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*Committee on Transport and Tourism*

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## **DRAFT REPORT**

on aviation security, with a special focus on security scanners  
(2010/2154(INI))

Committee on Transport and Tourism

Rapporteur: Luis de Grandes Pascual

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on aviation security, with a special focus on security scanners (2010/2154(INI))

*The European Parliament,*

- having regard to the communication from the Commission to the European Parliament and the Council on the use of security scanners at EU airports (COM(2010)0311),
- having regard to its resolution of 23 October 2008 on the impact of aviation security measures and body scanners on human rights, privacy, personal dignity and data protection<sup>1</sup>,
- having regard to Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security<sup>2</sup>,
- having regard to Commission Regulation (EC) No 272/2009 of 2 April 2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008<sup>3</sup>,
- having regard to Commission Regulation (EC) No 185/2010 of 4 March 2010 laying down measures for the implementation of the common basic standards on aviation security<sup>4</sup>,
- having regard to the fifth report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of Regulation (EC) No 2320/2002 establishing common rules in the field of civil aviation security (COM/2010/0725),
- having regard to its position of 5 May 2010 in the report on the proposal for a directive of the European Parliament and of the Council on aviation security charges<sup>5</sup>,
- having regard to the Council Recommendation of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz)<sup>6</sup>,
- having regard to Directive 2004/40/EC of the European Parliament and of the Council of 29 April 2004 on the minimum health and safety requirements regarding exposure of workers to the risks arising from physical agents (electromagnetic fields) (18th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC)<sup>7</sup>,
- having regard to Directive 2006/25/EC of the European Parliament and of the Council of

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<sup>1</sup> OJ C 15 E, 21.1.2010, p. 71.

<sup>2</sup> OJ L 97, 9.4.2008, p. 72.

<sup>3</sup> OJ L 91, 3.4.2009, p. 7.

<sup>4</sup> OJ L 55, 5.3.2010, p. 1.

<sup>5</sup> P7\_TA(2010)0123.

<sup>6</sup> OJ L 199, 30.7.1999, p. 59.

<sup>7</sup> OJ L 184, 24.5.2004, p. 1.

5 April 2006 on the minimum health and safety requirements regarding exposure of workers to the risks arising from physical agents (individual directive within the meaning of Article 16(1) of Directive 89/391/EEC)<sup>1</sup>,

- having regard to Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation<sup>2</sup>,
- having regard to the opinion of the European Economic and Social Committee's Section for Transport, Energy, Infrastructure and the Information Society on the communication from the Commission to the European Parliament and the Council on the use of security scanners at EU airports,
- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on Transport and Tourism and the opinions of the Committee on the Environment, Public Health and Food Safety and the Committee on Civil Liberties, Justice and Home Affairs (A7-0000/2011),

### *Security scanners*

- A. whereas security scanner is the generic term used for a technology that is capable of detecting metallic and non-metallic objects hidden in clothing; whereas detection performance lies in the scanner's ability to detect any prohibited object that the person screened may be carrying concealed in their clothing,
- B. whereas the EU's legal framework for aviation security provides for various screening methods and technologies that are considered capable of detecting prohibited items hidden in clothing, from which the Member States choose one or more; whereas security scanners do not currently figure on that list,
- C. whereas a number of Member States are currently using security scanners on a temporary basis - for a maximum of 30 months - at their airports, thereby exercising their right to conduct trials with new technologies (Chapter 12.8 of the annex to Commission Regulation (EU) No 185/2010),
- D. whereas Member States are entitled to apply more stringent measures than the common basic standards required by European legislation and may thus introduce security scanners on their territory; whereas, in this case, they must act on the basis of a risk assessment and in compliance with EU law; whereas these measures must be relevant, objective, non-discriminatory and proportional to the risk that is being addressed (Article 6 of Regulation (EC) No 300/2008),
- E. whereas the introduction of security scanners by the Member States in either of the above two cases makes genuine one-stop security impossible; whereas if the present situation

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<sup>1</sup> OJ L 114, 27.4.2006, p. 3.

<sup>2</sup> OJ L 159, 29.6.1996, p. 1.

continues the operating conditions that apply to the Member States will not be uniform and will therefore not benefit passengers,

- F. whereas health represents an asset to be preserved and exposure to ionising radiation from certain types of scanners, such as those emitting X-rays with cumulative effects, needs to be analysed; whereas this represents a risk that should be avoided,
- G. whereas both EU legislation and the laws of the Member States already lay down rules on protection against health hazards that may arise from the use of technologies emitting ionising radiation and on limits for exposure to such radiation,
- H. whereas the Commission consulted the European Data Protection Supervisor, the Article 29 Working Party and the European Fundamental Rights Agency, and their replies contain significant elements regarding the conditions under which the use of security scanners at airports could comply with the protection of fundamental rights,
- I. whereas concerns over the rights to privacy, freedom of thought, conscience and religion, non-discrimination and data protection can be duly guaranteed where security scanners are used properly,

#### ***Financing aviation security***

- J. whereas the Council has not yet stated its standpoint on Parliament's position on the Directive on aviation security charges,

#### ***Liquids, aerosols and gels (LAG)***

- K. whereas the ban on carrying liquids, aerosols and gels in hand luggage will end in April 2011 for a limited number of passengers (transit passengers carrying liquids, aerosols and gels acquired at a third-country airport or on board a plane belonging to a non-Community carrier, carried in a bag that complies with the security screening guidelines recommended by the International Civil Aviation Organisation, provided that the bag displays satisfactory evidence that the purchase was made within the previous 36 hours in the airport operating area or on board the aircraft),
- L. whereas this ban will end for all liquids, aerosols and gels by April 2013 at the latest,
- M. whereas the ban on carrying liquids, aerosols and gels in hand luggage will be transformed into an obligation to screen them,

#### ***Security measures for cargo***

- N. whereas the most recent terrorist offences detected by the intelligence services aimed to use cargo to carry out attacks,
- O. whereas not only passengers but also cargo and mail are and must be subject to the appropriate security measures,

- P. whereas security measures concern not only airports but the entire supply chain,
- Q. whereas postal operators play an important part in the field of aviation security in managing exchanges of mail and parcels, and they have invested significant sums of money and technology, pursuant to European legislation, to guarantee compliance with international and European security standards,

### ***International relations***

- R. whereas international coordination on aviation security measures is needed in order to guarantee a high level of protection, whilst avoiding a situation where passengers are subjected to successive checks, with the consequent restrictions and additional costs,

### ***Training of security staff***

- S. whereas training for security staff is a crucial element that is necessary in order to guarantee a high level of aviation security, which must be compatible with a way of treating passengers that preserves their dignity as individuals,

### ***General considerations***

1. Takes the view that an integrated approach to aviation security is needed, with one-stop security so that passengers, luggage and cargo arriving at an EU airport from another EU airport do not need to be screened again;
2. Takes the view that some scanning methods that are effective and quick for passengers, with due respect for the time taken at checkpoints, constitute added value in aviation security;
3. Calls on the Commission and Member States to develop an integrated risk-analysis system for suspicious passengers and for checks on luggage and cargo, based on all available information, in particular the information provided by the police, intelligence services, customs and transport undertakings; takes the view that the entire system should be informed by the search for effectiveness, but based on respect for the principle of non-discrimination;
4. Calls on the Commission and Member States to ensure effective cooperation and exchange of information among all the authorities involved, and between the authorities and air transport undertakings, at both European and national level;
5. Calls on the Commission regularly to revise the list of authorised screening methods and the conditions for their implementation, in line with technological progress, in order to provide a high level of detection performance in keeping with that progress;

### ***Security scanners***

6. Calls on the Commission to propose adding security scanners to the list of authorised screening methods, together with appropriate rules for their use, as set out in this

resolution;

7. Believes that the use of security scanners must be based on common rules that not only lay down detection performance but also impose the necessary safeguards to protect the health and fundamental rights of passengers and workers;
8. Proposes, more specifically, that the Commission should revise the rules on the use of security scanners to ensure that the provisions on the protection of health and fundamental rights are adapted to technological progress;

#### *Necessity and proportionality*

9. Believes that the escalating terrorist threat means that public authorities must take the protective and preventive measures demanded by democratic societies;
10. Takes the view that, even though 100% aviation security cannot be guaranteed, the detection performance of security scanners is higher than that offered by current metal detectors, particularly with regard to non-metallic objects and liquids, whilst frisking (full hand-search) causes more irritation and is more likely to be rejected than a scanner;
11. Takes the view that the use of security scanners does not go beyond what is necessary to achieve the objective of a high level of security, provided that the appropriate safeguards are guaranteed and taking into account that less demanding methods would not provide a similar degree of protection;
12. Takes the view that concerns and demands regarding privacy and health can be resolved with the technology and methods available; considers that the technology now being developed is promising and that the best available technology should be used;
13. Takes the view that the installation of security scanners, or the decision not to install them, falls within the responsibility and freedom of decision of the EU Member States;
14. Takes the view that where an EU Member State decides to install security scanners, they must meet the minimum standards and requirements set by the EU for all the EU Member States, without prejudice to the right of the Member States to apply more stringent measures;
15. Takes the view that passengers should be given a choice in using security scanners whereby, if they refuse, they would be obliged to submit to alternative screening methods that guarantee security to at least the same levels of effectiveness as security scanners;

#### *Health*

16. Points out that European and national legislation must be applied in accordance with the ALARA principle in particular;
17. Takes the view that the rules for the effective operation of security scanners must pay particular attention to vulnerable groups and to people who are frequently exposed to

radiation;

18. Takes the view that exposure to doses of ionising radiation above the recommended annual limits cannot be acceptable; believes, therefore, that X-ray transmission imaging should not be used in systematic security screening;
19. Points out that the Member States have a responsibility to assess risks in accordance with Directive 96/29/Euratom and they can adopt more stringent rules than those set out by the EU in that directive; points out, further, that some Member States do not permit the exposure of people to ionising radiation other than for medical purposes;
20. Calls on the Member States to periodically monitor the long-term effects of exposure to body scanners, taking new scientific developments into account, and to check that the equipment has been correctly installed and is properly used and operated;
21. Calls on the Commission to adapt Directive 96/29/Euratom to technical progress;
22. Calls for account to be taken of specific cases and special treatment to be given to vulnerable passengers (in terms of health), such as pregnant women, children, elderly people and people with disabilities, and people with implanted medical devices (e.g. orthopaedic prostheses and pacemakers);

#### *Body images*

23. Takes the view that operating rules must guarantee protection for images of passengers for reasons of data protection and to protect the right to human dignity, privacy and intimacy;
24. Believes that such protection can be better achieved when a standard figure is used, and that the use of body images should be permitted only with the appropriate guarantees and on an exceptional basis;
25. Stresses that images should not be stored for longer than is necessary to ensure aviation security, that they should be destroyed once they are no longer necessary for the intended purposes, and that they should not be used for purposes other than to detect prohibited objects;

#### *Prohibition of discrimination*

26. Takes the view that the operating rules must ensure that people are not selected to pass through a security scanner on the basis of discriminatory criteria;

#### *Data protection*

27. Takes the view that, when images are used, they should not be linked to the passenger's identity and measures should be taken to ensure that passengers cannot be identified with images of any part of the body unless this is necessary;



### *Information for people scanned*

28. Takes the view that people undergoing checks should receive all the necessary information in advance, particularly regarding the operation of the scanner concerned, what images can be seen and by whom, the conditions in place to protect the rights to intimacy, privacy and data protection, and the possibility of refusing to pass through the scanner;

### *Treatment of people scanned*

29. Calls on the Commission to propose that special training that takes into account the impact on personal dignity, health and the protection of personal data be provided for security staff responsible for using security scanners;
30. Calls on the Commission, in conjunction with the Member States, to draw up a code of conduct on the use of security scanners which requires airports to carry out scanning in such a way as to respect passengers' fundamental rights;

### *Financing aviation security*

31. Recalls its position of 5 May 2010 on aviation security charges;
32. Takes the view that security charges should be transparent, that they should be used only to cover security costs and that Member States which decide to apply more stringent measures should finance the ensuing additional costs;
33. Urges the Council to adopt a position on aviation security charges at first reading as soon as possible;

### *Ban on liquids, aerosols and gels (LAG)*

34. Reiterates and upholds its standpoint that the ban on carrying liquids should come to an end in 2011 and 2013 if the technological effectiveness of the tools provided for the purpose of preserving security is confirmed;
35. Invites Member States and airports to take all necessary action to ensure that adequate technology is available in good time so that the scheduled end of the ban on carrying liquids does not have the effect of undermining security;
36. Takes the view that, in this context, all those involved should take the necessary action to make the transition from a ban on carrying liquids, aerosols and gels to checks on those items as satisfactory and uniform as possible, guaranteeing passengers' rights at all times;
37. Urges the Member States, in coordination with airports, to carry out an appropriate information campaign on passengers' rights; calls on the Commission to cooperate as far as possible in this information work;

### *Security measures for cargo*

38. Takes the view that checks on cargo and mail, based on a risk analysis, should be proportional to the threats posed by transporting them and that adequate security should be provided, particularly where cargo and mail are carried in passenger planes;
39. Takes the view that the level of security for cargo still varies from one Member State to another and the Member States should therefore ensure that the existing measures relating to European cargo and mail are correctly applied;
40. Believes that the Commission's checks on cargo and mail have been stepped up, and would therefore consider it highly useful to draw up a technical report on the weaknesses of the current cargo system and possible ways of remedying them;
41. Calls on the Commission and Member States to strengthen checks on air cargo; stresses the need, to this end, to have more inspectors available both at national level and within the Commission;
42. Stresses the importance of information at customs in order to assess the risk associated with a specific consignment; asks the Commission to consider whether information equipment at customs offices should be expanded;
43. Asks the Commission to take all the necessary steps to ensure the safe transport of cargo originating in third countries, identifying the responsibility of each of the various agents;
44. Asks the Commission to ensure that the security programme takes account of the specific characteristics of all the players affected and reconciles security measures relating to the exchange of mail and cargo with the need to ensure a dynamic economy that continues to encourage trade, service quality and the development of e-commerce;
45. Calls on the Commission to propose a harmonised system for training security staff in relation to cargo;

### ***International relations***

46. Calls on the Commission and Member States to work with the ICAO and third countries on risk assessment and intelligence systems in the field of aviation security;
47. Calls on the Commission and Member States to promote global regulatory standards within the framework of the ICAO in order to support the efforts made by third countries to implement those standards, move towards the mutual recognition of security measures and pursue the objective of effective one-stop security;

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48. Expects the Commission to submit a legislative proposal in the course of the current

parliamentary term on adapting Regulation (EC) No 300/2008, taking account of the Commission's statement of 16 December 2010 in the context of the adoption of the Regulation of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers;

49. Instructs its President to forward this resolution to the Council and the Commission.

## **EXPLANATORY STATEMENT**

### **An integral view of aviation security**

The communication from the Commission to the European Parliament and the Council on the use of security scanners that was the initial subject of this report on aviation security has been superseded by subsequent events.

Successive terrorist alerts, first in the United Kingdom, when an explosive package was found on a cargo plane, and subsequently in Greece, when the Greek police intercepted a number of parcel bombs addressed to a senior figure and various embassies in Athens, have obliged the EU to take measures in proportion to the new risks that have been detected.

Parliament is therefore taking up the challenge of analysing the measures adopted and proposing others where appropriate, with a view to preventing risks on the basis of an integral view of civil aviation security.

This report thus addresses security scanners, an analysis of the decisions taken on liquids, aerosols and gels (LAG) and security measures for cargo and mail.

### **The fight against terrorism and civil aviation security**

We are living at a time when globalisation is not a working hypothesis but an incontrovertible fact. In this interconnected world, terrorism is unfortunately not an isolated phenomenon affecting some countries and leaving others untouched. Any form of terrorism is impossible to justify in a democratic society and there is no cause that might legitimise it.

That being the case, the competent democratic institutions have an inescapable duty to take whatever measures are necessary to guarantee public safety. Decisions taken on grounds of security often imply the loss of certain freedoms and inevitably entail inconvenience, disruption and a change in normal modes of behaviour.

Sadly, in the hierarchy of values of modern societies, security is presented as a value that needs to be preserved because it is not guaranteed. Democratic societies give their representatives in the relevant institutions a mandate to protect them, whilst at the same time asking that this should not be done by whatever means and at any price. European citizens demand that the adoption of security measures should not curtail their fundamental rights.

### **The need to improve civil aviation security**

Civil aviation security is doubtless one of the European Union's main concerns. Since the attacks of 11 September 2001 a series of measures have been drawn up, defined in Community regulations that seek to prevent and avoid any terrorist attack or incident that affects public safety.

Legislation on aviation security has thus developed as follows:

- following the terrorist attacks of 11 September 2001 the foundations were laid for a Community policy that had previously remained within the national domain, and Regulation No 2320/2002 was adopted;
- in December 2001 the so-called shoe bomber attempted to hide explosives in the heels of his shoes, as a result of which specific measures were laid down at European level to improve checks on passengers' footwear;
- in August 2006 the use of liquid explosives in attempted attacks on several aircraft over the Atlantic led to an immediate ban on carrying liquids on board planes;
- in the light of accumulated experience in the field of civil aviation security it became necessary to update Regulation No 2320/2002, and the basis for European legislation on civil aviation security, Regulation 300/2008, was adopted. That Regulation simplified, harmonised and clarified the existing rules;
- on 25 December 2009 an attempted terrorist attack on a flight from Amsterdam to Detroit using concealed explosives revealed the limitations of current systems for carrying out checks to detect non-metallic prohibited items at European airports. As a consequence, a number of countries started to carry out tests or adopted more stringent security measures and introduced security scanners as a means of screening passengers;
- the recent attacks at the end of October 2010 when explosive packages were sent to the United States and discovered in the United Kingdom and Dubai led to more stringent security measures for air cargo and a European action plan for the coming years.

To sum up, there are **three main regulations** on civil aviation security:

- Regulation (EC) No 300/2008 of the European Parliament and of the Council on common rules in the field of civil aviation security;
- Commission Regulation (EC) No 272/2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008;
- Commission Regulation (EC) No 185/2010 laying down measures for the implementation of the common basic standards on aviation security.

## **Justification for this own-initiative report**

### **Security scanners**

#### Context

Given that the EU's legislative framework on aviation security lays down the list of screening and control methods and technologies from which the Member States and/or airports are to choose, the current legislation will need to be amended to include security scanners on that list (without prejudice to the possibility of installing scanners for trial purposes or as a more stringent security measure).

#### *Background*

When the Commission submitted its draft regulation to Parliament in 2008, including security

scanners as one of the recognised methods for screening persons, Parliament delivered a critical opinion in its resolution of 23 October 2008 on the grounds that including security scanners did not offer any added value and raised doubts regarding the preservation of fundamental rights. Parliament's resolution stressed the impact of security scanners on human rights, privacy, personal dignity and data protection and called for an in-depth analysis of the situation.

#### *Commission communication*

In response to Parliament's 2008 resolution, the Commission has now submitted a communication which goes some way to resolving the concerns expressed by Parliament:

- consultation of the European Data Protection Supervisor;
- scientific and medical assessment of the health impact;
- cost-benefit assessment, as far as possible, of the economic and commercial impact;
- assessment of the impact on fundamental rights.

The purpose of this report is therefore to respond to the Commission's appeal for discussion and joint consideration by the three institutions with a view to moving forward on this common task, which is to protect European citizens.

#### *Rapporteur's assessment*

The rapporteur's assessment of the Commission communication is positive. He considers that the Commission has found a satisfactory way of resolving the reasonable doubts that Parliament raised in 2008.

The rapporteur recommends the implementation of harmonised rules across the EU regulating operating conditions and common standards for the detection performance of scanners.

The new-generation security scanners appear to offer a suitable means of improving security in EU air transport. They provide added value in relation to the effectiveness of security screening at EU airports and are also proportional to the risk that is being averted.

### **Liquids, aerosols and gels (LAG)**

#### *Background to the situation regarding LAG at European airports*

A ban on carrying liquids, gels and aerosols in hand luggage in amounts exceeding 100 ml has been in place since 2006.

In September 2007 Parliament adopted resolution P6\_TA(2007)0374, in which it called on the Commission to 'review urgently and – if no further conclusive facts are brought forward – to repeal Regulation 1546/2006'. Since then various attempts to end the ban have led to a common position of the three institutions whereby the ban on carrying liquids is to be phased out.

#### *The current state of legislation on LAG*

Commission Regulation (EU) 297/2010 of 9 April 2010 put an end to the restrictions on LAG and created a system for phasing out the ban and moving to a system of screening for liquid explosives.

That Regulation requires that airports should have an effective mechanism in place until they are in a position to install reliable detection equipment, an objective which is to be achieved by 29 April 2013. By that date, all airports should have the capability to screen liquids, aerosols and gels.

The phases are as follows:

Liquids, aerosols and gels may be taken into security-restricted areas and on board an aircraft provided they are screened or exempted from screening in accordance with the requirements of the implementing rules:

- by 29 April 2011 liquids, aerosols and gels obtained at a third-country airport or on board an aircraft of a non-Community air carrier may be taken into security-restricted areas and on board an aircraft;
- by 29 April 2013 all airports must screen liquids, aerosols and gels in accordance with the requirements of implementing rules adopted pursuant to Article 4(3) of Regulation (EC) No 300/2008.

## **Cargo and mail**

*The European security system for cargo is based on two complementary pillars:*

- Screening of cargo and mail: All cargo and mail must be screened before being loaded onto an aircraft. This screening is carried out: **by a regulated agent** (the air carrier, the agent or any other entity carrying out security checks), **by a known consignor** (the consignor who originates cargo or mail on its own account and whose procedures meet common security rules and standards sufficient to allow the carriage of cargo or mail) or **by an account consignor** (the consignor who originates cargo or mail for its own account and whose procedures meet common security rules and standards sufficient to allow carriage of that cargo on all-cargo aircraft or mail on all-mail aircraft). Cargo that has not been screened beforehand may not be loaded onto the aircraft.
- Protection of cargo and mail along the supply chain: Cargo and mail to be carried on an aircraft must be protected from unauthorised interference from the point at which security controls are applied until the departure of the aircraft. Cargo and mail that are not adequately protected from unauthorised interference after security controls have been applied must be screened.

### *Context*

After the incidents in late October and early November 2010 the European Union quickly introduced additional security measures for cargo, taking particular account of the fact that

cargo is often carried on passenger planes.

EU aviation security experts promptly recommended a number of guiding principles: security screening of cargo and mail should be based on a common risk assessment, including the characteristics of the consignment, on the quality of security checks carried out beforehand, on the type of air transport (passenger plane or all-cargo or all-mail plane), and the place of origin.

It was also agreed to set up a working party that would put forward new proposals aimed at strengthening aviation security. The current framework for action is based on the plan drawn up by the high-level group for strengthening air cargo security.

There are three main areas of action to improve air cargo screening:

- Strengthening and harmonising European legislation on air cargo: specifically with regard to security checks on cargo and mail from third countries, and improving training and screening at European and national level;
- Improving coordination and the exchange of information in the EU: the current customs system has been strengthened as from 1 January 2011. An effective exchange of information is needed among the Member States;
- Raising global standards: this requires continuing to cooperate fully with the International Civil Aviation Organisation to ensure that packages originating in third countries comply with European or equivalent rules when they cross our borders.

It is in this context that the rapporteur has formed his views and calls on the Commission to continue with these improvements, whilst also suggesting a series of measures that he considers crucial in order to remedy the lack of security for cargo.

It should not be forgotten that screening, the intelligence and security services, the exchange of police information and analysis of the human factor are key elements in the area of aviation security as a whole.

All this forms part of an integrated approach to aviation security that seeks to provide the highest level of protection for European citizens, which is a basic and vital task of European legislators. In short, it is a question of protecting democratic values and fighting against the terrorism that threatens them.