

## EUROPEAN DRAFT DIRECTIVE ON AIRPORT CHARGES

### Purpose

1. This paper informs the Liaison Group of the Department's current consultation on the European draft Directive on airport charges. The draft Directive is ambitious and, if implemented as currently drafted will have significant implications for the industry as well as the CAA, the proposed regulator for the purposes of the Directive. In view of the number of airports that would be affected by the draft Directive it is suggested that a response be made on behalf of the Liaison Group. This paper sets out some suggested comments for consideration.

### Background

2. In January this year, the European Commission announced its "airport package". The package consists of three key initiatives: a proposal for a directive on airport charges, a communication on airport capacity, efficiency and safety in Europe and a report on the implementation of the ground handling directive. The package focuses on the role of airports in the further development and competitiveness of the European internal aviation market and will mark the future of airport regulation in Europe by ensuring regulatory convergence between Member States.
3. This paper specifically considers the detail of the draft directive on airport charges. Updates on the other elements of the package are given elsewhere on the agenda.
4. The Department is currently seeking views from interested parties on the European Commission's proposal in order to establish the UK position for negotiating the Directive. The Department held a symposium on the proposals on 26<sup>th</sup> April and this was attended by a wide range of representatives from airports, airlines and the CAA. A representative from the Liaison Group also attended and the feedback given at the symposium forms the basis of the comments in this paper. Responses to the consultation are required to be submitted by 18<sup>th</sup> June.

### The Current Regulatory System for Airports in the UK

5. A framework for economic regulation of airports in the UK – overseen by the CAA has existed for over 20 years. Economic regulation of airports in Northern Ireland is a devolved matter and separate legislation exists which closely follows that for other parts of the UK but is overseen by the CAA.
6. In the UK airports fall into three categories for economic regulation:
  - Airports not subject to any sector-specific economic regulation – these airports have an annual turnover, measured over each of the previous three years, of less than £1m
  - Airports that require permission to levy airport charges – any airport with an annual turnover in excess of £1m requires permission to levy airport charges. These airports are required to submit financial information to the CAA. In addition, the CAA has powers to attach conditions to remedy or prevent certain courses of conduct but these airports face no active regulation of their airport charges
  - Airports designated by the Secretary of State for price cap regulation – additionally the CAA must attach conditions relating to the information in these airports' accounts and the maximum amount raised from airport charges.

7. The system of economic regulation of airports was established in the Airports Act 1986. There is a system of general safeguards for airports meeting a £1m turnover. They must seek permission to levy charges and the CAA can take action if an airport acts in an uncompetitive or discriminatory way. Once permission to levy charges is granted, these airports are free to set their charges in line with the market conditions under which they operate, subject to domestic and European competition law. This threshold has not changed and therefore, over time, it has led to an increasing number of airports being subject to economic regulation. Currently more than 50 airports meet the threshold. Since 1986, the CAA has considered 11 instances where airlines thought an airport was potentially acting un-competitively. These cases have been resolved without the CAA having to use its powers to impose remedies on airport operators.
8. Airports with significant market power are subject to an additional level of regulation following designation by the Secretary of State for Transport. Under the Civil Aviation Act the CAA is required to impose price controls (price caps) on the designated airports to regulate the maximum revenue an airport can receive from airport charges during a five year period. There are currently four designated airports in the UK – Heathrow, Gatwick, Stansted and Manchester. No other airports have been designated since 1986 nor have any been de-designated. However, it should be noted that cases for the de-designation of Stansted and Manchester Airports are due to be considered in the near future.

### **The Draft Directive**

9. The Commission has advised that at present, the pricing of airport infrastructure is regulated at national level through systems that are not always properly justified and the provision of information thereon can be inadequate. Users are not systematically consulted at all EU airports prior to the determination of charges or before the modification of a charging system. Airport users are not usually informed about future investments at airports and their necessity. There is therefore tension between airports and airlines over the acceptability and transparency of charges and the Commission would like to introduce measures aimed at creating a level playing field to avoid cases of discontent.
10. The Commission's proposal for airport charges is ambitious, as it will re-define the relationship between airport operators and airport users by requiring total transparency, user-consultation and the application charging systems that do not discriminate between carriers or passengers. It also wishes to create a strong, independent national authority to arbitrate and settle disputes in order to achieve a speedy resolution.
11. A copy of the draft Directive is attached at Annex A. It will be noted that all airports handling 1 million passengers per annum or 25,000 tonnes of cargo will fall within the scope of the Directive. This would mean that 144 airports in the EU (20 UK airports, i.e. the majority of airports participating in the Liaison Group) would be covered by the Directive. It is understood that the Commission chose the threshold as it was simple, objective and gives certainty.
12. The Directive also sets out a process for regular consultation between the airport managing body and airline users about the operation of airport charges. It proposes that consultation should take place each year but it does not specify how long the charging regime should last.
13. All member states must nominate a regulatory authority, independent of airports and airlines. It can be the same body as the national aviation regulator i.e. the CAA in the UK. It will have a dispute settlement body for complaints from airlines and airports within the scope of the Directive.
14. Consultation on airport charges will be required to be undertaken once a year. Airports will have to consult airlines 4 months in advance of any changes to charges and a final decision to be communicated at least 2 months in advance of the changes.

15. If the draft Directive is implemented in its current form, the UK would propose that the framework for economic regulation under the 1986 Act would remain including the requirement that designated airports would continue to have airport charges regulated by means of a price cap. The Directive allows for member states to maintain existing regulatory frameworks in addition to but not instead of the provisions of the Directive. As such, all airports falling within the scope of the Directive, whether or not they are designated under the Airports Act would be required to adhere to the common principles of the Directive.
16. In view of the wide ranging implications of the scope of the Directive it is considered appropriate for a collective response on behalf of the Liaison Group to be submitted to the Department.

### **Timetable**

17. The European Parliament will consider the Directive between May and September and there will be on going discussions with member states at Council Working Groups during June 2007. The DfT is therefore seeking comments on the draft Directive to feed into that process. As and when the Directive comes into force, UK implementing legislation will be necessary.

### **Issues for Consideration**

18. The Government's stated position is that competition is preferable to regulation. Even where competition is weak and there is a risk of anti-competitive effects, there are now wide-ranging powers in the UK and under EU law to tackle anti-competitive agreements and practices. These legislative provisions are therefore felt to provide the requisite tools to safeguard competition. However, there might exceptionally be circumstances which merit consideration of additional regulation but only if it can be expected to deliver a clear net benefit. The Directive therefore needs to be measured against these principles.
19. At the stakeholder symposium much concern was expressed by airport operators about the significant and unnecessary burden that would be imposed on UK airports and their airline users. As mentioned above, since 1986 the CAA has considered only 11 instances where airlines thought an airport was potentially acting un-competitively. These cases were resolved without the CAA having to use its powers to impose remedies on airport operators.
20. Airlines and airports however recognise the need for airport charges to be regulated at EU level but they have differing views on how this should be done. Airlines take the view that legislation is needed to ensure independent national regulation and the need for consultation and transparency. This is because it is not always clear how airport charges have been calculated or what components have been taken into account in setting the charge. Some low cost carriers and airports see less need for community legislation as increased competition from secondary airports has a downward effect on airport charges levels.
21. It therefore appears that in order to address problems at a handful of airports in Europe which act in un-competitive or discriminating ways the Directive, as currently drafted, would give rise to more problems than solutions for UK airports and the CAA. The proposals are therefore felt to be disproportionate to the problem they seek to address. A key issue for the Government is in the negotiation of an appropriate threshold to establish which airports should fall within the scope of the Directive and the mandatory requirements it will impose.
22. It is suggested therefore that the following points be raised in a collective response to the Department:

- **General** – The Liaison Group is far from convinced that benefits of the draft Directive for UK airports will outweigh the costs involved for airports, airlines and the CAA. The proposed mandatory requirements are considered disproportionate to the problem they seek to address at a handful of airports in Europe.
- **Article 1** - given the rapid growth in air passenger numbers over the past few years, and which is forecast to rise further, it is questioned whether a threshold of airports handling over 1 million passengers per annum or handling 25,000 tonnes of cargo is too low. The threshold is considered to be disproportionate to the problem it seeks to address. If the EU is insistent on maintaining such a low threshold it is suggested that the Government seek changes to the scope of the other articles of the Directive as discussed in the points below.
- **Article 3** - the proposal to ensure that airport charges do not discriminate among airport users or passengers is fully supported.
- **Article 4** – the mandatory requirement for regular consultation between airports and airlines on the system for setting the level of airport charges is supported as it helps to foster effective working relationships between airports and airlines. However, the suggested timescales for the process is questioned. Firstly, is the requirement to undertake consultation on an annual basis onerous especially if an airport is only wishing to raise its level of charges below or in line with the rate of inflation? Secondly, is the timescale of four months for the consultation and implementation process practical? As currently drafted, it only allows for a period of two months to undertake consultations with airlines/users as a final decision is required to be published two months before the new charges take effect. It is doubtful whether two months would be sufficient at the larger airports where a greater number of airlines with differing business models and requirements will need to be consulted.
- **Article 5** – ensuring there is transparency in the process is supported but it is felt this should only become mandatory where there are disputes at local level. The proposed list of information both parties are required make available will need to be carefully considered by the Government in its negotiations. It is vital that commercially sensitive information, not normally shared with competitors, is only required to be revealed where it can be demonstrated that the consideration of that information is needed to determine future investment plans and the level of charges to be levied.
- **Article 6** – consultation on plans for new infrastructure projects funded through airport charges is fully supported and should be a mandatory requirement in the consideration of setting charges.
- **Article 7** – quality standards are a key consideration for both airlines and passengers. The passenger experience should feature in discussions between the airport operator and airlines. However, whilst service level agreements are supported as it focuses airports' and airlines' attention on the needs of passengers, it would not be appropriate to make this a mandatory component of the airport charges process. Service level agreements should only become mandatory where the independent regulatory authority is of the view that such agreements would remedy a particular problem or dispute. If service level agreements are to become mandatory, then it is suggested that a baseline minimum level of service is specified and agreed locally by all the airlines operating at an airport. The system should also allow for airlines to top-up service levels for an agreed additional charge. In addition, if service level agreements become a mandatory requirement, the Directive should identify a range of services/facilities that could be covered by such agreements.
- **Article 8** – the ability to allow airports to impose differential charging systems according to the quality and scope of airport service and facilities is supported.

- **Article 9** – the proposal to require airports to use security charges exclusively to meet security costs, including the cost of financing security facilities and installations, and the expenditure on security staff and operations is fully supported. It is however disappointing that the Directive does not go further to address the inequities in the funding of airport policing (see paper on airport security considered elsewhere on the agenda). The UK Government has stated that it believes that the industry should meet all its running costs, including those relating to security. It also does not think it appropriate for the general taxpayer to subsidise those who travel by air or, indeed by sea or rail. It is therefore suggested that the Government be urged to address the cost of airport policing in its discussions on the draft Directive.
- **Article 10** – It will be noted that the draft Directive sets out provisions for an Independent Regulatory Authority (IRA) to oversee the measures set out in the Directive. It also proposes that the IRA acts as an independent arbitrator in the event of a dispute between an airport and airlines over the appropriate level of charges at an airport. As drafted, the Directive suggests that if such a dispute were to occur, the IRA would be called on to issue a binding decision which could involve setting the level of the charge. The Department has advised that in the UK this is likely to be the CAA. It is suggested that the Liaison Group supports this proposal in principle but wishes the Government to carefully consider the full implications of this in relation to the CAA's current role and area of responsibility as there are likely to be significant resource implications. In addition, in respect of the arbitration process the suggested timescales for the arbitration process is an area of concern and it is doubtful whether two months is sufficient to consider complex cases. It is also questioned how the decisions reached by the IRA will fit with the domestic and European competition law.

**The views of the Liaison Group are sought**

Paula Street  
Secretariat

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on airport charges**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission<sup>7</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>8</sup>,

Having regard to the opinion of the Committee of the Regions<sup>9</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>10</sup>,

Whereas:

- (1) The main task and commercial activity of airports is to ensure the handling of aircraft, from landing to take-off, and of passengers and cargo, so as to enable air carriers to provide their air transport services. For this purpose, airports offer a number of facilities and services related to the operation of aircraft and the processing of passengers and cargo, the cost of which they generally recover through airport charges.
- (2) It is necessary to establish a common framework regulating the essential features of airport charges and the way they are set, as in the absence of such framework, basic requirements in the relation between airport managing bodies and airport users may not be respected.
- (3) This Directive should apply to airports located in the Community territory that are above a minimum size, as the management and the funding of small airports do not call for the application of a Community framework.

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<sup>7</sup> OJ C, p

<sup>8</sup> OJ C, p

<sup>9</sup> OJ C, p

<sup>10</sup> OJ C, p

- (4) The collection of charges with respect to the provision of Air navigation services and groundhandling services has already been addressed by Commission Regulation (EC) No 1794/2006 of 6 December 2006 and Council Directive 96/67/EC of 15 October 1996, respectively.
- (5) Airport charges should be non-discriminatory. A compulsory procedure for regular consultation between airport managing bodies and airport users should be put in place with the possibility for either party to have recourse to an independent regulatory authority whenever a decision on airport charges or the modification of the charging system is contested by airport users.
- (6) An independent regulatory authority should be established in every Member State so as to ensure the impartiality of its decisions and the proper and effective application of this Directive. The authority should be in possession of all the necessary resources in terms of staffing, expertise, and financial means for the performance of its tasks.
- (7) It is vital for airport users to obtain from the airport managing body, on a regular basis, information on how and on what basis the airport charges are calculated. Such transparency will provide air carriers with an insight into the costs incurred by the airport and the productivity of an airport's investments. To allow an airport managing body to properly assess the requirements with regard to its future investments, the airport users should be required to share all their operational forecasts, developments projects and specific demands and wishes with the airport managing body on a timely basis.
- (8) Airports should inform airport users about major infrastructure projects as these have significant impact on the level of airport charges. Such information shall be provided in order to make monitoring of costs of infrastructure possible and with the view to providing suitable and cost-effective facilities at the airport concerned.
- (9) Due to the emergence of air carriers operating air services at low costs, airports served by these carriers should be enabled to apply charges corresponding to the infrastructure and/or the level of service provided as air carriers have a legitimate interest to require services from an airport that correspond with the price/quality ratio. However, access to such reduced level of infrastructure or services should be open to all carriers that wish to avail of them on a non-discriminatory basis. In case demand exceeds supply, access must be determined on the basis of objective and non-discriminatory criteria to be developed by an airport managing body.
- (10) As the methods for establishing and levying the amounts due for the coverage of security costs differ across the Community, the harmonisation of the basis for charging security costs at Community airports where the costs of security are reflected in the airport charges is necessary. At these airports the charge should be related to the cost for providing security, taking into account any public financing of security costs.
- (11) Airport users should be entitled to a minimum level of service in return for the charges they pay. To ensure this, the service level should be the subject of agreement between the airport managing body and the association(s) representing the airport users at the airport, to be concluded at regular intervals.

- (12) This Directive is without prejudice to the application of the provisions of the Treaty, in particular Articles 81 to 89 thereof.
- (13) Since the objectives of the action taken cannot be sufficiently achieved by the Member States as airport charges systems cannot be put in place at their level in a uniform way throughout the Community and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in the Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

HAVE ADOPTED THIS DIRECTIVE:

### *Article 1*

#### **Subject matter**

1. This Directive sets common principles for the levying of airport charges at Community airports.
2. This Directive applies to any airport located in a territory subject to the provisions of the Treaty and open to commercial traffic whose annual traffic is over 1 million passenger movements or 25 000 tonnes of cargo.

This Directive shall not apply to the charges collected for the remuneration of en-route and terminal air navigation services in accordance with Commission Regulation (EC) 1794/2006 laying down a common charging scheme for air navigation services<sup>11</sup>, or to the charges collected for the remuneration of groundhandling services referred to in the Annex of Council Directive 96/67/EC on access to the groundhandling market at Community airports<sup>12</sup>.

This Directive is without prejudice to the right of each Member State to apply additional regulatory measures that are not incompatible with this Directive or other relevant provisions of Community law with regard to any airport managing body established in its territory. This may include in particular the approval of charging systems and/or the level of charges based on competition law.

### *Article 2*

#### **Definitions**

For the purposes of this Directive

- (a) ‘airport’ means any land area especially adapted for the landing, taking-off and manoeuvring of aircraft, including the ancillary installations which these

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<sup>11</sup> Commission Regulation (EC) No 1794/2006 of 6 December 2006 – OJ L 341, 7.12.2006.

<sup>12</sup> Council Directive 96/67/EC of 15 October 1996 - OJ L 272, 25.10.1996.

operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services;

- (b) 'airport managing body' means a body which, in conjunction with other activities or not as the case may be, has as its objective under national laws or regulations the administration and management of the airport infrastructures and the co-ordination and control of the activities of the different operators present in the airports concerned;
- (c) 'airport user' means any natural or legal person responsible for the carriage of passengers, mail and/or freight by air from or to the airport concerned;
- (d) 'airport charge' means a levy collected for the benefit of the airport managing body and paid by the airport users and/or air passengers with a view to recovering all or part of the cost of facilities and services which are exclusively provided by the airport management body and which are related to landing, take-off, lighting and parking of aircraft, and processing of passengers and freight;
- (e) 'security charge' means a levy which is specifically designed to recover all or part of the cost of security measures intended to protect civil aviation against acts of unlawful interference.

### *Article 3*

#### **Non-discrimination**

Member States shall ensure that airport charges do not discriminate among airport users or air passengers.

### *Article 4*

#### **Consultation and remedy**

1. Member States shall ensure that at each airport a compulsory and regular procedure for consultation between the airport management body and airport users or representatives of airport users is established with respect to the operation of the system of airport charges and the level of such charges. Such consultation shall take place at least once a year.
2. Member States shall ensure that, wherever possible, changes to the airport charges system or to the level of charges are made in agreement between the airport managing body and the airport users. To that end, the airport managing body shall submit any proposal to modify the airport charges system or the level of airport charges to the airport users no later than 4 months before they enter into force, together with the reasons for the proposed changes. At the request of any airport user, the airport managing body shall hold consultations on the proposed changes with the airport users and take their views into account before the final decision is taken. The airport managing body shall publish its final decision no later than 2

months before it enters into force. The airport managing body shall justify its decision with regard to the views of the airport users in the event no agreement on the proposed changes is reached between the airport managing body and the airport users.

3. Member States shall ensure that in the event of a disagreement over a decision on airport charges, either party may seek the intervention of the independent regulatory authority which shall examine the justifications for the modification of the airport charges system or the level of airport charges.

#### *Article 5*

#### **Transparency**

1. Member States shall ensure that the airport managing body provides each airport user, or the representatives or associations of airport users, once a year with information on the components serving as a basis for determining the level of all charges levied at the airport. This information shall at least include:
  - (a) a list of the various services and infrastructure provided in return for the charge levied;
  - (b) the method of calculation of charges;
  - (c) the overall cost structure of the airport;
  - (d) the revenue and cost of each category of charges collected at the airport;
  - (e) the total number of staff deployed to services which give rise to the collection of the charges;
  - (f) forecasts of the situation at the airport as regards the charges, traffic growth and any proposed investments;
  - (g) the actual use of airport infrastructure and equipment over a given period;
  - (h) the productivity of the investments in terms of their effects on the airport capacity and the quality of services provided.
2. Member States shall ensure that airport users submit information to the management body on a regular basis, concerning in particular:
  - (a) forecasts as regards traffic;
  - (b) forecasts as to the composition and envisaged use of their fleet;
  - (c) their development projects at the airport concerned;
  - (d) their requirements at the airport concerned.

3. The information provided on the basis of this article shall be considered as confidential and handled accordingly.

#### *Article 6*

### **New infrastructure**

Member States shall ensure that the airport managing body consults with airport users before plans for new infrastructure projects are finalised.

#### *Article 7*

### **Quality standards**

1. In order to ensure smooth and efficient operations at an airport, Member States shall ensure that the airport managing body and the association or associations representing airport users at the airport enter into negotiations with a view to concluding a service level agreement with regard to the quality of service provided at the airport terminal or terminals, and the exactitude and timeliness of information provided by airport users on their projected operations referred to in Article 5(2), to allow the airport to fulfil its obligations. Such agreement shall be concluded at least once every two years and be notified to the independent regulatory authority of each Member State.
2. Member States shall ensure that, in the event no agreement on service levels is reached, either party may seek intervention of the independent regulatory authority.

#### *Article 8*

### **Differentiation of charges**

1. Member States shall take the necessary measures to allow the airport managing body to vary the quality and scope of particular airport services, terminals or parts of terminals, with the aim to provide tailored services or a dedicated terminal or part of a terminal. The level of airport charges may be differentiated according to the quality and scope of such services.
2. Member States shall ensure that any airport user wishing to use the tailored services or dedicated terminal or part of a terminal, shall have access to these services and terminal or part of terminal.

In the case that more users wish to have access to the tailored services and/or a dedicated terminal or part of terminal than it is possible due to capacity constraints, access shall be determined on the basis of relevant, objective, transparent and non-discriminatory criteria.

## *Article 9*

### **Security charges**

Security charges shall be used exclusively to meet security costs. These costs shall be determined using the principles of accounting and evaluation generally accepted in each of the Member States. However, Member States shall ensure that particular account is taken of:

- the cost of financing the facilities and installations dedicated to security operations including fair depreciation in the value of these facilities and installations;
- the expenditure on security staff and security operations;
- the grants and subsidies allocated by the authorities for security purposes.

## *Article 10*

### **Independent regulatory authority**

1. Member States shall nominate or establish an independent body as their national independent regulatory authority in order to ensure the correct application of the measures taken to comply with this Directive and to assume the tasks assigned under Articles 4 and 7. Such body may be the same as the entity entrusted by a Member State with the application of the additional regulatory measures referred to in Article 1(2), including with the approval of the charging system and/or the level of charges, provided that it meets the requirements of paragraph 2.
2. Member States shall guarantee the independence of the independent regulatory authority by ensuring that it is legally distinct from and functionally independent of any airport managing body and air carrier. Member States that retain ownership or control of airports, airport managing bodies or air carriers shall ensure effective structural separation of the regulatory function from activities associated with ownership or control. Member States shall ensure that the independent regulatory authority exercises its powers impartially and transparently.
3. Member States shall notify to the Commission of the name and address of the independent regulatory authority, their assigned tasks and responsibilities, and of the measures taken to ensure compliance with paragraph 2.
4. Whenever an airport managing body or an airport user has a complaint with regard to any matter within the scope of this Directive, it may refer the complaint to the independent regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. The independent regulatory authority shall have the right to request the necessary information from the parties for the decision. The decisions of the regulatory authority shall have binding effect.
5. The independent regulatory authority shall publish an annual report concerning its activities.

## *Article 11*

### **Report and revision**

1. The Commission shall submit a report to the European Parliament and the Council on the operation of this Directive no later than 4 years after its entry into force as well as, when appropriate, any suitable proposal.
2. Member States and the Commission shall cooperate in the application of this Directive, particularly as regards the collection of information for the report mentioned in paragraph 1.

## *Article 12*

### **Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to conform to this Directive not later than 18 months from the date of its publication in the *Official Journal of the European Union*. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication.

2. Member States shall communicate to the Commission the text of the essential provisions of domestic law which they adopt in the field covered by this Directive.

## *Article 13*

### **Entry into force**

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*