



*European Economic and Social Committee*

**TEN/396**  
**Aviation Security Charges**

Brussels, 5 November 2009

**OPINION**

of the  
European Economic and Social Committee  
on the  
**Proposal for a Directive of the European Parliament and of the Council  
on Aviation Security Charges**  
COM(2009) 217 final – 2009/0063 (COD)

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Rapporteur: **Mr Opran**

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On 20 July 2009, the Council decided to consult the European Economic and Social Committee, under Article 80, paragraph 2, of the Treaty establishing the European Community, on the

*Proposal for a Directive of the European Parliament and of the Council on Aviation Security Charges*

COM(2009) 217 final – 2009/0063 (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 12 October 2009. The rapporteur was Mr Opran.

At its 457th plenary session, held on 4 and 5 November 2009 (meeting of 5 November), the European Economic and Social Committee adopted the following opinion by 130 votes to 4 with 2 abstentions.

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**1. Recommendations and proposals**

- 1.1 The Committee recommends that the Parliament and the Council ***adopt the Commission's draft Directive on aviation security costs, so that the modern methodology and solutions proposed may be implemented by all Member States as swiftly as possible.***
- 1.2 At the same time the EESC proposes that ***the following corrections and changes should be made*** for the sake of greater clarity and ease of application of the modern methodology and solutions proposed by the Commission:
  - 1.2.1 With reference to the Explanatory Memorandum, paragraph 3 "Legal elements of the proposal", subparagraph "Non-discrimination", the Committee proposes that this should take account of the contribution (including as regards research and development costs) of aircraft manufacturers to raising the security level of aircraft, so that the paragraph reads as follows: ***"The costs of charging for air security should be fair and non-discriminatory as regards air companies, passengers and the aeronautic industry"***.
  - 1.2.2 With reference to Article 1 – "Subject matter" of the draft Directive, the Committee proposes that subparagraph 1 should be modified as follows: ***"This Directive sets common principles at EU level for the calculation and levying of security charges for all Community airports"***.
  - 1.2.3 With reference to Article 4 – "Consultation", the Committee proposes that subparagraph 2 should read as follows: ***"Member States shall ensure that a Committee of aviation operators is established in every airport. This Committee shall participate in a compulsory and regular***

*procedure for consultation with the airport managing body with respect to the operation of the system of security charges and the level of such charges. That consultation shall take place whenever necessary and no less than once a year. Representatives of civil organisations supporting the interests of air passengers shall be invited to participate permanently in the work of the Committee as full members or observers, on a case-by-case basis".*

1.2.4 Taking into consideration the financial effort imposed on the Member States to support the establishment of the new authorities, the EESC considers that ***the Commission, the Parliament and the Council should finally decide between the following two possible options:***

1.2.4.1 to accept the professional and well trained structures of NASC's secretariats to fulfil the role of "Independent Task Units", avoiding financial support;

1.2.4.2 to maintain the initial decision to set up new independent structures.

1.2.5 Similarly the Committee, which is convinced that activities relating to the provision of national security in general and the fight against terrorist threats in particular are key responsibilities of the Member States, considers that **governments' financial participation in covering the costs of air security should be reviewed and their contribution towards the costs – currently borne by airports, air operators and passengers – substantially increased.**

## 2. **Conclusions and remarks**

2.1 The new methodology proposed by the Commission to calculate charges for civil aviation security service providers is based on the selection and definition of **a set of basic principles** with which all airport operators in this sector must comply when establishing the level of charges to be borne by all or one or more categories of the potential users (States, airport authorities, aviation companies and passengers):

- subsidiarity;
- state responsibility;
- charging / tariffs;
- information and communication;
- harmonisation;
- transparency;
- setting up a National Independent Supervisory Authority (NISA) in each Member State.

2.2 After a careful assessment of the basic principles proposed by the Commission, the Committee considers that their practical implementation can eliminate current procedural distortions, ensuring the successful implementation of the new innovative methodology.

- 2.3 Regarding the need to establish a National Independent Supervisory Authority in every Member State, the Committee outlines that:
- 2.3.1 A National Aviation Security Committee (NASC) has already been set up in every EU country, with an inter-ministerial structure.
- 2.3.2 The secretariat of the NASC – despite the fact that it can not be considered a true independent body – can act as a supervisory task unit with all the necessary professional, human and financial resources at its disposal, ensuring that the provisions of the Directive are applied properly and efficiently. The EESC believes that, in general terms, matters affecting the security of people in a Member State should not be made completely independent, but should ultimately be subject to democratic parliamentary supervision.
- 2.4 The Committee appreciates the Commission's professional work, especially the use of computer modelling, on evaluating the *various major options for aviation security charges* based on the international principles in force.
- 2.4.1 The *EU plays no part in the process* and the consequences of this position.
- 2.4.2 *The practice of self-regulatory policies accepted by ICAO and industry* could protect the interests of passengers and more efficiently promote aviation security services through direct consultation between air carriers and airports.
- 2.4.3 *Similar to option "2.4.2", but regulated by a European directive.*
- 2.4.4 Member States *bear the full cost of covering airport security expenses*, which would eliminate any security costs to third parties and any discrimination in order to correctly select the optimal "win-win" solution for passengers, airport authorities, air companies and governments.
- 2.5 The Committee supports the Commission's decision, concluding too that **the third option best serves the interests of consumers and boosts the efficiency of airport security services provided**, outlining also that the administration of this option at national level and the consequent rise in costs could be negligible if the Commission can agree to use as dedicated task units the NASC secretariats already set up in accordance with the provisions of the Directive on airport charges<sup>1</sup>.
- 2.6 At the same time the Committee considers that the option selected by the Commission will reach the expected target only if the **governments agree in their turn to make a substantial increase in their contribution** to the related costs.

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<sup>1</sup> OJ L 70, 14.3.2009, p. 11.

- 2.7 With reference to the Directive's provisions on transparency, the Committee believes that these should state clearly that this aspect refers not only to problems related to air security costs, but also and to the same extent to the existing financing mechanisms; air operators and passengers will only have an **accurate grasp of how airport authorities calculate security charges if these financing mechanisms are rendered open and transparent**. In the same way, the costs of security personnel and the main performance indicators relating to them must be publicly available.
- 2.8 With reference to the Explanatory Memorandum, paragraph 3 "Legal elements of the proposal", subparagraphs "Consultation and remedy" and "Transparency", the Committee considers that **representatives of organisations of air passengers, as the principal contributors to the budget allocated to air security, should take part in the relevant dialogue between the airport authorities and the aviation companies**, if only with the role of observers. It would thus be possible to avoid the introduction or unjustified continuation of security procedures which are costly and embarrassing to passengers, without contributing to a significant reduction of terrorist threats. As a rule, such measures are proposed in addition to the standard procedures by the US and/or Israeli authorities. They are applied in certain situations depending on the level of risk, yet some EU security authorities, from an excess of zeal and sometimes from the fear of being responsible for incorrectly assessing the level of risk, endeavour to make them permanent practice. For this reason they usually reject many proposals coming from organised civil society for joint discussion on these matters.
- 2.8.1 Thus, at Brussels National Airport, passengers are asked to remove their shoes before passing through the metal detecting gate, with their footwear being scanned separately; this creates the risk of contamination when passengers walk barefoot from the security check area where millions of viruses may be lurking, for example from a sneeze by a person with as yet undiagnosed swine flu. At the same time, the airport administration has acquired, using public money, an important number of the latest generation scanning and detecting equipment to check passengers' footwear while it is still on the passengers' feet; this equipment has been installed in the security check area, but is not used during the security checking procedures of the passengers.
- 2.8.2 Another current debateable case is the ban on bringing more than a ludicrous authorised volume of liquids on board; the established threshold being primarily prompted by excessive and unjustified zeal at the ridiculous value of 100 ml per passenger.
- 2.9 Despite of the incompatibility between the draft Directive's ban on reaping operational profit from activities providing aviation security services and the philosophy governing the existence and operation of private companies, geared towards optimising profit, in the same time trying to avoid any further misinterpretations of Article 7 of the proposed Directive, the Committee strongly proposes for the Commission to accept private companies as air security service providers for airports, with the exemption of screening and detecting operations.

- 2.10 The EESC believes that the proper application of the Commission's proposal, together with a **stronger role for civil society representatives**, could offer major benefits for people in Europe and the rest of the world, together with the aviation industry and EU airport operators.

### 3. **General comments**

#### 3.1 **The Commission's proposal for a Directive – the result of broad consultation**

- 3.1.1 While drafting the Directive, DG TREN consulted Member States and vocational organisations representing industry and consumers, using data received from eleven Member States, nine professional organisations of airport administrations and air carriers, also one association representing air passengers.

- 3.1.2 None of the Member States supported the proposal whereby security costs should be borne in full by national governments, arguing that they are an integral part of the cost of doing business in the aviation sector, which should be borne by the aviation industry, along the lines of the car industry's investments in improving car safety. Every Member State called for a total ban on reaping operational profits from these activities, stressing the need to guarantee a high level of transparency in this area.

#### 3.2 **Definition of the problem**

##### 3.2.1 ***Breakdown of the cost of aviation security***

- 3.2.1.1 There are three major components: airport security costs, aviation company costs and the costs borne by Member States. Security checks on passengers and cargo (luggage) make up the bulk of these costs.

- 3.2.1.2 There are two parts to the cost of security checks: wages and the cost of infrastructure and equipment. Security services are generally provided by competent national organisations or are delegated to the airport administration or a specialised private firm.

##### 3.2.2 ***How much does it cost and who pays in the end?***

In 2007, costs of providing air security throughout the EU amounted to an estimated EUR 1.6 bn, representing approximately 1% of the average cost of an air ticket paid by the over 636 million passengers boarding at Community airports. The bulk of the costs borne by Member States and industry are recovered from the fees and additional costs paid by air passengers. In total, aviation companies, passengers and air freight cover over 90% of the costs of aviation security services, while Member State governments cover only 6% to 7% of these costs through budget allocations.

### 3.2.3 *Discriminatory practices in the field of aviation security service costs*

Air passengers are subject to the same security checks regardless of their destination throughout the EU, including domestic flights. Security costs should thus be identical. Unfortunately, in order to cut their costs, aviation companies pass on to passengers the costs of security checks that they should in fact bear themselves. Generally speaking, national companies bring the strength of their position to bear in their national airports, slanting the price structure in favour of domestic flights and raising the ticket price for flights originating abroad.

Table 1: Cost of aviation security per passenger for external flights within the EU and domestic flights

Country / Airport	Intra-EU	Domestic
<b>Romania – Bucharest Airport</b>	EUR 7.50	EUR 3.81
<b>Spain – all airports</b>	EUR 1.39	EUR 1.18
<b>Lithuania – Vilnius</b>	EUR 2.32 / MT of Max. Take-Off Weight of the aircraft	Max. EUR 1.16 / MT of Take-Off Weight of the aircraft
<b>Cyprus - Larnaca</b>	EUR 0.39	0

Table 1 gives examples of the practice whereby many national companies apply different security service costs for international and domestic flights, a practice in complete contradiction with the provisions of Article 5 of Framework Regulation 300/2008 on aviation security<sup>2</sup>.

### 3.3 **Modelling and simulating a variety of options / selecting the optimal solution**

When preparing the Directive, the Commission used mathematical simulation to assess four different options based on the existing international principles relating to the charges of providing aviation security.

#### 3.3.1 Option 1: *The EU plays no part in the process and the consequences of this position*

The charges applied will lead to major discrimination between aviation companies and passengers.

#### 3.3.2 Option 2: *The practice of self-regulatory policies accepted by ICAO and industry* could protect the interests of passengers and more efficiently promote aviation security services through direct consultation between carriers and airports.

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<sup>2</sup>

OJ L 97, 9.4.2008, p. 72.

A similar framework has existed since 1981 in the form of the ICAO rules but self-regulation has not yielded any significant results.

3.3.3 Option 3: *Similar to option 2, but regulated by a European directive.*

In addition, aviation companies can take legal action against airports if security charges are discriminatory or used for a purpose other than covering security costs. This solution is supported by a series of connected EU policies and is in line with national legislation in this area.

3.3.4 Option 4: Member States **bear the full cost of airport security expenses**, which would eliminate any security expenses incumbent on third parties and any discrimination.

This solution discourages improvements in the quality of security services, since operators in the sector would not be encouraged in any way to control their costs. Furthermore, this option has been vehemently rejected by all Member States.

3.4 **The Committee's evaluation of the Commission's choice of principles used to define the new methodology**

3.4.1 *Subsidiarity*

3.4.1.1 This applies when the proposal is outside the scope of exclusive Community competence and when its objectives cannot be achieved satisfactorily by Member States acting individually, because the systems for establishing security and airport charges are not uniformly regulated across the EU.

3.4.1.2 Charging systems continue to vary between Member States, preventing the establishment of a level playing field for airports and air carriers.

3.4.1.3 Applying a common set of basic rules regarding security charges throughout the EU will level the field between the partners in the aviation sector as regards setting the parameters for allocating airport security costs.

3.4.1.4 There are a number of different charging systems in the EU, owing to the absence of uniformly applied guiding principles for calculating security charges. The Directive eliminates ambiguities in this field by defining and proposing a single method for calculating such charges, thus rendering uniform application possible.

3.4.1.5 The proposal restricts itself to laying down a set of minimum rules to be complied with when Member States and/or airport operators establish the level of security charges. The Directive does not impose any one charging system; the choice of system is left up to Member States.



**Conclusion:** the selection and application of the principle of subsidiarity is correct and necessary for the implementation of the new Directive.

### 3.4.2 *State responsibility*

3.4.2.1 As in the case of subsidiarity, this applies when the proposal is outside the scope of exclusive Community competence; similar problems arise for both of the principles adopted with a view to drafting the Directive.

3.4.2.2 The proposal restricts itself to laying down a set of minimum rules to be complied with when Member States and/or airport operators establish the level of security charges. The Directive does not impose any one charging system; the choice of system is left up to Member States.

**Conclusion:** the selection and application of the principle of State responsibility is correct and necessary for the implementation of the Directive, with due consideration for the potential for asymmetric, conflictual conditions and the disparity between Member States in the levels of terrorist alert that must be provided, as well as the nationality of the carrier. Governments' financial contribution to providing air security must be re-evaluated and substantially increased, since the executive is the State body largely responsible for fighting terrorism.

### 3.4.3 *Charging*

3.4.3.1 The collection of charges for the provision of air navigation and groundhandling services has already been covered by Commission Regulation (EC) 1794/2006 of 6 December 2006 laying down a common charging scheme for air navigation services<sup>3</sup> and Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports<sup>4</sup>.

3.4.3.2 The legal costs relating to security cannot be laid down by a common charging scheme owing to major disparities in the levels of Member States' contributions to developing, setting up and putting into practice air security systems in national airports.

**Conclusion:** the selection and application of the principle of charging is correct and necessary for the implementation of the Directive; however, it is impossible to draw up a common charging scheme owing to the wide range of conditions across the EU.

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<sup>3</sup> OJ L 341, 7.12.2006, p. 3.

<sup>4</sup> OJ L 272, 25.10.1996, p. 36.

#### 3.4.4 *Information and communication*

3.4.4.1 Generally speaking, users at airports in Europe and on other continents are organised into committees of airport operators engaged in permanent dialogue with the airport administration.

3.4.4.2 This framework allows information to be exchanged regarding the procedure and the basis for calculating security charges, specifically users' operational forecasts, development plans, specific requests and proposals.

**Conclusion:** the principle of information and direct communication between security operators and airport authorities has been chosen correctly and is apt for the implementation of the new Directive; it would become still more important if PR activities were included.

#### 3.4.5 *Harmonisation*

3.4.5.1 The rate base for security costs could be harmonised in Community airports, where these costs are fully covered by security charges.

3.4.5.2 The yield accrued from the application of these charges must not exceed the total costs incurred in providing security, including all public funds; in short, no operational profit from this type of activity is allowed.

3.4.5.3 For this reason, security charges in general cannot be fully harmonised.

**Conclusion:** the selection and application of the principle of harmonising the rate base is correct and necessary for the implementation of the Directive, although attention is drawn to the impossibility of harmonising all the charges and to the ban on reaping operational profit.

#### 3.4.6 *Transparency*

3.4.6.1 Transparency must be guaranteed when the existence of national security measures more restrictive than the specific Community standards laid down in Regulation (EC) 300/2008 of the Parliament and the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) 2320/2002 has an impact on the economy.

3.4.6.2 It should be noted that some of these measures may only be imposed, permanently or temporarily, at the express request of one or more air operators.

**Conclusion:** the selection and application of the principle of transparency is correct and necessary for the implementation of the Directive, when national security measures are more restrictive than Community measures or at the express request of the air operators. It must be

complemented by detailed information regarding the sources of the funds and the bodies responsible for collecting the funds allocated, should they be other than the airport authorities.

3.4.7 *Need to establish a National Independent Supervisory authority in every Member State*

3.4.8 A national aviation security committee has already been set up in every Member State, with an inter-ministerial structure.

3.4.9 As a governmental structure, the NASC secretariats cannot fully act as an independent supervisory authority, but we consider that – based on the professionalism and international reputation of their specialists and on the financial resources at their disposal – they can supervise in a neutral way that the provisions of the Directive are applied properly and efficiently.

**Conclusion:** establishing an independent supervisory authority is correct and necessary for the successful implementation of the provisions of the new directive. Despite their integration in governmental structures, the Committee considers that the NASC's secretariats can fulfil this role in a neutral and professional way, minimising the financial effort of the Member States to set up the new structures and to help them to become operational.

Brussels, 5 November 2009.

The President  
of the  
European Economic and Social Committee

Mario Sepi

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