

Civil aviation: common rules and creation of the European Aviation Safety Agency (EASA)

2005/0228(COD) - 18/10/2007 - Commission communication on Council's position

The Commission states that the essential provisions of the Commission proposal are contained in the text of the common position. The Commission accepted totally or in part 14 of the 31 amendments proposed by the European Parliament at first reading. Of these 31 amendments, the Council included 8 verbatim in its common position.

Amendments concerning penalties for non-compliance with the common rules have even been strengthened as a result of the discussions. In terms of its form, however, the Commission text has been substantially modified as Member States wish to deal with third-country carriers in separate articles. The Commission points out that most of the proposals for improvements to the governance of the EASA have been rejected by the Council. Furthermore, the Council has preferred to restrict the certification powers entrusted to the Agency to what is strictly necessary. Given the Agency's limited resources, the Commission has accepted this restriction.

The following amendments were the key ones accepted by the Commission and incorporated in full or in part in the common position:

- Article 8(4) states that cabin crew engaged in commercial operations must hold a certificate as initially described in the Annex to Regulation

(EC) No 1899/2006 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation (EU OPS). At the discretion of the Member State concerned, such a certificate may be issued by approved operators or training bodies;

- one amendment introduces into Article 11(2) and 11(3) corrective and safeguard measures to be applied by the Commission in the event of the non-conformity or non-operative conformity of a certificate issued in accordance with the Regulation;

- Article 32(2)(b) provides that the Management Board shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedure. The amendment states this shall be done in particular as regards any information concerning the effects or consequences of changes made to the missions entrusted to the Agency;

- the idea of setting up an Executive Board within the Agency's Management Board was not adopted;

- Article 55 provides that the Agency's annual work programme must clearly state the Agency's mandates and missions which have been added, changed or abolished as compared with the previous year;

- Article 56 provides that the Agency's general report shall clearly state the effects or consequences of any changes to the missions entrusted to the Agency;

- one amendment specifies that the implementation rules must be based on a risk assessment and be proportional to the scale and scope of the operation. Parliament had proposed including these provisions in Annex IV, while the Council, as suggested by the Commission, considered it more advisable to include them at the heart of the Regulation in Article 8(6).

The common position also contains the provision that fees are assigned revenue. This provision is very important in order to be able to ensure some stability for the Agency's budget as regards certification activity. The Council also consolidated the recitals.

The Council rejected six amendments, in full or in part, which had been accepted by the Commission. The main ones are:

- a recital regarding the need for the Agency to provide information which would be useful for drawing up a "black list" (Regulation (EC) No 2111/2005);
- a reference to the need to take account of scientific and technical progress when drawing up the rules for implementing Article 7(7) (pilots);
- the text of the common position includes neither the Commission's proposal nor Parliament's amendments regarding the weighting of the Commission representatives votes' on the Agency's Management Board;
- the Council did not accept Parliament's proposals to amend the definition of a "qualified entity". However, Parliament's definition was not very different.
- one amendment which contains provisions to protect information sources, has been incorporated in the text of the common position, the only difference being as regards Parliament's proposed use of the term "penal law" as compared to "criminal law".

The Commission states that, except for the issue of the weighting of the Commission representatives votes' on the Agency's Management Board, the other amendments set out above did not give rise to any real problems on the part of the Member States, the only changes being minor editorial amendments but not changes to the substance.

17 amendments were rejected by the Commission and not incorporated in the common position, inter alia:

- the proposal to extend the remit of the EASA to air security. The Commission considers that this cannot be part of the Agency's responsibility as its technical expertise is strictly concerned with safety;
- the amendments intended to exclude certain types of aeroplane and helicopter for commercial reasons. The Commission believes that this would run counter to the purpose of ensuring an adequate level of safety inspections and therefore has not adopted Parliament's proposals;
- two amendments have been rejected by the Commission as their effect would be to prevent certification procedures from being imposed on non-commercial operators operating complex, powerful aeroplanes;
- the amendment concerning the introduction of mutual recognition of cabin crews has been rejected as it duplicates Article 11(mutual recognition).
- one amendment concerns a provision enabling the Agency to impose financial penalties on those for whom it is responsible in cases of minor infringements for which the withdrawal of a certificate would be disproportionate. It cannot be accepted as it stands as it raises legal, institutional and practical issues which require detailed consideration ;
- the Commission considers that the members of the Agency's Management Board must be appointed by the Member States and not Parliament as the Agency is called upon to perform tasks on behalf of the Member States ;

- on the matter of the fees charged by the Agency for its certification activities, Parliament calls for two separate decisions: the first concerning the budget for

certification fees and the second for other resources. Parliament also asks to have part of the European subsidy assigned to certification activity. The Commission does not accept these amendments as the first undermines the principle of unity of the budget and the second would have the effect of depriving the Agency of about 40% of the financial resources allocated to the development of safety regulations, compliance checks by the Member States and accident analysis. This would benefit certain industrial groups which would no longer have to pay for certain activities in connection with ensuring that their products are maintained at the requisite safety level.

The Commission concludes that the common position detracts neither from the essential aims nor the spirit of the proposal and is therefore able to accept it.