



COMMISSION OF THE EUROPEAN COMMUNITIES

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97/0039 (SYN)

COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT

pursuant to the first subparagraph of Article 189 c (b) of the EC-Treaty

**Common position adopted by the Council on 3 June 1998
with a view to the adoption of a
Council Directive establishing a Safety Assessment of Third Countries Aircraft
using Community Airports**

Subject: Common position adopted by the Council on 3 June 1998 with a view to the adoption of a Council Directive establishing a Safety Assessment of Third Countries Aircraft using Community Airports

(COM (97) 55 final - 97/0039 (SYN), amended by COM(1998) 123final - 97/0039 (SYN)

1. HISTORY OF THE FILE

- Date of transmission of the proposal to the Council : 17.02.1997
- Date of the opinion of the European Parliament in its first reading: 19.11.1997
- Date of transmission of the amended proposal : 05.03.1998
- Date of opinion of the Economic and Social Committee : 30.10.1997

2. SUBJECT OF THE PROPOSAL OF THE COMMISSION

The purpose of the proposal of the Commission is to improve the safety of the travelling public as well as of people living near airports, by ensuring that aircraft from third countries comply fully with the relevant safety standards through :

- collection and dissemination of information so that sufficient evidence can be established to decide on measures required to ensure safety;
- visual inspection of third-country aircraft and crew, whenever there is reasonable suspicion that international safety standards are not being met and grounding of such aircraft if this is necessary to ensure immediate safety;
- collective adoption and implementation of appropriate measures for rectification of identified shortcomings.

3. COMMENTS ON COMMON POSITION

3.1. Brief general observations on common position

The Commission proposal for a Directive on this subject stems from its perceived need for homogeneous, effective and well co-ordinated actions regarding foreign aircraft already carried out by some Member States in an isolated manner. Member States would therefore benefit of the strength of a common stance with regard to third countries and avoid that unsafe aircraft could be redirected to neighbouring airports where national authorities would be less strict. The common position has weakened this aspect in particular by removing the possibility of common decisions on bans or conditions on operation of aircraft/operator/country found not to be in conformity with international safety standards.

3.2. Parliament's amendments on first reading

The Parliament approved the Commission proposal subject to 14 amendments, of which 13 were accepted by the Commission in its amended proposal of 4 March 1998.

3.2.1. *Accepted by Commission and incorporated in common position*

3.2.1.1. Incorporated in their entirety :

Amendment 1 adding in recital 1 a reference to a Resolution of the Parliament,

Amendment 3, first paragraph, to take into account in the definition in Article 3 of "International Safety Standards" the fact that aircraft have to comply with these standards in force at the time of the inspection,

Amendment 11 to Article 10 paragraph 1, which requires that Member States inform not only the Commission, but also other Member States of implementation measures taken and,

Amendment 14 introducing a new Article 13a containing a revision clause on the basis of a Commission report.

3.2.1.2. Incorporated partially or in substance :

Amendment 15 concerning Article 1 is taken into account in a restructured article which the Commission considers as improving the original text.

Amendment 3, third paragraph, concerning the definition of "Third country aircraft" which accepts the addition from the Parliament and deletes part of the original text to give a clearer definition.

Amendment 4 to Article 4 is accepted and its scope is even broadened, which is satisfactory.

Amendment 5 is not fully taken into account ; moreover the Council common position removes the obligation contained in Article 5 of the Commission's amended proposal to check all aircraft suspected of being potentially unsafe and a reasonable number of those for which doubts have been expressed. This dilutes seriously the obligations of Member States. However article 9 in the Common Position, which enables the Commission to decide on surveillance measures to be implemented by Member States, constitutes a flexible (although bureaucratic) alternative which can be acceptable.

Amendment 8 concerning Article 8, paragraph 2, is partially incorporated but the Council did not accept to inform the operator in writing as well. This is acceptable to the Commission as the operator (or its representative at the airport where the inspection took place) will be well placed to receive first hand information.

Amendment 10 is only partially incorporated as Article 9, first paragraph, first indent, of the amended proposal specifies *systematic* ramp inspections while Article 9 (3) of the common position requires only *appropriate* ramp inspections. The Commission may however accept this wording as it does not prevent systematic inspection if necessary.

3.2.2. *Accepted by the Commission but not incorporated in common position*

Amendment 3, second paragraph, the definition of "ramp inspection" adopted by the Council in Article 3 is different from the one suggested by the Parliament but is acceptable to the Commission.

Amendment 6 which added the cooperation to the exchange of information in Article 6 was rejected by the Council on the ground that cooperation is suitably dealt with in other articles. The Commission may accept this reasoning.

Amendment 7 and 12 concerning the publication of groundings were rejected by the Council. The Commission does not share the views expressed by the Council and will consider reintroducing these provisions when preparing its re-examined proposal (see statements in the minutes of the Council meeting from the Commission and from the Netherlands and Swedish delegations concerning Article 7).

Amendment 9 concerning Article 8a introducing the right of appeal was rejected on the grounds that this right already exists in national legislations. The Commission accepts this explanation.

3.2.3. *Not accepted by the Commission but accepted by Council*

Amendment 13 concerning the deletion of Article 12 of the Commission's proposal on penalties was accepted while the Commission considers that it has to be part of the provisions of such a Directive to ensure its correct application at national level and therefore do not agree with this deletion.

3.3. New provisions introduced by Council

Modifications introduced by the Council in the recitals and definitions other than those mentioned above are acceptable to the Commission.

The Council limited the scope of the ramp inspection in Article 5 to "airports usually open to international air traffic". The Commission accepts this addition as explained by the Council in its Statement, considering that, should an unexpected situation arise, the provisions of Article 9 would allow specific measures to be taken to deal with it.

As already expressed, the Commission does not accept the redrafting of Article 7.

Merging of the provisions of Article 8, paragraphs 3 and 4 is acceptable to the Commission.

Modifications to the Commission's proposal introduced in Articles 9, 10 and 12, paragraph 2, of the Common position weaken substantially the element of common stance vis-à-vis third countries and, as already expressed in 3.1 above, reduce the value of Community legislation in this field.

The Commission agrees with the modification of the date of implementation of the Directive.

3.4. Committee procedures.

Although the Commission proposed a consultative committee, the Council changed it into a regulatory committee. The Commission maintains its position.

4. CONCLUSIONS AND GENERAL REMARKS

For the reasons explained above - and giving due consideration to the support of the European Parliament in its first reading - the Commission did not agree with the common position adopted by the Council, voting by unanimity, at its meeting of 3 June 1998. In particular, it considers that it could not support a Community legislation which would only recognise rights already held by the Member States without giving the opportunity to decide in common of sanctions to apply to countries/aircraft/operators which do not comply with international safety standards.

The Commission therefore believes that further amendments need to be made to solve the question of confidentiality/transparency in Article 7 and to give assurances that sufficient common action can be decided through the Committee and consultation procedures of Articles 9 and 10 of the Common Position. The Council statements on confidentiality as well as the Statement of the Council's reasons on the common position concerning the role of the Committee pave the way towards these improvements.