elements contributing to the establishment of a robust and resilient security culture in the workplace and in the aviation domain, including, inter alia, insider threat and radicalisation.’;
- (33) In point 11.2.3.7, point (a) is replaced by the following:
- ‘(a) knowledge of how to protect and prevent unauthorised access to aircraft and of elements contributing to the establishment of a robust and resilient security culture in the workplace and in the aviation domain, including, inter alia, insider threat and radicalisation.’;
- (34) In point 11.2.3.8, point (b) is replaced by the following:
- ‘(b) awareness of the relevant legal requirements and knowledge of elements contributing to the establishment of a robust and resilient security culture in the workplace and in the aviation domain, including, inter alia, insider threat and radicalisation.’;
- (35) In point 11.2.3.9, point (b) is replaced by the following:
- ‘(b) awareness of the relevant legal requirements and knowledge of elements contributing to the establishment of a robust and resilient security culture in the workplace and in the aviation domain, including, inter alia, insider threat and radicalisation.’;
- (36) In point 11.2.3.10, point (b) is replaced by the following:
- ‘(b) awareness of the relevant legal requirements and knowledge of elements contributing to the establishment of a robust and resilient security culture in the workplace and in the aviation domain, including, inter alia, insider threat and radicalisation.’;
- (37) In point 11.2.6.2, point (b) is replaced by the following:
- ‘(b) awareness of the relevant legal requirements and knowledge of elements contributing to the establishment of a robust and resilient security culture in the workplace and in the aviation domain, including, inter alia, insider threat and radicalisation.’;
- (38) In point 11.2.7, point (b) is replaced by the following:
- ‘(b) awareness of the relevant legal requirements and knowledge of elements contributing to the establishment of a robust and resilient security culture in the workplace and in the aviation domain, including, inter alia, insider threat and radicalisation.’;
- (39) Point 11.3.1 (b) is replaced by the following:
- ‘(b) for persons operating x-ray or EDS equipment, recertification at least every 3 years; and’;
- (40) Point 11.3.2 is replaced by the following:
- ‘11.3.2 Persons operating x-ray or EDS equipment shall, as part of the initial certification or approval process, pass a standardised image interpretation test.’;
- (41) Point 11.3.3 is replaced by the following:
- ‘11.3.3 The recertification or re-approval process for persons operating x-ray or EDS equipment shall include both the standardised image interpretation test and an evaluation of operational performance.’;

(42) In point 11.4.1 the following paragraph is deleted:

‘The results of testing shall be provided to the person and recorded and may be taken into consideration as part of the recertification or re-approval process.’;

(43) Point 11.4.2 is replaced by the following:

‘11.4.2 Evaluation of the performance of individual screeners shall be carried out at the end of every 6 month period. The results of this evaluation:

(a) shall be provided to the person and recorded;

(b) shall be used to identify weaknesses and inform future training and testing adapted to address those weaknesses; and

(c) may be taken into consideration as part of the recertification or re-approval process.’;

(44) Point 11.5.1 (a) is replaced by the following:

‘(a) the successful completion of an enhanced background check in accordance with point 11.1.3.’

(45) Point 11.6.3.5 (a) is replaced by the following:

‘(a) have been subjected to an enhanced background check in accordance with point 11.1.3.’;

(46) In point 11.6.5.5, the following sentence is added:

‘Manual initialling on each page may be replaced by an electronic signature of the entire document.’;

(47) The following points 12.0.4 and 12.0.5 are added:

‘12.0.4 Where several types of security equipment are combined, each one has to comply with the defined specifications and meet the standards set out in this Chapter, both separately and combined.

12.0.5 Equipment shall be positioned, installed and maintained in compliance with the requirements of equipment manufacturers.’;

(48) Point 12.1.1.8 is deleted;

(49) The last sentence in point 12.5.1.1 is replaced by the following:

‘Where CTI TIP is deployed with EDS equipment used exclusively for hold baggage screening, the requirement in point (b) shall only apply as of 1 September 2020’;

(50) The following point 12.11.2.3 is added:

‘12.11.2.3. Standard 2.1 shall apply to security scanners installed from 1 January 2021’;

(51) Point 12.12 is replaced by the following:

‘12.12 SHOE SCANNER EQUIPMENT

12.12.1 **General principles**

12.12.1.1 Shoe metal detection (SMD) equipment shall be able to detect and to indicate by means of an alarm at least specified metallic items, both individually and in combination.

12.12.1.2 Shoe explosive detection (SED) equipment shall be able to detect and indicate by means of an alarm at least specified explosives items.

12.12.1.3 The detection by SMD and SED shall be independent of the position and orientation of the metallic or explosive items.

12.12.1.4 SMD and SED shall be placed on a solid base.

12.12.1.5 SMD and SED shall have a visual indicator to show that the equipment is in operation.

12.12.1.6 The means for adjusting the detection settings of SMD and SED shall be protected and accessible only to authorised persons.

12.12.1.7 SMD shall give at least a visual alarm and an audible alarm when it detects metallic items as refers to in point 12.12.1.1. Both types of alarm shall be noticeable at a range of 1 m.

12.12.1.8 SED shall give at least a visual alarm and an audible alarm when it detects explosive items as refers to in point 12.12.1.2. Both types of alarm shall be noticeable at a range of 1 m.

12.12.2 Standards for SMD

12.12.2.1 There shall be two standards for SMD. Detailed requirements on these standards are laid down in Commission Implementing Decision C(2015) 8005.

12.12.2.2 All SMD exclusively used for screening persons other than passengers shall meet at least standard 1.

12.12.2.3 All SMD used for screening of passengers shall meet standard 2.

12.12.2.4 All SMD shall be able to resolve alarms generated on a WTMD, in the area between the surface supporting the shoe and at least 35 cm above.

12.12.3 Standard for SED

12.12.3.1 Detailed requirements on this standard are laid down in Commission Implementing Decision C(2015) 8005.;

(52) The following point 12.14 is added:

12.14 EXPLOSIVE VAPOUR DETECTION (EVD) EQUIPMENT

12.14.1 Standards for EVD

12.14.1.1 All EVD equipment used for the screening of hold baggage or cargo shall meet at least standard 1.

12.14.1.2 All EVD equipment used for the screening of persons or cabin baggage shall meet at least standard 3.

12.14.1.3 Detailed requirements on these standards are laid down in Commission Implementing Decision C(2015) 8005.'
