Dear Speaker,

The Commission would like to thank the House of Commons for its reasoned Opinion on the proposal for a Regulation establishing a Union certification system for aviation security screening equipment (COM(2016) 491 final).

The Commission takes note of the concerns expressed by the House of Commons as regards the fact that the proposal would fail to meet the requirements of Article 5(3) Treaty on European Union (TEU) and Protocol 2.

By adopting this proposal the Commission intends to contribute to the proper functioning of the EU internal market and to increase the global competitiveness of the EU industry by establishing an EU certification system for aviation security screening equipment.

This proposal was announced in the Commission Communication on security industrial policy\(^1\) adopted on 26 July 2012, which sets out a number of actions to enhance the competitiveness of the EU security industry. The actions focused on reducing the fragmentation of the internal market, closing the gap between research and market and improving the societal acceptance of security technologies.

The European Agenda on Security\(^2\) adopted by the Commission in April 2015 emphasised the need for a competitive EU security industry that can also contribute to the EU’s autonomy in meeting security needs. In addition, it encouraged the development of innovative security solutions, for example through standards and common certificates.

In the aviation security screening equipment field, the functioning of the internal market is hampered by the fact that, even though the technical specifications and performance requirements for equipment used at EU airports are established at the EU level, there is no legally binding EU-wide conformity assessment scheme to ensure that the required standards

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\(^1\) COM(2012) 417 final.
are met. This can result in situations where equipment may be approved and certified in one Member State but not in another. Therefore, equipment certified in one Member State can be put on the market in that Member State only. This increases the development costs as well as the time to market the aviation security screening equipment. Any other Member State is free to either recognise this certification or to require that the equipment is tested again to verify whether it meets the requirements prescribed by the EU legislation, or even to impede its use in its territory. In any case, there is no automatic recognition of the certification issued by the first Member State.

The proposal aims at establishing a unique EU certification system based on EU type-approval and issuance of a certificate of conformity by manufacturers, which would be valid in all Member States, based on the principle of mutual recognition.

The proposed certification system builds on the Common Evaluation Process (CEP), elaborated within the European Civil Aviation Conference (ECAC) to assess the conformity of aviation security screening equipment with the existing performance requirements and combines it with an accreditation procedure for conformity assessment bodies. In fact, the goal of this action is to incorporate the non-binding ECAC CEP cooperation agreement of the Member States into single market legislation.

The Commission wishes to underline that this proposal does not limit the possibility of any Member State to apply more stringent measures for performance requirements as envisaged in the currently applicable EU aviation security legislation (Regulation 300/2008). The performance requirements are established by already existing legislation and are not part of this proposal. The rules that pertain to that legislation are therefore not modified by this proposal.

The Commission fully acknowledges the UK engagement to ensure the highest security level for the aviation in Europe, in particular in the framework of its action in ECAC.

The points made above are based on the initial proposal presented by the Commission, which is currently in the legislative process involving both the European Parliament and the Council. As in any legislative process for the adoption of Union legislation, the adopted text may differ from the originally proposed one to reflect the results of the negotiations with the European Parliament and the Council.

In response to the more technical comments in the reasoned Opinion the Commission would like to refer to the attached annex.

The Commission hopes that the clarifications provided in this reply address the issues raised by the House of Commons.

Yours faithfully,

Frans Timmermans
First Vice-President

Julian King
Member of the Commission
ANNEX

The Commission welcomes the inquiry that the House of Commons has carried out into this important subject. Whilst the Commission does not share the conclusion drawn in the reasoned Opinion that the proposal fails to meet the requirements of Article 5(3) TEU and Protocol 2, the detailed work that the House of Commons has undertaken constitutes an important contribution to the future debate on this proposal.

As regards the points to which the House of Commons has drawn the Commission particular attention, the Commission would like to provide the following replies:

**Point a:**

The proposal concerns the establishment of a certification scheme and does not impact in any ways on the definition of the performance requirements for aviation security screening equipment as provided in Regulation 300/2008. In particular, Article 4 states that Member States should not impose additional requirements to already certified equipment in respect to the certification methodology used for that equipment. This does not limit in any ways the application of the existing provisions of Regulation 300/2008 with regard to More Stringent Measures (MSM).

The Commission acknowledges that Article 4 does not explicitly refer to the ability of the Member States to apply MSM to aviation security screening equipment as permitted by Regulation 300/2008. Nevertheless, since the proposal fully encompasses the provisions of Regulation 300/2008, which establishes the technical specifications and performance requirements for aviation security screening equipment used at EU airports, it is deemed that all provisions of Regulation 300/2008 automatically apply if not specified otherwise.

**Point b:**

The Commission fully recognises the need for a comprehensive consultation of Member States and other relevant stakeholders in the context of an Impact Assessment. The consultations were therefore not limited to a single survey, but also comprised a public consultation, a dedicated workshop, external studies, bilateral discussions with Member States as well as numerous presentations during meetings of the European Civil Aviation Conference. These consultations were not limited to a specific period, but took place over the whole process.

The Impact Assessment also acknowledged that there has been progress on the efficiency of the ECAC CEP system over the last years. Member States have extended their cooperation in ECAC which has led to an improvement of the testing procedures as well as harmonization of quality. This did however not improve the lack of mutual recognition or the lack of legal certainty.

The Commission therefore believes that, even though a certain time elapsed between the public consultation, the workshop and the submission of the Impact Assessment, the findings from these consultations remain valid on the central issue addressed in the Impact Assessment, namely the lack of common legally binding procedures for the certification of aviation security screening equipment in the Member States.
**Point c:**

The proposed certification scheme is intended to have a very limited impact on the administration of the Member States and not to add any costs to national budgets for the compliance with its requirements.

In particular, it requests that each Member State either establishes or appoints an approval authority which will be in charge of all of the approval phases of equipment as well as for issuing, amending and withdrawing EU type-approval certificates. Its role is therefore key to the system described in the proposal and it is at the basis of the mutual recognition of the EU-type approval certificates among Member States.

The Commission would like to stress that the provision that each Member State can establish or appoint an approval authority means that those Member States, which do not have an existing one and do not wish to create it, can simply appoint the one of another Member State.

Since the proposal does not explicitly touch upon this subject, the decision on whether to make use of a coordinated platform such as the one provided by ECAC to manage the proposed certification process is left to the Member States' appreciation.

The Commission is fully aware of the fact that the Member States have invested considerably in the development of the Common Testing Methodologies at ECAC. All stakeholders consulted during the process agreed that the ECAC Common Evaluation Process is the best available system in the EU and that it should continue to play a central role. The aim of the proposal is thus not to abolish the existing cooperation agreement of the Member States or to impose disproportionate burden but merely to incorporate it into a more transparent and legally binding EU-wide system.

**Point d:**

The legal basis of this proposal, Art. 114 Treaty on the Functioning of the European Union does not prescribe whether a Directive or a Regulation should be used as a legal instrument in this specific case.

Nevertheless, in consideration of the aims of the proposal and of its relevance for national security, the Commission is convinced that a Regulation is better suited than a Directive to establish an equal framework for an EU certification system in all the EU Member States, based on the already existing Regulations EC 300/2008 and EU 185/2010. Indeed, the detailed definition of all the components of the proposed certification scheme, directly applicable in all the Member States, will formalise the increased cooperation among Member States in ECAC which is required for the correct functioning of the proposed scheme.