



European Communities

EUROPEAN PARLIAMENT**SESSION DOCUMENTS**

English Edition

30 May 1991

A3-0153/91

**R E P O R T**

of the Committee on Transport and Tourism

on the Commission proposal for a Council directive on the harmonization of technical requirements and procedures applicable to civil aircraft
(COM(90) 0442 final - C3-0367/90)

Rapporteur: Mr Enrique SAPENA GRANELL

DOC_EN\RR\110603

PE 148.166/fin.
Or. PT

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*	= Consultation procedure requiring a single reading
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**II	= Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment
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**I	= Cooperation procedure (first reading)
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***	= Parliamentary assent which requires the votes of a majority of the current Members of Parliament
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By letter of 29 October 1990 the Council consulted the European Parliament, pursuant to Article 84(2) of the EEC Treaty, on the Commission proposal for a Council directive on the harmonization of technical requirements and procedures applicable to civil aircraft (COM(90) 0442 final - C3-0367/90).

At the sitting of 19 November 1990 the President of Parliament announced that he had referred this proposal to the Committee on Transport and Tourism as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy for its opinion.

At its meeting of 27 November 1990 the Committee on Transport and Tourism appointed Mr Sapena Granell rapporteur.

At its meeting of 26 February 1991 it examined the validity and appropriateness of the legal basis pursuant to Rule 36(3). By letter of 26 February 1991 it requested the opinion of the Committee on Legal Affairs and Citizens' Rights.

At its meetings of 26 February 1991, 18 March 1991 and 27 May 1991 it considered the Commission proposal and the draft report.

At the last meeting it adopted the draft legislative resolution by 13 votes to 9.

The following were present for the vote: Amaral, chairman; Ch. Beazley and N. Christensen, vice-chairmen; Sapena Granell, rapporteur; Anastassopoulos (for Bourlanges), Bettini (for Fernex), Coimbra Martins (for Stamoulis), Cornelissen (for Fantini), Joanny, Lalor (for Marleix), McIntosh, McMillan-Scott, Müller, Romera i Alcazar, Rosmini (for Lüttge), Sarlis, Schlechter, Stewart, Siso Cruellas (for Bonetti), Schodruch, B. Simpson, Visser and Wijsenbeek.

The opinions of the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Legal Affairs and Citizens' Rights are attached.

The report was tabled on 30 May 1991.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

AMENDMENTS

A

Commission proposal for a Council directive on the harmonization of technical requirements and procedures applicable to civil aircraft

Commission text¹

Amendments

(Amendment No. 1) Preamble

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84(2) thereof,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 82(2) and Article 100a thereof,

(Amendment No. 2) Fourth recital

Whereas several European civil aviation authorities have established the Joint Aviation Authorities organisation (hereinafter called the JAA), as an associated body of the European Civil Aviation Conference, to develop arrangements to co-operate on the development and implementation of Joint Aviation Requirement (JARs) in all the fields related to safety of aircraft and their operation;

Whereas the expressed view of the Parliament is that any Community initiative in the field of liberalisation should be accompanied by specific proposals in the field of safety and air control; whereas this view was based upon the logic that in the field of civil aviation, the process of liberalisation, safety and air traffic control constitutes a "whole" responsibility for a single body of competence.

(Amendment No. 3) Fifth recital

Whereas it is appropriate to harmonise safety levels by establishing common requirements and procedures on the basis of JAA codes;

Whereas it is appropriate to harmonise and ultimately to unify safety and air traffic control within common levels, standards and procedures throughout the Community as the basis for the achievement of liberalisation.

¹ For full text see COM(90) 0442 - OJ No. C 324, 26.10.1990, p. 3

Commission text

Amendments

(Amendment No. 4)
Sixth recital

Whereas, to facilitate harmonisation, all Member States should become members of the JAA and the Commission should participate in the JAA organisations;

Deleted

(Amendment No. 5)
Sixth recital a (new)

Whereas to facilitate harmonisation within the single market concept all Member States should accept the prospective development and operational implementation of a single unified air traffic control system for the internal market comprising an area of Community air space without internal frontiers in which the most efficient, economic, expeditious and safe movement of air traffic is ensured.

(Amendment No. 6)
Seventh recital

Whereas Member States should accept the certification of products, and organisations or persons concerned with the design, manufacture, maintenance and operation of products, without further technical work or evaluation, when the product, organisation or person has been certificated in accordance with the common requirements and procedures;

Whereas Member States should accept certification of products, and organisations or persons concerned with the design, manufacture, maintenance and operation of products, where that organisation or person has been certificated in accordance with the common requirements and procedures;

Commission text

Amendments

(Amendment No. 7)
Eighth recital

Whereas emergency problems in aviation might arise: whereas in such cases the Member State must take all appropriate measures: whereas a reason must be given for the measures and, where the reason is a shortcoming in the common requirements and procedures, the Commission should request the JAA to propose such amendments;

Deleted

(Amendment No. 8)
Ninth recital

Whereas it is appropriate that funding by the Member States of research to improve aviation safety be co-ordinated to ensure efficient use of resources and to enable the maximum benefit to be achieved;

Whereas it is appropriate that the funding by the Member States of research and development to improve aviation safety and air traffic control by coordinated to ensure efficient use of resources and to enable maximum benefit to be achieved throughout all regions of the single market;

(Amendment No. 9)
Ninth recital a (new)

Whereas it is appropriate to delegate the power to the Commission to establish a competence in all matters which relate to aviation safety and air traffic control to ensure the safe and expeditious movements of all aircraft throughout the area of the single market;

Commission text

Amendments

(Amendment No. 10)

Tenth recital

Whereas it is appropriate to delegate the power to the Commission to introduce new common requirements and procedures, or amendments to existing ones, as developed by the JAA, assisted by a committee composed of experts nominated by the Member States in accordance with procedure I of Council Decision 87/373/EEC(1);

Whereas it is appropriate to support this competence by committees and organisations composed of experts in civil aviation safety and air traffic control nominated by Member States in accordance with procedure I of Council Decision 87/373/EEC;

(Amendment No. 11)

Tenth recital a (new)

Whereas safety in air transport and smoothness and efficiency in the flow of air traffic must be priorities in a common transport policy, and whereas the development of such a policy requires an overall, coordinated Community approach to the harmonization of technical requirements, safety rules, airports policy, vocational training and the improvement of air traffic control;

Commission text

(Amendment No. 12)
Article 1

Amendments

This Directive shall apply to the harmonisation of technical, operational and administrative requirements and procedures in the field of safety of civil aviation with respect to:

- the design, manufacture, operation and maintenance of aircraft registered in the Member States of the Community
- persons and organisations involved in these tasks
- the mutual acceptance within the Community of certification granted by any Member State of the Community on the basis of these requirements and procedures.

This Directive shall apply to the harmonisation of technical, operational and administrative requirements and procedures in the fields of safety and expedition of all aircraft flights relative to Community civil aviation with respect to:

- the specification, procurement and installation of all systems needed for the implementation of a Unified Air Traffic Management System throughout the entire Community
- the determination of common standards and procedures for the operational conduct of air traffic control services and for the training and employment of all staff in these services throughout the Community.

(Amendment No. 13)
Article 2(2)

2. 'Arrangements' means arrangements developed under the auspices of the European Civil Aviation Conference, to co-operate in the development and implementation of joint requirements in all the fields related to safety of aircraft and the safe operation of aircraft. These arrangements are specified in Annex I.

2. 'Arrangements' means arrangements developed under the auspices of the Commission to co-operate in the development and implementation of joint requirements in all the fields related to safety of aircraft and the safe operation of aircraft.

Commission text

Amendments

(Amendment No. 14)
Article 2(5)

"national variant" means a national requirement or regulation imposed by a given country additional to, or instead of, a JAR provision. The national variants are indicated in the relevant JAR code.

"national variant" means a national requirement or regulation imposed by a given country additional to, or instead of, a Community provision. The national variants would be registered by the Commission as valid, but interim arrangements.

(Amendment No. 15)
Article 2(6)

"JAR" means "Joint Aviation Requirements", that is requirements developed and maintained by the JAA including procedural requirements in accordance with the arrangements.

Deleted

(Amendment No. 16)
Article 2(6)a (new)

"Air traffic control system" means the system in its entirety which is used to guide, direct and control the flight of an aircraft from take-off or arrival into Community airspace to final landing or exit from Community airspace, at all times to exemplary levels of safety whether in flight or in movement on the ground or parked for operational maintenance purposes.

"Unified air traffic control system" means the single cohesive system of air traffic control, which will be implemented and operated at the Community level to common standards throughout the air space and territorial environs of the Community Member States.

Commission text

(Amendment No. 17)

Article 3

1. Member States shall adopt as their sole national codes, and apply not later than 1 January 1993, the codes relating to the common requirements and procedures specified in Annex 2 and adopted by the Commission under Article 10.

2. Where by 1 January 1993, and as long as, a specific code is not adopted, Member States may use the relevant part of their existing national codes.

Amendments

1. The Commission shall establish common codes of practice and procedures for the purposes of achieving consistently high standards of air traffic operations and aircraft and aviation equipment safety throughout the Community Member States.

2. These common codes of practice and procedures shall be applicable to the introduction of a single unified air traffic control system for the Community which should be operational by 2005. They will be introduced progressively from 1 January 1993.

3. They will be progressively adopted by Member States to encourage harmonisation of operational practice, operator training and to guide the procurement and installation of equipments for air traffic control purposes.

4. As long as Member States continue to operate air traffic control systems individually and a specific code is not available they may continue to use the relevant part of their existing national codes to ensure safety of aircraft operations.

5. Certificates issued pursuant to a national code shall continue to be valid after the adoption of a common code provided the aircraft, in respect of which the certificate was issued, continues to be used by the original applicant for the certificate.

Commission text

Amendments

(Amendment No. 18)
Article 4

1. Member States shall ensure that their civil aviation authorities meet the conditions for membership of the JAA specified in, and shall sign, the arrangements not later than 1 January 1992.

Deleted

2. Member States shall take the necessary steps to enable the Commission to participate in the JAA organisations mentioned in point 4 of the arrangements.

(Amendment No. 19)
Article 4a (new)

Member States shall ensure their civil aviation authorities collaborate fully with the Commission to create a single unified system of air traffic control for the Community and to establish a singular set of codes of practice for the safety of aircraft and aviation products. These arrangements and active participation with the Commission to realise these objectives shall be effective not later than 1 January 1993.

Commission text

Amendments

(Amendment No. 20)
Article 5

1. Member States shall accept products designed, manufactured, operated and maintained in compliance with the common requirements and procedures, without further technical requirements or evaluation, when the products have been certificated or approved by another Member State. When the original acceptance is for a particular purpose, or purposes, the subsequent acceptances shall cover the same purpose(s).

Member States, where appropriate, shall continue within the standards set by the Community to provide a capability to undertake safety and accident investigations. They will also determine draft standards for airworthiness regulation which can be incorporated into acceptable standards at the Community level. they shall be responsible to inform the Commission of all findings and to convene, under the direction of the Commission, in order to determine appropriate actions which are designed to improve the overall safety performance in all areas of the civil aviation industry within the Community. Where appropriate they will establish standards which shall apply to internationally manufactured equipment which are designated for operation or use within the environs of the Community.

2. Member States shall accept products that have not been certificated in compliance with the common requirements and procedures subject to a technical assessment, by the JAA, to determine that the product's level of safety is broadly equivalent to that required by the common requirements and procedures.

Commission text

Amendments

(Amendment No. 21)
Article 7(2)

2. The Commission shall enter into consultation with the Member States and the JAA as soon as possible. Where after such consultation the Commission finds that the measure referred to in paragraph 1 is justified, it shall forthwith so inform the Member States. Where the measure is attributed to shortcomings in the common requirements and procedures, the Commission shall ask the JAA to develop a new code or amendments to an existing code.

2. The Commission shall enter into consultation with Member States through the appropriate committee or body of expertise as soon as possible whenever a safety issue is identified. After due deliberation the Commission will use an appropriate notice to ensure compliance, issue a regulation or amend a regulation. This shall be advised to all Member States and coordination shall be made with the ICAO where such matters are relevant to their sphere of influence.

(Amendment No. 22)
Article 10

1. The Commission is hereby empowered in accordance with the procedure set out in Article 11:

- to make the necessary changes to the Annexes;
- to adopt the code relating to the common requirements and procedures specified in Annex 2, and amendments to those codes.

1. The Commission is hereby empowered in accordance with the procedure set out in Article 11:

- to establish a programme to prepare specifications designs, transition plans, procedures, operational regulation and implementation schedules to achieve the introduction of a single unified system of Air Traffic Control for the Community progressively from 1995 so as to be fully operational not later than 2005.
- to establish a single schedule of common requirements and procedures necessary to regulate the standards of safety to be applied to aircraft, airworthiness and the supply and maintenance of aviation materials. In this to liaise with the JAA in order to harmonise standards as appropriate to Community interests, with other European non-Community States.

Commission text

Amendments

(Amendment No. 22) (continued)
Article 10

- to establish all safety regulations such that it is acceptable for a common certification at Community level within any Member States of aircraft or aviation materials or personnel, pilots, air traffic controllers, concerned with operational Civil Aviation functions to be acceptable to all Community Member States
- to establish by 1 January 1995 the Community Civil Aviation Authority in order to prepare and plan for and ultimately operate the single unified system of Air Traffic Control
- to work with the Civil Aviation Authorities of Member States to achieve the objectives of this Directive to the benefit of the single market within the Community. In particular to determine the future constitution of the EUROCONTROL convention. In particular to review and determine the relationship with non-community member states of that convention.

2. If a new code, or amendment to an existing code, developed by the JAA contains a national variant for a Member State, the Commission shall decide, in accordance with the procedure set out in Article 11, to make the variant applicable for all Member States, or not to include it in the common requirements and procedures.

2. All decisions must be taken with reference to maximum safety criteria.

Commission text

Amendments

(Amendment No. 23)
Article 12a (new)

1. The Commission shall set up within its Directorate General for Transport a task force to consider matters relating to civil aviation in Europe, with particular reference to the following:

- harmonisation of technical standards and unification of procedures
- safety including harmonisation of cabin safety and cabin crew training
- air traffic control
- training and civil aviation personnel
- airports policy

2. By 31 December 1991 at the latest, the Commission shall submit a proposal for the creation of a European Civil Aviation Authority on the basis of the work carried out by the task force;

3. By 31 December 1992 at the latest, this Directive shall be revised by the Council on the basis of the Commission proposal referred to in the above paragraph.

A

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament
on the Commission proposal for a Council directive on the harmonization
of technical requirements and procedures applicable to civil aircraft

The European Parliament,

- having regard to the Commission proposal to the Council (COM(90) 442 final)¹,
 - having been consulted by the Council pursuant to Article 84(2) of the EEC Treaty (C3-0367/90),
 - having regard to the report of the Committee on Transport and Tourism and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Legal Affairs and Citizens' Rights (A3-0153/91),
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
 2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 5. Instructs its President to forward this opinion to the Council and Commission.

1 OJ No. C 270, 26.10.1990, p. 3

B

EXPLANATORY STATEMENT

INTRODUCTION

1. The aim of this proposal for a directive is to harmonize the technical standards relating to the design, manufacture, operation and maintenance of civil aircraft, their engines and other equipment, and the procedures relating to the persons and organizations involved in such tasks. This should lead to the mutual acceptance within the Community of certificates granted by the Member States on the basis of harmonized standards and procedures.

2. Before examining the Commission proposal in detail (or, at least, the proposed ways of achieving such harmonization), we should consider the following questions:

SAFETY IN AIR TRANSPORT

3. The technical design, the operation and the maintenance of aircraft are some of the most important factors affecting the safety of air transport, and the main aim of harmonizing certification standards for aircraft and other aeronautical products should be to achieve higher safety levels.

Parliament has always maintained that any Community policy adopted in the field of civil aviation must include Community-wide safety measures, and not just ones at national level as has been the case so far. In its resolution of 15 September 1987², it maintained that the safety of air transport should be an integral part of Community policy in the field of aviation and called on the Commission to ensure that, amongst various other proposed guidelines, common measures were adopted with regard to aircraft design and construction.

4. Parliament's view has always been that Community measures to liberalize civil aviation (relating to fares, access by air transport companies to air service routes, capacity sharing in passenger transport, and competition) must be supplemented by accompanying measures including, in particular, the regulation of air traffic control and the harmonization of airworthiness certificates and of cockpit and passenger cabin safety standards.

The second liberalization package, which has since been published, omitted such accompanying measures³, which remain under the control of the authorities in each individual country. This perpetuates a most unsatisfactory state of affairs, whereby the Community is responsible for liberalization and individual authorities for safety and air traffic control.

2 A2-0135/87 - Anastassopoulos report

3 See Parliament's resolution of 14 March 1990 (OJ No. C 96, 17.4.1990, p. 53) on the package in question (Visser report, A3-0042/90)

FREE MOVEMENT OF AERONAUTICAL PRODUCTS

5. Harmonization of the technical requirements and the procedures applicable to civil aircraft has, as we have seen, a considerable bearing on the safety of air transport. But it also has significant implications for the completion of the single market and the free movement of aircraft within the Community by making it possible to transfer aircraft from the register of one country to that of another without their having to be modified technically (and at considerable expense) so as to meet the different requirements of each individual authority.

This also has a bearing on the competitiveness of the European aircraft industry.

6. In its communication of 3 August 1990 on a competitive European aeronautical industry⁴, the Commission said that the industry ought to benefit from the measures concerning standardization and certification which had been adopted with regard to completion of the internal market, since the technical obstacles resulting from the differences in regulations from one Member State to another and the preservation of specific national certification procedures represented serious disadvantages, which did not affect, for instance, the North-American industry in particular.

On the subject of standardization, the AECMA (Association Européenne des Constructeurs de Matériel Aérospace) signed a protocol agreement with the CEN (European Committee for Standardization) on 1 January 1987 and has subsequently been recognized as the body responsible for the technical aspects of standardization.

7. With regard to certification, the civil aviation authority of each country is responsible for the certification process, on completion of which the certificate of airworthiness is granted. The individual civil aviation authorities have achieved notable cooperation and harmonization in this area, which we shall now consider.

JAR (Joint Aviation Requirements)

8. The Federal Airworthiness Regulations (FAR) established in the USA under the authority of the Federal Aviation Administration (FAA) are the model for, and the source of, the regulations adopted in this field by other countries.

The civil aviation authorities of certain Western European countries belonging to the ECAC (European Civil Aviation Conference) began to cooperate in this area in 1969, and on 21 March 1979 the initial Arrangements concerning the Development and the Acceptance of Joint Airworthiness Requirements (JAR) were signed. These initial arrangements, which aimed at setting common European airworthiness standards for civil aircraft, engines, propellers, controls and other aircraft components were signed by the civil aviation authorities of thirteen European countries, some of them members of the EEC, others not: Austria, Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland and the UK.

4 SEC(90) 1456 final

During this initial phase the JARs established common certification (codes) in respect of large transport aircraft (JAR 25), engines (JARE) and APUs (auxiliary power units). Under such arrangements, there was specific provision for individual authorities to lay down special conditions regarding harmonized airworthiness requirements, conditions which could be made an 'additional requirement for import' if they had not been applied by the authorities in the country of manufacture.

This specifically-recognized right for national variants to exist in respect of harmonized products results in the fact that the common codes adopted, which refer only to the certification of products and parts, have been published with a large number of national variants.

9. In 1987 a Memorandum of Understanding on Future Airworthiness Procedures (MoU) was signed by twelve countries which were signatories to the JAR arrangements, with a view to extending cooperation. The authorities which signed it were thereby committed to increasing the scope of harmonization to operations and maintenance and to finalizing the airworthiness codes. The previous title, JAR (Joint Airworthiness Requirements), was changed to JAA (Joint Aviation Authorities) and the regulations were henceforth called Joint Aviation Requirements. This is the terminology which is still in use.

10. On 6 December 1989 and 11 September 1990, the new Arrangements concerning the Development, Acceptance and the Implementation of Joint Aviation Requirements were signed by the civil aviation authorities of sixteen European countries (the thirteen who signed the initial arrangements in 1979, plus Greece, Ireland and Portugal). Two other countries, (Luxembourg and Iceland) have formally applied for admission to the group, with the result that all the EEC and EFTA countries will be members of the JAA by 1991.

11. Compared to the initial 1979 arrangements, the objectives of the current ones are much more clearly defined, but individual authorities still have the right to impose special technical conditions and additional requirements for import on existing harmonized codes, if justified on safety grounds. Such variants have to be declared, and there is an agreement amongst the various authorities to dispense with them altogether, but there is no legal obligation for the countries which have signed the arrangements (nor for the arrangements themselves) to grant true legal status to the JARs. Furthermore, the JAA (Joint Aviation Authorities Organization), a body linked to the European Civil Aviation Conference (ECAC), operates on a purely voluntary basis; it has no legal framework nor any legislative power to enforce the harmonized codes which it approves.

THE COMMISSION PROPOSAL

12. As we have already seen, the aim of the proposal is to harmonize technical standards relating to the design, manufacture and maintenance of civil aircraft, their engines and other equipment.

To achieve this aim, the Commission proposes to incorporate JAR codes into Community law. The Community would therefore recognize the JAA as the body responsible for drawing up common codes, and the Commission would participate in its activities (Article 4(2)).

Under the terms of the proposal, the Commission may also adopt the JAR codes and any amendments thereto, and would have the power to delete national variants or make them applicable in all Member States (Article 10). In exercising such powers, the Commission would be assisted by a committee of an advisory nature composed of specialists appointed by the Member States (Article 11).

CRITICAL APPRAISAL

13. It would be desirable for harmonization of the technical requirements applicable to civil aviation to be placed under Community jurisdiction and, possibly under that of a European civil aviation authority to be set up in the future (as in the resolution adopted by Parliament on 22 November 1990 on proposed amendments to the EEC Treaty). Such an authority would also be responsible for other measures relating to safety in air transport and to air traffic control, areas which would therefore cease to be the responsibility of individual civil aviation authorities.

This is by no means the Commission's proposal, however: 'Whilst considering that such a result is highly desirable and is to be welcomed, it is not at this stage an objective of the Commission' (point 7 of the Explanatory Memorandum).

14. The rapporteur considers it essential for the Commission to take in hand the whole range of issues relating to the harmonization of the technical requirements and the procedures applicable to civil aircraft, the safety of air transport and airports, and the congestion and control of airspace. This should be done by means of a task force to be set up within the Directorate-General for Transport and given responsibility for such matters, so that proposals may be submitted with a view to establishing a European civil aviation authority with jurisdiction in these areas. Such an authority would be required to cooperate with existing national and international bodies and to coordinate research projects at Community level.

This is not the approach adopted by the current proposal. However, it seems obvious that the codes to be drawn up with regard to technical harmonization must be based on work already carried out in this field, i.e. on the JAR codes drawn up by the JAA. The proposal may thus be adopted, even though the methodology used may not be accepted.

15. Another consideration concerns the codes referred to in Annex 2. The Commission wants powers to adopt such codes and propose amendments. However, many of the common codes referred to in Annex 2 have not yet been adopted by the JAA, so the granting of such powers could be tantamount to giving the Commission a blank cheque without requiring it to apply any principles or guidelines adopted by Parliament or the Council concerning the safety requirements to be pursued. In its resolution of 8 April 1987⁵, Parliament stated that the Community's legislative bodies must have the right to lay down certain safety requirements relating to technical harmonization and standardization within the Community.

5 OJ No. C 125, 11.5.1987, p. 85

For this reason it is proposed that the decisions taken by the Commission should aim for the highest levels of safety which may in any way be of benefit to consumers, irrespective of such considerations as cost or convenience.

LEGAL BASIS

16. The legal basis of the proposal is Article 84(2) of the Treaty.

The Committee on Transport and Tourism has regularly maintained that Commission proposals on the approximation of laws, regulations and administrative provisions of the Member States and concerning the establishment and operation of the internal market (see Articles 8a and 100a of the Treaty) should have as their legal basis not just Article 84(2), but also Article 100a, which involves cooperation and not just consultation.

The measures proposed by the Commission in other sectors 'with the aim of progressively establishing the internal market over a period expiring on 31 December 1992 as provided for in Article 8a of the Treaty' (first recital of the proposal) always have Article 100a of the Treaty as their legal basis and involve cooperation with Parliament. In the transport sector alone, an incorrect interpretation of Articles 75 and 84 - which should not always be considered as 'lex specialis' - and a manifest lack of will on the part of the Commission result in the non-application of Article 100a, with a consequent reduction in Parliament's powers.

It is clear that the main aim of this proposal is the implementation of the single market rather than the freedom of services in the transport market. It may therefore be questioned whether the legal basis selected by the Commission is the correct one and, in this connection, the Committee on Legal Affairs and Citizens' Rights should be consulted pursuant to Rule 36(3) of the Rules of Procedure.

17. Despite the views expressed in the opinion of the Committee on Legal Affairs and Citizens' Rights, the rapporteur and the Committee on Transport and Tourism maintain their proposed Amendment No. 1.

The proposal before us aims to harmonize technical standards relating to the design, manufacture and maintenance of civil aircraft, their engines and other equipment, and the procedures laid down for granting certificates of air worthiness. In the rapporteur's view, the legal basis proposed by the Commission is not appropriate to the scope of the proposal nor does it deal with the following points:

- (a) although the establishment of common standards and procedures has to do with civil aviation, it is in fact geared to the elimination of technical barriers to facilitate the free movement of goods, which is one of the cornerstones of the single market. The article provided for in the Treaty for this subject is Article 100a;

(b) the Commission has shown a lack of consistency vis-à-vis the legal bases proposed for other topics related to transport, i.e. the directive on the approximation of the laws of the Member States relating to the spray-suppression devices of certain categories of motor vehicles and their trailers (COM(89) 0377 final) and the directive on the harmonization of glazing materials, masses, dimensions and pneumatic tyres on motor vehicles and their trailers, and the authorization of procedures (COM(89) 0653 final). The legal basis for these proposals was Article 100a.

In the light of these points, the rapporteur would question the appropriateness of the proposed legal basis and wonders whether the Commission is deliberately avoiding using Article 100a for matters which clearly fall within its scope.

FINAL VOTE

18. The final vote on the report in committee made crucial amendments to the proposal, by eliminating, inter alia, the references and role given to the JAA and the 'Joint Aviation Requirements' (JAR) and tightening up matters related to security and air traffic control, which, under the amendments adopted, are now given high priority.

OPINION

(Rule 120 of the Rules of Procedure)

**of the Committee on Economic and Monetary Affairs and Industrial Policy
for the Committee on Transport and Tourism**

Draftsman: Mr SISO CRUELLAS

At its meeting of 4 December 1990, the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr Siso Cruellas draftsman.

At its meetings of 10-11 January, 27-28 February, 1 March and 18-20 March 1991 it considered the draft opinion.

At the last meeting it adopted the conclusions unanimously.

The following took part in the vote: Beumer, chairman; Siso Cruellas, draftsman; Barton, Bernard-Reymond, Colom i Naval, de Donnea, Friedrich, Herman, Hoppenstedt, Merz, Metten, Mihr, Patterson, Peter (for Rogalla), Porto (for Cox), Roumeliotis, Seal, Speciale and von Wogau.

Introduction

The proposal from the Commission contains three objectives:

- a) harmonisation of technical requirements and procedures applicable to aircraft (design, production, operation and maintenance) to persons and organisations as well as to the mutual acceptance of certification granted by Member States (see Articles 1 to 3).
- b) recognition by the Community of the Joint Aviation Authorities as the organ responsible for elaborating the codes and procedures in civil aviation (see Articles 4 to 9).
- c) authorization given to the Commission to amend the Annexes containing all available and future codes (see Articles 10 et 11).

These three objectives ought to be seen in the context of the liberalisation process for civil aviation following the adoption of the second package of Council Regulations: No. 4058/89, 4059/89 and 4060/89¹, the expressed opinion of the Parliament as stated in its resolutions of 15 September 1987² and 23 May 1989³ and the experience of the USA deregulation and its safety record.

Content of the Proposal

The Commission proposal sets the harmonisation objective in the context of the single market. The single market consideration would apply to the aspects of aircraft production, of maintenance and of free movement of aircraft. Such an initiative comes at a time when a new impetus is needed in two specific fields. The first concerns the competitiveness of the European Aeronautical industry and the second is about the Community industrial strategy concerning a sector characterised by high-technology products.

The Commission recognises both needs in its communication on 'A Competitive European Aeronautical Industry' (SEC(90) 1456 final, 23.7.90). Among the five fields: taxation, mergers, standardization, credit and networks identified as needing Community initiatives, standardization and, consequently, certification are said to create technical barriers. These technical barriers are due to differences in regulations and standards between Member States.

As to standardization, the European Association of Aerospace Manufacturers (AECMA - Association Européenne des Constructeurs de Matériel Aérospatial) - after the signing of a memorandum of understanding with the European Committee for standardization on 1 January 1987 - is recognised as the body responsible for the technical aspects of standards. So far both the industry and civil aviation authorities seem to be happy with the results.

As to certification, national civil aviation authorities have been responsible for issuing, directly or indirectly, certificates of air-worthiness. Certificates of air-worthiness have to do with all safety aspects of an aircraft and its maintenance. Recently national civil aviation authorities set up the Joint Aviation Authorities (JAA). The JAA is an organisation under the auspices of the European Civil Aviation Conference (ECAC). It does not have a legal basis. On 11 September 1990, ten Member States, the Scandinavian

¹ OJ L 390, 30.12.1989

² OJ C 281, 19.10.1987

³ OJ C 158, 26.6.1989

countries, Austria and Switzerland signed the "Arrangements" concerning the development, the acceptance and the implementation of Joint Aviation Requirements (JARs).

Certification is important for at least three reasons. First, it could harmonise the technical standards for aircraft equipment, operation and maintenance and hence reduce the cost of aircraft transfer between registers of Member States. Second, certification could set such standards that could ensure the highest aviation safety. Third, certification could be designed to spur a new industrial policy and take advantage of the spin-off from the internal market.

These three reasons and the fact that in the civil aviation field the Community has already adopted legislation concerning fares, access to the market and capacity and competition⁵, render the Community the only institution competent in taking initiatives in the field of harmonisation and of safety. In addition, it has been argued convincingly that the Community is more efficient in all these and in related aspects of civil aviation.

In the resolutions of Parliament of 15 September 1987, of 23 May 1989 and of 14 March 1990⁶, Parliament expressed the view that any Community initiative in the field of liberalisation should be accompanied by specific proposals in the field of safety and air control. This position of Parliament was based on the logic that in the field of civil aviation, the process of liberalisation, safety and air control constitute a "whole". Hence, either the Community assumes responsibility for the entire field or the air sector is left outside of the single market. In other words, one cannot have two competent bodies: the Community responsible for liberalisation and national civil aviation authorities responsible for safety and air control in a sector whose components constitute a "whole".

The proposal in question by recognising the JAA as the body responsible for developing technical codes and procedures on the basis of Joint Aviation Requirements - which implies technical, operational and maintenance standards - does two things. First, it maintains the national competence in safety and, second, it recognises a body, the JAA, which is not a Community body, nor purely created by Member States, as the authority to set and develop standards.

There is another aspect of this problem. Harmonisation is required to be effected on a legal base (Article 84, paragraph 2) which, due to its drafting after the Single Act, cannot act both as a legal base for initiating Community legislation and for harmonising national standards.

A serious problem is involved when considering Annex 2. According to Article 10, the Commission is empowered to adopt the codes referred to in Annex 2 as well as to propose amendments to these codes. However, more than half of the codes contained in Annex 2 do not yet exist nor have they been approved by the technical committees of the JAA. Yet the Commission seeks the authorization of Council and of Parliament for a 'blank cheque' in order to write it as it wished avoiding, thus, guidelines approved by the Council and Parliament.

⁵ OJ L 390, 30.12.1989

⁶ OJ C 96, 17.4.1990 and the Visser report I (A3-42/90) and II (A3-94/90)

Conclusions

The Economic Committee requests the Transport Committee to take into account the following conclusions:

1. The three objectives of the proposal: harmonisation of technical requirements, recognition by the Community of the Joint Aviation Authorities and authorization granted to the Commission to amend the codes concerning certification of products and of procedures are not well served by a proposal of this kind.
2. Codes developed by a body like the Joint Aviation Authorities which has no legal basis but it is a body consisting of some Member States, and of some EFTA countries might not be appropriate to develop a set of standards that adhere to a high level of safety.
3. The legal base chosen for this proposal Article 84(2) might not be appropriate for a harmonisation instrument.
4. Certification set by a body which includes non-Community countries might not promote the competitiveness of the Aeronautical industry in the Community.
5. Fares, access to the market and competition rules constitute the liberalisation process of an air transport policy but this policy equally consists of safety and of its related matters.
6. Competence granted to the Community for the liberalization process implies that the Community should progressively take initiatives in the field of safety and of its related aspects.

Committee on Legal Affairs and
Citizens' Rights

The Chairman

58/91
RP/MV

Mr Rui AMARAL
Chairman of the Committee
on Transport and Tourism
MAE 208
BRUSSELS

Brussels, 3 April 1991

Subject: Legal basis of the proposal for a Council directive on the harmonization of technical requirements and procedures applicable to civil aircraft (C3-367/90 - COM(90) 442)

Dear Mr Amaral,

At its meeting of 2 and 3 April 1991 the Committee on Legal Affairs and Citizens' Rights, of which I am the chairman, considered the legal basis of the above proposal for a directive.

After hearing the opinion of Mrs Salema, the member with responsibility for questions of legal basis, the committee decided⁶ that the appropriate legal basis was Article 84(2) of the EEC Treaty, as proposed by the Commission.

Without any doubt, the proposal for a directive in question forms part of transport policy and Article 84 should be considered a 'lex specialis' vis-à-vis Article 100a of the EEC Treaty. Consequently, the latter provision is not applicable in this case.

Yours sincerely,

(sgd) Graf STAUFFENBERG

⁶ The following took part in the vote: Graf Stauffenberg, chairman; Vayssade, Rothley and Speroni, vice-chairmen; Salema, rapporteur; Bru Puron, Cooney, Fontaine, Garcia Amigo, Gollnisch, Hoon, Inglewood, Janssen van Raay, Tadzaït, Wijsenbeek and Zavvos.

