EU certification of aviation security screening equipment

In 2016, the European Commission adopted a proposal for a regulation establishing a certification system for aviation security screening equipment. The proposal sought to contribute to the proper functioning of the EU internal market and to increase the global competitiveness of the EU industry by establishing an EU certification system for aviation security equipment. This system was to be based on EU type-approval and issuance of a certificate of conformity by manufacturers, which would have been valid in all Member States, according to the principle of mutual recognition.

Progress on the proposal rapidly reached a stalemate. Consequently, in its 2019 work programme, the Commission announced its intention to withdraw the proposal, noting that there was a common understanding that an EU certification system would be better reached by amending existing implementing legislation based on Regulation (EC) No 300/2008 on common rules in the field of civil aviation security. The proposal was formally withdrawn on 21 June 2019.

Proposal for a regulation of the European Parliament and of the Council establishing a Union certification system for aviation security screening equipment


Committees responsible: Transport and Tourism (TRAN) and Internal Market and Consumer Protection (IMCO) jointly under Rule 55

Rapporteurs: Luis De Grandes Pascual (EPP, Spain) and Anneleen Van Bossuyt (ECR, Belgium)

Shadow rapporteurs: Carlos Coelho (EPP, Portugal), Maria Grapini (S&D, Romania), Anna Hedh (S&D, Sweden), Peter van Dalen (ECR, the Netherlands), Filiz Hyusmenova (ALDE, Bulgaria), Pavel Telička (ALDE, Czechia), Kateřina Konečná (GUE/NGL, Czechia), Jakop Dalunde (Greens/EFA, Sweden), Julia Reda (Greens/EFA, Germany), Daniela Aiuto (EFDD, Italy), Marie-Christine Arnautu (ENF, France)

Introduction

Aviation screening equipment refers to the security equipment used for screening persons, cabin and hold baggage, supplies, air cargo and mail. While existing regulations, in particular Regulation (EC) 300/2008, define the technical specifications and performance requirements for aviation security screening equipment used at European Union (EU) airports, there are no EU-wide rules on certification. Member States have therefore adopted different rules when it comes to approving and certifying such equipment before placing it on the market. This market fragmentation has in practice prevented the creation of a true internal market for aviation screening equipment in the EU. The market is a considerable one, representing an annual turnover of €14 billion globally, and of €4.2 billion in the EU.

The proposal for a regulation establishing a Union certification system for aviation security screening equipment, presented by the Commission on 7 September 2016, together with the impact assessment and related executive summary, thus seeks ‘to contribute to the proper functioning of the EU internal market and to increase the global competitiveness of the EU industry by establishing an EU certification system for aviation security equipment’. Such a system would be based on EU type-approval and issuance of certificate of conformity by manufacturers, which would be valid in all EU Member States, according to the principle of mutual recognition.

Existing situation

Current provisions regarding aviation screening equipment are enshrined in Regulation (EC) No 300/2008 of 11 March 2008 on common rules in the field of civil aviation security, and its implementing acts. Regulation 300/2008 is based on standards developed by the Commission. These standards are continually adapted to threat scenarios and risk assessments but they are classified and only made available, owing to their impact on national security, to the persons, bodies or organisations who have adequate security clearance and a valid justification (‘need to know basis’).

There is, however, no legally binding EU-wide conformity assessment scheme to ensure that the standards are met in all EU airports and the methods by which Member States certify the equipment diverge. Consequently, the equipment certified in one Member State can only be placed on its own market. Other Member States are free to recognise this certification or not, to ask that the equipment is tested again to ensure that it meets EU requirements, or to forbid its use on their own territory. There is no automatic recognition of the certification issued by the first Member State.

To overcome this difficulty and address this fragmentation, Member States have worked, within the framework of the European Civil Aviation Conference (ECAC),¹ and in cooperation with the European Commission, towards the establishment of common testing methodologies for different categories of screening equipment. This resulted in the creation in 2008 of a common evaluation process (CEP) within ECAC. The ECAC CEP applies to explosives detection systems (EDS), liquid explosive detection systems

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¹ Created in 1955, ECAC is an intergovernmental organisation which seeks to harmonise civil aviation policies and practices amongst its member states and to promote understanding on policy matters between its member states and other parts of the world. It has a pan-European membership (44 including the 28 EU Member States).
(LEDs), explosive trace detection (ETD) and security scanners (SSc). In 2015, according to the Commission’s impact assessment, it was deemed to be extended to cargo metal detection equipment (MDE) and EDS for cabin baggage (EDS-C).

Though the ECAC common testing methodologies are endorsed by the ECAC members, they are not legally binding and Member States are free to request additional or different tests. The ECAC CEP publishes test results but does not issue equipment certificates, which remain at national level. The results of a 2012 survey by the Joint Research Centre show that Member States have different approaches regarding the ‘approval(s)/certificate(s)/information’ requested in order for aviation security screening equipment to be eligible for a tender. Some Member States rely on the ECAC system, some on the US certification scheme, or the approval of another Member State, while one Member State has no requirement at all.

According to the European Commission’s impact assessment, the lack of an EU-wide legally binding system for the certification of aviation security screening equipment has prevented the creation of an internal market for that sector and negatively affected both manufacturers and end-users (such as aviation security services and airports). Such a fragmentation implies that manufacturers face increasing development and commercialisation costs as well as delays in placing their products on the market, while end-users have a limited choice of purchasable equipment. It also has negative implications for the European industry compared with third country competitors. The US certification scheme\(^2\) is renowned and, according to industry representatives, gives US companies a strong competitive advantage, compared with EU-based companies, when they compete in third countries.

Parliament’s starting position

Parliament has not yet taken a position on this specific issue. However, in a resolution of 6 July 2011 on ‘Aviation security with a special focus on security scanners’, it did call on the Commission ‘to revise regularly the list of authorised screening methods and the conditions and minimum standards for their implementation’; and invited both the Commission and Member States when it comes to international relations to ‘promote global regulatory standards within the framework of the ICAO in order to support the efforts made by third countries to implement these standards, move towards the mutual recognition of security measures and pursue the objective of effective one-stop security’.

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\(^2\) In 2007, the United States adopted a harmonised US certification system that is administered by the US Transportation Security Administration (TSA).
Proposal

Preparation of the proposal

This legislative proposal falls under different policy frameworks dedicated to strengthening EU security policy, the EU security industry or the internal market in the sector.

The European Commission did already announce the proposal in a 2012 communication entitled ‘Security Industrial Policy Action Plan for an innovative and competitive Security Industry’. This communication suggested that, subject to a thorough impact assessment analysis and consultation of stakeholders, the Commission would put forward a legislative proposal to establish an EU wide harmonised certification system for airport screening (detection) equipment. It also pointed to the objective of achieving mutual recognition of certification systems.

The European agenda on security, adopted by the Commission in April 2015, underlined the importance of a competitive EU security industry contributing to the EU’s autonomy in meeting security needs. It recalled that the EU had encouraged the development of innovative security solutions, for example through standards and common certificates. The Commission also mentioned in the European agenda that it was considering further action, notably on airport screening equipment, in order to remove barriers to the single market and to enhance the competitiveness of the EU security industry in export markets.

In the follow-up to the terrorist attacks of 22 March 2016 in Brussels, the Commission adopted a communication entitled ‘Delivering the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union’. It announced that the Commission would, by September 2016, propose EU-wide rules on certification of airport screening equipment.

The legislative proposal, published on 7 September 2016, builds on the results of different consultations and studies. A public consultation on the certification of aviation security screening equipment was held between 5 March 2013 and 10 June 2013, the results of which fed into the impact assessment accompanying the legislative proposal. A workshop to follow up the open consultation was organised later that year with stakeholders that included Member States, industry representatives, ECAC and end-users such as Airports Council International Europe. Two pieces of analysis were used to prepare the proposal. The first was an external study on civil security research and development in major third countries,\(^3\) that looked at the different certification and conformity assessment schemes available in the EU and in the world, and included an assessment of the impacts of the policy options identified by the Commission; the second was a survey on detection requirements and testing methodologies for aviation security screening devices in the EU and EFTA,\(^4\) carried out by the Joint Research Centre (Institute for Reference Materials and Measurements) and answered by EU and EFTA Member States’ aviation security authorities.

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\(^3\) Ecorys, Study on Civil security R&D in major third countries (referred to as ‘SER3CO’ in the impact assessment), 2013.

Preparation of the proposal

The changes the proposal would bring

The proposal seeks to establish a legally binding EU certification system and describes the obligations of the different bodies involved in that certification mechanism. The certificate would be valid throughout the EU and based on the principle of mutual recognition by all Member States.

According to article 6 of the proposal, each Member State would designate, and notify to the Commission, an approval authority competent for all aspects of the approval of equipment, as well as for issuing, amending or withdrawing EU type-approval certificates.

According to article 5, manufacturers would issue a certificate to accompany each piece of equipment manufactured in conformity with the type and configuration covered by an EU type-approval certificate. By issuing the certificate of conformity, the manufacturer would assume responsibility for the compliance with the approved type and configuration.

Regarding applications for EU type-approval certificate, the manufacturer would submit to an approval authority only one application in respect of any given type and configuration of equipment and in only one Member State (article 7). The approval authority would be required, within 20 working days from issuance of the type approval certificate, to send to the other approval authorities and the Commission, a copy of the EU type-approval certificate (article 11).

As there are already detailed performance requirements and testing methods, the proposal does not aim to add more technical legislation. In its annex I, the proposal states that the performance requirements which must be fulfilled would be those laid down in Regulation (EU) No 300/2008 and its supplementing and implementing acts. The same would apply to the testing methods, as annex IV states that ‘the common testing methodologies to be applied for the tests referred to in Article 8 are the Common Testing Methodologies (CTMs) developed in the framework of the Common Evaluation Process (CEP) approved by the European Civil Aviation Conference (ECAC)’. The Commission, however, would be empowered to amend the annexes to reflect the introduction of new performance requirements or to adapt the annexes to the development of scientific and technical knowledge through delegated acts (article 27).

Article 8 mentions that the approval authority would have to ensure that appropriate tests would be carried out by a technical service to determine whether the type and configuration of equipment concerned comply with the performance requirements referred to in annex I. The tests would be carried out by technical services which would have to be notified to the Commission by the approval authorities (article 21). The skills of such technical services would have to be demonstrated by an accreditation certificate issued by a national accreditation body (article 23); in case of doubt, the Commission would investigate the competence of such technical bodies (article 26).

5  ‘EU type-approval’ and ‘EU type-approval certificate’ are defined in the proposed regulation as respectively ‘the procedure whereby a Member State certifies that a type and configuration of equipment satisfies the performance requirements referred to in Annex I and that the procedural requirements of this Regulation have been complied with’ and ‘the document whereby an approval authority certifies that a type and configuration of equipment is approved’.
Another important provision of the proposal is article 4 which specifies that Member States should not impede the making available and/or putting into service of any equipment accompanied by a valid certificate of conformity issued in accordance with the proposal’s provisions, nor should they impose additional requirements in respect of such equipment.
Views

Advisory committees

Consultation of the European Economic and Social Committee (EESC) on the proposal is mandatory (Article 114 of the Treaty on the Functioning of the EU (TFEU)). The EESC adopted an opinion on 25 January 2017 (rapporteur: Stefan Back, Employers –Group I, Sweden). In this opinion, the EESC welcomes the objective of the proposal but expresses doubts about its added value and asks the Commission to reconsider its content. In particular, it regrets that the proposal does not introduce a single EU approval authority with an integrated technical service, an approach considered as more efficient and cost-effective. It deplores "the fact that internal market consideration seem to have taken precedence over security concerns"; and in particular the fact that the proposal does not include the possibility of prescribing more stringent requirements at national level (as authorised by Article 6 of Regulation (EC) 300/2008). Lastly, it questions the scope of the use of delegated acts to modify technical provisions, considering that it goes ‘beyond the scope of what is authorised under Article 290(1) TFEU’.

National parliaments

The deadline for submitting a reasoned opinion on the grounds of subsidiarity was 3 November 2016. Chambers of national parliaments from 13 Member States looked at the proposal and Italy and Romania submitted comments for political dialogue. Two Member States – France and the United Kingdom (UK) – submitted reasoned opinions stating that the proposal does not comply with the subsidiarity principle. Both Member States also share concerns regarding article 4 of the proposal (see above), pointing out that it does not reflect or take into account Member States’ ability to adopt more stringent measures than the common basic standards for the protection of civil aviation (as described in Article 6 of the existing Regulation No 300/2008), or stricter measures adapted to their individual situation as to threat scenarios and their assessment of the specific risks incurred. The UK in particular underlines that the impact assessment and the survey it contains do not sufficiently substantiate the rationale for action at EU level. It also expresses concerns regarding the risk of exposure of confidential information and of increased bureaucracy. France mentions that the proposal transfers some important competences from Member States to the Commission via delegated acts, notably concerning testing methodologies, standards definition and qualification criteria for test centres.

Stakeholders’ views

As mentioned above, a public consultation was held between 5 March 2013 and 10 June 2013 and a workshop was organised on 25 September 2013. The consultation received 37 contributions. Though recognising that the number of responses was relatively low, the Commission nonetheless considered the results to be relevant, as all stakeholder groups (such as national administrations and airports operators,

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6 This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under ‘EP supporting analysis’.
as well as the main airlines and business associations, representing most EU manufacturers, and several testing laboratories) were represented. The majority of stakeholders (SMEs, large industry, test laboratories and business associations) agreed that the negative effects of the current certification framework concern the commercialisation of aviation screening equipment. They pointed notably to the current system's lack of legal certainty and efficiency, the time it takes to market equipment, and research and development costs. On the external dimension, they underlined in particular the harmonisation with third countries and competition with the USA. Only representatives of the national authorities had a slightly different view. Over 90 % of respondents were of the view that the ECAC should retain a central role in an EU-wide harmonised certification system for aviation screening equipment, although they were not clear as to what its liability should be. Other issues, such as airport space, the training of personnel, passenger and security staff or passenger flows, were not considered to be problematic. The findings of the workshop were in line with the initial findings of the public consultation.
**Legislative process**

The European Parliament appointed Luis de Grandes Pascual (EPP, Spain) and Anneleen van Bossuyt (ECR, Belgium) as rapporteurs (Joint Internal Market and Consumer Protection/Transport and Tourism Committees under Rule 55 of the EP Rules of Procedure). A first meeting of this joint committee took place in July 2017. During that meeting, Members discussed the latest developments in Council, where certain Member States had indicated they wished the Commission to withdraw the proposal, while the Commission had committed to redrafting part of the proposal to meet the Council’s main concerns.

Discussions in the joint committee revealed diverging positions on content and procedure, and the chairs of the two committees concluded the meeting by asking the Commission to provide to the European Parliament a clear assurance that the proposal had enough support in the Council in order for the Parliament to start its work. Since then no further developments took place.

In annex IV of its 2019 work programme, the Commission announced its intention to withdraw the proposal, highlighting that following interinstitutional discussions there was a common understanding that an EU certification system would be better reached through amending existing implementing legislation based on Regulation (EC) No 300/2008.

The proposal was withdrawn on 21 June 2019.
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