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*****I**

REPORT

on the proposal for a European Parliament and Council regulation on establishing common rules in the field of civil aviation security (COM(2001) 575 – C5-0481/2001 – 2001/0234(COD))

Committee on Regional Policy, Transport and Tourism

Rapporteur: Jacqueline Foster

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 11 October 2001 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 80(2) of the EC Treaty, the proposal for a European Parliament and Council regulation on establishing common rules in the field of civil aviation security (COM(2001) 575 - 2001/0234 (COD)).

At the sitting of 25 October 2001 the President of Parliament announced that she had referred this proposal to the Committee on Regional Policy, Transport and Tourism as the committee responsible and the Committee on Budgets for its opinion (C5-0481/2001).

The Committee on Regional Policy, Transport and Tourism appointed Jacqueline Foster rapporteur at its meeting of 20 November 2001.

It considered the Commission proposal and draft report at its meeting of 20/21 November 2001.

At this meeting it adopted the draft legislative resolution by 30 votes to 19.

The following were present for the vote: Konstantinos Hatzidakis, chairman; Emmanouil Mastorakis, Rijk van Dam and Helmuth Markov, vice-chairmen; Jacqueline Foster, rapporteur; Sir Robert Atkins, Emmanouil Bakopoulos, Rolf Berend, Theodorus J.J. Bouwman, Philip Charles Bradbourn, Felipe Camisón Asensio, Carmen Cerdeira Morterero, Gerard Collins, Giovanni Claudio Fava, Mathieu J.H. Grosch, Ewa Hedkvist Petersen, Marie Anne Isler Béguin (for Reinhold Messner), Juan de Dios Izquierdo Collado, Georg Jarzembowski, Elisabeth Jeggle (for Luigi Cesaro), Dieter-Lebrecht Koch, Giorgio Lisi, Sérgio Marques, Linda McAvan (for Mary Honeyball), Erik Meijer, Rosa Miguélez Ramos, Juan Ojeda Sanz, Josu Ortuondo Larrea, Karla M.H. Peijs, Wilhelm Ernst Piecyk, Giovanni Pittella (for Danielle Darras), Samuli Pohjamo, James L.C. Provan (for Dana Rosemary Scallon), Alonso José Puerta, Reinhard Rack, Marieke Sanders-ten Holte, Giacomo Santini (for Francesco Musotto, pursuant to Rule 153(2)), Gilles Savary, Agnes Schierhuber (for Margie Sudre), Ingo Schmitt, Elisabeth Schroedter (for Camilo Nogueira Román), Brian Simpson, Renate Sommer, Dirk Sterckx, Hannes Swoboda (for Carlos Lage), Francesco Turchi (for Adriana Poli Bortone), Ari Vatanen, Demetrio Volcic, Mark Francis Watts and Jan Marinus Wiersma (for Ulrich Stockmann).

The opinion of the Committee on Budgets is attached.

The report was tabled on 22 November 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council regulation on establishing common rules in the field of civil aviation security (COM(2001) 575 – C5-0481/2001 – 2001/0234(COD))

The proposal is amended as follows:

Text proposed by the Commission ¹

Amendments by Parliament

Amendment 1
Recital 9 a (new)

(9a) Member States should undertake coordinated action in drawing up a comprehensive policy for financing the highest possible level of security for air travel.

Justification

Member States should be willing to support airports to improve security.

Amendment 2
Recital 9 b (new)

(9b) This will create an audit system to be financed by operational appropriations.

Justification

According to article 19 of the Financial regulation, administrative expenditure should be financed under part A of the Budget. Operational appropriations are not appropriate to finance an administrative structure.

Amendment 3
Recital 9 c (new)

¹OJ C not yet published.

(9c) This decision by the legislative authority is without prejudice to budgetary decisions taken in the context of the annual budgetary procedure.

Justification

Prior adoption of a legal basis is necessary to authorise the implementation of the appropriations in the Budget. The annual amount is decided within that annual budgetary procedure.

Amendment 4
Article 1(1)

1. The main objective of this regulation is to ensure ***a high*** level of security by taking action to prevent acts of unlawful interference against civil aviation.

1. The main objective of this regulation is to ensure ***an appropriate*** level of security by taking action to prevent acts of unlawful interference against civil aviation.

Justification

Levels of security may vary from high to very high, therefore the term 'appropriate' is more apt.

Amendment 5
Article 4(1)

1. The common standards on security measures at airports and the technical specifications for equipment in support of aviation security are laid down in the annex.

1. The common standards on security measures at airports and the technical specifications for equipment in support of aviation security ***are based on the current recommendations of European Civil Aviation Conference (ECAC) Document 30 and*** are laid down in the annex ***or***

annexes taken together, which include community adaptations.

Justification

There needs to be specific recognition of ECAC's continuing role and a much clearer distinction between the ECAC standards and any Community adaptations.

Amendment 6
Article 5(1)

1. Each Member State shall adopt a national security programme in order to ensure the application of the common standards referred to in Article 4(1) and the measures adopted in accordance with Article 4(2) by the date specified in these measures.

1. Each Member State shall adopt a national security programme in order to ensure the application of the common standards referred to in Article 4(1) and the measures adopted in accordance with Article 4(2) by the date specified in these measures. ***Member States shall accept the costs of aviation security on the basis that security threats against aviation are a manifestation of threats against the state.***

Justification

Security is the responsibility of the state which should meet security costs, as indicated in the Commission Communication on the implementation of the Single European Sky¹.

Amendment 7
Article 6

More stringent measures

Member States may apply more stringent

More stringent measures

Member States may apply more stringent

¹ COM(2001) 564 final

measures than those laid down in this regulation. In such a case they shall notify to the Commission and the other Member States the nature of these measures and the reasons therefore. ***If the Commission considers that these measures are discriminatory or unnecessarily restrictive and are not justified by the particular circumstances, it may decide, following the procedures laid down in article 8(2), that the measures shall be withdrawn.***

measures than those laid down in this regulation. In such a case they shall notify to the Commission and the other Member States the nature of these measures and the reasons therefore.

Justification

Member States must be absolutely free to apply more stringent measures on the basis of their own assessment of threat.

Amendment 8 Article 7(3)

3. The officials mandated by the Commission to conduct inspections in accordance with paragraph 2 above shall exercise their powers upon production of an authorisation in writing specifying the subject-matter, the purpose of the inspection and the date on which it is to begin. ***In good time before the inspection, the Commission shall inform the Member State concerned of the inspection and of the identity of the authorised officials.*** The Member State concerned shall submit to such inspections and shall ensure that bodies or persons concerned also submit to inspections.

3. The officials mandated by the Commission to conduct inspections in accordance with paragraph 2 above shall exercise their powers upon production of an authorisation in writing specifying the subject-matter, the purpose of the inspection and the date on which it is to begin. ***Inspections of airports shall be unannounced.*** The Member State concerned shall submit to such inspections and shall ensure that bodies or persons concerned also submit to inspections.

Justification

Inspections must be unannounced if airports are to be inspected in real operating conditions.

Amendment 9
Article 7(5)

5. The inspections reports and the answer of the Member States shall be confidential.

5. The inspections reports and the answer of the Member States shall be confidential ***however the Commission shall inform any airlines affected by those shortcomings identified which require urgent measures along with the corrective actions agreed.***

Justification

Airlines operating in the airports concerned should have a right to see the inspection reports as they will be directly affected by the matters raised.

Amendment 10
Article 7, paragraph 5 a (new)

5a. EU Member States will undertake coordinated action in drawing up a comprehensive policy for financing and guaranteeing the highest level of security possible for air travel.

Justification

The financing of security for air transport currently differs from country to country. The cost is borne by the government in some States, paid for by a special departure tax in other States, and financed directly by air transport operators in others. The security issue demands a harmonised approach in the European Union. Consequently, the cost of implementing all security measures, not just those additional measures recently proposed in Europe, should from now on be covered by national governments.

Amendment 11
Article 7a (new)

***Article 7a
Security checking of employees
Security checking of employees engaged***

in screening and other security tasks, and employees authorised to enter restricted zones, shall be the responsibility of the appropriate national authorities in the Member States.

Justification

Background screening of personnel should be carried out by national authorities. In various countries employers would not be entitled to access personal data due to strict privacy laws.

Amendment 12
Article 8(1)

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission. ***The Committee shall adopt its own rules of procedure on the proposal of its Chairman in accordance with Article 7 of Council Decision 1999/468/EC. Representatives of the major aviation industry organisations may be admitted to the Committee's meetings in accordance with Article 8 of the standard of procedure for Committees using procedures laid down by Council Decision 1999/468/EC.***

Justification

The industry cannot accept regulatory standards which exclude industry participation in their preparation. The current ECAC arrangements have direct industry participation and some way must be found for this to continue.

Amendment 13
Article 9

Publication of information

The Commission shall publish each year a report on the implementation of this regulation and on the situation in the Community as far as aviation security is concerned, drawing conclusions from the inspection reports.

Publication of information

Subject to confidentiality constraints, the Commission shall publish each year a report on the implementation of this regulation and on the situation in the Community as far as aviation security is concerned, drawing conclusions from the inspection reports. ***When presenting the Preliminary Draft Budget, the Commission forwards to the Budgetary Authority the result of quantitative and qualitative evaluation of the action based on annual programming and performance targets.***

Justification

Nothing in the report should in any way compromise security at airports. The budgetary authority needs to be informed about the evaluation of this action at a useful stage of the annual procedure.

Amendment 14
Article 10a (new)

Article 10a

All of the common standards for security measures and technical specifications of equipment in support of aviation security listed in the annex to this Regulation shall be applied on the entry into force of this Regulation. Common standards for

- boundaries between landside and airside,***
- other public areas and***
- separation of screened and unscreened passengers***

shall apply from*

This derogation only applies where structural modifications to airports and/or terminals are required.

* *six months after entry into force of this regulation*

Justification

Those measures of an administrative nature should be implemented immediately. Where measures might require changes to airport infrastructure immediate implementation will not be practicable but implementation should not be unduly delayed.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council regulation on establishing common rules in the field of civil aviation security (COM(2001) 575 – C5-0481/2001 – 2001/0234(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2001) 575¹),
 - having regard to Article 251(2) and Article 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0481/2001),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Regional Policy, Transport and Tourism and the opinion of the Committee on Budgets (A5-0415/2001),
1. Approves the Commission proposal as amended;
 2. Considers that the financial amount foreseen for this action is compatible with the current financial perspective;
 3. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
 4. Instructs its President to forward its position to the Council and Commission.

EXPLANATORY STATEMENT

¹OJ C not yet published.

Background and Context

The tragic events of the 11 September in the United States have given new impetus to the reinforcement of arrangements for aviation security. The European Council, meeting the day after the hijacking and deliberate crashing of aircraft in New York, Washington D.C. and Pennsylvania, asked the Transport Council to evaluate the measures to be taken to improve aviation security and complete its consideration of those already proposed.

The Commission has quickly brought forward a proposal for a regulation establishing common rules in the field of civil aviation security.

The technical Annex to the regulation is under almost constant expert review and is a "living" document. It is subject to change through comitology and the expert groups concerned may propose changes in the course of the legislative procedure.

Content of the proposed regulation

The draft regulation concerns principally access control and passenger, luggage and freight screening on the ground at airports. Its scope is

- the control of access to sensitive areas in airports,
- the screening of passengers and their hand luggage,
- the screening and tracing of hold luggage,
- the screening of freight and post,
- equipment definition for all of the above and
- the definition of arms and items which may not be placed on board or be introduced in sensitive areas.

The specification of the standards to be reached in all of these areas is given in the annex to the regulation. The technical standards themselves are those adopted by the European Civil Aviation Conference (ECAC) in 1992 in its Document 30 (part 2), most recently revised in January 2001, and as indicated in bold above, currently being reviewed. ECAC membership extends to 38 states including all EU Member States. Member States may require more stringent standards but must inform the Commission of these. Member States must establish national security programmes and designate competent authorities for their implementation.

In addition the regulation sets up a system of "peer review " inspection by teams of Member State inspectors inspecting across the European Union. This would be a compliance monitoring exercise to ensure that all screening, control and equipment specification requirements were being respected. The inspection teams would examine national systems for inspection and compliance. The annual cost to the EU budget would be € 1645000.

Provision is made to revise and update the specifications given in the annex through a Regulatory committee of Member State representatives chaired by the Commission under Articles 7 and 8 of Council Decision 1999/468/EC. This allows the EP to be informed if no agreement can be reached in Committee and the matter goes to Council.

Remarks on the Context

The rapporteur's view is that the urgency of these proposals is self-evident and requires a speedy response from the Parliament. The Council has requested that the Parliament deals with this proposal as quickly as possible. This should not lead to a lower level of parliamentary scrutiny of the draft regulation. Equally other proposals with implications for aviation security and which have had a first reading in Parliament but are now with the Council for the adoption of a Common Position need to be expedited. These are an amending regulation on technical requirements and administrative procedures for civil aviation (JAR-OPS); a draft directive on the prevention of accidents and the collection and dissemination of information in civil aviation; and a draft directive on safety requirements and professional competence for cabin crew.

The European Council of 12 September also asked that on board security be strengthened through an examination of cockpit access and security. Your rapporteur believes that the question of unruly passengers must also be addressed. It can be seen from the above that the area of on board security is not addressed here. It is entirely coherent that on board security be addressed in separate legislation but members should be aware that the draft regulation on civil aviation security, despite its title, deals only with security on the ground.

Remarks on the Content

The structure of the draft regulation sets down general requirements and defines the detailed standards to be met by national authorities in the annex. Provision is made for changing these standards through comitology. The efficacy of this approach is evident but there must always be a question about whether it provides for sufficient democratic accountability. The range of the requirements dealt with in the annex is wide, from pre-employment checks on security staff to the designation of persons and baggage exempt from screening.

As stated above the effect of the regulation would be to incorporate in EU legislation ECAC's recommendations as they appear in its Document 30. This gives rise to two related questions - timetable and costs. Some of the proposed measures are infrastructural. For example the physical separation of screened and unscreened passengers. Others are administrative such as the requirement for various staff to wear security badges. Nonetheless the draft regulation makes no distinction between them in terms of a timetable for implementation. It simply states that the regulation will come into force 20 days after publication in the Official Journal. Physical separation of screened and unscreened passengers or having the means to control access to areas near aircraft movements, including hotels, may not be immediately realisable in all of our smaller airports. Your rapporteur is proposing an amendment to address this.

Related to this is the obvious matter of costs both on the infrastructural and personnel and administrative sides. It is the rapporteur's view that airports and airlines should not be asked to pay for the security consequences of 11 September. It is Member States' responsibility to ensure the safety of citizens at airports as elsewhere. Your rapporteur is proposing an amendment to clarify this point.

Article 6 deals with more stringent measures which Member States may apply. Your rapporteur's view is that Member States are best placed to assess the nature of the threat and must be allowed to apply more stringent measures without hindrance. An amendment to

Article 6 to this effect is proposed.

As far as the inspection regime is concerned, inspections of airports will only be effective as instruments to assess the real implementation of the regulation if they are unannounced. Finally and importantly security checking of employees engaged in sensitive tasks or entering restricted areas must be the responsibility of the appropriate national authorities who are best placed legally to access the necessary information.

Effective cooperation between the Institutions and International Cooperation

Clearly this is essential if airport security in Europe is to respond to the tragic events of 11 September. In treating this proposal urgently the Parliament is showing its preparedness to respond to a request from the Council to conclude the legislative procedure by the end of November. In the same spirit the Commission must make clear to the Parliament what further proposals it intends to bring forward to improve security following the European Council of 12 September, and when. Equally the Council should indicate when it will conclude its Common Position on the security-related legislation listed above. International cooperation also needs to be reinforced in particular in the area of the exchange of information for security purposes.

General direction of the rapporteur's amendments

While acknowledging the urgency of tightening airport security your rapporteur is of the view that a distinction must be made between infrastructure provisions and others when timetabling and implementation is considered. Nevertheless there can be no open-ended or lengthy implementation, far less a generalised derogation for smaller airports. As in other areas, inspection of airports should be unannounced. The detailed results of inspection must remain confidential, although the Parliament has a right to know that the regulation is being fully implemented. The rapporteur's amendment deals directly with the question of who meets the costs of enhanced security post 11 September. In your rapporteur's view this should be the Member States as the Commission has indicated in its Communication on the Single European Sky.

It is your rapporteur's view that national authorities must assist with security checks before the engagement of security personnel.

Finally, it is important to recognise a distinction between administrative measures which can be implemented very quickly and other measures which may have infrastructure implications and which realistically can only take effect after a period of time which should be as short as possible.

20 November 2001

OPINION OF THE COMMITTEE ON BUDGETS

for the Committee on Regional Policy, Transport and Tourism

on the proposal for a Council regulation on establishing common rules in the field of civil aviation security
(COM(2001) 575– C5-0481/2001 – 2001/0234(COD))

Draftsman: Per Stenmarck

PROCEDURE

The Committee on Budgets appointed Per Stenmarck draftsman at its meeting of 12 November 2001.

It considered the draft opinion at its meeting of 20 November 2001.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Terence Wynn, chairman; Reimer Böge, vice-chairman; Per Stenmarck, draftsman; Ioannis Averoff, Jean-Louis Bourlanges, Kathalijne Maria Buitenweg, Paulo Casaca, Joan Colom i Naval, Carlos Costa Neves, Gérard M.J. Deprez (for Markus Ferber), Den Dover, James E.M. Elles, Göran Färm, Salvador Garriga Polledo, Catherine Guy-Quint, Wolfgang Ilgenfritz, Juan Andrés Naranjo Escobar, Bartho Pronk (for Armin Laschet), Heide Rühle, Esko Olavi Seppänen (for Chantal Cauquil), Francesco Turchi, Kyösti Tapio Virrankoski and Ralf Walter. .

SHORT JUSTIFICATION

Following the criminal attempts committed in New York and Washington on 11 September 2001, the European Council at a special meeting of the Transport Ministers held on 14 September 2001 and lately at the extraordinary session of 21 September 2001, called for necessary and urgent measures to strengthen air transport security on the basis of the essential measures contained in ECAC document 30.

However, it must be pointed out that the Community can only legislate for the territory of its competence.

The current draft regulation therefore establishes common rules to ensure civil aviation security and gives the Commission the necessary powers to adopt the implementing measures that will facilitate their application starting in 2002 and ongoing over subsequent years.

An annual amount of 1.215 Mio € will be charged to heading B2-702 and will mainly cover :

- the recruitment of 8 auditors in charge of ensuring the standardisation and the respect of security arrangements throughout European airports : 1.2 Mio €
- the cost of training actions to the auditors : 0.015 Mio €

The rapporteur welcomes the new legal basis to be adopted under the co-decision procedure which is a collective response to the terrorist threat by effectively and uniformly introducing common preventive measures.

Concerning the budgetary aspects, he nevertheless wishes to formulate some remarks :

- although the annual amount is not significant (1.215 Mio €) it is a new action which the Community budget will have to support from 2002 on, at Council's request on the basis of the existing financial framework.
- the nature of the action is purely administrative : creation of an Audit Office of 8 auditors divided in two teams in charge of checking 387 airports, and therefore this action should not be financed under operational appropriations but rather under heading 5 of the Financial Perspective or should be run by the new Aviation Safety Agency.
- the allocation of financial and human resources will be decided by the budgetary authority within the annual procedure on the basis of an evaluation provided by the Commission before end July.

AMENDMENTS

The Committee on Budgets calls on the Committee on Regional Policy, Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
Recital 9 a (new)

The action consists in the creation of an Audit Office to be financed by operational appropriations,

Justification

According to article 19 of the Financial regulation, administrative expenditure should be financed under part A of the Budget. Operational appropriations are not appropriate to finance an administrative structure.

Amendment 2
Recital 9 b (new)

The decision by the legislative authority is taken without prejudice of the budgetary decisions taken in the context of the annual procedure.

Justification

Prior adoption of a legal basis is necessary to authorise the implementation of the appropriations in the Budget. The annual amount is decided within that annual budgetary procedure.

¹ OJ C (not yet published).

Amendment 3
Article 9
Publication of information

The Commission shall publish each year a report on the implementation of this regulation and on the situation in the Community as far as aviation security is concerned, drawing conclusions from the inspection reports

The Commission shall publish each year a report on the implementation of this regulation and on the situation in the Community as far as aviation security is concerned, drawing conclusions from the inspection reports. ***When presenting the PDB, the Commission forwards to the Budgetary Authority the result of quantitative and qualitative evaluation of the action based on annual programming and performance targets.***

Justification

The budgetary authority needs to be informed about the evaluation of this action at a useful stage of the annual procedure.

AMENDMENT TO THE LEGISLATIVE RESOLUTION

[The European Parliament],

Considers that the financial amount foreseen for this action is compatible with the current financial perspective.

Justification:

According to the common declaration of 20 July 2000, the Budgetary Authority should evaluate the compatibility of the envelope with the Financial Perspective on the basis of the other existing policies.