Reasoned Opinion of the House of Commons

Submitted to the Presidents of the European Parliament, the Council and the Commission, pursuant to Article 6 of Protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality.

concerning

a Proposed Regulation establishing a Union certification system for aviation security screening equipment("the proposal")

i) The UK House of Commons firstly notes that Protocol No 2 on the application of the principles of subsidiarity and proportionality (the Protocol) applies to the proposal since it is a proposal from the Commission” and a “draft legislative act”.

ii) The House of Commons considers that the proposal fails to meet the requirements of Article 5(3) TEU and the Protocol for the following reasons:

a) it is not sufficiently clear that Article 4 of the proposal strikes the right balance between action necessary at EU level and action best left to Member States as it does not explicitly refer to the ability of Member States to continue to apply higher security standards for aviation equipment (“More Stringent Measures”) permitted by Regulation 300/2008;

b) The Commission does not provide adequate substantiation in its Impact Assessment of the necessity of action at EU level, by making too great an inference from a survey limited to eighteen Member States that Member States are unlikely to make improvements to their current cooperation on testing of aviation security equipment;

c) The supposed benefit of EU level action in improving the internal market in aviation security equipment will be undermined by increased bureaucracy and costs in complying with the requirements associated with a common certification scheme in each Member State and ensuring that confidentiality concerning specifications for such equipment is maintained as a matter of utmost national security; and

d) The balance between EU level action and discretion at national level would be better achieved if the proposal were to take the regulatory form of Directive rather than a Regulation, thus leaving Member States some flexibility as to how to implement the infrastructure needed for a common certification scheme in a cost effective manner.

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1 Council document: 12090/16 + ADDs 1–2, COM (16) 491.
2 Article 3.
3 This proposal is based on Article 114 TFEU which specifies an ordinary legislative procedure and does not fall within the exclusive competence of the Union.
4 Article 5(3) TEU provides that "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional or local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level".