ACI EUROPE POSITION on THE PROPOSAL FOR A DIRECTIVE ON SECURITY CHARGES (COM (2009) 217)

June 2009

ACI EUROPE noted the publication of the Proposal for a Directive on aviation security charges (COM (2009) 217) and welcomes the renewed focus of the European institutions on the important issue of aviation security and its financing.

A high level of aviation security remains a key priority for European airports. Currently, security costs for aviation account for up to 35% of total operating costs at European airports, with an average of 41% of total airport staff employed in security-related areas.

However, ACI EUROPE believes that the draft Directive fails to address the most urgent problems, for airports and airlines alike, in the area of aviation security. In its current form, **the draft Directive does not solve the long-standing problem of inadequate public financing of aviation security and, in particular, national security measures going beyond EU requirements**. In this respect it is important to recall that modern constitutional law sees the provision of security as one of the core functions of the State. The proposed Directive rightly recognises the principle that aviation security at European airports is essentially a state responsibility. Therefore, the draft Directive must clearly account for a consistent public financing of aviation security, in particular if policy measures such as the relaxation of restrictions on liquids are to be successfully implemented in a timely manner.

Instead, the draft Directive imposes additional administrative burdens on airports, without taking into account the compromise reached between the European institutions on the recently adopted EU Directive on Airport Charges. Moreover, the draft Directive does not consider the different responsibilities in the area of aviation security in EU Member States and the fact that security charges can also be set/levied by Public Authorities and not by airports. In such instances, airports should bear no responsibility for the obligations laid down in the draft Directive. In its current form the draft Directive would create conflicts with existing regulatory systems in different EU Member States and may hamper the ability of European airports to recover the costs incurred for the provision of aviation security.

Against this background, ACI EUROPE is calling on the European Parliament and EU Member States to ensure that the draft Directive is aligned with the existing EU Directive on Airport Charges, in particular with regards to the scope, transparency requirements and airport networks, and accounts for an adequate public funding of security measures.

We have outlined our initial assessment of the key provisions of the proposal in more detail below.

Art. 1 - Scope of the Directive

The draft Directive states that all airports, independent of their size, fall under the scope of the Directive. However, the recently adopted EU Airport Charges Directive only covers airports with more than 5 million passengers and/or the biggest airport in each EU Member State.

There is no justification for the application of the Directive on security charges to airports below 5 million passengers. Therefore, in order to avoid unnecessary additional administrative burdens for smaller airports, the scope of the draft Directive should be aligned with the provisions of the EU Airport Charges Directive.

Art. 3 & 4 - Non-discrimination & Consultation

ACI EUROPE welcomes the principles of non-discrimination and consultation with users. The consultation with airport users on security charges is already part of existing regulatory systems in several EU Member States.

However, it is important to note that airports often have little or no ability to adjust the cost and level of security provided, given the fast-changing and often capital-intensive regulatory requirements. Therefore, security charges cannot be deemed to be amenable to negotiation with the airport as other charges might be.

Against this background, any disagreement over the security charge cannot be permitted to halt the recovery of costs of mandatory security measures. Likewise, if additional security measures are introduced by the EU or a Member State within a regulatory period, the airport must be allowed to recover those costs in a timely manner.

In addition, as does the EU Airport Charges Directive, the draft Directive on Security Charges should recognise existing multi-annual agreements with users and clearly account for the possibility to differentiate charges, based on the principle of non-discrimination (e.g. transfer passengers; fast-track security).

It should also be noted that in some countries security charges or part of them are also levied by the Public authorities and **not** by the airport. In these cases, it should be clarified that the airport bears no responsibility for the consultation on charges levied by Public authorities. Instead, the consultation and all other obligations laid out in the draft Directive should be applied to the security charge levied by a Member State **under its sole responsibility**. Airports, airlines and other stakeholders should have the necessary information on the components serving as a base for the determination of the level of security charges levied by the State in order to create a level playing field for European airports.

Art. 5 - Transparency

ACI EUROPE fully supports the principle of transparency in the setting of airport charges.

However, the level of information to be provided by the airports under the draft Directive is not proportional. There is, for example, no justification to provide information for "the revenue and costs of **each category** of security charges levied at the airport". This level of detail would lead to a high administrative burden for airports, with no clear benefit for airport users. Therefore, the provisions on transparency should be aligned with the EU Airport Charges Directive, i.e. the need to provide the revenue of security charges as well as the **total** cost of the services covered by security charges.

ACI EUROPE would also like to point out that the key rationale of this proposed Directive must be to ensure that the economic outcome is in the best interest of the end consumer, the passenger. It follows that the real focus of the proposed transparency measures should also be the passenger. It is therefore essential to ensure that all aviation stakeholders, including airlines, are covered within the scope of the proposed regulatory act, especially with regard to transparency and information to passengers related to security fees.

Indeed, passengers should be fully informed about the various charges and taxes paid for any particular routing of their choice. We remain concerned about the continued lack of transparency of additional charges levied by air carriers on flight tickets (*e.g.,* airline security charges, fuel surcharges). We feel strongly that the principle of cost-relatedness should also apply to these airline surcharges.

Art. 6 - Impact Assessments

ACI EUROPE welcomes the proposal that Member States shall be obliged to undertake impact assessments of new and existing more stringent measures with regard to the effect on the level of security charges. It is important to ensure an evaluation of the cost implications of additional measures proposed as well as an explicit assessment showing that the benefits of the development are sufficient to warrant such investment. This is to ensure that any increase in costs resulting from technology changes is exceeded by the additional security benefits the new technology brings.

However, it is neither understandable nor acceptable that only airport users shall be consulted on the outcome of these impact assessments according to Art. 6 (2). Airports need to be informed in a timely manner about the impact of more stringent national measures.

In addition, ACI EUROPE firmly believes that the same obligation to undertake impact assessments with regard to the effect on costs and the level of security charges should apply prior to the adoption of all new or amended measures in EU legislation.

Art. 8 – Independent Supervisory Authority

In federal systems, it is essential to have the possibility to delegate the powers of the national supervisory authority to regional authorities in charge of the economic regulation of airports. Accordingly, in alignment with the EU Airport Charges Directive, the draft Security Charges Directive must allow for the delegation of supervisory powers to regional authorities.

In addition, if security charges are approved by the supervisory authority under a mandatory procedure, Member States should have the possibility not to apply the provisions on dispute settlement (Art. 8 (4)), as already foreseen in the EU Airport Charges Directive.

New article to be inserted - Airport networks and common charging systems

ACI EUROPE is very concerned by the non-recognition of airport networks and airport systems serving the same city or conurbation with common charging systems in the draft Directive. Airport networks have been established by several Member States (e.g. Spain, Portugal, Greece, Sweden, Finland and Norway) within the framework of their national transport policy with the objective to provide access to the air transportation network at a fair and reasonable cost and to ensure regional development. They need to be in a position to apply a common charging system for security charges by supporting smaller airports in remote regions.

In addition, airport systems serving the same city or conurbation must be enabled to apply a common charging system for security charges for reasons of traffic distribution.

Therefore, the draft EU Directive on Security Charges should be aligned with Articles 4 and 5 of the EU Directive on Airport Charges in order to recognise airport networks and airport systems serving the same city or conurbation.

Operational Issues impacting on the financing of aviation security

Finally, a number of **essential operational issues** were not taken into full consideration when drafting the proposed Directive. The current aviation security developments evolve at a very fast pace and typically have significant financial as well as operational implications for a large number of airports.

For instance, the current regulatory requirement to separate the arriving and departing third country/EU and Schengen/non-Schengen passenger flows had a very important impact on our airports' operations (in some cases involving the construction of a new part of a terminal) but also significant financial implications at a very difficult time for our members. Future developments in the area of Liquids, Aerosols and Gels are likely to come at a very high cost for European airports.

Without an appropriate level of public financing made available to our members, the required operational changes may have to be delayed, especially under current economic conditions, as private funds may simply not be available. The current proposal fails to address public financing needs in a meaningful way.

Ensuring an adequate level of public financing for aviation security for airports across the European Union will also have an important impact in speeding up the enactment of a one-stop security space within the European Union. This can only happen if substantial investments are made on a large scale in technologically advanced, standardized and integrated generations of security equipment.

Brussels, June 2009

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ACI EUROPE is the European region of Airports Council International, the only worldwide professional association of airport operators. ACI EUROPE represents over 400 airports in 46 European countries. Member airports handle 90% of commercial air traffic in Europe, welcoming nearly 1.5 billion passengers each year.