

EN TRANSLATION OF LETTER SENT 4 SEPT 2008

Dear Mr Costa,

I am writing to you in your role as Chairman of the TRAN Committee on the formal submission to the European Parliament and the Council of a draft Commission Regulation supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008.

This draft measure shall be adopted using the regulatory procedure with scrutiny and I am aware of the significance that the European Parliament placed on this procedure for rulemaking on aviation security when agreeing to Regulation (EC) No 300/2008 during conciliation.

I believe that the contents of the text are straightforward and should pose no problems for the European Parliament to approve.

I wanted in particular to draw your attention to the fact that the proposed Regulation does not foresee the prolongation of the restrictions on liquids beyond April 2010 (when the existing legislation will have to be replaced by Regulation (EC) No 300/2008 and its associated implementing acts, in accordance with Article 24(2) thereof). This text reflects both the recognition by the Commission and the Member States of the concerns of the European Parliament on the current restrictions on liquids and the reasonable prospect that technological solutions for detecting liquid explosives can be deployed by this date.

It should be stressed that for the Commission the continued safety of passengers is of paramount importance. In this regard liquid explosives will continue to be a serious and real threat. Furthermore, the work of aviation security at Community level exists within the global aviation network. The threat from liquid explosives and, in particular, the current limitations on the ability to detect them has been recognised by the International Civil Aviation Organization (ICAO). The Commission and Member States are working hard with ICAO and its Contracting States to find solutions so as to enable liquids to be carried freely again.

Existing restrictions must remain in place until technological solutions are deployed at Community airports. The preamble of the text recognises that this is an enormous undertaking. The Commission will thus work closely with Member States and industry – both equipment manufacturers and airports – to ensure this transition is managed as efficiently as possible. In this context my services have developed a roadmap with Member States and industry that seeks to ensure a smooth and swift introduction of liquids screening technology at Community airports.

I am optimistic that this can all be achieved by April 2010, if not sooner. However, it is appropriate and responsible that consideration is also given to the possibility that for practical reasons the deployment of technologies cannot be achieved within the timescale envisaged in the roadmap. Under such a circumstance, as a last resort and only if absolutely necessary, the Commission would bring forward an amendment to the Regulation before you in order to extend the restrictions on liquids for a defined period. Any such amendment would, of course, also be adopted using the regulatory procedure with scrutiny and would thus enable a full and proper debate to take place on the subject in the European Parliament at that stage. In such a scenario I am confident that the European Parliament would treat a request from the

Commission in a positive manner. In this regard, I would like to point out that Member States continue to have the right to individually retain existing restrictions as a more stringent national measure. Under such a circumstance, if a plethora of national measures restricting liquids did occur, it would be for the Commission to coordinate such national action in the interest of security within a single aviation market.

However, I remain optimistic that by 2010 at the latest a technological solution will be in place at Community airports that will allow airline passengers to carry liquids.

In bringing forward this regulation without liquids, the Commission and Member States are actively seeking to facilitate the early adoption of the total package of aviation security measures under Regulation (EC) No 300/2008. I would like to remind you that the aim of this package is for better legislation with consequential benefits for passengers, airlines and airports.

By taking this purposeful and responsible approach, we are maintaining an effective and efficient Community aviation security regime, whilst taking into account international commitments.

I therefore look forward to a positive assessment by the European Parliament on this draft.

Yours sincerely,

Vice President Tajani



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COMMITTEE ON TRANSPORT AND TOURISM

THE CHAIRMAN

TRAN/D/2008/31604
316210 26.09.2008

Mr Antonio TAJANI
Vice-president of the
European Commission
BERL 12/366
200 rue de la Loi
1049 Brussels

Dear Vice President,

Thank you for your letter of 4 September and the draft Commission Regulation CMT(2008) 262 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation EC No.300/2008, submitted under the provisions of the comitology procedure with scrutiny. Your explanations of the draft measures, in particular of the anticipated end to the restrictions on liquids beyond April 2010, when new screening technology should be available, are very helpful. Nevertheless the Transport and Tourism committee will wish to consider whether a motion for a Resolution of the European Parliament objecting to the proposed measure is necessary. To help the Committee and its Coordinators come to a view on this, a clarification from you on a number of aspects of the proposed Regulation which I raise below would be very welcome.

On the question of liquids, the objective of removing constraints on passengers taking liquids on board is very welcome. However, until the general availability of new technology, expected in 2010, the current implementing measure 1546/2006 continues to apply. This raises at least two questions. Firstly, has the Commission undertaken a thorough review of the grounds for and against retaining Regulation 1546/2006, as Parliament demanded in its Resolution (B60267/2007)? And if so, what are the results? If not, when will the review be undertaken and its results made known to European Parliament? Secondly, what is the timetable for the deployment of this new technology? Will its deployment be based on an assessment of restricted risk from liquids or on the premise that a risk arises from all possible liquids and liquid mixtures?

For the use of body scanners more information would be needed to assess the proportionality of this measure. What will the impact of the use of body scanners be on passenger health? What will the impact be on passenger privacy and will screening points be separated from viewing points? How will the image data be held, and when will it be destroyed?

Similarly, we will need to be satisfied that the handling of baggage of 'no show passengers' is proportional in view of the fact that such baggage has been screened already.

Finally there is a prima facie case for a clearer definition of the conditions under which the exemptions referred to in Part K of the annex of the draft Commission Regulation would apply. I would welcome any clarification you could give on this.

As the TRAN Coordinators will consider this case and the possibility of a motion for a Resolution again at their meeting of 7 October, a reply from your side prior to that date would be most welcome.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Paolo Costa', written in a cursive style with a long horizontal stroke extending to the right.

Paolo COSTA

Antonio Tajani
Vice-President of the European Commission

Brussels, 7 October 2008
D(2008) 971

Mr Chairman,

I thank you for your letter of 26 September 2008 listing a number of issues for clarification in conjunction with the position to be taken by the European Parliament on the draft Commission Regulation CMT (2008) 262 supplementing the common basic standards on civil aviation security standards as laid down in the Annex to regulation (EC) n° 300/2008 and submitted by the Commission under the provisions of the Comitology procedure with scrutiny.

As regards the question of liquids and, more particularly, the requested review of the continued application of Regulation (EC) 1546/2006, I should point out that the whereas clause 2 of the Regulation already requires the Commission to carry out a review every six months. So far the Commission has undertaken four reviews and has on each occasion presented the results to the Regulatory Committee on Civil Aviation Security. These reviews are supported by regular re-assessments of the threat situation as well as by analysis undertaken jointly with security equipment manufacturers and experts in explosive materials (ECAC Technical Task Force).

In short, the conclusions reached by these reviews are that explosive liquids in the hand-luggage of passengers continue to pose a risk which cannot, at this stage, be reliably detected with the screening equipment currently deployed at most European airports. However, the assessment of the results of research and development undertaken by manufacturers of screening equipment and Member states' experts for explosives also leads to the conclusion that equipment capable of detecting dangerous liquids will be available for deployment at airports in the not too distant future and, possibly, before the end of the transitional period for the adoption of all implementing acts under Regulation (EC) n) 300/2008 (April 2010).

This assessment is based on the assumption that such equipment must not necessarily be able to detect "all possible liquids" posing a security threat. Instead, it is important, that the detection capability as well as the efficiency of such new equipment (e.g. throughput at the screening points) meets certain minimum requirements yet to be determined.

In parallel, the Commission is examining the possibility of first introducing such new equipment at transfer points of big airports in order to remove the need for confiscating duty-free liquids arriving from third country airports at a much earlier date.

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I will not fail to inform the EP Committee on Transport and Tourism directly as soon as the ongoing review of Regulation (EC) 1546/06 allows the phasing in of less burdensome control procedures on liquids.

In relation to body-scanners, I can inform you that the results of trials with this new technology for screening of passengers undertaken in some Member States have shown very encouraging results in terms of detection capabilities as well as in terms of the potential for more efficient, less burdensome screening procedures. It is the intention of the Commission to allow the use of body-scanners only as an additional option for the screening of passengers, not as an obligation. It is nevertheless correct to say that some aspects such as impact on health and, in particular, questions of passenger privacy will need to be examined more closely prior to enacting any Commission Regulation on standards for such body-scanners. In this context, I appreciate that your letter draws my attention to possible options aimed at safeguarding passenger privacy in a satisfactory manner. My services will involve fully the independent European Data Protection Supervisor when developing rules for body scanners, so as to ensure that all concerns about such machines are addressed.

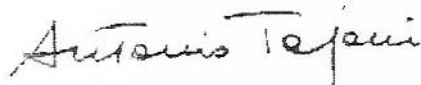
Also on this aspect I will not fail to keep the EP informed about ongoing developments. A special workshop with manufacturers and experts and open to members of the European Parliament for this new and promising screening technology might be organised at a later stage to ensure transparency prior to regulatory decisions.

Finally, your letter raises the issue of the offloading of hold baggage of so-called "no-show passengers". I would like to draw your attention to the fact that any change of current EU legislative requirements - which are, based, by the way, on rules issued by the International Civil Aviation Organisation (ICAO) - will require prior adoption of the proposal currently before the EP.

During the October meeting of the Regulatory Committee the airline industry will have the opportunity of making a detailed presentation on this issue. Immediately afterwards the Commission's services will continue and complete the analysis of this matter. I am willing to support a more flexible re-definition of the off-loading requirements, on condition, however, that the security goal is not unduly compromised and that any such re-definition is compatible with the obligations of Member States and Community in international fora (ICAO).

I take this opportunity to thank you for your support to the Commission's work towards a better balance between security requirements and the necessary simplification of rules. The adoption of Regulation (EC) 300/08 has been the first steps towards achieving this goal. Adoption of the so-called PRAC Regulation will be another element for achieving goals shared by the European Parliament and the European Commission.

Yours sincerely,



Antonio TAJANI