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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.5.2009
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2009/0063 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on aviation security charges

(presented by the Commission)

{SEC(2009) 615 final}

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EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **General context**

At present, systems for the recovery of aviation security costs are regulated at national level are not always transparent to the users. Users are not systematically consulted at all EU airports before charges are determined or before a charging system is modified.

- **Existing provisions in the area of the proposal**

There are no existing provisions in the area of the proposal.

- **Consistency with the civil aviation policy and other objectives of the Union**

The third package adopted by the Council in 1992 represented the final stage in the liberalisation of access to the air transport market. Subsequent initiatives were aimed at regulating and liberalising ancillary activities such as the provision of groundhandling services, slot allocation and the use of computerized reservation systems. The Community has also adopted legislation in the field of aviation safety and security and has addressed the issue of air traffic management by means of legislative measures creating the Single Sky. The Directive on airport charges covers charges other than security charges.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

During a hearing that was held on 17 July 2008, the Commission consulted with stakeholders in the air transport industry on the various possibilities of devising Community legislation on security charges. The Commission also asked for information and the views of Member States and industry through questionnaires.

Bilateral contacts have also been made with some stakeholders in order to hold further exchanges of views.

Summary of responses and how they have been taken into account

All industry organisations emphasised that aviation security is a state responsibility and the costs should therefore be borne by the states. However, no Member State was in favour of an obligation for it to cover security costs.

- **Collection and use of expertise**

Scientific/expertise domains concerned

An impact assessment has been carried out to provide a quantitative and qualitative analysis of the impact of this initiative, so as to evaluate the chosen approach. No external expertise was used for that impact assessment. However, DG JRC did quantify the impact of some of the measures. The note of DG JRC is attached in Annex XII of the impact assessment. The impact assessment made use of statistics that are publicly available, mainly from Eurostat, and also relied on statistics provided by stakeholders and by Member States.

Main organisations/experts consulted

All major stakeholder organisations have been consulted. Transport users and consumers have also been consulted via their associations.

Summary of advice received and used

No mention has been made of the existence of potentially serious risks with irreversible consequences.

The main conclusions were that, of the four contemplated policy options which were identified as the basis for the study, the implementation of a general framework containing general principles (i.e. option 3) offers the best potential to be successful and to bring about a positive change in the way security charges are being set and in the relationship between airports and air carriers on this issue.

- **Impact assessment**

The impact assessment considered the following policy options.

The first 'no EU action' option was used as a benchmark against which the other policy scenarios have been compared.

Option 2 involved a scenario in which the aviation industry actors develop and adopt voluntary EU-wide self-regulation measures to address the issues identified by either party, i.e. the air carriers and airports, as being due to the lack of agreement and common understanding between the parties on how the main points of contention could be best addressed.

Option 3 was a Community act establishing a general framework requiring that the way in which security charges are determined at national level reflect a number of common principles to which airport operators would have to adhere.

Option 4 suggests that Member States should fully finance airport security. This will do away with any security charges and their discriminatory aspects.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposal defines a number of basic principles to be respected by airport operators when they determine their security charges. These are:

Non-discrimination:

Aviation security charging systems should not discriminate between carriers or passengers.

Consultation and remedy:

The airport managing body and the air carriers serving the airport, or their representative organisations, must engage in a dialogue on the security charging system applicable at an airport not only when such system is modified but also when the levels of the security charges are being established. The aim of this requirement is that the two parties exchange views on a regular basis on the levels of the charges, as well as on all factors and regulatory requirements that have an influence on the determination of those charges.

Transparency:

The proposed Directive contains no provisions on the methods for calculating security charges that should be applied in each Member State. While the Commission acknowledges the wide diversity of airport regulation in the various Member States, a reasonable amount of information must nevertheless be provided by the operator to the air carriers so as to make the consultation process between airports and air carriers meaningful. To this end, the Directive establishes which information should be provided on a regular basis by the airport managing body.

Air carriers should, in turn, give information as to their traffic forecasts, their intended fleet use and their present and future specific requirements at the airport, so as to allow the airport managing body to employ their capital and dedicate their capacity in an optimal manner.

Air carriers should also have the right to be informed about security measures that are more stringent than required by Community law.

Cost-relatedness:

Revenues from security charges shall only be used to meet security costs.

Supervisory authority:

A draft Directive that contains the principles to be respected by the main partners in the air transport industry i.e. the airports and air carriers, which have diverging interests, needs to be properly applied and adhered to at the level of the Member States. An authority to be established in each Member State, that is in charge of ensuring the correct application of the Directive, would be an appropriate guarantee that its provisions are respected.

- **Legal basis**

The proposal is based on Article 80(2) of the Treaty establishing the European Community.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

The objectives of the proposal cannot be sufficiently achieved by each Member State individually as security charges systems and the determination of security charges at individual airports are not regulated in a uniform manner across the EU. Different charging systems continue to exist in the Member States. This situation hinders the creation of a genuine level playing field for airports and air carriers alike.

Community action will better achieve the objectives of the proposal for the following reasons:

The application throughout the EU of a common set of basic rules with regard to security charges will ensure fair play between the aviation partners when defining the parameters for allocating the cost of airport security.

Different charging systems exist in the Member States. Not all systems include fundamental principles that are uniformly applied when security charges are being determined and when the underlying method for their calculation is devised. The proposed Directive will make such uniform application possible.

The proposal is limited to the definition of a minimum set of rules to be observed when Member States and/or airport operators determine the levels of security charges. The proposed Directive does not impose a particular charging system. The definition of such a system is left to the Member States.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

The proposed Directive leaves unchanged the scope for a basic framework on security charges to be set at national level and preserves the flexibility for airports to determine their own

security charges. The Directive ensures that airport users will receive more explanation of the security charges. The administrative burden for Member States and regional authorities that are engaged in the process of defining the regulatory framework will be limited to the extent that they will have to adapt their existing legislation to the Directive where such legislation is not in conformity with the basic principles set out in the Directive.

- **Choice of instruments**

Proposed instruments: Directive.

Other means would not be adequate for the following reason(s).

A directive is the most proper means to regulate security charges, as it will set clear but basic principles with regard to security charges that have to be respected by airport operators when applying and levying their security charges. The transposition of the Directive into the national law of each Member State will allow the latter to take into account, in its national legislation, the specific situation with regard to airports in that Member State, always provided that the provisions of the Directive are fully applied.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5) ADDITIONAL INFORMATION

- **Correlation table**

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on aviation security charges

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

- (1) Aviation security at European airports is essentially a state responsibility. Each Member State decides on the methods for financing aviation security. It is, however, necessary to establish a common framework regulating the essential features of security charges and the way they are set, as in the absence of such framework basic requirements in the relationship between airport managing bodies and airport users may not be respected.
- (2) The collection of charges with respect to the provision of air navigation services and groundhandling services has already been addressed by Commission Regulation (EC) No 1794/2006 of 6 December 2006 laying down a common charging scheme for air navigation services⁵ and Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports⁶, respectively.
- (3) It is vital for airport users to obtain from the airport managing body, on a regular basis, information on how and on what basis aviation security charges are calculated. This information will provide air carriers with an insight into the costs incurred by providing security services and the productivity of related investments. To allow an airport managing body to properly assess the requirements with regard to its future investments, the airport users should be required to share all their operational forecasts, developments projects and specific demands and wishes with the airport managing body on a timely basis.
- (4) As the methods for establishing and levying the amounts due for the coverage of security costs differ across the Community, the harmonisation of the basis for charging

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ L 341, 7.12.2006, p. 3.

⁶ OJ L 272, 25.10.1996, p. 36.

security costs at Community airports where the costs of security are reflected in the security charges is necessary. At these airports the charge should be related to the cost for providing security, taking into account any public financing of security costs.

- (5) It is important to establish transparency in relation to the economic impact of national security measures more stringent than the common basic standards established in accordance with 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 and repealing Regulation (EC) No 2320/2002⁷.
- (6) An independent supervisory authority in every Member State should ensure the proper and effective application of this Directive. The authority should be in possession of all the necessary resources in terms of staffing, expertise and the financial resources for the performance of its tasks.
- (7) Since the objectives of the action taken cannot be sufficiently achieved by the Member States, as security charges systems cannot be put in place at their level in a uniform manner throughout the Community and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

1. This Directive sets common principles for the levying of security charges at Community airports.
2. This Directive applies to any airport located in a territory subject to the provisions of the Treaty.

This Directive does not apply to the charges collected for the remuneration of en-route and terminal air navigation services in accordance with Commission Regulation (EC) No 1794/2006, or to the charges collected for the remuneration of groundhandling services referred to in the Annex to Council Directive 96/67/EC.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (a) 'airport' means any land area especially adapted for the landing, taking-off and manoeuvring of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services;
- (b) 'airport managing body' means a body which, whether or not in conjunction with other activities, has as its objective under national laws or regulations the

⁷ OJ L 97, 9.4.2008, p. 72.

administration and management of the airport infrastructures and the coordination and control of the activities of the different operators present in the airports concerned;

- (c) ‘airport user’ means any natural or legal person responsible for the carriage of passengers, mail and/or freight by air from or to the airport concerned;
- (d) ‘security charge’ means a levy which is specifically designed to recover all or part of the cost of security measures intended to protect civil aviation against acts of unlawful interference.

Article 3

Non-discrimination

Member States shall ensure that security charges do not discriminate between airport users or air passengers.

Article 4

Consultation

1. Member States shall ensure that the airport managing body has access to all necessary information on the costs of providing aviation security services at the airport.
2. Member States shall ensure that at each airport a compulsory and regular procedure for consultation between the airport managing body and airport users is established with respect to the operation of the system of security charges and the level of such charges. That consultation shall take place at least once a year.
3. The airport managing body shall submit any proposal to modify the system or the level of security charges to the airport users no later than four months before it enters into force, together with the reasons for the proposed changes. The airport managing body shall hold consultations on the proposed changes with the airport users and take their views into account before a decision is taken.
4. The airport managing body shall publish its decision no later than two months before it enters into force. When no agreement on the proposed changes is reached between the airport managing body and the airport users, the airport managing body shall justify its decision with regard to the airport users.

Article 5

Transparency

1. Member States shall ensure that the airport managing body provides each airport user and the representatives or associations of airport users, once a year, with information on the components serving as a basis for determining the level of all security charges levied at the airport. This information shall at least include:
 - (a) a list of the various services and infrastructure provided in return for the security charge levied;
 - (b) the method of calculation of security charges;
 - (c) the revenue and cost of each category of security charges levied at the airport;

- (d) the total number of staff deployed to services which give rise to the collection of security charges;
 - (e) forecasts of the level of security charges;
 - (f) any intended investments that may affect significantly the level of security charges;
2. Member States shall ensure that airport users submit information to the managing body before every consultation, as provided for in Article 4, concerning in particular:
- (a) forecasts as regards traffic;
 - (b) forecasts as to the composition and envisaged use of their fleet;
 - (c) their development projects at the airport concerned;
 - (d) their requirements at the airport concerned.

Article 6

Impact assessments

1. Before adopting more stringent measures pursuant to Article 6 of Regulation (EC) No 300/2008, Member States shall undertake an impact assessment with regard to the effects on the level of security charges.

With regard to more stringent national measures already existing on [the date of entry into force of this Directive], Member States shall undertake impact assessments during a transitional period of three years from the date of entry into force of this Directive.

2. Member States shall inform the Commission and consult airport users in accordance with Article 4 about the outcome of the impact assessments provided for in paragraph 1.

Article 7

Cost-relatedness of security charges

Security charges shall be used exclusively to meet security costs. These costs shall be determined using the principles of accounting and evaluation generally accepted in each of the Member States.

However, Member States shall ensure that particular account is taken of:

- the cost of financing the facilities and installations dedicated to security operations, including fair depreciation in the value of these facilities and installations;
- the expenditure on security staff and security operations;
- the grants and subsidies allocated by the authorities for security purposes.

Article 8

Independent supervisory authority

1. Member States shall nominate or establish an independent body as their national independent supervisory authority in order to ensure the correct application of the

measures taken to comply with this Directive. That body may be the same as the entity entrusted by a Member State with the application of Directive (EC) No 12/2009 of the European Parliament and of the Council on airport charges⁸.

2. Member States shall guarantee the independence of the independent supervisory authority by ensuring that it is legally distinct from and functionally independent of any airport managing body and air carrier. Member States that retain ownership or control of airports, airport managing bodies or air carriers shall ensure effective structural separation of the regulatory function from activities associated with ownership or control. Member States shall ensure that the independent supervisory authority exercises its powers impartially and transparently.
3. Member States shall notify to the Commission the name and address of the independent supervisory authority, its assigned tasks and responsibilities, and the measures taken to ensure compliance with paragraph 2.
4. Member States shall ensure, in respect of disagreements with regard to security charges, that measures are taken to:
 - (a) establish a procedure for resolving disagreements between the airport managing body and the airport users;
 - (b) determine the conditions under which a disagreement may be submitted to the independent supervisory authority and in particular provide for the dismissal by the authority of complaints which it deems are not properly justified or adequately documented; and
 - (c) determine the criteria against which disagreements will be assessed for resolution.These procedures, conditions and criteria shall be non-discriminatory, transparent and objective.
5. The independent supervisory authority shall publish an annual report concerning its activities.

Article 9

Report and revision

1. The Commission shall submit a report to the European Parliament and the Council on the operation of this Directive no later than 4 years after its entry into force as well as, where appropriate, any suitable proposal.
2. The Member States and the Commission shall co-operate in the application of this Directive, particularly as regards the collection of information for the report mentioned in paragraph 1.

Article 10

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] at the latest. They shall

⁸ OJ L 70, 14.3.2009, p. 11.

forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 11

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 12

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President