AIR CARGO SECURITY POLICY NEWSLETTER

Known Consignors – An EU and International Challenge   June 6, 2011

Known consignor (or trusted shipper) programmes where shippers must be validated by independent auditors or government inspectors, are becoming the standard for securing air cargo transported on passenger aircraft in the EU and the US.

In the EU these voluntary procedures are specified under Regulation No (EC) 300/2008 and implementing Regulation No (EU) 185/2010.

Member States have tended to be "slow starters" in establishing the legal and operational processes and procedures required to select, authorise, train and monitor organisations and/or individuals to operate as independent validators. This is understandable as the procedure where known consignors remit validation fees to approved independent validators, are new and unfamiliar to the vast majority of appropriate authorities.

With the current international interest in implementing similar schemes in third-countries, perhaps the time has come to look again at an EU-wide implementation, operated by a centralised EU certification authority.

This newsletter discusses the challenges implementing these system presents to the EU air cargo industry, and suggests how they could be addressed by the Commission and the Member States[1].

We explain how a central EU wide validation programme could be established and operated, and possibly funded on behalf of DG-MOVE, by the Trans-European Transport Network Executive Agency ("Ten-T Agency").

The authors believe that a central EU wide known consignor validation programme initiated by the Commission could re-enforce Community leadership in promoting air cargo security standards. It could significantly reduce the administrative and financial burdens being incurred by multi-national manufacturers and shippers, who must today be validated by separate certification authorities in each of the EU Member States in which they operate.

Background

Known consignor (or trusted shipper) programmes are becoming the standard for securing air cargo transported on passenger aircraft in the EU (known consignor validations) and the US (Certified Cargo Screening

Programme or CCSP). In States adopting the known consignor model, consignors that apply to join the programme, undergo training in air cargo security measures, and the security procedures at each accredited shipping location are validated by either a government inspector or a third party independent cargo security auditor, usually referred to as an independent validator.

The initial example of this model of a known consignor validation programme was launched in the UK in 2004. The US CCSP programme has been fully operational since August 2010. However, the take up of these programmes by consignors and shippers has been lower than originally expected, with total validated participants in the EU and US programmes today being less than 4,000 shippers.

In reaction to the Yemen parcel bombs at the end of 2010, the major trading nations together with the International Civil Aviation Organisation (ICAO) determined that known consignor validation should be established as the international standard for air cargo security. The ever increasing cost of the latest, state-of-the-art air cargo screening equipment which will over time be specified by the aviation security authorities, (required in the EU to secure cargo originating from non-validated shippers), will result in the number of participants in these programmes increasing dramatically over the next 24 months.

The above notwithstanding, the global air cargo industry is once again faced with new regulations, common goals and a striking absence of common standards.

The EU programme validates known consignors, with a separate programme in place for regulated agents.

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[1] The text contents of this newsletter have been published by the authors (Mark O'Conor and Edward Corry of LA Piper UK LLP ,and Marcus Hallside of Innovative Compliance Europe Ltd) in the June/July 2001 issue of the journal - Cargo Security International. (www.cargosecurityinternational.com)

Participants, however, in the US Programme can be shippers, regulated agents (or IACs as they are called in the US) and/or cargo screening facilities. Finally, the challenge of establishing an international standard ratified by the 190 ICAO signatories is one of time and content – a standard acceptable to all ICAO members, once ratified, may be significantly lower than that required in the EU and the US.

Although a three year implementation period for the known consignor validation process has been established across the EU, the Commission indicated In press release IP/10/1651[2] that *"Member States will be encouraged to implement as soon as possible the additional requirements for EU known consignor validation, which has to be implemented in any case by April 2013"*.

Included in the operation of known consignor validation programmes are tasks such as on-site verifications to assess the compliance of the consignor; industry self appraisal; training and monitoring of approved validators; and, entering validated known consignors into the EU database of regulated agents and known consignors. These procedures are required across the EU under Regulation (EC) No 300/2008 and implementing Regulation (EU) No 185/2010.

To further "muddy the waters" EU Consignors recognised as "known" prior to 2009 are able to continue to maintain known consignor status, without validation, until 2013; although, this "interim", non-verified status is not recorded in the EU database. In addition, there is no centrally operated "support desk" for this database. Member State users must contact the air cargo security staff in their national appropriate authority for technical assistance.

The Known Consignor Challenge in the EU

Member States have tended to be "slow starters" in establishing the legal and operational processes and procedures required to select, authorise, train and monitor organisations and/or individuals operating as independent validators. This is understandable as the procedure where known consignors pay validation fees to approved independent validators, are new and unfamiliar to the vast majority of appropriate authorities.

> *The greatest challenge to establishing an effective and efficient EU wide programme, with world-wide recognition, stems from the decision of the Commission that each EU Member State will establish its own known consignor programme*.

Only a small number of Member States (UK, Ireland, France, Switzerland and Malta) have operational programmes in place to date. One State requires consignors to attend security training courses; prepare security plans; perform annual self –audits; and, undergo re-validation once every 3 years. Other Member States base their programmes on annual re-validations performed by independent validators, without the requirement for known consignors to establish and implement a formal security program.

The EU implementing regulation (185/2010) is based on the independent validation being achieved based on the completion by the validator of a validation checklist. Formal consignor security programmes are not mandated under the EU regulations; however, re-validation is required at regular intervals not to exceed five years.

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[2] IP/10/1651 – Brussels, 2 December 2010

The appropriate authority in one Member State encouraged the Commission to adopt the validation checklist for known consignors utilised in its own Member State. This document is included in the EU implementing regulations. However this Member State continues to reserve the right to refuse to recognise cargo from known consignors validated in other EU Member States.

Some Member States will use government inspectors to validate known consignors; others will appoint one or more commercial security firms as independent validators; and, still others will appoint individuals as validators. However, with all of the above alternatives, there is no specification for the standards required to train, and monitor the quality of the validations of the independent validators. With such a variety of approaches, and lack of agreement on mutual recognition of the new known consignor process even across all EU Member States, how can this EU programme achieve worldwide recognition, and /or be considered as a model for implementation in third-countries?

In addition to the above operational complexities, the establishment of these programs creates challenges in itself. Whereas the number of known consignors in a large EU Member State with hundreds of annual validations may provide a valid business case for independent validation, a smaller EU Member with less than 100 Consignors being validated once every three or five years will find it difficult to attract serious contenders as independent validators.

Each Member State establishing its own known consignor validation programme must to some extent "re-invent the wheel", by incurring similar time consuming "learning" processes previously undertaken in Member States that have

established such programmes. Furthermore, without additional support for, and oversight of, the establishment of known consignor programmes in Member States, it is possible that considerable variations will be introduced in the quality of the certification and inspection procedures operated by the independent validators across Member States. This will work against cargo from EU known consignors being accepted as being free from additional security controls both inside and out of EU borders.

Speeding up the introduction of known consignor validations in Member States

To encourage Member States to bring forward the validation of known consignors the Commission could provide enhanced support and capacity building actions for the validation process. These actions could assist EU Member States in establishing known consignor programmes and setting-up administrative and operational relationships utilising one or more independent validators.

A review of the measures and procedures that have already been established to launch and monitor the operation of independent validator schemes could deliver a "best practice" manual, documenting Member States experiences, and proposing templates for establishing and operating known consignor programmes. Assistance provided by the Commission to Member States could include the appropriate legal, contractual and operational processes and procedures to enable each Member State's rapid (and cost effective) establishment of a national known consignor programme based on independent validation.

Despite being detailed, the audit checklist provided by the Commission to support the validation of known consignors offers the possibility of differing interpretations. This has been recognised by Member States who have requested guidance materials on how validations should be undertaken. This was recently again raised by both Member States and EU industry in a discussion of the validation of known consignors at third-country locations.

Interpretation of the already complex cargo rules have on occasions led to misunderstandings of the EU law with costly consequences for the shipping industry. The current comprehensive Commission handbook for EU cargo inspectors, authored prior to the introduction of the known consignor programme, ensures that Member States inspection activities and the legal interpretation of the regulations is balanced and performed correctly. This handbook has been well received both by EU Member States and international Partners. Member States are waiting for information from the Commission when this document will be updated to include known consignor validations.

The Commission could expand its database to support the application of firms wishing to participate in the programme, the provision of training materials, and the means to monitor the quality standards of audits performed by independent validators.

The reasons for bringing forward the validation of known consignors are not only related to aviation security. The inability of Member States to implement known consignor validations at the same time results in distortion of competition among Member States, even within multinational corporations. For example, a multinational corporation operating out of the UK can be validated due to the already implemented EU regime. Based on payment of an annual fee and associated costs of around 750 Euro per year, the known consignor location of this multinational in the UK can ship air cargo without any additional security expenses or potential delays. German locations of this same multinational, however, cannot yet be validated as known consignors, and this situation may continue up until the April 2013 Commission deadline. These consignors may be further penalised by not having been previously recognised under the transitional known consignor regime.

For the German branches of this multinational, individual shipments can incur screening charges amounting to 500 - 750 Euros. Thus a branch of the same company producing and shipping largely the same goods volumes could incur additional annual shipping costs of between 30,000 – 50,000 Euro. Where such differences exist between two competing companies, the distortion of competition that uneven application of EU law can cause becomes clear.

An alternative centralised EU programme

There is however an alternative approach which could be examined. This would involve the establishment and operation of a central EU wide known consignor validation programme.

This approach may be of less interest to certain of the larger Member States who would wish to maintain the management and operation of existing "in-house" known consignor programmes, should the industry in these Member States be willing to continue to meet the validation costs. It will however, be of interest both to the larger Member States who have not yet established their own programmes, and to many of the smaller Member States where the number of participants in the programme may not justify the cost of set-up and operation of a national programme.

This is also a method of ensuring harmonisation and homoginisation of known consignor validations; by centralising the accreditation of validators, and introducing a uniform validation process based on Regulation 185/2010.

The Commission has adopted this approach in other fields (for example in the field of document storage and management with the DLM Forum) and there is a precedent for the establishment of such accreditation and certification processes.

It is very possible that such a central EU wide validation programme could potentially be funded, established and operated on behalf of DG-MOVE by the

Trans-European Transport Network Executive Agency ("Ten-T Agency").

The Ten-T programme "*dedicates financial support towards the realisation of important transport infrastructure projects - in line with the overreaching goal of European competitiveness, job creation and cohesion*"[3]. As key stakeholders in the Ten-T Agency, EU Member States have the ability, supported by the Commission, to formulate proposals for funding of initiatives that "*simplify administrative procedures, use new project management techniques and IT tools, increase the types of services available and improve the visibility for EU support to infrastructure projects thorough dissemination activities*".

The tasks to be performed by such an initiative could include:

i. the establishment of an EU wide standard for the independent validation process;

ii. the hiring, operation and management of air cargo inspection staff to support the validation of known consignors, and/or the issuance of public tenders to commercial organisations within the EU to perform the validation process;

iii. the provision of programme inspectors to oversee and monitor the work of the validators;

iv. the provision of IT components to monitor the quality of the application, validation and audit actions, to provide electronic

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[3]

http://tentea.ec.europa.eu/en/about_us/mission__introduction/mission__introduction.htm

security programme and audit templates, and to support the operation of the database of known consignors;

v. training of the personnel of known consignor applicants; and

vi. provision of operational standards and (screening) equipment specifications.

The establishment of a central EU programme could address many of the underlying challenges facing the EU Member States today. It would resolve the issue of differing standards in each Member State; could address the lack of Member State resources to set-up, and monitor the operation of known consignor programmes; and, address the adverse link between the level of fees being paid by consignors and the level of security oversight achieved.

Should it not be possible to fully fund the operation of the centralised approach using Ten-T Agency budget sources, it would at a minimum be possible to implement a single fee structure across the EU, and EU multinationals would be subject to exactly the same validation procedures and processes in each Member State.

An EU wide known consignor validation programme could support the future validation of consignors in third-countries and support future EU "chain-of-custody" air cargo security regulations that will require the accreditation of additional actors (logistics and transport firms).

In addition, this approach could facilitate bringing together the supply chain security requirements for Authorised Economic Operators (AEO's) with those for known consignors. This objective - removing the need for multiple supply chain security certifications - is an on-going and world-wide subject of contention, the resolution of which has been fully endorsed by ICAO.

A central EU wide known consignor validation programme initiated by the Commission could re-establish Community leadership in establishing air cargo security standards, and significantly reduce the administrative and financial burdens associated with achieving the high levels of air cargo security, incurred today by EU manufacturers and shippers.