

## Opinion of the European Economic and Social Committee on Aviation security for passengers

(2009/C 100/07)

On 17 January 2008 the European Economic and Social Committee decided to draw up an own-initiative opinion, in accordance with Rule 29(2) of its Rules of Procedure, on

*Aviation security for passengers.*

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 September 2008. The rapporteur was Mr McDONOGH.

At its 448th plenary session, held on 21, 22 and 23 October (meeting of 23 October), the European Economic and Social Committee adopted the following opinion by 94 votes in favour with two abstentions.

### 1. Recommendations

1.1. The EESC recommends to create specific standards for aviation security services, unified at the highest possible level in addition to the existing common legal standards governing the Community approach to civil aviation security.

1.2. In the Committee opinion service providers should be excluded from aviation security activities amongst others if: they are bankrupt or being wound up, subject to proceedings for a declaration of bankruptcy, convicted for an offence concerning their professional conduct, guilty of grave professional misconduct, guilty of failure to fulfil obligations relating to the payment of social security contributions, guilty of failure to fulfil obligations relating to the payment of taxes, guilty of serious misrepresentation in supplying or failing to supply tender relevant information and no entry on professional register if required by national legislation. Also, aviation security providers should have an internal recruitment mechanism, provide for sufficient training of staff and proof of insurance for potential liabilities following the execution of the contract.

1.3. The introduction of one legally binding common set of training hours as well as a compulsory training package for security staff in all 27 Member States of the European Union, is recommended by the EESC.

1.4. The Committee believes that measures should be clear and concise.

1.5. The EESC deems it necessary to inform explicitly airlines, airports and security providers on the application of legislation containing security measures and provide, subject to strict conditions, direct access to these rules to airlines, airports and security providers.

1.6. The Committee believes that the publication of non-sensitive parts of the implementing legislation containing

security measures which impose obligations on or limit the rights of passengers in the Official Journal of the European Union and a review of these security measures every six months is a necessary requirement in the Community legal order.

1.7. The EESC requests the European Commission to take initiative with regards to the compensation of victims of criminal acts, such as terrorist attacks, in the field of aviation.

1.8. Measures should promote the recognition and professional development of careers in security.

1.9. Measures should avoid redundant security checks by implementing the concept of One-Stop Security across the EU. Promote the recognition of third countries' security measures.

1.10. Measures should develop customised innovative approach allowing differentiation of security measures for crew and passengers, without compromising security.

1.11. According to the Committee Aviation Security should be a priority in the allocation of Security research funds.

1.12. The independent assessment of technologies and requirements for technologies by the European Commission is indispensable. Standards for technologies, used in the field of aviation security, and a central register of approved suppliers should be created on the basis of this independent assessment according to the EESC.

1.13. The EESC believes that a more co-ordinated approach between member states in the fight against terrorism and organised crime is needed. Moreover more stringent measures taken at member state level, creating obligations and, or limiting rights of passengers should be based on risk assessment and take into account human dignity, be reviewed every six months and should be explicitly communicated to the travelling public.

## 2. Introduction

2.1. Following the tragic events of 11 September 2001 a Framework Regulation of the European Parliament and the Council, establishing common rules in the field of civil aviation security<sup>(1)</sup>, was adopted. This Regulation specifies the main provisions and common standards governing the Community approach to civil aviation security. Whilst Community legislation lays down common basic standards, it also allows Member States (or individual airports) to set higher standards, due to the variable level of risk of a terrorist attack depending on the member state, airport or airline.

2.2. In 2005 a process of revision of this Framework Regulation in the field of aviation security was initiated by the European Commission<sup>(2)</sup>, leading to a final consensus between members of the European Parliament and the Council of the European Union on 11 January 2008 and resulting in the adoption of a new Framework Regulation No 300/2008<sup>(3)</sup> on 11 March 2008. The aim of the revision was to clarify, simplify and harmonise further the legal requirements with the aim of enhancing the overall security in civil aviation.

2.3. The momentum created by the revision of the Framework Regulation should be seized, as this is a fundamental change to the rules governing aviation security. A common transport policy was one of the earliest European Community common policies. In this context air transport is of vital importance for the free movement of persons and goods: two of the objectives of the European Community. The freedom for a citizen of one member state to travel freely to another member state implies the protection of that person from harm. Moreover, the disruption (by for example a terrorist attack) of the air transport system would have negative impacts on the European economy as a whole. Therefore it is clear that security should remain a key element for the air transport success.

2.4. Despite the many initiatives in the field of aviation security, the current regulatory framework in the field of aviation security does not address some of the basic concerns of passengers, airlines, airports and private security providers. The air transport sector needs clearer, comprehensive and harmonised measures. The overall aim of the aviation security policy should therefore be to create a clear, efficient and transparent regulatory framework and to have security with a human face.

<sup>(1)</sup> 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, OJ L 355, 30.12.2002, p. 1.

<sup>(2)</sup> COM(2003) 566, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 2320/2002 of the European Parliament and of the Council establishing common rules in the field of civil aviation security, OJ C/2004/96.

<sup>(3)</sup> Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002, OJ L 97, 9.4.2008, p. 72.

## 3. Certification of private security providers is a necessity

3.1. Because aviation security is crucial for the functioning of the air transport system, the creation of specific standards for aviation security services in addition to the existing common legal standards governing the Community approach to civil aviation security is necessary. In practice private security providers are often selected merely on the basis of the lowest price, in spite of the sensitive nature of their business. New binding legislation incorporating such specific standards should give some guidance for the selection and attribution of aviation security providers on the basis of quality criteria.

3.2. Selection and attribution of criteria for security providers should, amongst others include the financial and economic capacity of the security provider, financial transparency, ability and technical capacity, this all improving the quality of services.

3.3. The European Aviation Security Association has recently launched an initiative of self-regulation through a Quality Charter and an Annex on Training of private security staff. Principles put forward in this document could serve as a basis for the certification of all private aviation security companies and illustrate the commitment of the industry to provide high quality solutions.

3.4. The European Economic and Social Committee recommends the creation of legally binding quality criteria for private aviation security providers. Service providers could be excluded from aviation security activities amongst others if: they are bankrupt or being wound up, subject to proceedings for a declaration of bankruptcy, convicted for an offence concerning professional conduct, guilty of grave professional misconduct, guilty of failure to fulfil obligations relating to the payment of social security contributions, guilty of failure to fulfil obligations relating to the payment of taxes, guilty of serious misrepresentation in supplying or failing to supply tender relevant information and no entry on professional register if required by national legislation. Besides this, aviation security providers should have an internal recruitment mechanism, provide for sufficient training and proof of insurance for potential liabilities following the execution of the contract.

3.5. In addition the European Economic and Social Committee proposes to introduce one legally binding common set of training hours as well as a compulsory training package for all 27 Member States of the European Union.

## 4. Recognition of background checks for security staff

4.1. Prior to their appointment, security staff should, according to the current and future Framework Regulation on aviation security, undergo both a specific training and a background check. It is crucial that a future security agent has no records or links to potential terrorist groups or criminal groups and no criminal record, since their work is a key element in the aviation security system.

4.2. Currently, background checks are performed by national authorities, normally by the Ministry of Justice or Interior, only in their jurisdiction. As a result, there is no mutual recognition of this prerequisite by the majority of Member States. This topic is particularly important if the mobility of workers is taken into account, a fundamental freedom established by the Treaty of Rome.

4.3. The European Economic and Social Committee urges the Council of the European Union and the European Commission within the remit of its competence in the field of Judicial and Police cooperation within the EU to reflect upon this issue.

## 5. One Stop Security

5.1. The main objective for giving competencies to the European Union in the field of aviation security was to achieve a common European framework of rules which would be applied consistently across the EU Member States. As all rules developed at the EU level are to be applied by all Member States, the logical consequence would be the mutual recognition among Member States of EU security standards – this is what is meant by the concept of One-Stop Security. The passenger, luggage and cargo which travels from one EU Member State to another should be considered as secure, and thus should not have to undergo additional security screening in the EU transfer point before the destination.

5.2. The principle of One-Stop Security has been recognised at EU level, and is further strengthened with the new Framework Regulation on aviation security. However, mutual recognition of EU Member States security standards is still not completed within the EU. Based on the fact that threat levels were not equal among all Member States, some Member States have imposed more stringent security measures to mitigate the specific threat they are exposed to.

5.3. This non-recognition of security standards across the EU implies the multiplication of redundant checks, which are not only linked to additional delays and costs for airlines, but are also using resources which would be better used for protecting more vulnerable parts.

5.4. This principle of One-Stop Security, which should be implemented across the EU, should also be considered with regards to other countries. There is no reason why aircraft coming from countries with advanced aviation security regime, like the United States or Israel, should be considered as 'unsecured'. Mutual recognition of standards should also be possible with 'like-minded' countries and this would again contribute to a balanced global security regime where all efforts are targeted at the real threat.

5.5. The European Economic and Social Committee therefore urges the European Commission to ensure that the principle of One-Stop Security is thoroughly applied in the EU, and that any aircraft arriving from an EU Member States in another EU Member States is considered as 'secure'. The European Commission is also strongly invited to make rapid progress on recognition of third countries security standards, where these standards can be considered as equivalent, with a special focus on the United States.

## 6. Differentiation

6.1. Considering the significant increase in passengers travelling by air forecast for the upcoming years, the current security screening of passengers and luggage does not propose a sustainable model. For the moment, all passengers are screened in a similar way and they all have to undergo the same process of security check. This burdensome process is the main target for complaints from passengers when asked to evaluate their travel experience. The dissatisfaction from passengers is reinforced by the knowledge that the vast majority of travellers are not posing any threat to either the airport or the aircraft.

6.2. Again, resources available to ensure aviation security are extremely scarce. Distinction should first be made between what is probable and what is possible. The credibility of the whole system needs to rely on the capacity to address probable threats and not trying to cover 100 % of the possible risk. The identification of a probable threat should be based on the assessment of this threat and an evaluation of the risk taken in the application of adequate measures.

6.3. The European Economic and Social Committee invites the European Commission to reflect upon an approach where the systematisation of security checks on passengers could be replaced by a pro-active differentiation of passengers combining information gathering with deterrence of random measures.

## 7. Allocation of Research and Development Funds in the field of Security

7.1. The European Economic and Social Committee welcomes the allocation of EUR 1.2 billion to security research in the 7th Research Framework Programme. Aviation security should be considered a priority in the allocation of funds due to the increasing costs for the aviation sector and its impact on society at large. Furthermore, it is crucial that the selected projects are in line with the policy that is being developed and that funds are made available for necessary research in this regard such as for example research on technologies used to detect liquid explosives or other detection technologies such as the use of biometrics.

7.2. As a result, the European Economic and Social Committee requests the European Commission to coordinate internally its work in order to optimise the utilisation of financial resources provided by tax payer money.

7.3. Moreover the European Economic and Social Committee recommends to allocate funds for the independent assessment of technologies and requirements for technologies by the European Commission. Standards for technologies, used in the field of aviation security, and a central registrar of approved suppliers should be created on the basis of this independent assessment.

## 8. Difficulties in recruiting and retaining Security Staff

8.1. In some Member States, airports or security providers have been facing important difficulties in recruitment of security staff. It is natural that the selection criteria have been increased due to the importance of the role of these agents. Thus, besides the need of 'clean' background check, the necessity to speak one or more foreign languages, a certain level of education to understand the procedures and to deal with conflicting passengers leads to more a restricted poll of candidates.

8.2. An additional problem that occurs is that once the staff has been recruited and properly trained, the retention of this staff becomes extremely difficult. The necessary flexible working hours combined with a constant pressure and the relatively low salary, render the profession of a security agent undesirable in the eyes of many. Moreover it is clear that the lack of social recognition and career prospects results in a loss of expertise in the sector.

8.3. The European Economic and Social Committee believes that the European Commission can play an important role in this social field by promoting the benefits of a career as a security agent throughout the European Union and this more concretely by revalorising these important jobs.

## 9. Accountability

9.1. The aviation industry invests in the delivery of high quality of services, but is confronted with obstacles precluding a clear view on the legal requirements, and thus hampering a qualitative implementation.

9.2. The European Economic and Social Committee believes that measures should be clear and formulated as simple as practicably possible. Current rules are often a series of rules, spread over different legal texts, with many exceptions with exceptions. The result is a complex set of requirements, which do not contribute to efficiency and increase stress for staff, delays and inconvenience for travellers.

9.3. Moreover, end-users of security measures, namely airlines, airports and security providers who are actually applying the measures, have no direct access to these rules. Crucial service providers, such as airlines, airports and security providers are expected to follow rules correctly, but are not directly informed on those rules while article 254 of the European Community Treaty provides that regulations shall be published in the Official Journal of the European Union and it is absurd to expect service providers to apply rules which they are not supposed to know. In the pending case C-345/06, better known as the 'Heinrich-case', Advocate General Sharpston has issued an opinion suggesting to declare implementing regulation on aviation security non-existent. According to the Advocate General the persistent and deliberate non-publication of the Annex to Regulation EC No 2320/2002, which contained, inter alia, the list of items prohibited in cabin luggage, is a failing of such gravity that it can not be tolerated in the Community legal order <sup>(1)</sup>.

9.4. Consequently the European Economic and Social Committee recommends clear and direct information to airlines, airports and security providers having to apply security measures about these measures and thus to provide for a direct access to the rules, subject to strict conditions, for airlines, airports and aviation security providers. It does not contribute to high quality of services that private security providers should apply security measures and are to a certain extent accountable for the application, but do not have the capacity to be informed directly. Nevertheless, given the need for high confidentiality of these rules, specific conditions regarding the guarantee of their confidentiality, must be defined and endorsed. Moreover the European Economic and Social Committee recommends the publication of non-sensitive parts of the implementing legislation to Regulation No 2320/2002, which imposes obligations or limit rights of passengers, in the Official Journal of the European Union as required by article 254 of the European Community Treaty and a review of security measures imposing obligations or limiting the rights of passengers every six months. The European Economic and Social Committee recognises the necessity of the competence of Member States to take more stringent measures, due to the variable level of risk. Nevertheless the European Economic and Social Committee believes that a more coordinated approach between Member States in the fight against terrorism and organised crime is needed. Moreover more stringent measures taken at member state level, creating obligations and, or limiting rights of passengers should be based on risk assessment and take into account human dignity, be reviewed every six months and should be communicated to the travelling public.

## 10. Consequences of a terrorist attack

10.1. One of the objectives of the European Community is the free movement of persons and goods. Moreover the European Community has committed itself to create a common transport policy and to protect human rights such as the right to life and property.

<sup>(1)</sup> Opinion Advocate General Eleanor Sharpston in case C-345/06, 10 April 2008, [www.curia.europa.eu](http://www.curia.europa.eu)

10.2. In the Cowan <sup>(1)</sup> case, the European Court of Justice held that, when Community law guarantees to a natural person the freedom to go to another Member State, the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement. The Council of the European Union added to this, in its Council Directive 2004/80/EC that measures to facilitate compensation to victims of crimes should form part of the realisation of this objective. These principles should be applied in the case of victims of a terrorist attack in the field of civil aviation.

10.3. At its meeting in Tampere on 15 and 16 October 1999, the European Council called for the establishment of minimum standards that would protect the victims of crime, in particular on crime victims' access to justice and their rights to compensation for damages, including legal costs.

10.4. Given the fact that airlines, airports and the security industry are investing in high quality services, through research, and is contributing to the security of society, but do not have the overall ultimate competence to prevent terrorist attacks, it is necessary for the European Union to take initiative to provide assistance of victims after a terrorist attack.

10.5. Currently no European rule exists on the compensation of victims following a terrorist attack. Victims are left dependent on the outcome of judicial proceedings and *ex gratia* solutions offered by Member States. A consequence of the lack of common European rules is that national liability regimes would apply, which is unsatisfactory and does not secure citizens from the far-reaching consequences of a terrorist attack. An example of this would be that victims who desire compensation would be required to initiate lengthy judicial proceedings against terrorists who may not easily be found or who may lack the necessary financial means to compensate the victim. Furthermore, different actors such as airlines, airports

and private security providers could face legal actions, with a potential unlimited liability as a result on the basis of national liability regimes. The existing insurance solutions are not sufficient, as airlines, airports and private security providers are saddled with high insurance premiums and limited coverage. Clearly, these private actors are not in the position to provide the necessary compensation to victims, nor is it desirable to have private actors pay for actions directed against state policies.

10.6. The European Economic and Social Committee wishes to draw the attention to Article 308 of the Treaty of the European Community, which empowers the Community to take action where two conditions are fulfilled. First, the action must be necessary in order to achieve one of the objectives of the Community; and secondly, the European Community Treaty must have failed to provide the necessary powers in another article.

10.7. With this in mind the European Economic and Social Committee recommends as a possible solution, taking an initiative on the basis of article 308 of the Treaty of the European Community with regard to the compensation of victims of terrorist attacks. As European Community action is necessary in order to achieve the objective of free movement of persons and goods, to protect the functioning of the air transport system and to protect the right to life and property of citizens.

10.8. In this opinion the European Economic and Social Committee proposes to the European Commission and the Council of the European Union to apply principles used for other industries (e.g.: nuclear, maritime, ...). More specifically: a strict liability that is capped, and exclusively channelled towards one actor and whose viability remains protected by a three tier liability regime, respectively covered by an insurance, a fund financed by all interested parties, a state intervention.

Brussels, 23 October 2008.

The President  
of the European Economic and Social Committee  
Mario SEPI

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<sup>(1)</sup> ECJ, Ian William Cowan vs. Trésor public, case 186/87, [www.curia.europa.eu](http://www.curia.europa.eu)