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Opinion

Title **Impact Assessment report on: proposal for a Directive on financing of aviation security (draft version of 13 February 2009) - RESUBMISSION**

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

Compared to the previous version, the content of the options has been further developed and a self-regulatory option has been added. The report has explained why an exemption for smaller airports would not be an optimal solution and has broadly presented the distributional implications of the proposal. The report has dropped the option of obligatory "one-stop" security as it was not possible to justify EU action on this issue.

(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: Although the revised report has dropped the idea of obligatory "one-stop" security and modified the objectives for this initiative, it still does not provide sufficient evidence why EU action is needed in the area of discriminatory and excessive security charges. This concerns evidence regarding both the claimed distortions of competition and the anti-competitive effects on any

of the affected aviation markets. Furthermore, given the reshuffle of the objectives (moving the centre of gravity from the level playing field to the protection of consumer interests and avoidance of excessive charges), the report should demonstrate that they form a coherent set and explain more clearly on which issues the EU action is now to be based. The report should also discuss an option involving the use of a non-binding instrument.

(1) The claimed distortions of competition caused by discriminatory and excessive security charges should be more concretely identified and further substantiated. Concerning the first problem (discriminatory security charges), the revised report has provided a few examples showing that incumbent airlines operating in some (large) airports could profit from lower charges for domestic passengers (compared to charges for intra-EU passengers), and for transfer passengers (compared to departing passengers), given their higher share in domestic and transfer traffic. However, the first set of examples is not very representative for the overall EU market, and the second and third set of examples do not demonstrate that security charges are the cause of such differences, since the information provided refers to passenger charges (without distinguishing security charges). The report still needs to demonstrate for which relevant air transport and airport services markets (e.g. between regional, national, international airports; between airlines and airports or between airlines competing on the relevant city-pairs) this translates into anti-competitive effects. As the report has suggested that the airlines with a strong market position are able to exercise their "bargaining power" over the airports to lower the charges for the mentioned segments, it should explain more precisely how this mechanism works in view of the fact that airports often tend to enjoy a monopolistic position vis-a-vis airlines. As regards the aforementioned examples, while admittedly the differences in security charges in case of domestic and intra-EU segments of the market do not seem to have an objective justification, the report should explain why this would imply that the lower level of charges for transfer passengers than for departing passengers could not be justified objectively (for example by the fact that in most cases transfer passengers are not re-screened for security).

For all claimed distortions, the report should demonstrate on the basis of more convincing evidence (e.g. concrete examples/complaints/comparisons) that the resultant negative effects on competition (particularly as regards consumer harm) are appreciable. In addition, the magnitude of those distortions should be compared to that resulting from the fact that certain Member States subsidise airport security from public budgets.

(2) Clarify the rationale for and objectives of EU action and strengthen its justification accordingly. While the general objectives of the revised report no longer refer to the need for ensuring the level playing field, this issue still seems to underlie the rationale for EU action. On the other hand, for the issues covered by the new set of general objectives ("Protect consumer interest", "Avoid excessive security charges"), the rationale for EU action should be more clearly established (e.g. for the issue of the efficiency of security services).

With respect to the objectives, the report should explain the links between the main, general and specific objectives to demonstrate that they form a coherent set. For instance, it is not clear how the main objective of "ensuring that the methods used for financing aviation security do not impact aviation security" relates to the general objectives of the initiative. The report should also clarify why maintaining the status quo in financing aviation security could lead to a worsening of the security level at airports in the EU.

(3) Discuss an option involving the use of a non-binding instrument. While the revised report has discussed the self-regulatory option and explained why exemptions and derogations for smaller airports would not be an optimal solution, it should still discuss whether a non-binding solution, such as a recommendation addressed to Member States could have the potential to address the problems.

(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 state whether the minimum standards for consultation have been met.

2) IAB scrutiny process

Reference number	2009/TREN/020 (catalogue item)
Author DG	DG TREN
External expertise used	No
Date of Board Meeting	Written procedure
Date of adoption of Opinion	24 -02- 2009 The present opinion concerns a resubmitted draft IA report. The first opinion was issued on 20 January 2009.