

To the attention of Jean-Marie CAVADA,
President of the LIBE committee

Brussels, 29 August 2007

Dear President,

The Commission has adopted on the 31st of July 2007 the Commission Regulation No 915/2007 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security (1).

As you will be aware, this is a further measure adopted in the framework of aviation security, which follows the adoption of restrictive measures in the quantity of liquids that citizens are allowed to carry on airplanes in their cabin luggage. The detailed content of Regulation No 915/2007 is - as for Regulation 622/2003 and further modifications of it - "*classified and not published*", and "*the Annex is secret and shall not be published in the Official Journal of the European Union*".

Once again, the Commission has approved a piece of legislation following a procedure which has prevented any debate on its content within the European Parliament. Again, the Commission pretends that the Parliament was "consulted", just because some selected Members of the TRAN Committee had the luxury of reading the proposal behind closed doors at the beginning of July. Whatever its theoretical legal base, it is difficult for me to consider this a democratic procedure. And therefore, I have serious difficulties in considering these secret norms as democratic pieces of legislation, by any standard.

In order to clarify the legal situation, which raises serious doubts, I would ask you to urgently request the Legal Service of the European Parliament to check if this type of decisions is in conformity with the transparency and openness provisions that are enshrined in the EU Treaties, as well as of respect of the Rule of Law and of the certainty of the legal order which are basic principles of democracy also according to art. 6 TEU, notably concerning:

a) the effective respect of the duty of ex-ante evaluation of the impact on fundamental human rights also of executing measures. The Commission, in its Communication on the compliance with the Charter of Fundamental Rights in Commission legislative proposals - Methodology for systematic and rigorous monitoring, underlined that such monitoring is essential since "*fundamental rights problems sometimes arise only with the detailed implementing provisions or with very specific elements of a legal instrument which an impact assessment could not forecast*"(2).

1 the text of the Regulation is available at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_200/l_20020070801en00030004.pdf

2 see point 14 of the Communication, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0172:FIN:EN:DOC>

b) **the classification the documents concerned shall be limited to those aspects strictly indispensable for purposes of public order.** The classification of all the Annexes as "secret" seems is contradiction with the principle according to which any exception to transparency and access to documents, as well as of the publicity of norms binding on citizens, has to be justified and motivated, while blank or routine exceptions covering a whole or a category of acts (in this case all amending acts) cannot be allowed without a case-by-case analysis. It has also to be underlined that the inaccessibility of these norms creates an obstacle to the right and possibility for citizens to know their rights as well as their possibility to judge abuses, and to attack the norms in front of Courts.

I would be grateful if you would urgently raise these issues - as well as any other you would deem relevant - with the EP Legal Service, so to verify the legality of the current practices concerning aviation security. If I am completely wrong in my concerns, and what is happening is perfectly legal and democratic, nobody should have anything to fear about this proposed consultation. If, as I believe, the Commission, and with it the European Union as a whole, is entering into a dangerous path, you will have provided a great service to democracy and to the very legitimacy of the Union.

With my best regards,

A handwritten signature in black ink, appearing to read 'IG', written in a cursive style.

Ignasi Guardans
MEP, ALDE group