

DRAFT SPEECH

For 7th TRANSEC TRANSPORT SECURITY CONFERENCE,
3 JUNE 2009, AMSTERDAM
to be delivered by Mr A.Preto

"AVIATION SECURITY - PRIORITIES OF THE COMMISSION"

- **INTRODUCTION**

Thank you for inviting the European Commission to make the keynote address at the 7th TranSec World Conference. This invitation shows the important role the European Commission now plays in setting aviation security standards. If one turns back the clock 7 years there was then no Community aviation legislation at all.

Of course, over this time the needs and priorities of Community rules in the field of aviation security have changed. Aviation security cannot be a static subject – it must develop. We have to continue to seek ways of improving the protection of the citizens of Europe. At the same time, we must draw conclusions from experiences made and constantly seek to better reconcile indispensable security requirements with the operational needs of all players: public administrations in charge for implementing rules, airport managers, airlines, cargo companies, security companies, catering suppliers and, above all, the passengers.

- **HISTORICAL CONTEXT OF EC LEGISLATION ON AVIATION SECURITY**

The existing framework regulation on aviation security - Regulation 2320/2002 - was developed in the immediate aftermath of the events of 11 September 2001. Some of you will know that the basis for the work was ECAC's Document no 30 – which was a set of guidelines for best practice in the field of aviation security that had been developed by the European states. It soon became apparent that transposing guidelines into binding legal requirements did not result in optimal legislation. This information has been learned not only by means of feedback from Member States and stakeholders, but also from inspections performed by the Commission at airports. With the Commission having performed over 100 inspections since the application of the legislation we now have considerable knowledge and expertise on aviation security – as well as what makes

good rulemaking and what does not. So, after some five years it is now time to revise the rulemaking.

- **THE PRINCIPLES BEHIND REVISION OF EC LEGISLATION**

Under President Barroso the European Commission is committed to the principle of better legislation. This is the core principle behind what is being done.

Specifically, the new legislative approach allows for the development of rulemaking that can be better tailored to address security issues in a holistic manner, rather than as a series of individual steps which was the case for today's rules. As such it will be able to reflect better the needs and wishes of the travelling public and the aviation industry, whilst not compromising on the overall level of security. What this means is that security rules will not be developed in a piece-meal manner – the European Commission will work with industry to develop rules that avoid costly and unnecessary duplication of security. Similarly, the new legislation will allow flexibility to enable industry to show innovation in bringing forward new ways of performing security.

- **SIMPLIFICATION OF THE RULES**

One goal of the work is to simplify the rules on aviation security. Simplification addresses several issues. Firstly, a big effort is being made to remove unnecessary duplication of security requirements. It is generally recognised that aviation security should be considered to be a series of concentric rings around the aircraft – like the layers of an onion. What has happened over time is that legislators have been successively adding layers of security. To constantly add layers without review does not necessarily improve security. Thus the opportunity is being taken to remove some layers. As an example, rules for the protection of aircraft, baggage, cargo and mail will be reduced to recognise the benefits of increased security that has accrued from staff screening at Community airports.

Secondly, the rules on the searching of aircraft will be modified to allow for more appropriate levels of security. Today, all aircraft are searched in the same way. In the future, the requirements for aircraft searches should be related to where the plane originally came from.

Thirdly, Lighter procedures will be introduced for the introduction of new methods of screening, allowing swifter adaptation to technical progress. It is imperative that new technologies are encouraged, not stifled by rigid rules.

Fourthly, simplification means better drafting of the rules to make them clearer to understand. Aviation in general is a field with lots of jargon – at times it has a vocabulary of its own. Yet, with legislative process that requires the rules to be translated into 21 languages, it is essential that Community legislation is drafted in a clear and precise manner that avoids misinterpretation.

- **FURTHER HARMONISATION OF THE RULES**

A major positive consequence of the existing legislation has been to introduce harmonisation for the first time in the field of aviation security in the EU. The opportunity will be taken to build on the initial progress. In particular, the degree of scope for national rules will be diminished. This is particularly significant in the area of air cargo security where currently 27 differing regimes are practised. Another example is in the technical standards for security equipment where standardised approval processes are necessary to ensure the proper functioning of the Single Market for the sales of such equipment.

Furthermore, whilst the legislation will continue to allow individual Member States to set "more stringent" security measures on top of the EC baseline standards, in order to respond to specific, targeted threats, there will be a new obligation that more stringent measures shall be 'relevant, objective, non-discriminatory and proportional to the risk that is being addressed';

- **GREATER SCRUTINY AND TRANSPARENCY**

The new legislative structure also contains a correct balance of democratic scrutiny. The new framework Regulation 300/2008 – which will ultimately replace Regulation 2320 - is one of the first major pieces of legislation to use the new "*procédure réglementaire avec contrôle*" or Regulatory Procedure with Scrutiny. This enables the European Parliament and the Council of Transport Ministers, to apply checks and balances to the legislation in a manner that is both effective and yet also administratively lighter. This is a "win-win" situation for all the institutions. This legislative structure is thus a well-balanced compromise giving the Parliament and Council a key appreciation on policy issues, whilst leaving technical details to experts, both from National administrations and stakeholders. In this regard it should be noted that Regulation 300 has, in Article 17, formalised the Stakeholders Advisory Group on Aviation Security (or SAGAS) as an industry body to advise the Commission on aviation security issues.

In addition, the Commission has recognised that we have been too secretive under the existing regime by not publishing any of the implementing rules on aviation security. This was done with

the best of intentions – the 'precautionary principle' that it was better to put too little, rather than too much sensitive information in the public domain. But, with hindsight, the Commission was overcautious. This resulted in the so-called "Heinrich Case" in front of the European Court of Justice that questioned this secrecy. With the new legislation we have changed this approach and shall be as transparent as possible with the rules on aviation security – keeping out of the public domain only the most sensitive of information that potential terrorists should not have.

- **REINFORCING INTERNATIONAL COOPERATION**

The new package of legislation, when fully adopted, will also make it easier for the adoption of arrangements with those Third Countries that have similarly high levels of aviation security. The concept of 'one stop security' is already familiar within the EU and is greatly appreciated by both passengers and airlines alike by eliminating the need for transfer passengers (and their baggage) to be rescreened on flights originating within the EU. By adopting arrangements with Third Countries then it will be possible to extend the concept of 'one stop security' to flights from these countries too. This will make EU hub airports – and the airlines serving them – more attractive for customers, offering quicker connecting times as well as eliminating costly and unnecessary duplication of security.

This work on aviation security with Third Countries will be complemented by continuing development of security clauses in bilateral EU aviation agreements – so as to ensure equivalency of security standards, with the consequential possibility for 'one stop security' through mutual recognition. Furthermore, the Community will continue to develop its role in ICAO to speak with one voice and to ensure that European standards on security are underpinning the international standards.

- **STATE OF PLAY**

In September 2005 the Commission formally commenced the task of replacing all the existing legislation on aviation security adopted by means of Regulation (EC) No 2320/2002. The first key stage was the adoption, in March 2008, of Regulation (EC) No 300/2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002. In order for this regulation to become applicable, the complementary detailed implementing rules need to be adopted by April 2010 at the latest. A second key step was taken with the adoption of Regulation 272/2009.

The Commission services are now ready to embark on the decision-making process for the final, major package of implementing rules following the principles I have highlighted. My services have been involved in close dialogue with Member States and, in particular, stakeholders over some three years of working group meetings – to improve the rules.

Overall, the legislative draft is a balance between addressing on the one hand the requests of stakeholders for lighter rules and the removal of possible duplications in security and, on the other hand, the caution of Member States not to compromise the level of security and their role in the application of the rules. The Commission aims to have the legislation adopted by the Autumn of 2009 with the new rules applying from April 2010 (to allow a reasonable transition period).

- **BAN ON LIQUIDS**

I do not intend, in a keynote speech, to go into details of the content of the planned package of implementing rules. However, on one high profile issue – the ban on liquids – it is appropriate to say a few words.

This ban has proved to be very unpopular with citizens, as well as initially difficult for airports to apply. However, it should also be noted that whilst the ban may have originated in the EU – as the original incident took place in London in August 2006 – it is now virtually a worldwide ban.

Nonetheless, from day 1 of the ban the Commission has said that an outright ban on liquids in quantities greater than 100ml is only a stopgap measure until technology can be introduced at airports that will be able to screen liquids and thus determine whether or not they are safe. Once that technology is in place then passengers will once again be able to carry liquids. Development of such technology has taken longer than anticipated but is now progressing well. A target date for a rule change of April 2010 has been set. This is an extremely ambitious target, but the Commission wishes to see a lifting of the total ban as swiftly as possible – without prejudicing security, of course.

- **CONCLUSIONS**

Since 9/11 the European Commission has had a legal obligation to lay down aviation security rules for the Community. Over this time the needs and priorities of Community rules in the field of aviation security have changed. What we are doing – and will continue to do - is seeking to set rules that will not only improve aviation security for EU citizens but it will also establish a much

better platform for responding to their legitimate interests for better balancing the risks to be targeted with the extent of controls and the corresponding operational implications for the aviation industry to be undertaken.

Author: Robert Missen
tel 55201