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## Opinion

**Title**                                    **Impact Assessment report on: proposal for a Directive on financing of aviation security (draft version of 17 December 2008)**

**Lead DG**                                   **DG TREN**

### **1) Impact Assessment Board Opinion**

#### **(A) Context**

The preparation of this proposal is closely related to the Commission report from 2006 on transport security and its financing and the still pending report on financing aviation security (adoption expected in January 2009). In addition, in January 2007, the Commission presented a proposal for a Directive on airport charges, which addressed financing airport infrastructure in general and contained a provision on security charges. This Directive is expected to be approved in early 2009. However, security levies will not be covered due to differences of positions between the Council and the European Parliament on the financing of more stringent measures exceeding EU requirements.

#### **(B) Positive aspects**

The report is written in clear, non-technical language and is accessible to a non-specialist reader. Annex I contains a useful overview of national legislation relating to the transparency and cost-relatedness of airport security charges.

#### **(C) Main recommendations for improvements**

*The recommendations below are listed in order of descending importance. Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.*

**General recommendation: In general the Board is not convinced that this report provides a sufficient justification for further EU action in this area. The report requires significant further work on the following points. First, the report should establish more precisely the claimed distortions of competition by identifying and substantiating the anti-competitive effects on airports and airlines on the relevant aviation markets. On that basis for each of the two key issues identified (excessive and discriminatory airport security charges, re-screening of transit passengers) the case for EU action should be strengthened or even reconsidered (particularly in the**

case of the obligatory "one stop" security). Secondly, the report should provide more evidence that the benefits stemming from increased transparency, cost-related security charges and the obligatory "one-stop security" would outweigh the costs. Thirdly, the report should be more precise about the content of the options, including whether they entail information obligations and therefore administrative burden for airlines, and expand the range of alternative options by discussing e.g. self-regulation by the airport industry. Finally, the report should assess to what extent the impacts of this initiative are spread unevenly across different types of EU airlines and airports and whether it affects their global competitiveness.

During its meeting with the board, DG TREN agreed to revise the impact assessment on this basis. Given the nature of the recommendations, the Board would like to examine a revised draft IA report on which it will issue a new opinion.

**(1) Establish more precisely and substantiate the claimed distortions of competition and strengthen the case for EU action.** Where the issue of distortions of competition on the EU aviation market is raised, the report should identify the relevant markets on which appreciable distortions take place (e.g. between airports, between airlines at each individual airport or airlines competing for transit passengers), and provide evidence to substantiate each claimed distortion. In addition, the report should explain how the magnitude of the identified distortions compares to that resulting from the fact that certain Member States subsidise airport security from public budgets while others rely solely on the "user pays" principle. In the context of re-screening of transit passengers, the report should take into account that the adoption by a Member State of a regulation which is stricter or more burdensome than in other Member States cannot be as such considered as an anti-competitive state measure if objectively justified (irrespective of the possible competitive disadvantages this may have for undertakings operating predominantly in that Member State). In the light of this, the report should reconsider the current justification for EU action in the case of the obligatory "one-stop" security at airports by a distortion of competition.

**(2) Demonstrate better that the benefits of increased transparency, relating airport security charges to costs and of the obligatory "one-stop" security outweigh the costs.** The report should explain why increased transparency and the requirement of cost-related security charges would lead to a decrease in fare prices and for which type of passengers (whether this would happen because of competitive pressure or rather would be a consequence of existing laws). Given that the introduction of mandatory "one-stop" security at EU airports, while generating savings of €2.6 million per year for the airlines, requires some refurbishment of existing airport terminals, the report should demonstrate that those benefits outweigh the related costs. In this context, the report should also clarify that only transit passengers are affected by re-screening, not all passengers departing from or transferring at airports in the three Member States concerned. The report should also explain how the € 1 million environmental costs have been calculated.

**(3) Develop the content of the options and expand the available range of alternatives.** The report should be more precise on the content of the options, e.g. as regards information obligations and therefore administrative burden on airlines and possible exemptions/derogations, including which legal instruments could be used. The report should analyse the following additional options (or explain why they are not feasible and should be discarded): a non-binding version of the preferred option, self-regulation by the airport industry, an option providing for the possibility of differentiating

security levies for cargo and passenger handling (apparently security requirements are different for those categories), the obligatory financing by Member States of any additional screening of transfer passengers, or an exemption or a transition period for smaller airports.

**(4) Consider distributional impacts.** While the proposed measures may be beneficial for passengers and the aviation sector as a whole, their costs and benefits may be spread unevenly across different types of EU airlines and airports. The report should assess to what extent on the one hand low-cost, regional, and network airlines and on the other hand larger and smaller/regional airports are affected differently.

#### **(D) Procedure and presentation**

The executive summary should be presented as a separate staff working document and should contain a clear presentation of any quantified benefits and costs for the various options.

The report should be more specific about the timing of the consultations and indicate which organisations responded to the public consultation. The full results of the stakeholders' consultation should be annexed to the report. The views of airlines other than those organised in AEA (e.g. regional, charter and low-cost airlines) on the various options (in particular mandatory one-stop security screening) should be presented more transparently.

## **2) IAB scrutiny process**

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