

Economic Regulation Group
Economic Policy and International Aviation



Mr Barry Gigg
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Aviation Security Division
Transport Security and Contingencies Directorate (TRANSEC)
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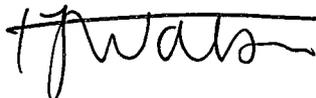
Dear Barry,

The Civil Aviation Authority (CAA) welcomes the Government's consultation on this proposal and the opportunity to feed in comments. A completed consultation response form is attached to this letter (both of which we will be placing on the CAA website).

The CAA has responded to the consultation based on the Commission's current proposal and the stated aims and intentions of it as set out in the documents accompanying the proposal, in order to focus comments on the text that the Department will be negotiating. However, we are also aware of the history behind the genesis of this proposal (emerging as it did following a compromise on a previous security regulation when agreement could not be reached on elements including who should fund security costs) and recognise that negotiations on the proposal will be continued in this context.

Notwithstanding this context, and the Commission's desire to address perceived shortcomings in the setting of security charges, the CAA does have significant concerns about the objectives of the proposal, the potential costs and benefits attached to it, and whether these aims would be realised in practice under the current proposal. The attached consultation response addresses these points in more detail.

The CAA looks forward to continuing to engage constructively with the Department as discussions on this proposal progress.

Yours,


Helen Watson
Head, Economic Policy & International Aviation
Economic Regulation Group
Civil Aviation Authority

Consultation Response Form for UK consultation on Aviation Security Charges Proposal.

Consultation documents are available at <http://www.dft.gov.uk/consultations/open/>

PART 1 - Information about you

Name	UK Civil Aviation Authority
Address	CAA House, Kingsway, London
Postcode	WC2B 6TE
email	helen.watson@caa.co.uk
Company Name or Organisation (if applicable)	As above
Please tick one box from the list below that best describes you /your company or organisation.	
<input type="checkbox"/>	Small to Medium Enterprise (up to 50 employees)
<input type="checkbox"/>	Large Company
<input type="checkbox"/>	Representative Organisation
<input type="checkbox"/>	Trade Union
<input type="checkbox"/>	Interest Group
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Central Government
<input type="checkbox"/>	Member of the public
<input checked="" type="checkbox"/>	Other (please describe): Regulator
If you are responding on behalf of an organisation or interest group how many members do you have and how did you obtain the views of your members: N/a	
If you would like your response or personal details to be treated confidentially please explain why: N/a	

PART 2 - Your Comments

1. Do you think the Commission's proposal to regulate security charges is well targeted and proportionate to the problems identified?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
<p>Please explain your reasons and add any additional comments you wish to make:</p> <p>The CAA suggests that more clarity is needed than is given in the Commission's proposal and accompanying documents as to what problems have been identified and thus the proposal seeks to target. Without such clarity, it is difficult to assess how the aims of the Directive should best be achieved, and to assess any benefits of such a proposal against any costs. The CAA is concerned that there could be costs that outweigh any benefits of such a proposal, including through undue interference in competitive markets.</p> <p>The Commission's Impact Assessment identifies the rise in security charges in recent years as context for this proposal. Although the CAA can understand the position of airport customers in relation to higher charges, it is also important to note the need to present a credible response to whatever the current security threat may be – which is likely to incur a cost. In addition, if the intention of, and therefore justification for, the proposal is to reduce these charges, the CAA is concerned that the proposal will not achieve that (see answer to question 18 for more detail).</p> <p>The Commission's Impact Assessment also suggests that larger airlines are negotiating agreements with airports that disproportionately reduce their security charges such that the part of the charge that would have been levied on the larger airline is instead passed on to a smaller airline. There is however no evidence offered of this, and we would be surprised if this is the case given that smaller airlines are likely to be most vulnerable to competitive pressures and therefore unlikely to be able to bear such increases. It may be that consultation responses from airlines and airports will provide more information on this matter. If this were happening, it would probably be better dealt with through competition law (which naturally bites only on airports with a dominant position in a market) than this Directive (which as currently proposed applies to all EU airports).</p> <p>The CAA had previously understood that the Airport Charges Directive, which was published on 14th March 2009 and must be brought into effect in Member States by March 2011, would cover security charges along with all other airport charges not explicitly excluded from the terms of the Directive. The Airport Charges Directive was the result of a European-wide agreement to promote principles of transparency and consultation between larger airports and their users. Given this relatively recent agreement, the CAA is concerned that a separate proposal for security charges risks duplicating this process without a clear justification or aim for doing so.</p> <p>The CAA also considers that there may be existing processes that could be used for the purposes set out in the Directive without creating a new legislative instrument. For example, the CAA understands that there are existing ICAO (and ECAC Doc 30) processes for managing the specific issue of costs by requiring each international</p>		

airport to have an Airport Security Committee comprising the airport, airport users and the national regulator. Amongst other things the committee is meant to be a vehicle for consultation on costs, although not an approval body. If other suggestions (such as incorporation into the ACD) made in this document were not thought workable, another option would be to direct effort at improving these existing systems rather than creating a new system at EU level.

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

The Commission's Impact assessment states "airlines and passengers will have greater transparency of the costs they pay for security". However, as the proposals only bite on charges levied by airports, which are almost exclusively on airlines, the proposal will not ensure that passengers will have greater visibility of security costs unless airlines *choose* (there is no requirement) to display the charge separately on tickets as some now do for the passenger charges at airports.

Passengers may welcome more information about the security charges they pay for through their fare; however, no evidence is presented in the proposal documents on whether this is the case (they may conceivably be more concerned with the overall ticket cost), and again there is no requirement for the information provided under the Directive to be made available to the passenger. There is also the possibility that this sort of information would be inappropriate (in security terms) for general publication.

It appears imperative – and in the best interests of the passenger - that Member States and airports are able to determine their security requirements according to their needs, and are not prevented from acting quickly should that be necessary. The current provisions in article 6 of the Directive would appear to put this at risk (see answer to question 16 below).

We have made further comments in relation to the cost/benefit calculations in the Commission's Impact Assessment in our response to question 4 below.

Although this question asks about benefits to passengers, the CAA will also be interested to see responses from airlines about the benefits the proposal might bring to them, in the UK and elsewhere in Europe.

<p>3. 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 on and maximise benefits for the UK aviation sector?</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input checked="" type="checkbox"/></p>
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Please explain your reasons and add any additional comments you wish to make:

The CAA considers that the Airport Charges Directive (ACD) already covers security charges, and as such this separate proposal is not warranted. Should the Commission make a compelling argument that separate provisions are necessary for security charges then ideally the CAA would suggest that this is discussed in the form of an amendment to the ACD (the provisions of any such amendment would need to

be subject to discussion, and the points raised in this response would apply). However, appreciating that this would necessitate a new formal proposal from the Commission, which may make this course of action less likely at this stage, an alternative would be for the provisions of this new proposal to be aligned to mirror those of the ACD.

Bringing the proposal in line with the ACD should minimise additional burdens on airports and airlines. In addition, bringing this proposal into effect as an amendment to the ACD, which comes into effect in 2011, could have the effect of bringing the provisions – and any benefits attached to it - into effect sooner than with a stand-alone instrument.

The provisions that would need to be brought into line with the ACD are as follows:

- Article 1 – subject matter – scope – see answer to question 7 below
- Article 3 – non-discrimination – see answer to question 10 below
- Article 4 – consultation – see answer to questions 11 & 12 below
- Article 7 – cost relatedness – see answer to question 18 below
- Article 8 – Independent Supervisory Authority – see answer to questions 19 & 20 below

4. Do you have any comments on the European Commission's Impact Assessment of the proposal?	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
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Please explain your reasons and add any additional comments you wish to make:

The Commission has assumed that the same market conditions apply across EU, which is not the case. For example, the UK airport sector is competitive - or regulated. This means there is 'protection' for the user in any case (either regulation or general competition law will serve to restrict prices to competitive levels or competition will mean airports can't overcharge or their business would go elsewhere). With such different circumstances across the EU, it is also unlikely that there will be a 'one-size-fits-all' solution to any identified problem.

The Commission's 'Benefit case', as set out in its Impact Assessment, is made up of a very small impact (0.26 euro per ticket) spread across each of a multitude of users (c 320m), whereas the **costs** are spread across a much smaller number (Member States and airports/airlines) and not estimated. The CAA suggests that it is important to ascertain that the benefits would outweigh the costs of this proposal. In addition, the user benefit (10% off security costs) is based on a small sample (AEA work on 4 German airports) yet assumed to apply across all member states. Such benefit calculations should give some sort of 'error bound' around them (which one would expect to be wide at such low levels). We would also question whether these airports are typical (see point above about lack of homogeneity in the airports market across Europe); whether there should have been a control group against which to test the baseline case; what the German security costs were before the legislative

intervention; what was the actual cause of the reduction in this case, and what happened to other airport costs at these airports (i.e. did the airport simply increase other charges to compensate?)

The Impact Assessment considers and rejects the idea that this proposal should be applied only to those airports with more than 5m passengers per annum (aligned with the coverage of the ACD) as since "benefits are expected to be proportionately higher at smaller and regional airports". But no evidence is adduced to support this claim. The majority of any benefits realised will in practice be at larger airports.

In relation to the competition assessment we would point out that the requirement for any charges to be cost-related does not fit well with the generally competitive airports market in the UK, and could have a negative effect on some of the competitive price signals airports respond to, e.g. in terms of providing additional capacity (as explained in response to question 18).

The Commission's Impact assessment states "airlines and passengers will have greater transparency of the costs they pay for security". However, as the proposals only bite on charges levied by airports which are almost exclusively on airlines, passengers will not have greater visibility of security costs unless airlines *choose* (there is no requirement) to display the charge separately on tickets as some now do for the passenger charges at airports.

5. **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

NO

Please explain your reasons and add any additional comments you wish to make:

N/a

6. **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

NO

Please explain your reasons and add any additional comments you wish to make:

N/a

7. 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

NO

Please explain your reasons and add any additional comments you wish to make:

The CAA's view is that the UK should argue for the scope of this proposal, and the rest of its provisions, to be aligned with the Airport Charges Directive (ACD). That would mean that the Directive would cover airports serving more than 5 million passengers per annum, and the largest airport in each Member State if not otherwise covered.

Such a threshold was agreed as a compromise scope in the ACD to represent the airports most likely to have a strong market position (although we would note that size of airport does not necessarily correlate to its market power). As this proposal is predominantly about charges it would seem sensible to align the two.

The CAA is aware that other legislative instruments concerning security provisions have different thresholds. However, the CAA would suggest that any provisions specifically concerning security measures would be more appropriately dealt with as amendments to this separate legislation rather than being part of an instrument that is mainly concerned with charging issues.

A wider scope could create unnecessary burdens for airports and airlines operating at those airports. It would also significantly increase the costs of implementing the Directive for the Government and the Independent Supervisory Authority. This would appear to be disproportionate to any benefits likely to accrue to airlines or passengers, as the benefits foreseen appear to be in the form of lower charges, and the largest benefit will therefore be seen at the largest airports with the largest cost/charge base.

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

YES

NO

Please explain your reasons and add any additional comments you wish to make:

Inevitably it will be very difficult to alight on one standard definition of security charges that will facilitate comparisons between airports.

However, the current proposed definition of security charges leaves it uncertain as to which costs are to be treated as “the cost of security measures”. Would they for example, include policing costs, which are included in the security charges at some UK airports? Airports may levy several different charges in relation to security, including passenger security charges; baggage screening charges and charges for the issue of airside security passes. These would all appear to be within the scope of the Directive. The CAA would suggest that the definition needs careful examination to ensure that it is workable at all airports covered, and includes relevant ‘security’ charges.

The proposals refer to “security measures intended to protect civil aviation against acts of unlawful interference”. This links the proposal directly to Annex 17 of the Chicago Convention, which defines acts of unlawful interference, but goes on to define such acts in relation to aircraft rather than the airport. The CAA would observe that security threats can be directed as much against airports as aircraft, and that this definition might not therefore be appropriate.

The fact that a single, standard definition of security charge is unlikely to be reached creates the risk of unintended consequences and costs that should be (and are currently not) included in any Impact Assessment.

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

YES

NO

Please explain your reasons and add any additional comments you wish to make:

The definitions leave it unclear whether the proposals would apply to charges at military aerodromes.

More fundamentally, Article 1 describes the purpose of the directive as setting common principles for the levying of security charges at Community airports”. This, allied to the definition of security charges, suggests that the directive would apply only to those airports that levy a separate security charge. It would be helpful to understand if this is the case (the CAA has answered the rest of this consultation on the understanding that separate identification of security charges is required – although the Directive does not specify this).

The CAA suspects it will also be difficult to identify all those costs that are related to security in a way that allows meaningful comparisons over time or between airports (how, for example, are overheads to be treated?)

10. **Non-discrimination (Article 3):**

<p>a) Do you agree with the principle of non-discrimination when applying security charges? What do you understand this to mean?</p> <p>b) Are there any circumstances when this principle might not be feasible to administer?</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input checked="" type="checkbox"/></p>
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Please explain your reasons and add any additional comments you wish to make:

Clarity is needed on what is meant by non-discrimination. A similar provision was included in the ACD, and after clarification was sought the drafting was resolved as “Member States shall ensure that airport charges do not discriminate among airport users, in accordance with Community law” to make clear that the intention was to reflect other community law in this area – i.e. that discrimination should not be allowed on grounds of nationality etc. We would suggest aligning this text with that in the ACD.

The ACD equivalent article goes on to say: “This does not prevent the modulation of airport charges for issues of public and general interest, including environmental issues. The criteria for such a modulation should be relevant, objective and transparent.” Similar wording is needed for the security charges proposal to reflect the fact that airports may need to differentiate their charges e.g. to reflect security requirements on different routes.

<p>11. 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?</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input checked="" type="checkbox"/></p>
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Please explain your reasons and add any additional comments you wish to make – **we are particularly interested in any costs and benefits associated with the proposal:**

No justification is given for consultation on security charges to differ from that on other charges (as set out in the ACD). The CAA would therefore suggest that the provisions in the proposal be brought into line with the ACD such that consultation can take place at intervals other than annually where agreed in the latest consultation or covered by a multi-annual agreement. In addition it is important that the consultations on security and other charges (as required under the ACD) can take place at the same time, should the airport and airlines in question wish, and are not required to be separate processes, to avoid unnecessary duplication.

The Commission’s Impact Assessment suggests that multi-annual agreements are not desirable, but it is not clear what the reason for this is. The CAA would observe that both airports and airlines often choose to utilise such agreements as they bring benefits for all parties. For example, a long-term contract can provide the airport with

the certainty needed to invest and the airline the certainly as to future charges: a win-win situation.

12. Do you think the proposed timescale for agreeing changes to security charges would work in practice? If not, please suggest what would be a more realistic timetable?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
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Please explain your reasons and add any additional comments you wish to make:

The CAA would suggest aligning the requirements to those in the Airport Charges Directive to avoid undue bureaucracy. This would mean (i) adding in a provision for exceptional circumstances (which would need to be justified to airport users) for not giving four months' notice of any proposed changes; and (ii) adding in that it should "normally" publish its decision no later than two months before it enters into force, again to take into account of the possibility of extenuating circumstances.

13. Transparency (Article 5): Do you believe that these information requirements are appropriate at all EU airports? What do you would you consider to be the costs and benefits?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
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Please explain your reasons and add any additional comments you wish to make:

As set out in the answer to question 7, the CAA considers that it is not appropriate for the Directive to cover all airports, and would suggest that the scope of the Directive should be aligned with that of the Airport Charges Directive.

The Commission's Impact Assessment suggests the data/information likely to be required should be easily available. Airports and airlines will be well placed to judge whether that is the case; however the CAA understands that many UK airports do not currently levy separate security charges, which suggests that, were they obliged to do so (see question 9 for discussion of whether there is this obligation), new systems and/or resources may be required by the airport to fulfil such requirements, which would incur a cost. The CAA suspects it will also be difficult to identify all those costs that are related to security in a way that allows meaningful comparisons over time or between airports (how, for example, are overheads to be treated?)

As mentioned in relation to question 2 above, passengers may welcome more information about the security charges they pay for through their fare; however, there

is no evidence that is the case (they may conceivably be more concerned with their overall ticket cost), and there is in any case no requirement for the information provided under the Directive to be made available to the passenger, so no guarantee that additional information will be forthcoming.

14. Transparency (Article 5): Do you think that these information requirements would affect your current commercial relationships?

If so, please state how.

YES

NO

Please explain your reasons and add any additional comments you wish to make:

N/a

15. Transparency (Article 5): 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

NO

Please explain your reasons and add any additional comments you wish to make:

The proposal as currently drafted would require airports to identify additional information on a certain category of charges and at a level of granularity within this category, that is not required by the ACD and does not appear to be justified by the proposal. This would appear to create additional burdens for airports.

The CAA suggests that it would be sensible for consultation and information on all airport charges to be considered together (which would also suggest aligning this provision with the ACD).

If a case can be made for identifying and treating security charges differently, then the CAA would suggest discussing with airports and their airline customers what sort of information they would find useful and that can be produced for most benefit as against the costs incurred.

<p>16. Impact Assessments (Article 6):</p> <p>a) What are your expectations about what a Member State should do before the adoption of More Stringent aviation security Measures (MSMs)?</p> <p>b) Are there any circumstances where you could foresee that undertaking an impact assessment and consulting upon it may not be appropriate or necessary?</p>	<p>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p>	
<p>Please explain your reasons and add any additional comments you wish to make:</p> <p>Although the CAA does not claim expertise in this area, it is clear from recent history that there could be circumstances where More Stringent Measures may need to be applied at very short notice, which would not permit the undertaking of an impact assessment or consulting upon that. The Directive should make provision for such circumstances.</p> <p>Alternatively, the CAA understands that the Government can impose new security requirements straight away by letter to be followed up later by a formal legal direction. In such a case it might be possible for the IA to be linked to the latter and not prevent the former happening sooner should that be necessary.</p>		
<p>17. Impact Assessments (Article 6): Are there any operational or financial impacts associated with the requirements of this Article?</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>Please explain your reasons and add any additional comments you wish to make, including any data that may help to inform the impact assessment:</p> <p>N/a</p>		
<p>18. Cost-relatedness of security charges (Article 7): Do you agree that the principle of cost-relatedness should be included in the Directive?</p> <p>How feasible would this principle be to apply within the context of the UK's system of airport operation and regulation?</p> <p>What effect do you think that a requirement for cost-relatedness would have on your</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input checked="" type="checkbox"/></p>

charges?		
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Please explain your reasons and add any additional comments you wish to make:

The CAA is opposed to a requirement for security charges to be cost-related on grounds of both practicality and principle.

Primarily the CAA is concerned that the proposal is unlikely to be effective in practice, for the following reasons:

- The Airport Charges Directive does not require cost-relatedness in other charges, and hence this provision would not secure lower charges (should that be the aim) where any 'excess' contained in security charges could simply be added on to other charges.
- Even if lower charges were to result, there is no guarantee that any savings generated by this measure would be passed on to passengers, without a similar requirement for airlines to make their charges cost-related (which is not currently part of the proposal).
- The proposal also appears unlikely to drive efficiencies in security costs, as once 'costs' have been incurred and identified they can be passed on, whatever the level.
- Under a single till mechanism as we have in the UK (where all revenues go into the same 'pot'), we do not see how revenues can be allocated between services/activities, and without prescription on this point (which would probably require burdensome intervention) a cost-relatedness requirement is likely to be ineffective.
- As outlined in question 8, defining (and enforcing) a definition of security charges is also likely to be very difficult. Security requirements change frequently, and are not necessarily distinct from other airport services (e.g. there will be shared overheads, and it may not be clear where 'security' begins and other airport services end).

We would also note that cost reflectivity of security charges is already mentioned in Article 5 of Regulation 300/2008, and would suggest that a revisiting of this text would seem unnecessary and unlikely to yield a different outcome given the recent discussions and agreement on the text therein.

The CAA also has objections of principle to this proposal. Firstly, requiring cost relatedness could provide a disincentive to innovation. For example, an airport would face no incentive to take the initiative and invest in new security equipment that would increase quality of service if the airport can only recover its costs. Secondly, the proposal could mean that security charges must reflect annual accounting costs. Apart from the practical difficulty associated with calculating such a cost in a single till context, this risks distorting competition between airports as it would prevent charges reflecting the levels of scarcity in the market – something which is highly desirable providing charges continue to reflect the competitive level, i.e. reflect the costs of providing new services/facilities over the long term. The reason it is highly desirable is because unless charges are allowed to reflect scarcity, the signal to invest will be weakened, and investment may not take place, which could damage passengers' interests (given the extent to which airport services depend upon long term

investment).

19. Independent Supervisory Authority (Article 8): Do you agree that an Independent Supervisory Authority should be nominated or established to ensure the correct application of the proposed Directive?

YES

NO

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

YES

NO

Please explain your reasons and add any additional comments you wish to make:

The CAA would suggest that the proposed function of the ISA should be aligned with the provisions of article 6 (5) in the Airport Charges Directive. Such alignment would mean that the UK would not be required 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.

See answer below for comment on dispute resolution should the above not apply.

20. Independent Supervisory Authority (Article 8): Who do you feel would be best placed to undertake the role of the ISA for the purpose of security charges in the UK?

The CAA anticipates that it will be designated as the Independent Supervisory Authority (ISA) for the Airport Charges Directive (ACD). Should this Security Charges Directive be aligned with the ACD, as the CAA suggests, then the CAA may be the most appropriate body to undertake such a role for the Security Charges Directive.

However, the CAA would note that, under the existing proposals, it has significant concerns about the roles of the ISA as proposed in article 8 of the draft Directive as they relate to dispute resolution. The answer above covers whether these provisions should be applied to the UK. However, the CAA would also be concerned that the provision as drafted could undermine the incentives for normal commercial dialogue between the parties, potentially increasing the frequency of any airport/airline disagreements and introducing unnecessary uncertainty into the charges setting process.

In addition, as drafted, these provisions would appear to require an ISA to intervene

to adjudicate on what should be the correct level of operational security at an airport and therefore what can be charged for. When setting price controls at designated airports the CAA may scrutinize the security (and other) costs projected by the airport and determine whether these represent an efficient level of costs. In all cases the CAA's assessment takes the level of operational security to be provided as a given and relies on Transec for this purpose. The CAA views the correct level of operational security as a matter for the Member State to determine and therefore not appropriate for judgement by an ISA. The same concern applies to article 6 on Impact Assessments: should the ISA be responsible for assessing the content of Impact Assessments then the CAA would note that this is a security issue that it does not consider it appropriate for an ISA to undertake.

In summary, should the final Directive be primarily concerned with *charging* issues then it would seem to make sense for the CAA to be the ISA, and the provisions aligned with those of the ACD. However, should *security* issues be a key element then the CAA considers that more thought is needed as to the appropriate body to carry out this role.