



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**AVIATION 167
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NOTE

From : General Secretariat

To : COREPER

No. prev. doc. : 13973/06 AVIATION 162 CODEC 1108

No. Cion prop. : 12588/05 AVIATION 129 CODEC 787

Subject : **AVIATION**

**Proposal for a Regulation of the European Parliament and of the Council on
common rules in the field of civil aviation security**

- Preparation of informal trilogue

Procedure

1. At its session on 12 October 2006, the Council reached a political agreement on the above draft Regulation (doc. 13973/06). The Presidency announced that it would seek to reach swiftly an agreement at second reading with the European Parliament.
2. After Council, the Presidency had some informal contacts with representatives of the European Parliament and of the Commission in order to examine the possibility of reaching an agreement at second reading in the light of the amendments presented by the European Parliament at first reading (doc. 10377/06). During these contacts, it appeared that the positions of the three Institutions on this file might be closer than initially estimated, and that a solution could possibly be worked out within a relatively short timeframe.

3. In this light, the Presidency considered it appropriate to renew its efforts in order to reach an agreement with the European Parliament in the form of a Council pre-negotiated common position.¹
4. To this end, the Presidency discussed this file with delegations at the meeting of the Aviation Working Party on Thursday 19 October 2006. It also had an informal contact with EP rapporteur Mr. Costa and representatives of the Commission on Friday 20 October 2006.

Contents

5. In the light of both the outcome of the meeting of the Aviation Working Party and the informal contacts that have taken place so far, the Presidency would like to obtain a mandate from COREPER in order to be able to propose, in ultimate resort, the following compromise suggestions to Parliament, aimed at reaching an overall agreement on the text:
 - a) rewording of draft recital 18a on "financing", addressing amendments 35, 43 and 44;
 - b) a new Article on "transparency in aviation security changing", addressing amendments 39 and 44.

¹ In case agreement with the European Parliament could be reached in the upcoming weeks, there are two ways of achieving a Council common position on the text as thus agreed:

- a) in case that there is still sufficient time for finalisation of the agreed text by legal-linguists before the December Council: by replacing, in perfect agreement with COREPER, the text of the political agreement as reached on 12 October 2006 by a revised text that is fully acceptable to the European Parliament, and by submitting that text for adoption by Council as common position at its meeting in December;
- b) in case there is no sufficient time for finalisation of the agreed text by legal-linguists before the December Council: by inviting the Council, at its meeting in December, to reach a political agreement on a revised text that is fully acceptable to the European Parliament. This new text would then be submitted to the Council for adoption as common position at a later stage.

In both options the European Parliament should, after inter-institutional agreement has been reached, confirm by a letter that the new text is fully acceptable to it, so that its members will not present any amendments at second reading.

6. As regards the element under a), reference is made to the reworded text of recital 18a) as set out in the text in the Annex to this note. The Presidency suggestions have been underlined.
7. As regards the element under b), the following text is submitted for a new Article 4a:

Transparency in aviation security charging

While each Member State is autonomous, subject to Community law, in its decisions concerning the financing of aviation security measures taken on the basis of this Regulation, there shall be appropriate transparency regarding the manner in which the costs of these measures are carried by the relevant Member State and/or by other parties, both private and public. Revenues from aviation security charges collected from users shall in principle not exceed the costs for applying the aviation security measures taken on the basis of this Regulation.

Future steps

8. If COREPER provides a new mandate in the line as described above, the Presidency intends to meet with representatives of the European Parliament and of the Commission during an informal trilogue scheduled for Thursday 26 October 2006 in Strasbourg.

Draft

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on common rules in the field of civil aviation security
(Text with EEA relevance)

EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80 (2) thereof,

Having regard to the proposal from the Commission ²,

Having regard to the opinion of the European Economic and Social Committee ³,

Having regard to the opinion of the Committee of the Regions ⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁵,

Whereas:

- (1) In order to protect persons and goods within the European Union, acts of unlawful interference with civil aircraft, ***which jeopardise the security of civil aviation***, should be prevented by establishing common rules for safeguarding civil aviation. This objective should be achieved by setting common rules and common standards on aviation security as well as mechanisms for monitoring compliance. ***(am. 1 acceptable)***

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ OJ C [...], [...], p. [...].

- (2) It is desirable, in the interests of civil aviation security generally, to provide the basis for a common interpretation of the April 2002 issue of Annex 17 to the Chicago Convention on International Civil Aviation of 7 December 1944.
- (3) Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security ⁶ was adopted as a result of the events of 11 September 2001 in the United States.
- (4) The content of Regulation (EC) No 2320/2002 should be revised in the light of the experience gained, and the Regulation itself should be replaced by a new act seeking the simplification, harmonisation and clarification of the existing rules and the improvement of the levels of security.
- (5) Given the need for more flexibility in adopting security measures and procedures in order to meet evolving risk assessments and to allow new technologies to be introduced, the new act should lay down the basic principles of what has to be done in order to safeguard civil aviation against acts of unlawful interference without going into technical and procedural details on how they are to be implemented.
- (6) The new act should apply to airports serving civil aviation located in the territory of a Member State, to operators providing services at such airports and to entities providing goods and/or services to or through such airports.
- (7) Without prejudice to the Convention on offences and certain other acts committed on board aircraft, Tokyo, 1963, the Convention for the suppression of unlawful seizure of aircraft, The Hague, 1970 and the Convention for the suppression of unlawful acts against the safety of civil aviation, Montreal 1971, the new act should **also** cover security measures that apply on board an aircraft, or during a flight, of Community air carriers. (*am. 2 acceptable*)

⁶ OJ L 355, 30.12.2002, p. 1.

- (7a) Each Member State may decide for itself whether to deploy in-flight security officers on aircraft registered in that Member State and on aircraft of air carriers licensed by that Member State.
- (8) The various types of civil aviation do not necessarily present the same level of threat. In setting common standards on aviation security, the size of the aircraft, the nature of the operation and/or the frequency of operations at airports should be taken into account with a view to permitting the grant of derogations.
- (9) Member States should also be allowed, on the basis of a risk assessment, to apply more stringent measures than those to be laid down. *(am. 3 on "distinction in funding" not acceptable; modification made to recital in order to achieve coherence with operative part of the text, see Article 5)*
- (9a) A distinction should be drawn between mail and traditional cargo. Common security measures adapted to the specific features of mail should be put in place. (am. 4 acceptable)*
- (10) Third countries may require the application of measures that differ from those laid down in this act in respect of flights from an airport in a Member State to, or over, that third country. However, without prejudice to any bilateral agreements to which the Community is a party, it should be possible for the Commission to examine the measures required by the third country
- (11) Even though, within a single Member State, there may be two or more bodies involved in aviation security, each Member State should designate a single authority responsible for the coordination and monitoring of the implementation of security standards.
- (12) In order to define responsibilities for the implementation of the common standards and to describe what measures are required by operators and other entities for this purpose, each Member State should draw up a national civil aviation security programme. Furthermore, each airport operator, air carrier and entity applying aviation security standards should draw up, apply and maintain a security programme in order to comply both with the new act and with whichever national civil aviation security programme is applicable.

(13) In order to monitor compliance with the new act and with the national civil aviation security programme, each Member State should draw up and ensure the implementation of a national programme to check the **level and** quality of civil aviation security. *(am. 5 on insertion of "level" acceptable, but "quality" remains as well)*

(14) In order to monitor the application by Member States of the new act, and also to make recommendations to improve aviation security, the Commission should conduct inspections, including unannounced inspections.

(am. 6 proposing a new recital 14a on EASA not acceptable, since EASA has no competence in the field of aviation security)

(15) Implementing acts setting out common measures and procedures for the implementation of the common standards and containing sensitive security information, together with Commission inspection reports and answers of national authorities should be regarded as “EU classified information” within the meaning of Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure⁷. Those items should not be published; they should only be made available to those operators and entities with a legitimate interest.

(16) The measures and procedures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁸.

(16a) In particular, it is necessary to follow the regulatory procedure with scrutiny as regards measures of general scope designed to amend non-essential elements of this Regulation, inter alia by deleting some of those elements or by supplementing this Regulation by addition of new non-essential elements; such measures are referred to in Articles 4(3) and 9a(2) of this Regulation. *(new comitology recital)*

⁷ OJ L 317, 3.12.2001, p. 1.

⁸ OJ L 184, 17.7.1999, p. 23. Decision amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11). (Footnote amended because of new comitology decision)

(17) The goal of "one-stop security" for all flights within the European Union should be advanced. (am. 7 acceptable, but only when renumbered as new recital 17, former recital 17 being deleted in order to achieve coherence with the operative part of the text)

(17a) This Regulation is without prejudice to the application of rules on aviation safety, including those relating to the transportation of dangerous goods.

(18) Penalties should be provided for infringements of the provisions of this Regulation. These penalties, which may be of a civil or administrative nature, should be effective, proportionate and dissuasive.

(18a) Where appropriate, and in conformity with Community law, Member States could contribute with users to the costs of security measures taken under this Regulation to protect civil aviation against acts of unlawful interference. Security taxes and charges dedicated to financing these costs should be transparent and should in principle not exceed the costs of applying the security measures. The Commission is invited to consider an initiative on the financing of security measures at European airports, and the transparency of security costs to passengers, in order to address possible distortion of competition in this field.

(text suggested by Council in order to address amendments 35, 43 and 44; underlined texts are new and have been suggested by the Presidency)

(19) The Ministerial Statement on Gibraltar Airport, agreed in Cordoba on 18 September 2006 during the first Ministerial meeting of the Forum of Dialogue on Gibraltar, will replace the Joint Declaration on the Airport made in London on 2nd December 1987, and the full compliance with it will be deemed to constitute compliance with the 1987 Declaration. ***(am. 8 already accepted in political agreement, although in slightly different form)***

(am. 9 on creation of "solidarity mechanism" not acceptable, since it falls outside the remit of the Regulation)

HAVE ADOPTED THIS REGULATION:

Article 1

Objectives

1. This Regulation establishes common rules *to protect* civil aviation against acts of unlawful interference *that jeopardise the security of civil aviation. (am. 10 acceptable)*

It also provides the basis for a common interpretation of Annex 17 to the 1944 Chicago Convention on International Civil Aviation.

2. The means of achieving the objectives set out in paragraph 1 shall be:
 - a) the setting of common rules and common basic standards on aviation security;
 - b) mechanisms for monitoring compliance.

Article 2

Scope

1. This Regulation shall apply to the following:
 - a) all airports or parts of airports located in the territory of a Member State that are not exclusively used for military purposes; *(am. 11 already accepted in political agreement)*
 - b) all operators, including air carriers, providing services at airports referred to in point (a);
 - c) all entities applying aviation security standards that operate from premises located inside or outside airport premises and provide goods and/or services to or through airports referred to in point (a).
2. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated. *(am. 12 already accepted in political agreement)*

Article 3
Definitions

For the purpose of this Regulation:

- (1) ‘civil aviation’ means any air operation carried out by civil aircraft, excluding operations carried out by state aircraft referred to in Article 3 of the 1944 Chicago Convention on International Civil Aviation;

- (2) ‘aviation security’ means the combination of measures and human and material resources intended to **protect** ~~safeguard~~ civil aviation against acts of unlawful interference *that jeopardise the security of civil aviation; (am. 13 acceptable)*

(am. 14 on insertion of a definition of airport not acceptable)

- (3) ‘operator’ means a person, organisation or enterprise engaged, or offering to engage, in an air transport operation;

- (4) ‘air carrier’ means an air transport undertaking holding a valid operating licence or equivalent; *(am. 15 already accepted in political agreement)*

- (5) ‘Community air carrier’ means an air carrier holding a valid operating licence granted by a Member State in accordance with Council Regulation (EC) No 2407/92⁹;

- (5a) ‘entity’ means a person, organisation or enterprise, other than the operators referred to under point 3;

- (6) ‘prohibited articles’ means weapons, explosives or other dangerous devices, articles or substances that may be used to commit an act of unlawful interference *that jeopardises the security of civil aviation; (am. 16 acceptable in slightly revised form)*

⁹ OJ L 240, 24.8.1992, p. 1.

- (7) ‘screening’ means the application of technical or other means which are intended to identify and/or detect prohibited articles;
- (8) ‘security control’ means the application of means by which the introduction of prohibited articles may be prevented;
- (9) ‘access control’ means the application of means by which the entry of unauthorised persons or unauthorised vehicles, or both, may be prevented (*am. 17 already accepted in political agreement*);
- (10) ‘airside’ means the movement area of an airport, adjacent terrain and buildings or portions thereof, access to which is restricted;
- (11) ‘landside’ means those parts of an airport, adjacent terrain and buildings or portions thereof that are not airside;
- (12) ‘security restricted area’ means that area of airside where, in addition to access being restricted, other aviation security standards are applied;
- (13) ‘demarcated area’ means an **airside** area that is separated by means of access control either from security restricted areas, or, if the demarcated area itself is a security restricted area, from other security restricted areas of an airport; (*am. 18 acceptable in modified form, old formula remains as well*)
- (14) ‘background check’ means a recorded check of a person’s identity, including any criminal history, as part of the assessment of an individual’s suitability for unescorted access to security restricted areas; (*am. 19 on deletion of last part and insertion of "intelligence data" not acceptable*)
- (15) ‘transfer passengers, baggage, cargo or mail’ means passengers, baggage, cargo or mail departing on an aircraft other than that on which they arrived; (*am. 20 partially already accepted in political agreement, rest "on same aircraft but on a flight with different number" not acceptable*)

- (16) ‘transit passengers, baggage, cargo or mail’ means passengers, baggage, cargo or mail departing on the same aircraft as that on which they arrived; ***(am. 21 partially already accepted in political agreement, rest "on flight with the same number" not accepted)***
- (17) ‘potentially disruptive passenger’ means a passenger who is either a deportee, a person deemed to be inadmissible for immigration reasons or a person in lawful custody; ***(am. 22 on enlarging of the definition not acceptable, "unruly passengers" being a different category)***
- (18) ‘cabin baggage’ means baggage intended for carriage in the cabin of an aircraft;
- (19) ‘hold baggage’ means baggage intended for carriage in the hold of an aircraft;
- (20) ‘accompanied hold baggage’ means baggage, carried in the hold of an aircraft, which has been checked in for a flight by a passenger travelling on that same flight;
- (21) ‘air carrier mail’ means mail whose origin and destination are both an air carrier;
- (22) ‘air carrier materials’ means materials either whose origin and destination are both an air carrier or that are used by an air carrier;
- (22a) ‘mail’ means dispatches of correspondence and other items tendered by and intended for delivery to postal services in accordance with the rules of the Universal Postal Union (UPU); ***(am. 23+25 accepted in slightly modified form, as agreed in political agreement)***
- (23) ‘cargo’ means any property intended for carriage on an aircraft, other than baggage, mail, air carrier mail and air carrier materials, and in-flight supplies; ***(am. 24 already accepted in political agreement)***
- (24) ‘regulated agent’ means an air carrier, agent, freight forwarder or any other entity who ensures the security controls in accordance with this Regulation in respect of cargo or mail; ***(am. 26 already accepted in political agreement)***

- (25) ‘known consignor’ means a consignor who originates cargo or mail for its own account and whose procedures meet common security rules and standards sufficient to allow carriage of that cargo or mail on any aircraft; *(am. 27 already accepted in political agreement, but slightly different wording)*
- (26) ‘account consignor’ means a consignor who originates cargo or mail for its own account and whose procedures meet common security rules and standards sufficient to allow carriage of that cargo on all-cargo aircraft or mail on all-mail aircraft; *(am. 28 already accepted in political agreement, but with slightly different wording)*
- (27) ‘aircraft security check’ means an inspection of those parts of the interior of the aircraft to which passengers may have had access, together with an inspection of the hold of the aircraft in order to detect prohibited articles and unlawful interferences *that jeopardise the security of* ~~with~~ the aircraft; *(am. 29 already partially accepted in political agreement and partially accepted in this new text)*
- (28) ‘aircraft security search’ means an inspection of the interior and accessible exterior of the aircraft in order to detect prohibited articles and unlawful interferences *that jeopardise the security of* ~~with~~ the aircraft; *(am. 30 already partially accepted in political agreement and partially accepted in this new text)*
- (29) ‘in-flight security officer’ means a person who is employed by a State to travel on an aircraft of the air carrier licensed by it with the purpose of protecting that aircraft and its occupants against acts of unlawful interference *that jeopardise the security of the flight*; *(am. 31 accepted in political agreement)*

(am. 32 on "continuous random check" not accepted, as term does not appear in Regulation)

Article 4

Common basic standards

1. The common basic standards for safeguarding civil aviation against acts of unlawful interference *that jeopardise the security of civil aviation* shall be as laid down in the Annex.
(am. 33 already partially accepted in political agreement, partially in this new text)
2. Detailed measures for the implementation of the common basic standards referred to in paragraph 1 shall be laid down in accordance with the procedure referred to in Article 16(2).
(am. 34 already accepted in political agreement)

(am. 35 on "financing" has been addressed by the new recital 18a)

These measures shall, in particular, address:

- a) methods of screening, access control and other security controls;
- b) methods of performing aircraft security checks and aircraft security searches;
- c) prohibited articles;
- d) performance criteria and acceptance tests for equipment;
- e) staff recruitment and training requirements;
- f) the definition of critical parts of security restricted areas;
- g) the obligations of, and the validation procedures for, regulated agents, known consignors and account consignors;
- h) categories of persons, goods and aircraft that for objective reasons shall be subject to special security procedures or shall be exempted from screening, access control or other security controls.

(am. 36 on "background checks" not acceptable)

3. The Commission shall, **by amending this Regulation through a decision in accordance with the procedure referred to in Article 16(2a)**, set criteria to allow Member States to derogate from the common basic standards referred to in paragraph 1 and to adopt security measures that provide an adequate level of protection on the basis of a local risk assessment. Such alternative measures shall be justified by reasons relating to the size of the aircraft, or by reasons relating to the nature, scale or frequency of operations or of other relevant activities. *(am. 37 already accepted in political agreement) (new text added because of the Decision modifying the Decision on comitology)*

The Member States shall inform the Commission of these measures.

(am. 38 "on risk and impact assessments" not acceptable, since individual measures should not be subject to risk and impact assessments. The Stakeholders Advisory Group may be an appropriate forum to this end)

4. Member States shall ensure the application in their territory of the common basic standards referred to in paragraph 1. Where a Member State has reason to believe that the level of security has been compromised through a security breach, it shall ensure that appropriate and prompt action is taken to rectify that breach and ensure the continuing security of civil aviation. *(am. 40 in comparable terms already accepted in political agreement)*

(am. 39, inserting a new paragraph 5 on "indication of security costs on the price of the ticket", has been added by the suggestion for a new Article 4a, see cover page)

Article 5

More stringent measures applied by Member States

Member States may apply more stringent measures than the common basic standards referred to in Article 4. In doing so, they shall act on the basis of a risk assessment and in compliance with Community law. More stringent measures shall be relevant, objective, non-discriminatory and proportional to the risk that is being addressed.

Member States shall inform the Commission of such measures as soon as possible after their application. Upon reception of such information, the Commission shall transmit this information to the other Member States. *(am. 41 on "consultation of Committee" - which seems to concern Article 5, not Article 4 - not acceptable; am. 42 on "notification of Committee" not acceptable)*

Member States are not required to inform the Commission if the measures concerned are limited to a given flight on a specific date.

(am. 43 on "costs for more stringent measures" has been addressed by new recital 18a)

(am. 44 on insertion of new Article 5a on "hypothecation of security taxes and charges" has been addressed by new recital 18a - and see also the new suggestion for Article 4a on cover page)

Article 6

Security measures required by third countries

1. Without prejudice to any bilateral agreements to which the Community is a party, a Member State shall inform the Commission of measures required by a third country if they differ from the common basic standards referred to in Article 4 in respect of flights from an airport in a Member State to, or over, that third country.

2. At the request of the Member State concerned or on its own initiative, the Commission shall examine the application of any measures notified under paragraph 1 and may, in accordance with the procedure referred to in Article 16(2), draw up an appropriate response to the third country concerned. *(am. 45 already partially accepted in political agreement, without consultation of third country)*
3. Paragraphs 1 and 2 shall not apply if:
 - a) the Member State concerned applies the measures concerned in accordance with Article 5; or
 - b) the requirement of the third country is limited to a given flight on a specific date.

Article 7

Appropriate authority

Where, within a single Member State, two or more bodies are involved in aviation security, that Member State shall designate a single authority (hereinafter referred to as “the appropriate authority”) to be responsible for the coordination and monitoring of the implementation of the common basic standards referred to in Article 4. *(am. 46 already accepted in political agreement)*

Article 8

[Deleted]

Article 9

National civil aviation security programme

1. Every Member State shall draw up, apply and maintain a national civil aviation security programme.

That programme shall define responsibilities for the implementation of the common basic standards referred to in Article 4 and shall describe the measures required by operators and entities for this purpose. *(am. 47 already accepted in political agreement)*

2. The appropriate authority shall make available in writing on a 'need to know' basis the appropriate parts of its national civil aviation security programme to operators and entities which it deems to have a legitimate interest. *(am. 48 already accepted in political agreement)*

Article 9a

National quality control programme

1. Every Member State shall draw up, apply and maintain a national quality control programme.

That programme shall enable the Member State to check the quality of civil aviation security in order to monitor compliance both with this Regulation and with its national civil aviation security programme.

2. The specifications for the national quality control programme shall be adopted **by amending this Regulation through the addition of an annex** in accordance with the procedure referred to in Article 16(2a). *(new text added in view of the Decision modifying the comitology rules)*

The programme shall allow for the swift detection and correction of deficiencies. It shall also provide that all airports, operators and entities responsible for the application of security standards that are located in the territory of the Member State concerned shall be regularly monitored directly by, or under the supervision of, the appropriate authority. *(am. 49 already accepted in political agreement)*

Article 10

Airport security programme

1. Every airport operator shall draw up, apply and maintain an airport security programme.

That programme shall describe the methods and procedures which are to be followed by the airport operator in order to comply both with this Regulation and with the national civil aviation security programme of the Member State in which the airport is located.

The programme shall include internal quality control provisions describing how compliance with these methods and procedures is monitored by the airport operator.

The airport security programme shall be submitted to the appropriate authority, which may take further action if appropriate.

Article 11

Air carrier security programme

1. Every air carrier shall draw up, apply and maintain an air carrier security programme. *(am. 50 not acceptable, since it would inappropriately change the responsibility from air carriers to Member States)*

That programme shall describe the methods and procedures which are to be followed by the air carrier in order to comply both with this Regulation and with the national civil aviation security programme of the Member State from which it provides services.

The programme shall include internal quality control provisions describing how compliance with these methods and procedures is monitored by the air carrier.

2. Upon request, the air carrier security programme shall be submitted to the appropriate authority, which may take further action if appropriate.
3. Where a Community air carrier security programme has been validated by the appropriate authority of the Member State granting the operating licence, the air carrier shall be recognised by all other Member States as having fulfilled the requirements of paragraph 1. This is without prejudice to a Member State's right to request from any air carrier details of its implementation of:

a) the security measures required by that Member State under the provisions of Article 5;

and / or

b) local procedures that are applicable at the airports served. *(am. 51 already accepted in principle in political agreement; wording of political agreement is maintained)*

Article 12

Entity security programme

(am. 52 requiring introduction of "regulated agent" not acceptable)

1. Every entity required under the national civil aviation security programme referred to in Article 9 to apply aviation security standards shall draw up, apply and maintain a security programme. *(am. 53 already accepted in political agreement)*

That programme shall describe the methods and procedures which are to be followed by the entity in order to comply with the national civil aviation security programme of the Member State in respect of its operations in that Member State. *(am. 54 not acceptable)*

The programme shall include internal quality control provisions describing how compliance with these methods and procedures is to be monitored by the entity itself.

2. Upon request, the security programme of the entity applying aviation security standards shall be submitted to the appropriate authority, which may take further action if appropriate. *(am. 55 already accepted in political agreement)*

Article 13

[renumbered as Article 9a]

(am. 56 already accepted in political agreement)

Article 14

Commission inspections

1. The Commission, acting in cooperation with the appropriate authority of the Member State concerned, shall conduct inspections - including inspections of airports, operators and entities applying aviation security standards - in order to monitor the application by Member States of this Regulation and, as appropriate, to make recommendations to improve aviation security. For this purpose, the appropriate authority shall inform the Commission in writing of all airports in its territory serving civil aviation other than those covered by Article 4(3).

The procedures for conducting Commission inspections shall be adopted in accordance with the procedure referred to in Article 16(2).

(am. 57 already partially accepted in political agreement; the parts on EASA are not accepted, since EASA is not competent in the field of security)

2. Commission inspections of airports, operators and entities applying aviation security standards shall be unannounced. The Commission shall in good time before an inspection inform the Member State concerned thereof.
3. Each Commission inspection report shall be communicated to the appropriate authority of the Member State concerned, which shall, in its answer, set out the measures taken to remedy any identified deficiencies.

The report, together with the answer of the appropriate authority, shall subsequently be communicated to the appropriate authority of each other Member State. *(am. 58 already accepted in political agreement)*

(am. 59 requiring all airports to be inspected at least every four years is unrealistic, not acceptable)

Article 15

Dissemination of information

The following documents shall be regarded as “EU classified documents” for the purposes of Decision 2001/844/EC, ECSC, Euratom, and shall not be placed in the public domain:

- a) measures and procedures as referred to in Article 4(2), **4(3)**, 5(1) and **6(1)**, if containing sensitive security information;
- b) Commission inspection reports and answers of appropriate authorities, as referred to in Article 14(3).

Article 15a

Report

Every year the Commission shall present a report to the European Parliament, to the Council and to the Member States, informing them of the application of this Regulation and of its impact on improving aviation security. (am. 60 acceptable in amended form)

(am. 62 on "Commission drawing conclusions" not acceptable since it is too prescriptive; the Commission can at all times propose appropriate measures in the view of the findings set out in the report)

Article 16

Committee

1. The Commission shall be assisted by a committee (hereinafter referred to as “the Committee”).
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period referred to in Article 5(6) of Decision 1999/468/EC shall be set at one month.

2a. Where reference is made to this paragraph, Articles 5a (1)-(4) and (6), and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
(new text added in view of the Decision modifying the comitology rules)

3. The Committee shall adopt its rules of procedure.

Article 16a

Stakeholders' Advisory Group

Without prejudice to the role of the Committee referred to in Article 16, the Commission shall establish a Stakeholders' Advisory Group on Aviation Security, composed of European representative organisations engaged in or directly affected by aviation security. The role of this group shall be solely to advise the Commission. The Committee referred to in Article 16 shall keep the Stakeholders' Advisory Group informed during the entire regulatory process. (am. 61 possibly acceptable in the framework of an overall compromise package)

Article 17

[deleted]

(am. 63 making changes to Article 17 not accepted)

Article 18

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 19

Repeal

Regulation (EC) No 2320/2002 is repealed.

Article 20

Entry into force

This Regulation shall enter into force on (*).

It shall apply from (**), with the exception of Articles 4(2), **4(3)**, 9a(2), 14(1) and 16, which shall apply from the date of entry into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President

(*) the twentieth day following that of publication in the *Official Journal of the European Union*

(**) two years after entry into force of the Regulation (*am. 64 putting one year not acceptable, since Member States and operators need sufficient time for adjustment to the new rules*)

COMMON BASIC STANDARDS FOR SAFEGUARDING CIVIL AVIATION AGAINST ACTS
OF UNLAWFUL INTERFERENCE (ARTICLE 4)

1. AIRPORT SECURITY

1.1 Airport planning requirements

1. When designing and constructing new airport facilities or altering existing airport facilities, requirements for the implementation of the common basic standards referred to in this Annex and implementing acts shall be fully taken into account.
2. At airports the following areas shall be established:
 - a) landside;
 - b) airside;
 - c) security restricted areas; and
 - d) critical parts of security restricted areas.

1.2 Access control

1. Access to airside shall be restricted in order to prevent unauthorised persons and vehicles from entering these areas. *(am. 65 already accepted in political agreement)*
2. Access to security restricted areas shall be controlled in order to ensure that no unauthorised persons and vehicles enter these areas.
3. Persons and vehicles may only be granted access to airside and security restricted areas if they fulfil the required security conditions.

4. Persons, including flight crew members, shall have successfully completed a background check before either a crew identification card or an airport identification card authorising unescorted access to security restricted areas is issued to them. *[An appropriate authority may decide to recognise identification cards issued in another Member State.] (am. 66 acceptable in modified form; am. 67 already accepted in political agreement, although in modified form)*

1.3 Screening of persons other than passengers and items carried

1. Persons other than passengers, together with items carried, shall be screened on a continuous random basis upon entering security restricted areas in order to prevent prohibited articles from being introduced into these areas.
2. All persons other than passengers, together with items carried, shall be screened upon entering critical parts of security restricted areas in order to prevent prohibited articles from being introduced into these parts.

1.4 Examination of vehicles

Vehicles entering a security restricted area shall be examined in order to prevent prohibited articles from being introduced into these areas.

1.5 Surveillance, patrols and other physical controls

There shall be surveillance, patrols and other physical controls at airports and, where appropriate, in adjacent areas with public access, in order to identify suspicious behaviour of persons, to identify vulnerabilities which could be exploited to carry out an act of unlawful interference and to deter persons from such acts.

2. DEMARCATED AREAS OF AIRPORTS

Aircraft parked in demarcated areas of airports to which alternative measures referred to in Article 4(3) apply, shall be separated from aircraft to which the common basic standards as laid down in the Annex apply in full, in order to ensure that security standards applied to aircraft, passengers, baggage, cargo and mail of the latter are not compromised. *(am. 68 already accepted in political agreement)*

3. AIRCRAFT SECURITY

1. Before departure, an aircraft shall be subjected to an aircraft security check or aircraft security search in order to ensure that no prohibited articles are present on board. An aircraft in transit may be subjected to alternative measures.

(am. 69 exempting certain flights from EU not acceptable – can be dealt with in implementing legislation)

(am. 70 not acceptable, issue is already addressed by paragraph 4.1.3b of the Annex – and can also be dealt with in implementing legislation)

2. Every aircraft shall be protected from unauthorised interference.

(am. 71 not acceptable since it can be more appropriately dealt with in implementing legislation)

4. PASSENGERS AND CABIN BAGGAGE

4.1 Screening of passengers and cabin baggage

1. All originating, transfer and transit passengers and their cabin baggage shall be screened in order to prevent prohibited articles from being introduced into security restricted areas and on board an aircraft.

2. Transfer passengers and their cabin baggage may be exempted from screening, if:
 - a) they arrive from a Member State, unless the Commission or that Member State has provided information that those passengers and their cabin baggage cannot be considered as having been screened to the common standards; or
 - b) they arrive from a third country where the security standards applied are recognised as equivalent to Community standards in accordance with the procedure referred to in Article 16(2).
3. Transit passengers and their cabin baggage may be exempted from screening, if:
 - a) they remain on board the aircraft; or
 - b) they do not mix with screened departing passengers other than those who board the same aircraft; or
 - c) they arrive from a Member State, unless the Commission or that Member State has provided information that those passengers and their cabin baggage cannot be considered as having been screened to the common basic standards; or
 - d) they arrive from a third country where the security standards applied are recognised as equivalent to Community standards in accordance with the procedure referred to in Article 16(2).

4.2 Protection of passengers and cabin baggage

1. Passengers and their cabin baggage shall be protected from unauthorised interference from the point at which they are screened until departure of the aircraft on which they are carried.

2. Screened departing passengers shall not mix with arriving passengers, unless:
 - a) the passengers arrive from a Member State, provided that the Commission or that Member State has not provided information that those arriving passengers and their cabin baggage cannot be considered as having been screened to the common basic standards; or
 - b) the passengers arrive from a third country where the security standards applied are recognised as equivalent to Community standards in accordance with the procedure referred to in Article 16(2).

4.3 Potentially disruptive passengers

Before departure potentially disruptive passengers shall be subjected to appropriate security measures.

5. HOLD BAGGAGE

5.1 Screening of hold baggage

1. All hold baggage shall be screened prior to being loaded onto an aircraft in order to prevent prohibited articles from being introduced into security restricted areas and on board aircraft.
2. Transfer hold baggage may be exempted from screening, if:
 - a) it arrives from a Member State, unless the Commission or that Member State has provided information that this hold baggage cannot be considered as having been screened to the common basic standards; or
 - b) it arrives from a third country where the security standards applied are recognised as equivalent to Community standards in accordance with the procedure referred to in Article 16(2).

3. Transit hold baggage may be exempted from screening if it remains on board the aircraft.

5.2 Protection of hold baggage

Hold baggage to be carried on an aircraft shall be protected from unauthorised interference from the point at which it is screened or accepted into the care of the air carrier, whichever is earlier, until the departure of the aircraft on which it is to be carried.

5.3 Baggage reconciliation

1. Each item of hold baggage shall be identified as accompanied or unaccompanied.
2. Unaccompanied hold baggage shall not be transported, unless that baggage has been either separated due to factors beyond the passenger's control or subjected to ~~additional~~ **appropriate** security controls. *(am. 72 acceptable in modified form: "appropriate" is put instead of "adequate")*

6. CARGO AND MAIL (am. 73 accepted)

6.1 Security controls for cargo and mail

1. All cargo and mail shall be subjected to security controls prior to being loaded on an aircraft. An air carrier shall not accept cargo or mail for carriage on an aircraft unless it has applied such controls itself or their application has been confirmed and accounted for by a regulated agent, a known consignor or an account consignor. *(am. 74 inserting "another air carrier" not acceptable)*

2. Transfer cargo and transfer mail may be subjected to alternative security controls as detailed in an implementing act. *(am. 75 not acceptable, since it is regulating in too much detail - should be left to implementing legislation)*
3. Transit cargo and transit mail may be exempted from security controls if it remains on board the aircraft.

(am. 76 on "mail" not acceptable, since it is already covered by the change of the title "cargo and mail". To be noted also that at the time of reaching the political agreement, the Commission made a declaration on "mail" which equally addresses this issue)

6.2 Protection of cargo and mail

1. Cargo and mail to be carried on an aircraft shall be protected from unauthorised interference from the point at which security controls are applied until the departure of the aircraft on which it is to be carried.
2. Cargo and mail that are not adequately protected from unauthorised interference after security controls have been applied shall be screened.

7. AIR CARRIER MAIL AND AIR CARRIER MATERIALS

Air carrier mail and air carrier materials shall be subjected to security controls and thereafter protected until loaded onto the aircraft in order to prevent prohibited articles from being introduced on board an aircraft.

8. IN-FLIGHT SUPPLIES

In-flight supplies, including catering, intended for carriage or use on board an aircraft shall be subjected to security controls and thereafter protected until loaded onto the aircraft in order to prevent prohibited articles from being introduced on board an aircraft.

9. AIRPORT SUPPLIES

Supplies intended to be sold or used in security restricted areas of airports, including supplies for duty-free shops and restaurants, shall be subjected to security controls in order to prevent prohibited articles from being introduced into these areas.

10. IN-FLIGHT SECURITY MEASURES

1. Without prejudice to the applicable aviation safety rules:
 - a) unauthorised persons shall be prevented from entering the flight crew compartment during a flight;
 - b) potentially disruptive passengers shall be subjected to appropriate security measures during a flight. *(am. 77 and 78, proposing minor modifications to editing, acceptable)*
2. Appropriate security measures such as training of flight crew and cabin staff shall be taken to prevent acts of unlawful interference during flight.
4. Weapons shall not be carried in the cabin or the cockpit of an aircraft, unless authorisation has been given by the States involved in accordance with their respective national laws. *(am. 79 accepted, subject to rewording already accepted in political agreement)*

5. Paragraph 4 shall also apply to in-flight security officers if they carry weapons.

(am. 80, relating to the deleted paragraph 6, not acceptable)

(am. 81 on "definition of responsibilities" not acceptable)

11. STAFF RECRUITMENT AND TRAINING

1. Persons implementing, or responsible for implementing, screening, access control or other security controls shall be recruited, trained and, where appropriate, certified so as to ensure that they are suitable for employment and competent to undertake the duties to which they will be assigned. *(am. 82 already accepted in political agreement)*
2. Persons other than passengers requiring access to security restricted areas shall, before either an airport identification card or crew identification card is issued, receive security training. *(am. 83 not acceptable)*
3. Training as referred to in paragraphs 1 and 2 shall be conducted on initial and recurrent basis.
4. Instructors engaged in the training of the persons mentioned in paragraphs 1 and 2 shall be qualified.

12. SECURITY EQUIPMENT

Equipment used for screening, access control and other security controls shall ~~be capable to perform the security controls concerned~~ *comply with defined specification and be capable of performing the security controls concerned. (am. 84 acceptable, subject to modification of "approved" into "defined")*

(am. 85 on "background checks" not acceptable)