



12<sup>th</sup> December 2011

Filip CORNELIS  
Head of Unit for Aviation Security  
European Commission  
B-1049

### **IATA comments on EC Regulation 859/2011**

Dear Mr.Cornelis,

IATA welcomes the strengthening of cargo security measures at the international level and appreciates the efforts made by the Commission to clarify the requirements and ensure adequate communication with airlines.

The new security measures adopted by the European Union in August 2011 on EU-bound cargo will have a significant impact on IATA members operations on a world-wide scale. The Question & Answer document dated 30 September 2011 already provides useful information on the implementation scope of Reg. 859/2011. In view of the implementation deadline of 1<sup>st</sup> February 2012, IATA would however seek further clarification and present our view on the following points from the Commission and Member States representatives.

#### **1) Security status of shipments**

According to Regulation 185/2010, only regulated agents can assign a security status to a shipment. In the case of EU-bound cargo, paragraph 6.8.2.3 of Regulation 859/2011 does not specify which entity can assign the security status in third countries. In numerous countries, there are no regulated agents programs and cargo is screened at the airport by the airlines - either self-handling their cargo, or by a ground handler acting on behalf of the airlines, or by governmental entities.

- a) Considering that ACC3 airlines will be subjected to independent validation on requirements equivalent to the RA status applied within Europe, can the Commission confirm that ACC3 carriers can assign a security status to a shipment which they have screened – either via self-handling or via a ground handler acting on behalf of the airline?
- b) Similarly, if cargo is screened, according to EU requirements, by a governmental authority, but which is not a Regulated Agent, can ACC3 carriers accept the shipment with a security status applied by such entities?

#### **IATA Proposal:**

1. The ACC3 Carrier should be able to issue the security status of a shipment to which it has applied security controls and be permitted to accept the security status issued by another recognized party following verification of a secure chain of custody;



2. If cargo is screened by governmental authorities in third countries ACC3 carriers should be able to accept shipment with a security status applied by such entities.
- c) Could the Commission confirm that for cargo carried by an ACC3 carrier into the EU and transferring (unloading and reloading) at an EU airport the regulated agent at the EU transfer point shall:
- Verify the security status of the cargo it receives from that ACC3 carrier using the consignment security declaration?
  - Not verify the ACC3 status of the carrier from which it receives cargo against the database?

**IATA Proposal:**

1. The regulated agent should only verify at the EU transshipment point the security status of the cargo carried by an ACC3 carrier against the security declaration preferably in electronic format of the cargo being transhipped (unloaded and reloaded cargo) for each and every shipment;
2. There is no need to verify the security status of the cargo in transit (freight remaining on-board) at the EU transit point;
3. There is no need to verify the ACC3 status of the carrier however a copy of the ACC3 declaration of commitments shall be available if needed.

**2) Security status of cargo coming from green list countries**

EU rules on transfer cargo imply that cargo transferring at an EU airport shall be screened if it has not been screened by a regulated agent or a known consignor and is transferred from an all-cargo aircraft to a passenger aircraft.

While cargo carried by ACC3 will have a security status and be accompanied by the appropriate documentation in paper or electronic format as per EU rules, cargo coming from green list countries may not have a security status or an accompanying documentation recognised by the EU.

If they do not have such documentation this implies that cargo coming from a green list country, which has been screened to an SPX standard but is carried on an all-cargo aircraft, will have to be rescreened if it is transferred onto a passenger aircraft at an EU airport because the security status may be unknown. This clearly is a redundant measure, which will have a significant impact on the large volumes of cargo coming from the green list countries.

- a) Could the Commission and Member States confirm this specific requirement for cargo coming from green list countries and transferring within the EU?



### **IATA Proposal:**

1. The EU shall recognise the security controls and security status of cargo coming from green list countries. Further work should be undertaken in consultation with the industry to consider how this recognition of controls is managed in practice.

### **3) Security status of consolidations**

Airlines are currently adapting their systems to include the new SHR code. Could the Commission confirm the following:

- a) Would a consolidation of SHR shipments with SPX shipments receive a SPX status?
- b) Similarly, for a consolidation of SCO shipments with SHR shipments, would the consolidation then have a SCO status?

### **4) Charter flights and contingencies**

Considering the lengthy procedure required from airlines to become ACC3 – especially as of 2014 – it will not be possible for air carriers operating ad-hoc charter flights or contingency situations to be granted an ACC3 status for these operations.

Ad-hoc charters are short notice and one-time requirements. As stated in the Question & Answer document, IATA understands that EU regulation does not exempt charter flights in general. However, ad-hoc charters are a reality of the airline business and Member States will be confronted with short notice requests by individual carriers to accommodate cargo coming on ad-hoc charters or contingency flights from third countries.

### **IATA Proposal:**

1. IATA urges the European Commission and Member States to agree on a coordinated solution to accommodate cargo coming into the EU on ad-hoc charter flights and contingency flights.

### **5) Cargo flown into Switzerland, Iceland, Norway**

IATA's understanding is that Switzerland, Iceland and Norway are going to apply EU regulation 859/2011.

- a) Could the Commission clarify whether airlines will also have to be designated as ACC3 for routes into Switzerland, Iceland or Norway?
- b) Will the same procedure for ACC3 designation apply – i.e. an EU Member States will have to designate ACC3 carriers for routes into Switzerland, Iceland or Norway?
- c) Could the Commission confirm that airlines carrying cargo from Switzerland, Iceland or Norway into an EU country will not have to be designated as ACC3 carrier?



In addition to these questions on the immediate implementation of the regulation 859/2011, IATA would invite the Commission to consider the following issues for discussion during a future Air Cargo Working Group.

#### **6) Mutual recognition and one-stop security**

The extra-territorial implications of the new regulation 859/2011 risk imposing redundant security measures on cargo flying into the EU and increasing the administrative burden on airlines operating into the EU.

Some countries in the world have implemented strict security regimes for air cargo, meeting ICAO standards and EU regulations. In order to avoid duplication of measures, IATA is urging the European Commission to engage as quickly as possible in a wide-ranging mutual recognition process of cargo security measures with like-minded countries in order to promote the one-stop security principle within the cargo supply chain.

Could the Commission indicate which process it intends to pursue to rapidly achieve mutual recognition of cargo security measures with like-minded countries concerning cargo originating from third countries?

#### **7) Independent validation**

Before July 2014, EU Member States will have to independently validate more than a thousand ACC3 operations and many more Regulated Agents and known consignors.

Bearing in mind the challenges currently faced by Member States with regards to the validation process of Regulated Agents and Known Consignors within their own territory, the process of independent validation for ACC3 and third country Regulated Agent and Known Consignors will have to be organised more effectively to allow the validation of worldwide operations.

IATA is currently reflecting on a system to streamline these different audit requirements in order to comply more efficiently with the ACC3 independent validation requirement.

#### **IATA Proposal:**

1. In order to facilitate this independent validation process, IATA urges the European Commission and Member States to take into account existing independent audits to which airlines are subjected and to look for synergies between these auditing programmes, in order to avoid redundancies.
2. IATA would welcome the organisation of an EU working group dedicated to the issue of independent validation to which industry will be invited.



We remain at your disposal to provide any further clarifications or information and we look forward to receiving your comments on the points raised above.

Yours sincerely,

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**REGULATION (EU) No 859/2011 and DECISION C(2011)5862**  
**EU INBOUND CARGO/MAIL from THIRD COUNTRY AIRPORTS**  
**(Version 30.9.2011)**

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**Regulation point 6.8.1.1**

Referring to the Annex of regulation (EU) No 349/2011 means in practice that a MS is responsible for designating carriers with an AOC from another EU Member State. Could this really be the intention of the regulation?

**Yes. After further consideration, the Commission intends to keep the order of the attribution of responsibility for ACC3 registration in order not to obstruct registration processes to take place before 1/2/2011.**

**Regulation point 6.8.1.1 c)**

It can only exist one original of a document, and if the air carrier chose to retain this original of the declaration of commitments it is not clear where the document shall be available for inspection?

**Original may stay with AA or air carrier, yes. Original or copies may be available for inspection with the carrier, for example, on board planes to clarify the ACC3 status of the carrier.**

**Regulation point 6.8.2 and Decision point 6.2.3**

*Regulation point 6.8.2.1 c) and point 6.8.2.2*

According to regulation point 6.8.2.2 the requirements of point 6.8.2.1 shall as a minimum meet ICAO standards. There are no standards in Annex 17 related to account consignors and there are no standards in Annex 17 related to exemptions from screening, only guidance material in Doc 8973. What requirements/exemptions are applicable?

**ICAO requirements apply until July 2014. If there are no specific requirements in Annex 17, none apply. Guidance material is never legally binding, but shall of course not be excluded from application.**

**However, the HRCM chapter applies in addition to Annex 17, which does not know HRCM (yet).**

Please note also the text in new point 6.8.2.1 d) which refers to present point 6.1.1 d) which makes us even more confused:

*6.8.2.1 d) the consignment is exempted from screening in accordance with point 6.1.1 d) and protected from unauthorized interference from the time it became identifiable air cargo or identifiable air mail and until loading.*

*6.1.1 d) the consignment is exempted from screening and has been protected from unauthorized interference from the time it became identifiable air cargo or identifiable air mail and until loading.*

**These are references, however, exemption from screening are defined in detail by the Decision in point 6.2.3.**

*Regulation point 6.8.2.1 d) and 6.8.2.2 and Decision point 6.2.3*

The answer regarding applicable exemption will also be related to the exemption in 6.2.3 h) and ad-hoc flights. ACC3 approvals related to ad-hoc flights is not feasible as flights under this category normally is unforeseen, not planned in advance and of very urgent character.

**According to the adopted text ACC3 status is in principle required for every cargo flight into the EU with the exemption of those coming from airports in "green list" countries. The screening exemptions have no impact on ACC3 status.**

**However, the EC will propose under "small amendments" a rectification providing for an ACC3 exemption for those flights.**

Is it the Commission's intention to provide all ACC3 with EU Confidential information about performance requirements for EDS equipment? There are no EDS-standards in Annex 17.

**No. ECAC publishes equipment that has passed EU standards, we just have to refer to the ECAC publication which is accessible for to everybody interested, without closing standard details.**

We also need an clarification of the following examples in regard of HRCM since point 6.7.3 states that "one of the following *additional* security controls shall be applied".

**No. HRCM is a regime that does not distinct between Secure Supply Chain (SSC) shipments and others. Every consignment needs to be subject to HRMC screening, no matter if it is delivered through a SSC or not. Once screened and SHR labelled however, protection must be undertaken and SSC standards apply for the rest of the journey.**

*Decision 6.7.3 ii a)*

Must EDS standard 3 be used in combination with another screening method?

**No! EDS above standard 1 is subject to 6.7.3.i and is considered as a stand alone screening method.**

*Decision 6.7.3 iv)*

See also questions above regarding what exemptions are applicable?

**Indeed the reference should have been 6.2.3. d.**

*Decision 6.7.4.*

**Prohibited items for cargo according to EU legislation are explosives and incendiary devices. As said above HRCM is fully subject to EU rules through ACC3.**

**SCOPE:**

*On ACC3 ~~certification~~ designation:*

How are aircraft, crew, maintenance & insurance (ACMI), i.e. wet/dry lease of aircraft, or third party contractors of an airline to be considered in ACC3 certification? How will code shares/capacity shared flights be treated? Will ACC3 ~~certification~~ registration only apply to the entity operating the flight?

**The responsible entity under the legislation is the air carrier-no matter what underlying contracts there may exist. In case of several air carriers code-share a flight, the one responsible for the cargo/mail needs to have ACC3 status or at least one of several if also this responsibility is shared.**

ACC3 only applies to the last point of departure (LPD) prior to the arrival into the EU.

**Yes.**

Are Member States also allowed to confirm ACC3 status for non-LPD locations? If not, where air cargo is consolidated into that LPD from other 3rd country origins, can those 3rd country origins be regarded as Regulated Agents (RAs) and similarly, can Exempt countries be regarded as RAs?

**No, however MS need not to monitor closely the continuation of cargo services. ACC3 however have the obligation to inform responsible AA of any change in their cargo services.**

What are the required certifications in the process of setting-up RA/KC/AC in non-EU locations?

**Until 2014: The ACC3's Security Programme (ACC3 SP) needs to cover all business relations with other air carriers, RA and/or KC in respect of cargo/mail transported into the EU from a foreign airport.**

**As of July 2014: independent validation of all (RA/KC/AC/) is required in addition, as well as the ACC3's own security measures.**

Is an exchange of cargo from one ACC3 to another ACC3 (e.g. from an integrator to a commercial carrier) allowed outside of the hypothesis that they are each other's RA?

**ACC3 status is required for LPD. Everybody else feeding cargo/mail into the operation of that ACC3 is to be considered as either RA or KC, even if it is another air carrier.**

Is ~~certification~~ ACC3 designation based on flight numbers or on aircraft registrations (nationality)?

**Air carriers (=the company) need to be registered as ACC3.**

What security designation will be given to Exempt Countries (e.g. China or the US as in Annex 6-F ii of the Commission Decision)? Will it always be SPX?

**None. Exempted origins are only relevant in respect of the obligation to become an ACC3. Cargo/mail coming in from an exempted origin still needs to comply with the control requirements set by EU legislation at the EU transfer airport.**

What will be the process when changes are made to annex 6-F ii?

**Same legal process that applied to the current version of the legislation, including a EU Risk Assessment.**

For point of departure from a 6-F ii country there is no requirement for ACC3 designation ~~certification~~, even if non-6-F ii countries and 6-I countries may transit/transfer through that LPD?

**Yes.**

Has the scope taken into account considerations of other actors such as the Customs-Trade Partnership Against Terrorism (CTPAT), IATA Operational Safety Audit (IOSA), Authorized Economic Operator (AEO), Transported Asset Protection Association (TAPA) and other security designations? How would those certifications affect ACC3 status?

**Only in respect of those foreign operators already recognised under EU legislation. Currently this is the AEO in countries with which the EU has a mutual recognition regime.**

*Exemptions to ACC3:*

Fuel stops or contingency routings (e.g. for technical issues) where no cargo is loaded to the aircraft will be exempt from this process.

**Yes, if cargo remains on board and no cargo is loaded and the cargo hold is protected from unlawful interference. An ACC3 SP should cover such stops, otherwise it may not be considered comprehensive!**

Will ad-hoc charters from destinations where the airline is not ACC3 validated be regarded as exempt?

**Not all charters in general, but the legislation foresees a limited possibility for exemptions for MS to apply.**

In the Express industry, there are occasions where last minute aircraft replacements are needed for aviation safety reasons (technical failure or other). If the only alternative is to replace it by an aircraft from an airline that does not have that specific ACC3 status, would this contingency flight be exempt?

**No.**

How would this process be managed under ACC3? Bear in mind that a RA will already have performed security screening and documented this.

**Contingency planning is the responsibility of the air carrier or its business partners.**

*High Risk Cargo and Mail (HRCM):*

On revisions to the definition of high risk cargo (HRCM) how will that process work and what would be the timeline to adopt those measures?

**ACC3 will be informed by MS AA of the additional measures they need to apply/ensure for cargo/mail from certain origins. Deadline for HRC: 1.2.2012**

What will be the process when new countries are listed in annex 6-I? What will be the timelines (taking into account that industry must then deploy EDD, ETD or EDS in those countries where permitted)?

**Same legal process that applied to the current version of the legislation, including reference to a EU Risk Assessment. Transition periods/delayed application may be part of the legal obligation.**

Some countries will never be able to deploy explosive detection dogs (EDD), explosive trace detection (ETD) or explosive detection systems (EDS). In these instances, the ACC3 will be unable to implement HRCM requirements. What alternatives should the ACC3 consider to allow for movement to or through the Union?

**There are no alternatives for cargo/mail intended to be carried from HR origins into the EU.**

## RECOGNITION OF SCREENING ENTITY

What exactly are the criteria for RA/KC and AC in third countries (checklists as initially sent out)?

**Until 2014: The ACC3's Security Programme (ACC3 SP) needs to cover all business relations with other air carriers, RA and/or KC in respect of cargo/mail transported into the EU from a foreign airport.**

**As of July 2014: independent validation of all (RA/KC/AC/) is required in addition, as well as the ACC3's own security measures.**

**The checklists will only be relevant for independent validation and will be added to the legislation at the next revision.**

In many third country locations, screening is done by authorities (for some countries, they may not allow industry insight into these procedures). How will this be reflected in the ASP?

**ACC3 SP needs to comply with ACC3's duty to ensure ICAO (until July 2014) control processes. If a third country does not allow insight into control/screening processes the ACC3 SP will remain incomplete and thus not comply with the ACC3's declaration/EU legislation. MS/EC have committed themselves to assist with necessary diplomatic interventions.**

The rule to be applied in third countries is that packages must be screened, unless shipments come from RA, KC or AC. However, who is the RA if the screening is fully government controlled and who then takes responsibility for that screening?

**ACC3 needs to ensure not perform screening. If government screening facilities perform the screening this needs to be reflected in the ACC3 SP.**

Regarding the text "Nominated person to have overall responsibility for implementation of cargo security provisions in third party on airline's behalf": Can that nominated person be one person per organization, with that person having access to local security managers? In some cases the entity in the third country may not be a direct employee of the carrier.

**However has overall responsibility ...on the air carriers behalf.**

## SCREENING

In the document, "significantly tampered" is judged as HRCM. Is this applicable to all cargo or only to cargo which is at the start of a secure supply chain?

**Applies to all cargo.**

When damage occurs in a recognized secure environment (e.g. penetration by forklift in secured warehouse), why should that cargo be assessed as HRCM?

**Damage occurring in secure environment to be reflected in security status or other documentation. Otherwise next actor will have to re-screen.**

What is the reason for taking samples from the inside a consignment with ETD, when EDD dogs sample only the outside? Vapour penetrates the packaging and registers an ETD reading on the outer surface; therefore the need for inside sampling is not required.

**Applies already today under current EU legislation. Expert opinion!**

Regarding SCO/SPX and SHR, is the Commission looking at the production of separate declarations for SHR consignments? Would express carriers have to confirm that there are no SHR in the shipments sent on a SCO or a SPX declaration even though the security requirements for HRCM have been followed?

**SHR equivalent to SPX because control standard beyond SPX.**

## IMPLEMENTATION

How will the system work for commercial airlines, who for instance receive cargo at a certain location from the integrators; taking into account that each will have their own security processes in place?

**ACC3 status required.**

What if Member States have not confirmed ACC3 recognition to the airline by February 2012, although the airline can demonstrate they have sent in the applications before that date?

**The air carrier's ACC3 declaration with the MS's AA is the relevant act. Confirmation not required. For EU MS's mutual recognition process the dissemination to other MS is important but no prerequisite for ACC3 status. For practical reasons MS should acknowledge receipt.**

Can the Commission confirm that, once ACC3 has been granted, all Union Member States will recognize that status and not apply additional measures on import, transit or transfer cargo?

**Yes, provided individual MS do not apply More Stringent Measures.**

Regarding independent validators: How will the process for validator approval work to ensure recognition by all member States? When will the validators be established and available to start auditing?

**No rules yet on this process (entry into force July 2014). Precondition is recognition of an Independent Validator by one MS or EC. Some MS seem**

**to have already recognised Independent Validators, at least for MS internal use.**

Would audit pooling be possible or acceptable (e.g. several ACC3 certified carriers using one validator)?

**Yes, as long as the validation process remains the responsibility of each individual company RA/KC/ACC3. The result of the validation (the independent validation report) can be copied to whoever has requested/requests independent validation.**

How will the price of a validation be fixed? The express industry has already observed distortions within the EU on the validation of KC (some Member States are providing the service for free, some are asking for money, the price varies by Member State).

**Free market.**