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from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Proposal for a Directive of the European Parliament and of the Council on
Airport Charges

Delegations will find attached Commission document COM(2006) 820 final.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.1.2007
COM(2006) 820 final

2007/0013 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on airport charges

(presented by the Commission)

{SEC(2006) 1688}

{SEC(2006) 1689}

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **General context**

At present, pricing of airport infrastructure is regulated at national level through systems that are not always properly justified and the provision of information thereon can be inadequate. Users are not systematically consulted at all EU airports prior to the determination of charges or before the modification of a charging system. Airport users are not usually informed about future investments at airports and their necessity.

EU air carriers operate in a strongly cyclical economic environment with increased international competition and they are confronted with external challenges such as international health crises, volatile fuel prices and security concerns. The entire aviation supply chain should become as competitive as possible in order to ensure the continued competitiveness of the whole EU economy. Airport charges are an important link in this chain as they account for between 4% and 8% of the major EU air carriers' operational costs¹.

The majority of EU airports are still publicly owned and as a result the public authorities have an interest to maximize profits from airport operations. Yet, the number of privately owned EU airports is growing, and shareholders equally have an interest in the maximization of profitability and may press the public authorities thereon. Public authorities have an interest to facilitate charges increases at airports that are in the preparatory stages to privatisation so as to generate optimal revenues from the sale of an airport to private investors.

Reference is made to ICAO's 'Policies on charges for airports and air navigation services'². The recommendations therein recognise the need for the economic regulation of airports to include elements such as non-discrimination in the application of the charges, the ensuring of transparency and consultation, and the establishment and review of quality standards³. The present proposal gives heed to this policy guidance.

- **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 the 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

¹ Source: Association of European Airlines. Percentage influenced by other operational costs such as the price of jet fuel. Low cost air carriers claim a higher percentage for airport charges as part of their total costs.

² ICAO's policies on charges for airports and air navigation services, 7th Edition - 2004.

³ ICAO's policies on charges for airports and air navigation services, 7th Edition - 2004 , point 15.

traffic management by means of legislative measures creating the Single Sky.

The present proposal is part of a wider initiative that places the focus on airports and that seeks to promote efficient airport operations and the optimal use of scarce capacity.

The present initiative is in line with the main objective of the Lisbon agenda for the EU to remain a competitive economy targeting the dynamic sectors.

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 has been held on 7 April 2006, the Commission has consulted with all stakeholders in the air transport industry on the various possibilities to devise Community legislation on airport charges.

Bilateral contacts have also been engaged with some stakeholders in order to further exchange views.

Summary of responses and how they have been taken into account

The air carriers and the airports have understanding for the necessity for airport charges to be regulated at EU level but they have different views on how this should be done. The air carriers take the view that legislation is needed to ensure independent national regulation, that airport charges should be compliant with ICAO principles and reflect cost-efficiency, and that systematic consultation is necessary. Low cost carriers and airports see less need for Community legislation as increased competition from secondary airports has a downward effect on airport charges levels.

The present initiative seeks to strike a balance between the two main positions described above.

- **Collection and use of expertise**

Scientific/expertise domains concerned

A study has been carried out to provide a quantitative and qualitative analysis of the impact of this initiative, so as to evaluate the chosen approach. The study was performed by Ecorys.

Methodology used

The consultant executed a qualitative analysis of the impacts of the proposed options.

Main organisations/experts consulted

All major stakeholder organisations have been consulted as well as individual air carriers and individual airports in eighteen Member States. Transport users and consumers have also been consulted via their associations.

Summary of advice received and used

The existence of potentially serious risks with irreversible consequences has not been mentioned.

The main conclusions were that of the four contemplated policy options that 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 airport charges are being set and in the relationship between airports and air carriers.

Means used to make the expert advice publicly available

The executive summary of the study by Ecorys has been published on DG TREN's website⁴.

- **Impact assessment**

The Commission has carried out an impact assessment⁵.

The policy options that were considered are mentioned below. The first 'no EU action' option was used as a benchmark against which the other policy scenarios have been compared.

The second option contained the scenario in which the aviation industry actors develop and adopt voluntary EU wide self-regulatory measures to address the issues perceived by either party i.e. the air carriers and airports, incurred by 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 airport charges are determined at national level, reflect a number of common principles that airport operators would have to adhere to.

The last option concerned the introduction of a legal framework in the EU that would require that airport charges be determined and levied on the basis of one regulatory system that would apply across the EU in a uniform way, establishing a single method of calculation to be defined.

⁴ http://ec.europa.eu/transport/air_portal/index_en.htm

⁵ SEC(2006) 1688.

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 airport charges.

Non-discrimination :

Charging systems should not discriminate between carriers or passengers. Furthermore, differences in treatment should be related to the actual cost of the facilities and services provided.

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 charging system applicable at an airport not only when such system is modified but also when the levels of the respective 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 their determination.

Transparency :

The proposed Directive does not contain provisions on calculation methods for charges that should be applied in each Member State. The Commission acknowledges the large diversity of airport regulation existing in the various Member States but a reasonable amount of information must 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 way.

Quality standards :

Sub-standard quality of airline operations and airports' services disturbs the efficiency of the airport system especially in departure and transfer operations. Delays in embarking and the subsequent possibility of the loss of slots are, especially at airport rush hours, relatively severe consequences. Both players have an interest, therefore, to come to an agreement that may safeguard the quality of service at an airport. Either party should be given the possibility to seek the intervention of an independent regulatory authority when an agreement is not reached.

Differentiation of charges :

Charges are set on the basis of fixed criteria. This is different for the passenger charge which is related to the use of the terminal. At an airport, one terminal may differ from another and as a result the level and quality of service in the various terminals on offer may not be the same: the difference in quality, and age and degree of dilapidation, of a terminal itself may equally be a

point of distinction between the various levels of passenger charge to be paid by the airport users at one airport.

It is necessary to ensure that in principle all air carriers wishing to have access to the terminal or services at reduced costs and quality will have such access on a non-discriminatory basis.

Security charges :

The protection of air passengers and cargoes from acts of unlawful interference committed against air transport has been enhanced by Regulation (EC) No 2320/2002⁶ establishing common rules in the field of aviation security and a series of implementation Regulations which have laid down more specific measures for the implementation of common basic standards. The funding of security measures is not addressed by this legislation.

Four main mechanisms are currently being used to fund aviation security activities within Europe: funding by (1) aviation security taxes, (2) security surcharges or fees, (3) airport security charges and, to a lesser extent, (4) State grants and subsidies. As certain EU airports levy charges for security services, this subject should be within the remit of this Directive especially as significant differences in the way security costs are passed on, or not, to airport users between one airport and another can have a distortive effect on competition.

Regulatory authority :

A draft Directive that contains 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 Member States' level. 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 can not be sufficiently achieved by each Member State individually as airport charges systems and the determination of airport charges at individual airports are not regulated in a uniform way across the EU. Diverging charging systems continue to exist in the Member States. This situation hinders the existence of a true level playing field for airports and air carriers alike.

⁶ OJ L 355, 30.12.2002.

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 airport charges will ensure fair play between the aviation partners when defining the parameters for the use of airport infrastructure.

Diverging charging systems exist in the Member States. Not all systems include fundamental principles which are uniformly applied when airport charges are being determined and the underlying method for their calculation is devised. The proposed Directive will achieve such application.

The proposal is limited to the definition of a minimum of rules to be respected when Member States and/or airport operators determine the levels of airport charges. The proposed Directive does not impose a particular charging system. The discretion to define such a system remains with 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 the scope for a basic framework on airport charges to be set at national level unchanged and preserves the flexibility for airports to determine their charges. The Directive ensures that airport users will obtain a more visible justification of the 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 adjust their existing legislation to the Directive as far as their 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 airport charges as it will set clear but basic principles with regard to airport charges that have to be respected by airport operators when applying and levying their charges. The transposition of the Directive into national law of each Member States 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 airport charges

(Text with EEA relevance)

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 Commission⁷,

Having regard to the opinion of the European Economic and Social Committee⁸,

Having regard to the opinion of the Committee of the Regions⁹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹⁰,

Whereas:

- (1) The main task and commercial activity of airports is to ensure the handling of aircraft, from landing to take-off, and of passengers and cargo, so as to enable air carriers to provide their air transport services. For this purpose, airports offer a number of facilities and services related to the operation of aircraft and the processing of passengers and cargo, the cost of which they generally recover through airport charges.
- (2) It is necessary to establish a common framework regulating the essential features of airport charges and the way they are set, as in the absence of such framework, basic requirements in the relation between airport managing bodies and airport users may not be respected.
- (3) This Directive should apply to airports located in the Community territory that are above a minimum size, as the management and the funding of small airports do not call for the application of a Community framework.
- (4) The collection of charges with respect to the provision of Air navigation services and groundhandling services has already been addressed by Commission Regulation (EC)

⁷ OJ C, p

⁸ OJ C, p

⁹ OJ C, p

¹⁰ OJ C, p

No 1794/2006 of 6 December 2006 and Council Directive 96/67/EC of 15 October 1996, respectively.

- (5) Airport charges should be non-discriminatory. A compulsory procedure for regular consultation between airport managing bodies and airport users should be put in place with the possibility for either party to have recourse to an independent regulatory authority whenever a decision on airport charges or the modification of the charging system is contested by airport users.
- (6) An independent regulatory authority should be established in every Member State so as to ensure the impartiality of its decisions and 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 financial means for the performance of its tasks.
- (7) It is vital for airport users to obtain from the airport managing body, on a regular basis, information on how and on what basis the airport charges are calculated. Such transparency will provide air carriers with an insight into the costs incurred by the airport and the productivity of an airport's 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.
- (8) Airports should inform airport users about major infrastructure projects as these have significant impact on the level of airport charges. Such information shall be provided in order to make monitoring of costs of infrastructure possible and with the view to providing suitable and cost-effective facilities at the airport concerned.
- (9) Due to the emergence of air carriers operating air services at low costs, airports served by these carriers should be enabled to apply charges corresponding to the infrastructure and/or the level of service provided as air carriers have a legitimate interest to require services from an airport that correspond with the price/quality ratio. However, access to such reduced level of infrastructure or services should be open to all carriers that wish to avail of them on a non-discriminatory basis. In case demand exceeds supply, access must be determined on the basis of objective and non-discriminatory criteria to be developed by an airport managing body.
- (10) 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 security costs at Community airports where the costs of security are reflected in the airport 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.
- (11) Airport users should be entitled to a minimum level of service in return for the charges they pay. To ensure this, the service level should be the subject of agreement between the airport managing body and the association(s) representing the airport users at the airport, to be concluded at regular intervals.
- (12) This Directive is without prejudice to the application of the provisions of the Treaty, in particular Articles 81 to 89 thereof.

- (13) Since the objectives of the action taken cannot be sufficiently achieved by the Member States as airport charges systems cannot be put in place at their level in a uniform way 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 the 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 airport charges at Community airports.
2. This Directive applies to any airport located in a territory subject to the provisions of the Treaty and open to commercial traffic whose annual traffic is over 1 million passenger movements or 25 000 tonnes of cargo.

This Directive shall not apply to the charges collected for the remuneration of en-route and terminal air navigation services in accordance with Commission Regulation (EC) 1794/2006 laying down a common charging scheme for air navigation services¹¹, or to the charges collected for the remuneration of groundhandling services referred to in the Annex of Council Directive 96/67/EC on access to the groundhandling market at Community airports¹².

This Directive is without prejudice to the right of each Member State to apply additional regulatory measures that are not incompatible with this Directive or other relevant provisions of Community law with regard to any airport managing body established in its territory. This may include in particular the approval of charging systems and/or the level of charges based on competition law.

Article 2

Definitions

For the purposes of this Directive

- (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;

¹¹ Commission Regulation (EC) No 1794/2006 of 6 December 2006 – OJ L 341, 7.12.2006.

¹² Council Directive 96/67/EC of 15 October 1996 - OJ L 272, 25.10.1996.

- (b) ‘airport managing body’ means a body which, in conjunction with other activities or not as the case may be, has as its objective under national laws or regulations the administration and management of the airport infrastructures and the co-ordination 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) ‘airport charge’ means a levy collected for the benefit of the airport managing body and paid by the airport users and/or air passengers with a view to recovering all or part of the cost of facilities and services which are exclusively provided by the airport management body and which are related to landing, take-off, lighting and parking of aircraft, and processing of passengers and freight;
- (e) ‘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 airport charges do not discriminate among airport users or air passengers.

Article 4

Consultation and remedy

1. Member States shall ensure that at each airport a compulsory and regular procedure for consultation between the airport management body and airport users or representatives of airport users is established with respect to the operation of the system of airport charges and the level of such charges. Such consultation shall take place at least once a year.
2. Member States shall ensure that, wherever possible, changes to the airport charges system or to the level of charges are made in agreement between the airport managing body and the airport users. To that end, the airport managing body shall submit any proposal to modify the airport charges system or the level of airport charges to the airport users no later than 4 months before they enter into force, together with the reasons for the proposed changes. At the request of any airport user, the airport managing body shall hold consultations on the proposed changes with the airport users and take their views into account before the final decision is taken. The airport managing body shall publish its final decision no later than 2 months before it enters into force. The airport managing body shall justify its decision with regard to the views of the airport users in the event no agreement on the proposed changes is reached between the airport managing body and the airport users.

3. Member States shall ensure that in the event of a disagreement over a decision on airport charges, either party may seek the intervention of the independent regulatory authority which shall examine the justifications for the modification of the airport charges system or the level of airport charges.

Article 5

Transparency

1. Member States shall ensure that the airport managing body provides each airport user, or 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 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 charge levied;
 - (b) the method of calculation of charges;
 - (c) the overall cost structure of the airport;
 - (d) the revenue and cost of each category of charges collected at the airport;
 - (e) the total number of staff deployed to services which give rise to the collection of the charges;
 - (f) forecasts of the situation at the airport as regards the charges, traffic growth and any proposed investments;
 - (g) the actual use of airport infrastructure and equipment over a given period;
 - (h) the productivity of the investments in terms of their effects on the airport capacity and the quality of services provided.
2. Member States shall ensure that airport users submit information to the management body on a regular basis, 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.
3. The information provided on the basis of this article shall be considered as confidential and handled accordingly.

Article 6

New infrastructure

Member States shall ensure that the airport managing body consults with airport users before plans for new infrastructure projects are finalised.

Article 7

Quality standards

1. In order to ensure smooth and efficient operations at an airport, Member States shall ensure that the airport managing body and the association or associations representing airport users at the airport enter into negotiations with a view to concluding a service level agreement with regard to the quality of service provided at the airport terminal or terminals, and the exactitude and timeliness of information provided by airport users on their projected operations referred to in Article 5(2), to allow the airport to fulfil its obligations. Such agreement shall be concluded at least once every two years and be notified to the independent regulatory authority of each Member State.
2. Member States shall ensure that, in the event no agreement on service levels is reached, either party may seek intervention of the independent regulatory authority.

Article 8

Differentiation of charges

1. Member States shall take the necessary measures to allow the airport managing body to vary the quality and scope of particular airport services, terminals or parts of terminals, with the aim to provide tailored services or a dedicated terminal or part of a terminal. The level of airport charges may be differentiated according to the quality and scope of such services.
2. Member States shall ensure that any airport user wishing to use the tailored services or dedicated terminal or part of a terminal, shall have access to these services and terminal or part of terminal.

In the case that more users wish to have access to the tailored services and/or a dedicated terminal or part of terminal than it is possible due to capacity constraints, access shall be determined on the basis of relevant, objective, transparent and non-discriminatory criteria.

Article 9

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 10

Independent regulatory authority

1. Member States shall nominate or establish an independent body as their national independent regulatory authority in order to ensure the correct application of the measures taken to comply with this Directive and to assume the tasks assigned under Articles 4 and 7. Such body may be the same as the entity entrusted by a Member State with the application of the additional regulatory measures referred to in Article 1(2), including with the approval of the charging system and/or the level of charges, provided that it meets the requirements of paragraph 2.
2. Member States shall guarantee the independence of the independent regulatory 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 regulatory authority exercises its powers impartially and transparently.
3. Member States shall notify to the Commission of the name and address of the independent regulatory authority, their assigned tasks and responsibilities, and of the measures taken to ensure compliance with paragraph 2.
4. Whenever an airport managing body or an airport user has a complaint with regard to any matter within the scope of this Directive, it may refer the complaint to the independent regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. The independent regulatory authority shall have the right to request the necessary information from the parties for the decision. The decisions of the regulatory authority shall have binding effect.
5. The independent regulatory authority shall publish an annual report concerning its activities.

Article 11

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, when appropriate, any suitable proposal.
2. Member States and the Commission shall cooperate in the application of this Directive, particularly as regards the collection of information for the report mentioned in paragraph 1.

Article 12

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to conform to this Directive not later than 18 months from the date of its publication in the *Official Journal of the European Union*. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication.

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

Article 13

Entry into force

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

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President