COMMISSION OF THE EUROPEAN

Brussels, 3.8.2007
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2005/0191 (COD)

OPINION OF THE COMMISSION
pursuant to Article 251(2), third subparagraph, point (c) of the EC Treaty, on the European Parliament's amendments to the Council's common position regarding the proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on common rules in the field of civil aviation security

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amending the Proposal of the Commission pursuant to Article 250 (2) of the EC Treaty

1. Introduction

Article 251(2), third subparagraph, point (c) of the EC Treaty requires the Commission to deliver an opinion on amendments proposed by the European Parliament at second reading. The Commission sets out its opinion below on the amendments proposed by Parliament.

2. Background

Date of transmission of the proposal to the EP and the Council (document COM(2005) 0429 final – C6-0290/2005 - 2005/0191(COD):	22.09.2005
Date of the opinion of the European Economic and Social Committee:	20.04.2006
Date of the opinion of the European Parliament, first reading:	15.06.2006
Date of adoption of the common position:	11.12.2006
Date of the opinion of the European Parliament, second reading	25.04.2007

3. Objective of the Commission Proposal

Regulation (EC) No 2320/2002 of the European Parliament and of the Council establishing common rules in the field of civil aviation security has been in force since January 2003. Experience gained on the basis of Commission inspections and the daily application of the Regulation by Member States shows that the swift transformation into legislation of a set of non-binding recommendations developed by the Member States has led, due to the quick drafting and adoption of the Regulation as a response to the events of 11 September 2001, to a number of problems affecting its implementation in a more solid manner.

The Commission has therefore proposed a revision of this Regulation in order to clarify, simplify and harmonise further the legal requirements with the aim of enhancing the overall security in civil aviation. The new framework regulation should solely lay down the basic principles of what has to be done in order to safeguard civil aviation against acts of unlawful interference, whereas implementing acts should lay down the technical and procedural decisions on how this is to be achieved.

4. Opinion of the Commission on the amendments adopted by the Parliament

The Commission can accept in their entirety, partly or in principle most of the amendments adopted by the European Parliament in second reading. The amendments the Commission can agree with confirm the original proposal of the Commission, introduce minor drafting changes without negatively affecting the proposal, add reporting requirements and introduce a very welcome provision on the cooperation with the International Civil Aviation Organization (ICAO).

The Commission can accept in full (if needed subject to redrafting) amendments 1, 4, 5, 9, 11, 14, 16, 18, 19, 24, 27, 28, 30, 35, 40, 41, 42, 43, 45, 48, 50, 52, 53, 55, 58, 59, 61, 64, 65, 69, 71, 76, 80, 83, 91 and 93. It can accept in principle amendments 12, 17, 20, 23, 25, 26, 38, 46, 49, 56, 68, 92, 94 and 96, and in part amendments 6, 7, 13, 15, 29, 34, 51, 54, 70 and 72. The remaining amendments 2, 3, 8, 10, 21, 22, 31, 32, 33, 36, 37, 39, 44, 47, 57, 60, 62, 63, 66, 67, 73, 74, 75, 77, 78, 79, 81, 82, 84, 85, 86, 87, 88, 89, 90, 95 and 97 are to be rejected.

Amendments accepted in principle:

Amendment 12 on the creation of a solidarity mechanism to offer assistance following terrorist acts is a new concept, raised only in the preamble. The Commission acknowledges the importance of this issue while recognising that the consequences go beyond the transport sector.

Amendment 17 incorporating a definition of "airport" is not strictly necessary in this regulation but can be accepted in principle by the Commission.

Amendment 20 changing the definition of "demarcated area" is not necessary since all airside areas of airports are not accessible to the general public. In order to clarify this, it would be better to add the term "airside" before "area".

Amendment 23 changing the definition of "mail" is acceptable but it should be clarified that "air carrier mail" is excluded.

Amendments 25 and 26 changing the definition of "known consignor" and "account consignor" are in accordance with the Commission's original proposal. However, it would be useful to add "for its own account" as this would make the text clearer. In amendment 26, moreover, it would be useful to use "or mail on all-mail aircraft" as this is more consistent with the rest of the Regulation.

Amendment 38 on transparency in charging states that security costs shall be indicated to the passenger. Whilst not strictly relevant to the Regulation, this could be considered as a means of ensuring greater transparency for citizens.

Amendment 46 on cooperation with ICAO is welcomed but should be inserted in a separate article as Article 6 deals only with third countries, which ICAO is not.

Amendment 49 on security programmes, even if superfluous, can be accepted.

Amendment 56 on recognition of Community air carrier security programmes is acceptable but the drafting should be changed to include local requirements.

Amendment 68 on the date of application will depend on when the Regulation is adopted.

Amendment 92 on the principle that guns carried in the hold are safe is acceptable but the wording could be improved.

Amendment 94 on defining responsibilities clearly in the event of an act of unlawful interference can be accepted.

Amendment 96 on security equipment is acceptable only if the word "approved" is replaced with "defined", since no EU-wide approval system is in place.

Amendments accepted in part:

Amendment 6 incorporating minor drafting changes can be accepted, but not the change "this Regulation" into "the new act".

Amendment 7 is acceptable, but not the change "this Regulation" into "the new act".

Amendment 13 limits the version of Annex 17 to the existing one. Although it was in the Commission's original proposal, the Commission accepted the Council's argument in order to keep this competence whenever there are new versions. The same argument applies for **amendment 15** as regards the reference of the Chicago Convention.

Amendment 29 on 'in-flight security officers' should include both Member State's and third country's officers, so 'Member' should be deleted.

Amendments 34 and 51 which suppress the possibility to use the urgency procedure for the adoption of implementing measures via comitology cannot be accepted.

Amendment 54 on air carrier security programmes should refer both to EU legal obligations and the national civil aviation security programme obligations, not just the latter. Also, the original proposal gives carriers, airports and other entities similar obligations which would change with this amendment.

Amendment 70 changing "persons" into "all staff" is to be rejected, as it should not be possible that a person who is not staff is issued with an ID card authorising unescorted access to security restricted area *without* having successfully completed a background check.

Amendment 72 deleting the word "mail" brings inconsistency in the part of the text related to cargo and mail.

Amendments rejected by the Commission:

Amendment 2 changing "this Regulation" into "the new act" is not acceptable, as in a couple of years this act is no longer new.

Amendments 3, 31, 39 and 44 on the financing of security seek to oblige Member States to pay some of the costs of aviation security – those measures required by Member States in addition to the EU Regulation (‘more stringent measures’, as permitted under Article 5 of the Regulation). Whereas the Commission could show some sympathy with the issue, it should not be dealt with in this proposed regulation which concerns technical standards.

Amendments 8 and 60 on EASA require the European Aviation Safety Agency to perform security inspections. It is inappropriate to substantially change by means of such an amendment the scope of EASA by giving it security responsibilities.

Amendments 10, 67, 77, 78, 79 and 81 on agreements with third countries seek to advance the goal of "one-stop security" for flights between the Community and third countries. Although the intention of the amendments is good, these amendments have the effect of making the task more difficult, and not easier as intended. As the rules on transfer passengers and transfer baggage are to be applied at Community airports, there are as such no extra-territorial elements involved and therefore no need for agreements. It should be possible to recognise security standards in third countries following the 'comitology' procedure.

Amendments 21 and 32 on background checks seek to harmonise rules governing background checks on airport staff and flight crew. This goes beyond the scope of this legislation, as work of national intelligence services would be included (subsidiarity).

Amendment 22 on transit passengers is not acceptable, as passengers departing on the same aircraft where the flight number changes would fall outside the scope of the regulation.

Amendment 33 introduces a 'sunset clause' requiring all implementing legislation to be reviewed and readopted after 6 months. This would create legislative uncertainty, as there would be no longer any stability in the measures to be applied, from which industry would suffer the most.

Amendment 36 introduces risk-, impact- and costs assessments: While the definition of the standards and overall policy will be subject to a risk- and impact assessment, it would not be appropriate to do this for the individual measures and procedures. Furthermore, the stakeholder group (amendment 65 which is acceptable to the Commission) will be able to provide a forum for the detailed assessment of implementing measures and procedures.

Amendment 37 introduces an 'opt-out' possibility for Member States for those measures that they deem disproportionate. This would destroy the entire concept of harmonised baseline levels of aviation security across the Community, reverting to the old situation where uncoordinated sets of national rules applied.

Amendment 47 requiring the Commission to consult a third country before drawing up a response to that third country is inappropriate for an EC Regulation.

Amendment 57 reducing the scope to regulated agents is not acceptable as the rule should apply to more than just regulated agents.

Amendment 62 which foresees that every European airport that falls within the scope of this Regulation is inspected at least once within four years of the entry into force of this Regulation is unrealistic. This would either mean that the Commission undertakes 200 inspections a year or, conversely, that the Commission compels Member States to a 4-year cycle for inspecting its airports which is not frequent enough.

Amendment 63 seeks to reduce the number of provisions referred to. However, for any measures and procedures containing sensitive security information, it should be possible to regard these as "EU classified information".

Amendment 66 duplicates amendment 64, already accepted by the Commission.

Amendments 73, 75, 86 and 90 are of a degree of detail that should be left to implementing legislation.

Amendments 74 is duplicating rules because the issue is already covered by paragraph 4.1.3b) of the Annex. **Amendment 82** on the identification of hold baggage as either accompanied or unaccompanied comes back to the Commission' original proposal but should be changed as there was an inconsistency with ICAO Annex 17 (guidance).

Amendments 84, 85, 87, 88 and 89 deleting the word "mail" brings inconsistency in the part of the text related to cargo and mail. Furthermore, as regards amendment 85, the text proposed by the Council is more precise.

Amendment 95 on training applies only to staff with airport/crew cards, neither of which would be issued to temporary staff or visitors.

Amendment 97 on background checks before pilot licensing goes beyond the scope of this Regulation.

5. Conclusion

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as set out above.