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## **Ensuring the Security of Civil Aviation against the Terrorist Phenomenon in the Legislation of the European Union**

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**Abstract:** The European Union is a supranational structure and is an important part of the global civil aviation market. Terrorist acts are the most dangerous challenge to civil aviation security in the 20<sup>th</sup> and 21<sup>st</sup> centuries. Ensuring civil aviation security is one of the key priorities of the member states in particular and the European Union in particular. This article reflects attempts to regulate the process of preventing the negative effects of the terrorist phenomenon on the process of ensuring civil aviation security in the European Union. Following the tragic events of September 11<sup>th</sup>, 2001 in the United States, the process of regulating civil aviation security in the European Union has rapidly developed. Subsequent attempts to carry out terrorist attacks on civilian aircraft, as well as world experience, have contributed to the awareness of the need to regulate this process at the supranational level. The systemic analysis of the legal norms at the level of the European Union that have as object of regulation the assurance of the civil aviation security is the analysis object of this research.

**Keywords:** aviation terrorism; civil aviation security; European Union; legal regulation

The European Union's counter-terrorism policy has been shaped by events, which have generated an uneven pace of policy-making. Although terrorism has affected many Member States, the events of September 11<sup>th</sup>, 2001 (9/11) generated an unprecedented mobilization at Union level. (Den Boer & Monar, 2022, pp. 11-28) The European Union's rapid response was built on a series of pre-existing political proposals that were promoted in the opportunity created by the effects of tragic events in the US (Den Boer, 2003, pp. 185-206).

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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. Aviation safety refers to protection against all unintentional accidents, errors or defects in the design, construction, maintenance and operation of aircraft (Huseynova, 2021, p. 297).

While the European Council has set the political direction, the Commission and the Council of Ministers are the institutions that have acted as partners to match the “old” political solutions with the “new” problem of terrorism (Bossong, 2008, p. 42). An eloquent example is the European arrest warrant, which has come to be seen as a “key measure” in EU counter-terrorism policy.

The Commission has been working on this topic since the beginning of 2001 and this procedure became operational only eight days after September 11<sup>th</sup>. (Kauert, 2007, pp. 387-404) This early intervention, accompanied by a proposal to define and criminalize (Council of the European Union (December 3<sup>rd</sup>, 2001)) led to the signing of an unexpectedly rapid agreement by the end of 2001. (Mégie, 2004, 304 p.) Many other points on agendas have been similarly accelerated (Bossong, 2008, pp. 27-48) such as the creation of EUROJUST or joint investigation teams.

There were also exceptions, such as the extension of the EU’s competences in the field of civil aviation security. However, even this step was built on coincidence, as the Commission had planned to present a Green Paper on civil aviation security at the end of September 2001. (Poincignon, 2004, pp. 83-119) External pressure from the United States did not significantly affect the EU’s initial policy response to the 9/11 event. The first concrete list of US demands came only after the EU drew up its own “Anti-Terrorism Roadmap”. (EU, Anti-Terrorism Roadmap. September 26<sup>th</sup>, 2001)

One of the cornerstones of the the European Union functioning is the elimination of borders between all Member States and the creation of a single internal market within them, guaranteeing the free movement of goods, people, services and capital (Treaty of Lisbon, article 26).

Currently, the world’s 1,478 airlines have collectively transported 4.5 billion passengers to 3,780 commercial airports around the globe in 2019 and have carried cargo worth 61 million tons. To enable this activity, the industry generated 11.3 million direct jobs and added USD 961.3 billion to global gross domestic product (GDP), equivalent to 1.1% of global GDP (968 billion). USD).

In total, taking into account the direct impact of the sector, the impact of its supply chain, the impact of wage costs and the impact of the volume of tourists through air transport, the aviation sector included approximately 9.8 million jobs and a contribution of USD 794 billion (EUR 672 billion) of GDP in the European Union in 2018. ((ATAG), Aviation: benefits beyond borders. Report, 2020, p. 19)

The principle of border elimination and freedom of movement 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 the application of common safety and security standards in the EU.

This is particularly important in the context of air transport, as the vast majority of air operations take place across several national borders. By applying common European standards for the protection of passengers, crews, cargo, aircraft and airport infrastructure, we can be sure that the same high standards will be introduced in all Member States. This also helps to avoid the uncertainty and confusion of passengers, which can be generated by the need to comply with many very different internal security regulations.

Thus, the application of common security standards by EU Member States has improved the comfort and safety of air travel, shortened the time before departure and, most importantly, reduced the cost of air travel.

Ensuring the security of civil aviation in general and the beneficiaries of these services in particular has been a priority for the supranational decision-making system of the European Union. Following the tragic attacks of September 11<sup>th</sup>, 2001, the European Union understood the importance and need for the adoption of a uniform system of regulations for the prevention of illegal acts in civil aviation. Prior to that date, in fact, each Member State was individually responsible for air transport security legislation. On October 10<sup>th</sup>, 2001, one month after the tragic events in New York and Washington, the Commission, at the initiative of the European Parliament, proposed the adoption of a common security regulation.

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This proposal led to the adoption of Regulation (EC) no. (Regulation (EC) No 2320/2002), which has been implemented at European Union airports since January 19<sup>th</sup>, 2003. This Regulation, which is no longer in force today, is of fundamental importance, because it has, for the first time, made the procedures for checking passengers and their luggage in airport access areas uniform in accordance with the common rules on aviation security (Rossi Dal Pozzo F., p. 59) In 2005, the Commission proposed a new regulation, and after three years of bureaucratic procedures specific to the decision - making system of the European Union, Regulation (EC) no. (Regulation (EC) No 300/2008).

Protecting aviation against various types of illegal interference has been a major concern for the international aviation community for several decades. The triggering event that stimulated work to improve the quality of airport security measures was the bombing of the Pan Am flight over Lockerbie in 1988, which led to the adoption of the Convention on the Marking of Plastic Explosives for Detection, signed in Montreal on March 1<sup>st</sup>, 1991. (Convention of the marking of plastic explosives for the purpose of detection, Montreal, March 1<sup>st</sup>, 1991)

In addition, a special aviation security program (ICAO AVSEC program) was launched under the auspices of ICAO (Antonini, 2010, p. 33) and the development of new explosive detection technologies was initiated. The threat of aviation terrorism has been evident since the 1960s, but none of the European countries has been interested in cooperating to introduce common airport security standards. The fight against aviation terrorism has taken place only at the national level. The lack of interest of Member States in regulating civil aviation security at pan-European level was mainly due to the unwillingness of certain special services to engage in closer cooperation. (EU, Flying safely in Europe, p. 1).

The impetus came after the memorable 9/11 attacks, when the European Council, at its extraordinary meeting on September 21<sup>st</sup>, 2001, adopted the Conclusions and Action Plan on the Fight against Terrorism. (Council of European Union, Conclusions and Plan of Action of The Extraordinary European Council Meeting, September 21<sup>st</sup>, 2001). The Transport Council was obliged to take the necessary measures to improve the protection of air transport within the EU.

These activities consisted of the creation of a list of objects that could be used by terrorists as weapons that should be banned from boarding aircraft, the mandatory training of crews, the implementation of procedures for checking and monitoring luggage hatches, and quality control measures implemented by Member States.

The document also emphasized that the effective and uniform application of the above-mentioned measures will be ensured by carrying out a mutual audit by the Member States. Subsequent work on the creation of unified European aviation security standards stated that all EU Member States were already signatories to the common aviation security standards developed by the European Civil Aviation Conference (ECAC), but none has not fully implemented these regulations. (ECAC Policy Statement in the Field of Civil Aviation Facilitation, 2018).

In this situation, it was best to include these provisions in EU law, as only this action ensured their consistent and uniform application by Member States. (EU, Flying safely in Europe, p. 1) Thus, the European Commission, based on ECAC regulations, has developed a set of basic standards for civil aviation security, reflected in Regulation (EC) no. 2320/2002. (Regulation (EC) No 2320/2002).

This document required all Member States to develop and implement a National Civil Aviation Security Program, to designate a single competent authority responsible for coordinating and monitoring the implementation of this program, to develop and implement it within six months a national civil aviation security quality control program, to cooperate with Commission officials when conducting inspections of compliance with this Regulation and to establish proportionate and dissuasive sanctions for infringements. Document implementing the Regulation no. 2320/2002 was the Regulation of the European Union Commission no. 622/2003 of April 4<sup>th</sup>, 2003 laying down measures for the implementation of the common basic standards on aviation security. (Regulation (EC) No 622/2003).

This document was subsequently amended through several updates, most of which were confidential, which caused major problems for both passengers and airport managers, as they were required to apply regulations to which they had very limited access. An example of such activity was the introduction of a list of prohibited articles, which was included in the secret annex to Regulation no. 68/2004 (Regulation (EC) No 68/2004).

O altă modificare semnificativă a standardelor europene de securitate a aviației civile a fost făcută în 2006, în urma încercării de a bombardă cel puțin șapte avioane care zburau din Marea Britanie în SUA, de către radicalii islamici.

The terrorists planned to use liquid explosives illegally introduced on board the planes in plastic drink bottles. It should be noted that the attack was avoided only by the efforts of the British Special Forces, because the explosives, due to the innovative construction, were impossible to detect during a routine security check of hand

luggage at the airport. Immediately following these events, the European Commission issued Regulation no. 1546/2006, (Regulation (EC) No 1546/2006) which completed the list of prohibited articles contained in the Annex to Regulation no. 622/2003, prohibiting any kind of liquids (except for individual packaging of up to 100 ml capacity) (Laskowski, 2017, p. 27).

According to the hypotheses of the legislators, these provisions were to be temporary and in force until the introduction of an efficient detection technology for liquid explosives.

In 2008, the European Parliament and the Council of the European Union, seeking to simplify, harmonize and make more transparent the existing rules, and to improve the level of civil aviation security, decided to repeal Regulation 2320/2002, together with all implementing acts together its application acts, replacing them with more appropriate provisions for new threats.

This was achieved through the implementation of Regulation no. 300/2008 of March 11<sup>th</sup>, 2008 (Regulation (EC) No 300/2008) on common rules in the field of civil aviation security and repealing Regulation no. 2320/2002, which introduced a number of new measures aimed at improving and simplifying existing procedures, for example by:

- eliminating duplication of security controls by limiting costly access controls at EU airports where control procedures have already been implemented. This has brought significant benefits to both airlines and airports.
- simplification of procedures, by establishing a uniform set of standards for the documents required for access to security restricted areas. The new rules clearly specify what types of identification and authorization are required to grant individual access to restricted areas, which will improve the functioning of the airport security system.
- standardization of procedures, by introducing a common procedure for the safety certification of carriers transporting air cargo across the EU. These certificates will be recognized in all Member States, which will reduce the need for multiple and costly security controls.
- the introduction of common minimum safety standards, such as, for example, uniform training for all employees involved in the security control

process. (EC, Transport: EU updates aviation security rules to simplify and improve procedures, 2010)

The effective implementation of the provisions contained in Regulation no. 300/2008 also required the amendment of the whole package of complementary and implementing regulations, the most important of which was Commission Regulation (EC) No 272/2009 of April 2<sup>nd</sup>, 2009 supplementing the common regulations and basic standards on civil aviation security provided for in the Annex to Regulation (EC) No 300/2008 of the European Parliament and of the Council (Regulation (EC) No 300/2008) and in Regulation no. 185/2010 of March 4<sup>th</sup>, 2010 laying down detailed measures for the implementation of the common basic standards on civil aviation security. (Regulation (EU) No 185/2010).

This regulation introduced a number of new measures aimed at improving and simplifying existing procedures. The new Annex to Regulation (EC) No 300/2008 is divided into 12 parts. The provisions are summarized below:

1. Aircraft security.
2. Airport security.
3. Air carrier mail and air carrier materials.
4. Hold baggage.
5. Airport supplies.
6. In-flight security measures.
7. Staff recruitment and training.
8. Delimited areas.
9. Passengers and hand luggage.
10. Flight supplies.
11. Cargo and mail.
12. Security Equipment. (Rossi Dal Pozzo, 2015, p. 71)

The European Commission adopted Implementing Regulation (EU) 2015/1998 in November 2015. It lays down comprehensive procedures for the implementation of these security standards and repealed an earlier regulation (Regulation (EU) No 185/2010), which was revised by over 20 times (Huseynova, 2021, p. 299).

In September 2000, the Commission proposed to establish compliance with the principle of subsidiarity, so that the institutions and bodies of the European Union have all the necessary powers in the field of aviation security whenever and where collective action is preferable to action at individual state level.

This proposal led to the adoption of Regulation (EC) no. 1592/2002 (now Regulation (EC) No 216/2008) and the establishment of the European Aviation Safety Agency. Established on the basis of Regulation (EC) 1592/2002, EASA builds on the experiences and cooperation of the former European Aviation Regulators Group, known as the Joint Aviation Authorities, which ceased operations in July 2009. It is a pan-European body, with legal jurisdiction which, since September 28<sup>th</sup>, 2003, has been operating as a one-stop shop for airworthiness and safety certification for all aeronautical products. After a new transitional period of 42 months, it took over the

functions and missions of the Member States and the activities of the JAAs, i.e. it replaced the national aviation authorities.

As a result, since June 28<sup>th</sup>, 2008, all JAROPS were replaced by EU-OPS (with Regulations issued by EASA), and in 2009 the functions of the JAA were taken over completely by the European Aviation Safety Agency.

By Regulation no. 216/2008 (Regulation (EC) No 216/2008) EASA, based in Köln, has been assigned specific regulatory and executive tasks in the field of aviation safety. In particular, it provides professional advice to the European Union on the development of regulations and the conclusion of international agreements on aviation safety. On the other hand, it performs operational tasks that were previously the prerogative of the aeronautical authorities of the Member States, such as the issuance of type-certificates for aeronautical products and the issue of extended airworthiness through the adoption of Regulation (EC) No 1907/2006. 1108/2009, (Regulation (EC) No 1108/2009) extending them to aerodromes, air traffic management and air navigation safety services.

This Regulation has been implemented by the adoption of Regulation (EU) no. 139/2014 Commission Regulation (EU) No 139/2014 of February 12<sup>th</sup>, 2014 (Regulation (EU) No 139/2014) and its provisions became applicable from March 6<sup>th</sup>, 2014. In addition, in order to ensure uniform application of the rules in force in the Member States, Regulations (CE) no. 736/2006 of May 16<sup>th</sup>, 2006 (Regulation (EC) No 736/2006) established the working methods of the European Aviation Safety Agency. (Huseynova, 2021, p. 299)

In this context, EASA has launched a standardized sample inspection program, carried out through a team of experts, in order to verify the level of compliance maintained by Member States, both in the organization of state agencies and in the aeronautical industries.

These inspections shall be carried out for a period of 2 years and shall cover all activities covered by the Agency. The results are then communicated to the Commission and, in the event of irregularities, the latter may decide to initiate infringement proceedings under EU law, (Treaty of Lisbon, Article 258) the number of provisions setting out the scope of the rules, the ways of their implementation, the date of their entry into force and the transition periods. (Rossi Dal Pozzo, 2015, p. 17)

Another incident that led to changes in European civil aviation security procedures occurred on December 25<sup>th</sup>, 2009, when a Nigerian al-Qaeda supporter, Umar



Farouk Abdulmutallab, attempted to blow up a passenger plane flying from Amsterdam to Detroit. The bomber managed to bypass the improved security system at Schiphol Airport by using a new, innovative solution by transporting powdered explosives in his personal underwear. Fortunately, despite the attempt to detonate, this bomb for unexplained reasons did not explode. (USA, District Court, Indictment in U.P. v. Abdulmutallab)

This incident was the main argument that convinced the European Parliament to allow the introduction of body scanners at EU airports. Despite the many doubts that accompany the work on the implementation of this new solution, including its impact on the privacy and health of passengers, finally the amendments to Regulations 272/2009 and 185/2010, which introduce detailed guidelines on how to use scanners at EU Airports were adopted in November 2011. (Regulation EC No 1141/2011)

Given the evolution of the concept of civil aviation security in the EU, a very important sector of air transport is cargo security. Recent events have shown that terrorists, due to increasing demands on passenger security procedures, have begun to be interested in the less protected segment of air transport, which is freight and mail. An example of this is the attempt to blow up two UPS cargo planes on October 29<sup>th</sup>, 2010. In both cases, 300-400 grams of explosives and detonators were mounted in printer toners, which were then packed and shipped by air from Yemen to the United States.

These attacks were thwarted only by operational information obtained and transferred to the CIA by the Saudi Special Service, which allowed the location and neutralization of bombs during stops at East Midlands (UK) and Dubai (UAE) airports. (EU Terrorism Situation and Trend Report TE-SAT 2011) This incident revealed another weakness of the civil aviation security system and showed that EU regulations on the protection of cargo and air mail needed to be corrected immediately.

Therefore, in November 2010, the European Commission developed an Action Plan to strengthen the protection of air cargo, in which a new model for the protection of air cargo was proposed.

This document involved the implementation of new uniform European standards for the control of cargo and air mail from non-EU countries to EU airports, the establishment of a data exchange system that provides information on new threats, incidents and rescue actions and the intensification of activities and in the ICAO Forum, aimed at supplementing Annex 17 on air cargo protection issues.

New regulations on cargo security and air correspondence brought to EU airports in third countries were introduced on February 1<sup>st</sup>, 2012 by Commission's Implementing Regulation (EU) no. 859/2011 (Regulation (EC) No 859/2009) of August 25<sup>th</sup>, 2011 amending Regulation (EU) no. 185/2010, which lays down detailed measures for the implementation of the common basic standards on aviation security in respect of air cargo and mail, implementing, inter alia, procedures for the approval of air carriers, the so-called ACC3 (Air Cargo or Mail Carrier operating into the Union from a Third Country Airport - an air cargo operator or airmail operator operating from an airport in a third country to the Union).

ACC3 must ensure that all cargo and mail are physically controlled in accordance with EU standards or come from the secure supply chain validated by EU aviation security. EU aviation security validation of ACC3 cargo and mail operations at each airport of departure for flights to the EU is mandatory from July 1<sup>st</sup>, 2014. EU program ACC3, implemented by Commission Implementing Regulation (EU) No. 2015/1998 laying down detailed measures for the implementation of the common basic standards on aviation security (Regulation (EU) 2015/1998) does not apply to freight and mail operations from the outset with sound aviation security measures and a low established risk, confirmed by the risk assessment carried out by the EU's competent bodies.

At the same time, additional rules apply to goods and mail that have been identified, again through the EU Risk Assessment, as high-risk goods and mail. Details of these risk-based measures shall be communicated to air carriers by the competent authorities of the EU Member States.

Summarizing the above analyses, it should be noted that EU legislation on securing civil aviation against terrorism, as well as regulatory procedures on preventing and combating terrorism, have emerged in response to the launch of acts of aviation terrorism.

Despite the reluctance of EU Member States to introduce increasingly stringent standards, a comprehensive set of common rules on civil aviation security has finally been developed and introduced.

Significantly, these regulations, due to successive changes, work in practice, as evidenced by the fact that all terrorist attacks on civil aviation carried out in the European Union have failed (they were thwarted in the organization or implementation phase) (Laskowski, 2017, p. 29)

Thus, Regulation (EC) no. 300/2008 establishes common basic rules and standards on aviation security and establishes procedures for monitoring the implementation of common rules and standards.

Regulation (EU) 2015/1998 lays down detailed measures for the implementation of the common basic safety standards, in accordance with Article 4 and Annex I of Regulation (EU) No. 300/2008. Regulation (EU) 2019/413 (Regulation (EU) 2019/413) amends Regulation (EU) 2015/1998 as regards third countries recognized as applying security standards equivalent to the common basic standards on civil aviation security.

Air travel in the 27 countries of the European Union will continue to grow by about 2.1% per year over the next two decades. This growth will, in turn, lead to an increase in economic output and jobs supported by the airline industry over the next 20 years. Oxford Economics estimates that by 2038, the impact of air transport and tourism, which the European Union facilitates, will increase to 12 million jobs (23% more than in 2018) and a contribution to GDP of 1.1 trillion dollars (889 billion euros) (up 32%). (ATAG, Report, p. 59)

Despite the constant evolution of the standards and practices recommended by ICAO and the legally binding nature of these instruments under international law, we can see that their application is far from universal.

While ICAO's argument about the lack of coordination between states and international organizations and the low level of technical expertise of some states in this area is certainly inadmissible, it seems necessary to go beyond this state-centered view of the international organization. We may therefore wonder whether states still have the political means to implement these standards, as their control over the private operators to whom they have delegated security is declining.

This denationalization of security and the introduction of a logic of profit implies a radical change of perspective: the interests pursued by companies that directly finance security measures may be different from those of a state that theoretically acts for the "common good" (Ocqueteau 1998, p. 126).

Indeed, studies on the financing of civil aviation security clearly show that the costs are in most cases borne by airport managers and airlines, which transfer them to passengers. Thus, companies subject to a market logic are therefore able to model, depending on their economic imperatives and interests, the budget allocated to safety and the level of measures taken.

Therefore, there is a likelihood of a conflict of interest between public recommendations and private interests. The exorbitant cost of implementation, which is not considered by states and which exceeds the capacities of private operators, could be a major handicap for the implementation of international standards (Poincignon, 2014, p. 90)

In conclusion, we can say that the supranational legislation of the European Union is sufficiently elaborated and elevated. However, the methods and means used by terrorist structures and their members to achieve criminal objectives are developing at a rate directly proportional to technical and scientific progress.

Thus, ICAO in general and the EU institutional system responsible for ensuring the security of civil aviation in particular, is required by circumstances to observe and analyze all technical and scientific results that could allow the circumvention of control and verification systems from the time of production of the aircraft to its operation, from an operational point of view.

Even making the process of adopting EU law may prove more difficult than at Member State level, the precedents at the beginning of the 21<sup>st</sup> century, caused by the events of 9/11, have shown that, if necessary, the speed of adopting strictly necessary Regulations can be a very big one.

We consider it necessary that the emphasis in the complex process of ensuring civil aviation security be placed on preventing and combating the negative effects of the terrorist phenomenon on civil aviation security.

Despite the fact that legal regulation, in the vast majority of areas of social life, occurs post factum, existing regulations at EU level in the field of civil aviation security are sufficient to achieve the set objectives. The irony and cynicism of the analyzed situation consists in the fact that, only the production of a tragedy by terrorist act, always precedes the exemplary mobilization and the operative and express regulation of some specific situations that can prevent the terrorist attacks.

Another matter is ensuring the implementation in practice of the normative provisions adopted at EU level, at national level and the direct implementation which is, in most cases, the responsibility of the airlines. This poses a major challenge to the effectiveness of the process of implementing EU legislation at Member State level.

In our opinion, the general solution would be, in addition to ensuring compliance with EU law by the responsible structures and sanctioning those who do not comply,

to stimulate and motivate companies that implement exemplary regulatory provisions related to ensuring civil aviation security, by providing facilities and exempting some taxes or parts of the taxes they pay, depending on the degree of achievement of the standards specific to the field of civil aviation security.

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### **Specialty Articles**

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