



COMMISSION OF THE EUROPEAN COMMUNITIES

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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**

EUROPEAN PARLIAMENT AND COUNCIL REGULATION

on establishing common rules in the field of civil aviation security

**AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250 (2) of the EC Treaty**

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Article 251(2)(c) of the EC Treaty lays down that the Commission shall deliver an opinion on the amendments proposed by the European Parliament at second reading.

The Commission sets out its opinion below on the amendments proposed by Parliament.

1. BACKGROUND

- a) On 11 October 2001, the Commission forwarded to the Council and to the European Parliament its proposal for a Regulation (COM(2001) 575 - 2001/0234(COD) of 10 October 2001).¹
- b) The Economic and Social Committee delivered its opinion on 28 November 2001².
- c) On 29 November 2001, the Parliament adopted at first reading its opinion³ including certain amendments to the Commission proposal.
- d) The Council adopted its common position on 28 January 2002.⁴
- e) The Council common position and the related Commission communication⁵ were transmitted to Parliament on 6 February 2002.
- f) European Parliament voted on 14 May 2002 (second reading), approving the common position with thirty-two amendments.

¹ OJ C 51 E, 26.2.2002, p. 221.

² OJ C 48, 21.2.2002, p. 70.

³ OJ C 51 E, 26.2.2002, p. 221.

⁴ OJ C 113 E, 14.5.2002, p. 17.

⁵ SEC(2002) 65 of 30.1.2002.

2. OBJECTIVE OF THE PROPOSED REGULATION

Following the terrorists attacks committed in New York and Washington on 11 September 2001 the EU authorities agreed unanimously that the EU should take urgent decisions to respond to the new challenges it faced.

The Commission proposal aims at establishing common rules to prevent terrorist attacks and unlawful acts against civil aviation for both international and domestic flights.

This proposal is based on the security measures contained in European Civil Aviation Conference (ECAC) Restricted Document 30. ECAC Document 30 is based on the common standards in the field of civil aviation security, namely Annex 17 to the Convention on International Civil Aviation (the “Chicago Convention”), which sets international standards and recommended practices. The incorporation of these rules into Community law will enable their application in an effective and harmonised manner, including permanent control.

The proposal contains the following essential elements:

- the key security measures in ECAC Document 30 will be made mandatory; more detailed technical standards will be adopted by a regulatory committee of representatives of the Member States;
- national civil aviation security programmes will be adopted by the Member States (including the implementation of security measures, the establishment of a national quality control programme, the approval and monitoring of airports and air carriers’ security programmes and the implementation of national security training programme);
- the responsible authority in each Member State will implement control mechanisms and the Commission will set up an inspection body.

3. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT

The European Parliament adopted, at second reading, 32 amendments to the Council common position. These amendments relate mainly to the part of the proposal that had been revisited by the Council when adopting its common position.

Of those 32 amendments, the Commission can accept 12, and a further four in principle but subject to redrafting. The remaining 16 amendments were considered to be unacceptable.

3.1 Amendments accepted by the Commission

Amendments 16, 19, 21-26, 28, 29, 32 and 33 seek either to strengthen rules on aviation security, or to improve the text of the Regulation without changing its substance; they should therefore be welcomed.

Amendment 16 (annex 2.3 (a)) requires that all staff should be screened systematically when entering security areas (100% screening). The Commission agrees that staff should be subject to the same levels of security screening as passengers, and not inferior levels.

Amendment 19 (annex 3.1) suggests that the content of the section dealing with searching and checking aircraft should be fully described in the heading.

Amendment 21 (annex 3.2 para. 4) aims at removing a restriction introduced by the Council common position regarding the security of parked aircraft.

Amendments 22, 24 and 25 (annex 4.1 para. 1(b), 5.3 para. 1(c) and 5.3 para. 1 (d)) constitute various editorial improvements to the annex when dealing with screening of passengers and protection of hold baggage.

Amendment 23 (annex 4.2) ensures that risk assessment is undertaken by suitable responsible authorities.

Amendment 26 (annex 6.2 (b)) ensures that the specified obligations of the regulated agents in charge of security controls for cargo, courier and express parcels shall be defined by the appropriate authority.

Amendment 28 (annex 8.3 para 1a and 1b (new)) improves security of air carrier mail and materials.

Amendment 29 (annex 9.2 para. 1) points out that section 9 does not deal with cleaning materials.

Amendment 32 and 33 (annex 13.1.1 (a)(i) and 13.1.2 (a)) are no problem in changing the wording regarding metal detection equipment.

3.2 Amendments acceptable in principle subject to redrafting

Amendments 8, 14, 15 and 18 should also be welcomed subject to redrafting.

Amendment 8 (art. 7 para. 3) requiring unannounced airport inspection is acceptable in principle. It is intended that airports should not know in advance of inspections. But it is also the wish of the Commission that airports should be inspected with the knowledge and co-operation of the national regulatory authorities in the same way that the Competition or Agriculture services of the Commission undertake inspections. As a consequence, the following drafting is suggested: "Inspections at airports shall be unannounced. The Commission shall in good time before scheduled inspections inform the Member States concerned of the inspections".

Amendments 14, 15 and 18 (annex 2.2.2, 2.2.3 and 2.4 (c)) requiring the overall responsibility of the Member States for the surveillance of all terminal areas accessible to the public, for controlling access to public areas which are closed to aircraft movement areas and for perimeter fence and adjacent areas to security restricted areas are acceptable in principle, as Member States authorities are already fully responsible for overall functioning of aviation security measures. The aim of the annex is not to outline the individual responsibilities for execution of the various security measures, but to identify security measures that should be undertaken by the Member States.

3.3 Amendments not accepted by the Commission

Amendments 1-5, 7, 9, 10-13, 17, 20, 27, 30 and 31 seek either to dilute the regulation or to broaden its scope.

Amendments 1-4, 7, 9, 10 and 12 raise the issue of financing of additional security measures.

The Commission understands the political objective of these amendments and recalls that in its Communication of 10 October 2001 on the economic impact of terrorist attacks, it stated it would be ready to consider positively public financing for the compensation of additional security measures, which are clearly a concern of airports and air carriers. However, as indicated by the Commission in its communication of 30.01.2002 concerning the common position of the Council, these provisions are not directly related to the objective of improving aviation security. Therefore this Regulation should be restricted to establishing the commitments of the Member States as opposed to possible rules on funding of such measures. Furthermore, even if it were possible to adopt rules in this Regulation concerning additional funding, it would not negate the overlying EU rules on state aid which would still apply to the financing of aviation security.

The Commission is ready to look at the funding issue from a broader perspective. This could include the need for more harmonisation in the area of financing expenditure for aviation security, avoiding distortion of competition and, if necessary, after carrying out detailed studies, it could bring forward a legislative proposal. But, such action should be stand-alone and not a part of this Regulation. An inter-institutional declaration could identify the objectives of this work.

Amendment 5 (art. 4 para.1) cannot be accepted. In referring to the recommendations of the European Civil Aviation Conference (ECAC) Document 30, there is the risk that the Community refers to a document which could be amended without its consent.

Amendment 11 (art. 9 (a) new) would conflict with the implementing legislation that will result from this Regulation and address this issue. Moreover, the reference to ECAC is superfluous, as it has no mandate to draft legislation.

Amendment 13 (art. 12) is inappropriate. Member States have already given commitments through ECAC to have better security in place by end 2002. This amendment, which indicates an entry into force on 31 December 2003, would give completely the wrong signal.

Amendment 20 (annex 3.1) The consequence of the amendment would weaken the security measures.

Amendment 27 (annex 8.3 (a)) cannot be accepted. Goods shipped on passenger aircraft shall always be screened wherever possible.

Amendments 30 and 31 (annex 12.3 introduction and last sub-paragraph) refer to the overall responsibility of the Member States for security at airports. But it is not acceptable that security training should only apply to certain airport employees. All staff have a role to play in maintaining high security levels.

4. CONCLUSION

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