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Case study Report on the impact of
respective techniques, strengths and
flaccidities, and scope

-Airport

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1. Introduction

The objective of this report is to give an overview of the judicial framework of the security measures and technology usage at the airport case study in Berlin.

The security regime at airports is rather complex and highly regulated. Aviation security involves a large number of stakeholders with different assignments that come with different judicial foundations. These different frameworks can limit the usage or implementation of security measures and technologies (SMT) for some actors and create new opportunities for others at the same time. The judicial framework not only consists out of laws, but also involves directives, notes or informal agreements. These manifold constellations of actors and rules sometimes prevent awareness or transparency about this observable fact.

To create an assessment support system, it is essential to take these judicial perspectives into account and to analyze the different case studies. Therefore this case study report sets a focus on the everyday usage of SMTs and the experiences of their planners and users.

Methods

This report is part of work package 9 'Legal frameworks – Regulative techniques' and structured along the guidelines provided by the work package leader Kassel University. It contains a short literature review analyzing the existing judicial framework and points out contested issues arising from the judicial framework. Data is being supplemented by the analyses of documents provided from the case studies. Furthermore we draw on interviews from previous work packages. Additional expert interviews were conducted with policy makers, civil aviation authorities, airport managers and police officials.

2. Short literature review

Following the attacks of 9th September 2001, the worldwide security standards in civil aviation changed and were tightened. In Europe policy makers acknowledged that airplanes can cross state borders rather quickly since European states are considerably small. Therefore the member states of the European Union decided in favour of a common security standard instead of a single state approach (Richter, S. 2007). Respecting the individual threat level of each state the EU established security standards, but allowed the subsidiarity principle. This principle states that each state must fulfil the minimum standards set by the EU, but is allowed to add further or stricter measures to ensure its security (Seebohm, E. 2008). The EU regulation no. 2320/2002 was adopted considerably quickly in December 2002, which is due to the fact that

the EU used the already existing 'document 30' by the European civil aviation conference (ECAC). The document 30 based on the 'Annex 17' of the International Civil Aviation Organisation (ICAO), the United Nations body that regulates the international civil aviation. This adoption of key parts in aviation security enabled a first quick common approach. The EU 2320/2002 regulation has been revised twice (EU 300/2008) and is now the valid EU 185/2010, which was adopted in March 2010. Those EU regulations then had to be translated into national law. The German parliament did so by ratifying the 'Luftsicherheitsgesetz' (LuftSiG).

Before 9/11, there was only the 'Luftverkehrsgesetz' which did not distinguish between security and safety. Since civil aviation is a way of transport, all responsibility for aviation safety and security was at the Transport ministry. The key point of the debate for the LuftSiG was about the restructuring and distinguishing between security and safety. This distinction not only brought in the question about the nature of security, but also further actors (Arnhold, J. 2012). The Federal Civil Aviation Authority was established and also in the Länder Civil Aviation Authorities (CAA) were created. §2 LuftSiG regulates that those CAAs are responsible for the security of the civil aviation (§7, 8, 9 LuftSiG). New was that those CAAs are not situated in the Transport ministries, but at the Ministries on Interior and at the very top the Federal Ministry of Interior - a security actor. Germany is a federal state with high autonomy of the Länder, especially in police tasks. The Federal state wanted to achieve a common approach in civil aviation security and tried to use the Federal Police (BPOL) for those tasks. To enable this, the states had to transfer those tasks to the federal level, following §31 (2) LuftSiG. Except the state of Bavaria, nearly each state transferred those tasks for passenger and luggage control (§5LuftSiG) to the Federal Ministry of Interior. By doing so the Länder were able to save capacities of their police forces. However, it became obvious that by transferring just the passenger and luggage controls, the competence of patrolling and maintaining security on the airport site became rather fragmented. It led to the situation that the BPOL had only to control the passengers and the luggage, but was not allowed to patrol in the non public area of the airport. This would have meant that the state police forces would have to patrol in front of the passenger controls and behind them with the BPOL in the middle. This was avoided by introducing the patrol right in §4 'Bundespolizeigesetz' (BPolG) (Borsdorff, A. 2005).

New was also the introduction of background checks for each employee that works on the airport site and has access to the non public area §7LuftSiG. The EU argued that security control at the airport can be bypassed by employees if needed, thus preventive security measures need to be taken. This extensive background checks will be conducted by various security services by each state. It is contested about the proportionality of such measures, because even a doubt of

the trustworthy, which does not represent a sufficient proof, is prohibiting the employment of such a person (Arnold, J. 2012). Critical was the introduction of the §8 LuftSiG, because it introduced the self-protection of the airport operators. Particularly §8 (1) no.5 forces the operator to control each employee who changes into the non public area. This includes also airplane crews. In interviews, the employees and the employer argued that it is useless, because they can organise anything behind the controls to cause harm. But the major cause for anger was not the futility of the measurement, but the fact that this puts everybody under general suspicion.

3. Overview of the legal framework identified by the case study

EC 185/2010

The EU regulation number 185/2010 is the most relevant judicial document in civil aviation. It is the second revision of the EU regulation that sets the common standards in civil aviation security. It replaces EU 2320/2002 following the terroristic attacks of 2001 and its first revision 300/2008.

Luftsicherheitsgesetz

The 'Luftsicherheitsgesetz' is the translation of the European regulation 185/2010 into the German law (LuftSiG. 2009).

Civil Aviation Security <small>„Luftsicherheitsgesetz“ of the Federal Republic of Germany Based on EC 185/2010</small>		
§§2, 5, 7	§8	§9
Public Authorities	Airport operator	Airlines
<small>§2 – Competence of Civil aviation authority §5 – Passenger control §7 – Employee background check</small>	<small>Safeguarding measures by the airport operator</small>	<small>Safeguarding measures by the airline</small>

Figure 1: Key paragraphs of the 'Luftsicherheitsgesetz' (TUB, 2013)

The key paragraphs of the 'Luftsicherheitsgesetz' that have been identified for the usage of SMTs are shown in figure no.1.

Even though many paragraphs regulate security, when asked for the paragraphs they need the most in their daily work it became clear that public authorities identified §5 and airport operator §8. Both sides are not directly affected by the other ones.

Luftsicherheits-Schulungsverordnung (LuftSiSchulV)

The Luftsicherheits-Schulungsverordnung regulates the necessity of an aviation security course which is compulsory for every employee that works in or crosses the non-public zone of the airport. This shall ensure that everybody who crosses the land-airside does have a certain level of understanding why he is being controlled (LuftSiSchulV. 2008).

International Civil Aviation Organization (ICAO) Annex 17

The annex no.17 written by the United Nations organization ICAO tries to ensure the civil aviation against unlawful interference. It guides each member state in translating such standards into the respective state law. In chapter four it formulates 'Preventive Security Measures' like passenger screenings and access control for example (ICAO. 2006).

4. Overview of the legal Framework identified by the Work package

Transferred from: 3. Overview of the legal framework identified by the interviewees

- EC 185/2010
- Luftsicherheitsgesetz
- Luftsicherheits-Schulungsverordnung (LuftSiSchulV)
- International Civil Aviation Organization (ICAO) Annex 17

Further legal framework

Even though our case study partners identified most of the legal framework relevant for the planning and usage of SMTs at the airport, further judicial acts became apparent.

Bundespolizeigesetz (BPolG)

The BPolG regulates the responsibilities, rights, and limitations of the Federal Police of the Federal Republic of Germany. In the matter of aviation security, it states in §4 that the BPOL is responsible to protect the civil aviation if being transferred from the state level to the federal level §16 (2) LuftSiG.

Bundesdatenschutzgesetz (BDSG)

The 'Bundesdatenschutzgesetz' regulates the data protection laws that are valid, if the federal level is involved. If the aviation security is transferred to the federal level, it becomes valid at the airport. If it has not being transferred to the federal level the respective data protection law of the state is being valid.

Next to judicial acts, there are relevant acts for the usage of SMTs. Those acts are not officially introduced by a state actor, but by the operative actors.

Betriebsvereinbarungen (Employment agreement)

These are agreement between employer and the workers council. It regulates the usage of certain SMTs in the regard of the relationship between employer and employees especially with the focus on workers' rights. Examples for those SMTs are agreements about the usage of biometric identification and CCTV.

Arbeitsanweisung (Work instructions)

Every process at the airport is depicted in detail in such Arbeitsanweisungen. They explain how measures must be performed and explain their background. Example here is the translation of EU regulations in the regard of employment security checks into operationalized work performance. If employees do not comply with such Arbeitsanweisungen, the employer will automatically write a warning or will dismiss the employee, depending on the level of disobeying.

Dienstanweisungen (Departmental notes)

The Federal Ministry of Interior (BMI) releases, if necessary, ongoing departmental notes for the BPOL at the airports. Those notes highlight contemporary threats like a strong suspicion of a terroristic attempt and suggest different or stricter security measurements.

5. Further findings

Aviation security: over- or under-regulated?

The judicial framework of security at airports is considered being rather over-regulated than under-regulated. Even though interviewees explained that the EU regulations do have an adequate level of leeway, the federal ministry of interior (BMI) is tightening this level of security. It was depicted that the Federal Ministry of Interior (BMI) seems to be over anxious in the regard of security and makes it more difficult for the airports to design security processes in an adequate manner. Especially the self protection of the airport (§8 LuSiG) is being one of the most time consuming paragraph for the airport. Airports try to achieve a modification of this paragraph which would allow the airports to perform an explosive check for its employees instead of a full security check (like passenger check §5 LuftSiG). The airports argue that it does not really make sense to check for knives or screw drivers which are declared dangerous and prohibited things in the security area. The actual danger is, that employees could transport explosive into the restricted areas. But also the civil aviation authorities criticise that since the EU harmonisation occurred, a certain level of 'check-list-mentality' came into being. The CAA that has been interviewed stated that local circumstances are not being taken into account, but are being reported being a violation if they differ from the measurement on the 'list'. This basically excludes anything that might work in practise but is not standardised. In general the CAA stated that a gain on 'actual security' can hardly been measured.

Communication of legal requirements

The legal requirements are being translated in 'Arbeitsanweisungen'. They explicitly explain what has to be done in what situation and in what way for each process it may affect. Those 'Arbeitsanweisungen' are being presented by the security department in training rounds. They are also pinned on the black boards, giving as hand outs to each employee and are made public through the intranet. It will explicitly explain why processes and behaviours have to be adapted and what the legal background of it is. This is basically being done for not being completely blamed by the employees.

Data protection and data protection officer

The German law (Bundesdatenschutzgesetz; §4) dictates companies with a certain size or a certain number of people being involved in operating with data, to have a company data protection officer (DPA). He is responsible for the data protection of the employees and the obligation to data protection law. However the interviewee indicated that such a role is seen as being rather 'annoying instead of warrant for compliance'. At the airport site the position is slowly extending its influence but is limited because his role as DPA is only part time. He is also part of the law department (50%).

Public Affairs Management

When being asked to assess the success of PA activities the interviewee referred to the planned amendment of the 'Luftsicherheitsgesetz' in Germany. This amendment has been subject to large PA activities, but failed the parliament, which made it impossible to see how much 'ideas' would have been included. Here it is important that the amendment process was conducted in secrecy. However, the interviewee was able to assess the success of PA activities by mentioning the 'Internationale Gesundheitsverordnung (IGV)¹' which regulates the depiction of "designated airports". Those airports have to have the permanent capacities to react in the case of emergencies such as infections. The permanent offering of those capacities are very expensive, hence the airports conducted massive public affairs management. The interviewee estimates that approximately 30% of the wishes and ideas of airports have been successfully placed in the new regulation. But not only is the one that has to implement the SMTs at the end using public affairs. When interviewing one CAA, it stated that it using public affairs management intensively to affect new regulations in aviation security. The CAA even managed to place one of its leading representative into the "Aviation Security Committee" at the European Union. This board develops and decides the security regulations in civil aviation. The board consists out of all Schengen States, but only allows the member states of the EU to vote. However, one day allows non-state-actors, especially used by the industry, to give their statement. The interviewee indicated, that this procedure may have an influence. Another point the CAA made was, that aviation security is situated at the transport department of the European Commission and that it is rather questionable if this is legal.

¹ http://www.parldok.brandenburg.de/parladoku/w5/drs/ab_1400/1429.pdf

Usage and control of used SMTs

At the interviewed airport, the SMTs are highly controlled. The control mechanism is twofold. There is one internal control and one external control due to the security regime following the LuftSiG. The internal control is being conducted by the security department, which is also responsible for the planning of SMTs. Employees can contact the department with complains and questions, in this particular case the person is a lawyer. However, the external control is being done by the civil aviation authority, which is responsible for controlling and approving all security plans made by the airport (§8LuftSiG) and the airlines (§9LuftSiG).

New Security Measures and Technology and the judicial framework

When being asked if new SMTs are often lacking a new law framework, the interviewee stated that even if a technology is very new and innovative it is very unlikely that no judicial framework exists which could penetrate the SMT. Meaning that even a SMT can be new, parts of its functionality will fall under certain laws. For example a SMT that works with CCTV will fall partially under the CCTV laws.

This depicts also the way how lawyers start assessing new SMTs. First check the entire functionality, then break it down to the partial functionalities and then start checking all the laws that could affect these partial functionalities (radiation laws, personal laws...).

Affection of SMT usage by courts

The practitioners that were interviewed neglected any affection by court decisions in their daily work. The CAAs on the other hand do acknowledge an impact. The verdict by the Federal Court of Justice in the matter of §7LuftSiG did affect their work immense. The court judged that the level of felonies someone was allowed to have to achieve confidentiality (positive result of the background check) was being interpreted to strictly. The consequences of not achieving confidentiality, namely losing the job, were too great. The CAA said that this is highly concerning, because someone who is a convict is in their eyes not to be trusted in the highly secure area such as an airport. Anyway, the CAA had to revoke layoffs, because of these verdicts.

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