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COMMISSION OF THE EUROPEAN COMMUNITIES

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2005/0228 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

in accordance with the second paragraph of Article 251(2) of the EC Treaty

concerning the

common position adopted by the Council with a view to the adoption of a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1592/2002 of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency

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1- BACKGROUND

Date of forwarding of the proposal to the EP and Council (document COM(2005) 579 final – 2005/0228 (COD):	18 November 2005
Date of the opinion of the European Economic and Social Committee:	21 April 2006
Date of the opinion of the European Parliament, first reading:	14 March 2007
Date of adoption of the common position (by unanimity):	15.10.2007

2- OBJECTIVE OF THE COMMISSION PROPOSAL

The Commission proposal aims to extend the common safety rules to air operations, pilot licensing and the safety of third-country aircraft. It also aims to strengthen inspections and penalties in the event of non-compliance with these rules and, in the light of experience, to improve the operation of the European Aviation Safety Agency (EASA).

Air operations: the proposal for a Regulation extends the common rules to all air operations and the certification requirement to all commercial operators. For non-commercial operations, the rules would be tailored to the complexity of the aircraft used and there would be no certification.

Pilot licensing: the proposal for a Regulation requires most pilots operating in the Community to hold a licence issued on the basis of common requirements regarding their theoretical and practical knowledge and physical aptitude. Organisations, flight synthetic training devices and persons involved in the training, testing, checking and medical assessment of pilots must also be certified on the basis of common rules. While commercial transport would be subject to the maximum requirements, other aviation sectors would be governed by rules tailored to the complexity of the aircraft used and that of the airspace in which they fly.

Third-country aircraft: the proposal for a Regulation makes third-country aircraft operating in the Community subject to the common rules, within the limits permitted by the Chicago Convention. It also provides that a foreign operator may perform commercial operations in

the Community only if it holds an appropriate authorisation issued by the EASA. That authorisation must certify that the operator concerned is able to comply with ICAO rules and, where applicable to it, with the common safety rules.

Inspections and penalties: the proposal strengthens the obligations of the Member States and grants powers to the EASA as regards aircraft inspections. It also lays down the sanction mechanisms which must be implemented by the Community or its Member States if the common rules are not complied with.

3- COMMENTS ON THE COMMON POSITION

The Council made general amendments to the Commission's proposal which were acceptable since they would make it possible to achieve the objectives set.

Overall, the essential provisions of the Commission proposal are contained in the text approved by the Member States. Those concerning penalties for non-compliance with the common rules have even been strengthened as a result of the discussions. In terms of its form, however, the Commission text has been substantially modified as the Member States wish to deal with third-country carriers in separate articles. Lastly, it should be pointed out that most of the proposals for improvements to the governance of the EASA have been rejected by the Council. Furthermore, the Council has preferred to restrict the certification powers entrusted to the Agency to what is strictly necessary. Given the Agency's limited resources, the Commission has accepted this restriction.

The Commission accepted totally or in part 14 of the 31 amendments proposed by the European Parliament at first reading.

Of these 31 amendments, the Council included 8 verbatim in its common position.

4- DETAILED COMMISSION COMMENTS

4.1 Amendments accepted by the Commission and incorporated in full or in part in the common position

The references below are to the recitals and articles of the common position.

Amendment 10: Article 8(4) states that cabin crew engaged in commercial operations must hold a certificate as initially described in OPS 1.1005, point d, in the Annex to Regulation (EC) No 1899/2006 of the European Parliament and of the Council on the harmonisation of technical requirements and administrative procedures in the field of civil aviation (EU OPS); at the discretion of the Member State concerned, such a certificate may be issued by approved operators or training bodies.

Amendment 14: This amendment introduces into Article 11(2) and 11(3) corrective and safeguard measures to be applied by the Commission in the event of the non-conformity or non-operative conformity of a certificate issued in accordance with the Regulation.

Amendment 15: referring to the criteria in Article 13 to be met by qualified entities to which the certification tasks may be entrusted, this amendment aims to simplify the text proposed by the Commission.

Amendment 19: 32(2)(b) provides that the Management Board shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedure. The amendment states this shall be done in particular as regards any information concerning the effects or consequences of changes made to the missions entrusted to the Agency.

Amendment 22: The idea of setting up an Executive Board within the Agency's Management Board was not adopted.

Amendment 23: Article 55 provides that the Agency's annual work programme must clearly state the Agency's mandates and missions which have been added, changed or abolished as compared with the previous year.

Amendment 24: Article 56 provides that the Agency's general report shall clearly state the effects or consequences of any changes to the missions entrusted to the Agency.

Amendment 29, in part: this amendment specifies that the implementation rules must be based on a risk assessment and be proportional to the scale and scope of the operation. Parliament had proposed including these provisions in Annex IV, while the Council, as suggested by the Commission, considered it more advisable to include them at the heart of the Regulation in Article 8(6).

The common position also contains the provision that fees are assigned revenue. This provision is very important in order to be able to ensure some stability for the Agency's budget as regards certification activity. The Council also consolidated the recitals.

4.2 Amendments accepted by the Commission, but not incorporated in the common position

These are amendments 2, 8 and 21 in full and part of amendments 4, 13 and 16.

Amendment 2 proposed a recital regarding the need for the Agency to provide information which would be useful for drawing up a "black list" (Regulation (EC) No 2111/2005).

Amendment 8 referred to the need to take account of scientific and technical progress when drawing up the rules for implementing Article 7(7) (pilots).

Amendment 21: the text of the common position includes neither the Commission's proposal nor Parliament's amendments regarding the weighting of the Commission representatives votes' on the Agency's Management Board.

Amendment 4: the Council did not accept Parliament's proposals to amend the definition of a "qualified entity". However, Parliament's definition was not very different.

The Council took the view that various places in the text of the common position already contain provisions encouraging the Member States to make available any information regarding any failure to apply the Regulation properly and therefore did not accept amendment 13.

Amendment 16, which contains provisions to protect information sources, has been incorporated in the text of the common position, the only difference being as regards Parliament's proposed use of the term "penal law" as compared to "criminal law".

To sum up, except for amendment 21, the other amendments set out above do not give rise to any real problems on the part of the Member States, the only changes being minor editorial amendments but not changes to the substance.

4.3 Amendments rejected by the Commission and not incorporated in the common position

These are: Nos 1, 3, 5, 6, 7, 9, 11, 12, 17, 18, 20, 25, 26, 27, 28, 30 and an oral amendment.

- Amendment No 1 proposes to extend the remit of the EASA to air security. The Commission considers that this cannot be part of the Agency's responsibility as its technical expertise is strictly concerned with safety.
- Amendment Nos 5, 6, 7 and 30 and the oral amendment are intended to exclude certain types of aeroplane and helicopter for commercial reasons. The Commission believes that this would run counter to the purpose of ensuring an adequate level of safety inspections and therefore has not adopted Parliament's proposals.
- Amendment Nos 9 and 11 have been rejected by the Commission as their effect would be to prevent certification procedures from being imposed on non-commercial operators operating complex, powerful aeroplanes.
- Amendment No 12 concerning the introduction of mutual recognition of cabin crews has been rejected as it duplicates Article 11(mutual recognition).
- Amendment No 17 concerns a provision enabling the Agency to impose financial penalties on those for whom it is responsible in cases of minor infringements for which the withdrawal of a certificate would be disproportionate. It cannot be accepted as it stands as it raises legal, institutional and practical issues which require detailed consideration.
- Amendment 18 runs counter to both the Conditions of employment of other servants of the European Communities, and current Community policy regarding staff language skills.
- The Commission considers that amendment No 20 cannot be accepted. The members of the Agency's Management Board must be appointed by the Member States and not Parliament as the Agency is called upon to perform tasks on behalf of the Member States.

- By means of amendment No 25, Parliament wishes to ensure that the Agency is independent and not open to any kind of interference from private entities. The Commission and Council share this objective. However, they are convinced that the present text does not open up this possibility as it is explicitly prohibited.
- Amendment Nos 3, 26, 27 and 28 concern the fees charged by the Agency for its certification activities.
 - Parliament calls for two separate decisions: the first concerning the budget for certification fees and the second for other resources. Parliament also asks to have part of the European subsidy assigned to certification activity.
 - The Commission does not accept these amendments as the first undermines the principle of unicity of the budget and the second would have the effect of depriving the Agency of about 40% of the financial resources allocated to the development of safety regulations, compliance checks by the Member States and accident analysis. This would benefit certain industrial groups which would no longer have to pay for certain activities in connection with ensuring that their products are maintained at the requisite safety level.

5- CONCLUSION

The Commission considers that the common position detracts neither from the essential aims nor the spirit of the proposal and is therefore able to accept it.

Annex: Statements by the Commission.

ANNEX

Unilateral statement by the Commission

Article 10(3), Article 24(2) and Article 54(1)
"Inspections by EASA"

1. The Commission confirms that the wording of Articles 10(3), 24(2) and 54(1) does not change the current role of Member States both as regards their primary oversight role over undertakings under their responsibility, and as regards ramp inspections including decisions on grounding of aircraft.
2. These provisions simply add the possibility for the Agency to carry out inspections of aircraft for the purpose of:
 - a) certification procedures carried out by the Agency within the context of tasks assigned to it by this Regulation;
 - b) standardisation inspections as provided for in Article 24(1);
 - c) inspections of any undertaking to check compliance with relevant Community law in potentially unsafe situations, in cooperation with the Member States.
3. Article 10 explicitly limits the possibility to ground aircraft to Member States only. Under no circumstance can the Agency ground an aircraft.

Where a safety deficiency is found, the Agency's role is to inform the Member States concerned and the Commission thereof.

The Agency's power to act is limited to the withdrawal/suspension of certificates/authorisations it has issued.

Unilateral statement by the Commission

Article 7(7), "Leisure Pilot Licence"

The Commission confirms that, when drawing up implementing rules for Article 7 relating to leisure pilot licences, priority will as always be given to safety. In particular, the implementing rules will limit the privileges associated with these licences depending on the level of training of the pilots concerned. Besides, recital 9 and Article 7(6)(c) make this necessity an obligation.

Joint Council and Commission statements:

Article 69(2), "Entry into force"

The Council and the Commission agree that they will endeavour to have the implementing rules referred to in Article 69(2) developed and adopted as soon as possible, and as far in advance of the deadline set out in that Article as is feasible, given the technical complexity of such implementing rules.