



European Economic and Social Committee

TEN/249

**Enhancing supply chain
security – transport of
goods**

Brussels, 13 December 2006

OPINION

of the

European Economic and Social Committee

on the

Proposal for a Regulation of the European Parliament and of the Council

on enhancing supply chain security

COM(2006) 79 final - 2006/0025 (COD)

On Tuesday, 4 April 2006, the Council decided to consult the European Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Community, on the

Proposal for a Regulation of the European Parliament and of the Council on enhancing supply chain security
COM(2006) 79 final - 2006/0025 (COD).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 November 2006. The rapporteur was Mr Simons.

At its 431st plenary session, held on 13 and 14 December 2006 (meeting of 13 December), the European Economic and Social Committee adopted the following opinion by 115 votes in favour, with one abstention:

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1. **Conclusions and recommendations**

- 1.1 Following on from the security measures adopted in the aviation and maritime transport sectors, the Commission has drafted a regulation to enhance supply chain security on land. The provisions are to be mandatory for the Member States and voluntary for industry.
- 1.2 The Commission defines the supply chain as "comprising all the transport and transport related operations and processes beginning at the production site and ending at the cargo's point of destination". The Commission also indicates that the proposed regulation relates only to freight transport and that passenger transport may be addressed at a later stage if necessary.
- 1.3 The objective of the Commission's proposal is not only to increase the level of security along the supply chain, but also to establish a common framework for a systematic European approach to safety in this area, without jeopardising the common transport market and existing security measures. The aim is also to avoid unnecessary administrative procedures and burdens at European and national levels.
- 1.4 The Committee feels that, given the high degree of interdependence between the various inland freight transport modes (inland waterways, roads, rail and also pipelines), a coordinated approach is needed to making them secure, as the strength of the entire supply chain depends on its weakest link.
- 1.5 That said, however, any measures that are proposed must, with an eye to the Lisbon strategy, be effective and efficient, and must not result in more red tape and/or distortions of

competition within or between the transport modes. The Committee has serious doubts as to whether these objectives will be attainable under the proposal for a regulation currently on the table. The entire approach seems highly bureaucratic. Moreover, the Committee cannot help feeling that the burdens involved in rolling out the proposed measures will be passed on to employers and workers in the sectors concerned. Accordingly, for this reason, the benefits associated with the status of "secure operator" and its impact on the supply chain should be defined more closely in order to prevent the risk of serious distortions, which could lead to a rise in costs for the whole economy without any appropriate benefits being obtained.

- 1.6 In that connection, the Committee also notes the absence of any proposals for the adequate protection of physical infrastructure against terrorist attacks. Precisely because inland transport modes use infrastructure such as bridges, tunnels, viaducts and also the pipeline network, proposals to enhance supply chain security must also be accompanied by proposals for the more effective protection of the physical infrastructure.
- 1.7 The Committee feels that the Commission's proposal to make the Member States responsible for adopting security measures is correct. This also applies in principle to the establishment of a special authority in each Member State to coordinate, implement and monitor application of the supply chain security measures proposed in the draft regulation. However, the Committee feels that, given the key role of this special authority, the Commission's proposal is seriously lacking in detail.
- 1.8 In the framing of new security-related proposals, the Committee would have liked to see an inventory made of the characteristic features of the transport modes and due account taken both of security measures already in place for the individual freight transport modes and of existing recommendations on this front. The fact that the various transport modes have different traits – the road haulage sector, for instance, is made up of 500 000 mainly small businesses – means measures need to be put in place that are tailored to each specific mode.
- 1.9 Given the projected impact of the proposed measures on the individual transport modes, the Committee thinks the Commission proposal would have been more convincing had it been much clearer about the advantages operators are set to gain from the measures. As things stand, it is doubtful whether there will be any advantage to be gained at all, not least given the absence nowadays of systematic border controls in international transport.
- 1.10 Member States are to draw up the minimum security requirements to be met by operators under a "secure operator" scheme. The Committee feels that such an arrangement is not calculated to secure the establishment of a harmonised system of minimum standards across the EU, and thus a level playing field.
- 1.11 The proposed measures are to be funded by the individual Member States. The Committee feels that, from a subsidiarity angle, that is the right approach. Security investment costs and ongoing related expenditure should be covered by the operators and, in the Committee's view,

should be factored into the price or rate they charge. The Committee also thinks that the Commission proposal should pay more attention to the advantages to be gained from "secure operator" status.

- 1.12 With regard to the European Commission's role, the Committee feels that the Union must free up adequate resources so that non-EU countries are also in a position to take the requisite action to attain the same level of security as the Member States. The Committee feels this is important given the international nature of inland freight transport.

2. **Introduction**

- 2.1 In its communication of 27 February 2006 to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on enhancing supply chain security (COM(2006) 79 final), the Commission cites terrorism as one of the greatest threats to democracy and freedom.

- 2.2 The Commission believes that the risk of a terrorist attack targeting freight transport remains high, despite the tightened security measures that have been put in place. In Europe in particular, improvements have been made to aviation and airport security and to maritime and port terminal security.

- 2.3 Regulation (EC) No 2320/2002 establishes a European legal framework for aviation and airport security. Regulation (EC) No 725/2004 deals with maritime and port terminal security, while Directive 2005/65/EC lays down measures to improve security in the entire port area.

- 2.4 The Committee too has not been silent on these issues. It has adopted a number of opinions, not least in the fields of air and maritime transport. Rapporteurs have included Ms Bredima-Savopoulou on the security of ports, ships and port facilities, and Mr McDonogh on the security of (civil) aviation. The issue of inland transport was considered in the exploratory opinion on *Security of modes of transport* adopted on 14 December 2005 (rapporteur: Mr Simons).

3. **Commission proposal**

- 3.1 The Commission points to the need for enhanced security in land freight transport and notes the current absence of rules for the European land transport supply chain in its entirety. In this context, the Commission defines the supply chain as comprising all the transport and transport-related operations and processes beginning at the production site and ending at the cargo's point of destination.

- 3.2 The Commission proposes measures to enhance land transport supply chain security as a complement to existing Community transport security rules. These measures are mandatory for the Member States and voluntary for supply chain operators. The Commission also notes

that this proposal does not cover passenger transport security, in particular mass transport systems, which may be addressed at a later stage if necessary.

- 3.3 The freight transport modes covered by the draft regulation are thus internal waterways, rail and road.
- 3.4 Alongside the proposal for a regulation, the Commission is also submitting a communication listing the key freight transport security considerations and setting out the reasons why the draft regulation is deemed to be the most realistic and focused approach to enhancing the security of European freight transport.
- 3.5 The Commission's objectives as set out in the communication on enhancing supply chain security are as follows:
- to increase the level of security along the supply chain without impeding the free flow of trade;
 - to establish a common framework for a systematic European approach without jeopardising the common transport market and existing security measures; and
 - to avoid unnecessary administrative procedures and burdens at European and national levels.
- 3.6 The measures proposed by the Commission to achieve these objectives are as follows:
- to establish a mandatory system requiring Member States to create a security ("secure operator") quality label which can be awarded to operators in the supply chain meeting European minimum security levels, thus allowing mutual recognition of the label on the internal market;
 - to introduce, within the mandatory provisions for the Member States, a voluntary scheme under which operators in the supply chain increase their security performance in exchange for incentives;
 - to make operators in the supply chain explicitly responsible for their security performance in European freight transport;
 - to allow "secure operators" to benefit from facilitations where security controls are carried out and to distinguish themselves positively from other competitors in the area of security, giving them a commercial and competitive advantage; and
 - to allow regular updating and upgrading of security requirements, including recognised international requirements and standards, through the committee procedure.
- 3.7 In this opinion, the Committee will seek to examine the measures proposed by the Commission and thereby assess the extent to which their intended objectives can, in fact, be achieved.

4. General comments

- 4.1 Before considering the actual content of the communication and the proposal for a regulation, it is important to be clear about the terminology to be used. The English version of the text, for instance, uses the term *security*. This is rendered in Dutch as *beveiliging* and in German as *Sicherheit*. Some EU languages* make no distinction between the process of making secure (in Dutch: *beveiliging*) and the state of being secure (*veiligheid*). German, however, does make such a distinction, which is why, in the German-language version, the term *Sicherheit* (being secure) will have to be replaced by *Sicherung* (making secure), as the draft is, after all, about making the supply chain secure, rather than about its security *per se*.
- 4.2 The Commission feels that, with a European legal framework now in place for aviation and airport security and for maritime and port terminal security, the time has come to lay down rules for inland transport modes as well.
- 4.3 The Committee feels that the Commission has failed to take due account of the fact that, as it itself recognises, air and maritime transport modes are, by their very nature, completely different from inland waterway, rail and road transport modes. A feature of air and maritime transport is the limited number of operators. In contrast, a huge number (some 500 000) of small, frequently one-person businesses are active in the fields of inland water transport and freight transport by road, operating in a market with very small and often negative margins. If we include product manufacturers positioned at the very start of the supply chain, then the number of enterprises involved in the process rises to some 4.7 million. This is, in the Committee's view, a further obstacle to action along the lines proposed by the Commission.
- 4.4 The Commission considers – in the EESC's view rightly – that it is virtually impossible in practice to establish, in a single all-embracing operation, security rules and measures for the land transport supply chain. Instead, the Commission believes it is more realistic to establish a framework of minimum security requirements capable of ensuring satisfactory security levels in an operational environment in line with technological progress and risk developments.
- 4.5 A chain is as strong or as weak as its weakest link. This is also true of supply chain security. The Commission states that each operator or each link in the supply chain can be made responsible for the security of its own – but only its own – activities and that the individual security measures of the various operators add up to the security of the complete chain. The Committee also feels that each operator should take responsibility for his part of the supply chain. The Committee would point out that risk of terrorist attacks applies not only to individual links (that is to say individual operators), but also – or perhaps even to a much greater extent – to transfer installations and infrastructure.

* Translator's note: including English.

- 4.6 In particular, the risks posed to the physical infrastructure that must be protected by public authorities in the Member States have, in the Committee's view, been grossly underestimated. The Committee feels there is no point in investing in the security of individual links in the supply chain unless government investments are, at the same time, also made in a high level of security for the physical infrastructure.
- 4.7 Given the sheer number of businesses potentially affected by the proposal, the Commission feels that the intended measures can only be effective if each Member State designates one competent authority to coordinate, implement and monitor application of the supply chain security measures laid down in the draft regulation. Assuming that the proposal on the table is, in fact, the right one, the Committee feels that, on this point, given the key role of the competent authority concerned, the Commission draft is seriously lacking in detail.
- 4.8 To achieve a level playing field within the EU, the Committee feels it is important that "secure operator" status should be subject to the same evaluation criteria in every Member State. To qualify for this status, a transporter from, say, Poland must comply with the same requirements as one from Portugal or Greece. That is the only way to facilitate the mutual recognition of "secure operator" status. The Commission proposal still gives insufficient safeguards as to how this level playing field can be achieved. To be sure, the Commission has appended a list of minimum requirements that must be met, but the Committee feels that this fails to provide adequate safeguards to secure a level playing field.
- 4.9 The Commission's proposal comes at a time when, with the Lisbon strategy in mind, Member States are calling for a radical cut in red tape for loading and transport companies. However understandable the background to the Commission proposal may be, the administrative burdens involved in rolling out this regulation will be passed on to employers and workers in the sector concerned. The Committee feels that financial investment should also be forthcoming from public authorities at both national and international level.
- 4.10 Moreover, the proposal merely skims over the impact of the projected "secure operator" quality certificate on employers and workers in the inland transport sector. Workers will have to be trained in how to act in various situations, while businesses will have to take all manner of high-cost security measures and it is doubtful whether they will be able to pass those costs on to consignor or final customer.
- 4.11 The Committee feels that the Commission proposal is not specific enough about the potential benefits of acquiring "secure operator" status. This applies both to the practical application of those benefits and to their scope.
- 4.12 The Committee wonders whether, in framing this draft regulation, the Commission has been sufficiently aware of the measures already taken in the various sectors. To take just one area, for instance, albeit the most vulnerable, freight transport by road is covered by the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR), while

the ADNR provisions (on the transport of dangerous goods on the Rhine) apply to freight transport by inland waterway (see Article 1(10)). Similar agreements are in force for freight transport by rail. The Committee feels that it would, in the first instance, be advisable to consider whether, instead of putting forward a proposal for a new regulation, it would not be just as effective to fine-tune the measures that are already in place. It is not clear whether the Commission has given this possibility any thought, but it should be taken into consideration, not least from the angle of cutting red tape.

- 4.13 The Commission also believes that, once a company has acquired the status of a secure operator, this will mean a substantial reduction in freight checks in ports and at border crossings. The Commission proposal, however, gives no guarantees that this will happen and makes no mention of any agreements in this regard. The Committee feels that, particularly in the light of the efforts that are to be expected of operators and individual companies, assurances must be given of the potential advantages to be gained by taking part in the scheme, not least since, as far as border waiting times are concerned, any potential benefits are negated by the fact that systematic checks at the internal borders are already a thing of the past.
- 4.14 The Committee would point out that the security measures must be such that they do not impinge on certain fundamental rights, such as the right to company or trade union representation, or pose a hindrance to people from outside the company who are involved on a temporary basis in its activities (e.g. loading and unloading).
- 4.15 The Committee would also draw attention to an issue arising in particular in the field of international road haulage. Parking areas are often deemed so unsafe that drivers no longer dare use them for overnight stops. This makes it difficult to comply with the rules on driving time and rest periods and increasingly compromises road safety. The Committee feels that much more investment is needed in making parking areas safe, especially those used by international road hauliers for overnight stops. The Committee would ask the Commission to consider this issue and submit proposals to boost safety.

5. **Specific comments**

- 5.1 Before examining the security-enhancing measures proposed by the Commission, we would do well to consider what security measures are already in place for individual inland transport modes.
- 5.2 The inland waterway transport sector frequently uses ports for loading and unloading. In such cases, the ISPS code (International Ship and Port Facility Security) already applies.
- 5.3 Traditionally, the railways have always had a culture in which the safety of staff and freight are of paramount importance. It would therefore be desirable to reinforce the principle of a flexible and precise risk assessment. When taking security measures, special consideration

will have to be given to vulnerable locations such as stations and marshalling yards. The International Union of Railways (known by its French acronym UIC) will have to come up with some recommendations for security measures for international freight transport by rail.

- 5.4 The road freight transport sector, which includes both professional road haulage firms and own-account transporters, is in a very vulnerable position since it is made up of a huge number of mainly small and micro enterprises. The coordinating international organisation, the International Road Transport Union (IRU), has drawn up security guidelines for managers, drivers and consignors. The IRU has also devised a framework for voluntary cooperative arrangements with customs authorities.
- 5.5 The basic principles underlying the security guidelines mentioned in point 4.4 are as follows:
- security measures must not be so strict as to make normal business impossible;
 - newly introduced security measures must be proportionate to their purpose, the costs involved and the consequences for traffic;
 - unilateral measures by states are not acceptable;
 - security measures must be readily understood and reasonable;
 - in view of the international nature of transport, the security measures to be taken should be applied uniformly, proportionately and without discrimination, and with little or no disruption to the most efficient business flows.
- 5.6 The Committee would stress that pipelines too are vulnerable to security concerns. The Commission gives no consideration to this transport mode which, although it may be complex in terms of the security arrangements required, is nonetheless manageable given the small number of operators involved. The Committee thus recommends that additional consideration be given to the security of pipelines, which are not just a transport mode but infrastructure as well.
- 5.7 Subject the same proviso as in point 3.7 above, the Committee undoubtedly sees advantages to be gained in each Member States designating a single competent authority to coordinate, implement and monitor supply chain security, provided that this body is given not only the responsibility but also the appropriate powers to act. This is not explicitly mentioned in the draft regulation. The Committee recommends taking the opportunity afforded by the adoption of such a weighty legal instrument as a regulation to introduce more detailed provisions on this front so as to secure a uniform approach across the Member States.
- 5.8 The draft regulation proposes that Member States make provision for the central authority to award the status of "secure operator" to operators involved a number of clearly defined supply-chain activities. "Secure operator" status may be awarded for periods of three years, although this may be renewed where the secure operator concerned continues to meet the minimum requirements of the draft regulation. Once awarded the status of secure operator, the operator concerned should then be subject to less stringent security controls.

- 5.9 The Committee feels that picture painted here by the Commission is too rosy. The draft regulation is not clear about the establishment of a system involving a single competent authority for each Member State or about the procedure and criteria for awarding applicants "secure operator" status.
- 5.10 It is only in the accompanying communication that we read that operators are required to meet certain minimum security standards. Under the "secure operator" scheme, Member States are to decide for themselves what these minimum standards are to be. Such an arrangement, whereby each Member State sets its own requirements in this area, is not calculated to secure the establishment of a harmonised system of minimum standards across the EU. Quite the reverse: unless requirements are laid down as to the form and content of the minimum standards, the Committee fears the emergence of a non-comparable system. As already mentioned in point 3.8 above, the Committee is concerned as to whether the desired level playing field can be achieved in this way. The Committee recommends that the Commission give particular attention to the question of how to ensure that "secure operator" status can be made to mean the same thing and carry the same weight in the different Member States.
- 5.11 The proposed system of mutual recognition of the status of "secure operator" may well also result in inequality of treatment within the Union and thus, to a certain extent, in distortion of competition.
- 5.12 The Committee would point out that the meaning of the term "secure operator" may vary from mode to mode. The rail market, for instance, is made up of a small number of large undertakings, while the road haulage sector consists of some 500 000 mainly small businesses.
- 5.13 The Committee is not convinced by the secure operator's benefits outlined in Article 6 of the Commission's draft regulation. Member States are to allow secure operators to benefit from facilitations and simplifications related to security control measures by being subject to so-called "fast track treatment". According to the Commission, that would include a reduced level of security controls. The Committee considers that the wording used here is so vague and lacking in substance that it has serious doubts about the applicability of the text in practice.
- 5.14 It is clear from the context that the Member States will, in one way or another, have to fund the measures taken under the proposals. The Committee feels this places a major burden on the Member States. Clarification is needed of the areas of responsibility and of cooperation of the Member State and the "secure operator". The costs involved in setting up and maintaining a system such as that proposed by the Commission will be high given the disparate nature of the target groups concerned.

- 5.15 Obviously, Member State public authorities will cover the costs involved in framing and monitoring implementation of the rules. In addition, the European Union will have to free up resources to provide every kind of support to non-EU countries so that these too are able to attain the same level of security as the Member States. The Committee feels this is important given the international nature of inland freight transport.
- 5.16 The security investment costs as well as ongoing security-related expenditure in areas such as staffing, insurance and information measures should be covered by the operators taking the security measures concerned and should be factored into the prices or rates they charge. It must also be remembered in this regard that businesses awarded "secure operator" status should be subject to lower insurance premiums as a result. A question needing analysis is the possibility of a situation arising whereby "secure operators" and other firms not having this status are offering their services on the transport market in parallel. This could lead to the emergence of one group of operators offering secure but more expensive services, and another which does not have to bear the cost of raising security standards and can thus offer its services more cheaply.
- 5.17 In recital 11, the Dutch version of the draft regulation uses the term "*gevestigd*". This is correct^{*}, but the Committee notes that some other language versions (e.g. Polish) speak of "*carrying on activities*", which is something quite different.

Brussels, 13 December 2006.

The President
of the
European Economic and Social Committee

The Secretary-General
of the
European Economic and Social Committee

Dimitris Dimitriadis

Patrick Venturini

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Translator's note: as indeed is the English version, which uses the term "*established*".