

# Airport charges

## Revision of Directive 2009/12/EC

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### SUMMARY

Directive 2009/12/EC (the Airport Charges Directive) is a common EU framework aimed at regulating the essential features of airport charges. It covers the charges relating to landing, take-off, lighting and parking of aircraft, and processing of passengers and freight. The directive seeks to avoid airport charges being applied in a discriminatory way to different carriers.

In 2016, the European Commission started an evaluation of the directive. The outcome of this evaluation was made public in 2019 and concluded that the directive had helped to improve the existing setting, without however fully achieving its objectives.

A new legislative proposal is expected by the end of this year.

## 1. Background

Airport charges are the charges that airlines pay to airports for using their infrastructure and facilities. These charges concern aircraft landing, freight and the use of different types of airport infrastructure (for instance, passenger terminals). To ensure greater transparency and non-discrimination as regards airport charges that ultimately reflect on the price paid by passengers and the fees collected from freight customers – national, European and international authorities set up policies and rules putting in place minimum standards and frameworks to avoid unfair competition among airlines and unequal treatment between carriers.

At the international level, the UN International Civil Aviation Organization (ICAO) is in charge of the management, administration and governance of the Convention on International Civil Aviation (Chicago Convention), signed by 193 ICAO member states. With regard to airport charges, ICAO recommends to the member states to: 1) permit the imposition of charges only for services and functions that are provided for, directly related to, or ultimately beneficial for, civil aviation operations; and 2) refrain from imposing charges that discriminate against international civil aviation in relation to other modes of international transport.<sup>1</sup> The recommendations and guidance issued by ICAO are based on the general principle that 'where an airport is provided for international use, that the users shall ultimately bear their full and fair share of the cost of providing the airport. It is therefore important that airports maintain accounts that provide information adequate for the

needs of both airports and users, and that the facilities and services related to airport charges be identified as precisely as possible ... Moreover, it is recommended that States consider the application by airports, where appropriate, of internationally accepted accounting standards'.<sup>2</sup>

At the EU level, [Directive 2009/12/EC](#) (the Airport Charges Directive, ACD) was adopted in 2009, with the aim of establishing 'common principles for the levying of airport charges at Community airports'. The transposition deadline was 15 March 2011. The directive was subject to an evaluation process started in 2016, and a new legislative proposal is expected by the end of 2020.

In May 2014, the European Commission set up the Thessaloniki Forum, an expert group of airport charges regulators whose tasks involve: assisting the Commission in relation to the implementation of existing Union legislation, programmes and policies; assisting the Commission in the preparation of legislative proposals and policy initiatives; and coordinating EU Member States' exchange of views.<sup>3</sup>

In 2015, a stakeholder consultation ran in the context of the adoption of an EU Aviation Strategy<sup>4</sup> checked, inter alia, whether the provisions of Directive 2009/12/EC were suitable for the market in practice. The input received confirmed the difference of views between the main players – airlines and airports – that to this day fuels the debate as regards the approach to be taken. While airlines favoured a strengthened regulatory framework, airports supported a more flexible regulatory approach.<sup>5</sup>

The provisions of the Airport Charges Directive apply to airports that are subject to EU law and whose commercial traffic is over five million passenger movements per year. Furthermore, the provisions of the directive apply to at least the largest airport in each Member State. As for charges, excluded from the scope of the directive are 'the charges collected for the remuneration of en route and terminal air navigation services in accordance with Regulation (EC) No 1794/2006, or to the charges collected for the remuneration of ground handling services referred to in the Annex to Directive 96/67/EC, or to the charges levied for the funding of assistance to disabled passengers and passengers with reduced mobility referred to in Regulation (EC) No 1107/2006'<sup>6</sup> (Article 1(4)).

Moreover, the Airport Charges Directive seeks to ensure: non-discrimination among airlines while applying airport charges (unless duly justified); increased transparency on the way airport charges are calculated; regular consultations and remedy between airports and airlines; and creation of national independent supervisory authorities (ISAs) in charge of i) settling disputes between airports and airlines regarding airport charges, and ii) supervising the directive's implementation.

Other issues addressed by the directive refer to: airport networks, a common charging system, new infrastructure and differentiation of services.

## 2. EU-level reports

### European Commission: Communication on an Aviation Strategy for Europe (2015)

Acknowledging the importance of aviation as a 'strong driver of economic growth, jobs, trade and mobility for the European Union',<sup>7</sup> in 2015 the Commission published a [communication](#) on a comprehensive strategy to promote competitiveness and sustainability in the EU aviation sector. The proposed strategy included three main objectives: 'tapping into growth markets, tackling limits to growth in the air and on the ground and maintaining high EU safety and security standards'.<sup>8</sup> The text laying out the second objective emphasised the importance of improving the efficiency of airport charges and indicated that the fitness of the Airport Charges Directive had already been questioned by stakeholders in a 2014 Commission report on the implementation of the directive. In this respect, the Commission planned an evaluation of the directive for 2016-2017, outlined in the new strategy's indicative action plan.

## Support study to the ex-post evaluation of Directive 2009/12/EC on Airport Charges (2017)

The Commission launched an evaluation of the Airport Charges Directive in 2016, to assess if it had achieved its objectives, by providing an up-to-date overview of its implementation and identifying areas of concern in its application. In its ACD [evaluation roadmap](#) of the same year, the Commission indicated that this evaluation would cover 'an assessment of the performance of all provisions of the Airport Charges Directive across Member States since its adoption'.<sup>9</sup>

An external [support study](#) to this evaluation was published in December 2017. The study, covering a period starting from March 2009, i) evaluated the progress achieved in meeting the goals of the directive; ii) assessed the ACD's internal coherence and added value; iii) defined the relevance of the ACD's objectives as regards the latest developments in the airport sector; and iv) outlined some proposals to review or amend the ACD provisions. The support study included desk research and analysis of data on the implementation of the directive by the Member States, case studies of eight airports/groups of airports across Europe, and an evaluation of the views and opinions expressed by the most relevant stakeholders.

Regarding the achievement of the ACD objectives, the Commission's evaluation concluded that although there had been progress since the ACD started being implemented, not all of its objectives had been achieved and therefore not all of its benefits had been delivered. For the authors of the study, 'the benefits could have been more significant than they are today, whilst the costs would probably have been lower or at least equal, to what they are today. Under current arrangements, costs are felt to be high by the airports that see the staff time and resources they had to invest in consultation for fairly limited changes in charges compared to the situation pre-Directive, whilst airlines are frustrated too at the level of staff time and resources needed to attend consultation and analyse data for limited outcomes'.

The evaluation also indicated that, while there were some areas of difference between the Airport Charges Directive and other relevant legislation (for instance, the legislation on passengers with restricted mobility and on security charges), the directive was 'generally coherent with other EU interventions',<sup>10</sup> and that EU intervention with respect to airport charges had added value by promoting competitiveness and preventing fragmentation. The evaluation also confirmed that there had been major changes in the industry since the directive was adopted, including the growth in number of low-cost carriers and the emergence of new competitors, specifically from the Middle East and Turkey. However, and especially considering that they had only partially been fulfilled, the goals and provisions of the directive remained generally relevant.

The evaluation finally offered some recommendations for the review or amendment of the existing measures. These included, among others, the need for:

- a better definition of principles to be followed by Member States, enabling improved national implementation;
- a stronger position of the ISAs and a clarification of their responsibilities;
- more focussed regulation of airports that have the highest levels of market power;
- increased clarity of the Commission's approach to i) incentives and discounting; and ii) bilateral agreements between airport and airlines;
- a clarification that there should be data and cost transparency for airport networks;
- enforcement of the requirement that each ISA should produce an annual report in order to improve transparency and reporting.

## Inception impact assessment: Charges for the use of airport infrastructure (2017)

Based on the evidence gathered as part of the 2014 and 2017 evaluations of the Airport Charges Directive, and in addition to the data obtained during the Commission's monitoring of its implementation,<sup>11</sup> the Commission decided to launch an impact assessment while the evaluation was still ongoing. The [inception impact assessment \(IIA\)](#), published in November 2017, reiterated the Commission's aim to ensure that the problems identified would be tackled as soon as possible, thereby avoiding 'persistent inefficiencies in the market for airport services'.<sup>12</sup> The IIA addressed two problems, namely the risk of abuse of market power by airports with high market power and the additional barriers to entry sometimes imposed on airlines through the airport charges-setting process. The IIA also highlighted some of the drivers that caused these problems, such as the inadequate information exchange between airports and airlines and the latter's insufficient bargaining power as regards airport charges. The IIA noted that ISAs had no say in the airport charges-setting process and that air passengers and cargo customers were inadequately represented in it. It also pointed out that the directive lacked guidance on how to regulate individual airport situations.

The IIA indicated some of the means to address the two main problems: '1) to ensure a more transparent and consistently high quality of consultation at EU airports, through improved exchange of information between airlines and airports; 2) to ensure that all ISAs are sufficiently independent and have sufficient powers to intervene effectively in the airport charges setting process; 3) to improve the targeting of regulation at airports with significant market power and remove any unnecessary regulatory burdens at airports where it is not needed; 4) to ensure the interests of passengers and cargo customers are always reflected in airport charges setting; and 5) remove unjustified differences in the airport charges setting process across EU airports'.<sup>13</sup>

## Technical report by the Joint Research Centre (JRC): The Airport Charges Directive and the level of Airport Charges (2018)

The technical [report](#) elaborated by the JRC in 2018 presented the results of an impact evaluation of the Airport Charges Directive, launched to gauge whether the implementation of the directive had had an impact on the level of airport charges. This was done by comparing the average change in the level of charges before and after the directive came into force.

The key findings of the impact evaluation suggested that, for airports that register more than five million passengers – and only in the case of flights within the EU – the introduction of the directive had 'reduced airport charges by up to 10% for both low-cost and full-service airlines in the case of EU short-haul flights'.<sup>14</sup> This effect had however a weak statistical significance and had materialised three years after the introduction of the directive. In the case of long-haul flights of legacy airlines and regional flights, the introduction of the directive showed no statistically relevant results. Finally, according to the estimates for the largest airports (serving more than 20 million passengers), no statistically relevant effect on airport charges could be seen from the application of the directive. The latter result might also have been affected by the legal and economic heterogeneity of the comparison group, composed of Asian and US airports with a similar number of passengers.

## Evaluation of Directive 2009/12/EC (2019)

The Commission published its [evaluation](#) of the Airport Charges Directive in July 2019. It covered the period from the deadline for the transposition of the directive by Member States (15 March 2011) to April 2019.

The evaluation concludes that, although the Airport Charges Directive has improved airport charges-setting, it has not fully met all of its objectives. The directive remains relevant, since the issues it aimed to address still exist, albeit to a lesser degree. EU airports' competitiveness has

generally increased since the Directive came into force, although 'no firm conclusions can be drawn on the extent to which these developments affect the competitive situation of individual airports'.<sup>15</sup> The two main issues the directive aims to tackle – the risk that some airports might set prices and terms that are not in line with a competitive market, and the diverging and non-transparent charging systems in the Member States – also seem to persist, but on a smaller scale. The evaluation also identifies some inconsistencies in the directive, specifically regarding the interests of passengers and air-freight owners, since they are not specifically mentioned in its provisions.

According to the evaluation, the directive has proved effective to the extent that, by providing a general framework for airport charges-setting, it has improved transparency and promoted fairness in EU airports. However, it would have been more effective if the requirements related to consultation and transparency, especially regarding airport infrastructure, had been defined in more detail. The evaluation also highlights that further details should be provided regarding the independent status, powers and duties of the ISAs, since they are key to ensuring the correct implementation of the directive. As regards the efficiency of the directive, the evaluation points out that the benefits accruing from implementing the directive exceed the additional costs incurred by the industry. The evaluation confirms the external coherence of the directive but identifies an internal incoherence between 'the non-discrimination requirement and the provision allowing Member States to not provide for the possibility to seek the intervention of the ISA at airports where the maximum level of airport charges is determined or approved by the ISA itself'.<sup>16</sup>

### 3. European Parliament position

#### Resolutions of the European Parliament

Over the years, the European Parliament has shown its interest in the issue of airport charges and adopted a number of resolutions relating to this topic. In its [resolution](#) of February 2017 on the Aviation Strategy, the European Parliament stressed that it 'notes the importance of a favourable regulatory framework for airports to attract and mobilise private investment' and that it 'considers that the Commission's evaluation of the Airport Charges Directive, in conjunction with effective airline/airport consultation, should help clarify whether the current provisions are an effective tool to promote competition against the risk of abuse of monopoly power and to further the interests of European consumers and promote competition, or whether a reform is needed'.

### 4. European Court of Justice position

In 2014, Lufthansa, in its capacity of airport user, contested the approval of a new system of airport charges for Berlin-Tegel airport, which was managed by the Land of Berlin.

In this context, the German Federal Administrative Court submitted a preliminary ruling procedure ([Case C-379/18](#)) to the European Court of Justice (ECJ) concerning the interpretation of Article 3, Article 6 (paragraphs 3 to 5) and Article 11 (paragraphs 1 and 7) of the Airport Charges Directive.

The Federal Administrative Court asked the ECJ for clarification on two issues: i) the possibility for an airport management company and its users to agree on airport charges different to the ones granted by the ISA; and ii) the compatibility of the directive in regard to effective judicial protection rights.

In 2019, the Court [ruled](#) that a national provision which allows an airport managing body to agree with an airport user airport charges different from those set by that body and approved by the relevant national independent supervisory authority violates Directive 2009/12. Regarding the first issue, the ECJ concluded that the directive precludes a national provision allowing an airport managing company to agree with an airport user on airport charges different from those established by the ISA, since this would undermine the principles of transparency and non-discrimination included in Articles 3, 6 and 7 of the directive.<sup>17</sup> With regard to the second issue, the ECJ considered that the directive precludes the application of a national law that confers competence to the civil

courts to decide on a case-by-case basis on claims related to airport charges granted by an ISA. It also prevents airport users from directly challenging the ISA decisions.

## 5. Stakeholder positions and academic paper

### Stakeholder positions

Several stakeholders have expressed opinions relating to the Airport Charges Directive, some of which are outlined below.

In 2013, the International Air Carrier Association's (IACA) expressed its views<sup>18</sup> in the context of the mid-term consultation on the Airport Charges Directive. Considering, at the time of its adoption, that the directive is 'a first but tentative step in the right direction', IACA identified a number of shortcomings, such as:

- the directive is insufficient to control monopolistic service providers (the airports);
- the directive does not stop the rise in airport charges;
- the directive does not provide sufficient guidance or access to clear and useful data (some of the main missing data are on the cost breakdown per airport);
- allocating new charges on a per-passenger basis does not encourage efficiency.

The International Air Transport Association (IATA) has also expressed its opinion<sup>19</sup> with regard to the transparency requirements for the determination of airport charges set by the directive. Article 7 sets up minimum requirements for information flow to and from airport users. However, IATA considers that the directive does not enter into details and, moreover, fails to achieve its objectives, 'as its provisions have not prevented airports abusing their market power'. For IATA, the directive should be replaced by a regulation, and transparency requirements should be one of the points to be considered in more detail in further legislation, 'in order to ensure meaningful consultations' between parties. IATA also gave its input to the 2019 Commission evaluation, pointing out three key lessons: consumers need to be at the heart of the issue; effectiveness depends on stronger powers for regulators; and the risk of airports abusing their significant market power remains.<sup>20</sup>

In a recent position paper (from 2016, updated in April 2020), Airlines for Europe (A4E) considers that the Airport Charges Directive 'is inadequate and ineffective in protecting airport users and consumers from airports' abuses of their market power, notably in the process for setting airport charges. The purpose of economic regulation is to replicate the outcomes achieved in a competitive market, however the ACD fails to achieve this, in particular, the ACD fails to address the asymmetry of information between airports and airport users that is required to allow for meaningful consultations and eventually agreements'.<sup>21</sup> A4E insists on the importance of having an effective and meaningful consultation process (the current one being focused on the procedural aspects of consultation), and an improved transparency approach (the current directive does not protect users from monopoly airports abusing their dominant position). In this respect, A4E believes that 'the ACD should be reformed and, in order to guarantee effective transparency over costs and revenues to address the asymmetry of information between airports and users, ... a meaningful consultation process should be established which requires a review of the ACD's provisions on consultation and transparency'. More recently, A4E has welcomed the Commission's intention to revise the directive, 'calling on the EU to significantly strengthen economic regulation of major European airport monopolies by prioritising the interests of consumers'.<sup>22</sup>

Airports Council International (ACI) pointed out that<sup>23</sup> the Commission's 2019 evaluation of Directive 2009/12/EC did not reveal any misuse of airports' market power. ACI representatives also raised concerns about a number of issues, such as the lack of consistency between different sections within the Commission's report, or the Commission's belief that regulation is the solution to every problem. That said, they supported the fact that the evaluation of the directive included the notions of sustainability and climate emergency, with a focus on coherence with the *user pays principle*.

## Academic paper

A 2019 article<sup>24</sup> published by researchers from the University of Genoa and the JRC, assessed the effects of the ACD on the level of airport charges. The analysis focused on airports serving between 2 million and 20 million passengers over the 2008–2017 period. The authors used the difference-in-difference research design as their methodological tool.<sup>25</sup> Their main conclusions are that 'the transposition of the Airport Charges Directive into national legislation has led to a statistically significant reduction in the level of airport charges, but only after a few years', and that there are 'heterogeneous treatment effects that depend on the quality of transposition of the Directive'.

## 6. Consultations and petitions

As part of the evaluation process of Directive 2009/12/EC, between April and June 2018 the European Commission held a public consultation on charges for the use of airport infrastructure. The consultation was intended to 'to ensure that, in addition to the organisations and individuals directly involved in the implementation or subject to the requirements of Directive 2009/12/EC, wider stakeholder groups and the general public are provided with the possibility to express their opinion about the topic'.<sup>26</sup> As indicated by the Commission, its evaluation of the ACD had taken into consideration the opinions and views of the different stakeholders expressed in the course of the consultation (these are also presented in Annex 5 to the evaluation).

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Agence Europe, [Airport Charges Directive did not entirely live up to expectations](#), July 2019.

## ENDNOTES

<sup>1</sup> According to [ICAO's Policies on Charges for Airports and Air Navigation Services](#), Section I.

<sup>2</sup> ICAO, [ICAO's Policies on Charges for Airports and Air Navigation Services](#), Section II.

<sup>3</sup> European Commission dedicated [webpage](#).

<sup>4</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, An Aviation Strategy for Europe, [COM/2015/0598 final](#).

<sup>5</sup> For additional information, see Commission Staff Working Document Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, An Aviation Strategy for Europe, [SWD\(2015\) 261 final](#).

<sup>6</sup> [Directive 2009/12/EC](#) of the European Parliament and of the Council of 11 March 2009 on airport charges, OJ L 70, 14.3.2009, pp. 11–16.

<sup>7</sup> Communication from the Commission: An Aviation Strategy for Europe, [COM \(2015\) 598 final](#), p. 2.

<sup>8</sup> *ibid.*, p. 3.

<sup>9</sup> European Commission Evaluation [Roadmap](#), Evaluation of the Directive 2009/12/EC on Airport Charges, September 2016.

<sup>10</sup> European Commission, DG MOVE, [Ex-post Evaluation of Directive 2009/12/EC on Airport Charges](#), Steer Davies, December 2017.

<sup>11</sup> The Commission launched investigations and opened infringement proceedings against several Member States since the transposition deadline via the EU Pilot mechanism or formal infringement procedures.

<sup>12</sup> European Commission, [Inception Impact Assessment](#): Charges for the use of airport infrastructure, November 2017, p. 1.

<sup>13</sup> *ibid.*, p. 3.

- <sup>14</sup> Maurizio C. et al., [The Airport Charges Directive and the level of airport charges](#), European Commission Joint Research Centre, 2018.
- <sup>15</sup> European Commission Staff Working Document, [Executive Summary](#) of the Evaluation of the Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges, SWD (2019) 289 final, p. 1.
- <sup>16</sup> *ibid.*, p. 2.
- <sup>17</sup> European Court of Justice, Judgment in Case C-379/18, Request for a preliminary ruling from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), November 2019.
- <sup>18</sup> International Air Carrier Association's (IACA) input for the mid-term consultation of Directive 2009/12/EC on Airport Charges, [Position Paper](#), 2013.
- <sup>19</sup> International Air Transport Association (IATA), [Transparency requirements for the determination of airport charges in the context of the EU Directive 2009/12/EC](#).
- <sup>20</sup> According to Centre for Aviation (CAPA), [EU airport charges Directive: IATA and ACI differ on evaluation report](#), 2019.
- <sup>21</sup> Airlines for Europe, [A4E's Position on Consultation and Transparency Requirements for the Determination of Airport Charges](#), 2020.
- <sup>22</sup> A4E, [Revised Airport Regulation Will Benefit European Consumers](#), April 2020 (last update).
- <sup>23</sup> Airports Council International, [EC Airport Charges Report shows no misuse of airport market power](#), 2019.
- <sup>24</sup> M. Conti, A. Rita Ferrara, M. Ferraresi, 'Did the EU Airport Charges Directive lead to lower aeronautical charges? Empirical evidence from a diff-in-diff research design', [Economics of Transportation](#), Elsevier, 17/2019, pp. 24-39.
- <sup>25</sup> The difference-in-difference method (DD or DiD) 'combines insights from cross-sectional treatment-control comparisons and before-after studies for a more robust identification. First consider an evaluation that seeks to estimate the effect of a (non-randomly implemented) policy ('treatment') by comparing outcomes in the treatment group to a control group, with data from after the policy implementation' (A. Fredrikson, G. Magalhães de Oliveira, 'Impact evaluation using Difference-in-Differences', [RAUSP Management Journal](#), 54(4)/2019).
- <sup>26</sup> European Commission, [Public Consultation on Charges for the Use of Airport Infrastructure](#).

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