

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council establishing a Union certification system for aviation security screening equipment’

(COM(2016) 491 final — 2016/0236 (COD))

(2017/C 125/04)

Rapporteur: **Stefan BACK**

Consultation	European Parliament, 15.9.2016 Council, 24.10.2016
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	13.1.2017
Adopted at plenary	25.1.2017
Plenary session No	522
Outcome of vote (for/against/abstentions)	138/1/3

1. Conclusions and recommendations

1.1 The EESC reiterates its support for the 2012 Action Plan for an innovative and competitive Security Industry (the Action Plan) ⁽¹⁾.

1.2 The EESC also draws attention to the European Agenda on Security (the Security Agenda) ⁽²⁾ and once again voices its support for the action plan against illicit trafficking and use of firearms and explosives, as well as for the Proposal for a directive on combating terrorism ⁽³⁾ ⁽⁴⁾.

1.3 Subject to the remarks below, the EESC now also welcomes the objective of the Commission Proposal for a Regulation establishing a Union certification system for aviation security screening equipment ⁽⁵⁾ (the Proposal) as a first step in implementing the Action Plan. It commends the Proposal's aim to put in place a type approval system for screening equipment with a one-stop shop certification in order to simplify the introduction of products on the market, reduce costs, increase market volume and improve the competitiveness of the European security product industry.

1.4 The EESC regrets, however, that the Proposal does not introduce a single EU approval authority with an integrated technical service, as this would have made for optimal efficiency and cost reduction. The EESC has serious doubts about the resource efficiency of the proposed option of splitting the technical services and approval authorities.

⁽¹⁾ COM(2012) 417 final (OJ C 76, 14.3.2013, p. 37).

⁽²⁾ COM(2015) 185 final.

⁽³⁾ COM(2015) 624 final: Implementing the European Agenda on Security: EU action plan against illicit trafficking in and use of firearms and explosives and COM(2015) 625 final: Proposal for a Directive on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism.

⁽⁴⁾ OJ C 177, 18.5.2016, p. 51.

⁽⁵⁾ COM(2016) 491 final.

1.5 The EESC further regrets that the possibility provided in Article 6 of Regulation (EC) 300/2008 ⁽⁶⁾ on common rules in the field of civil aviation security of prescribing more stringent requirements at national level than the basic level provided for under that regulation, which was expressly welcomed by the EESC in its opinion ⁽⁷⁾ on the proposal for that regulation, is not reflected in the Proposal.

1.6 The EESC deplores the fact that internal market considerations seem to have taken precedence over security concerns, to the point where not even the possibility of allowing additional national security requirements to safeguard vital national interests in accordance with Article 114(10) TFEU has been granted.

1.7 In this respect, the EESC also regrets that the TFEU does not allow dedicated national action to protect essential national interests against terrorist acts, in line with what applies with regard to military equipment under Article 346 TFEU or to public procurement under Article 15 of Directive 2014/24 on public procurement ⁽⁸⁾.

1.8 The EESC questions the adequacy of the provision in Article 24(3) of the Proposal specifying that the Commission shall chair the coordination committee of the technical services, considering the highly technical and complex nature of the questions that will have to be dealt with by its services.

1.9 In this respect, the EESC also expresses its regret that no consideration seems to have been given to the possibility of including in the Proposal a system for exchange of information and coordination between the different national approval authorities.

1.10 The EESC questions whether the extent to which the proposal authorises the use of delegated acts to modify technical provisions goes beyond the scope of what is authorised under Article 290(1) TFEU. This is in particular the case with respect to Article 27(a) of the Proposal, which sets no limits to the scope or character of the new performance requirements that may be included in Annex I to the Proposal through delegated acts.

1.11 In any case, the EESC points out that if it is to legislate in this field, the Commission will need the technical competence required to ensure the quality of the legislative acts.

1.12 The EESC welcomes in principle the Proposal that the EU should seek to become a full member of the European Civil Aviation Conference (ECAC). However, in view of the fact that the current ECAC Constitution only authorises states as members, that ECAC membership is wider than the EU Member States and that the outcome of any such membership negotiation cannot be taken for granted, it might be more realistic to state that the EU should take the appropriate steps with a view to obtaining membership of ECAC.

1.13 The EESC has taken note of the provision in the Proposal for a maximum average time of six months between submitting a request for a test by technical services and the delivery of the test results to the relevant authorisation authority. The EESC suggests that a better option would be for the technical service to make an initial assessment of a request in order to define the amount of time needed for testing and to inform the applicant within a fixed time limit. If the deadline for testing is subsequently not met, the applicant should be informed and the reasons for the delay explained.

1.14 The EESC notes that the ECAC system for product assessment now works well and that the added value of an EU type-approval system, for operational purposes, may therefore be open to question. This observation is without prejudice to the Internal Market objectives set out in the Proposal.

1.15 For the reasons indicated, the EESC has doubts about the added value of the Proposal as it now stands and would therefore ask the Commission to reconsider its content with a view to taking on board the observations made in this opinion.

⁽⁶⁾ OJ L 97, 9.4.2008, p. 72.

⁽⁷⁾ OJ C 185, 8.8.2006, p. 17.

⁽⁸⁾ See also the Interpretative Communication on the application of Article 296 of the Treaty (current Article 346 TFEU) in the field of defence procurement (COM(2006) 779 final) (OJ L 94, 28.3.2014, p. 65).

2. Introduction

2.1 The Proposal is a step towards implementing the Action Plan ⁽⁹⁾. The objectives of the Action Plan are:

- to overcome market fragmentation through the creation of EU-wide certification/international standards, harmonisation of EU certification/conformity assessment procedures and exploitation of synergies between security and defence technologies;
- to reduce the gap from research to market;
- to improve integration of the social dimension by early testing of the social impact, including possible effects on fundamental rights.

2.2 One important aim of the Action Plan is to end the fragmentation of the security market by introducing EU-wide certification systems for security technologies, starting with airport screening equipment and alarm systems, to be achieved by setting up a one-stop shop system to obtain certification granting market access for the certified product across the entire EU. This would result in simplification, reduced certification costs, increased domestic market volumes and therefore improved competitiveness compared to US and Chinese products that have the advantage of higher volumes on large domestic markets.

2.3 The Security Agenda ⁽¹⁰⁾ approves the Action Plan when addressing support actions such as training, funding, research and innovation.

2.4 The Security Agenda contains a wide range of measures comprising counteracting financing of terrorism, illicit trafficking in and use of firearms and explosives and further measures to protect citizens and critical infrastructure, including an action plan against illicit trafficking and use of firearms and explosives and a Proposal for a directive on combating terrorism ⁽¹¹⁾.

2.5 The Proposal introduces a certification system built on common performance requirements, common testing methods and accreditation of testing laboratories (technical services).

2.6 The performance requirements are those laid down under Regulation (EC) 300/2008 ⁽¹²⁾ on common rules in the field of aviation security and its implementation acts (Article 4 and Annex I to the Proposal).

2.7 The evaluation methods are those developed in the Common Evaluation Process (CEP) approved by the ECAC.

2.8 Each Member State is to have an approval authority with competence for all aspects of approval of equipment (Article 6 of the Proposal). No Member State may make additional requirements on certified equipment (Article 4 of the Proposal).

2.9 The Proposal lays down procedures for dealing with equipment that presents a risk at national level or that is not in conformity with certification (Articles 17-19 of the Proposal).

3. General comments

3.1 The EESC has already welcomed the Action Plan ⁽¹³⁾, the European Agenda on Security, the action plan against illicit trafficking and use of firearms and explosives, and the Proposal for a directive on combating terrorism ⁽¹⁴⁾.

⁽⁹⁾ COM(2012) 417 final.

⁽¹⁰⁾ COM(2015) 185 final.

⁽¹¹⁾ COM(2015) 624 final: Implementing the European Agenda on Security: EU action plan against illicit trafficking in and use of firearms and explosives and COM(2015) 625 final: Proposal for a Directive on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism.

⁽¹²⁾ 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).

⁽¹³⁾ See footnote 1.

⁽¹⁴⁾ See footnote 4.

3.2 The EESC now also welcomes the intention of the Proposal to implement the Action Plan through strengthening the European security industry sector by creating a larger domestic market and improving the competitiveness of this industry.

3.3 The EESC welcomes the Proposal's aims to enhance the competitiveness of the EU security industry and simplify administrative procedures by introducing a one-stop shop for certification to reduce costs and create a larger domestic market. The EESC notes the strong focus on the Internal Market and competitiveness, and the fact that security matters are dealt with mainly from the perspective that increasing the industry's competitiveness may improve its possibilities for innovation and new product development.

3.4 The EESC approves the approach taken by the Proposal to legislate on performance requirements and make use of the Common Testing Methods developed by ECAC, and agrees that the classified character of much of the legal material makes this approach necessary. Nevertheless, the EESC is of the opinion that the Proposal could be improved on in a number of important respects.

3.5 The EESC thus regrets that the possibility contained in by Article 6 of Regulation (EC) 300/2008 for a Member State to apply more stringent measures than the common basic standards referred to in the Proposal is not included in the Proposal. Neither the procedures for dealing with equipment presenting a risk at national level nor the union safeguard procedure are suitable for tackling this kind of problem.

3.6 The EESC recalls here that it specifically approved the possibility allowing Member States to take more stringent measures under Article 6 of Regulation (EC) 300/2008 in its Opinion on the Proposal for that regulation⁽¹⁵⁾.

3.7 The EESC is aware of the difficulties involved in authorising additional national requirements on products covered by harmonised criteria, but nevertheless draws attention to the possibility offered under Article 114(10) TFEU of authorising national requirements based on the need to protect national security interests, for instance, although only for a limited period of time.

3.8 The EESC takes note of the fact that the parliaments of at least two Member States have, in proposals for reasoned opinions on the question of subsidiarity, one of which has been submitted, referred to the need to be able to adapt security requirements in line with the varying levels of risk exposure in the different Member States⁽¹⁶⁾. This means that it may be necessary to heighten security requirements by introducing additional characteristics and improved performance of equipment, including screening equipment at airports, compared to standard EU requirements.

3.9 The EESC takes the view that, when implementing a policy that seeks to improve protection against terrorist acts, this aim must be seen as the essential element of any measure proposed. An industrial policy agenda related to this aim must be seen as subordinate to the aim of counteracting terrorism.

3.10 There must therefore be clear scope for separate action by Member States to deal with terrorist threats, including by making additional demands on screening equipment at airports over and above the standard certification requirements. Articles 17 and 18 of the Proposal are not related to this problem and do not give sufficient freedom of discretion to Member States to enable them to protect themselves against terrorist threats. The EESC is aware that the TFEU as it now stands contains no specific rules allowing security equipment to be exempt from internal market rules on the grounds of safeguarding vital national interests, since Article 346 TFEU provides for such a possibility only with respect to military equipment and the provisions of Directive 2014/24/EU (Article 15) relate only to public procurement⁽¹⁷⁾.

⁽¹⁵⁾ See footnote 6.

⁽¹⁶⁾ Reasoned Opinion of the House of Commons of the United Kingdom Parliament 1 November 2016 in Council document 14180/16 and Assemblée Nationale of France, No 4060 rect. Proposition de Résolution Européenne.

⁽¹⁷⁾ Interpretative Communication on the application of Article 296 of the Treaty (Article 346 TFEU) in the field of defence procurement, page 6, footnote 10. Directive 2004/18/EC has since been replaced by Directive 2014/24/EU — COM(2006) 779 final.

3.11 The EESC takes note of the fact that the Proposal enables the Commission to adopt delegated acts to amend Annex I to reflect the introduction of new performance requirements for aviation security screening equipment (Article 27 (a)) and to amend the annexes to the Regulation to adapt them to the development of scientific and technical knowledge (Article 27(b)). Article 290(1) TFEU limits delegation to non-essential elements of the legal act in question, including updates due to technical developments. The delegation in Article 27(a) of the Proposal appears to go beyond that limit. The EESC therefore questions the compatibility of the delegation proposed in Article 27(a) of the Proposal with the TFEU.

3.12 In any case, if it is to legislate in this field, the Commission will need the technical competence required to ensure the quality of the legislative acts.

3.13 The Proposal provides for an approval authority in each Member State. The EESC questions both the capacity of all Member States to set up such an authority at the time of the entry into force of the Proposal as well as the resource efficiency of such a requirement and its added value, bearing in mind that currently only five Member States have the capacity to test equipment and issue a type-approval. The EESC considers that a single EU approval authority would have been a more efficient solution, in line with the one-stop shop approach.

3.14 In this connection, the EESC also questions the usefulness of splitting the testing and certification functions between the technical services and the approval authorities, meaning that the actual testing of a product's performance is to be carried out by a technical service, which has been certified as to its competence level, while the decision to issue certification (type-approval) is to be taken by the approval authority, which clearly does not need to fulfil any specific criteria of technical competence but will rely entirely on the assessments made by the technical service. Should the reason for this two-tier system be that adequate technical competence is not available in all Member States, the EESC would suggest integrating the two functions in a reduced number of approval authorities or, ideally, as already suggested, setting up one common approval authority for the entire EU.

3.15 The EESC also takes note of the fact that the ECAC common certification test methodology is now working adequately. This brings into question the added value of the system to be created by the Proposal, since the ECAC framework ensures free movement for the products concerned among the ECAC Member States. This observation is without prejudice to the Internal Market objectives of the Proposal.

3.16 The EESC takes note that Article 10 of the Proposal stipulates that the EU shall become a full member of the body responsible for the elaboration of the common testing methodologies, i.e. ECAC. The EESC points out that EU membership of ECAC would require a prior amendment to the ECAC Constitution, as it currently allows only states as full members. Since membership would be the outcome of a negotiation process, the EESC would suggest that the provision be changed to stipulate that the EU should be mandated to start negotiations with a view to obtaining full membership of ECAC.

4. Specific remarks

4.1 The Proposal specifies that the Commission shall establish and chair a sectoral group of technical services to ensure cooperation and coordination between technical services. Bearing in mind that this group is likely to be dealing with highly complex technical matters, the EESC questions the adequacy of this solution.

4.2 The EESC is surprised that no need has been seen to propose an exchange of information and coordination between the various national approval authorities, and between the approval authorities and the Commission, bearing in mind that such a system has been considered useful for the technical services and in other contexts where national authorities exercise decision-making competence that is of relevance for the application of EU law, for instance in the field of competition.

4.3 While the Proposal provides for one approval authority for each Member State, no such requirement applies to the technical services which, as pointed out above, will hold a key role in the planned certification system. This again supports the view that the requirement of one approval authority in each Member State has a merely symbolic value, bearing in mind that type-approval certification and the certificates of conformity issued based on that certification are valid across the whole of the EU. The procedure for dealing with equipment presenting a risk at national level (Article 17 of the Proposal) could be dealt with by a national authority competent in security matters.

4.4 The Proposal specifies that the technical services shall ensure that the average time between a request for a test of equipment and delivery of the results to the approval authority shall at most be six months, except in exceptional circumstances or at the specific request of the manufacturers. The EESC takes the view that a fixed time period of this kind is neither desirable nor realistic. A better option might be an obligation for the technical service to immediately assess the time needed to deal with a request and inform the applicant within a fixed period of time, for example fifteen working days. If the deadline set cannot subsequently be met, the technical service should give a reasoned explanation.

Brussels, 25 January 2017.

The President
of the European Economic and Social Committee
Georges DASSIS
