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INFORMATION NOTE

From : Council General Secretariat
To : Council
Subject : Ban on liquids onboard aircraft and possible next steps
– Information from the Commission

Delegations will find annexed a contribution from the Commission on the abovementioned subject in support of its intervention under "other business" at the TTE Council on 9 October 2009.

Information paper**Ban on liquids onboard aircraft and possible next steps****Current situation**

- The ban on taking liquids in hand luggage onboard aircraft will no longer apply from April 2010.
- This measure was intended to be temporary, with a view to being replaced by suitable screening technology to identify liquid explosives carried in hand luggage.
- However, security experts from all Member States maintain that the threat of an attack on aircraft using liquid explosives remains and is significant; a position shared by the Commission and recently confirmed by the judgment of a UK Court in relation to the terrorist plot, discovered in August 2006, to attack aircraft departing from Heathrow Airport.
- A limited range of technological solutions to screen for liquid explosives at security checkpoints is close to being ready for deployment at airports.
- On the one hand, these technological solutions will not be fully ready by April 2010, and in any case cannot be installed in airports by that date. As such, the potential consequence of the expiry of the ban is a return to a pre-August 2006 situation, and thus the exposure to a terrorist attack using liquid explosives would increase.
- On the other hand, an open-ended prolongation of the ban beyond April would take away the incentives to deploy more advanced technology to reduce the inconvenience for passengers.
- Therefore, the Commission believes that it would be more appropriate to phase out the ban in steps. This would have deliverables both in the short-term, by making use of the technological solutions as they become available, and in the medium term, by removing the ban on liquids completely.

Background

- The ban on liquids¹ was introduced following the discovery of a plot, in August 2006, to destroy aircraft destined for the United States by using homemade explosive liquids carried onboard in hand luggage. A recent UK Court judgment confirmed the plot as conspiracy to murder using explosives on aircraft.
- Commission Regulation 1546/2006² – following a favourable opinion by the comitology Regulatory Committee on Civil Aviation Security - was adopted in October 2006 detailing the ban, by putting liquids on the list of prohibited articles.
- It was designed as a temporary restriction to be lifted when suitable technology to screen liquids for explosives became readily available.
- The European Parliament initially supported the measure too³, but stressed the inconvenience faced by passengers and the absence of a deadline for lifting the ban. The Parliament since strongly called for alternative, less inconvenient methods to protect citizens. As such, liquids will no longer appear on the list of articles prohibited on board aircraft from April 2010.
- The expiry of the ban on liquids in April 2010 is a result of framework Regulation 2320/2002 on civil aviation security - on the basis of which the current ban on liquids was adopted – being replaced by the application of a new framework Regulation 300/2008 and its implementing regulation.

¹ Commission Regulation 1546/2006, replaced by Commission Regulation 820/2008, stipulates: 'Liquids include gels, pastes, lotions, liquid/solid mixtures and the contents of pressurised containers, e.g. toothpaste, hair gel, drinks, soups, syrups, perfume, shaving foam, aerosols and other items of similar consistency.'

² Replaced by Commission Regulation 820/2008 which details the same restriction.

³ European Parliament resolution of 5 September 2007 on Commission Regulation (EC) No 1546/2006 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security (introduction of liquids onto aircraft) - P6-TA(2007)0374.

- The new framework Regulation gives the European Parliament a role in certain types of implementing Regulation that must be adopted under the regulatory procedure with scrutiny (PRAC)¹. This procedure gives the Parliament the right to control the draft implementing regulation prepared by the Commission, as it has done with Commission Regulation 272/2009 which does not include liquids.
- Progress by industry to deploy screening equipment that can analyse efficiently liquids for explosives has been much slower than anticipated. It is possible that a reasonable range of equipment will be available some time in 2010, but the majority of current designs require that passengers present their liquids separately for control at screening points which poses significant operational challenges at airports.
- On the international front, the EU is leading on this issue. Together with the USA, Canada and Australia, the EU ensured that similar guidelines for the carrying of liquids in hand luggage were adopted by the International Civil Aviation Organisation (ICAO) in 2007.

Next steps

- The replacement of the ban by technological solutions appears best achieved through a phased approach that takes account of the continued threat that liquids pose, whilst making it possible to use the limited available technological solutions.
- A phased approach could consist of three parts:
 1. As a first step, by 29 April 2010 liquids, aerosols and gels obtained at a third country airport or on board an aircraft of a non-Community air carrier shall be permitted into security restricted areas and on board an aircraft, under certain conditions. This first step will notably improve the situation of passengers in transfer having bought at duty-free shops.

¹ Article 5a of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, as amended by Council Decision 2006/512/EC of 17 July 2006.

2. As a second step, by 29 April 2012 all airports handling at least 10 million departing passengers per annum shall have the capability to screen liquids, aerosols and gels in accordance with the requirements of Regulation (EC) No 300/2008.
 3. Finally, by 29 April 2014 all airports must have the capability to screen liquids, aerosols and gels in accordance with the requirements of Regulation (EC) No 300/2008.
- However, such an approach should not prevent airports from installing equipment at an earlier date, provided that the equipment meets the standards set by the Commission. This way, airports would be able to facilitate the carriage of liquids by departing passengers by equipping, for example, one security check lane with screening equipment for liquid explosives. Furthermore, some airports may choose to install advanced equipment more quickly.
 - The Commission will continue to liaise closely with the US, Australia, Canada, and ICAO, to come to an understanding on the approach and to ensure that this approach is supported at international level. An ICAO workshop on liquids will be held in Brussels in November to co-ordinate the international approach.

Procedural steps

- A prolongation of the ban beyond April 2010 requires an implementing act to be adopted.
- Such an act must be adopted through the regulatory procedure with scrutiny (PRAC) by the Commission, possibly by amending Commission Regulation 272/2009.
- The draft measures proposed by the Commission will be submitted, following the opinion of the Regulatory Committee, to the Parliament and Council for a three month scrutiny period during which they may be opposed.
- A Commission proposal on draft measures along these lines should, therefore, be submitted to the Regulatory Committee on Civil Aviation Security for vote as soon as possible.

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