

UK Government response to a consultation on the European Commission's proposed Aviation Security Charges Directive

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Background

On 21 July 2009, the Department for Transport launched a consultation on the European Commission's proposed Aviation Security Charges directive. The primary purpose of the consultation was to help inform the UK's negotiating position during working groups of the Council of the European Union held in the Autumn of 2009.

The consultation documents were issued to aviation stakeholders including airports, airlines and certain representative bodies of the aviation industry. The documents were also published on the Department for Transport (DfT) website (<http://www.dft.gov.uk/consultations/closed/aviation-security-charges/>) and the deadline for responses was 25 September 2009.

A total of 23 responses to the consultation were received:

- 8 from airports
- 5 from airlines
- 6 from representative organisations
- 1 from a passenger body, 1 from a Regulator and
- 2 from private individuals.

A detailed list of those who responded is at Annex A. We are very grateful to respondents for taking the time to provide a response and furnishing detailed comments.

This document summarises the responses and provides the Government's comments. It should be read alongside the Commission's published proposal and the UK's initial impact assessment both of which are available on the DfT website.

The following sections provide a detailed response to the consultation setting out the 20 questions asked, the broad response to each, key individual points of response and then the Government's comments.

Questions in the consultation paper

Q1 Do you think the Commission's proposal to regulate security charges is well targeted and proportionate to the problems identified?

Yes = 4 No = 15

Broad Response to Q1

The majority of respondents, particularly airports, do not see the need for a separate Security Charges Directive although, if there was to be one, they suggest that it should be closely aligned with the Airport Charges Directive (ACD) to avoid any extra regulatory burdens. The airlines were generally supportive although disappointed that it didn't address the financing of aviation security costs.

Individual points in response to Q1

- The Directive should be more closely aligned with the ACD (airports)
- The Directive does not address the possibility of the State financing aviation security measures (airlines)
- Current arrangements in the UK already satisfy the aims outlined by the Commission (airports)
- Concern about increasing administrative burdens particularly for small airports (airports)
- A separate proposal for security charges risks duplicating the process without a clear justification for its need (regulator)

Government response to Q1

We are concerned that the proposed directive differs from the ACD in the areas of scope, cost relatedness, consultation and in the role of the Independent Supervisory Body. We would prefer the proposed directive to only apply to airports with 5 million + passenger movements per annum to avoid additional regulatory burdens for small airports and align with the ACD. Airports and users should also be free to agree multi-annual agreements and there should be a suitable appeals procedure possibly along the lines of the ACD. With regards to State financing, the Government views aviation security charges as just one of the many costs of doing business and there should be no obligation on any Member State to increase public expenditure in this area – the user should continue to pay.

Q2 What do you see would be the main benefits / disbenefits for passengers of this proposal?

Broad Response to Q2

The main benefit foreseen by respondents was that greater transparency and consultation on security costs could lead to more efficient solutions for security issues and ultimately passengers benefiting from a reduction in fares. The requirement to carry out an Impact Assessment for any new and existing More Stringent Measures (MSMs) was welcomed by a number of respondents. The possibility of a level playing field across Europe was welcomed together with the requirement for cost relatedness.

A number of respondents could see little benefit for the UK as the industry is already controlled by a system of economic regulation or market-forces/competition. It was also felt that there would be administrative burdens associated with the proposed directive which may not be immediately obvious. Member States should be allowed to respond to a heightened threat by immediately introducing new security requirements without being constrained by the need to carry out an Impact Assessment first.

Individual points in response to Q2

- Welcome Impact Assessments for new and existing security measures (all)
- Has the potential to minimise costs for airlines as a result of greater transparency (airlines)
- Recent review of economic regulation in the UK and the competitive market in the UK make it unlikely that this Directive will lead to a reduction in costs (airports)
- Proposals do not ensure that passengers will have greater visibility of security costs (representative organisation/regulator)

Government response to Q2

While we do not consider that the proposed Directive will have a significant effect on charges levied by UK airports, there could be potential benefits for UK airlines operating out of other EU airports and consequently UK passengers. For example the proposal could bring greater visibility of charges, especially in countries which are less market-based or have limited regulation, which may help to drive down costs but how tangible or real any benefits are to the end user (i.e passengers) is still not clear. The UK will work towards achieving a fair and proportionate outcome that balances the interests of passengers and airports.

Our principal security concern is to ensure that we have the ability to put in place MSMs to counter a heightened threat, without the need to carry out an initial Impact Assessment first. We are, however, committed to carrying out Impact Assessments for MSMs, but in some instances the assessments might have to be undertaken after introducing MSMs. We are also concerned about the potential regulatory burdens placed on small airports as a consequence of this proposed directive.

Q3 Do you think that the proposed directive is well-aligned with the provisions in the Airport Charges Directive? If not, how could it be better aligned to minimise burdens and maximise benefits for the UK aviation sector?

Yes = 3 No = 12

Broad Response to Q3

The majority of respondents were of the opinion that the proposed Directive was not well aligned with the ACD and that closer alignment would minimise burdens.

Individual points in response to Q3

- There are differences in scope, transparency, cost relatedness and consultation (all)
- On scope, align with the ACD and only cover airports above 5 million passenger movements (airports)
- On consultation, allow agreements lasting more than one year (airport)
- Include a dispute resolution process for users as set out in the ACD (airports/airlines)
- ACD arguably covers security charges so separate proposal not warranted (regulator)

Government response to Q3

We are concerned that the proposed directive does not align with the ACD in a number of key areas. As indicated in response to Q1 above these are in the areas of scope, cost relatedness, consultation and in the role of the Independent Supervisory Body. We would prefer the directive to only apply to airports with 5 million + passenger movements per annum to avoid additional regulatory burdens for small airports. On cost-relatedness we believe this Directive should preferably align with the ACD and only include cost-relatedness as a recital in the Directive. Member States should also be able to introduce MSMs in response to a heightened threat without the need to carry out an Impact Assessment first. Airports and users should also be free to agree multi-annual agreements. It would also help if the Directive could recognize that, where there are systems in place which already achieve the aims of the Directive, Member States should have the option of not applying elements of this proposed Directive.

Q4. Do you have any comments on the European Commission's Impact Assessment of the proposal?

Broad Response to Q4

There was a general consensus amongst respondents that the Commission has underplayed the administrative burden, in particular for smaller and regional airports, as regulation tends to increase costs rather than reduce them. A significant number of respondents questioned the basis, i.e. a small sample in one country, for the claim that costs could be reduced by 10%. The Impact Assessment did not address the fact that different market conditions apply across the EU and that the UK operates in a generally competitive market.

Individual points in response to Q4

- Some of the airlines favour option 4 –full State financing (airlines)
- A number of airports questioned the conclusions of the Impact Assessment as they were based on information from four airports in one Member State (airports)
- Many airports consider the 10% cost saving to be an over estimate (airports/representative organisation/regulator)
- Impact Assessments do not give sufficient weight to compliance costs that airports will incur to comply with the proposed Directive (airport)
- At the regulated airports in the UK, the benefits suggested by the Commission will already have been secured for users (airport)

- A few respondents disagreed with the assertion that long term contracts between airports and airlines were discriminatory (airports)
- Requirement to be cost related does not fit well with the generally competitive market operating in the UK (regulator)

Government response to Q4

The Commission's IA states that the UK has "no particular mechanism that ensures transparency or cost-relatedness". While there is no mandated transparency for security charging in the UK, many airports do levy a separate security charge at a published rate. As the UK airport market is largely privatised we believe that competition between private companies is a better way than regulation to exert downward pressure on prices for the benefit of consumers. However, in the absence of competition, regulation may be necessary and the Civil Aviation Authority performs this role in the UK for Heathrow, Gatwick and Stansted airports. We do not believe that the imposition of the proposed Directive will bring about a reduction of costs as indicated in the IA.

Q5. Airport operators – do you currently separately identify security costs from other elements of your charges to users? If not, why not? How easily could you do so? How would the proposed Directive impact on your business?

Yes = 2 No = 5

Broad Response to Q5

A number of airports do already separate out security costs and a number can identify these charges amongst an overall charge. However, most respondents felt that to separately identify security costs was likely to prove complicated and ultimately fruitless as most airlines were only interested in the overall charge.

Individual points in response to Q5

- Airlines are mainly interested in a single, per passenger charge for all airport services (airports)
- It would be more administration for no end product (airport)
- Directive would add one-off and ongoing administration costs to comply with the objectives of the Directive, including transparency and consultation. These costs would be greater at airports not included in the ACD (airport body)

Government response to Q5

We do not believe this would be a burden on larger airports but, for those smaller airports that do not currently separate out security charges from general airport charges, there could be an additional burden. In some airports it will probably be extremely difficult to separately identify security costs, e.g where staff multi-task, where equipment or floor space is shared with Customs, Police or Immigration staff.

Q6. Airlines – What do you think the effect of the proposals will be on the charges you pay at other EU airports? Will the proposed requirements generate any new cost burdens for you?

Yes = 3 No = 1

Broad Response to Q6

Of the few responses received on this topic most airlines expected charges to rise as a result of the costs of administering the proposed directive.

Individual points in response to Q6

- While expecting charges to rise there will be the opportunity for airline and passenger representatives to suggest more efficient alternatives (airline)
- Concern that increase in costs will not be applied in a uniform manner across Member States (airline)

Government response to Q6

While the proposed Directive may have the potential for costs to be lower for airlines (see response to Q2) we are doubtful that the proposed Directive will bring tangible benefits to airports or passengers in the UK.

Q7. Subject Matter (Article 1): Do you agree that this Directive should apply to all airports in the EU for security or other reasons? If not, can you suggest an appropriate threshold for those airports that should be covered by the legislation?

Yes = 4 No = 14

Broad Response to Q7

The majority of respondents did not agree that it should apply to all EU airports and most suggested that the scope should align with the ACD, i.e. airports with 5 million passenger movements per annum or more. A minority welcomed wider coverage to ensure a level playing field across the EU.

Individual points in response to Q7

- The threshold used in the Airport Charges Directive should apply (almost all)
- Applying the Directive across all airports would not impose any disproportionate burdens (airline)
- Given the competitive nature of aviation in the UK, a limit of 10 million passengers per annum may be more appropriate (airports)
- A wider scope could create unnecessary burdens for airports and airlines operating at those airports (regulator)

Government response to Q7

We do not believe that this proposed Directive should be applied to all commercial airports. We would prefer the proposed Directive to only apply to airports with 5 million + passenger movements per annum in line with the ACD and in order to avoid additional regulatory burdens for small airports.

Q8. Definitions (Article 2): Do you agree with the definition of security charge? If not, please suggest changes or alternative definitions.

Yes = 6 No = 11

Broad Response to Q8

A minority were content with the definition as it currently stands but the majority would like a change. Among the suggestions were that it should be clearer, i.e. would it cover policing costs? Some suggested it should only cover those costs which can be directly controlled, while others suggested an agreed schedule of costs which could be aligned with the differing definitions applied across all Member States.

Individual points in response to Q8

- Not clear whether airport policing costs are included in the security charges definition (airlines/airports/regulator)
- Alternative wording suggested 'A levy which is specifically set at a level in order to recover all or part of the cost of security measures intended to protect civil aviation against acts of unlawful interference' (airline)
- Those elements of security provided on a fully competitive basis should be excluded from this Directive (airport)
- A broader definition is needed to cover costs associated with protecting the public in accordance with anti-terrorism law (airport)
- Seek to identify a schedule of costs that should be included, together with an appropriate cost allocation methodology (airport)
- The charge needs to include the cost for the protection of airport infrastructure (representative organisation)

Government response to Q8

There needs to be a clear understanding of what is covered by the proposal's definition of security charges to ensure that there is a level playing field across all Member States. In this respect there is a need to clarify those policing costs which should be covered by this proposed Directive.

Q9. Definitions (Article 2): Do you have any other comments about the definitions in the proposed Directive?

Broad Response to Q9

A few respondents suggested changes to the definition for Airport User and airport managing body, and to include definitions for aviation security, airport and passenger.

Individual points in response to Q9

- Replace 'airport user' with 'commercial air transport operator' to be consistent with ICAO guidance (airline)
- Whether airport user covers corporate and general aviation (airport)
- Not clear whether the proposals would apply to military aerodromes (regulator)

Government response to Q9

We have no major concerns but, as the airport managing body is not always the body setting security charges across the EU, we believe this definition should be widened to include any other bodies which have a responsibility for setting the level or structure of security charges.

Q10. Non-discrimination (Article 3):

Do you agree with the principle of non-discrimination when applying security charges? What do you understand this to mean?

Yes = 15 No = 1

Are there any circumstances when this principle might not be feasible to administer?

Broad response

There was overwhelming support for the principle of non-discrimination when applying security charges. However, most respondents would not want any new regime to prevent airports from developing innovative and service-led security products, for example higher charges for fast track services.

Individual points in response to Q 10

- Align text with ACD and include 'Member States shall ensure that airport charges do not discriminate amongst airport users, in accordance with Community law' and the wording of the ACD to reflect that airports may need to differentiate their charges to reflect security requirements on different routes (regulatory body)
- Shared services should be shared by all but if a tailored service is provided this should be allocated to particular airline/group. The principle of non-discrimination should always be brought to bear. (airlines)
- The Directive discriminates against airlines and their customers by forcing them to pay charges that other modes of transport and industries are spared (airline)
- Differentiation of service should be allowed, e.g. higher service for fast track service and not have to cross-subsidise the normal service (airports)
- Businesses should be free to make a loss on certain services to deliver growth (airports)

Government response to Q10

We can agree in principle to non-discrimination although we do share the concerns expressed in this consultation that this should not be allowed to restrict airports/airlines from agreeing tailored services and reduce the flexibility for airports to sustain losses in the short term to deliver growth.

Q11. Consultation (Article 4): Do you agree with the requirement for a mandatory yearly consultation on security charges between the airport management body and airport users?

Yes = 14 No = 3

Broad Response to Q11

Most respondents agreed with the need for an annual consultation but that the wording should be more closely aligned with the ACD to ensure consistency and allow for multi-annual agreements. A number also suggested that the consultation should take place under the same mechanism as the ACD. The few who disagreed were concerned about the resource intensive nature and how it would work in practice, particularly so for smaller airports. It was noted that formal consultations are already carried out at the three regulated airports in the UK.

Individual points in response to Q11

- The Directive should mirror the ACD to ensure consistency and include a remedy mechanism (airline)
- An annual mechanism seems the minimum practicable (airports)
- For airports that already carry out annual consultations there would be no incremental costs or benefits associated with the consultation process itself (airports)
- The consultation process should involve security stakeholders such as Transec, Special Branch and the UK Border Agency (representative organisation body)
- Cost of consultations would mean smaller airports would suffer disproportionately (representative organisation)
- The consultations on security and other charges, as required under ACD, should take place at the same time to avoid unnecessary duplication (regulator)

Government response to Q11

Along with a number of respondents we are concerned that the proposed Directive differs from the ACD in this area and that there would appear to be no provision for allowing multi-annual agreements. It would also introduce unnecessary regulatory burdens for the smaller airports.

Q12. Do you think the proposed timescale for agreeing changes to security charges would work in practice?

Yes = 8 No = 8

If not, please suggest what would be a more realistic timetable.

Broad Response to Q12

There was a mixture of views with some content because timescales were in line with the ACD with others suggesting greater flexibility and some wanting a slightly longer timescale.

Individual points in response to Q12

- Propose five months for pre-consultation and three months for publishing changes (airlines)
- Align with the ACD by adding in a provision for exceptional circumstances for not giving four months notice of any proposed changes and add in that it should 'normally' publish its decision less than two months before it enters into force (regulator)

Government response to Q12

We are content as the timescales are in line with those in the ACD.

Q13. Transparency (Article 5): Do you believe that these information requirements are appropriate at all EU airports?

Yes = 4 No = 10

What would you consider to be the costs and benefits?

Broad Response to Q13

A few respondents believed that there were significant benefits from requiring airlines/airports to disclose more information and there would be little difficulty in doing this for the larger airports. Many believed, however, that only overall costs of security operations should be provided. A number of respondents indicated that this article should be consistent with the ACD in both scope (5m ppa) and the text used.

Individual points in response to Q13

- Representative bodies should be allowed to provide information for those operators with few services (airline)
- Concern that airlines will not provide meaningful information on forecasts (airports)
- Administrative burden would be substantial at smaller airports (airports)
- Little benefit in providing the revenue and cost of each category of security charges (airport)
- Airports should only be required to give a single overall cost for airport policing (airports)
- No requirement for additional information to be made available to passengers (regulator)

Government response to Q13

We can support transparency in principle although we can agree that it would be less meaningful for smaller airports.

Q14. Do you think that these information requirements would affect your current commercial relationships?

Yes = 5 No= 6

If so, please state how.

Broad Response to Q14

It could help in better aligning commercial arrangements between airports and airlines and also that of passengers. Concern that highly confidential information would pass from the airport user to the managing body which would need to remain confidential. In general it was felt that the effect on current commercial relationships would be minimal.

Individual points in response to Q14

- Need assurances that information would remain confidential between the airport user and managing body (airlines)
- Could result in less rather than more competitive arrangements in the UK (airport)
- Need for Directive to make explicit mention of economic regulation already existing in Member States (airport)
- Existing long term deals could be affected by this Directive (airports)
- Consideration should be given as to how to compel airlines to provide this information as they have been unwilling in the past to provide it (airport)

Government response to Q14

Like a number of respondents, we would like the proposed directive to recognize the arrangements already operating in the UK to avoid any unnecessary duplication of resources. We can also understand the desire for the airlines to obtain assurances about the use of information provided to the airports.

Q15. For airports (and associated airlines) covered by the Airport Charges Directive, would these requirements create any additional burden to that which is already covered under the existing Directive?

Yes = 8 No = 4

Broad Response to Q15

There was a general belief that this proposed Directive would lead to additional burdens. It could introduce unwelcome tension between airports and airlines over the 'perceived' levels of cost recovery in airport charges. There were additional burdens which would result from this proposed Directive, particularly for smaller airports.

Individual points in response to Q15

- Difficult to comment as no real experience of practical impact of ACD (airport)
- ACD recognizes economic regulations already in place (airport)
- ACD does not apply to airports below 5 m ppa so there will be additional administrative burdens (airport)

- It should allow airport operators to derogate from the requirements of the Directive in order to comply with any confidentiality provisions of the Member State's Government (airport)
- Extra administrative and financial burdens associated with this Directive, particularly for those airports that do not currently separate out security costs (airport)
- Sensible for consultation and information on all airport charges to be considered together (regulator)

Government response to Q15

In light of responses, we consider there could be additional burdens for those smaller airports not currently covered by the ACD but difficult to monetise the burden.

Q16. Impact Assessments (Article 6)

a) What are your expectations about what a Member State should do before the adoption of More Stringent aviation security Measures (MSMs)?

b). Are there any circumstances where you could foresee that undertaking an impact assessment and consulting upon it may not be appropriate or necessary?

Broad Response to Q16

A Member State should at least carry out a risk assessment and possibly a High Level Impact Assessment to be followed up later by a more detailed Impact Assessment. There was also some support for sunset clauses to ensure that an Impact Assessment was carried out and consulted upon which may avoid the introduction of costly long-term measures. Lifetime costs should be included in these assessments. Any measure should be discussed with industry as to its practicability.

Individual points in response to Q16

- MSMs should only be allowed in response to a specific threat or circumstance (airline)
- MSMs should take into consideration the operational and financial impact on the operators and the travelling public (airline)
- Impact Assessments to be completed retrospectively within one month of measure being introduced. (airports/representative organisation)
- If not possible to consult then State should fund measure (airport)

- No circumstance where an Impact Assessment should not be carried out prior to imposition of MSM (airport)
- Directive should make provision for circumstances where it may not be possible to carry out an Impact Assessment before introduction of MSM (regulator)

Government response to Q16

We do not believe it was the Commission's intention to restrict Member States from acting swiftly to counter an identified/increased threat by putting in place MSMs. We are, however, committed to carrying out Impact Assessments, on the impact on security charges, for aviation security measures that are more stringent than the EU-wide common basic standards. We have been negotiating in Council Working Groups to amend the MSM text to allow Member State's the ability to put in place MSMs without an initial Impact Assessment, if needed.

Q17. Are there any operational or financial impacts associated with the requirements of this Article? Please include any data that may help to inform the impact assessment.

Broad Response to Q17

There was general concern that once the Impact Assessments were carried out and the requirements notified to industry that this would lead to higher costs. A number of respondents suggested that trials should be carried out before full implementation.

Individual points in response to Q17

- IAs should be carried out by the EU as well as the Member States before the introduction of new security measures. (airlines)
- Many respondents indicated that there would be some impacts. Several of the airports suggested that a trial might prove beneficial in certain threat scenarios before full implementation. There would be additional costs as a result of Impact Assessments (airports)
- One respondent stated that the impacts associated with security go beyond the cost of the actual measures themselves. They included direct and indirect costs, operational expenses and consequences, e.g. the recent baggage size requirements, which resulted in reduced reliability, increased connection times and made the UK seem less competitive (airline)
- Two respondents expressed uncertainty over how foreign owned airlines could take part in this consultation process, which appears to have been written around the needs of airlines with frequent

movements at larger airports against smaller airport users. Small airports don't have the resources and should be exempted (airline/airport)

- Two airports said there would be no operational or financial impacts since much of the proposed Directive was already covered in the consultation process with airlines. In any case, operational impacts would be driven by changes to the security requirements rather than the charging aspects of the Directive (airport)

Government response to Q17

Beyond the principle that we believe that Member States should be allowed to introduce MSMs to counter a specific/heightened threat without the need for an IA, we do not believe that there are any operational or financial impacts associated with this Article.

Q18a. Cost-relatedness of security charges (Article 7) Do you agree that the principle of cost-relatedness should be included in the Directive?

Yes = 11 No = 5

Broad Response to Q18a

There was considerable agreement to accept cost-relatedness as a principle. An increase in cost-relatedness would provide greater incentives for more efficient operations, although there may be implications for regional deals between airports and airlines. However, one respondent stated that cost-relatedness does not reflect airport economics and should not be included in the proposal.

Individual points in response to Q18a

- The principle of cost-relatedness is fundamental and an increase would provide greater incentives for more efficient operations (airline)
- There is general agreement to accept cost-relatedness as a principle although there may be implications for regional deals between airports and airlines (airlines/airports)
- The provision that charges are broadly cost-related is also consistent with ICAO rules for airport charges (airline)
- Airlines should also be subject to these requirements and be compelled to inform passengers of the cost of security so that these charges cannot be used to raise revenue (airport)
- This principle is already evident in the UK. Competition between airports is sufficient to keep charges low, resulting in airlines moving

- This could be more effective where a state has responsibility for charging or where an airport has a monopoly (airport)
- It is important that the full cost is charged and not subsidised by shops or subsidies from local authorities (individual)
- The principle of cost-relatedness does not reflect the realities of airport economics and should not be included in the proposal. The approach at designated airports in the UK is that charges to airlines are offset by retail revenues the airport anticipates to raise and, therefore, they do not pay charges which relate to actual costs incurred. At non-designated airports, this principle would make it difficult for airports to reduce charges to stimulate business and may result in distorted pricing behaviours (airport)
- Do not agree that the requirement for security charges should be cost-related on grounds of both practicality and principle (regulatory body)

Government response to Q18a

We can support the general principle of cost-relatedness but do not support a requirement in the Directive that security charges be strictly based on security costs. This would be inflexible and unnecessary for airports operating in a competitive environment. This Directive should preferably align with the ACD where cost relatedness is referred to as a principle [in a recital] rather than as a specific requirement. If cost relatedness has to be a specific requirement in the Directive, however, we would prefer it if the wording in the aviation security framework regulation 300/2008 is used, that is 'As far as may be practicable, any charges or transfers of security costs shall be directly related to the costs of providing the security services concerned and shall be designed to recover no more than the relevant costs involved.'

Q18b. How feasible would this principle be to apply in practice within the context of the UK's system of airport operation and regulation? What effect do you think that a requirement for cost relatedness would have on your charges?

Broad Response to Q18b

Two respondents said that airlines are likely to have stronger motivations than airports to find cost effective solutions. One airport stated that the security charges should include airport policing in the recovery process, while another said introducing cost-relatedness would increase the disparity between costs and charges in other areas.

One respondent said it would be difficult to define security charges as airline yields are the prime drivers of individual fares rather than fully itemised costs and that there was no guarantee any savings would be passed onto passengers. The proposal would be unlikely to drive efficiencies in security costs as cost-relatedness would provide a disincentive to innovation.

Individual points in response to Q18b

- Identifying security costs should not conflict with the current approach in the UK. Some judgements may need to be made on shared costs. Airlines are likely to have much stronger motivations than airports to find cost effective solutions. This will lead to a better understanding of security costs and to better, more proportionate, solutions (airline)
- Carriers will not object to increased charges if they can see efficiencies being driven through the system (airline)
- Security charges should recover all security costs, including airport policing (airport)
- The current system in the UK allows use of airport infrastructure to be cross-subsidised with commercial income so that charges are not cost reflective. A requirement to introduce cost-relatedness will therefore only increase the disparity between costs and charges in other areas. There would be serious operational issues at smaller airports to identify security costs. The Commission should specify that any security charges (which are levied) are to be passed onto passengers directly. If a separate charge is introduced, it will affect other charges and should be left for the UK Government's review of economic regulation. For smaller airports, the principle of cost-relatedness would be too costly and largely irrelevant to their operation (airport)
- There seems to be no advantage for the passenger in calculating fully allocated security costs. Airline yields are the prime drivers of individual fares rather than fully itemised costs. The ACD does not require cost-relatedness. No guarantee that any savings would be passed onto passengers. The proposal appears unlikely to drive efficiencies in security costs. This does not fit in with the single till mechanism in the UK where all revenues go into the same pot. It's likely to be difficult to define security charges, and it's not clear where security starts and other services end. It is noted that cost-relatedness is already referenced in Article 5 of 300/2008. Requiring cost-relatedness could provide a disincentive to innovation. The proposal could mean that security charges would not reflect the competitive level of providing new facilities over the longer term (regulatory body)

Government response to Q18b

We believe that this may encourage airports to just pass on security costs and not look for efficiency savings. Costs can also be recovered by increasing charges in other areas and so it may not lead to a reduction in costs for airlines. In any case there is no requirement in the proposed Directive for airlines to pass on any savings to passengers.

Q 19. Independent Supervisory Authority (ISA) (Article 8)

a). Do you agree that an Independent Supervisory Authority should be nominated or established to ensure the correct application of the proposed Directive?

Yes = 15 No = 3

Broad Response to Q19

There was considerable support for the establishment of an ISA, although there were a couple of dissenting voices saying this would increase bureaucracy.

A couple of respondents said the proposed Directive should mirror the ACD to ensure consistent application of the rules and so that there would be no intervention in the setting of security charges. Two respondents disagreed that only one person would be required to undertake the role of the ISA as this was felt to be over-optimistic and would result in remedy being slow. A couple of respondents said the proposed Directive needed to reflect the broader role played by the CAA in respect of economic regulation. One respondent stated that the ISA should also be responsible for ensuring that airports consult with passengers and nominated the Air Transport Users Council as the appropriate body to represent passengers.

Individual points in response to Q19

- It is essential to establish an ISA (airport)
- Can agree to the establishment of an ISA and that the CAA is the only competent body to take on this role within the UK (airports and regulatory body)
- Can agree that an ISA is appointed to ensure correct application of the Directive (airports and representative organisation)
- The ISA should ensure that best practice is shared across airports and deal with passenger concerns on matters of security provision (individual)

- There is no need for a new mechanism as the UK already has systems in place to raise disputes with the CAA. Therefore there is no support for the introduction of such a new regulatory system. This Directive would only increase bureaucracy and be of no benefit (airport and representative organisation body)

b). Do you have any comments on the ISA's proposed function and operation in practice?

- The proposed Directive should mirror the ACD to ensure consistency and easy application of the rules (airline)
- The proposed body must be capable of resolving disputes (airport)
- Appointing one person to the role as suggested would mean that remedy would extremely slow (airport)
- There is disagreement with the Commission's IA statement that only one person will be required to undertake the role of the ISA, as this is felt to be over-optimistic (airport)
- The proposed Directive needs to reflect the broader role played by the CAA in respect of economic regulation and that it should seek to minimise any distortions to competition in the market (airport)
- Funding for the ISA should not be sourced from UK airports (airport)
- The role should be part of, not separate from, the wider function of economic regulation of airports (representative organisation)
- The proposed function of the ISA should be aligned with Article 6(5) in the ACD. This would mean that the UK wouldn't have to apply the requirements on intervention in the setting of security charges, as there is already a system in place that determines whether such intervention is necessary (regulator)
- The ISA should also be responsible for ensuring that airports consult with passengers, as provision for this is patchy across the EU. The Air Transport Users Council could be considered as the appropriate body to represent passengers (individual)

Government response to Q19

We agree with the need for an Independent Supervisory Authority which should not be TRANSEC. The proposed directive should recognize the there are already systems in place in some airports to resolve disputes and these should not be duplicated by requirements in this proposed Directive.

Q20. Who do you feel would be best placed to undertake the role of Independent Supervisory Authority (ISA) for the purpose of security charges in the UK?

Broad Response to Q20

There was a considerable majority in favour of this role being undertaken by the Civil Aviation Authority (CAA). Although this included the CAA itself, it had concerns about the role of the ISA relating to dispute resolution and on the requirement to intervene on the level of operational security at airports. Other concerns were expressed that there would be resource implications for the CAA, resulting in increased airport charges.

Individual points in response to Q20

- The Civil Aviation Authority (CAA), which is independent of Government and already responsible for economic and air safety regulation, should be the ISA. TRANSEC should not be the ISA because it is subject to some of the provisions of the Directive and therefore cannot operate independently (nearly all)
- DfT is best placed to house the independent authority, which should be structured along same lines as that envisaged in the ACD (airline & representative organisation body)
- There must be an appeal mechanism for airlines against airports' decisions (airline)
- The CAA has recently demonstrated its expertise in this area. If the CAA is obliged to carry out extra regulatory duties as a result of this proposed Directive, then there would be resource implications for it. As CAA costs are passed through to airport operators, this may affect the level of airport charges (airport)
- The CAA could be setting the level of security in the UK, which is clearly beyond its expertise (2) as it does not have access to threat and intelligence information (airport)
- The CAA is the logical candidate for the ISA because of its existing regulatory role. But its remit would need to be defined, as assessments of whether processes at airports complied with Government security requirements should rest with the DfT (representative organisation body)
- It is anticipated that the CAA will be the Independent Supervisory Authority for the ACD. If the proposed Directive is aligned with the ACD, it would be the appropriate body for this Directive as well. However, there are significant concerns about the role of the ISA as it relates to dispute resolution. There are additional concerns that there would appear to be a requirement to intervene or adjudicate on what

the correct level of operational security at an airport should be and therefore what can be charged for. However, the level of security is provided by TRANSEC. Operational security is for the Member State to determine and therefore not appropriate for the ISA to judge. It is felt the ISA is not the appropriate body to assess IAs. If the provisions in this proposed Directive are aligned with those of the ACD and the Directive is primarily concerned with charging issues, then it would make sense for the CAA to be the ISA. However, if security issues are a key element, then more thought needs to be given as to who should be the ISA (regulator)

- The CAA, possibly delegated to the Air Transport Users Council. (individual)

Government response to Q20

We note the views of the respondents that the CAA should take on this role in the UK.

Conclusion

Under the Swedish Presidency, detailed negotiations on the proposed Directive took place in the Council's Aviation Working Group throughout the Autumn and a progress report was made to the December Transport Council. The UK supports the need for security charges to be fair and proportionate, however we have serious concerns about some of the amendments that have been proposed to the text. It is not long since agreement was reached on the regulation of airport charges via the ACD. That puts new procedures in place which cover much of the same ground as the proposal on aviation security charges. We consider it important to ensure a proper alignment between these two pieces of legislation in order to avoid the risk of putting in place inconsistent rules, which may well not achieve the proposal's objectives.

In parallel to Council negotiations, the proposal was raised at the European Parliament's Transport and Tourism (TRAN) Committee on 10 November and the rapporteur, Jörg Leichtfried MEP, is working on a report that he will present at TRAN Committee on 26 January 2010. We believe the report will include a strong preference that Governments assist in the funding of security costs. We consequently expect some difficult discussions between Member States and the EP on the 'user pays' principle. The UK will work towards achieving a fair and proportionate outcome that balances the interests of passengers and airports. We will continue to keep our initial IA under review as EU negotiations continue.

DEPARTMENT FOR TRANSPORT

January 2010

Annex A

RESPONSES TO AVIATION SECURITY CHARGES CONSULTATION

British Airways

Thomson Airways / TUI Travel

easyJet

Virgin Atlantic Airways

United Airlines

European Low Fares Airline Association (ELFAA)

International Air Transport Association (IATA) / European Express Association (EEA) / Association of European Airlines (AEA) / ELFAA / European Regional Airline Association (ERA) / International Air Carrier Association (IACA) joint response

Manchester Airports Group

Luton Airport

Birmingham Airport

Bickerton Aerodromes Ltd – Denham

BAA

Newcastle Airport

Gatwick Airport

Aberdeen Airport Consultative Committee

Airport Operators Association

Peel Airports Group

British Business General Aviation Association

General Aviation Awareness Council

Air Transport Users Council

Civil Aviation Authority

Mr Ian Hamer

Mr Chris Lowe