

# Procedure file

Basic information			
COD - Ordinary legislative procedure (ex-codecision procedure) Directive		2009/0063(COD)	
Air transport: aviation security charges		Procedure lapsed or withdrawn	
Subject 3.20.01.01 Air safety			
Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>TRAN</b> Transport and Tourism		02/09/2009
		S&D <a href="#">LEICHTFRIED Jörg</a>	
		Shadow rapporteur	
		PPE <a href="#">ZASADA Artur</a>	
		ALDE <a href="#">HENNIS-PLASSCHAERT Jeanine</a>	
		Verts/ALE <a href="#">LICHTENBERGER Eva</a>	
		ECR <a href="#">FOSTER Jacqueline</a>	
	Former committee responsible		
	<b>TRAN</b> <a href="#">Transport and Tourism</a>		
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
	Former committee for opinion		
	<b>LIBE</b> <a href="#">Civil Liberties, Justice and Home Affairs</a>		
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">3001</a>	11/03/2010
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2987</a>	17/12/2009
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2949</a>	11/06/2009
European Commission	Commission DG	Commissioner	
	<a href="#">Mobility and Transport</a>	KALLAS Siim	

Key events			
11/05/2009	Legislative proposal published	<a href="#">COM(2009)0217</a>	Summary
11/06/2009	Debate in Council	<a href="#">2949</a>	

14/07/2009	Committee referral announced in Parliament, 1st reading		
17/12/2009	Debate in Council	<a href="#">2987</a>	Summary
01/03/2010	Vote in committee, 1st reading		Summary
09/03/2010	Committee report tabled for plenary, 1st reading	<a href="#">A7-0035/2010</a>	
11/03/2010	Debate in Council	<a href="#">3001</a>	Summary
19/04/2010	Debate in Parliament		
05/05/2010	Results of vote in Parliament		
05/05/2010	Decision by Parliament, 1st reading	<a href="#">T7-0123/2010</a>	Summary
07/03/2015	Proposal withdrawn by Commission		

### Technical information

Procedure reference	2009/0063(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 100-p2
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	TRAN/7/00302

### Documentation gateway

Legislative proposal	<a href="#">COM(2009)0217</a>	11/05/2009	EC	Summary
Document attached to the procedure	<a href="#">SEC(2009)0615</a>	11/05/2009	EC	
Document attached to the procedure	<a href="#">SEC(2009)0616</a>	11/05/2009	EC	
Economic and Social Committee: opinion, report	<a href="#">CES1699/2009</a>	05/11/2009	ESC	
Committee draft report	<a href="#">PE430.895</a>	06/01/2010	EP	
Amendments tabled in committee	<a href="#">PE438.433</a>	04/02/2010	EP	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A7-0035/2010</a>	09/03/2010	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T7-0123/2010</a>	05/05/2010	EP	Summary
Commission response to text adopted in plenary	<a href="#">SP(2010)3805</a>	24/06/2010	EC	

### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

## Air transport: aviation security charges

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**PURPOSE:** to set common principles for the levying of security charges at Community airports.

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**BACKGROUND:** at present, systems for the recovery of aviation security costs are regulated at national level and are not always transparent to the users. Users are not systematically consulted at all EU airports before charges are determined or before a charging system is modified. This proposal sets common principles for the levying of security charges at Community airports and applies to any airport located in a territory subject to the provisions of the Treaty. However, it does not apply to the charges collected for the remuneration of en-route and terminal air navigation services in accordance with Commission Regulation (EC) No 1794/2006, or to the charges collected for the remuneration of ground-handling services referred to in the Annex to Council Directive 96/67/EC.

**IMPACT ASSESSMENT:** the impact assessment covers four policy options:

Option 1: No EU action;

Option 2: Self-regulation.

Option 3: EU Directive on non-discrimination, transparency, cost-relatedness and possibility to appeal;

Option 4: Full state funding of airport security.

Options 1 and 2 do not attain the objectives, while options 3 and 4 effectively address the concerns of discriminatory and excessive security charges. Option 4, however, discourages more efficient aviation security services because there are no incentives for the security providers to control costs. The increased administrative burden of option 3 is negligible because the same authority as established by the Directive on airport charges can be used. Consequently, option 3 offers the most efficient overall solution.

**CONTENT:** the proposal defines a number of basic principles to be respected by airport operators when they determine their security charges. These are:

**Non-discrimination:** aviation security charging systems should not discriminate between carriers or passengers.

**Consultation and remedy:** the airport managing body and the air carriers serving the airport, or their representative organisations, must engage in a dialogue on the security charging system applicable at an airport not only when such system is modified but also when the levels of the security charges are being established. The aim of this requirement is that the two parties exchange views on a regular basis on the levels of the charges, as well as on all factors and regulatory requirements that have an influence on the determination of those charges.

**Transparency:** the proposed Directive contains no provisions on the methods for calculating security charges that should be applied in each Member State. While the Commission acknowledges the wide diversity of airport regulation in the various Member States, a reasonable amount of information must nevertheless be provided by the operator to the air carriers so as to make the consultation process between airports and air carriers meaningful. To this end, the Directive establishes which information should be provided on a regular basis by the airport managing body.

Air carriers should, in turn, give information as to their traffic forecasts, their intended fleet use and their present and future specific requirements at the airport, so as to allow the airport managing body to employ their capital and dedicate their capacity in an optimal manner. Air carriers should also have the right to be informed about security measures that are more stringent than required by Community law.

**Cost-relatedness:** revenues from security charges shall only be used to meet security costs.

**Supervisory authority:** a draft Directive that contains the principles to be respected by the main partners in the air transport industry i.e. the airports and air carriers, which have diverging interests, needs to be properly applied and adhered to at the level of the Member States. An authority to be established in each Member State that is in charge of ensuring the correct application of the Directive would be an appropriate guarantee that its provisions are respected.

**BUDGETARY IMPLICATION:** the proposal has no implication for the Community budget.

## Air transport: aviation security charges

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The Council took note of a progress report on a proposal for a directive establishing common principles for the levying of security charges at EU airports (doc. [17393/09](#)).

The Commission submitted its proposal in May 2009 in response to a commitment it made to the European Parliament in 2007 during the negotiations leading to the adoption of framework regulation 300/2008 on aviation security. The European Parliament started its examination of the proposal this autumn.

The Council preparatory bodies dealing with this issue were able to resolve many technical difficulties resulting from the different charging and regulatory systems in place in individual Member States.

The key issues where positions still differ are as follows:

**Scope:** positions still differ is the scope of the proposed legislation. Under the original Commission proposal, the directive would apply to all EU airports. At the current stage of discussions, the presidency proposes that all commercial EU airports with annual traffic of over five million passenger movements should be covered. A broad majority of delegations could support this.

A number of delegations, however, would prefer to include all commercial airports or to lower the threshold for passenger movements, whereas the Member States sticking to the threshold of five million passengers fear that this might entail a major administrative burden. The Council invited its preparatory bodies to pursue discussion of the issue.

**Impact assessment (Article 6):** the Presidency compromise text 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. 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.

Cost-relatedness of security charges (Article 7): the Presidency suggested to add to the Commission proposal that the calculation of security charges shall 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 Presidency 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.

According to some delegations, this article is 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.

Supervisory authority (Article 8): under the proposal, 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 shall ensure that measures are taken as regards resolving disagreements with regard to security charges. Given the fact that some Member States have a different procedure under national law to determine and approve the structure or the level of security charges, the Presidency suggested the inclusion of an additional paragraph stipulating that these Member States may decide not to apply the provisions of this Article. However, this exemption raised concerns expressed by some Member States since it would, according to these delegations, 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. One delegation also expressed that it would prefer the provisions of this article less mandatory.

## Air transport: aviation security charges

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The Committee on Transport and Tourism adopted a report by Jörg LEICHTFRIED (S&D, AT) on the proposal for a directive of the European Parliament and of the Council on aviation security charges.

The committee recommended that the European Parliament's position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) should be to amend the Commission proposal as follows:

Harmonisation of the Commission's proposal with Directive 2009/12/EC on airport charges: the Commission's proposal draws heavily on the Directive on airport charges. The amendments seek, as far as possible and desirable, to harmonise the two legal texts.

Purpose: the Directive applies to any airport located in a territory subject to the provisions of the Treaty and open to commercial traffic.

Definitions: "competent body" means an airport managing body or any other body or authority responsible for the application and/or the setting of the level and the structure of aviation security charges at Community airports. The definition of "security charge" is also specified: it is a levy collected by any entity, airport or airport user in different forms which is specifically designed to recover the costs of security measures intended to protect civil aviation against acts of unlawful interference. This cost of aviation security may include the costs incurred for ensuring the application of Regulation (EC) No 300/2008 or for fulfilling the related regulatory and supervisory costs by the appropriate authority.

Airport network: a new article stipulates that Member States may allow the competent body of an airport network to introduce a common and transparent charging system for security charges to cover the airport network.

Common charging systems: after having informed the Commission and in accordance with Community law, Member States may allow the competent body to apply a common and transparent charging system at airports serving the same city or conurbation, provided that each airport fully complies with the requirements on transparency set out in the Directive.

Consultation and remedy: a compulsory procedure for regular consultation between the competent body and airport users or the representatives or associations of airport users should be established with respect to the operation of the system of security charges and the level of such charges. The competent body shall submit any proposal to modify the system or the level of security charges to the airport users or the representatives or associations of airport users no later than four months before it enters into force, together with the reasons for the proposed changes. In the event of a disagreement over a decision on security charges taken by the competent body, either party may seek the intervention of the independent supervisory authority which shall examine the justifications for the modification of the system or the level of security charges. A Member State may decide not to apply this provision in relation to changes to the level or the structure of the aviation security charges at those airports for which: i) there is a mandatory procedure under national law whereby aviation security charges, or their maximum level, are to be determined or approved by the independent supervisory authority; or ii) there is a mandatory procedure under national law whereby the independent supervisory authority examines, on a regular basis or in response to requests from interested parties, whether such airports are subject to effective competition.

Transparency: an amendment seeks to clarify the provisions regarding the provision of information concerning the setting of security charges. Firstly, information on both the structure and the level of charges has to be communicated. Secondly, all airports should be obliged to provide this information. The information should include, among other things: i) the overall cost structure with regard to the facilities and services to which security charges relate; ii) the revenue of the security charges and the total cost of the services covered by them; iii) any financing from public authorities of the facilities and services to which security charges relate; iv) forecasts of the level of security charges taking into account proposed investments, traffic growth and increased levels of security threats.

Airport users should submit information to the competent body before every consultation concerning in particular the amount of the security

charge levied by airport users on passengers departing from the airport and information on the components serving as a basis for determining these charges.

Information on the amount of security charges levied by the competent body and the airport users should be publicly accessible. Subject to national legislation, the information provided shall be regarded as confidential or economically sensitive and handled accordingly. In the case of airport managing bodies that are quoted on a stock exchange, stock exchange regulations in particular shall be complied with.

More stringent measures: the Commission's proposal lays down an obligation to undertake an economic impact assessment where more stringent measures are adopted by the Member States. However, Members propose that the funding of these more stringent measures, where they involve additional costs, shall be borne by the Member States. In this case, it would no longer be compulsory to proceed with an impact assessment.

Independent supervisory authority: Members consider that 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 in federal systems. When a Member State applies, in accordance with its national law, a regulatory or legislative procedure to determine and approve the structure or level of security charges at national level, the national authorities responsible for examining the validity of security charges shall perform the tasks of the independent supervisory authority.

Report: the Commission shall submit a report on the funding of aviation security, examining the evolution of aviation security costs and the methods for funding aviation security, no later than two years after entry into force of this Directive.

Member States shall transpose the Directive no later than two years after its entry into force.

## Air transport: aviation security charges

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The Council took note of a progress report on this proposal for a directive establishing common principles for the levying of security charges at EU airports. The common framework proposed is designed to guarantee non-discrimination and transparency, to give adequate scope for consultation regarding the level of the security charges and to ensure that they are directly related to the cost of providing aviation security. Furthermore, an independent supervisory authority should be established in each Member State to ensure correct application of the directive.

The state of play on this proposal has not changed much since the last progress report presented to the Council at its December meeting. The Council therefore agreed to await the European Parliament's position at first reading, which is likely to be adopted in April 2010, and invited its preparatory bodies to resume examination once the European Parliament has voted on the proposal.

The key issue where positions differ is still the scope of the proposed legislation. Under the original Commission proposal, the directive would apply to all EU airports. Several Member States, however, favour limiting the scope to airports whose annual passenger traffic exceeds a certain threshold. Whilst a threshold of five million passenger movements would be acceptable for a majority of delegations, a number of Member States would prefer to include all commercial airports or to lower the threshold. As a compromise, the Spanish presidency suggested a threshold of two million passenger movements, but that proposal was opposed by a majority of Member States, which fear that lowering the threshold might entail a major administrative burden.

The provisions on impact assessment and cost-relatedness as well as a possible exemption from the obligation to have an independent supervisory authority are also issues still under discussion.

## Air transport: aviation security charges

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The European Parliament adopted by 613 votes to 7, with 16 abstentions, the legislative resolution on the proposal for a directive of the European Parliament and of the Council on aviation security charges.

It adopted its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure).

Parliament amends the Commission's proposal as follows:

Harmonisation of the Commission's proposal with Directive 2009/12/EC on airport charges: the Commission's proposal draws heavily on the Directive on airport charges. The amendments seek, as far as possible and desirable, to harmonise the two legal texts.

Purpose: the Directive applies to any airport located in a territory subject to the provisions of the Treaty and open to commercial traffic.

Definitions: 'competent body' means an airport managing body or any other body or authority responsible for the application and/or the setting of the level and the structure of aviation security charges at Community airports. The definition of 'security charge' is also specified: it is a levy collected by any entity, airport or airport user in different forms which is specifically designed to recover the costs of security measures intended to protect civil aviation against acts of unlawful interference. This cost of aviation security may include the costs incurred for ensuring the application of Regulation (EC) No 300/2008 or for fulfilling the related regulatory and supervisory costs by the appropriate authority.

The definition of 'aviation security' has been introduced to mean the combination of measures and human and material resources intended to safeguard civil aviation against acts of unlawful interference that jeopardise the security of civil aviation.

Airport network: a new article stipulates that Member States may allow the competent body of an airport network to introduce a common and transparent charging system for security charges to cover the airport network.

Common charging systems: after having informed the Commission and in accordance with Community law, Member States may allow the competent body to apply a common and transparent charging system at airports serving the same city or conurbation, provided that each airport fully complies with the requirements on transparency set out in the Directive.

Consultation and remedy: a compulsory procedure for regular consultation between the competent body and airport users or the representatives or associations of airport users should be established with respect to the operation of the system of security charges and the

level of such charges. The competent body shall submit any proposal to modify the system or the level of security charges to the airport users or the representatives or associations of airport users no later than four months before it enters into force, together with the reasons for the proposed changes. In the event of a disagreement over a decision on security charges taken by the competent body, either party may seek the intervention of the independent supervisory authority which shall examine the justifications for the modification of the system or the level of security charges. A Member State may decide not to apply this provision in relation to changes to the level or the structure of the aviation security charges at those airports for which: i) there is a mandatory procedure under national law whereby aviation security charges, or their maximum level, are to be determined or approved by the independent supervisory authority; or ii) there is a mandatory procedure under national law whereby the independent supervisory authority examines, on a regular basis or in response to requests from interested parties, whether such airports are subject to effective competition.

Transparency: an amendment seeks to clarify the provisions regarding the provision of information concerning the setting of security charges. Firstly, information on both the structure and the level of charges has to be communicated. Secondly, all airports should be obliged to provide this information. The information should include, among other things: (i) the overall cost structure with regard to the facilities and services to which security charges relate; (ii) the revenue of the security charges and the total cost of the services covered by them; (iii) any financing from public authorities of the facilities and services to which security charges relate; (iv) forecasts of the level of security charges taking into account proposed investments, traffic growth and increased levels of security threats.

Airport users should submit information to the competent body before every consultation concerning in particular the amount of the security charge levied by airport users on passengers departing from the airport and information on the components serving as a basis for determining these charges.

Information on the amount of security charges levied by the competent body and the airport users should be publicly accessible. Subject to national legislation, the information provided shall be regarded as confidential or economically sensitive and handled accordingly. In the case of airport managing bodies that are quoted on a stock exchange, stock exchange regulations in particular shall be complied with.

More stringent measures: the Commission's proposal lays down an obligation to undertake an economic impact assessment where more stringent measures are adopted by the Member States. However, Members propose that the funding of these more stringent measures, where they involve additional costs, shall be borne by the Member States. In this case, it would no longer be compulsory to proceed with an impact assessment.

Relation between costs and safety charges: the proposal states that security charges shall be used exclusively to meet security costs. Parliament considers that the total revenue from security charges shall not be higher than the total costs of aviation security for that airport, airport network, or group of airports. An amendment adopted in plenary stipulates that the Member States should ensure that the national and/or international level of the security threat should be taken into account. The cost base for the calculation of security charges shall not include any costs that would be incurred for more general security functions performed by Member States such as general policing, intelligence gathering and national security.

Independent supervisory authority: Parliament considers that 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 in federal systems. When a Member State applies, in accordance with its national law, a regulatory or legislative procedure to determine and approve the structure or level of security charges at national level, the national authorities responsible for examining the validity of security charges shall perform the tasks of the independent supervisory authority.

Report: the Commission shall submit a report on the funding of aviation security, examining the evolution of aviation security costs and the methods for funding aviation security, no later than two years after entry into force of this Directive.

Member States shall transpose the Directive no later than two years after its entry into force.