Implementing Regulation (EU) No 1082/2012 amending Commission Regulation (EU) No 185/2010 in respect of EU Aviation Security Validations

Evaluation Report

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GLOSSARY

ACC3	An Air Cargo or Mail Carrier that has been designated by a Member State to carry cargo or mail into the Union from a Third Country Airport.[1]
Account consignor of an EU aviation security validated regulated agent	A consignor in a third country who originates cargo or mail for its own account and whose procedures meet common security rules and standards sufficient to allow carriage of that cargo on all-cargo aircraft or mail on all-mail aircraft.[2]
Chicago Convention	The Convention on International Civil Aviation of December 7, 1944.
Contracting State	A signatory to the Chicago Convention.
EU aviation security validated known consignor	A consignor in a third country who originates cargo or mail for its own account and whose procedures meet common security rules and standards sufficient to allow carriage of cargo or mail on any aircraft.[3]
EU aviation security validated regulated agent	An air carrier, agent, freight forwarder or any other entity who ensures security controls in respect of cargo or mail,[4] and which has been validated as such, in a third country.
EU aviation security validation	The process whereby an ACC3, regulated agent or known consignor is validated to carry cargo or mail from an airport in a third country for transfer, transit or unloading.
EU aviation security validator	A representative of the national authority of a Union Member State or any other physical or legal person recognised by a Member State or the Commission for the purposes of performing EU aviation security validations.[5]
ICAO	The International Civil Aviation Organisation, a specialised agency of the United Nations which establishes standards and regulations for aviation safety, security, efficiency, regularity and environmental protection.
National accreditation body	The national accreditation body of a Member State established pursuant to Regulation (EC) No 765/2008.
New ACC3 Regulation	Commission Implementing Regulation (EU) No 1082/2012 of 9 November 2012 that was approved by a vote of Member States on 20th September 2012, and which supplements and amends the basic ACC3 framework established under Regulation (EU) No 859/2011.
Union airport	Airports existing within the European Union or the European Economic Area (i.e. 27 EU Member States plus Iceland, Liechtenstein, Norway and Switzerland).

1 Point 6.8.1, Regulation (EU) No 859/2011

2 Article 3(28), Regulation (EC) No 300/2008

3 Article 3(27), Regulation (EC) No 300/2008

4 Article 3(26), Regulation (EC) No 300/2008

5 Reg. (EU) 859/2011 – Point 11.0

1. EXECUTIVE SUMMARY

Key points

- The New ACC3 Regulation will be cost efficient to implement without reducing the strength of the measures proposed to enhance the security of flights bringing cargo from third countries into the EU.

- The New ACC3 Regulation contributes towards the goal of enhancing third country air cargo security without overburdening the air cargo industry.

- A supply chain approach to air cargo security is utilised in the New ACC3 Regulation. In recognising that different actors in the supply chain have different security vulnerabilities and strengths, the new ACC3 Regulation will enable third country entities that have been EU aviation security validated to benefit from streamlined security protocols.

- The ACC3 framework supplements ICAO's Chicago Convention.

Context

1.1 The New ACC3 Regulation augments an air cargo aviation security framework established by Commission Regulation (EU) No 185/2010 in respect of establishing common basic standards for EU aviation security validations. Prior to the New ACC3 Regulation, Commission Regulation (EU) No 859/2011 was enacted as part of this air cargo aviation security framework. This Regulation introduced rules for cargo and mail being carried to Union airports from third countries in order to:

- protect civil aviation that was carrying such cargo from acts of unlawful interference; and

- work towards achieving enhanced cooperation on aviation security, supporting the implementation and application of standards and principles in third countries equivalent to those of the Union where this was effective to meet global threats and risks.

Analysis of the New ACC3 Regulation

1.2 Over a period of six months (March through August 2012) in which we developed the content of this report, we provided the Commission with comments and suggestions relating to the wording of the differing drafts of the New ACC3 Regulation. Many of these observations were taken into account and were implemented in successive drafts of the New ACC3 Regulation. Likewise, we have included in this report some final suggestions that we believe could assist industry in

implementing the ACC3 framework in text boxes entitled '*Soft issues to ease the facilitation of the New ACC3 Regulation.'*

1.3 We have detailed the security controls which need to be implemented by an ACC3 and how they must either screen EU bound air cargo or ensure a secure supply chain, and to what extent and effect. This is followed by an overview of the validation process, including what options Member States can choose from when *establishing* an EU aviation security validation scheme and how validations of ACC3 should be performed.

Cost of implementing the New ACC3 Regulation

1.4 It is our opinion that the changes introduced into the final draft of the New ACC3 Regulation, when compared with the requirements of Commission Regulation (EU) No 859/2011, have significantly lowered the overall cost of implementing the New ACC3 Regulation without reducing the strength of the measures proposed to enhance the security of flights bringing cargo from third countries into the EU.

1.5 This lowering of costs is evinced by the model we constructed to support the New ACC3 Regulation.

- **Certifying costs:** This model indicates the costs of certifying 166 EU aviation security validators (180 being recruited and trained) of 1,039,360 Euros. This figure shows significant savings over the sum of 2,774,293 Euros required to certify 401 EU aviation security validators required to support the implementation of Regulation (EU) No 859/2011.

- **Screening costs:** The most strict scenario envisaged in this report, namely a 0.05 Euros surcharge per Kilo applied to a total volume of approximately 1.7 billion Kilo of cargo transported by air from relevant third countries into the Union, will result in the total annual additional costs related to the screening of shipments to EU standards amounting to 85.3 million Euros. In a more probable case this figure could be around 38.3 million Euros.

1.6 The cost of 18,014,400 Euros for performing 5,069 EU aviation security validations every five years shows a considerable reduction when compared against the sum of 23,569,200 Euros required to perform 10,323 EU aviation security validations to support the implementation of Regulation (EU) No 859/2011.

1.7 We believe that the changes introduced in the New ACC3 Regulation both reduce the absolute numbers of third country on-site inspections that will be performed and in addition contributes positively towards the goal of enhanced third country air cargo security.

1.8 The benefit of reducing the overall number of EU aviation security validators required to operate the programme will allow the professional standards for the validators to be maintained at a high level. This will remove the danger of a lowering of standards in order to rapidly fill the ranks of the considerable number of EU aviation security validators required to launch the programme, as would have been required, to implement Regulation (EU) No 859/2011.

1.9 Furthermore, it will be easier to support the knowledge base of a smaller cadre of dedicated, professional EU aviation security validators with respect to emerging trends and threats. This will permit individual and or teams of EU aviation security validators to specialise in handling validations relating to specific categories of industry stakeholders, and/or to establish expertise in addressing the particularities of individual third countries. Grouped validations can be planned to include validators who are third country experts and, where necessary, include EU Commission and/or Member States Cargo inspectors who can transfer their own knowledge to these specialists.

1.10 We believe that the decision to take note of and address the internal security quality assurance capabilities of the air carriers within the New ACC3 Regulation is a prime example of joint regulator/industry cooperation that will have a significant impact on the overall goal of improving the security of air cargo from third countries.

ICAO and the New ACC3 Regulation

1.11 The ACC3 framework should be seen as a supplement to the Chicago Convention which *could* and possibly *should* be transposed into the ICAO framework. With this in mind, two key dates are worth noting. First, 1 July 2014 is the deadline by which actors in the air cargo supply chain must apply the revised requirements in the New ACC3 Regulation. As a result of this, two parallel schemes - ICAO's and the EU's - will be in force from that date (although an ACC3 scheme already exists, it is from this date that robust security will be enforceable).

1.12 The second date is 30 June 2015, which signifies the deadline for the Commission to assess, evaluate and, if appropriate, make a proposal relating to the ACC3 measures. With sufficient focus, and after obtaining feedback from the operation of the New ACC3 Regulation, this could also mark when elements of the ACC3 framework could be formally proposed as an amendment to the Chicago Convention.

2. INTRODUCTION & OBJECTIVES

Context

2.1 According to Boeing's World Air Cargo Forecast 2010-2011, 'world air cargo traffic will triple over the next 20 years, compared to 2009 levels, averaging 5.9% annual growth. The number of airplanes in the freighter fleet will increase by more than two-thirds over the same period.'[6]

2.2 Air cargo traffic is an essential part of the global trading system and thus its efficacy, speed, reliability and cost are important considerations in the promotion of a successful global economy. As Table 1 (**EU External Trade by Mode of Transport in 2010**) demonstrates, in terms of EU external trade in 2010 only sea transport surpassed air traffic as a means of importing and exporting goods.

Table 1 - EU External Trade by Mode of Transport in 2010[7]

	Export		Import		Export & Import	
	€ (billion)	% of total	€ (billion)	% of total	€ (billion)	% of total
Air	362.0	26.8%	292.1	19.4%	654.1	22.9%
Sea	640.0	47.4%	812.3	53.8%	1,452.3	50.8%
Road	277.6	20.6%	209.2	13.9%	486.8	17.0%
Rail	20.3	1.5%	16.4	1.1%	36.8	1.3%
Inland waterway	4.3	0.3%	3.1	0.2%	7.4	0.3%
Pipeline	3.6	0.3%	88.0	5.8%	91.6	3.2%
Self propulsion	37.3	2.8%	26.5	1.8%	63.8	2.2%
Post	0.8	0.1%	2.2	0.1%	3.0	0.1%
Unknown	3.7	0.3%	59.2	3.9%	62.9	2.2%
TOTAL	**1,349.6**	**100.0%**	**1,509.1**	**100.0%**	**2,858.7**	**100.0%**

6 http://www.boeing.com/commercial/cargo/wacf.pdf

7 Source: http://ec.Eurospa.eu/transport/publications/statistics/doc/2012/pb_2012_21_general.xlsx

2.3 Indeed, almost one-quarter of the EU's external trade derived from air traffic; disruptions can have a detrimental economic impact, as evinced by the havoc caused by the eruption of the Eyjafjallajökull volcano in Iceland in 2010, with, for example Korean component suppliers losing an estimated $112 million USD between April 16 and 19 and Kenyan fresh produce exporters losing an estimated $3 million USD daily during the crisis.[8]

2.4 In recent years there has been a growing focus, both globally and within the EU, on air cargo security following an increase in terrorist activity targeted at civil aviation, including the foiled Yemeni ink cartridge bomb plot in October 2010. Since then, for example, the EU Presidency established a High-Level Group on Air Cargo Security to envisage ways in which air cargo security could be strengthened. A memo issued in November 2010 by this High-Level Group highlighted the reasons for this increased emphasis on air cargo security:

> *First, because the threat is common: cargo is shipped through airports in all Member States. And ten of the top twenty cargo hubs are in Europe. Second, the cargo business is global. If we all put in place different rules, it will be difficult and also very costly to comply with the rules.*[9]

2.5 Following this, the High-Level Group recommended action in three key areas:

i. strengthening cargo security controls;

ii. enhancing coordination of actions and information within the EU; and

iii. facilitating joint action at the international level.

2.6 It is apparent that a balance needs to be found between promoting a successful air cargo framework and implementing a resilient security apparatus to support this. On one hand, if inadequate security measures are enforced, the consequences of a disruption to the air cargo market would be severe; conversely, if the security regime is too onerous, it risks stifling the industry. Figure 1 (**Security and Economic Considerations**) below provides a visual overview of the security and economic nexus which needs to be balanced.

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8 http://www.airbus.com/company/environment/documentation/?eID=dam_frontend_push&docID=10262

9 http://Eurospa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/696&format=HTML&aged =0&language=EN

Figure 1 - Security and Economic Considerations

Policy Background

2.7 In 2008, Regulation (EC) No 300/2008 established a new framework of common rules in the European Union to protect civil aviation against acts of unlawful interference. It applied principally to airports located in EU countries, and to flights departing from EU airports.

2.8 Commission Regulation (EU) No 185/2010 laid down detailed measures for the common basic standards of aviation security. This was amended in August 2011 by Commission Implementing Regulation (EU) No 859/2011 which established a framework for assessing the security controls applied in respect of cargo or mail being brought *into* Union airports.

2.9 The Commission decided to legislate at the air carrier-level because, within the air cargo supply chain, air carriers provide the link between the wider world and Europe when they transport cargo *to* and *from* the latter.

2.10 The framework requires (subject to exemptions) air carriers carrying cargo or mail from an airport in a third country for transfer, transit or unloading at European airports, to be designated as an 'Air Cargo and Mail carrier operating into the Union from a Third Country Airport' or ACC3. In order to be designated as an ACC3, the air carrier must implement certain security controls and before 1 July 2014 submit a declaration as to its compliance with security requirements. From this date onwards the air carrier is subject to on-site EU aviation security validations,

2.11 Following consultation with industry stakeholders and representatives of Member State appropriate authorities, the European Commission drafted an additional Commission Implementing Regulation that is anticipated to come into force during November 2012. The New ACC3 Regulation will supplement and amend the basic

ACC3 framework established under Regulation (EU) No 859/2011. Member States approved the New ACC3 Regulation in a vote on September 20 2012.

Deriving a model for EU aviation security validation

2.12 We were tasked with preparing an evaluation of the new EU aviation security rules in Regulation (EU) No 859/2011 of 25 August 2011 for inbound air cargo being brought into the Union by an ACC3. Specifically, we were asked to:

- review the EU aviation security validation of known consignors in the EU and to discuss with Member States and accreditation bodies any alternative (non-security) accreditation procedures that were or could have been considered by Member States with the objective of determining EU best practices. This task involved reviewing obstacles encountered by Member States in the implementation of EU aviation security validation schemes;

- undertake an assessment of the likely impact of EU aviation security validation and of screening to EU standards required after June 2014, taking into account the implementing measures enacted during 2012; and

- draw conclusions and describe ways to improve the aviation security standards, thus creating a model for EU aviation security validation.

2.13 The results of this analysis were presented to DG-MOVE in our Second Interim Report, dated 24 May 2012, which is attached to this Report as Annex II – Interim Findings and Recommendations.

2.14 To derive a model it was first essential to obtain information on the background to relevant known consignor EU aviation security validation planning processes in each Member State, including the decisions taken, operational experiences and lessons learned. This information was presented to the Commission and the Air Cargo Working Group, providing an analysis of best practices and challenges that could assist the roll out of EU aviation security validations in third countries.

2.15 We designed a questionnaire to be relevant for both Member States that have implemented EU aviation security validation schemes for known consignors and for Member States who were in the process of reaching decisions as to how to establish EU aviation security validation schemes. In addition, a variant of the questionnaire was designed for interested industry bodies.

2.16 We then drew conclusions and described ways to improve the aviation security standards with regard to the requirements in the new legislation, and, where

appropriate, sketched out elements that could be incorporated in a proposal for future EU legislation.

2.17 We brought together the results of our research, collectively forming an Initial Interim Report, and combined that with our analysis of the characteristics of existing pan-European aviation security validation schemes. Initially we reviewed the situation in the Member States currently implementing known consignor validation schemes. Utilising identified best practices and derived metrics we constructed an initial cost model for the third country validation programme.

2.18 We extracted highlights from the EU aviation security validation programmes that have been implemented in the Member States which have established programmes, reviewed the number of EU known consignors that are projected by March 2013 and identified best practices from the existing Member States' programmes of relevance in third countries.

2.19 We also reviewed the information in the list of designated ACC3s submitted by the Member States to the Commission and developed an initial model to indicate the resources and timeframe required to establish a third country EU aviation security validation programme. Utilising this data, we developed estimations of the overall cost to the air cargo industry of the third party validation scheme. These estimations are described in Chapter 4 of this report and also referred to as “the February 2012 economic model”, after paragraph 4.46.

2.20 We solicited the views of Member States' appropriate authorities and industry stakeholders (air carriers, express air carriers and freight forwarders) with regards to the optimal approach to establishing a third country validation scheme and the benefits of utilising existing AVSEC and non-AVSEC accreditation bodies to support the third country validation scheme.

2.21 We undertook a review of existing AVSEC international audit schemes. These included the option of self-assessment - by certain European air carriers with established internal audit programmes - to support (and reduce the lead time of) the launch of the programme during the period when EU aviation security validators are being trained and recruited. We thus were able to identify ways in which these could support the third country scheme.

2.22 We also undertook a review of three non-AVSEC pan-European aviation security validation schemes to identify examples of schemes that utilise pre-existing accreditation bodies, which might facilitate accreditation and verification on a global scale, beyond Union borders, and we provided our recommendations as to how to proceed.

2.23 We analysed the answers from the Member States and relevant industry stakeholders on the utilisation of existing validation organisations for the accreditation and training of EU aviation security validators and the performance of EU aviation security validations.

2.24 As well as setting out the main principles on the existing practices of EU aviation security validation in Member States, the Interim Findings and Recommendations report (Annex II of this report) set out a summary of key issues (arising from research to date) which needed to be considered in the implementation of ACC3 validation in third countries. We particularly focused on the need for the mutual recognition of EU aviation security validations throughout the EU, taking into account the concerns and suggestions of Member States and industry stakeholders.

2.25 Overall, it became clear that there are at least two viable solutions for implementing the ACC3 validations:

- the use of a centralised body with a mandate to coordinate, manage and oversee the entire process; or

- in the absence of a centralised body, the use of clearly defined standards and practices which are implemented (and verified) at all levels of the ACC3 validation process.

2.26 Having reviewed the potential elements of the legislation that would require adjustment to permit the recommendations in this report to be implemented, and the pros and cons of each approach we were able to design a preferred model for EU aviation security validation. Section nine of our Interim Findings and Recommendations (Annex II of this report) sets out the detail of this analysis.

2.27 In summary, based on our understanding of the concerns and expectations of various stakeholders (including the Commission), a 'standardised' approach is favoured over a 'centralised' approach, not least because implementing a 'centralised' approach is likely to take considerable time. On this basis, we proposed that the ACC3 EU aviation security validation scheme be established, as set out in Figure 2 (**ACC3 Validation Solution**) in accordance with the following:

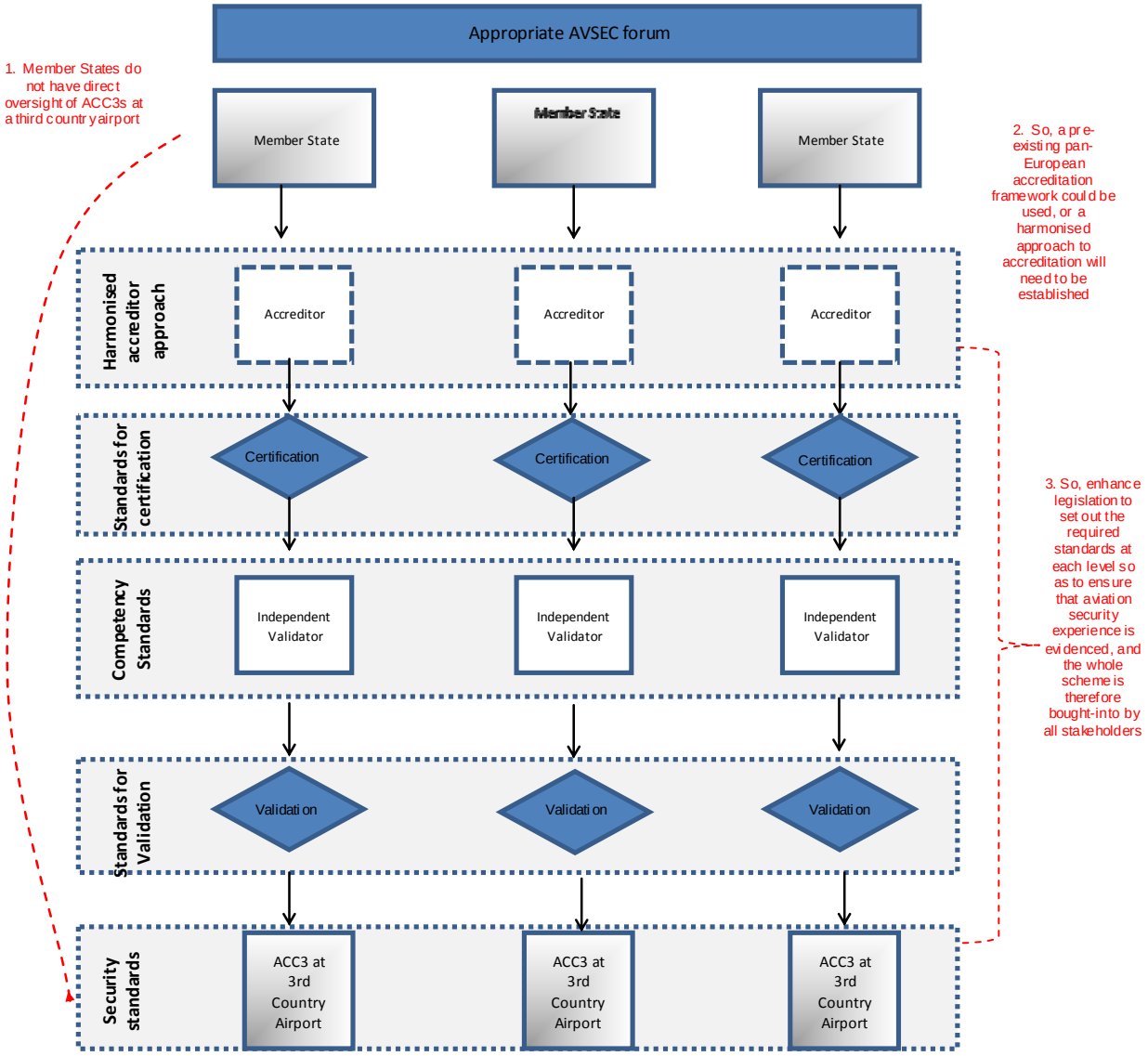

Figure 2 - ACC3 Validation Solution

- **Harmonised certifier approach**: there will need to be a clear and agreed approach as to which persons or bodies in each Member State are able to 'certify' EU aviation security validators. Certification can either be done by the Member States themselves, or through a public or private body which is established for that purpose. Our recommendation was that the existing European training and certification frameworks should be utilised in order to maximise harmonisation and leverage exiting best practices in the field of conformity assessment and accreditation. The framework itself has been established to avoid unnecessary duplication of procedures and organisations, and includes a provision to allow for those Member States who have not set up their own accreditation body to be accredited by an accreditation body in another Member State.

- **Standards for certification**: there will need to be a harmonised approach for accrediting persons or bodies as EU aviation security validators, and for on-going monitoring and/or periodic re-evaluation and certification.

- **Competency standards**: there will need to be a clearly defined set of standards relating to the competency of EU aviation security validators, including required knowledge, skills, qualifications, financial standing and so forth.

- **Standards for validation**: there will need to clear standards for the validation process itself, including:

  i. a methodology;

  ii. agreed validation checklists and/or other mechanisms for ensuring that the validation is accurate; and

  iii. reliable standards for 'passing' and 'failing', with a view to ensuring that all validations are equal regardless of who undertakes that validation.

- **Security standards**: there must be a clear and unambiguous set of standards to which ACC3, regulated agents and known consignors are required to comply, and there can be no uncertainty as to what is and is not acceptable (such that each ACC3, regulated agent and known consignor should be able to know in advance of a validation whether or not they meet the required criteria).

2.28 As part of the proposed solution, Member States should ensure that an 'appropriate AVSEC forum' is utilised to provide an element of centralisation and oversight of the entire programme. This would provide for a degree of flexibility and rapid response in respect of AVSEC issues, as well as providing for co-ordination of activities at a high level. By way of example, a centralised body could decide what training is required in respect of particular changes or risks identified from time to time (at the moment, the Member States decide for themselves when and how to provide training and retraining).

2.29 Similarly, a central point of contact and coordination could serve to promote efficiency and the overall success of the ACC3 framework, by seeking to coordinate the approach taken across each stage of the ACC3 framework and across all stakeholders. The role of such a centralised, coordinating entity could include:

- a centralised analysis of the ACC3 framework as whole, and dissemination of up-to-date knowledge when applicable;

- providing coordinated responses to international industry players, third country stakeholders and EU aviation security validator queries; providing assistance with logistics at third country airports; and

- maintaining an overall view of the operation of the ACC3 framework.

This will provide added value to all stakeholders and, ultimately, to the Commission.

Objectives of Regulation (EU) No 859/2011

General objectives

2.30 All references to provisions in regulations (e.g. 'point 6.8.1.1 of the Annex') are, unless specified otherwise, references to provisions within Regulation (EU) No 185/2010, as amended (including as it will be amended pursuant to the New ACC3 Regulation).

2.31 Regulation (EU) 859/2011 aims at (amongst other things):

- amending Regulation (EU) No 185/2010 to include the introduction of rules for cargo and mail being carried to Union airports from third countries, and to protect civil aviation carrying such cargo from acts of unlawful interference; and

- working towards achieving enhanced cooperation on aviation security, supporting the implementation and application of standards and principles in third countries equivalent to those of the Union where this is effective to meet global threats and risks.

2.32 The principal means by which Regulation (EU) 859/2011 sets out to achieve the above objectives is to ensure that:

- an air carrier carrying cargo or mail from non-exempted third country airports into the Union must be designated as an ACC3;

- each ACC3 must be independently validated by an EU aviation security validator;

- each ACC3 must comply with certain security standards (including in respect of its supply chain which may include regulated agents and known consignors);

- ACC3 designations can be removed in the event of non-compliance; and

- where security controls have not been applied to cargo and/or mail by entities that have been EU aviation security validated, that such cargo and mail has been screened to EU standards.

2.33 In addition, Regulation 859/2011 proposes a risk-based approach to the application of controls on cargo entering the EU from third countries, through the designation of certain locations as 'high risk' and the provision of additional measures to be applied at these locations.

Specific and operational objectives

2.34 The following operational objectives have been identified taking into account Member State and industry concerns:

i. to raise the level of security (to EU standards) for shipments from third countries to the EU to minimise the dangers to EU citizens and to international trade;

ii. to minimise the burden of the new measures on the EU air cargo industry and EU businesses utilising air cargo;

iii. to reduce as far as is possible the impact of new measures on Member States' appropriate authorities;

iv to ensure that there is a level playing field across the Union (i.e. equivalence across all Member States); and

v. to achieve rapid implementation of the scheme so that it is fully operational by 1 July 2014.

2.35 There are a number of distinct elements to the ACC3 framework which will be managed by a range of distinct and separate entities. By way of example, it is the responsibility of **each Member State** to establish the ACC3 framework within their jurisdiction, and to manage the recruiting, training and supervision of EU aviation security validators; it is the responsibility of **third country air carriers** to contract with EU aviation security validators to validate relevant third country aviation entities (including the air carriers themselves, as well as their regulated agents and known consignors); and EU aviation security validations are performed at third country airports under the jurisdiction of **third country civil aviation authorities**. This could result in the framework being less efficient than it could otherwise be. By way of example (and as demonstrated section four of this report which deals with the economic impacts of the New ACC3 Regulation) there are many large third country

airports where significant numbers of entities have been designated by more than seven Member States.

Medium and longer term goals

2.36 As described in Section three of Annex II (Interim Findings and Recommendations) a significant number of EU Member States have not yet fully established programmes for the EU aviation security validation of EU known consignors, operating within their own Member States, as required under Regulation (EU) No 185/2010.[10]

2.37 In establishing the ACC3 framework, and defining procedures for creating a body of EU aviation security validators, we believe that the Commission is seeking to assist Member States in becoming compliant with this requirement, by establishing a wider market for the services of EU aviation security validators. This could ensure that additional individuals and professional firms will be encouraged to become EU aviation security validation approved, and also offer their services within the EU.

2.38 A major objective of the Commission is to promote international harmonisation of aviation security measures, and provide an effective EU contribution towards enhancing aviation and air cargo security standards worldwide. This goal is encapsulated in the actions of the Commission to establish 'one stop' security procedures between the Union and countries that have implemented aviation security standards equivalent to those of the Union, and in the activities of the Commission within the 'Quadrilateral' framework.[11]

2.39 We view the ACC3 framework as a significant Union contribution to the above objectives, and we believe that the successful implementation of EU aviation security validations could establish an international model, based on the very high standards of EU air cargo security. Whilst the ACC3 framework is a European initiative, it is of course inherently global in scope and could, if delivered successfully, serve as a template for a more harmonized global approach to air cargo security. Indeed, provided that standards can be maintained and the process can be sufficiently transparent to ensure that European states retain sufficient confidence in the system, certification and validation could be conducted by third countries without necessarily needing direct European oversight.

2.40 The experience which will be obtained by the Commission and the Member States from the launch and operation of the ACC3 framework will enable the scheme and

[10] The deadline for establishing EU 'independently validated' known consignors is 31 March, 2013

[11] An informal forum for cooperation established by the EU, US, Canada and Australia

its underlying regulatory base to be enhanced and improved over time. We believe that the ACC3 framework will in the future be viewed as a Union based world-wide initiative that could be adopted by an international aviation regulatory body such as ICAO. This possibility is further examined in chapter six of this report.

Analysis of policy options to achieve objectives

2.41 Whilst Regulation (EU) 859/2011 sets out the basic framework for operating the ACC3 framework, the Commission has considered how to implement the programme (particularly in respect of validating ACC3s) through the establishment of detailed procedures and requirements in order to achieve the above objectives as far as possible.

Timeline for implementing the New ACC3 Regulation

2.42 Figure 3 (**Timeline for Implementing the ACC3 Regulation**) below provides a diagrammatic representation of the timeline for implementing the key requirements of the New ACC3 Regulation.

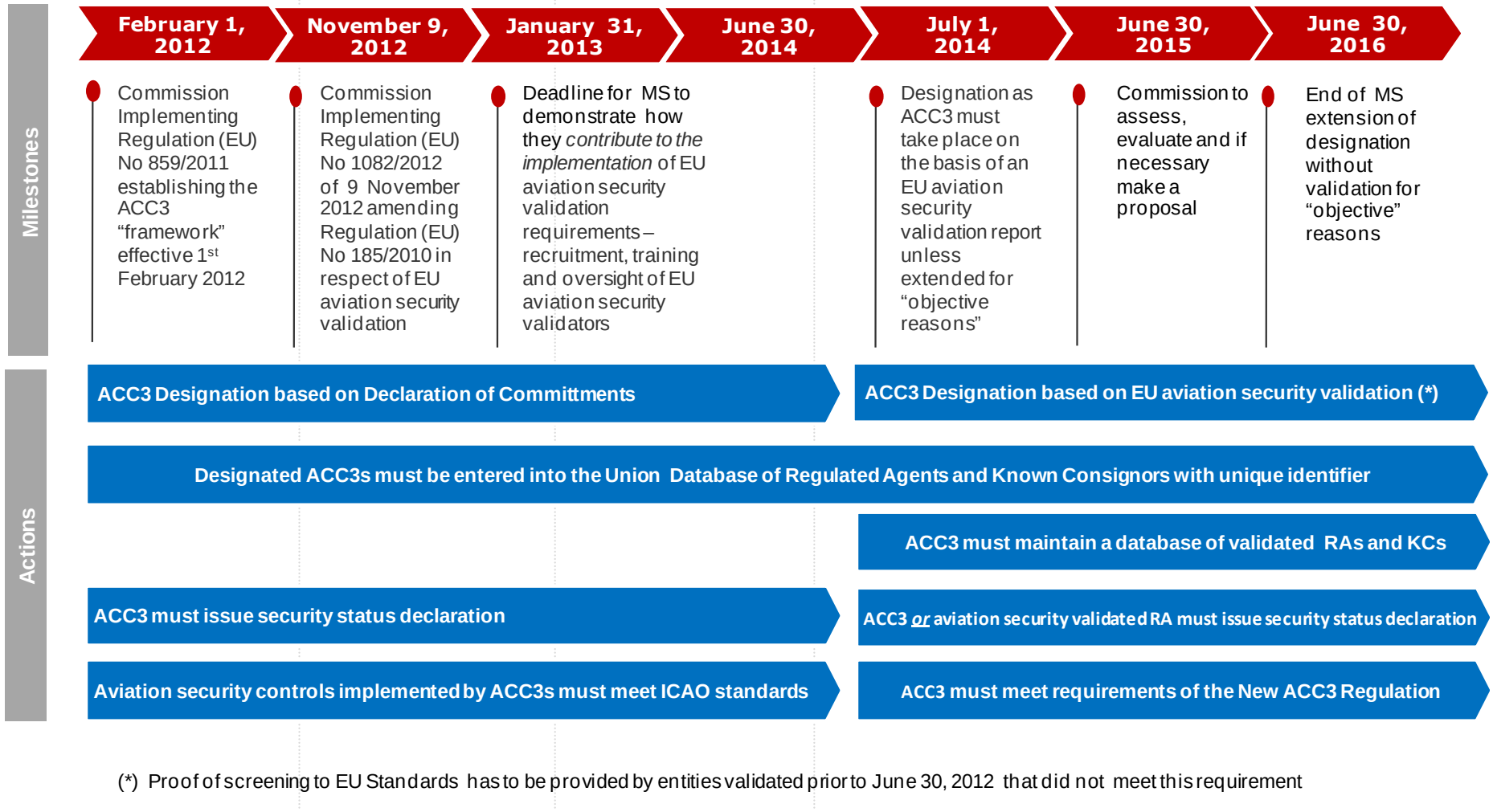

Figure 3 - Timeline for implementing the New ACC3 Regulation

Structure of this Evaluation Report

2.43 Chapter two of this Evaluation Report sets out a summary of the ACC3 framework as implemented in the New ACC3 Regulation and includes suggestions for improvement and/or clarification.

2.44 Chapter three of this Evaluation Report provides a detailed analysis of the potential impact from implementing third country EU aviation security validations, as required by the New ACC3 Regulation from security, administrative, socio-political and cost impact perspectives. It also assesses the extent to which a number of key objectives are likely to be met, and provides insight into the development of the legislative text to minimize the resource and economic impacts of the New ACC3 Regulation, without compromising the objective of enhancing aviation security.

2.45 In Chapter four, this Evaluation Report provides a further analysis of the impact of the requirement that cargo and mail is screened to EU standards in third country airports.

2.46 Chapter five provides an analysis of how the ACC3 framework could be applied on a global level and, as such, work as a future model for ICAO.

2.47 Annex I provides the text of the New ACC3 Regulation as approved by the Member States on 20th September, 2012.

2.48 Annex II – Interim Findings and Recommendations, includes a review of the status of implementation of the EU aviation security validation of known consignors in EU Member States and a set of recommendations provided to the Commission in respect to establishing and operating the ACC3 framework.

3. SUMMARY OF THE NEW ACC3 REGULATION

Overview

3.1 Below we detail the security controls which need to be implemented by an ACC3 and how they must either screen their cargo or ensure a secure supply chain, and to what extent and effect. This is followed by an overview of the validation process, including what options Member States can choose from when *establishing* an EU aviation security validation scheme and how validations of ACC3 should be performed.

3.2 Over a period of six months (March through August 2012) in which we developed the content of this report, we provided the Commission with comments and suggestions relating to the wording of the differing drafts of the New ACC3 Regulation. Many of these observations were taken into account and found their way into successive versions of the New ACC3 Regulation. We have included in this section of the report some final suggestions that we believe could assist industry in implementing the ACC3 framework in text boxes entitled '*Soft issues to ease the facilitation of the New ACC3 Regulation.'*

3.3 Any air carrier bringing cargo or mail into the Union from an airport in any third country (apart from airports in third countries listed in Attachment 6-F) is required to be 'designated' as an ACC3. Designation will be done by the appropriate authority of a single Member State (the identity of which will be established in accordance with point 6.8.1.1 of the Annex, and by default will be the Member State that issued the carrier's Air Operator's Certificate where applicable), and a carrier must be designated in respect of **each airport site** from which it conducts relevant cargo operations into the Union.

3.4 In order to be designated as an ACC3 from a particular third country airport, the air carrier must (as per point 6.8.1.2 of the Annex):

- nominate a person with overall responsibility for the implementation of relevant security controls;
- meet certain security requirements, including maintaining and implementing a security programme that meets prescribed security standards; and
- be successfully validated at least once every five years from 1 July 2014. Before this date, the ACC3 is required to submit a 'declaration of commitments' confirming the implementation of its security programme.

3.5 Once a carrier has been designated as an ACC3 at a particular third country airport, its operation at that airport will be allocated a unique alphanumeric identifier and its details will be entered into the Union database of regulated agents and known consignors. Once a carrier is listed on the database it shall be recognised in all Member States for all operations from that airport into the Union. A graphical representation of the framework for designating air carriers as ACC3 is set out in Figure 4 (**The transport of cargo and mail into the EU from a third country - ACC3 Designation**) below.

3.6 Member States' appropriate authorities are obliged to inform the Commission and other Member States of any serious deficiencies in respect of an ACC3's operations which are deemed to have a significant impact on the overall level of aviation security, and to require the ACC3 to rectify this deficiency. Where rectification is not achieved, the Commission can decide (after consulting the Regulatory Committee for Civil Aviation Security) that a carrier should no longer be recognised as an ACC3 either for specific routes into the Union or for all routes. The entry of any impacted third country operation(s) of the ACC3 will be removed from the Union database of regulated agents and known consignors and will not be reinstated until an EU aviation security validation has confirmed that the any deficiencies have been rectified.

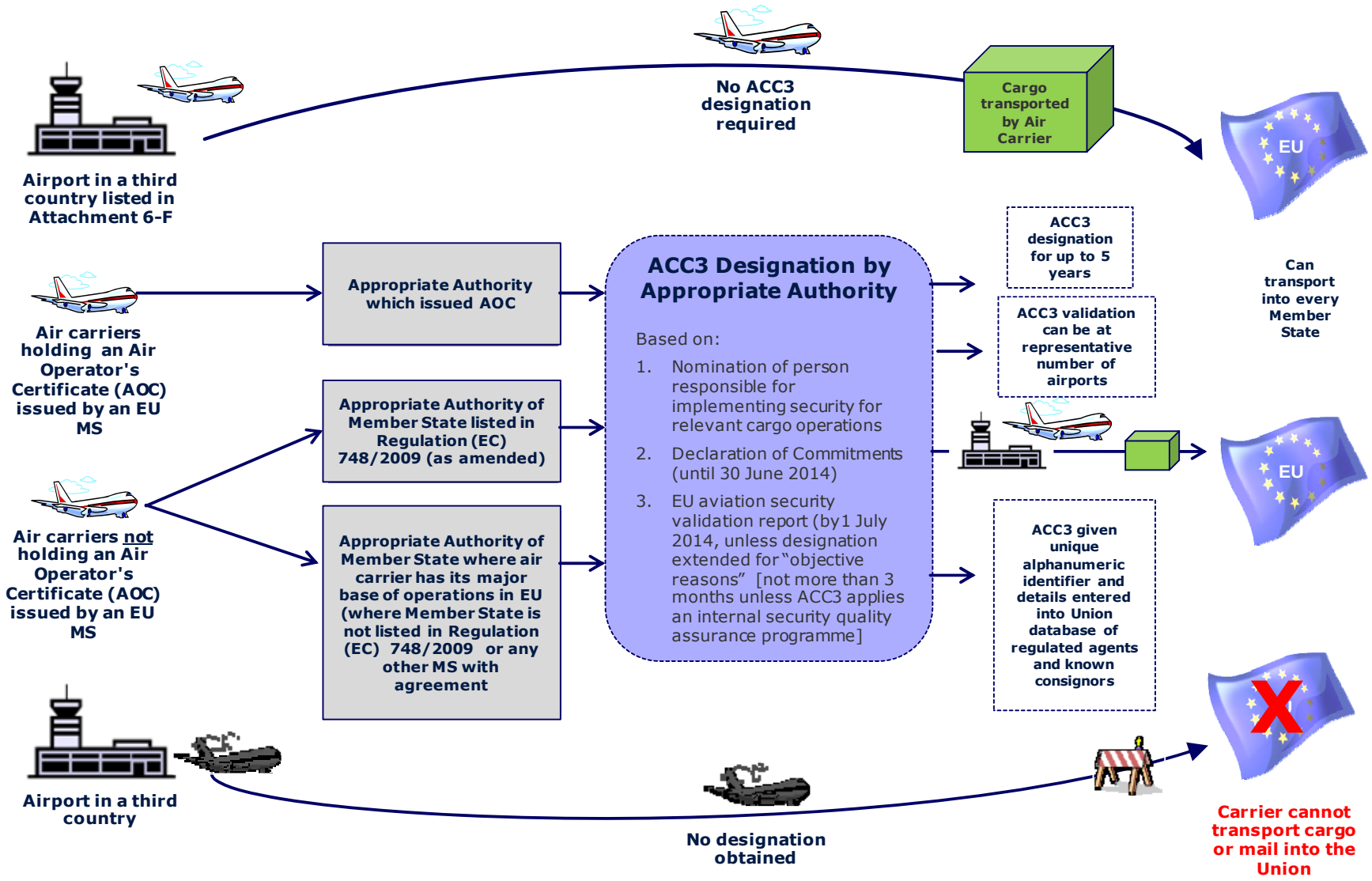

Figure 4 - The transport of cargo and mail into the EU from a third country - ACC3 Designation

Security controls to be implemented by an ACC3

3.7 An ACC3 is required to implement certain security controls in respect of all cargo and mail being brought into a Union airport for transfer, transit or unloading. In particular, the ACC3 is required on an on-going basis to:

- maintain and implement a security programme covering all points listed in Attachment 6-G to Regulation (EU) No 185/2010 (including setting out: a description of measures for air cargo and mail; procedures for acceptance; the standard of screening and physical examination; and details of screening equipment, amongst other things); and

- ensure that all exempt cargo and mail has been protected from unauthorised interference across the supply chain, and that all non-exempt cargo has been either (under point 6.8.3.1 of the Annex):

    - o screened to a required standard (as detailed further from section 3.8 below); **or**

    - o subject to required security controls across the supply chain (as detailed further from section 3.11 below).

Screening

3.8 Until 30 June 2014 screening must meet 'ICAO standards' and, from 1 July 2014, screening must involve 'one of the means or methods listed in point 6.2.1 of the Decision 2010/774/EU' to reasonably ensure that no prohibited items are included in cargo and mail (point 6.8.3.2 of the Annex)**.**

3.9 The New ACC3 Regulation distinguishes between the screening of high risk and non-high risk cargo or mail. High risk cargo must be screened by the **ACC3 itself or by an EU aviation security validated regulated agent**, according to specific requirements for high risk cargo, and these consignments must be labelled 'SHR' (meaning secure for passenger, all-cargo and all-mail aircraft in accordance with high risk requirements). Non-high risk cargo can either be prepared and submitted by an EU aviation security validated known consignor or an account consignor under the responsibility of an EU aviation security validated regulated agent, or be screened according to point 6.8.3.2 of the Annex by an EU aviation security validated entity, and it should be labeled as ‘SPX’ or ‘SCO’. However, in all instances the consignment can be screened at ***any*** point in the supply chain by a

regulated entity (ACC3 or regulated agent) provided it is then subsequently protected from unauthorised interference until loading.

3.10 The effectiveness and likely impact of the requirement to screen to EU standards from 2014 is analysed further in chapter five of this Evaluation Report.

Ensuring a secure supply chain

3.11 An ACC3 is **not** required to screen cargo and mail where the required security controls have been applied to the consignment during all relevant stages of the air cargo supply chain.[12]

3.12 In summary, this can involve one of the following scenarios:

- required security controls being applied by an 'EU aviation security validated regulated agent';
- required security controls being applied by an 'EU aviation security validated known consignor'; or
- only where a consignment is not carried on a passenger aircraft, required security controls being applied by an 'account consignor under the responsibility of an EU aviation security validated regulated agent', provided, in each case, that the consignment is subsequently protected from unauthorised interference until loading on to the aircraft.

3.13 A graphical representation of these secure supply chain scenarios is set out in Figure 5 (**Secure Supply Chain within the ACC3 Framework**) below.

[12] Point 6.1.1(d) of Regulation (EU) No 185/2010

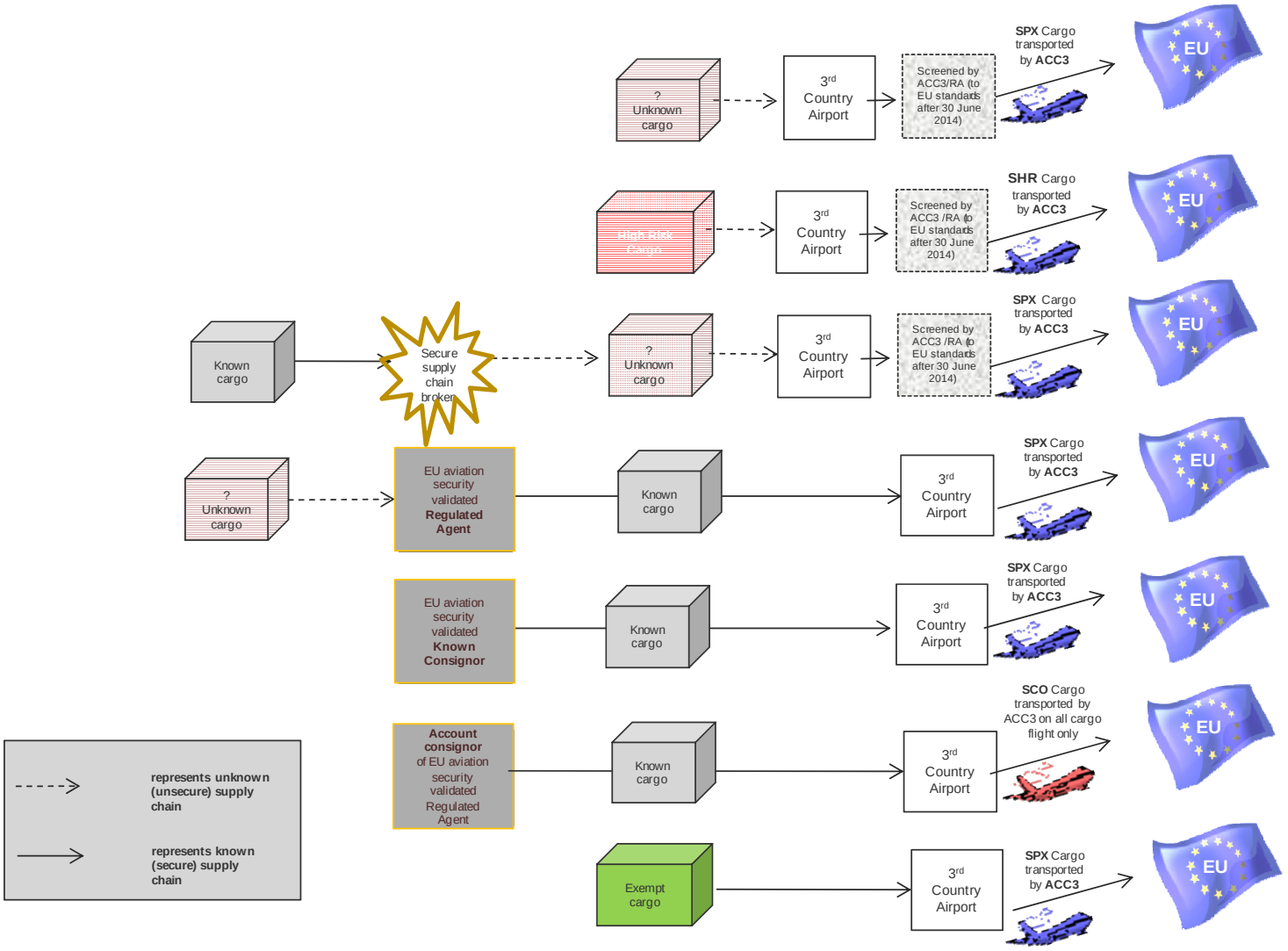

Figure 5 - Secure supply chain within the New ACC3 Regulation

3.14 The ACC3 is required to maintain a database of its regulated agents and known consignors that have been subject to EU aviation security validation, which includes various information, contact details and where available (or by 1 July 2014 at the latest) the validation report.[13] The database will be available for inspection (point 6.8.4.3 of the Annex).

3.15 The New ACC3 Regulation (at point 6.8.4 of the Annex) sets out how an 'entity' (that is, a regulated agent or known consignor) can become an EU aviation security validated regulated agent or an EU aviation security validation known consignor. In summary, there are two ways in which an entity can be validated. Either:

- the security controls implemented by that entity are set out in an ***ACC3's security programme*** and the ACC3 will validate the application of these security controls by each such entity; or
- the ***entity*** can 'submit the relevant cargo handling activities to an EU aviation security validation at intervals not exceeding five years' and give the resultant validation report to ACC3s to which it provides services.

Soft issues to ease the facilitation of the New ACC3 Regulation

The wording in point 6.8.4.1(a) of the Annex makes it clear that the validation of an ACC3's security programme involves visiting each of the ACC3's regulated agents and known consignors included in the ACC3s security programme to verify the security controls applied by these entities.

The effect of this is that where an ACC3 elects to request validation at a representative number of airports with relevant cargo operations (point 6.8.2.2 – 2 (a)) the roadmap for the ACC3 validation must either include all locations where the ACC3 intends to accept cargo from either regulated agents or known consignors, unless these entities have each submitted their cargo handling activities at such locations to an EU aviation security validation.

We suggest that text is added to point 6.8.4.1(a) to ensure that ACC3s are fully aware of the need to EU aviation security validate all such entities, unless they have in-house capability at the third country location to screen to EU standards all cargo submitted for carriage to the Union.

[13] The 'validation report' shall record the EU aviation security validation of the regulated agent and/or known consignor. It shall be comprised at the minimum of a declaration by the EU aviation security validator, the entities declaration of commitments and the validation checklist for verifying the entities implementation of the required security measures (point 6.8.4.3 of the Annex).

3.16 A graphical representation of the manner by which secure supply chains are established is set out in Figures 6 and 7 (**How a known consignor or regulated agent can become EU aviation security validated**) below.

3.17 If an entity fails to comply with the 'relevant checklist' it will receive a copy of the validator's completed checklist stating the deficiencies and the entity will not be authorised to operate cargo for carriage into the EU.

Soft issues to ease the facilitation of the New ACC3 Regulation

The wording in point 6.8.4.2, leaves the correction of 'deficiencies' in the hands of the ACC3. It does not document any way for those regulated agents or known consignors who fail their validations to rectify this. Similar wording to what is included for points 6.8.5.1(3) or 6.8.2.2.2(f) should be considered to the effect that:

*'*an entity *shall not be reinstated or be permitted to operate air cargo activities into the Union until it has confirmed that the serious deficiency has been rectified and the Committee on Civil Aviation Security has been informed thereof by the relevant appropriate authority.'*

Furthermore point 2.8.4.2 (a) refers to the 'relevant checklist'. At the time of submitting this report the checklists for regulated agents and for known consignors have not been finalised. During a 'pilot evaluation of the validation checklist for ACC3s (Attachment 6-C3) performed in Nairobi and Dubai, a number of changes were proposed to enhance the effectiveness of the ACC3 checklist. We propose that similar pilots be undertaken in third country locations for the checklists for regulated agents and known consignors prior to these being incorporated in the New ACC3 Regulation.

Point 11.6.4.1 of the Annex states that the details of approved EU aviation security validators shall be listed in the 'Union database for regulated agents and known consignors'. Access to this database, however, is not available to third country regulated agent and known consignor candidates for EU aviation security validation. A mechanism should be implemented to permit such candidates to obtain access to the list of approved EU aviation security validators.

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Method (i) - Inclusion in ACC3 security programme & EU aviation security validation

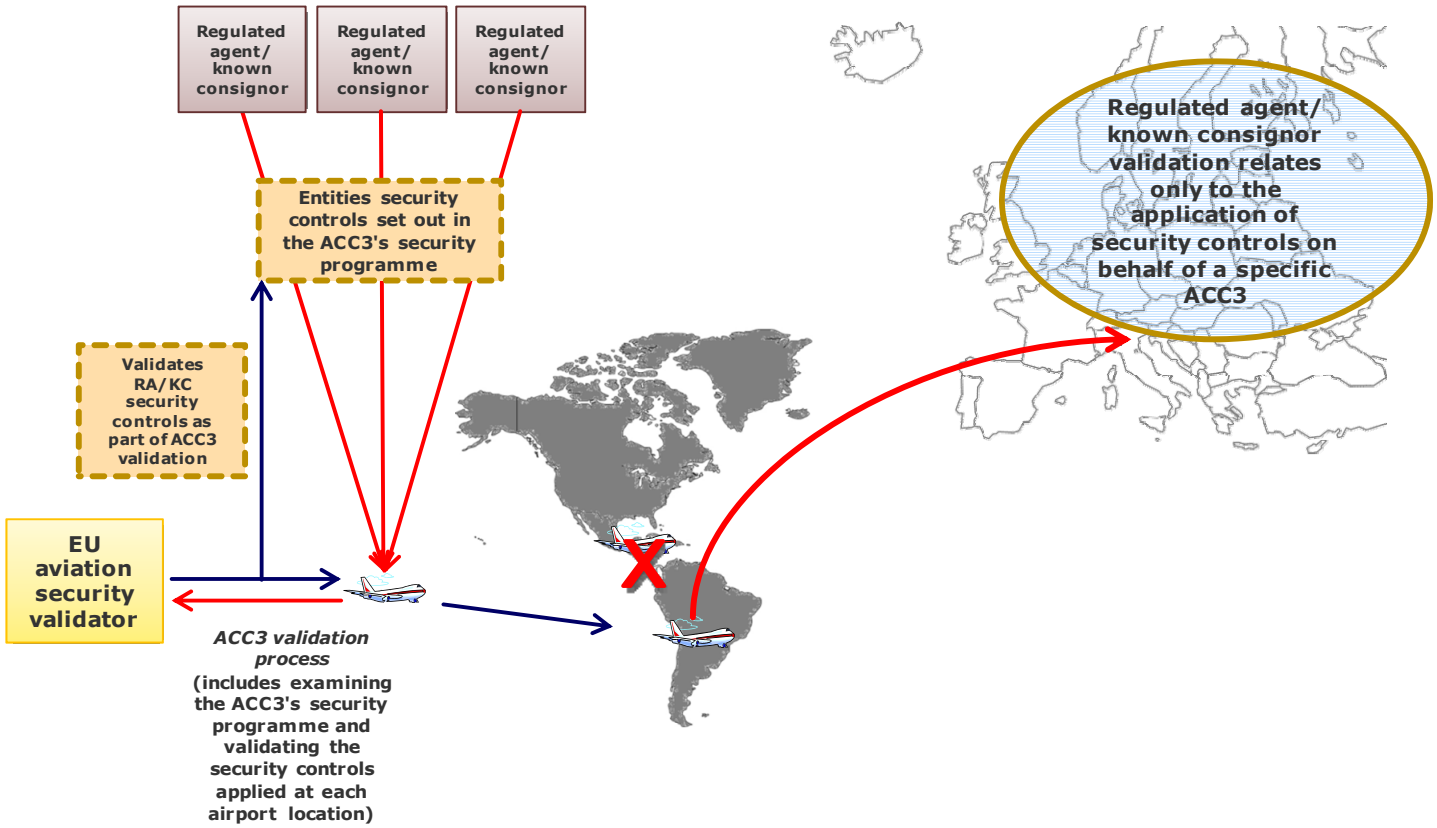

Figure 6 - EU aviation security validation of regulated agents or known consignors – Method (i)

Method (ii) - Validation by an EU aviation security validated entity

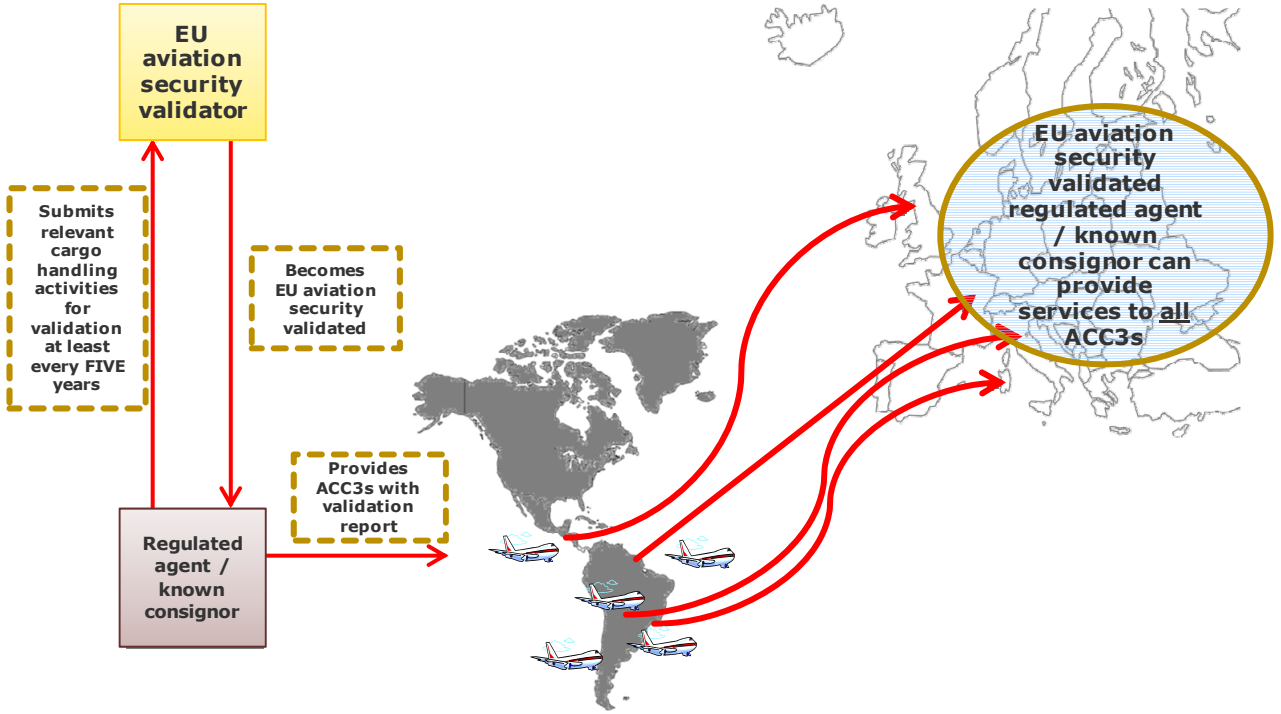

Figure 7 - EU aviation security validation of regulated agents or known consignors – Method (ii)

The requirement for ACC3 validation

3.18 A key component of the new ACC3 framework is the requirement that all ACC3s are subject to validation by an EU aviation security validator. A carrier cannot be designated as an ACC3 where the validation reveals a deficiency in the carrier's security controls (without proof of the implementation of measures to rectify the deficiency).

3.19 The New ACC3 Regulation set out a range of options that each Member State has as to how it sets up and implements an EU aviation security validation scheme. However in each case the validations themselves will be undertaken in a broadly harmonised manner (subject to some flexibility as further detailed from section 3.24 below).

Member State options for establishing an EU aviation security validation scheme

3.20 The options that are available to Member States in respect of establishing and implementing an EU aviation security validation scheme are set out in Figure 8 (**Options for EU Aviation Security Validation within New ACC3 Regulation**) below. In summary:

- **Option 1:** a Member State's appropriate authority is itself entitled to conduct validations of an ACC3 (point 11.6.2(b) of the Annex).
- **Option 2:** a Member State may approve (through certification) an entity or individual as an EU aviation security validator or a validator recognised as equivalent to it, provided certain standards are met (point 11.6.2(b) of the Annex). That EU aviation security validator will then validate an ACC3.
- **Option 3:** a Member State may empower its national accreditation body (as established pursuant to Regulation (EC) No 765/2008) to accredit an entity or individual as an EU aviation security validator (point 11.6.3.4 of the Annex). That EU aviation security validator will then validate an ACC3.
- **Option 4:** the appropriate authorities of at least two Member States may cooperate to approve quality assurance programmes operated by industry associations and entities under their responsibility as an EU aviation security validator, provided equivalent measures of those programmes ensure impartial and objective validation (point 11.6.4.4 of the Annex). That EU aviation security validator will then validate an ACC3.

- **Option 5:** The Commission may recognise authorities or validators in third countries as EU aviation security validators where it can confirm their equivalency to EU aviation security validation. That third country entity will then validate the ACC3 (point 11.6.4.5 of the Annex).

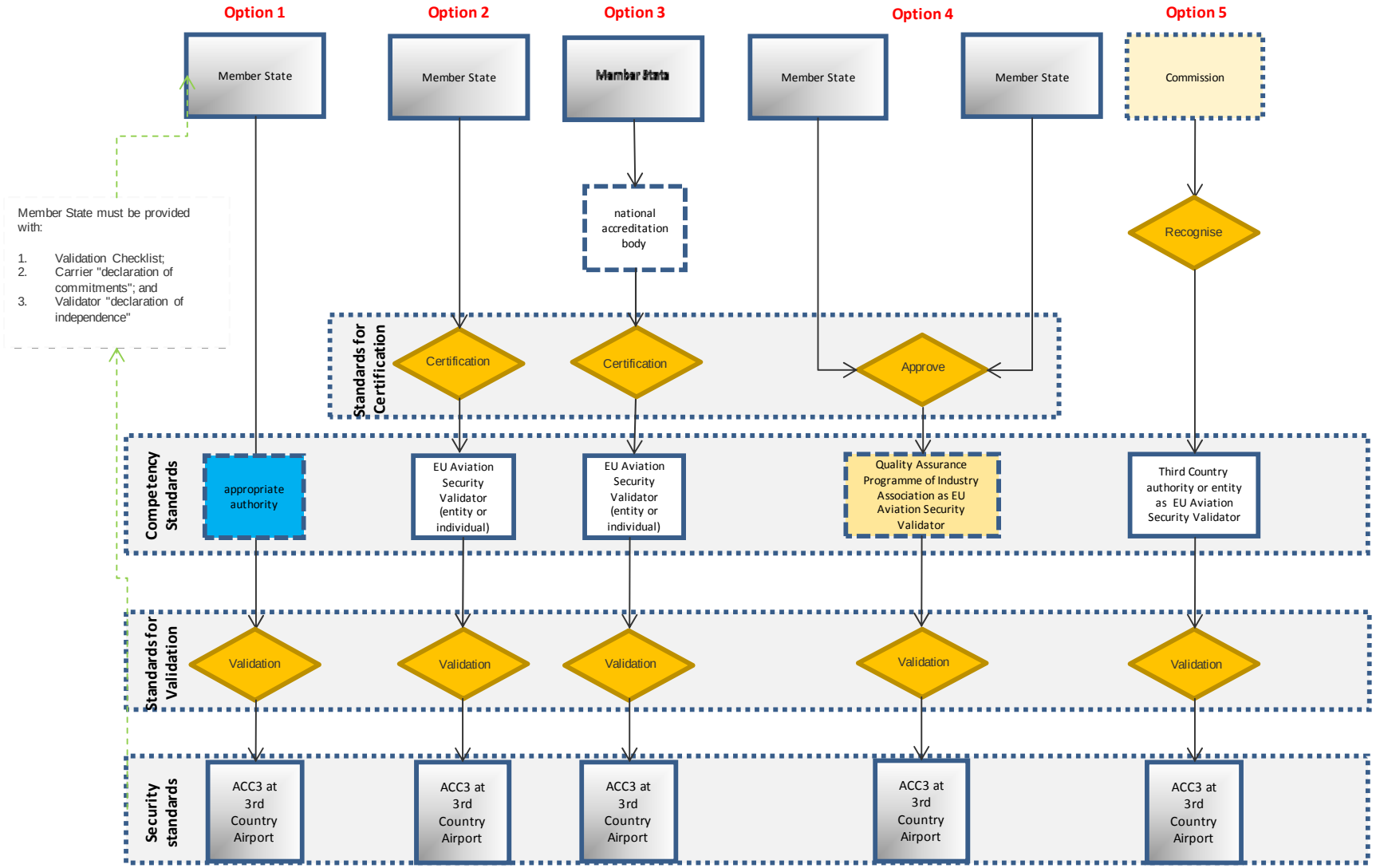

Figure 8 – Options for EU Aviation Security Validation within New ACC3 Regulation

Validation of the ACC3

3.21 Regardless of which of the above options is chosen by a Member State, the validation of the ACC3 should always be performed in accordance with a harmonised set of standards and requirements. In each case the validation will include:

- an examination of the ACC3's security programme ensuring that it covers all points set out in Attachment 6-G of the Annex; and
- verification of the implementation of required security measures using the prescribed 'validation checklist for ACC3' (included as Attachment 6-C3 of the Annex).

3.22 Furthermore, regardless of how an EU aviation security validation scheme is established in a Member State, the individual performing the EU aviation security validation must have appropriate competence and background experience (point 11.6.3.5 of the Annex) and the validator must be impartial and objective. To help facilitate the upholding of these standards, each Member State appropriate authority must either provide training for the validator or approve and maintain a list of appropriate security training courses.

3.23 Indeed, the New ACC3 Regulation states that an EU aviation security validation will be a 'standardised, documented, impartial and objective process' (points 11.6.1 and 11.6.3.5(b) of the Annex). This is essential to the overall success of the ACC3 framework because a single Member State will be responsible for designating and validating an ACC3's operations from a particular third country airport, after which that carrier will be permitted to operate from the relevant third country airport into *any* Member State. This means that each Member State will be relying on the validations of ACC3s conducted by other Member States, such that they will not have direct oversight as to either that carrier's security programme or the validation of that carrier. Consequently, a suitable framework must be established which provides all Member States with a sufficient degree of comfort that the designation and validation of ACC3s is done in a harmonised, consistent and transparent way across the Union.

Options available to Member States in respect of the ACC3 validations

3.24 Although the validations must be conducted in a standardised and harmonised manner, the New ACC3 Regulation does provide Member States with a degree of flexibility in terms of the extent of verification of specific carriers.

3.25 In particular, under point 6.8.2.2 of the Annex Member States can decide whether to:

- validate **each airport site** from which the carrier has relevant cargo operations; or
- validate only a 'representative number' of relevant airport sites, provided that:

  (a) this option is only utilised upon the request of an air carrier:

  (b) the carrier has in place an 'internal security quality assurance programme' that is equivalent to EU aviation security validation;

Soft issues to ease the facilitation of the New ACC3 Regulation

It could possibly be considered difficult to determine what precisely makes '*an internal security quality assurance programme*' equivalent to EU aviation security validation. Does this imply that the internal security quality programme must include documented security audits at third country locations similar to the information required to complete the EU aviation security validation checklist? We suggest that additional clarification could be useful.

  (c) at least the same number of additional airports are validated each year, and a 'roadmap' is established setting out the order of validation and the reasons why these airports have been chosen;

  (d) all designations for any specific ACC3 end at the same time; and

  (e) where a deficiency is found during a validation, the Member State has proof of how measures have been implemented to rectify this, and either the Member State doubles the number of subsequent validations for each remaining year of that ACC3's designation or conducts validations at all third country airport locations within a set deadline.

3.26 In addition, Member States have the option to designate a carrier as an ACC3 without being validated for a period of up to three months beyond 1 July 2014 until

30 June 2016, provided that the reason why the EU aviation security validation did not take place was for 'objective reasons' outside of the air carrier's control. Where such a designation is granted for more than three months without validation, the appropriate authority must verify that the air carrier has 'an internal security quality assurance programme that is equivalent to EU aviation security validation'.

Soft issues to ease the facilitation of the New ACC3 Regulation

Point 6.8.2.3 of the Annex does not provide guidance as to what could be considered to be 'objective reasons', such as coordination with a third country civil aviation authority that performs cargo screening and/or a lack of sufficient trained EU aviation security validators. It is suggested that additional guidance be provided to avoid disputes between ACC3s and appropriate authorities as to the nature of the 'objective reasons' that will trigger this point.

4. POTENTIAL IMPACT OF THIRD COUNTRY EU AVIATION SECURITY VALIDATION REQUIREMENTS

Overview

4.1 The New ACC3 Regulation seeks to bolster and contribute to air cargo security. However, as with any change to an established system, there will be numerable impacts as a result of the concomitant requirements imposed on the various actors in the air cargo supply chain.

4.2 In this chapter we assess the possible impacts that will result from the third country EU aviation security validation requirements in a security, administrative, commercial, socio-political and economic context. Some of these impacts result in positive outcomes whereas others are negative. Notwithstanding this, we believe that the net contribution of the New ACC3 Regulation outweighs the negative impacts.

4.3 A final section in this chapter provides a detailed analysis of the economic impacts of the ACC3 Regulation. This activity included estimating the number of potential EU aviation security validations that would be performed in third countries.

4.4 Initially we analysed the resources required and costs incurred in implementing the New ACC3 Regulation based on the draft legislation prepared in February 2012. The results of this exercise indicated a considerable cost and resource burden would be incurred by appropriate authorities (through programme administration and recruitment and training of EU aviation security validators) and the air cargo industry (that is, via ACC3, regulated agent and known consignor EU aviation security validations).

4.5 After presenting and discussing these findings, we further investigated the impact on resources and costs of changing the time frame for completing the initial round of EU aviation security validations; and of performing third country airport site visits that include a number of entities (described hereinafter as 'grouping of validations').. This exercise was undertaken and documented, and our findings are included in this report.

4.6 This modelling process supported the work of Commission in exploring a number of alternatives relating to phasing the implementation of the New ACC3 Regulation, further refining the criteria for appointing EU aviation security validators and seeking ways of reducing the initial and on-going burden of undertaking EU aviation security

validations for ACC3s, without compromising the security of air cargo shipments from third countries to the EU.

4.7 We conclude this chapter with a detailed estimation of the resources and costs associated with implementing the New ACC3 Regulation as currently formulated, taking into account the above amendments.

Security Impacts

Overview

4.8 The principal *raison d'etre* of the New ACC3 Regulation is to make air cargo security more resilient and robust. It is designed to have sufficient checks and controls to help prevent another security breach akin to the Yemeni ink cartridge bomb plot in October 2010 from arising. As a result of this, provided the New ACC3 Regulation succeeds in its aims there will be clear security gains from the new regime, and besides, it will still be an improvement on the current non-harmonised or non-standardised approach.

Impact on security enhancement

4.9 The New ACC3 Regulation will significantly contribute to enhanced air cargo security as cargo originating in third countries will either be handled within a secure and validated supply chain, where security controls have been applied in accordance with the requirements of the EU regulatory framework, or alternatively this cargo will be subjected to screening to EU standards by an ACC3.

Impact on one stop security

4.10 The New ACC3 Regulation will contribute both to one stop security and to enabling the EU to obtain additional information relating to the air cargo security standards being implemented in third countries that are future candidates for being designated as countries that have security controls equivalent to those of the Union.

4.11 However, due to potential or perceived differences between the abilities of the EU aviation security validators accredited by different Member States, it could be more difficult to achieve mutual recognition of the programme across all jurisdictions, thus hindering the creation of a truly harmonised approach.

4.12 Nonetheless, this potential downside will be mitigated by Member State and Commission oversight actions. The recent joint-European Commission and US Transport Security Administration declaration that 'U.S. air cargo security standards

are equivalent to Community standards' and 'Community air cargo security standards are equivalent to the U.S. standards',[14] will support the efforts of the Commission in establishing the programme. The implementation of EU security measures by ***all*** air carriers flying air cargo into the EU will have a positive effect on achieving *global* harmonisation, which we believe could further incentivise the adoption of a programme similar to the New ACC3 Regulation by ICAO, as discussed in more detail in chapter 5 of this report.

Administrative Impacts

Overview

4.13 New and additional administrative burdens will be placed on Member States, third countries and the air cargo industry. This is inevitable as the New ACC3 Regulation creates a new framework for the air cargo supply chain. There are in-built mechanisms within the New ACC3 Regulation to reduce these impacts however, primarily by allowing for a degree of flexibility as to how security standards are imposed and therefore not forcing a 'one-size-fits-all' approach on to the actors in the air cargo industry.

Administrative impact on Member States

4.14 Member States will be impacted by the New ACC3 Regulation to the extent that they will be responsible for the accreditation of EU aviation security validators. Each Member State will also be responsible for the recruitment, certification and management of EU aviation security validators. Furthermore, strict and regular monitoring of the accreditation of EU aviation security validators will be required so as to ensure they meet - and continue to meet - the minimum standards prescribed by the industry or in regulations.

4.15 The New ACC3 Regulation will also require increased oversight from Member States to ensure that the ACC3 framework is being adequately implemented by the various parties in the air cargo security supply chain. Monitoring of those parties *within* the EU who are supporting the New ACC3 Regulation will be facilitated utilising the controls provided in Regulations (EU) no 18/2010 and no 72/2010.

4.16 However, the New ACC3 Regulation provides Member States with a degree of flexibility regarding how the validation framework would operate in each respective Member State (subject to the agreed standards being maintained). Namely this is

[14] http://Eurospa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/400&type=HTML

with regards to who can be allocated responsibility for EU aviation security validations and how validations can then performed, as discussed in paragraphs 3.20 and 3.24 of this Evaluation Report, respectively.

4.17 Some Member States may find the proposed scheme easier to implement than others, particularly if they have already have experience of operating an EU aviation security validation scheme for known consignors. Yet those Member States that have not been successful in establishing a known consignor scheme which must be implemented by April 2013 under Regulation (**EU**) No 185/2010 may significantly benefit from the establishment of a system to appoint EU aviation security validators by the New ACC3 Regulation.

4.18 The New ACC3 Regulation envisages that Member States will be able to rely on the actions of more established Member States and avoid establishing their own EU aviation security validation schemes. This due to the following:

- the New ACC3 Regulation states that national accreditation bodies will be established pursuant to Regulation (EC) No 765/2008, and this Regulation permits those Member States which do not have such accreditation bodies to have recourse to the accreditation bodies of other Member States to the fullest extent possible[15]; and

- Member State appropriate authorities may simply advise designated ACC3s to utilise EU aviation security validators approved by other Member States appropriate authorities.

4.19 These options were not anticipated for validations of known consignors in EU Member States. This could reduce both the cost impact for those Member States whose ACC3s will utilise the EU aviation security validators accredited in other Member States, whilst also possibly introducing economies of scale for larger Member States whose EU aviation security validators would have access to a larger market share of EU validations and therefore be more willing to contribute towards the significant costs of accrediting EU aviation security validators. The economics of accrediting EU aviation security validators is discussed from paragraph 4.44 onwards (**Economic Impacts**).

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[15] Recital 18, Regulation (EC) No 765/2008

Administrative impact on third countries

4.20 Due to the differences between the security measures in place in third countries, where private firms and/or government entities may be involved in the screening of cargo on behalf of ACC3s, third countries may find that they are unable to take a single approach across their entire airport and/or airline base.

Administrative impact on industry

4.21 There will be a significant impact on the aviation industry from the enhanced security measures being performed in third countries due to the costs of certification being met by the industry. For instance, ACC3 air carriers will be required to be re-validated every five years with the accompanying burdens associated with this, such as ensuring that all security measures are up to date and fully compliant with the most recent aviation security requirements. There will also be associated costs with ensuring compliance. These will most likely be passed on through surcharges to clients shipping air cargo from third countries.

4.22 As stated in paragraph 4.11 above, under the New ACC3 Regulation it seems inevitable that EU aviation security validations conducted by (or on behalf of) each individual Member State will not be entirely identical and/or fully harmonised, even in spite of attempts at standardisation. Consequently the industry may find that they are unable to take a single approach across different operating environments, and third countries may find that they are unable to take a single approach across their entire airport and/or airline base, all of which will compound the administrative burden on the industry.

4.23 Nonetheless, there are arguably some cost savings to be gained from complying with these administrative burdens, not least those from increased efficiencies when exporting ACC3 cargo into the Union.

Commercial Impacts

Overview

4.24 The commercial impact of the New ACC3 Regulation will be mainly positive. By and large the main reason for this is that it will help sustain, expedite and facilitate the trade of goods in both a proactive way (by helping *prevent* security breaches) and reactive way (by *mitigating* any security breaches through the 'standardised' approach of the ACC3 scheme). There will be some increased costs as a result of the New ACC3 Regulation, but these will be partially if not fully offset by efficiency savings.

Impact on the functioning of the internal market

4.25 The New ACC3 Regulation is likely to have a positive impact on the free movement of goods and services because it will:

- contribute towards enhancing the security of air cargo shipments entering the EU from third countries;
- contribute to the safety of EU citizens;
- mitigate against disruptions to the supply of goods (raw materials and finished goods) entering the EU; and
- establish a scheme which is acceptable to all Member States, therefore facilitating the mutual recognition of air cargo security standards.

4.26 Whilst there will be an increase in the costs of security as a result of the validation of ACC3s, these costs could be partially offset by greater efficiency in the air cargo supply chain. For example, an ACC3 will only need to be validated once every five years by a single EU aviation security validator to be able to transport goods into the EU. Furthermore, the ability to increase the overall volume of exports owing to the reduction of barriers and bottlenecks in the exportation process will also benefit the internal market. This is compounded by how a significant number of the exports comprise of raw materials with limited shelf-lives, and thus less stock will be wasted.

Impact on competitiveness

4.27 Air cargo shipments from third countries into the EU include high value components that are incorporated into finished products and which may subsequently be exported from the Union. Therefore an increase in transport costs could potentially have an impact on the competitiveness of EU exports as these costs will reduce margins which may have to be offset by an increase in export prices.

4.28 However, improvements in the facilitation of trade within the Union (by avoiding the need to re-screen third country air cargo shipments arriving in the Union and being transhipped within the Union or exported) could mitigate any increased costs.

4.29 The volumes of cargo being shipped from third country airports to the EU will influence the costs incurred by these airports to screen cargo to EU standards. Airports with high volumes of cargo will be required to install more expensive equipment than will be needed by airports handling smaller volumes of cargo. However the majority of high volume airports will most probably have already installed such equipment to meet US cargo screening requirements, and thus additional costs will not necessarily be incurred to meet the EU requirements.

Impact on business operating costs

4.30 The increase in compliance transaction costs deriving from EU aviation security validations and the higher costs of screening to EU standards will tend to have more of an impact on the costs of conducting business for Small and Medium Enterprises (SMEs) than for larger organisations. Similarly, due to the nature of the third country products which are shipped by air cargo into the EU (e.g. agricultural products with limited shelf lives) there will be different impacts on different trade sectors.

4.31 The impact of screening to EU standards (and any additional controls on high risk cargo) will encourage suppliers in third countries to undergo validations where it reduces the cost and delays resulting from screening. Either way, businesses have a choice regarding how they comply with the New ACC3 Regulation; they can reduce the impact on their operating costs by choosing the option which is best suited to their needs and operations.

Impact on specific regions or sectors

4.32 It is usually more expensive to conduct business from 'high-risk' regions and different business sectors will be affected to different degrees. This is primarily determined by two factors:

i. the nature of the goods which are being transported; and
ii. the reliance in that particular sector on aviation as a mode of transport.

4.33 Any disruption or delay to the supply of perishable goods, for example, could have severe detrimental impacts as explained above. Furthermore, as air cargo is often used for the transportation of perishable goods, industries falling within this sector could be disproportionately affected by any delays or disruptions to the air cargo supply chain.

4.34 Whilst the costs of complying with any ACC3 scheme is likely to be more significant in such regions due to the higher logistical hurdles which need to be overcome, the ensuing benefits from having a more efficient system for regulating and supplying cargo should mitigate these costs. By improving the ACC3 regime, it will also be less likely that 'high-risk' regions will suffer security-related disruptions from the halting or hindering of their EU air cargo exports, which could have devastating economic impacts.

Impact on consumers and the public

4.35 Initially, the new ACC3 scheme will generate industry-wide costs. These costs may be passed on to the end-users in the air cargo supply chain, namely consumers. This will increase the price of consumer goods for consumers.

4.36 However, as the New ACC3 Regulation will augment efficiency with less delays and disruptions, these costs will decrease over time. Furthermore, the risk of a sudden spike in consumer prices caused by security-related disruptions will be reduced by the ACC3 scheme. Consumer choice will also be improved by facilitating the free flow of goods from third countries into the EU.

4.37 In theory the tax-paying public could also be impacted through higher taxes to offset the costs of public authorities having to establish the ACC3 framework. However, the accreditation agencies will be remunerated for performing accreditations of EU aviation security validators, and EU aviation security validators will in turn be paid for validations of ACC3. This will reduce budgetary pressures for public authorities. This could partly, if not fully, counteract any costs associated with the establishing and training of accreditation agencies.

4.38 Additionally, non-implementation of an appropriate ACC3 scheme could result in public authorities incurring higher costs: if, as presumed, an incident involving air cargo security is more likely to occur without security standards being improved, the resultant disruption to the supply of goods to Member States will impose significant costs, both economically and socially. This is particularly the case with perishable goods. This is also not to overlook the impact on EU *exports* resulting from disruptions to supply chains for high-value components being incorporated into finished EU products that are subsequently exported from the Union.

Socio-political Impacts

Overview

4.39 Whilst some instances of inter-country tension may emerge from the utilisation of EU standards by the air cargo industry in third countries, this would have happened - and indeed, does happen - regardless of the security approach taken. This is because of an inherent tension between the security concerns of the EU and the trading desires of third countries; the former will restrict the latter by design.

Third countries and international relations

4.40 Tensions could arise from the application of EU standards by EU aviation security validated entities in third countries as they may consider it to be a violation of their political sovereignty. However, to the extent that these standards are led and implemented by the aviation industry (rather than specifically by a Member State body), any geopolitical impact may be accordingly reduced because the standards are imposed at the carrier- rather than country- level.

4.41 In many other respects, the status quo will remain with regards to the impact the New ACC3 Regulation will have on international relations. For example, the countries which are listed in Attachment 6-I[16] that are deemed to have high risk cargo or mail are countries that would typically have been subject to more stringent security controls regardless of the New ACC3 Regulation. Thus, much of the international tension that could result from the New ACC3 Regulation will be a by-product of security controls *in general*, rather than the Regulation *specifically.*

Employment and labour markets

4.42 Whilst approximately 170 new EU aviation security validators will need to be employed, this will not have a significant 'macro' impact on employment, and as such there is unlikely to be any significant impact, positive or negative, on the labour market through an ACC3 scheme.

Public health and safety and crime, terrorism and security

4.43 The provision of security resilience goes to the root of the ACC3 scheme. The purpose of creating robust ACC3 regulations is to improve the security protocols and measures within Member States so that they are able to handle ACC3 cargo efficiently without undermining security standards. Consequently, the successful implementation of effective ACC3 regulations will assist in reducing crime and terrorism whilst also benefiting the health and safety of the public.

Economic Impacts

Overview

4.44 In the remainder of this chapter we analyse the projected resources and costs that will be incurred implementing the third country validation requirements initially, as required by Regulation (EU) No 859/2011, and subsequently, as required by the

[16] Decision 2011/5862/EU

New ACC3 Regulation. This analysis is based on estimated metrics relating to volumes of EU aviation security validators, of EU aviation security validations and the timeframes for implementing the ACC3 framework.

4.45 During the development of the economic model, we discussed the viability of the EU aviation security validation scheme with a number of EU commercial organisations providing professional training and certification services, with worldwide operations. Senior managers responsible for certification services in these organisations indicated that they would be interested in pursuing this as a commercial opportunity, after the operation of the scheme had been finalised. We conclude that whilst the costs are likely to be considerable, a market for EU aviation security validations may be established whereby the set-up costs are considered as a commercial investment required to enter this market and participate in the resultant economic opportunities.

4.46 This component of our report is divided into the description of a baseline economic model (subsection i) that was further refined (subsections ii and iii) in parallel to the evolution of the New ACC3 Regulation:

i. the initial subsection (**Regulation (EU) No 859/2011**) describes the baseline economic model we developed to estimate the possible economic impact of the ACC3 framework as defined in this regulation[17] which became effective on February 1, 2011.[18] Regulation (EU) No 859/2011 requires that on-site EU aviation security validations[19] will be performed at all designated ACC3 third country airport locations and for all third country regulated agents and known consignors delivering air cargo and/or air mail to designated ACC3s – it further stipulates that these EU aviation security validations must be completed no later than June 30 2014;

ii. a set of refinements to this baseline economic model are described in subsection ii (**Effect of extending the period for implementation and grouping of validations**) which illustrate potential cost

[17] Hereinafter also referenced in this document as 'the February 2012 economic model'.

[18] COMMISSION IMPLEMENTING REGULATION (EU) No 859/2011 of 25 August 2011 on amending Regulation (EU) No 185/2010 laying down detailed measures for the implementation of the common basic standards on aviation security in respect of air cargo and mail (Text with EEA relevance).

[19] Regulation (EU) No 859/2011 referred to 'independent validations' and 'independent validators'. In drafts of Implementing Regulation (EU) No xxx/2012 these terms were replaced by 'EU aviation security validations' and 'EU aviation security validators', respectively. In the interests of clarity the latter terminology has been adopted throughout this report.

reductions that could be obtained from such operational modifications; and

iii. in subsection iii (**Economic impact of the New ACC3 Regulation**[20]) we describe a new economic model that we developed to take into revised projections of the volume of, and timeframe for, EU aviation security validations.

4.47 The economic models of implementing the New ACC3 Regulation which we have developed (which includes costs of setting it up and for its on-going operation) include hypotheses relating to training costs, professional fees and related expenses. These assumptions, which we will now explain, have remained constant throughout all three versions of our model.

4.48 The New ACC3 Regulation does not include instructions or guidance as to the professional fees that an EU aviation security validator, or any organisation employing such individuals, should charge for performing EU aviation security validations. This subject was discussed at meetings between the Commission, the Member States and industry stakeholders and it was decided not to define a fee structure in the New ACC3 Regulation.

4.49 A factor in this decision was the effort required to complete an EU aviation security validation. This could vary based on the size and complexity of the operations of the ACC3 and/or other entity, and the location and operational environment of the third country airport. In addition, benefits in terms of cost reduction could be obtained by 'groupings' of validations by ACC3s and entities operating at the same third country airport.

4.50 Although international aviation audits such as IATA and TAPA have implemented standard fee rates for their respective audit programmes, these are audits of a single aviation related entity. The ACC3 framework seeks to validate, to some extent, interrelated entities where dependencies exist between these entities. The options whereby regulated agents and known consignors can be validated directly and/or within the framework of the ACC3s security programme could encourage ACC3s to bear the costs of EU aviation security validations of these entities.[21]

4.51 Notwithstanding the above, in order to create a valid economic model, we made certain assumptions relating to the costs of training and the professional fees that

[20] From this point onwards all references to the New ACC3 Regulation refer to the version approved by Member States in a vote on September 20, 2012 and included as Annex I to this report.

[21] Annex point 6.8.4.

would be levied by EU aviation security validators. These are further explained in the following sub-sections of this chapter.

4.52 In the course of our economic modelling we did not attempt to accurately estimate travel and per diem costs associated with the performance of EU aviation security validations, as these cost will depend on the arrangements reached between the entities involved and will be dependent on many factors such as distances travelled, the organisation of validation schedules and so forth; the extent to which ACC3s offer 'concession fares' to contractors; and the 'interrelation' considerations of paragraph 4.50 above.

4.53 We have, however, considered travel and per diem costs for the training of EU aviation security validators. We believe that these costs will be incurred by EU appropriate authorities and have included an estimation thereof in the overall training figures.

(i) Regulation (EU) No 859/2011

4.54 Regulation (EU) No 859/2011 proposed that all third country airport locations of each designated air carrier (ACC3) and each regulated agent and known consignor of the ACC3 must be validated not later than 30th June 2014.

4.55 In order to construct a model of the resources and associated costs associated with performing EU aviation security validations it was necessary to initially estimate the volume of validations that must be performed. To be useful, this must include metrics for validations of ACC3s, regulated agents and known consignors in third countries.

4.56 To further develop a valid cost model, we evaluated the tasks and timeframe required to establish the EU aviation security validation scheme, including the recruitment and training of EU aviation security validators, and estimated the costs of this activity.

4.57 Finally we estimated the cost of performing the projected number of EU aviation security validations, and summarised our findings relating to the economic impact associated with this initial draft of the legislation.

ACC3s, Regulated Agents, and Known Consignors at Third Country Airports

4.58 We were provided with a data set of airlines that carry cargo from the various third countries that are subject to the requirements of Regulation (EU) No 859/2011. Each data record included, among others, the Member State responsible for ACC3

designation, the name of the airline and its IATA code, the name of the airport and its IATA code, and the name of country where the airport is located.

4.59 The Member States that were responsible for the designation of air carriers as ACC3s were either[22]:

i. by the appropriate authority of the Member State listed in the Annex to Commission Regulation (EC) No 748/2009 as amended by Regulation (EU) No 394/2011 of 20 April 2011[23] on the list of aircraft operators which had performed an aviation activity within the meaning of Annex I to Directive 2003/87/EC[24] on or after 1 January 2006, for air carriers that do not hold an Air Operator's Certificate issued by a Member State;

ii. by the appropriate authority of the Member State that issued the air carrier's Air Operator's Certificate; or

iii. by the appropriate authority of the Member State where the air carrier has its major base of operations in the Union, or any other appropriate authority of the Union by agreement with that appropriate authority, for air carriers not holding an Air Operator's Certificate issued by a Member State and not listed in the Annex to Regulation (EC) No 748/2009.

4.60 The file provided to us on February 29 2012 contained 5,980 ACC3 records in the dataset. Initially, we discarded a number of invalid records regarding ACC3 airport locations in exempt third countries.

4.61 In addition, we discounted 1,690 airport locations for an executive charter airline with less than ten small executive aircraft which had been designated as an ACC3 by one appropriate authority.[25]

4.62 We were then left with a list of 3,923 ACC3 records located at 794 separate airports. This 'cleansed' list does not include airports and ACC3s in countries for which ACC3 security validations are not required.

4.63 Each ACC3 is designated by a specific Member State. Table 2 shows the number of ACC3s that had been designated in February 2012 by each Member State, after the adjustments described in paragraphs 3.60 through 3.62, above.

22 Annex point 6.8.1.1

23 OJ L 107, 27.04.2011, p.1.

24 OJ L 275, 25.10.2003, p. 32. as amended by Directive 2008/101/EC, OJ L 8, 13.1.2009, p. 3.

25 The entries for this ACC3 were later removed by the appropriate authority and did not appear in the revised data set of air carriers designated as ACC3s provided to us in July 2012.

Table 2 - ACC3s designated by each Member State[26] (February 2012)

Member State	Identifier	Designated ACC3s (February 2012)	**Member State**	Identifier	Designated ACC3s (February 2012)
Austria	AT	48	Italy	IT	231
Belgium	BE	130	Liechtenstein	LI	0
Bulgaria	BG	4	Lithuania	LT	1
Switzerland	CH	29	Luxembourg	LU	23
Cyprus	CY	5	Latvia	LV	11
Czech Republic	CZ	24	Malta	MT	3
Denmark	DE	3	Netherlands	NL	165
Germany	DK	1,927	Norway	NO	0
Estonia	EE	5	Poland	PL	35
Spain	ES	114	Portugal	PT	32
Finland	FI	27	Rumania	RO	9
France	FR	129	Sweden	SE	24
Greece	GR	6	Slovenia	SI	0
Hungary	HU	16	Slovakia	SK	0
Ireland	IE	0	United Kingdom	UK	910
Iceland	IS	17	**Total**		**3,923**

4.64 These initial figures indicate that Germany would be responsible for 49% of the total designated ACC3s, and the United Kingdom would be responsible for an additional 23%.

4.65 It should be noted, however, that the ACC3 list provided by one appropriate authority also included two non EU cargo airlines each indicating in excess of 200 ACC3 locations, that may have overstated the number of their ACC3 locations that have valid air cargo security programmes in place.

4.66 One list of ACC3 locations also included a significant charter airline which had recorded 450 ACC3 locations. Even if this charter airline was interested in being able to uplift cargo on its charter flights from third countries, we believed that the

[26] In referring to Member States and/or EU Member States we include all 27 EU Member States and the European Economic Area (EEA) states of Switzerland, Iceland, Norway and Liechtenstein. It should be noted that it is very possible that in certain Member States there will be no designated ACC3s, taking into account the criteria in paragraph 4.59 above

operational and economic costs associated with EU aviation security validation could in the future dampen such enthusiasm. However, enquiries addressed to the relevant appropriate authority indicated that the airline has a business arrangement in place with one of the express air carriers. This arrangement enables the charter air carrier to accept express cargo from locations where they operate charter flights on behalf of the express carrier, and transport such cargo into the EU.

4.67 The reason that we have highlighted these potentially overstated numbers of ACC3s (paragraphs 4.61, 4.65 and 4.66) is because the average number of ACC3 locations designated by each of the major EU 'national' air carriers did not exceed 60 – 70 third country airport locations.

4.68 No adjustments were made to the total of 3,923 ACC3 locations to account for any possible distortion to the data set due to these potential anomalies. However, the Commission requested that the Member States further review the ACC3 lists. The results of any revisions are reflected in the data set utilised in the revised economic model developed in July 2012.

4.69 After removing the entries for the above mentioned German charter airline and ACC3s designated in countries where ACC3 validation is not required, as discussed above, the revised ACC3 data set included 3,923 ACC3s.

4.70 There was, however, at this time (February 2012) more uncertainty about the number of regulated agents and known consignors that the ACC3s would require to become EU aviation security validated.

4.71 IATA has for many years implemented a process of certifying freight forwarders prior to allowing these companies to participate in the IATA Cargo Account Settlement System (CASS)[27] that works as a clearing system for transferring payments between the freight forwarders and the airlines. There are more than 13,000 IATA certified cargo agents, operating worldwide.

4.72 IATA advised us that there are 4,000 worldwide IATA certified cargo agents operating in third countries where EU aviation security validation is required. We took this figure as a basis for estimating the number of regulated agents requiring EU aviation security validations in third countries.

4.73 The Association of European Airlines (AEA)[28] provided the following figures to the contractor relating to the operations of the seven major airline members of AEA with

[27] http://www.iata.org/ps/financial_services/pages/cass.aspx

air cargo operations at some 149 third country airports where their members accept cargo for transport to the Union:

- approximately 400 ACC3 designations;
- 2000 regulated agents;
- 166 handling agents, providing cargo handling and security services to both regulated agents and ACC3s;
- 124 known consignors; and
- 306 secure supply chain partners.

4.74 Based on the number of IATA freight forwarders, and using the information above received from AEA as a 'sanity check' we included in our initial (February 2012) model the estimate that 4,600 regulated agents and 1,800 known consignors[29] will be EU aviation security validated.

4.75 We undertook the task of modelling the resources and costs that we believed would be required in order to set up a third country validation scheme and to complete an initial round of validations of ACC3s, regulated agents and known consignors prior to the proposed deadline of June 30, 2012.

4.76 The model we developed included both the initial set up of the EU aviation security validation scheme and the performance of validations in third countries.

Establishing the EU aviation security validaton scheme – Estimating the number of EU aviation security validators and the costs of recruitment and training

4.77 Prior to commencing EU aviation security validations it will be necessary to ensure a sufficient supply of suitably trained and certified firms and individuals who are able to act as EU aviation security validators.[30]

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28 http://www.aea.be/

29 At the time of establishing the above initial estimate of known consignors, it was assumed that any third country entity manufacturing or assembling goods for shipment to the EU could apply for EU aviation security validation. During discussions with industry stakeholders the possibility that only third country consignors delivering air cargo shipments **directly** to an ACC3 should be EU aviation security validated. Had this proposal been adopted it would mean that even if a security controlled shipment prepared by an EU aviation security validated known consignor was delivered to an EU aviation security validated regulated agent, the regulated agent would be required to screen the shipment. In the New ACC3 Regulation the original interpretation was retained.

30 The Commission has identified this as an important milestone by requiring that: '*Member States shall demonstrate to the Commission how they contribute to the implementation of point 11.6 in respect of point 6.8 of the Annex to Regulation (EU) No 185/2010 by 31 January 2013 at the latest.*' (Article 2)

4.78 The number of EU aviation security validators required for third country validations depends on the interplay of a number of variables. These include:

- the numbers of ACC3, regulated agent and known consignor validations that need to be performed;
- the quantity of EU aviation security validators that will participate in each validation, and the number of days per validation including time for travel and preparation of validation reports;
- the number of annual work days available per EU aviation security validator (it is assumed, as is the case for existing AVSEC audit programmes, that EU aviation security validators will be engaged on a part-time basis);
- the extent to which validations can be grouped as part of a single visit by a team of EU aviation security validators to one or more third country airport locations; and
- the time allotted for the completion of the initial set of audits.

4.79 The level of expertise required and the related training tasks will be different for EU aviation security validators conducting ACC3 and regulated agent validations when compared with EU aviation security validators performing known consignor validations. EU aviation security validators performing EU aviation security validations on ACC3s and regulated agents will require in-depth air cargo security and audit expertise and knowledge relating to airport and air carrier security programmes. However, the knowledge required to perform EU aviation security validations on known consignors will be similar to the level of knowledge required to perform known consignor validations in EU Member States, and be limited to physical facility security, preparation, handling and securing of consignments and staff training and awareness.

4.80 To reduce the complexity of the model we assumed at that time that the EU aviation security validators performing known consignor validations would not require to be EU residents. They would therefore not require to travel to the EU for training, and that such training would be provided in a number of third countries where approved AVSEC training courses are available.

4.81 This initial model proposed that one trained EU aviation security validator would participate in each EU aviation security validation, and that the period to undertake the EU aviation security validation of an ACC3 and a regulated agent would be two days for each (in total two person days of effort per validation) while the period

required for a known consignor validation would be one day, with one half day for an initial training/pre-validation session (in total 1.5 person days per validation).

4.82 Establishing the EU aviation security validation programme will involve a number of separate tasks. The specific tasks being undertaken by a Member State - such as recruiting, training and providing credentials to EU aviation security validators - will depend on a variety of factors, not least the approach to the training and approval of the individuals, and of the personnel who work for commercial certification and audit companies, that will be selected to provide EU aviation security validation services. The setup process will include:

- defining validation standards and understandings on the use of the checklists for ACC3, aviation security regulated agent, and known consignor EU aviation security validations, preparing training materials, instruction materials and user handbooks;
- providing instruction to the air cargo and audit professionals who will lead the training courses (i.e. train the trainers);
- using advertising and other communication channels to invite applications to become EU aviation security validators;
- reviewing applications and performing security checks on EU aviation security validator applicants;
- interviewing EU aviation security validation applicants and selecting those to be invited to training courses;
- scheduling training courses and examining participants at the end of the course;
- examining and credentialing of successful EU aviation security validators; and
- undertaking field training/supervision of newly credentialed EU aviation security validators.

4.83 Following supervised field training the EU aviation security validators will be able to perform unsupervised EU aviation security validations.

4.84 We proposed that during the setup period, the opportunity could be taken at the level of the Commission[31] to make contact with third country governments using aviation and diplomatic channels to ensure the smooth undertaking of the proposed third country audits, and to arrange, if possible, for the participation of representatives of the third country appropriate authorities.

4.85 The initial programme setup timeframe depends on a number of variables. These include:

- the time required for defining validation standards and checklists for various audits, preparing training courses, vetting applications, performing security checks and conducting interviews;
- the existing knowledge base of applicants, the length of each training course, the number of trainees per course and the number of available trainers;
- the attrition rates at each stage (vetting, interviewing, training and credentialing), combined with the target number of credentialed EU aviation security validators, determining the total number of applicants required; and
- the possible overlap of various stages in the setup process.

4.86 The number of EU aviation security validators required to perform the validation of 3,923 ACC3s, 4,600 regulated agents and 1,800 known consignors (total 10,323) is also a function of the period available to perform validations. In addition, it will be necessary to allow for additional EU aviation security validators to enrol in the training courses as inevitably there will be a small percentage that will not complete the training and/or fail during an examination phase.

4.87 In our model for achieving the above we assumed a programme start date for the set-up process of June 1 2012, and a period of seven to eight months (ending in January 2013), to select, train and accredit EU aviation security validators.

4.88 In this version of our model the time period for establishing the EU aviation security validation scheme and completing an initial set of EU aviation security validations was based on the requirement that all third country ACC3, regulated agent and known consignor validations be completed by June 2014. This implied a period of 17 months to complete the required number of validations. To achieve this goal our

[31] During August 2012, two groups of industry and appropriate authority evaluated the ACC3 validation checklist in Dubai and Kenya. Based on the findings from these 'trials' a number of changes were introduced into the ACC3 validation checklist in Attachment 6-C3 of the New ACC3 Regulation.

model indicated that a team of 370 certified EU aviation security validators to perform all projected 10,323 validations (based on training of 401 candidates, some of whom would not complete or fail the training course).

4.89 In our model we attempted to take into account the majority of the costs associated with soliciting applications from EU aviation security validators, an initial process of selection which will include a background check, a period of training followed by a training evaluation, credentialing and an initial period of supervision during on-site validations.

4.90 We did not include in our set-up costs the investment required to prepare reference and training materials and guidelines and the costs of instructing the persons who will be delivering the training courses. These courses will be provided by accredited training organisations, operating on a fee basis, and as such we believe that the fee structure for training courses will include the recovery of this initial investment.

4.91 We based our model on a training fee per candidate of 300 Euros per training/person day, which we found to be a current industry standard.

4.92 We reviewed the skill sets required for EU aviation security validators (participating in ACC3 and/or regulated agent validations) and provided in our model a training period for regulated agent EU aviation security validators with either AVSEC or audit expertise will require five days. This will also apply to ACC3 EU aviation security validators who are experienced in performing security validations. Less skilled regulated agent and ACC3 EU aviation security validators will require a full two week training course, and these trainees will be supervised during their conduct of one (initial) on-site validation. Known consignor EU aviation security validators will undertake one week of (local) training which will include two days of on-site validation practice. Thereafter, they will not be required to participate in supervised validations.

4.93 Table 3 provides an explanation of the data values we used to calculate the costs of recruitment, training and approval of EU aviation security validates, assuming that trainees with differing skill levels will require to be introduced to the requirements for EU aviation security validations.

Table 3 - Costs for recruitment and training of applicants with differing skill levels

Cost Element	ACC3 validator requiring full training course	ACC3 validator requiring partial training course	Regulated agent validator requiring full training course	Regulated agent validator requiring partial training course	Known consignor	Comments
Applicant acquisition	100 €	100 €	100 €	100 €	100 €	Advertising, etc
Background Checks	150 €	150 €	150 €	150 €	150 €	Required for all personnel
Interviewing	150 €	150 €	150 €	150 €	50 €	Is candidate suitable, determine skill level
Training Course days	10	5	10	5	5	
Training fee per day	300 €	300 €	300 €	300 €	300 €	
Training course cost	3,000 €	1,500 €	3,000 €	1,500 €	1,500 €	
Travel	700 €	700 €	700 €	700 €	300 €	Average for travel in EU or third country
Per diem days payment	12	5	12	5	5	
Per diem rate including hotels	200 €	200 €	200 €	200 €	100 €	
Total per Diem costs	2,400 €	1,000 €	2,400 €	1,000 €	500 €	
Examination	120 €	120 €	120 €	120 €	120 €	After training
Total per trainee	**6,620** €	**3,720** €	**6,620** €	**3,720** €	**2,720** €	

4.94 Our initial model was based on performing 10,323 validations (3,923 ACC3s and 4,600 regulated agents at two person days per validation) and 1,800 known consignors (at 1.5 person days). We further estimated that during the launch of the scheme 20% of the ACC3s and 10% of the regulated agents would fail their initial validations and require to be re-validated (one person-day). We added an estimation of the travel time for EU aviation security validators to travel from their home locations to third county airports (ACC3 and regulated agent EU aviation security validations). We estimated that in order to launch the scheme we would

require 38,078 person days of effort. A similar number of person days would be required for each five year validation cycle, but delivered over a longer period.

4.95 We further assumed that the average EU aviation security validator would devote slightly more than 45% of his or her available work days (after statutory holidays and vacations) to performing third country EU aviation security validations, based on information we obtained regarding the profile of the air cargo security auditors that have been recruited in the past by IATA and TAPA.

4.96 Using the above values with respect to EU aviation security validator candidates, we estimated that it would be necessary to train 401 persons to establish a pool of 370 approved EU aviation security validators that could deliver these required person days of effort. The distribution of 10,323 EU aviation security validations across the three categories of ACC3, regulated agent and known consignor were 43%, 47% and 10%, respectively.

4.97 We further assumed that 25% of the candidates to be trained as ACC3 and/or regulated agent EU aviation security would have experience in performing aviation security validations (with either aviation security and/or audit expertise) and would require reduced training (5 days), while 75% of the candidates would be less skilled and require a full training course of 10 days' duration.

4.98 Finally, we took into account the parameter that only one EU aviation security validator would participate in each EU aviation security validation. This limitation would require that all trainee ACC3 and regulated agent EU aviation security validators would require to be supervised by a more skilled EU aviation security validators during the performance of an initial third country validation. This stipulation resulted in the generation of additional training costs (associated with travel and per diem expenses).

4.99 Based on the above numbers, and on the requirement to complete all validations by 30 June 2014, selecting and training 401 candidates (resulting in 370 certified EU aviation security validators) would incur set-up costs of 2,774,293 Euros, of which 2,224,863 Euros would relate to training and associated expenses and 549,430 Euros would be the costs associated with on-site supervision of initial on-site validations (Table 4).

Table 4 - Set up Costs - Selection and training of EU aviation security validators (February 2012)

Expense Category	Scheduled Training days	No of persons being trained	Costs of training including expenses	Training costs	Additional costs of initial supervised validations	Total Costs
ACC3 EU aviation security validators with limited expertise	10	128	6,620 €	849,935€	354,927 €	1,204,852 €
ACC3 EU aviation security validators with AVSEC and/or Audit expertise	5	43	3,720 €	159,200 €		159,200 €
Regulated agent EU aviation security validators with limited expertise	10	141	6,620 €	931,530 €	194,503 €	1,126,033 €
Regulated agent EU aviation security validators with AVSEC and/or Audit expertise	5	47	3,720 €	174,486 €		174,486 €
Known consignor EU aviation security validators	5	43	1,720 €	109,722 €		109,722 €
		401		2,224,863 €	549,430 €	2,774,293 €

4.100 Should the average fee per training day be higher so that the figure of 300 Euros per training/person day is increased, the impact on the overall costs of training is illustrated in Table 5.

Table 5 - Sensitivity of the set up costs to changes in the costs of training

Training cost per person day	EU aviation security validations to be completed by	EU aviation security validators	Training costs	Additional costs of initial supervised EU aviation security validations	Total Training Costs
300 Euros (base)	30 Jun 2014	356	2,224,863€	549,430 €	2,774,293 €
350 Euros	30 Jun 2014	356	2,392,513 €	549,430 €	2,941,942 €
400 Euros	30 Jun 2014	356	2,560,162 €	549,430 €	3,109,592 €

Cost of performing EU aviation security validations

4.101 As indicated above the model makes a number of assumptions which influence the length of the setup period, the number of EU aviation security validators, and the length of time required for performing the initial validations. The cost of performing individual validations, however, is only minimally, if at all, impacted by the number of available EU aviation security validators.

4.102 We have reviewed with the industry the on-site time period for validations. In the February 2012 cost model we assumed that ACC3 and regulated agent validations will require one EU aviation security validator and be completed in two days. We have taken a conservative view that 20% of the initial ACC3 validations will 'fail' the validation and require a second visit by the EU aviation security validator performing the initial validation. Similarly, we believe that 10% of the initial regulated agent validations will 'fail' the validation and will require a second visit by the EU aviation security validator performing the initial validation.

4.103 Taking into account the fee rates being charged for IATA Operational Safety Audits (IOSA) and Transported Asset Protection Association (TAPA) air cargo security audits, we have applied a professional fee rate of 1,000 Euros per EU aviation security validator day on site for ACC3 and regulated agent validations, but have increased this by 20% to cover the additional effort involved in the initial validation of each ACC3 and regulated agent, by raising the actual fee rate to 1,200 Euros per day. The professional fees therefore for the initial two day validation will be 2,400 Euros.

4.104 In the course of economic modelling we did not attempt to estimate travel and per diem costs associated with the performance of EU aviation security validations, as this cost would be a dependent on the arrangements reached between the entities

undergoing validation and the air carriers being validated, and would be dependent on many factors (distances involved, organisation of validation schedules, etc).

4.105 We have not included costs for the re-validation of known consignors that do not pass the initial validation, as we believe that this will be minimised by the proposed known consignor pre-validation initial training activity. Where a known consignor does fail a validation, we believe (based on TAPA procedures) that in most cases documentary evidence of proof of compliance could be provided electronically to the EU aviation security validator, when the failure has been rectified, without the need for a further visit to the known consignor site.

4.106 For known consignor validations, we have utilised a professional fee rate of 500 Euros per EU aviation security validator day on site, but have increased this by 20% to cover the additional effort involved in an initial validation of known consignors, raising the actual fee rate to 600 Euros per day. The professional fees therefore for the initial round of known consignor validations including a one half day pre-validation initial training and one day on-site validation will be 900 Euros. As for ACC3 and regulated agent validations no professional fees are paid for travel days.

4.107 We have assumed that the majority of the known consignor validations will be performed by EU aviation security validators who are local to the third countries where the known consignors are located.

4.108 Table 6 provides the costs of performing 10,323 validations using the above assumptions. These result in an overall cost to the industry in each five year cycle of 23,569,200 Euros.

Table 6 - Costs to industry of 10,323 EU aviation security validations (February 2012)

Category	Validator professional fee per person day	Total person days per successful validation	Inclusive costs per validation	No of validations	Total professional fees
ACC3 EU aviation security validations	1,200 €	2	2,400 €	3,138	7,531,200 €
ACC3 EU aviation security validations that fail and require re-validation	1,200 €	3	3,600 €	785	2,826,000 €
Regulated agent EU aviation security validations	1,200 €	2	2,400 €	4,140	9,936,000 €
Regulated agent EU aviation security validations that fail and require re-validation	1,200 €	3	3,600 €	460	1,656,000 €
Known consignor EU aviation security validations	600 €	1.5	900 €	1,800	1,620,000 €
Total				10,323	**23,569,200 €**

4.109 This model, however, is highly sensitive to the number of EU aviation security validators participating in each validation. Performing the proposed 10,323 validations with a team of two EU aviation security validators, would greatly increase the numbers EU aviation security validators that would require to be recruited and trained. It would also significantly increase the professional costs of performing these EU aviation security validations from 23,132,000 Euros to 43,227,400 Euros. Table 6 does not include any 'notional' figure relating to the cost of international and local travel to and from third country airports nor for a per diem rate for the EU aviation security validators working in third countries, as explained in paragraph 4.52 above.

4.110 We believe that much of the travel and per diem costs that will be incurred in performing EU aviation security validations will be absorbed by the air carriers who will contract with EU aviation security validators. In addition it is assumed that a considerable number of EU aviation security validations will be performed by teams of validators brought together by a group of ACC3s to validate their operations, and

those of the regulated agents working on their behalf at a specific third country airport. We believe that it would be difficult to provide a valid estimation of the actual travel costs relating to such coordinated validations.

Conclusions on Regulation (EU) No 859/2011

4.111 We have established that the cost to industry of the EU aviation security validation scheme will be considerable, both in terms of selecting and training EU aviation security validators and in performing validations. Our figures indicate that to support 10,323 EU aviation security validations prior to 30 June 2014 would incur a set-up cost of in excess of 2.77 million Euros and validation costs in the region of 23.5 million Euros.

4.112 Who will incur the vast bulk of the set up costs is of importance. Should the Member States base the third country EU aviation security validation scheme on the certification of individuals to operate as EU aviation security validators, it could be expected that the bulk of these costs would be incurred by a potentially small number of Member States that would certify EU aviation security validators.

4.113 Should, however, the majority of EU aviation security validators be employed by commercial firms that intend to provide services to the ACC3s requiring validation, it could be assumed that these organisations would consider the training and set up costs as the investment necessary to enter the 'market' for EU aviation security validations.

(ii) Effect of extending the period for implementation and grouping of validations

4.114 In a second version of our model we evaluated the impact of extending the time period for establishing the EU aviation security validation scheme by a further 18 months and utilised this additional period to perform EU aviation security validations of regulated agents and known consignors (until 30 December 2015) i.e. providing a period of 37 months to complete initial regulated agent and known and account consignor EU aviation security validations.

4.115 An initial benefit from this approach (and specifically extending the period for regulated agent and known consignor EU aviation security validations until December 2015) would be to reduce the estimated total number of approved EU aviation security validators required to operate the scheme from 370 to 173 (and the number of EU aviation security validator candidates to be interviewed from 717 to 336).

4.116 Table 7 below provides a summary of the impact (benefit) of this approach.

Table 7 - Impact of increasing the time period in which to complete 10,323 validations

Total number of projected EU aviation security validations	Date for completion of all initial EU aviation security validations	Total number of EU aviation security validator candidates in selection process	Total number of EU aviation security validators who enter training	Total number of EU aviation security validators who complete certification
10,323	June 2014	711	401	370
10,323	Dec 2015	336	188	173

4.117 The additional benefit of this change would be that only 188 candidates would enter into training courses (as opposed to the figure of 401 in table 7 above) and the total set-up costs would be 1,299,325 Euros (1,042,025 Euros training related and 257,328 Euros for supervision of initial validations) as against the total of 2,724,293 Euros to establish the programme with 401 approved validators (2,224,863 Euros training related and 549,430 Euros for supervision of initial validations).

4.118 The above reduction in the resources required to launch the programme is significant not only in terms of the reduction in cost and administrative overhead, but also in that it could reduce the danger of recruiting and training larger numbers of EU aviation security validators to establish the programme than will actually be required to operate the programme in successive 5 year cycles.

4.119 We further analysed the initial ACC3 data set to investigate if there was a correlation between the numbers of ACC3s operating at third country airport locations and the number of different Member States that had designated the ACC3s at these airports.

4.120 In reviewing the distribution of ACC3s across airport locations we found the data in Table 8.

Table 8 - Distribution of ACC3s across airport locations (February 2012)

No of ACC3s per airport	Number of Airports	Aggregate number of ACC3s
1	361	361
2	127	254
3	65	195
4	42	168
5	22	110

No of ACC3s per airport	Number of Airports	Aggregate number of ACC3s
6	15	90
7	17	119
8+	145	2626
Total	**794**	**3923**

4.121 More than half of the third country airports have only one or two ACC3s. There are 145 airports with eight or more ACC3s, and 199 with five or more. These larger airports are where most of the ACC3s are located. About 75% of all ACC3s in the data set are located at airports with five or more ACC3s. This would indicate that the savings from any grouping of validations could be significant.

4.122 The distribution of airports with eight or more ACC3s per airport is shown in Table 9.

Table 9 - Airports with eight or more ACC3s (February 2012)

No of ACC3s per airport	Number of Airports	Aggregate number of ACC3s
8-10	38	331
11-15	35	447
16-20	22	385
21-25	21	482
26-30	11	302
31-35	10	330
36-40	2	74
41-45	3	127
45+	3	148
Total	**145**	**2626**

4.123 The three airports with the highest recorded number of ACC3s were Cairo, Dubai and Istanbul with 51, 50 and 45 ACC3s, respectively.

4.124 We found that the airports with the highest numbers ACC3s also tend to have a significant number of Member States involved in ACC3 designation.

4.125 We found a similar trend when we extracted from the above numbers figures relating to high risk cargo.

4.126 To take advantage of this trend, we developed the concept of 'grouping' of validations, whereby a team of EU aviation security validators would spend one week visiting a third country airport where a number of ACC3s and regulated agents operate. We found that this approach would not only bring significant cost reductions (relating to travel and per diem costs) , but it would also 'fit' the operational model that exists in many third country airports where one handling agent (and in some cases a government authority) provides cargo screening support to the majority of ACC3s and regulated agents located at the airport.

4.127 A 'grouping' approach would also reduce the complexity for the Member States in reviewing the resulting validation reports. Furthermore the approach would enable the inclusion in the 'team' of either EU aviation security validators and/or Commission or Member State aviation security inspectors with in depth knowledge of a specific third country where political and/or operational concerns may exist, There is, however, one downside to this approach: the additional administrative and logistical coordination requirements between ACC3s and EU aviation security validators.

4.128 To evaluate the savings from the grouping of validations we compared the resources required to perform a given set of individual ACC3 and regulated agent EU aviation security validations with the resources that would be required with trips of approximately one week in which a small team of EU aviation security validators performed the same total number of EU aviation security validations on a group of ACC3s and regulated agents operating at one third country airport location.

4.129 Taking a conservative view on the possibility of performing such group validations at airports with five or more ACC3s (which includes around 75% of all ACC3s), and assuming that at these third country airports grouped audits would be appropriate to 80% of the ACC3s at these locations, we estimate that it would be possible to realise significant savings.

(iii) Economic impact of the New ACC3 Regulation,

4.130 During reviews initiated by the Commission on the New ACC3 Regulation, a number of amendments were introduced that have impacted the resources and operational requirements necessary to establish the ACC3 framework.

Modifications to the New ACC3 Regulation

4.131 The New ACC3 Regulation will reduce the overall number of ACC3 EU aviation security validations that would be performed as these can now, under certain circumstances, and specifically where "*the appropriate authority has verified that the air carrier applies an internal security quality assurance programme that is equivalent to EU aviation security validation"* be performed *'at a representative number of airports with relevant cargo operations of an air carrier.'*[32]

4.132 Moreover, some additional flexibility has been introduced to the date by which an EU aviation security validation must take place *"where an EU aviation security validation could not take place for objective reasons beyond the responsibility of the air carrier."* [33]

4.133 Although the above changes will lower the total number of entities that require to be EU aviation security validated, we believe that the overall effect will have a positive impact on enhancing the security of air cargo carried from third countries into the Union. Taking into account the internal security quality assurance programmes of the air carriers will permit a more focussed utilisation of EU aviation security validation resources.

4.134 In Table 10 we have listed the relevant changes to the New ACC3 Regulation, the benefits that will accrue to the EU air cargo industry from these changes, and adjustments that we have made to the economic model.

[32] Commission Implementing Regulation amending Commission Regulation (EU) No 185/2010 of 4 March 2010 in respect of EU aviation security validation – **EU aviation security validation for ACC3** – 6.8.2.2- 2

[33] Commission Implementing Regulation amending Commission Regulation (EU) No 185/2010 of 4 March 2010 in respect of EU aviation security validation – **EU aviation security validation for ACC3** – 6.8.2.3

Table 10 - Impact of current Legislative proposals on the Economic Model

Section (Title)	New ACC3 Regulation	Change from Regulation (EU) No 859/2011	Impact on the Economic Model
EU Aviation Security validation for ACC3 6.8.2.2 – 2 and 6.8.2.2 – 2 (c)	The representative number of airports with relevant cargo operations to enable ACC3 designation to be granted for all airports with relevant cargo operations of the air carrier will be at least 3 or 5% whichever is the higher, and at all airports situated in Attachment 6-I countries.	Regulation (EU) No 859/2011 required that all third country ACC3, regulated agent and known consignor locations would require to be EU aviation security validated.	Development of a model that identifies the number of air carriers with more than 4 (non 6 –I) ACC3 locations and takes into account 'at least 3 or 5%' to estimate the total number of EU aviation security validations that will be required over a 5 year period. [This could range from 25% - 50% of air carriers with large numbers of ACC3 locations to 100% of air carriers with small numbers of ACC3 locations]
EU Aviation Security validation for ACC3 6.8.2.2 – 2 (b) 6.8.2.2 – 2 (d)	Where the appropriate authority has verified that the air carrier applies an internal security quality assurance programme; and, the appropriate authority has agreed to a roadmap that ensures EU aviation security validations for every year of the designation at additional airports for which ACC3 designation will be granted or until all airports have been validated, and those validations shall each year be at least equal to those required in (c).	Acceptance of the internal security quality assurance programme and roadmap was added during the legislative drafting process. This will particularly benefit major EU air carriers and appropriate authorities and will enhance the security goals of the New ACC3 Regulation. EU air carriers will be able over time (based on experience from undertaking EU aviations security validations) utilise and enhance their existing internal security quality assurance procedures. Appropriate authorities will not be faced with handling 100% of all validations at one time in each five year cycle; will be able to focus on a more regular flow of validations each year; and, take actions to address on-going validation report findings and emerging threats on a real time basis. It could however be considered that this provision could increase the overall burden on appropriate authorities relating to the launch of the New ACC3 Regulation.	Estimation of the number of air carriers that operate internal security quality assurance programmes and reach agreement to a roadmap for annual validations with the relevant appropriate authority that designated the air carrier as ACC3. [The economic model must address 6.8.2.2 - 2 (f) – doubling the number of EU aviation security validations for the remaining years of ACC3 designation in the event of non-compliance].

Section (Title)	New ACC3 Regulation	Change from Regulation (EU) No 859/2011	Impact on the Economic Model
		The appropriate authority will now require to review the internal security quality assurance programme of each air carrier requesting to be EU aviation security validated at a representative number of airports and agree to a roadmap that ensures EU aviation security validations for every year of the designation at additional airports for each ACC3.	
Designation extension without EU aviation security validation until June 30, 2016 6.8.2.3	The appropriate authority can designate an air carrier as ACC3 for a limited period, ending on 30 June 2016 at the latest, where an EU aviation security validation could not take place for objective reasons beyond the responsibility of the air carrier. Where such a designation is granted for a period of more than 3 months the appropriate authority shall have verified that the air carrier applies an internal security quality assurance programme that is equivalent to EU aviation security validation.	This new provision addresses possible enhanced lead times in launching the processes and procedures to introduce the New ACC3 Regulation to third country aviation security authorities and providing training to third country air cargo industry stakeholders; and, potential delays in recruiting and training of EU aviation security validators.	Adjustment to the initial time period required to recruit EU aviation security validators and perform initial EU aviation security validations.
Validation of regulated agents and known consignors 6.8.4.1	EU security validated regulated agent or known consignors shall be validated either by : (a) being included in the security programme of the ACC3 to which it directly delivers cargo or mail for carriage into the union and the EU aviation security validation of the ACC3 shall validate the security controls applied by those entities; or (b) submitting its relevant cargo handling activities to an EU aviation security validation at intervals not exceeding 5 years.	Where adequate descriptions of the security controls applied by regulated agents and known consignors delivering air cargo to ACC3 locations are detailed in the security programmes of air carriers with ACC3 locations, this provision requires the ACC3 to include in its 'roadmap' with respect to the representative number of airports with relevant cargo operations (Annex point 8.2.2.2 – 2 (d) However, in all events, these validations remain in force only in relation to the time frame of all ACC3 designations as defined in section 6.8.2.2 – 2 (e).	Where a number of regulated agents work with a significant number of ACC3s at a specific third country airport, it will be of considerable benefit to regulated agents to consider the overall benefit of obtaining their own EU aviation security validation. This will result in the performance of one EU aviation security validation for the regulated agent, as opposed to a number of such separate visits by an EU aviation security validator who is validating an ACC3 that has included the regulated agent in its security programme. In addition, ACC3s will wish to encourage regulated agents

Section (Title)	New ACC3 Regulation	Change from Regulation (EU) No 859/2011	Impact on the Economic Model
			to be EU aviation security validated in order to remove the danger of ACC3s having to increase the % of representative airports being included in their 'road maps' to cover all airports where they utilise regulated agents. The impact for known consignors will be less apparent as 1) only known consignors delivering cargo directly to ACC3s are required to be EU aviation security validated and 2) in most third countries each known consignor will only deal with one ACC3.

4.135 Taking the above changes into account, we re-estimated the projected number of EU aviation security validations, and the costs of performing these validations. We summarised our findings relating to the economic impact associated with the New ACC3 Regulation and compared these to the findings from the model developed to estimate the impact of Regulation (EU) No 859/2011.

ACC3s, Regulated Agents, and Known Consignors at Third Country Airports

4.136 In July 2012 we were provided with a revised data set of airlines designated as ACC3s by EU Member States. This new file no longer included the executive charter company with 1,690 entries, mentioned in paragraph 4.61. This revised data set contained 5,209 entries.

4.137 In this new data set we still found around 500 records relating to Air Carrier airport locations in exempt third countries. Removing these invalid entries left us with a total of 4,709 valid records.

4.138 It continued to include a number of EU and third country airlines (totalling around 1,450 entries) that had been designated by two appropriate authorities (discussed in paragraphs 4.65 and 4.66 above). As stated previously, we included EU aviation security validations for these ACC3s in our projections. As a result of the changes introduced into the New ACC3 Regulation, we at this time feel more certain that a significant number of these ACC3 designations will in fact be EU aviation security validated.

4.139 The provision in the New ACC3 Regulation where '*the appropriate authority has verified that the air carrier applies an internal security quality assurance programme; and, the appropriate authority has agreed to a roadmap that ensures EU aviation security validations for every year of the designation at additional airports for which ACC3 designation will be granted...*'[34] would indicate that the these air carriers might work to retain a majority of their third country locations on the ACC3 list, especially if only a representative number of their ACC3 locations would be subjected to EU aviation security validations in each five year cycle.

4.140 However, the above assumption is based on the 'representative number of airports with relevant cargo operations' being based on or around 'at least 5%'.[35] It should be noted that appropriate authorities requested from the Commission the ability to require more than 5% per year as a 'representative number'. One of the reasons for this Member State request is we believe to provide sufficient flexibility to address the case of these air carriers, even where they are eligible for this 'dispensation' by virtue of operating internal quality assurance programmes that are equivalent to EU aviation security validation.

4.141 Table 11 below provides the current number of 4,709 ACC3s designated by EU Member States, and compares this with the breakdown of the 2,923 records extracted from the ACC3 list of February 2012.

[34] Commission Implementing Regulation amending Commission Regulation (EU) No 185/2010 of 4 March 2010 in respect of EU aviation security validation – **EU aviation security validation for ACC3** – 6.8.2.2

[35] Annex point 6.8.2.2 – 2 (c)

Table 11 - ACC3s designated by EU Member States (February & July 2012)

Member State	Identifier	Designated ACC3s (February 2012)	Designated ACC3s (July 2012)	Member State	Identifier	Designated ACC3s (February 2012)	Designated ACC3s (July 2012)
Austria	AT	48	48	Italy	IT	231	391
Belgium	BE	130	133	Liechtenstein	Li	0	0
Bulgaria	BG	4	8	Lithuania	LT	1	1
Switzerland	CH	29	31	Luxembourg	LU	23	23
Cyprus	CY	5	6	Latvia	LV	11	11
Czech Republic	CZ	24	24	Malta	MT	3	3
Denmark	DE	3	2	Netherlands	NL	165	211
Germany	DK	1927	1974	Norway	NO	0	0
Estonia	EE	5	25	Poland	PL	35	35
Spain	ES	114	142	Portugal	PT	32	35
Finland	FI	27	22	Rumania	RO	9	10
France	FR	129	270	Sweden	SE	24	24
Greece	GR	6	8	Slovenia	Si	0	9
Hungary	HU	16	16	Slovakia	SK	0	0
Ireland	IE	0	0	United kingdom	UK	910	1228
Iceland	IS	17	19	**Total**		2923	**4709**

4.142 The above figures indicate that the number of designated ACC3 third country airport locations has increased since February 2012 in the major EU Member States (France, Italy, Spain, the Netherlands and the UK). Germany continues to be responsible for the largest number of air carriers with designated ACC3 locations (42%), with the United Kingdom responsible for second largest number (26%).

4.143 In reviewing the distribution of ACC3s across airport locations, we found the data presented in Table 12. This indicated that an additional 18 third country airports had been added to the total of airports where ACC3s are located.

Table 12 - Distribution of ACC3s across airport locations (July 2012)

No of ACC3s per airport	Number of Airports	Aggregate number of ACC3s (July 2012)
1	324	324
2	139	278
3	59	177
4	47	188
5	25	125
6	26	156
7	14	98
8+	178	3363
Total	812	4709

4.144 Once again the largest volume of ACC3s (71%) were located in airports with 8 or more ACC3s and the airports with the highest recorded number of ACC3s (over 50 each) remained in Cairo, Dubai, Istanbul with the addition of Moscow (Domodedovo).

4.145 Table 13 provides a list of the third country airports with the highest volumes of designated ACC3s and lists the number of EU Member States that have designated these ACC3s.

Table 13 - Third Country Airports with highest numbers of designated ACC3s (July 2012)

State	Airport Name	IATA Code	No of designated ACC3s	No of involved EU Member States
Bahrain	Bahrain	BAH	35	7
Egypt	Cairo	CAI	59	14
Ghana	Accra	ACC	33	8
India	Bangalore	BLR	25	6
	Chennai	MAA	32	5
	Delhi	DEL	49	12
	Mumbai	BOM	41	10
Kenya	Nairobi	NBO	46	10
Lebanon	Beirut	BEY	36	13
Nigeria	Lagos	LOS	37	10
Russia	Moscow (Domodedovo)	DME	50	13
	Moscow (Sheremetyevo)	SVO	40	19
	St. Petersburg	LED	40	16
Saudi Arabia	Jeddah	JED	33	8
	Riyadh	RUH	33	7
Senegal	Dakar	DKR	39	10
Serbia	Belgrade	BEG	33	11
South Africa	Johannesburg	JNB	38	10
Tunisia	Tunis	TUN	39	8
Turkey	Antalya	AYT	35	11
	Istanbul	IST	50	20
UAE	Abu Dhabi	AUH	41	7
	Dubai	DXB	57	14
	Sharjah	SHJ	31	7
Ukraine	Kiev	KBP	37	14

4.146 Table 14 identifies the airports with more than 40 designated ACC3s sorted by the number of designated ACC3s identified at each location. It displays the correlation

between the total number of designated ACC3s and the numbers of EU Member States that will be involved in the validation process at each airport.

Table 14 - Third Country Airports with in excess of 40 designated ACC3s (July 2012)

State	Airport Name	IATA Code	No of designated ACC3s	No of involved EU Member States
Egypt	Cairo	CAI	59	14
UAE	Dubai	DXB	57	14
Turkey	Istanbul	IST	50	20
Russia	Moscow (Domodedovo)	DME	50	13
India	Delhi	DEL	49	12
Kenya	Nairobi	NBO	46	10
India	Mumbai	BOM	41	10
UAE	Abu Dhabi	AUH	41	7
Russia	Moscow (Sheremetyevo)	SVO	40	19
Russia	St. Petersburg	LED	40	16

4.147 To project the actual number of ACC3s that would participate in on-site aviation security validations as required by the New ACC3 Regulation, we created Tables 15 and 16. Table 15 indicates the distribution of the count of ACC3 locations (by EU Member State) in terms of the number of ACC3 locations designated by the air carriers in each Member State. Table 16 utilises the same information but displays this as the actual number of ACC3 airport sites in each category.

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Table 15 - Count of airport locations designated by ACC3s in Member States (July 2012)

Member State	Identifier	Total air carriers in MS with ACC3 designations	Air Carriers with 1 - 3 locations	Air Carriers with 4-10 locations	Air Carriers with 11 – 20 locations	Air Carriers with 21 - 40 locations	Air Carriers with 41 – 60 locations	Air Carriers with over 60 locations
Austria	AT	3	1	1		1		-
Belgium	BE	10		4	3	3		
Bulgaria	BG	5	5					
Switzerland	CH	5	4			1		
Cyprus	CY	2	1	1				
Czech Republic	CZ	3	2			1		
Denmark	DE	1	1					
Germany	DK	47	13	11	4	4	5	10
Estonia	EE	3	1	1	1			
Spain	ES	24	12	6	4	2		
Finland	FI	4	1	3				
France	FR	42	25	12	3		1	1
Greece	GR	4	3	1				
Hungary	HU	2	1		1			
Iceland	IS	4	3		1			
Italy	IT	12	3	4	3			2
Lithuania	LT	1	1					
Luxembourg	LU	3	1	1	1			
Latvia	LV	2	1	1				
Malta	MT	1	1					
Netherlands	NL	10	3	3		1	2	1
Poland	PL	4	1	1	2			
Portugal	PT	7	3	4				
Rumania	RO	2	1	1				
Sweden	SE	5	2	3				
Slovenia	Si	1		1				
United kingdom	UK	44	16	9	6	7	2	4
Total		**251**	**106**	**68**	**29**	**20**	**10**	**18**

Table 16 - Number of airport sites designated by ACC3s in Member States (July 2012)

Member State	Identifier	Total ACC3 locations for MS	Sites of ACs having 1 - 3 locations	Sites of ACs having 4-10 locations	Sites of ACs having 11 – 20 locations	Sites of ACs having 21 - 40 locations	Sites of ACs having 41 – 60 locations	Sites of ACs having over 60 locations
Austria	AT	48	3	5		40		
Belgium	BE	133		20	45	68		
Bulgaria	BG	8	8					
Switzerland	CH	31	8			23		
Cyprus	CY	6	2	4				
Czech Republic	CZ	24	3			21		
Denmark	DE	2	2					
Germany	DK	1974	22	70	67	164	191	1460
Estonia	EE	25	1	4	20			
Spain	ES	142	21	27	46	48		
Finland	FI	22	2	20				
France	FR	270	47	74	33		44	72
Greece	GR	8	4	4				
Hungary	HU	16	1		15			
Iceland	IS	19	9		10			
Italy	IT	391	6	24	49			312
Lithuania	LT	1	1					
Luxembourg	LU	23	1	4	18			
Latvia	LV	11	1	10				
Malta	MT	3	3					
Netherlands	NL	211	4	15		36	87	69
Poland	PL	35	1	4	30			
Portugal	PT	35	6	29				
Rumania	RO	10	3	7				
Sweden	SE	24	3	21				
Slovenia	Si	9		9				
United kingdom	UK	1228	30	56	91	212	98	741
Total		**4709**	**192**	**417**	**414**	**612**	**420**	**2654**

4.148 Taking the above into account we assumed that air carriers with less than 20 ACC3 locations will require to have all locations validated; air carriers with between 21 – 60 locations will be validated at an average of 5% per year (or 25% over five years). We have, however, added an additional factor (of 1% per year) to take into account a) certain Member States may decide to increase this percentage; and b) some air carriers may be required to double the agreed annual number of 'road map' validations during certain years due to deficiencies. For air carriers with more than 60 locations, (including the two European charter airlines and two non-European all cargo airlines with between them a total of 1,450 ACC3 locations mentioned in paragraph 4.138), we have assumed that the appropriate authorities will be less generous in accepting a road map that will include only 5% of ACC3 locations per year. For air carriers with this level of ACC3 locations we have assumed an annual validation rate of 10% (i.e. 50% over five years).

Table 17 - Projected third country ACC3 EU aviation security validations (July 2012)

Air Carrier level of ACC3 locations	Total Number of ACC3 third country airport sites at this level	% of the total that will be EU aviation security validated	ACC3s to be EU aviation security validated over 5 year cycle
1-3 locations	192	100%	192
4-10 locations	417	100%	417
11-20 locations	414	100%	414
21 – 40 locations	612	30%	184
41 – 60 locations	420	30%	126
Over 60 locations	2,654	50%	1,327
Total	4,709		2,660

4.149 We created Table 17 above to summarise the above assumptions and to establish projected numbers of ACC3s locations that will undergo EU aviation security validation at third country airports.

4.150 We therefore estimate the total number of ACC3 EU aviation security validations in each five year cycle to be 2,660. This estimation includes the airports in third countries where all designated ACC3s will require to be EU aviation security validated.

4.151 Although the New ACC3 Regulation enables ACC3s to request EU aviation security validation at a representative number of airports with relevant cargo operations, no similar 'dispensation' has been provided for regulated agents or known consignors. Where ACC3s wish to rely on the security controls applied by regulated agents and known consignors in third counties, all such entities must be EU aviation security validated.

4.152 Notwithstanding this, we reached the conclusion that not all of the total number of 4,600 regulated agents that we projected in our initial February 2012 economic model will in fact require to be validated. Where a regulated agent that has not been EU aviation security validated delivers air cargo to an ACC3 for shipment to the EU, the ACC3 still has the option to (and should) screen this cargo, on its own account. In addition, at a considerable number of third country airports, the handling and screening of air cargo is performed by a small number of cargo handling agents (or specialised regulated agents) who provide such services for all ACC3s and regulated agents at this third country airport. We have therefore estimated that the total number of regulated agents that will be validated in each five year validation cycle will be in the region of 2,000.

4.153 Furthermore we significantly revised the number of 1,800 known consignors included in the February 2012 economic model. This was following discussions with industry stakeholders, and after further reviewing the limited numbers of EU known consignors that have been validated in EU Member States as discussed in Annex II, Section 3. We now estimate that the total number of known consignors will be 400.

4.154 The above revisions enabled us to estimate that the total number of entities to be EU aviation security validated in each five year cycle has been reduced from a total of **10,323** under the requirements of Regulation (EU) No 859/2011 (3,923 ACC3s, 4,600 regulated agents and 1,800 known consignors) to **5,060** under the provisions of the new ACC3 Regulation (2,660 ACC3s, 2,000 regulated agents and 400 known consignors).

Estimating the number of EU aviation security validators and the costs of recruitment and training

4.155 The New ACC3 Regulation maintained 1 July 2014 as the date by which ACC3s would have to submit EU aviation security validation reports confirming the implementation of security measures.

4.156 However the concession that permits the validation of ACC3s at a 'representative number' of third country airports will impact the number of EU aviation security validators required to launch and maintain the programme:

4.157 As discussed above (Paragraphs 4.77 through 4.85) the number of EU aviation security validators required to perform EU aviation security validations is a function of the period available to perform validations and the numbers trainees that will not complete the training and/or fail during an examination phase.

4.158 In our revised model for the launch of this programme we have moved the start date for the set-up process back from 1 June 2012 (model of February 2012) to 1 October 2012, and provided a period of six months (ending in March 2013), to select, train and accredit an initial team of EU aviation security validators.

4.159 The time period for establishing the EU aviation security validation scheme is based on the completion of the initial set of EU aviation security validations by the end of June 2014. This provides a period of 15 months, commencing in April 2013, to complete this initial effort.

4.160 Based on the changes described above, we have created in Table 18 estimates of the number of on-site ACC3 EU aviation security validations that will required to be completed (a) prior to June 30, 2014, and (b) during the full five year validation cycle.

Table 18 - ACC3 on-site EU aviation security validations during initial five year cycle (July 2012)

Air Carrier level of ACC3 locations	Total number of air carriers indicating this level of ACC3 locations	Total Number of ACC3 locations at this level	% of the total that will be EU aviation security validated	ACC3s to be EU aviation security validated over 5 year cycle	Volume of these ACC3s to be EU aviation security validated during programme launch (by June 30 2014)	Number of ACC3s to be EU aviation security validated during programme launch (by June 30 2014)
1-3 locations	106	192	100%	192	100%	192
4-10 locations	70	417	100%	417	3 * 70	210
11-20 locations	20	414	100%	414	3 * 20	60
21 – 40 locations	21	612	30%	184	6% of 612	37
41 – 60 locations	11	420	30%	126	6% of 420	25
Over 60 locations	19	2,654	50%	1,327	10% of 2,654	265
Total	256	4,709		**2,660**		**789**

4.161 Table 18 indicates a figure of 789 ACC3 validations that will require to be completed prior to June 30 2104. This estimate must be adjusted to take into account the delay of ACC3 validations for objective reasons beyond the responsibility of air carriers. We have estimated that such objective reasons could relate to a lack of a sufficient number of approved EU aviation security validators to perform validations and/or where aviation security controls are being applied by the government authority responsible for aviation security, and the validation process could require the support of one or more appropriate authority inspectors We do not believe that this will impact more than 12 - 15% of all third countries, and therefore have reduced the estimated number of ACC3s locations to be EU aviation security validated by June 30 2014 from the number of 789 in table 18 to a net figure of 700.

4.162 In order to estimate the number of regulated agent and known consignor locations that will be validated during the launch of the programme (i.e. by June 30 2014) we have applied to the total of estimate of 2,000 regulated agents and 400 known consignors a similar percentage as is exhibited in the ratio of total ACC3s (2,660) to ACC3s to be validated during the launch period (700), i.e. 26%.

4.163 Applying this factor of 26% to the projected totals of 2,000 regulated agents and 400 known consignors, we estimate that 520 regulated agents and 104 known consignors will require to be EU aviation security validated prior to June 30, 2012.

4.164 In summary, we project in Table 19 the total numbers of EU aviation security validations will be required in the programme.

Table 19 - Projected number of EU aviation security validations (July 2012)

Category of validation	Total number of EU aviation security validations to be completed by 30 June 2014 (launch period)	Total number of EU aviation security validations to be completed in each 5 year validation cycle
ACC3s	700	2,660
Regulated agents	520	2,000
Known consignors	104	400
Total	**1,324**	**5,060**

4.165 During an on-site simulation of an EU aviation security validation performed in Nairobi and in Dubai in August of 2012 it was proposed that at least two EU aviation security validators should participate in any on-site third country ACC3 and or regulated agent EU aviation security validation. It was further proposed that one day is spent on preparation for the on-site validation and therefore the total workload would involve three man-days of effort. The period required for a known consignor EU aviation security validation remains as one day, with one half day for an initial training/pre-validation session (in total 1.5 man days per validation).

4.166 To achieve this goal, our revised model indicates that a team of 166 EU aviation security validators (180 entering training) to perform a total of 5,060 validations during the initial five year validation cycle, but that only 50% of this number would require to complete recruitment and training during the initial launch period (by 30 June 2014).

4.167 In our revised model of the recruitment and training we once again included the majority of the costs associated with soliciting applications from EU aviation security validators, an initial process of selection which will include a background check, a period of training followed by a training evaluation, credentialing and an initial period of supervision during on-site validations.

4.168 We continue to exclude from our set-up costs any investments required to prepare reference and training materials and guidelines and the costs of instructing the persons who will be delivering the training courses.

4.169 We based our model on a training fee per candidate of 300 Euros per training/person day, which we found to be a current 'industry standard'.

4.170 We maintained in the revised model a training period for regulated agent EU aviation security validators with either AVSEC or audit expertise of five days. This will also apply to ACC3 EU aviation security validators who are experienced in performing security validations. Less skilled regulated agent and ACC3 EU aviation security validators will require a full two week training course, the difference being that regulated agent EU aviation security validators will be supervised over one on-site validation and less skilled ACC3s will be supervised over two on-site validations. Known consignor EU aviation security validators will undertake one week of (local) training which will include two days of on-site validation practice.

4.171 We made conservative assumptions as to the costs of travel and hotel accommodation for EU aviation security validators attending training courses, based on average air fare and hotel costs for European travel.

4.172 We further updated our model and assumed that the percentage of work time that EU aviation security validators would devote to supporting the New ACC3 Regulation would be in the region of 30%, (down from 45% in the February 2012 model) which would appear to be valid both for private individuals (based on data from similar aviation audit programmes) and for commercial entities where the professional staff would also be involved in other validation activities.

4.173 Based on the above numbers, and on the requirement to complete initial EU aviation security validations by 30 June 2014, and all EU aviation security validations within a five year cycle, our model requires us to interview 322 EU aviation security validator candidates, to train 180 potential validators and to certify 166 (after completing training and passing an exam/on-site validation) EU aviation security validators. This activity would incur set-up costs of 1,039,360 Euros related to training and associated expenses.

4.174 However in the revised model, utilising two EU aviation security validators for each validation we would no longer require to incur additional costs related to supervision of initial on-site validations, as teams comprising one experienced and one newly qualified validator could be utilised.

Table 20 - Set up Costs - Selection and training of EU aviation security validators (July 2012)

Expense Category	Scheduled Training days	No of persons participating in training	Costs of training including expenses	Training costs	Initial supervised validation costs	Total Costs
ACC3 EU aviation security validators with limited expertise	10	76	6,620 €	502,839 €	0 €	502,839 €
ACC3 EU aviation security validators with AVSEC and/or audit expertise	5	25	3,720 €	94,187 €	0 €	94,187 €
Regulated agent EU aviation security validators with limited expertise	10	54	6,620 €	357,822 €	0 €	357,822 €
Regulated agent EU aviation security validators with AVSEC and/or audit expertise	5	18	3,720 €	67,024 €	0 €	67,024 €
Known consignor EU aviation security validators	5	7	1,670 €	17,378 €	0 €	17,378 €
Total		**180**		**1,039,360 €**	**0**	**1,039,360 €**

4.175 Table 20 provides an explanation of the cost of certifying 166 EU aviation security validators (180 being recruited and trained) of 1,039,360 Euros indicates significant savings over the sum of 2,599,651 Euros required to certify 328 EU aviation security validators required to support Regulation (EU) No 859/2011 (Table 5).

Revised cost of performing EU aviation security validations

4.176 In addressing the cost of performing a projected volume of 5,060 EU aviation security validations, we have revised our February 2012 estimate that ACC3 and regulated agent validations will require one EU aviation security validator. As discussed in paragraph 4.165 above we now estimate that each ACC3 and regulated agent EU aviation security validation will require three person days of effort to complete.

4.177 We have maintained our conservative view that 20% of the initial ACC3 EU aviation security validations will fail the validation and require a second visit by the EU

aviation security validator performing the initial validation. Similarly, we believe that 10% of the initial regulated agent validations will fail the validation and will require a second visit by the EU aviation security validator performing the initial validation.

4.178 We have retained the professional fee rates (based on the rates being charged for IATA Operational Safety Audits (IOSA) and Transported Asset Protection Association (TAPA) air cargo security audits) of 1,000 Euros per EU aviation security validator day on site for ACC3 and regulated agent validations, but have increased this by 20% to cover the additional effort involved in the initial validation of each ACC3 and regulated agent, by raising the actual fee rate to 1,200 Euros per day. The professional fees therefore for the initial three day validation will now be 3,600 Euros.

4.179 We have once again not included costs for the re-validation of known consignors that do not pass the initial validation, as we believe that this will be minimised by the proposed known consignor pre-validation initial training activity. Where a known consignor does fail an EU aviation security validation, we believe (based on TAPA procedures) that in most cases documentary evidence of proof of compliance could be provided electronically to the EU aviation security validator, when the failure has been rectified, without the need for a further visit to the known consignor site.

4.180 For known consignor validations, we have used a professional fee rate of 500 Euros per EU aviation security validator day on site, but have increased this by 20% to cover the additional effort involved in an initial validation of known and account consignors, raising the actual fee rate to 600 Euros per day. Therefore, the professional fees for the initial round of known consignor validations including a one half day pre-validation initial training and one day on-site validation will be 900 Euros. As for ACC3 and regulated agent EU aviation security validations, no professional fees are paid for travel days.

4.181 Table 21 provides the costs of performing 5,060 EU aviation security validations during a five year cycle using the above assumptions. These result in an overall cost to the industry of 18,014,400 Euros.

Table 21 - Cost to Industry of 5,060 EU aviation security validations (July 2012)

Category	No of EU aviation security validations	Inclusive costs per validation	Total Professional fees
ACC3 validations	2,128	4,204 €	7,660,800 €
ACC3 validations that fail and require re-validation	532	7,164 €	2,553,600 €
Regulated agent validations	1,800	4,204 €	6,480,000 €
Regulated agent validations that fail and require re-validation	200	7,164 €	960,000 €
Known consignor validations	400	1,415 €	360,000 €
Total	5,060		**18,014,400 €**

4.182 Notwithstanding the increase in the number of man-days of effort for EU aviation security validations for ACC3s and regulated agents, the above cost of 18,014,400 Euros for performing 5,069 EU aviation security validations indicates savings over the sum of 23,569,200 Euros required to perform 10,323 EU aviation security validations required to support Regulation (EU) No 859/2011.

4.183 Once again, Table 21 does not include any notional figure relating to the cost of international and local travel nor does it provide for a per diem rate for the EU aviation security validators working in third countries, as we believe that much of these costs may be absorbed by the air carriers who will contract with WU aviation security validators.

Conclusion on the New ACC3 Regulation

4.184 It is our opinion that the changes introduced into the New ACC3 Regulation have significantly lowered the overall cost of implementing the New ACC3 Regulation, without however, reducing the strength of the measures proposed to enhance the security of flights bringing cargo from third countries into the EU.

4.185 The model constructed to support the New ACC3 Regulation indicates costs of certifying 166 EU aviation security validators (180 being recruited and trained) of 1,039,360 Euros. This figure shows significant savings over the sum of 2,774,293

Euros required to certify 401 EU aviation security validators required to support the model of February 2012.

4.186 Moreover, the cost of 18,014,400 Euros for performing 5,069 EU aviation security validations every five years shows a very considerable reduction when compared against the sum of 23,569,200 Euros required to perform 9,400 EU aviation security validations required to support the model of February 2012.

4.187 Table 22 provides a visual comparison of the inputs and outputs of the economic models described above.

Table 22 - Comparison of Economic Models

Model Element	Sub-element	(i) February 2012 (Regulation (EU) No 859/2011) Model	(ii) July 2012 (new ACC3 Regulation) Model	Notes
Estimated volumes of EU aviation security validations in 5 year cycle (required by June 30, 2012)	ACC3	3,923 (3,923)	**2,660** (700)	Paragraph 4.94 and Table 19
	Regulated agent	4,600 (4,600)	**2,000** (520)	
	Known consignor	1,800 (1,800)	**400** (104)	
% of work time of EU aviation security validators dedicated to EU aviation security validations	-	45%	**30%**	Paragraph 4.173
Establishing a body of EU aviation security validators	Interviewees	711	**322**	Paragraphs 4.99 and 4.176
	Trained	401	**180**	
	Approved	370	**166**	
Cost of recruiting and training the EU aviation security validators (professional fees and travel)		2,774,293 €	**1,039,360 €**	Tables 4 and 20
Cost of one 5 year cycle of performing EU aviation security validations		23,569,200 €	**18,014,400 €**	Tables 6 and 21

4.188 We believe that the changes introduced in the New ACC3 Regulation both reduce the absolute numbers of third country on-site inspections that will be performed and in addition contribute positively towards the goal of enhanced third country air cargo security.

4.189 Appropriate authorities will not be faced with handling 100% of all validations during a very short time period at the start of each five year validation cycle. Instead, they will be able to focus attention on a more regular flow of validations throughout the cycle and they will be able to take actions to address on-going EU aviation security validation report findings and emerging threats on a real time basis.

4.190 The benefit of reducing the overall number of EU aviation security validators required to operate the programme will allow the professional standards for the validators to be maintained at a high level. This will remove the danger of a lowering of standards in order to rapidly fill the ranks of the considerable number of EU

aviation security validators required to launch the programme as required to implement the terms of Regulation (EU) No 859/2011.

4.191 Furthermore, it will be easier to support the knowledge base of a smaller cadre of dedicated, professional EU aviation security validators with respect to emerging trends and threats. This will permit individuals and/or teams of EU aviation security validators to specialise in handling validations relating to specific categories of industry stakeholders, and/or to establish expertise in addressing the particularities of individual third countries. Grouped validations can be planned to include validators who are third country experts and where necessary include EU Commission and/or Member States Cargo inspectors who can transfer their own knowledge to these specialists.

4.192 We believe that the decision to take note of and address the internal security quality assurance capabilities of the air carriers within the New ACC3 Regulation is a prime example of joint regulator/industry cooperation, that will have a significant impact on the overall goal of improving the security of air cargo from third countries.

4.193 In addition to providing a 'back-up' for the programme during the initial launch phase, the internal auditors of the air carriers will be positively motivated to work towards the success of the New ACC3 Regulation, rather than seeing this as competing with and possibly reducing the value of their own professional activities. Furthermore, they will be able over time (based on findings from the EU aviation security validation reports) to enhance their existing internal security quality assurance procedures.

5. POTENTIAL IMPACT OF THIRD COUNTRY SCREENING REQUIREMENTS

Screening to EU Standards

5.1 Under Regulation EU 185/2010, cargo and mail must be screened using the means or method most likely to detect prohibited articles, taking into account the nature of the consignment. This must be of a standard sufficient to reasonably ensure that no prohibited articles are concealed in the consignment.

5.2 Where the screener cannot be reasonably sure that no prohibited articles are contained in the consignment, the consignment shall be rejected or be rescreened to his/her satisfaction.

5.3 The screening of cargo and mail is subject to provisions laid down in Commission Decision 2011/5862/EU. This information is provided to carriers on a need to know basis via their usual regulatory contacts within the EU States they operate with.

5.4 Whenever security staff encounter items that may appear suspicious (for example if it is of an unusual nature or its packaging gives rise to concern), the staff must immediately notify a responsible person, who should follow the approved process as required by the authority responsible for air cargo security.

Contributions and Impacts

Contribution to enhancing security

5.5 Screening to EU standards[36] would provide an added level of security in that all air cargo shipments originating from third country consignors that have not been independently validated - and any suspicious shipments - would be screened according to the measures adopted within the Union.

Contribution to one stop security

5.6 This could contribute to the goal of achieving one stop security between the Union and third countries to the extent that the air cargo industry in additional third countries will be implementing security measures equivalent to those of the Union.

[36] Screening by one of the means or methods listed in point 6.2.1 of Commission Decision 2010/774/EU to a standard sufficient to reasonably ensure that it contains no prohibited articles

Administrative burden on Member States

5.7 There will be no specific additional burdens on Member States excluding any additional efforts which may be required to facilitate, by way of outreach and capacity building, the actions of ACC3s and regulated agents in third countries screening air cargo to EU standards.

Administrative burden on industry

5.8 The impact on EU shippers and consumers by way of additional security costs could be significant as these costs will be incurred by the air cargo industry, and will most probably be passed on, through surcharges, to clients shipping air cargo from third countries.

Third country operational issues

5.9 Operational issues could be significant due to the legal framework relating to the screening of air cargo which exists in third countries. In addition, there will be a need to provide information (some of which may be considered as EU Confidential) to the entities performing screening in third countries.

Oversight

5.10 Related to the operational issues above, the task of oversight related to screening to EU standards will be more complex. Even if the Union were to publish a list of recommended screening equipment/procedures, it may be difficult to ensure that the EU standards are being fully adhered to. However, we believe that on-site EU aviation security validations will to a large extent remove this potential burden from the Member States. Rather than having to directly oversee the operations of ACC3s and other regulated entities operating at third country locations, EU aviation security inspectors will be able to support this process in the third countries where airport cargo security operations are performed by government officials.

Economic Impact

5.11 The New ACC3 Regulation permits consignments for which the required security controls have been applied by an EU aviation security validated known consignor to be accepted for transport from third countries to the EU without being subjected to additional screening (provided that the consignment has been protected from unauthorised interference from the time that security controls were applied until loading). This notwithstanding, a not inconsiderable volume of cargo will still be required to be screened to EU standards and there will be costs associated with this

5.12 It is difficult to accurately estimate the additional costs that will be incurred with the introduction of screening to EU standards. However, there is today a security surcharge levied on all air cargo shipments that ranges between 0.10 and 0.15 Euros per Kilo. This charge is dependent on the geographic location of the third country from where the air cargo is being uplifted and the destination.

5.13 Table 23 provides information on the total air cargo imports into the EU Member States for all third countries, including exempted third countries where ACC3 designation is not required.

Table 23 - Volume of Air Cargo imports into EU Member States (2011)[37]

		ACTUALS	ESTIMATES
CountryCode	**CountryName**	**AWBs**	**KGs**
AT	Austria	109,078	88,951,543
BE	Belgium	133,855	145,166,223
BG	Bulgaria	20,435	7,252,346
CY	Cyprus	56,215	20,193,545
CZ	Czech Republic	56,313	32,678,394
DK	Denmark	76,508	40,550,603
EE	Estonia	11,090	3,548,098
FI	Finland	68,511	43,227,592
FR	France	417,779	336,970,439
DE	Germany	924,825	835,942,264
GR	Greece	76,459	22,463,843
HU	Hungary	47,035	32,924,039
IE	Ireland	64,059	35,945,750
IT	Italy	305,609	223,799,049
LV	Latvia	12,724	4,262,067
LT	Lithuania	13,668	4,521,215
LU	Luxembourg	28,118	64,078,033
MT	Malta	27,090	7,114,316
NL	Netherlands	442,220	499,822,567
PL	Poland	53,904	22,188,785
PT	Portugal	121,835	36,769,763
RO	Romania	32,991	12,826,292
SK	Slovakia	6,961	5,038,110
SI	Slovenia	8,295	3,237,440
ES	Spain	403,613	242,923,666
SE	Sweden	105,699	60,369,063
UK	United Kingdom	716,302	579,801,512
	TOTAL	**4,341,191**	**3,412,566,559**

[37] Source IATA

5.14 Table 24 provides an indication of the additional security costs of the transport of air cargo into the EU assuming different percentages of the total volume of shipments were to be screened to EU standards, and assuming different additional levels of surcharge. Table 24 further assumes that approximately 50% of the air cargo volumes in Table 23 are in fact being transported into the Union from exempted third countries.

Table 24 - Sensitivity analysis of the additional costs of screening to EU standards

% of the total volume (3,412,566, 599 KGS) of cargo shipped to EU Member States that will require to be screened to EU standards in non exempted third countries	Volume of Cargo represented by this percentage	Total additional costs is screening to EU standards adds 0.01 Euros per KG to the security surcharge	Total additional costs is screening to EU standards adds 0.025 Euros per KG to the security surcharge	Total additional costs is screening to EU standards adds 0.05 Euros per KG to the security surcharge
25%	853,141,650	8,531,417 Euros	21,328,541 Euros	42,657,083 Euros
35%	1,194,398,310	11,943,983 Euros	29,859,958 Euros	59,719,916 Euros
45%	1,535,654,970	15,356,550 Euros	38,391,374 Euros	76,782,749 Euros
50%	1,706,283,300	17,062,833 Euros	42,657,083 Euros	85,314,165 Euros

5.15 In the most strict scenario envisaged above, the total additional costs related to the screening of required shipments to EU standards would amount to 85.3 million Euros. In a more probable case (45% of shipments being screened to EU standards and an additional security surcharge of 0.025 Euros per Kilo) this figure could be in the region of 38.3 million Euros

6. THE ACC3 FRAMEWORK AS A FUTURE MODEL FOR ICAO

Overview and summary

6.1 This chapter assesses to what extent the New ACC3 Regulation can provide a framework for a future, revised model for ICAO; a model which is robust and resilient, yet simple to implement and understand. We outline the underlying global regime for aviation security and highlight ways in which it is similar or different to the requirements of the New ACC3 Regulation.

6.2 Our research has shown that there are a number of approaches to achieve the policy aims of the High Level Group on Air Cargo Security established by the EU Presidency, namely strengthening cargo security controls; enhanced coordination of actions and information within the EU; and joint action at the international level. The most stringent approach is that of the US, and in our view this will not become a world standard. Instead the EU's approach reflected in the New ACC3 Regulations could be adopted globally, principally because it enhances the current approach of ICAO.

6.3 ICAO requires that cargo is screened to detect explosives, but it does not specify the means for achieving this aim. Conversely, the EU standards for the screening of cargo make the obligations clearer (although the detail is 'restricted' in the Decision that was adopted with Regulation (EU) 859/2011). The New ACC3 Regulation will also help third countries comply with air cargo security rules and norms by providing a more straightforward framework for them to follow. In particular, the checklist approach means that the requirements are explicit for ACC3s, regulated agents and known consignors.

6.4 We believe that elements from the EU's aviation security validation framework could be transposed into ICAO requirements and implemented worldwide. As such, aside from its intended aim of meeting EU policy objectives, the New ACC3 Regulation also has the potential benefit of being applied globally.

6.5 In many respects the New ACC3 Regulation picks up where ICAO ends, helping to clarify those gaps and uncertainties which make ICAO’s security standards less effective and/or difficult to implement. We believe that the new ACC3 scheme will provide certainty and clarity on air cargo aviation security and as such, could become the basis for a revised a world standard.

The underlying global regime: Annex 17 to the Convention on International Civil Aviation

Background

6.6 The Convention on International Civil Aviation (the 'Chicago Convention') established certain principles and arrangements relating to civil aviation in order that '*international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically*'.[38] Originally signed on 7 December 1944 and ratified on 5 March 1947, the Chicago Convention is now in its ninth edition and currently has 190 signatories (known as 'Contracting States').

6.7 The Chicago Convention established ICAO as a means of securing international co-operation and uniformity in respect of civil aviation matters. ICAO is composed of the 'Assembly' (the sovereign body made up of a representative from each Contracting State), the 'Council' (the governing body made up of 36 Contracting States elected by the Assembly), and the 'Secretariat' (which is divided into various administrative divisions).

Status of ICAO

6.8 The Chicago Convention provides for ICAO to have such legal capacity as may be necessary for the performance of its functions in the territory of each global Contracting State. Full juridical personality is granted to ICAO in each Contracting State, and as a specialised UN agency, in the territories of state parties to the UN Convention on Privileges and Immunities of the Specialised Agencies. As such, the body enjoys various diplomatic immunities and may bring international claims and incur responsibility.

6.9 Although ICAO does not have law making powers, the ICAO Council is vested with extensive powers and duties, including international administrative and juridical functions (including in relation to dispute settlement and implementing sanctions for default), quasi-legislative functions (including adopting and amending the 'Annexes' to the Chicago Convention), and research and investigation functions (including in respect of the USAP audit programme detailed below).

[38] Preamble to the Convention on International Civil Aviation signed at Chicago on 7 December 1944.

SARPs

6.10 The Annexes to the Chicago Convention contain international Standards and Recommended Practices (SARPs), which have a different status to the provisions of the Chicago Convention itself. A 'Standard' means any specification for physical characteristics, configuration, material, performance, personnel or procedure, the uniform application of which is recognised as necessary for the safety or regularity of international air navigation and to which Contracting States will conform in accordance with the Chicago Convention, and 'Recommended Practices' are identically categorised, but deemed to be desirable, rather than necessary.

6.11 Annex 17 of the Chicago Convention is concerned with administrative and co-ordination aspects of, as well as with technical measures for, the protection of the security of international air transport, including by requiring each Contracting State to establish its own civil aviation security programme that applies relevant SARPs. Compliance with Annex 17 is assessed through obligations to notify and periodic audits, described below.

Notification Obligations

6.12 Article 38 of the Chicago Convention states that '*any State which finds it impracticable to comply in all material respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter…shall give immediate notification to the International Civil Aviation Organisation of the differences between its own practice and that established by the International Standard*.' Once ICAO has been notified, it '*shall make immediate notification to all other States of the difference which exists between one or more features of an international standard and the corresponding national practice of that State*'.

6.13 Annex 17 states that '*Contracting States are invited to keep the Organisation currently informed of any differences which may subsequently occur*,' (emphasis added) and '*a specific request for notification of differences will be sent to Contracting States immediately after the adoption of each amendment to this Annex [17].*'

6.14 The legal obligation to notify ICAO of differences contained in Article 38 appears to refer to the differences which arise either on adoption or amendment of SARPS. The Chicago Convention does not make reference to differences arising on an on-going basis. This is dealt with by Annex 17, which provides that Contracting States are merely 'invited' to inform ICAO of the differences arising on an on-going basis.

Enforcement

6.15 Enforcement of the Chicago Convention can be initiated only by a Contracting State, and is governed by Articles 84 to 88, pursuant to which disputes relating to the 'interpretation or application' of the Chicago Convention can be escalated to the ICAO Council to be decided by way of a vote (in which disputing parties may not participate). Decisions of the ICAO Council can thereafter be appealed to the International Court of Justice in the Hague or to an agreed arbitral tribunal. Decisions of both are final and binding on the State parties. If the decision of the ICAO Council is not followed by a relevant air carrier, all Contracting States undertake not to allow that air carrier to fly through their airspace,[39] and if a Contracting State does not follow a decision of the ICAO Council, its right to vote in the Assembly becomes suspended.[40]

6.16 In practice, Contracting States shy away from invoking the dispute resolution. Often this is because of political and diplomatic considerations and/or because of the risk of retaliatory action by the other Contracting State. Indeed, it appears that ICAO has been asked to exercise its quasi-judicial dispute resolution functions on only a few occasions:

- India v. Pakistan (1952) - involving Pakistan's refusal to allow Indian commercial aircraft to fly over Pakistan;
- United Kingdom v. Spain (1969) - involving Spain's restriction of air space at Gibraltar;
- Pakistan v. India (1971) - involving India's refusal to allow Pakistan's commercial aircraft to fly over India;
- Cuba v. United States (1998) - involving the US refusal to allow Cuba's commercial aircraft to fly over the United States; and
- United States v. Fifteen European States (2003) - involving EU noise emission regulations.

6.17 A Contracting State may also be able to enforce its rights under the Chicago Convention through application of the international law of state responsibility.

[39] The convention on International civil Aviation, Article 87

[40] *Ibid*. Article 88

International Cooperation and Information Sharing

6.18 Chicago Convention Contracting States are obliged to ensure that '*requests from other Contracting States for additional security measures in respect of specific flight(s) by operators of such other States are met, as far as practicable*'.[41]

6.19 Contracting States are also obliged to cooperate with each other in *'the development and exchange of information concerning national civil aviation security programmes, training programmes and quality control programmes'*[42] and to *'establish and implement procedures to share with other Contracting States threat information that applies to the aviation security interests of those states, to the extent practicable'*.[43]

6.20 Annex 17 also contains Recommended Practices concerning the sharing of information. In particular, each Contracting State should, when so requested, *'share, as appropriate and **consistent with its sovereignty**, the results of the audit carried out by ICAO and the corrective actions taken by the audited State'*.[44] Also, each Contracting State should *'include in each of its bilateral agreements on air transport a clause related to aviation security, taking into account the model clause developed by ICAO'*,[45] and each State should, on request, make available appropriate parts of its national aviation security programme.[46]

The Universal Security Audit Programme

6.21 The Universal Security Audit Programme ('USAP') was launched by ICAO in June 2002 to ascertain the level of implementation of Annex 17 standards in all Contracting States by conducting regular, mandatory, systematic and harmonised audits.[47] The first cycle of audits, comprising 182 audits, was completed in December 2007, and the second cycle of expanded audits, which commenced in 2008, is expected to complete in 2013.

6.22 Each ICAO audit is conducted in a transparent manner with the cooperation of the audited State. Indeed, the State will usually have four to six months' notice of the audit, and will enter into a customised memorandum of understanding memorandum

41 The Convention on International Civil Aviation Annex 17, Art. 2.4.1 (a 'Standard')

42 *Ibid.* Annex 17, Art. 2.4.2 (a 'Standard')

43 *Ibid*. .Annex 17, Art. 2.4.3 (a 'Standard')

44 *Ibid.* Annex 17, Art 2.4.5 (a 'Recommendation')

45 *Ibid.* Annex 17, Art 2.4.6 (a 'Recommendation')

46 *Ibid.* Annex 17, Art 2.4.7 (a 'Recommendation')

47 USAP was established pursuant to the ICAO Assembly Resolution A33-1 (the 'Declaration on misuse of civil aircraft as weapons of destruction and other terrorist acts involving civil aviation'), which required the ICAO Council to establish an audit programme to evaluate the civil aviation security programmes and airport security arrangements in each Contracting State as a means of countering the heightened threat perceived to be posed by international terrorism.

of understanding with ICAO that sets out the audit's scope and implications. Typically, a team of three or four ICAO auditors will conduct the audit over a period of about one week in accordance with ICAO's standard auditing procedures and protocols before providing the State concerned with a confidential audit report. Following receipt of the audit report, the State typically has 60 days to submit a 'corrective action plan' detailing how it intends to rectify any deficiencies identified by the audit. The implementation of the corrective action plan is then monitored by ICAO. In 2005 a series of 'follow-up visits' (172 in total) were initiated to verify compliance with corrective action plans and provide further assistance in respect of outstanding deficiencies, and according to ICAO such visits '*confirmed that, overall, states made progress in the implementation of their corrective action plans*'.[48] In respect of audits starting in 2011 (and some to be undertaken in 2010), ICAO will notify the State of any 'significant security concerns' ('SSeCs') within 15 days, after which the State is required to implement immediate corrective action.[49] Failure to do so within 15 days will result in a notification to all Contracting States relating to the SSeCs that is published on the USAP secure website (see below).

6.23 USAP audit reports are strictly confidential and are not made available to other Contracting States. Indeed, as ICAO states, '*the assurance of confidentiality is important to the USAP audit process because of the special sensitivity of aviation security-related information*.'[50] Although ICAO recommends that States share USAP audit reports (see section 6.20), research suggests that that States may be reluctant to request such information on the grounds that they would not wish to reciprocate disclosure.

6.24 However, ICAO has recognised that the need for a degree of confidentiality must be balanced with '*the need for States to be aware of unresolved security concerns*', and as a result it advocates '*a limited level of transparency with respect to ICAO aviation security audit results*'.[51]

6.25 It is on this basis that, since the commencement of the second cycle of audits in 2008, ICAO has disseminated a limited amount of information relating to USAP audits to all Contracting States, which is available on a restricted website. This

48 *ICAO Annual Report of the Council 2009*, Doc 9921

49 The ICAO Council approved the definition of SSeCs during its 189th Session (C-DEC 189/3), and subsequently approved an amendment to the model memorandum of understanding that States enter into with ICAO in advance of an audit, to allow for the identification and publication of SSeCs. This will apply to all audits commencing in 2011, nd ICAO has invited (but not mandated) States with an audit scheduled to commence in 2010 to agree to amend the existing memorandum of understanding. ICAO Electronic Bulletin, 'Security Risk Indicators and Significant Security Concerns', 23 August 2010, EB 2010/31

50 http://www2.icao.int/en/AVSEC/usap/Pages/Confidentiality.aspx

51 Appendix E 'The ICAO Universal Security Audit Programme' of the *'Report Of The Executive Committee On Agenda Items 13, 14 And 15'* (A37-WP/359, P/33, 4/10/10) http://www.icao.int/icao/en/assembl/a37/wp/wp359_en.pdf

information sets out numerically, as a percentage figure, the level of implementation by the audited State in respect of eight 'critical elements' of an aviation security oversight system, being: (i) aviation security legislation; (ii) aviation security programmes and regulations; (iii) state appropriate authority for aviation security; (iv) personnel qualifications and training; (v) provision of technical guidance, tools and security critical information; (vi) certification and approval obligations; (vii) quality control obligations; and (viii) resolution of security concerns.[52] According to ICAO, such '*increased transparency will promote mutual confidence in the level of aviation security amongst states*', however, research suggests that the disseminated information may not, in fact, be sufficiently detailed to enable a thorough analysis of an audited State's compliance with Annex 17. Indeed, ICAO has stated that the information shared through the USAP secure website will not include '*sharing detailed security information of the level of implementation of Annex 17 at individual airports*'[53] (although, such information may, to a limited degree, be shared in future in light of ICAO's new approach to unremedied SSeCs). In addition to the information regarding an audited State's security oversight capabilities, the secure USAP website will, in future, also contain information pertaining to SSeCs identified during an ICAO audit, if the audited State has failed to implement corrective action within the required 15 days. It is envisaged that such an approach will '*enable States which have operations to/from the State in question to determine whether compensatory security measures are required*.'[54]

Transposition of the New ACC3 Regulation into ICAO Regulations

6.26 Although the above elements from the underlying ICAO regime exhibit certain similarities to elements in the New ACC3 Regulation, many of the ACC3 Regulation elements do not have exact equivalents within the ICAO requirements.

6.27 We have identified a number of ACC3 framework elements, that we believe could be transposed, with appropriate revisions, into IAO regulations.

6.28 The Chicago Convention's supplementing SARPs could be compared with the rules in the ACC3 framework. Whilst the provisions in the New ACC3 Regulation and its associated legislation prescribe the rules for air cargo security, the checklists in the Regulation stipulate what the various actors in the air cargo supply chain need to do

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52 An example of the information that is displayed on the USAP secure website is set out in 'Annex B' of ICAO Working Paper 'progress report on ICAO audit activities: usoap and usap' (C-WP/13298 8/01/09) http://www.icao.int/ICDB/HTML/English/Representative%20Bodies/Council/Working%20Papers%20by%20Session /186/C.186.WP.13298.EN/C.186.WP.13298.EN.HTM

53 ICAO Working Paper A37-WP101 26 August 2010 (http://www.icao.int/icao/en/assembl/a37/wp/wp101_en.pdf)

54 *Ibid.*

to comply with the rules, or allow them to specify what they have done to ensure compliance.

6.29 The notification requirements within the New ACC3 framework differ from those outlined in the Chicago Convention. This is because the notification obligations in the former apply in two ways: in terms of self-reporting and supervision. Both types of ACC3 notification obligation apply on an on-going basis.

6.30 Under Attachment 6-H1 of the New ACC3 Regulation, the air carrier must commit to informing the authority that designated it as ACC3 if it ceases trading, no longer deals with air cargo/air mail or can no longer meet the requirements validated in the validation report. Thus, this notification obligation applies on a much more local level than the obligation in Article 38 of the Chicago Convention which applies to Contracting States.

6.31 Point 6.2.1 of Regulation (EC) No 820/2008 has a similar provision to the effect that a regulated agent must promptly inform the relevant appropriate authority of any changes its programme.

6.32 On the other hand, Point 6.8.5.1 of the New ACC3 Regulation outlines that when the Commission or an appropriate authority identifies a serious security-related deficiency in an ACC3's operation, it must, *inter alia*, promptly inform the ACC3 concerned, the Commission and other Member States.

6.33 It is in these ways that the ACC3 framework builds on and complements the notification obligations under the Chicago Convention. Inasmuch that there is a similarity between the way the Commission deals with Member States and how ICAO deals with Contracting States, it is possible to see how the ACC3 framework's augmented notification obligations could be incorporated into the ICAO notification regime.

6.34 Although a formal tribunal system is not outlined in the ACC3 framework, if an ACC3 fails to meet and rectify any flaws with its security obligations, 'the Commission may, after consulting the [Commission's] regulatory committee for civil aviation security, decide that the carrier can no longer be recognised as an ACC3, either for specific or for all routes from third countries into the Union.'

6.35 The regulatory committee for civil aviation security therefore can act as an arbiter on disputes, and ultimately, the end result is the same as is the case with the Chicago Convention: the carrier cannot enter into the relevant airspace.

6.36 Whereas in the Chicago Convention Contracting States are responsible for invoking disputes, more independent entities have this responsibility under the ACC3 framework, namely the appropriate authorities or the EU aviation security validators.

6.37 Cooperation also features as a pillar of the ACC3 framework. The recitals to Regulation (EU) No 859/2011 lend their support to principle of cooperation between the EU, the Commission or individual Member States and third countries. Specifically, these recitals state:

- When assessing aviation security in third countries, consideration will be given to cooperation and partnership agreements concluded between the Union or individual Member States and third countries that provide a basis for guaranteeing the proper implementation of aviation security standards.

- When concluding Air Transport Agreements with third countries, the Commission and Member States should work towards achieving enhanced cooperation on aviation security supporting the implementation and application of standards and principles in third countries equivalent to those of the Union where this is effective to meet global threat and risk.

- Building on the International Civil Aviation Organisation (ICAO) contracting states' responsibility to meet at least ICAO standards for cargo security, the Commission and the Member States should reach out to authorities in third countries to cooperate with and, where possible and requested, provide assistance with capacity building in relation to the implementation of requirements to secure air cargo and mail being carried into the EU.

6.38 The notion of a European Commission or multi-jurisdictional database covering all accredited entities (including data on EU regulated agents, known consignors and ACC3s[55]) , does not exist within the Chicago Convention framework. This could be adopted by ICAO, and if it is, records relating to regulated agents and known consignors could also be included in the database.

6.39 The New ACC3 Regulation establishes a 'validation' scheme which is in many respects the ACC3 framework's equivalent of the ICAO auditing process. This validation scheme ultimately ensures that the ACC3 meets EU aviation security requirements.

[55] i.e. the Union database of regulated agents and known consignors

6.40 The key difference between the ACC3 validation scheme and the ICAO auditing process is that the ACC3 scheme is done on a micro level, whereas the latter is not. Whereas ACC3 validations incorporate ACC3s, regulated agents, known consignors, account consignors and airport sites, ICAO audits are based at the state level and therefore do not investigate the individual components of each company in the air cargo supply chain.

6.41 If an ACC3 fails to meet its security requirements following a validation, it must rectify this 'within a deadline set by the appropriate authority'. This is akin to the Chicago Convention's 'corrective action plan', but with increased flexibility. However, as the appropriate authority can set the deadline itself, it is not constrained by the 15 day limit prescribed for post-2011 audits in the Chicago Convention; this is significant when considering that some security deficiencies will be more serious than others.

6.42 The issue dealing with the nexus between confidentiality and the sharing of information is dealt with in the New ACC3 Regulation through the existence of a ACC3 database.

6.43 The ACC3 framework also envisages that Member States will be able to 'opt-out' of establishing their own EU aviation security validation scheme by having recourse to the accreditation bodies of other Member States to the fullest extent possible.[56] This not only acknowledges the reality that some countries may lack the capability to establish their own validation scheme, but it will also produce cost savings without jeopardising security.

6.44 Furthermore, the ACC3 framework enables EU aviation security validators who are not employed by the Commission to perform validations, provided they possess the requisite skills and experience. This will include IATA audit teams. A similar approach could therefore be adopted by ICAO in the future.

EU Status and influence in ICAO

6.45 The EU does not have Contracting State status under the Chicago Convention nor is it officially represented in ICAO, and therefore has no rights (or obligations) under the Chicago Convention, whether in relation to initiation of enforcement, influencing common standards, accessing the published USAP audit compliance summary or otherwise. Therefore, the EU can only exercise rights under the Chicago

[56] Recital 18, Regulation (EC) No 765/2008

Convention if such rights are assigned to it by Member States[57] (which may not be possible in any event unless approved by Contracting States generally) and if the ICAO Assembly, acting with the required majority, amends the Chicago Convention[58] to grant the EU status within ICAO.

6.46 EU membership of ICAO was recommended by the Commission in 2002,[59] and indeed Article 302 of the Treaty establishing the European Community states that '*it shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations and its specialized agencies*' (ICAO is a specialised agency of the UN). However, Article 92 of the Chicago Convention only permits adherence to ICAO for individual States rather than regional integration organisations such as the EU. An amendment would, therefore, be required to the Chicago Convention.

6.47 A memorandum of cooperation between the European Union and the international Civil Aviation Organisation (COM (2011) 107 final)[60] established in the 2011 framework for enhanced cooperation in the areas of aviation safety, aviation security, air traffic management, and environmental protection in the form of posting experts and financing specific actions. The expected results and impact of the memorandum were stated as follows:

The framework for cooperation in the areas of safety, security, environment and air traffic management should lead to the coordination and pooling of European efforts towards ICAO. Hence the framework is an additional tool to influence the global agenda and policy in view of European priorities.

6.48 All Member States are Contracting States under the Chicago Convention, and the EU has sought to introduce a degree of regional coordination amongst all Member States in their dealings with ICAO. Indeed all Member States are also members of the European Civil Aviation Conference (ECAC), and a degree of coordination takes place through that organisation in advance of an ICAO Assembly meeting.[61] Furthermore, a degree of Member State coordination also takes place in advance of ICAO Council meetings, supported in part by a Commission representative located

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57 For example, in 2003 when the ICAO Council granted the Commission a mandate for the purpose of negotiating an Open Skies Agreement / Open Aviation Area on behalf of Member States.

58 The Convention on International Civil Aviation Article 49(f) and Article 49(i)

59 Recommendation from the Commission to the Council in order to authorize the Commission to open and conduct negotiations with the ICAO on the conditions and arrangements for accession by the European Community / *SEC / 2002 / 0381 final*

60 http://eur-lex.Eurospa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0107:FIN:EN:PDF

61 *Ibid.*

in Montreal.[62] There is a degree of precedent, therefore, for the EU acting a single voice within ICAO through its Member States.

6.49 Although the EU has influence at ICAO in respect of implementing the Chicago Convention, the new ACC3 framework operates in a different way inasmuch that the Commission is the regulating body. However Recital 25 of Regulation (EC) No 300/2008 points out:

'the objectives of this Regulation, namely to safeguard civil aviation against acts of unlawful interference ***and to provide a basis for a common interpretation of Annex 17 to the Chicago Convention on International Civil Aviation*** *cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation,* ***be better achieved at Community level…'***

What could 'be better achieved at Community level' could most certainly benefit from achievement at an international level, as befits the objectives of ICAO.

Summary and Conclusions

6.50 As this chapter has demonstrated, it is possible to envisage a degree of overlap in scope between the Chicago Convention and the ACC3 framework. This is inevitable considering that the ACC3 framework in many respects aims to follow on from the Chicago Convention rather than to compete with it. It is important to note that both the ACC3 scheme and the Chicago Convention framework have the same ultimate goal of reducing, if not eradicating, threats from air cargo security. Indeed, recital 6 of Regulation (EU) No 859/2011 makes the link between ICAO and the ACC3 framework explicit:

> *(6)* ***Building on the International Civil Aviation Organisation (ICAO) contracting states' responsibility to meet at least ICAO standards for cargo security****, the Commission and the Member States should reach out to authorities in third countries to cooperate with and, where possible and requested, provide assistance with capacity building in relation to the implementation of requirements to secure air cargo and mail being carried into the EU.*

6.51 However, there are several 'grey' areas in the Chicago Convention which the ACC3 framework has attempted to address. Chief amongst these is how to produce a

[62] See http://ec.Eurospa.eu/transport/air/international_aviation/European_community_icao/European_community_icao_en.htm

multijurisdictional system for combatting threats emanating from the air cargo supply chain which offers each participating country sufficient flexibility without jeopardising security or confidence in the system. Adoption of the ACC3 framework could serve to discourage States from undertaking unilateral initiatives by making such initiatives redundant, as well as avoiding the application of duplicate or conflicting security requirements being advanced by individual states.

6.52 Consequently, the ACC3 framework should be seen as a supplement to the Chicago Convention, elements from which ***could*** and *possibly* ***should*** be transposed into the ICAO framework. With this in mind, two key dates are worth noting. First, 1 July 2014 is the deadline by which actors in the air cargo supply chain must apply the revised requirements in the New ACC3 Regulation. As a result of this, two parallel schemes - ICAO's and the EU's - will be in force from that date (although an ACC3 scheme already exists, it is from this date that robust security will be enforceable). The second date is 30 June 2015, which signifies the deadline for the Commission to assess, evaluate and, if appropriate, make a proposal of the ACC3 measures.. With sufficient focus, and after obtaining feedback from the operation of the New ACC3 Regulation, this could also mark when elements of the ACC3 framework could be formally proposed as an amendment to the Chicago Convention.