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*Committee on Economic and Monetary Affairs*

**2007/0013(COD)**

27.6.2007

## **OPINION**

of the Committee on Economic and Monetary Affairs

for the Committee on Transport and Tourism

on the proposal for a directive of the European Parliament and of the Council  
on airport charges  
(COM(2006)0820 – C6-0056/2007 – 2007/0013(COD))

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## SHORT JUSTIFICATION

The primary objective in relation to the regulation of airport charges should be to ensure that commercially driven airports with significant market power do not abuse their dominant position by charging excessively for facilities and services while at the same time ensuring that economically efficient investment in the development of such airports can be remunerated.

Mechanisms for the independent regulation of airport charges have already been put in place in a number of Member States. The model of economic “incentive” regulation which has been adopted in a number of Member States generally involves an independent regulator reviewing utilities’ charges at set intervals against specified criteria and setting charges on the basis of an efficient cost structure for the utility and allowing a reasonable return on economically efficient investment. This system of regulation normally allows for consultation with airline users and more general consultation as part of the process. It is also normal practice for charges to be set for a period of years so as to promote regulatory certainty and facilitate the financing of economically efficient investment on the most attractive terms possible.

It is not all clear that the proposal put forward by the Commission is consistent with that model. While the stated objective of this Directive is to establish a set of common principles and leave discretion with Member States on how they give effect to these principles, the Directive is in fact quite prescriptive in its approach.

One area of concern is the proposed application of the Directive to all airports with a passenger throughput of 1 million or more. The real issue is whether an airport can exercise **significant market power** in setting charges. In reality many airports with throughput well over 1 million passengers are not in a position to exercise such power, particularly airports reliant on public funding to support their operations.

The provisions for compulsory annual consultation on charges allied to the exchange of detailed information together with the fact that this consultation is confined to existing airline users only – as indicated above under existing systems of incentive regulation, charges are generally set for a period of time unless there are substantive grounds for revising the charges. While the intention behind this provision in the Directive is not entirely clear if it were to mean that charges would be open to review on an annual basis this could well give rise to a very short term perspective and practical difficulties in managing airport businesses. The focus should be on the principles of consultation and transparency with detailed mechanisms left to Member States.

The fact that any matter within the scope of the Directive can be referred to a dispute resolution authority and that the decisions of the authority will be binding, particularly given that the criteria to be applied in arbitrating on such disputes are not stated nor is it made clear that a Member State could exercise its discretion in establishing such criteria – in the case, for example, where a dispute arises from a conflict between airline users’ short term perspective and the longer term development needs of an airport what criteria will apply in deciding the dispute? Under the incentive regulation model, independent regulators are normally required to strike a balance between the needs of existing users and the future development of an airport in the interests of economic efficiency. While fully accepting the importance of

transparency and cost efficiency in the setting of charges it is important to acknowledge that the interests of existing airline users are not necessarily synonymous with investing in airport capacity that might have the effect of facilitating competitor airlines to improve their market share at the airport or to enable market entry by rival airlines in the future.

The inclusion of provisions relating to the differentiation of charges – as the objective is to set out common principles and not to prescribe particular charging regimes, the issue of whether to facilitate the offering of differential pricing is a matter best left to Member States under the subsidiarity principle.

It is important that any measure should not try to impose a rigid framework that runs counter to focusing on incentive regulation of airports that have **significant market power** or which creates an unstable environment for airport investment in the future. The inflexible adherence to the dispute settlement model for regulation of charges, together with the absence of any explicit mandate for the regulator to undertake incentive regulation of airport operators with significant market power, suggest that the draft directive may have the unintended effect of cutting across models of incentive regulation currently in place. Also the criteria to be applied by an independent regulatory body in either setting charges or in resolving disputes in relation to charges is therefore key and the draft Directive is silent on this. At minimum it ought to be clearly provided that Member States can establish independent regulatory bodies to set airport charges in line with specified criteria in a transparent and objective way as an alternative to the dispute resolution option.

## AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1 Recital 1

(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

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<sup>1</sup> Not yet published in OJ.

charges.

charges. *It should be noted that airports with smaller numbers of passengers have fewer opportunities to recover costs through such charges.*

Amendment 2  
Recital 13 a (new)

*(13a) A degree of competition among airports exists but obstacles to competition remain.*

Amendment 3  
Article 1, paragraph 2, subparagraph 1

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.*

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 *represents more than 1 % of total intra-Community passenger movements.*

*Justification*

*The 1 million threshold is neither justified by any objective criteria, nor is it compatible with any of the existing categorisations of airports. It would introduce heavy regulatory burden on the competent authorities and introduce high costs for regional airports. The Directive should target airports with a significant market power. Any numerical threshold risks unnecessarily regulating many airports that do not require regulation, while excluding some that may require regulation.. Therefore a general threshold based on EU criteria in terms of traffic volume should be applied.*

Amendment 4  
Article 1, paragraph 2 a (new)

*2a. Without prejudice to paragraph 2, Member States may:*  
*(i) apply this Directive to all airports located in a territory that is subject to the provisions of the Treaty and open to commercial traffic whose annual traffic represents more than 20 % of total passenger movements in the Member State concerned; or*  
*(ii) decide to include or exclude from the application of this Directive, on the basis of*

***a market test conducted by the competent national authorities of the Member State concerned, any airport located in its territory that is subject to the provisions of the Treaty and open to commercial traffic. Such a market test shall be carried out after full consultation with the airport managing body and users of the airport concerned.***

*Justification*

*The general threshold based on EU criteria in terms of traffic volume should be flanked by an adjustment mechanism allowing Member States to ensure that at least 1 airport per country is regulated, followed by an option of opting in or opting out based on a market test that ascertains for example that there is a need for deregulation at a certain airport given that there is a clear absence of abuse of market power.*

Amendment 5

Article 1, paragraph 2 b (new)

***2b. Member States shall publish the list of airports to which this Directive applies without disclosing confidential business information.***

*Justification*

*To increase transparency between airports and airports users without disclosing confidential business information.*

Amendment 6

Article 4, paragraph 1

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.***

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 ***whenever a revision of charges or the imposition of new charges is contemplated, and in any event every 24 months.***

### *Justification*

*While providing for greater flexibility and less administrative burden especially for smaller airports, this amendment recognises the fact that there should be mandatory routine consultation even if there are no changes in conditions.*

#### Amendment 7 Article 4, paragraph 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.

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 **4 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 *that* no agreement on the proposed changes is reached between the airport managing body and the airport users.

### *Justification*

*The announcement of increases in airport charges just 2 months prior to entry into force could have a negative impact on the increasing number of customers book early for their holiday travels. This additional cost would have to be paid by either the travel agent or the customer through a surcharge after that he/she would have already paid for the package. Furthermore, In some countries tour operators cannot increase prices to take account of variations in airport charges, when the contract has been concluded less than 4 months prior to departure. Thus, it would be better for any decision to be announced at least 4 months prior to entry into force.*

#### Amendment 8

Article 5, paragraph 1, point (b)

- (b) the **method of calculation of** charges; (b) the **methodology used to establish** charges;

*Justification*

*Charges are not calculated using pre-determined methods of calculation. Therefore airports should have the ability to make adjustments rendered necessary by market pressure and competition.*

Amendment 9

Article 5, paragraph 1, point (c)

- (c) the overall cost structure of the airport; (c) the overall cost structure of the airport **related to the facilities and services which the airport charges are intended to cover**;

*Justification*

*The cost structure should be more precisely referring to the cost related to the facilities and services which are related to landing, take-off, lighting and parking of aircraft and processing of passengers and freight.*

Amendment 10

Article 5, paragraph 1, point (d)

- (d) the revenue **and cost** of each category of charges collected at the airport; (d) the revenue of each category of charges collected at the airport;

*Justification*

*There is no single way of adjusting charges because charges are adjusted in different ways by airports to remain competitive. Charges are not cost-related. At an individual charge level airports allocate many shared costs and develop different activity-based costing models; the single-till approach is inconsistent with the concept of cost-relatedness; and providing cost per each category of charge would be costly particularly for smaller airports.*

Amendment 11

Article 5, paragraph 1, point (f)

- (f) forecasts of the situation at the airport as regards **the charges**, traffic growth and any proposed investments; (f) forecasts of the situation at the airport as regards traffic growth and any **major** proposed investments;



*Justification*

*Declaring future charges would amount to "price signalling" and could be anti-competitive in that they might encourage cartel-like behaviour. The level of charges is defined after consultation between the parties and forecasts are not available. Airports operating under a regulatory environment cannot forecast the level of charges.*

Amendment 12  
Article 5, paragraph 1, point (h)

(h) ***the productivity of the*** investments in terms of their effects on the airport capacity and the quality of services provided.

(h) ***the predicted output of any major proposed*** investments in terms of their effects on the airport capacity and the quality of services provided.

*Justification*

*There is no clear definition of what constitutes productivity and therefore the term could be interpreted in many different ways.*

Amendment 13  
Article 5, paragraph 2, introductory part

2. Member States shall ensure that airport users submit information to the management body ***on a regular basis***, concerning in particular:

2. Member States shall ensure that, ***without disclosing confidential business information***, airport users submit information to the management body concerning in particular:

*Justification*

*Adherence to the ICAO principle (Doc. 9082/7. There is no added value to annual consultation on charges and other data. To eliminate unnecessary bureaucracy between airports and customers, detailed consultation should be required only when there is an intention to alter airport charges. Annual consultation should imply a constant rolling process which would be administratively inefficient. Brings article into line with provisions of Art. 4, para 1.*

Amendment 14  
Article 6, paragraphs 1 and 1 a (new)

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

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

***1a. If the number of users of the airport that fall within the scope of this Directive, is below half of the average number of airport users, the pre-financing shall be automatically applied. It can be started minimum three years earlier than the beginning of the utilization and it should be preceded by appropriate consensus with airport users and the necessary administrative permits;***

Amendment 15  
Article 7, paragraph 1

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.***

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 ***consultation, at least once every two years,*** with a view to ***defining and concluding an overall*** service level agreement ***which sets out the minimum quality standards*** of service ***to be provided to the passenger*** at the airport terminal or terminals ***by all parties concerned.***

*Justification*

*Service standards should be set by all the service providers at the airport. However, in order to preserve individual commercial freedom of any supplementary agreement, the service agreement should set only minimum quality standards. Secondly the role of the independent regulatory authority should be confined to the application of the appeal process to the primary focus of the Directive - airport charges.*

Amendment 16  
Article 8, paragraph 1

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

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.

terminals, with the aim of *providing* 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. ***When using the same routes, different airport users shall not be subject to different charges for the same services. The level of charges shall not be linked to the volume of utilisation of the airport by the airport user concerned.***

Amendment 17

Article 8, paragraph 1 a (new)

***1a. Any differentiation of airport charges shall be based on relevant, objective, transparent and non-discriminatory criteria.***

*Justification*

*This addition would allow for any type of charge differentiation, as long as it is relevant, objective, transparent and non-discriminatory, e.g incentive discount scheme to attract new routes.*

Amendment 18

Article 10, paragraph 1 a (new)

***1a. Appeals against decisions of the independent regulatory authority shall be allowed. The appeals procedure shall be swift and cost effective and the Commission's interpretation of this Directive shall be binding upon all independent regulatory authorities.***

Amendment 19

Article 10, paragraph 1 b (new)

***1b. Member States shall provide for sanctions for the infringement of the rules laid down in this Directive in order to ensure their correct application and enforcement. Those sanctions shall be effective, proportionate and dissuasive.***

*Justification*

*Sanctions are necessary to ensure the correct application and enforcement of the Directive's provisions.*

Amendment 20  
Article 10, paragraph 4

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.

4. Whenever an airport managing body or an airport user has a complaint with regard to ***Articles 1, 4, and 5*** 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 ***or as specified in national legislation***. 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 ***and shall be without prejudice to any existing dispute resolution or statutory appeal process***.

*Justification*

*The rights to appeal with regard to any matter of the Directive leads to the perverse risk of exposing airports to systematic challenges by airlines. Also to avoid 27 different procedures throughout the EU the amendment aims to include more detail on timeframe, stages and form of the appeal mechanism. The independent regulatory authority should have two roles firstly, to select the airports of their own country falling within the scope of the Directive and secondly in the case of an airline or airport challenge when a revision of charges or the imposition of new charges is contemplated.*

## PROCEDURE

<b>Title</b>	Airport charges
<b>References</b>	COM(2006)0820 - C6-0056/2007 - 2007/0013(COD)
<b>Committee responsible</b>	TRAN
<b>Opinion by</b> Date announced in plenary	ECON 13.3.2007
<b>Drafts(wo)man</b> Date appointed	Eoin Ryan 13.2.2007
<b>Discussed in committee</b>	5.6.2007                      27.6.2007
<b>Date adopted</b>	27.6.2007
<b>Result of final vote</b>	+:                      19 -:                      2 0:                      12
<b>Members present for the final vote</b>	Mariela Velichkova Baeva, Zsolt László Becsey, Pervenche Berès, Sharon Bowles, David Casa, Elisa Ferreira, Jean-Paul Gauzès, Donata Gottardi, Benoît Hamon, Sophia in 't Veld, Othmar Karas, Guntars Krasts, Kurt Joachim Lauk, Andrea Losco, Cristobal Montoro Romero, Joseph Muscat, Lapo Pistelli, John Purvis, Alexander Radwan, Heide Rühle, Eoin Ryan, Antolín Sánchez Presedo, Olle Schmidt, Margarita Starkevičiūtė, Ieke van den Burg
<b>Substitute(s) present for the final vote</b>	Katerina Batzeli, Harald Ettl, Werner Langen, Gianni Pittella, Kristian Vigenin
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Slavi Binev, Adam Gierek, Philip Bushill-Matthews