



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 17 February 2010**

---

---

**Interinstitutional File:  
2009/0063 (COD)**

---

---

**6439/10**

**LIMITE**

**AVIATION 15  
CODEC 113**

**PROGRESS REPORT**

---

from: The Presidency

to: COREPER/Council

---

No. prev. doc.: 5795/10 AVIATION 8 CODEC 67

No. Cion prop.: 9864/09 AVIATION 74 CODEC 722

---

Subject: ***Preparation of the Council meeting (Transport, Telecommunications and Energy) on 11 - 12 March 2010***  
Proposal for a Directive of the European Parliament and of the Council on aviation security charges  
- *Progress report*

---

***Introduction***

1. On 14 May 2009, the Commission submitted the above mentioned proposal. Its objective is to ensure that the aviation security charges are set and levied in a way which ensures non-discrimination and transparency, provides sufficient possibility for consultation with respect to the level of the security charges and ensures that these charges are directly related to the cost of providing aviation security. Furthermore, in order to ensure correct application of the Directive, the establishment of an independent supervisory authority in each Member State is foreseen in the Directive.

## *Discussions within the Council bodies*

2. The issue of the financing of aviation security has been a source of differences between the European Parliament and the Council during previous negotiations concerning the framework Regulation (EC) No 300/2008 on common rules in the field of civil aviation security. During the final negotiations between the Council and the European Parliament regarding this Regulation, the European Parliament requested the Commission to submit, in due time, a proposal on aviation security charges. However, in light of the recent adoption of Directive 2009/12 on airport charges, several Member States expressed their doubts about the need for a specific proposal on aviation security charges.
3. The Working Party on Aviation started the examination of the above proposal in July 2009, under the Swedish Presidency. Since the beginning, the discussion was quite difficult and revealed different views among Member States on main aspects of the proposal. Some Member States expressed doubts on the usefulness of this proposal, given in particular the recent adoption of Directive 2009/12 on airport charges, whilst other underlined the importance to allow their national systems dealing with aviation security charges to be retained. Other delegations could accept a specific proposal on security charges but would prefer to extensively align the text of this Directive with the Directive 2009/12 on airport charges.
4. The Swedish Presidency submitted a progress report to the TTE Council, on 17 December 2009, explaining in detail the major objections presented by delegations to the Commission proposal.

5. The Spanish Presidency pursued the examination of this proposal at the Aviation Working Party on 22 January 2010. However, although the Spanish Presidency introduced further compromise solutions, specially with regard to the scope of the Directive where it suggested a threshold of two million passenger movements instead of five million (Article 1(2)), the main outstanding issues could not be solved. From this discussion it was clear that a majority of delegations could not support the Presidency compromise proposal. In this light, the Spanish Presidency decided to wait for the vote by the European Parliament at first reading, foreseen to take place in April 2010, and submit a progress report to the TTE Council on 11/12 March 2010.

### *Main outstanding issues*

- **Scope (Article 1)**

The Commission initially proposed that the Directive should apply to any airport located in the territory of the EU Member States. However, several Member States expressed certain concerns on the scope proposed by the Commission criticising, in particular, the fact that it was too broad and that it would create a heavy administrative burden for Member States, especially when it comes to smaller airports.

The Swedish Presidency had therefore suggested a compromise solution restricting the scope only to airports open to commercial traffic whose annual traffic is over five million passenger movements. This compromise solution received the support of a clear majority of delegations. However, some Member States would prefer the broader scope the Commission has proposed, i.e. including all commercial airports without any limitation in the number of passenger movements. In addition, some Member States expressed their flexibility for a possible lower threshold. Moreover, the Commission expressed a strong concern on the above compromise solution, which it considered being too restrictive and not bringing any added value. The Commission advocated a broader scope which would better establish a level playing field whilst including a higher number of airports in the Member States.

In the light of the above, the Spanish Presidency, whilst pursuing the examination of the proposed Directive and based on the agreed solution of Council Directive 96/67/EC, on access to the ground handling market at Community airports, suggested a compromise solution setting the threshold to two million passenger movements. The new threshold could, however, not be accepted by a majority of delegations who indicated they would prefer to keep the threshold of five million passenger movements.

Finally, some delegations also wished to ensure, by adding a paragraph to this article, that the proposed Directive should not apply to the charges collected for the funding of security measures as part of airport charges already addressed in Directive 2009/12.

- **Impact assessment (Article 6)**

The Commission proposal foresees an obligation for Member States, before adopting more stringent measures pursuant to Article 6 of Regulation (EC) No 300/2008, to undertake an impact assessment with regard to the effects on the level of security charges. Furthermore, the Member States would be obliged to inform the Commission and consult airport users about the outcome of the impact assessments.

The compromise text, as discussed in the Aviation Working Party, slightly modifies the Commission proposal by stipulating that, for any modification to the structure or level of security charges in relation to more stringent measures pursuant to Article 6 of Regulation (EC) No 300/2008, Member States shall ensure that an impact assessment is undertaken with regard to the effects of the costs of those more stringent measures on the level of security charges. In addition, it was considered sufficient that the airport users be informed about the outcome of the impact assessments instead of consulted.

Despite the long discussion on this article, a number of delegations expressed a concern which, according to them, would create an ambiguity in relation to the application of Article 6 of Regulation (EC) No 300/2008. It was also argued that the issue of impact assessment is already dealt with in Article 6 of Regulation (EC) No 300/2008 which lays down a requirement for Member States to do risk assessments if they introduce more stringent measures. The Commission, however, considers that the impact assessment in Article 6 of this Directive is focussed on the effects of the costs of those more stringent security measures and, thus, does not interfere with Regulation (EC) No 300/2008.

- **Cost-relatedness of security charges (Article 7)**

The Commission proposal foresees that security charges shall be used exclusively to meet security costs. Furthermore, some criteria were introduced which Member States shall take into account when determining the costs of aviation security.

Following the discussion at the Aviation Working Party, it was suggested to add to the Commission proposal that the calculation of security charges should be based on objective criteria, deriving from those laid down in the relevant ICAO documents, such as the number of passengers, aircraft weight or a combination of these or other relevant factors. Furthermore, the compromise text lays down that the total revenue from security charges at an airport, airport network or group of airports shall not be higher than the total costs of aviation security for that airport, airport network or group of airports. These costs shall be determined using the relevant principles of accounting and evaluation generally accepted in each of the Member States. The Spanish Presidency suggested to add "...and based on verifiable empirical data", which was accepted by the vast majority of delegations.

However, according to some delegations, this article is generally conflicting with the application of Article 5 of Regulation (EC) 300/2008. These delegations could only accept to use the exact wording of Article 5 of Regulation (EC) 300/2008 and a reference to ICAO principles in a recital. Otherwise, according to these delegations, Article 7 should be deleted.

Other delegations would prefer to be more specific in setting the list of criteria which Member States will have to take into account when determining the costs of aviation security by including additional elements based on ICAO recommendations.

- **Independent supervisory authority (Article 8)**

The Commission proposed that 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. Moreover, Member States should ensure, in respect of disagreements with regard to security charges, that measures were taken to:

- establish a procedure for resolving disagreements between the airport managing body and the airport users;
- 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
- determine the criteria against which disagreements will be assessed for resolution.

These procedures, conditions and criteria should be non-discriminatory, transparent and objective.

Given the fact that some Member States have different procedures under national law to determine and approve the structure or the level of security charges, it was suggested to include an additional paragraph (6) stipulating that Member States might decide not to apply the provisions of this Article. However, this was under the condition that any decision on the setting of security charges might be appealed in a non-discriminatory, transparent and objective way, without prejudice to parliamentary prerogative, and provided that the Member State would otherwise ensure the application of the Directive.

The above exemption raised concerns expressed by some Member States since it would, according to them, create different rules in the Member States resulting in an unbalanced level playing field. In addition, some delegations would prefer to extensively align the text of Article 8 with Directive 2009/12. Some delegations also indicated that they would prefer provisions less mandatory in this article.

### ***Conclusion***

Following the above, Coreper is invited to take note of this progress report and to invite the TTE Council, at its meeting on 11/12 March 2010, to examine it and, if appropriate, to give additional guidance to the work of the Council preparatory bodies.

---