

Civil aviation security

2005/0191(COD) - 03/08/2007 - Commission opinion on Parliament's position at 2nd reading

The Commission states that it can accept in their entirety, partly or in principle most of the amendments adopted by the European Parliament in second reading. These amendments 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). Accordingly, the Commission can accept 36 in full (subject to redrafting) amendments, 14 amendments in principle, and 10 amendments in part. The remaining 37 amendments are rejected.

Main amendments accepted in principle:

- the Commission stated that it accepted in principle the incorporation of definitions of "airport", "mail", "known consignor" and "account";
- 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;
- cooperation with ICAO is welcomed but should be inserted in a separate article;
- recognition of Community air carrier security programmes;
- the principle that guns carried in the hold are safe is acceptable but the wording could be improved;
- defining responsibilities clearly in the event of an act of unlawful interference;
- on 'in-flight security officers' should include both Member State's and third country's officers, so 'Member' should be deleted;
- 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 Parliament's amendment;

Main amendments rejected by the Commission:

- those amendments which suppress the possibility of using the urgency procedure for the adoption of implementing measures via comitology cannot be accepted;
- the amendments 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;
- two amendments on EASA require the European Aviation Safety Agency to perform security inspections. It is inappropriate substantially to change by means of such an amendment the scope of EASA by giving it security responsibilities;

- certain amendments 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 extraterritorial elements involved and therefore no need for agreements. It should be possible to recognise security standards in third countries following the 'comitology' procedure;
- two amendments 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);
- the amendment 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;
- the introduction of a 'sunset clause' requires 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;
- on the introduction of 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 will be able to provide a forum for the detailed assessment of implementing measures and procedures;
- the Commission rejected the amendment introducing 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;
- the clause requiring the Commission to consult a third country before drawing up a response to that third country is inappropriate for an EC Regulation;
- the clause reducing the scope to regulated agents is not acceptable as the rule should apply to more than just regulated agents;
- the amendment 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;
- certain amendments are of a degree of detail which should be left to implementing legislation;
- the clause on background checks before pilot licensing goes beyond the scope of the Regulation.