



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL DIRECTIVE

on airport charges

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. Introduction

1. The adoption of the third civil aviation package¹ by the Council in July 1992 represents the final stage in the liberalization of the aviation sector within the framework of the completion of the Internal Market. The new market organization makes it essential that ancillary aspects of air transport, such as groundhandling services, computerized reservation systems, air traffic management and slot allocation, meet the requirements of the Single Market. This is also the case with airport charging systems. This process of liberalization emphasizes the need for a rational management of airports which associate more and more their mission of managing infrastructure with an increased commercial approach. In addition, the management and ownership structures of the airport are varied. However, among the diverse activities they may exercise, the airports must above all fulfil their mission of handling aircraft and their passengers. The charges they receive in the framework of this mission, for which they exercise a natural monopoly and are thus not submitted to market rules, cannot be established in a purely arbitrary manner.
2. An analysis of airport charges in the Community shows that, even when taking into consideration a great diversity of situations as well as investments specific to each airport, in numerous airports:
 - the level of airport charges is abnormally high when compared to the real costs of facilities and services provided to the users;
 - an important difference subsists between national and international flights, including intra-Community flights. The charges for a national flight may vary from 30 to 90% when compared to those paid for a similar intra-Community flight;
 - the tariffication systems often appear very technical and complicated and the information concerning calculation criteria are not always provided and in the event that they are, they often seem inadequate;
 - the users are not informed of future airport investments and their consequences on the level of charges;
 - there is an important difference in the level of aeronautical charges for the same type of aircraft, these may vary from around ECU 800 to over ECU 2 500 for an intra-Community flight on an A-320 with approximately 100 passengers. These variations seem to indicate that airport charges do not always reflect the real costs of facilities and services provided by the airport to the users. They appear too important to be merely the reflection of local economic conditions or the result of airport investments;
 - no user consultation procedure is foreseen when the level of charges is established.

1. Council Regulations (EEC) Nos 2407/92, 2408/92, 2409/92, 2410/92 and 2411/92 of 23 July 1992 (OJ of 24 August 1992).

3. For the purpose of the Single Market it is essential that air carriers operate under fair and equitable market conditions. Consequently, there should be no discrimination between equivalent intra-Community air services, and the price paid by users should be reasonably related to the cost of the facilities used or the services provided.

At the same time information concerning airport charging systems should be made available by the airports to users so as to ensure transparency regarding the different aspects of charging. Regular exchanges of information between airports and users should contribute to this transparency, and appropriate and adequate consultations should enable airports and users to overcome points of dissension.

4. Such requirements would be in line with the basic principles laid down by the International Civil Aviation Organization (ICAO), more particularly in Article 15 of the Convention on International Civil Aviation signed on 7 December 1944 in Chicago, as well as in the Statement by the Council on Charges for Airports and Air Navigation Services (ICAO Doc. 9082) and included in the "Airport Economics Manual" (ICAO Doc. 9562).
5. Finally, it is essential that air transport should contribute to "sustainable mobility" and remain environmentally compatible.
6. Airport charging systems should therefore provide airports with the means to manage airport capacity efficiently and to limit the impact of air transport on the environment, particularly in the vicinity of the airport.
7. For all these reasons, the Directorate-General for Transport issued a consultation paper on airport charges. This paper examined the situation at airports in the Community and proposed a Community framework with three basic principles - cost-relatedness, transparency and non-discrimination - to ensure fair and equitable market conditions for users and airport owners/operators.

The consultation paper was sent to the various interested parties: airports, carriers, employees and passengers; the local, regional and national authorities in the Member States; environmental conservation associations and international civil aviation organizations.

National experts were also able to express their opinion in the ECAC (European Civil Aviation Conference) working group on charges.

8. The majority of the parties consulted replied. The total response rate was in the order of 67%, to which must be added a number of opinions expressed spontaneously by national air transport organizations and by carriers. On the basis of these replies, the Commission has been able to gain an overview of the airport charges problem and to draw a number of conclusions regarding future EU initiatives.

II. The current situation in the Community

(a) Airport charges

9. Airport charges serve to cover the cost of providing airport facilities and services. They represent a major source of revenue for the airport.

Airport charges, such as passenger charges and landing charges, must be distinguished from airport or environmental taxes which are imposed by the national authorities and do not represent revenue for the airport, but are usually collected by the airport on behalf of the Treasury.

So-called "charges" levied as concession or rental fees represent additional sources of revenue for the airport which should be identified as such and be distinguished from airport charges.

10. Airport charges are usually established and levied in accordance with a set of principles and criteria which make up the airport charging system. Charging systems are in most instances imposed and governed by the national authorities.
11. Charging systems also function as management tools. By modulating certain charges, airports can seek to enhance the use of airport infrastructure as well as seek to reduce the impact of air transport on the environment.

(b) Charging systems

12. Airport charging systems in the Community differ considerably from one Member State to another and sometimes even within a single Member State. They nevertheless include certain basic elements such as a description of the airport facilities and services covered by each type of airport charge, the cost basis of the individual charges and the method of calculation.

Airport charging systems also include the decision-making procedures for modifying the system or the mechanism for collecting the charges.

Airport charging systems cover a wide variety of charges related to different airport facilities and services. These include landing, lighting, parking, refuelling and storage facilities as well as aircraft, passenger and freight services.

As there is no standard use for the different airport charges, they do not always cover identical facilities or services.

13. Airport charges are based on a number of criteria, which vary from one charging system to another. Some criteria, however, are in common use. These include:
 - the origin or destination of the flight, with frequent distinction between domestic and international flights for landing, passenger and lighting charges;
 - the mass of the aircraft, often the maximum take-off weight, for landing and parking charges;
 - the noise category of the aircraft for the noise charge or, if no such charge exists, for the landing charge when modulated according to the noise emissions of the aircraft;
 - the parking time, sometimes modulated in accordance with the flight schedule, for the parking charge;

- the number of passengers, their age and sometimes the distance flown for the passenger charge;
- the freight tonnage loaded or unloaded for the freight charge.

Some of these criteria can give rise to discrimination, as in the case of the origin or destination of the flight.

14. Airport charging systems sometimes provide for the possibility of varying certain charges. Thus, in some Member States charges are reduced for certain categories of users or for certain users within a particular category, as for example in the case of reduced passenger charges for transit passengers or for children.
15. Airport charging systems also often include the possibility of exempting certain users from payment of all or several charges.

Thus, aircraft which fall within a particular noise category, military aircraft, aircraft used for the transport of Heads of State, aircraft on humanitarian missions, aircraft piloted by members of the aviation authorities, aircraft forced to return to their point of departure, flights operated at the request of the authorities, test flights and flights carried out for the obtention or renewal of licences or certificates are often exempted.

Such exemptions may also cover passengers, such as transit passengers, children and crew members servicing the aircraft.

16. The level of airport charges varies significantly from one Member State to another and often even from one airport to another within a single Member State.

Even when taking account of the exchange rate variations and the wage level differences between Member States as well as additional factors, such as demand and environmental compatibility, it is questionable whether those differences justify a cost variation for these facilities and services of between 1 and 18 for international traffic and 1 and 9 for domestic traffic.

17. In the case of landing and passenger charges there are significant differences according to the origin or destination of the flight. In most cases charges for international flights, including intra-Community flights, are higher than for national flights.

(c) Exchange of information and consultations between airports and users

18. Even if in some Member States the airport charging system(s) provide for exchange of information between airports and users, very often this information is restricted to certain users. Furthermore, it is often not appropriately detailed or sufficiently transparent.

The lack of adequate information makes it difficult for users to check the relation between the costs and the level of airport charges as well as the possible existence of differential treatment. Moreover, the absence of regular exchange of information between users and airports may make it difficult for airports to plan their future financial requirements in accordance with traffic forecasts.

19. Some charging systems provide for consultation procedures between airports and users. These procedures vary throughout the Community. In some instances consultation of users is mandatory prior to a change in the level of charges, the introduction of a new charge or a modification of the charging system. Often only certain users are consulted.

This makes it difficult for users to argue their case when major or unforeseen increases of airport charges, new charges or changes in the charging system are introduced.

III. A Community framework

(a) Objectives

20. In 1990 the Commission adopted a Proposal for a Regulation on consultation between airports and airport users and on airport charging principles². This proposal was not adopted by the Council.

Since the completion of the Internal Market on 1 January 1993 and the entry into force of the Treaty on European Union on 1 November 1993, this proposal no longer meets existing requirements.

21. Furthermore, the liberalization of the aviation sector has gradually highlighted the need to ensure the rational operation of Community airports. Airports are increasingly being managed as commercial undertakings and must, therefore, strive to be efficient and aim at an optimal management of their infrastructure and resources. This can only be achieved within a framework which ensures fair and equitable treatment of users, while allowing airports, notably through a system of planification and regulation in time of the level of charges, to adapt the use of the charging system to the requirements of an optimal airport management which remains compatible with environmental constraints.

The need for such a framework was pointed out by the Commission in its June 1994 Communication on the way forward for civil aviation in Europe³. In its Resolution on the situation in European civil aviation, the Council confirmed that an optimal management of airport infrastructure would help make European aviation more competitive⁴.

22. This framework must also remain compatible with the global approach outlined in the Commission White Paper "The Future Development of the Common Transport Policy - A global approach to the construction of a Community framework for sustainable mobility"⁵ in order to ensure its contribution to the efficiency of the transport system as well as economic and social cohesion.

The efficient operation of airports as well as fair and equal treatment of users thus represent the key objectives of such a framework.

2. COM(90) 100 final of 22 May 1990.

3. COM(94) 218 final of 1 June 1994.

4. Council Resolution of 24 October 1994 (OJ No C 309, 5.11.1994, p. 2).

5. "The future development of the Common Transport Policy - a global approach to the construction of a Community framework for sustainable mobility", COM(92) 494, 2.12.1992.

(b) The means

23. Not all differences in the charging systems and airport charges are incompatible with the objectives of a Community framework. Harmonization of existing regulations in the Member States would be virtually impossible to achieve and, moreover, is not essential to achieve these objectives. This framework must simply lay down general principles setting out the basic rules applicable in all Member States.

However, airport charging systems will have to meet a number of requirements to ensure that charges are non-discriminatory, that they reflect the costs of the airports and that users are provided with adequate information.

Such requirements will mean introducing the three principles: the principles of non-discrimination, cost-relatedness and transparency.

24. These principles constitute the key elements of the Community framework and should be applied in a manner which allows for a certain flexibility appropriate to the objectives of efficient management of airport capacity, environmental compatibility and economic and social cohesion.
25. Although the principles of non-discrimination and transparency can be applied to all Community airports and all types of traffic, it is much more difficult to maintain true cost-relatedness at small airports. The efficient operation of most of these small airports, which play a key role in the Community's economic and social cohesion, requires considerable and regular State or local authority support or, in certain cases, financial support from larger airports in order to avoid introducing excessively heavy charges. Moreover, the number of carriers serving these small airports is very limited and they may often have daily contacts with the management body. The introduction of Community measures does not, therefore, seem justified at the smallest airports.

(c) The principles

The principle of non-discrimination

26. The completion of the Single Market makes it necessary to eliminate all forms of discrimination between intra-Community air services, since such discrimination is incompatible with the principles of the Internal Market. Thus, charging systems should not discriminate between equivalent intra-Community services, equivalence being understood in terms of aircraft type and characteristics, distance flown and/or administrative and customs formalities.
27. Differentiated treatment between such intra-Community air services would not be justified unless such a difference were related to the actual cost of the facilities and services provided. In such cases the airport authority would have to provide evidence of a significant cost difference.
28. Compliance with the principle of non-discrimination should not have any effect on the global income from airport charges. However, because of the large differences which exist at present between the charges for domestic and other flights at most airports, non-discrimination may lead to an increased charge burden which some users, currently undertaking a large number of domestic flights, would find difficult to bear.

The principle of cost-relatedness

29. Because the airport management body is in a monopoly situation as regards the provision of airport facilities and services for which charges are levied, it is necessary that charging systems set the level of charges in a reasonable relation to the cost of the facilities and services which these charges are intended to cover.

The principle of cost-relatedness complies with existing Community law, in particular Article 86, together with Article 90 of the Treaty concerning abuse of dominant position, as well as with the provisions of the Chicago Convention and the recommendations of ICAO.

30. Cost-relatedness implies that airport charging systems set the level of airport charges in a reasonable relation to the cost of the facilities and services provided by the airport or airport system, allowing for a reasonable return on invested capital and the proper depreciation of assets as well as efficient management of capacity.

It also implies that users should not have to pay for facilities which they do not use or services from which they do not benefit.

31. However, a strict application of the cost-relatedness principle in terms only of the facilities and services actually used would appear impossible in practice, in particular where an airport has several terminals, perhaps built at different times and subject to different types of use and depreciation. If the airport introduced a different charging system for each specific facility, this might lead to changes in the use of certain air terminals and thus hamper the efficient and rational management of the facilities. Furthermore, if the management body is unable to make maximum use of the airport's existing capacity, this would immediately increase the cost to the users.

Cost-relatedness must therefore be seen globally, to ensure that the level of airport charges covers the total cost of the facilities and services they pay for.

32. Similarly, optimal use of capacity may mean that the management body has to adopt a global approach to managing all the airports belonging to a particular system or within a particular conurbation. The introduction of identical charging systems not only for all the terminals but also for all the airports within the conurbation would make it possible to avoid contradictions in capacity management and thus to avoid discriminating against certain users who have no choice as to the airport they use.

Moreover, certain Member States have established a single management system for networks or groups of airports covering all or parts of the country. Inside these networks, most of the smaller airports are unable to cover their costs unless aided by financial support from the state, regional or local levels or, sometimes, by support from the larger airports in the same network. The objective of these types of support systems are generally to ensure investments at airports often situated in peripheral areas as well as ensuring a nation-wide coverage of commercial air transport. The principle of cost-relatedness does not exclude such a system of solidarity and the proposal does not question its functioning providing that the subsidies coming from the major airports are drawn from commercial revenue or reasonable benefit margins.

In the cases where these sources of revenue and the direct financial support are not sufficient to cover the needs of the smaller airports, the level of charges at the major airport in the Member State may take into consideration this situation on the condition that a substantial economic link is established between these airports and the major airport.

33. Finally, in order to avoid abrupt increases in the level of charges where new facilities are made available, the gradual inclusion of the cost of infrastructure and facilities yet to be built or planned but not yet completed should not be excluded. This would apply in cases where an official decision has been taken to build the infrastructure and building permits, where needed, have been issued.
34. In general, the liberalization process requires the larger airports to adapt to the needs of the market and particularly to diversify their revenue. Those coming from the development of commercial activities could thus allow the airport to lower the level of its charges.

In the report the Commission will submit on the basis of the Article on the implementation and possible revision of the proposal, the Commission may examine the opportunity to present supplementary measures destined to improve the management of airport infrastructure.

The principle of transparency

35. In order to ensure that both the principles of non-discrimination and cost-relatedness are properly implemented and complied with, transparency requirements will be essential to complete the Community framework.

The principle of transparency should enable users to check whether they are being charged for the facilities and services provided in a non-discriminatory and cost-related manner.

The availability of precise, transparent and comparable information should enable users to assert their rights, if necessary, when airport charges are significantly increased or the charging system is modified. Transparency should also contribute to forward planning of airport development by linking new investment requirements to charging increases.

The principle of transparency therefore implies a regular exchange of precise and transparent information between airports and users.

36. There are two problems affecting the supply of information. In the first place, some of the information is of a commercial nature and its disclosure may harm the informer's interests. The fact is that airports are increasingly being run as businesses, subject to the rules of private business law, and the provision of certain information could be prejudicial to the confidentiality required by good business management.

Secondly, the more precise the data - and in particular the statistics and distribution keys - supplied by the airport management body, the more difficult they will be to justify.

37. It is, nevertheless, necessary to introduce minimum requirements covering the nature and the scope of the information.

Airports should, for example, provide information on:

- the cost basis for the charges;
- the criteria for establishing the different types of airport charges;
- the description of the services and facilities covered by each type of charge;
- the accounting data and relevant financial information as well as the traffic volume of the airport.

The financial information and accounts should be presented in accordance with the accountancy rules generally recognized in each of the Member States.

38. Moreover, sound management of airport facilities implies that, as part of the exchange of information, air carriers should provide the airport management body with information on traffic and fleet developments and on the facilities and services they would need to meet their forecasts.

The principle of transparency should be introduced and applied in such a way as to take account of practices and procedures already in use at airports.

39. The principle of transparency also requires the introduction of consultation procedures between airports and airport users. It is within the framework of such consultations that the airport management body could inform about not only how much had been charged by the airport under each heading during the previous financial year but also its expenditure forecasts, the expected growth in traffic and any planned increases in charge levels. In the course of such consultations, the airport users or users' associations could comment on these facts and forecasts. The purpose of the consultation is to enable airports to take account of the impact which new or increased charges would have on users. Although the consultation procedure should encourage the participants to reach consensus on the issues concerned, it would be, on this level, for the airport management body, or the statutory national authority, to make the final decision on what new or increased charges to introduce.
40. Consultation should be compulsory where the charging system is to be altered or the charges are to be increased significantly, and it should take place during a specified period of time prior to the introduction of the changes.
41. Any user who is not satisfied with the decision taken should have a guaranteed right to consultation. This means that the user should be entitled to ask to be consulted by the authority which has taken the decision.

(d) Modulations

42. In order to ensure that airports can operate efficiently and meet the requirements of "sustainable mobility" in the context of the future development of the common transport policy, and in particular to see that the environment is protected in an effective and structured manner, it will be essential to ensure efficient management of airport capacity.

To enable airports to meet these objectives, the principle of cost-relatedness should be sufficiently flexible to allow for the modulation of some airport charges under certain conditions.

Modulations in function of demand and available airport capacity

43. A large number of airports are faced with capacity problems due to physical and environmental constraints. This situation is likely to become more widespread as air traffic continues to grow. In order to ensure their efficient operation, airports should be encouraged to make optimal use of existing capacity and to plan future capacity development.

The possibility of modulating certain charges, such as landing, parking and passenger charges, in accordance with the number of movements would make the price of the service a function of the level of demand. This would enable the airport to respond more efficiently to capacity demand and to manage more effectively scarce capacity resources.

Modulations could also be used as an incentive to reduce the number of aircraft movements by encouraging the operation of larger aircraft during peak periods.

Modulation in function of the environmental impact

44. The cost of handling an aircraft at an airport consists not only of the cost of the facilities and services provided to the users but also includes external costs caused by environmental disturbances, such as noise and exhaust emissions. At present these external costs are not always borne by those who cause them.

This approach is in line with the strategy for "sustainable mobility" advocated in the Commission Green Paper on the Impact of Transport on the Environment⁶ and the White Paper on the Future Development of The Common Transport Policy⁷.

In its document entitled "Towards fair and efficient pricing in transport"⁸, the Commission confirmed that, both for reasons of economic efficiency and equity, measures should be introduced to reduce transport externalities, i.e. situations in which the user does not pay for the full costs of his/her transport activity, including environmental costs. The internalisation of such costs should contribute to "sustainable mobility" since the persons who cause these costs would be made financially responsible for them.

45. The possibility for the management body of modulating the level of landing charges according to the noise emissions produced by an aircraft or of introducing specific noise or gaseous emission charges, whether by applying decisions by the public authority which controls it or on its own initiative, may ensure an improvement of the environmental compatibility at airports.

⁶ COM(92) 46 final of February 1992.

⁷ COM(92) 494 final of 2 December 1992.

⁸ COM(95) 691 final.

The possibility of increasing the level of landing charges at certain times of day or of introducing a specific noise charge for night flights could serve as a deterrent and reduce the overall impact of noise emissions in the vicinity of the airport. This practice is already in force at a large number of Community airports.

A noise classification of aircraft types in accordance with the criteria set out in Annex 16 to the Chicago Convention could make the introduction of such modulations easier in practice and contribute to the overall transparency of charging systems.

However, such modulations should remain in line with the provisions of existing Community legislation, in particular Council Directive 92/14/EEC on the operation of noisy aircraft.

Requirements for modulations

46. The possibility of modulating airport charges should meet certain requirements, in particular the principle of non-discrimination. Modulations should not give rise to distortions of competition between users and should not be used to increase revenue.

Since modulations represent a change in the charging system, they should comply with the principle of transparency.

Discounts and exemptions

47. A number of Community airports grant discounts or exemptions to certain users. Such practices may be regarded as a form of charge modulation. However, they can result in a differentiated treatment of users which is not justified by a cost difference.

Discounts or exemptions which are not justified by cost differences can give rise to distortions of competition. They can have discriminatory effects, particularly if they favour the national carrier to the detriment of its competitors established in other Member States.

Since in many instances airports are still directly or indirectly controlled by the public authorities, such practices could constitute indirect State subsidies which are contrary to Community law when they affect or threaten to affect competition.

These discriminatory aspects are exacerbated by the fact that discount systems are often applied in a progressive manner and/or operated on the basis of thresholds below which no discount or exemption is available. The advantage to the beneficiaries of such discounts or exemptions can be considerable and consequently affect competition.

It is therefore essential that discount and exemption systems should meet the requirements of non-discrimination and transparency.

Public service obligations

48. Some airports are located in less developed, isolated or landlocked regions, where air transport often represents the only rapid link with the rest of the Community.

Air links are vital in overcoming the remoteness of the region as well as for their economic development. In such cases the Member State may, in accordance with Community legislation, impose a public service obligation on a carrier and grant financial compensation as provided in Council Regulation (EEC) No 2408/92 on market access, in order to safeguard the operation of these services and thus contribute to the Community's social and economic development.

49. The amount paid in airport charges is normally included in the financial compensation paid to the carrier responsible for carrying out a public service obligation. In such a case, a discount or exemption of the charges based on this obligation would distort competition between carriers. Were this not the case, any discounts or exemptions granted would have to comply with the rules of fair competition between users and be granted in a transparent way so as not to affect the objectives of the Community framework.

IV. Conclusions

50. The introduction of a Community framework for airport charges forms an integral part of the liberalization of civil aviation. The appropriate legal base for a legislative initiative in this area of air transport policy is therefore Article 84(2) of the Treaty.
51. In view of the inherent differences between the systems in existence in the Member States it is essential to take full account of the principle of subsidiarity and allow Member States to implement the contents of the Community framework. Member States will thus be able to determine the type and nature as well as the level of the charges, provided they comply with the basic principles of the Community framework.
52. The possibility of varying the charges in line with demand, available capacity and environmental impact will enable Member States to adapt the Community framework to existing constraints and specific requirements. A Council Directive would be the most appropriate legal instrument for that purpose.
53. By a flexible system, adapted to the circumstances of each Member State whilst avoiding further bureaucracy, the Community framework will give air transport in general a considerable added value by introducing and reaffirming fair and equitable market conditions not only for carriers but also for airport owners and operators.

Content of the Directive

Article 1

This Article lays down the scope of the measures, which apply to all Community airports open to commercial traffic where the annual volume of traffic is at least 250 000 passenger movements or 25 000 tonnes of freight.

Article 2

This Article gives the definitions required for the application of the Directive.

Article 3

This Article sets out the principle of non-discrimination for all intra-Community air services which are equivalent in terms of the type or characteristics of the aircraft, the distance flown and/or the administrative and customs formalities.

Article 4

This Article defines the relationship which must exist between the amount of charges demanded by an airport and the overall cost of the services and facilities which these charges are intended to cover. This relationship has been introduced because of the monopoly situation of the management body as regards the provision of the facilities and services giving rise to the collection of charges, taking into consideration the objective of economic and social cohesion.

Article 5

This Article allows the management body to modulate the charges in function of the management needs of the facilities concerned or changes in demand, but also in the framework of protecting the environment. Furthermore, it allows the management body to finance these facilities and services with all or part of its non-aeronautical revenue.

Article 6

This Article establishes the principle that air carriers must be informed by the airport on the level and details of invoicing as well as on the charges collected or anticipated. This principle supplements and follows on from the rules on non-discrimination and cost-relatedness and will help keep users informed about the system of calculation used by the management body and any investments it envisages to make. The principle of transparency also applies to users so that airports can respond more fully to their needs.

Article 7

This Article introduces a system for the consultation of airport users. This consultation, should take place at least once a year, must allow users to express their views on plans for changing the system or the level of charges. This is also the framework in which the management body may provide information to ensure the transparency referred to in Article 6. Users must be able to ask to be consulted by the management body. Lastly, the Article lays down a minimum period between the date of any decision concerning the system or level of charges and its entry into force.

Article 8

This Article obliges the Member States to adopt the measures necessary to guarantee the effective implementation of the common rules.

Article 9

This Article establishes the principle of cooperation between the Member States and the Commission in implementing the Directive. It also lays down that the measures adopted by the Member States in the area covered by the Directive must be notified to the Commission to allow it to verify their compliance with Community law.

Article 10

This Article consists of a revision and reporting clause.

Proposal for a
COUNCIL DIRECTIVE

on airport charges

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84(2) thereof,

Having regard to the proposal from the Commission⁹,

Having regard to the opinion of the Economic and Social Committee¹⁰,

Having regard to the opinion of the Committee of the Regions¹¹,

Acting in accordance with the procedure provided for in Article 189c of the Treaty in cooperation with the European Parliament¹²,

1. Whereas the Community has progressively introduced a common air transport policy, in particular for the purpose of completing the single market, under Article 7a of the Treaty;
2. Whereas the internal market comprises an area without internal borders in which the free movement of people, goods, services and capital is guaranteed;
3. Whereas a Community framework is needed to ensure that fair and equitable market conditions apply both to users and passengers and to the owners and management bodies of airports;
4. Whereas, however, these rules must comply with the principle of proportionality in accordance with the third paragraph of Article 3b of the Treaty and should therefore be limited to the laying down of fundamental principles;
5. Whereas, in addition, the administrative management and the financial situation of the smallest airports do not justify the application of the Community framework;
6. Whereas, within this market, there should be no discrimination between intra-Community flights for the provision of equivalent services;
7. Whereas airports may be managed as commercial undertakings which must strive to be efficient in order to make their activities profitable and to better satisfy market requirements and passengers' needs;

⁹ OJ No

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8. Whereas, however, within that market, airports are exposed to limited competition;
9. Whereas, among their various activities, the main task of airports is to ensure the handling of aircraft from landing to take-off so as to enable users to carry out their air transport business;
10. Whereas, for this purpose, airports offer a certain number of facilities and services directly related to the operation of aircraft, the costs of which they must be able to cover;
11. Whereas, unlike other types of airport revenue or charges which may be levied on users, airport charges provide compensation for the facilities and services provided by the airport;
12. Whereas such services and facilities can, by their nature, only be provided by the airport itself; whereas, in view of this monopoly situation, the level of airport charges must be in relation to the costs borne for the provision of such facilities and services, taking into consideration the objective of economic and social cohesion;
13. Whereas an airport must also be able to cover all of the costs required for its sound operation in terms of efficiency, safety and the environment by modulating the level of the charges;
14. Whereas it is therefore important to ensure the transparency of the costs to which such services or facilities give rise; whereas, therefore, any changes made to the system or level of airport charges must be explained to airport users;
15. Whereas, at the same time, to enable airports to fulfil their task of managing the facilities and better satisfying users' requirements, the airport's management body must receive sufficient information regarding users' forecasts and objectives concerning the airport;
16. Whereas such changes or investment proposed by the airport must be explained in the framework of consultation procedures between the management bodies and airport users;
17. Whereas the airport's management body must be able to retain control of the management and funding of its facilities;
18. Whereas it is necessary to take appropriate steps to ensure that infringements of Community law carry penalties which are effective, proportionate and dissuasive;
19. Whereas this Directive should not affect the application of the provisions of the Treaty, and in particular Articles 85 to 94 thereof,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Aim and scope

The aim of this Directive is to ensure compliance with the principles of non-discrimination, cost-relatedness and transparency as regards airport charges.

It applies to any airport or airport system located in a territory subject to the provisions of the Treaty and open to commercial traffic. However, Articles 4 to 7 apply only to airports with annual traffic of at least 250 000 passenger movements or 25 000 tonnes of freight.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

1. "airport" means any land specially developed for the landing, take-off and manoeuvring of aircraft, including any related facilities it may contain for aircraft traffic and service requirements and the facilities needed to accommodate commercial air services;
2. "management body" means the body which, whether or not in conjunction with other activities, has the task under national laws or regulations of administering and managing the airport facilities and coordinating and controlling the activities of the various operators present at the airport or within the airport system concerned;
3. "intra-Community air service" means any commercial, scheduled or non-scheduled flight between two Community airports;
4. "airport charges" means the sums collected at an airport for the benefit of the management body and paid by the airport's users ensuring the remuneration of facilities and services which, by their nature, can only be provided by the airport and which are related to handling passengers and freight, landing, lighting, parking of aircraft and, where appropriate, the security of passengers as well as the environmental effects of handling aircraft and passengers, excluding any amounts paid for air navigation or meteorological services;
5. "airport system" means two or more airports grouped together to serve the same city or conurbation, as defined in Article 2(m) of Council Regulation (EEC) No 2408/92¹³;
6. "airport user" means any natural or legal person carrying passengers, mail and/or freight by air from or to the airport concerned.

¹³ OJ No L 240, 24.8.1992, p. 8.

Article 3

Non-discrimination

Member States shall take the measures necessary to ensure that the same level of airport charges is applied at airports to equivalent intra-Community air services in terms of the aircraft type and/or characteristics, the distance flown and/or the administrative and customs formalities.

Article 4

Cost-relatedness

1. Member States shall ensure that the level of airport charges collected at airports or in the airport systems is set in a reasonable relation to the overall cost of the services and facilities which these charges intended to cover. When determining the level of such costs, particular account shall be taken of:
 - (a) the cost of financing the facilities, including depreciation in the value of the assets during the period concerned and the financing of any facilities for which the project and the date of commencement of the works have been duly agreed and any administrative permits, where appropriate, have been issued,
 - (b) the financial charges,
 - (c) the expenditure on operation and maintenance,
 - (d) the general administrative charges and various taxes,
 - (e) a reasonable return on the capital invested.
2. Without prejudice to the application of the competition rules of the Treaty, the airport charges applicable in the major national airport of a Member State can be established at a level which permits the management body, in order to promote economic and social cohesion, to support financially the levels of airport charges in regional airports in the same Member State, on condition that:
 - (a) this financial support comes from revenue other than the airport charges in the major airport and/or,
 - (b) this support comes from airport charges, provided that they are established in conformity with paragraph 1, or,
 - (c) otherwise, when the conditions referred to in points (a) and (b) are not fulfilled and when the subsidies granted by public authorities are not sufficient, the regional airports concerned have an annual traffic of less than 300 000 passenger movements or 30 000 tonnes of freight and on condition that the annual traffic of transfer or transit passengers at the major airport represent at least 5% of the total traffic at that airport.
3. The costs shall be determined using the principles of accounting and evaluation generally accepted in each of the Member States.

Article 5

Modulations

1. By derogation from Article 4, the management bodies may include the external environmental costs due to air traffic and modulate the charges to reflect the requirements in terms of management of the airport facilities or any changes in demand and use of the airport during a given period.

Member States shall ensure that the modulations are not designed to generate additional revenue for the airport.

2. The management body may also, as part of its commercial policy,
 - (a) take account of all or part of its income that is not derived from airport charges when establishing the total level of its airport charges,
 - (b) grant discounts in conformity with the provisions of the Treaty.
3. Any modulation in the level of the airport charges shall be applied in a transparent and non-discriminatory manner.

Article 6

Transparency

1. In order to improve the quality of the service provided to airport users, Member States shall ensure that the management bodies provide each airport user with information on the components serving as a basis for determining the level of the airport charges. This information shall include:
 - (a) a clear list of the various services provided by the airport in return for the airport charge levied, and
 - (b) the method of calculation used by the management body.
2. The management body shall in particular provide airport users or the associations representing them with information concerning:
 - (a) the amount of each category of airport charges collected at the airport,
 - (b) the total number of staff deployed to services which give rise to the collection of airport charges,
 - (c) forecasts of the situation at the airport as regards airport charges, traffic growth and any proposed investments.
3. Member States shall ensure that airport users submit information to the management body concerning in particular:
 - (a) forecasts as regards traffic,
 - (b) forecasts as to the composition of their fleet,

- (c) their development projects at the airport,
- (d) their requirements at the airport concerned.

Article 7

Consultation

1. Member States shall take the necessary measures to arrange, at each airport, a procedure for consultation between the management body and airport users. The aim is to seek the views of airport users before the decision to modify the system or the level of airport charges is taken. These views do not bind the authority responsible for taking a decision with regard to the airport changes.

Such consultation shall be held at least once a year.

2. Member States shall take the necessary steps to ensure that an airport informs airport users or the organizations representing them of any decision to change the system or level of airport charges at least two months before the change takes effect.
3. Member States shall also ensure that, in the event of disagreement over the decision, airport users are able to request to be consulted a second time.

Article 8

Penalties

Member States shall lay down a system of penalties applicable in the event of infringement of the national provisions transposing this Directive and shall take all necessary steps to ensure their implementation. The penalties shall be effective, proportionate and dissuasive.

Member States shall notify the Commission of those provisions before 1 January 2002 and of any subsequent amendment relating thereto as soon as possible.

Article 9

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to conform with this Directive before 1 January 2002. 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. The procedure for such reference shall be adopted by Member States.

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. The Commission shall inform the other Member States thereof.

Article 10

Report and revision

1. The Commission shall submit a report to the European Parliament and the Council on the operation of this Directive before 1 January 2004 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 11

Entry into force

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

Article 12

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

STATEMENT OF IMPACT ON COMPETITIVENESS AND EMPLOYMENT

Proposal for a Directive on airport charges

1. What is the main reason for introducing the measure?
 - The need for efficient management of airport facilities
 - To ensure fair and equal market conditions for airports and airlines
 - To continue the process of liberalization in the air sector
2. Features of the businesses concerned, in particular:
 - Are many SMEs involved? **No**
 - Are they concentrated in less-favoured regions? **No**
 - Are they eligible for national regional aid? **No**
 - Are they eligible for ERDF assistance? **No**
3. What direct obligations does this measure impose on businesses?

Mandatory communication of information to the users as well as the establishment of a consultation system for the users
4. What indirect obligations are local authorities likely to impose on businesses?

None
5. Do any special measures apply in respect of SMEs? **No**
 - If so, please specify.
6. What is the likely effect on:
 - business competitiveness?

An opening up leading to the more effective operation of airports
 - employment?

No effect foreseen.
7. Have both sides of industry been consulted? **Yes**
 - What are their views? The majority supports the initiative at Community level.

IMPACT ASSESSMENT FORM

The impact of the proposal on business
with special reference to small and medium-sized enterprises (SMEs)

Title of the proposal:

Proposal for a Council Directive on airport charges

Reference number:

The proposal:

The impact on business

1. Who will be affected by the proposal?

- Which sectors of business?

Airports with annual traffic of more than 250 000 passenger movements or 25 000 tonnes of freight and air carriers.

- Which sizes of business (what is the concentration of small- and medium-sized firms)?

The proposal will not affect the small airports of the Community.

In the vast majority of cases, airports are owned by the public authorities (the State, local authorities). Under the proposal, they provide certain facilities for take off and landing and cover the cost of these facilities and services by collecting airport charges.

The European air carrier market essentially consists of big companies, which account for 65.4% of the market. Charter companies represent 27.6% and small and medium-sized firms only in the order of 5%.

- Are there particular geographical areas of the Community where these businesses are found?

No

2. What will business have to do to comply with the proposal?

Airports will have to comply with the basic principles of the proposal. Carriers will be required to supply information concerning their forecasts of traffic for the airport.

3. What economic effects is the proposal likely to have?

- on employment: None
- on investment and the creation of new businesses: None
- on the competitive position of businesses:

There is relatively little competition between airports. For much of the traffic, airports enjoy a monopoly as regards the provision of the facilities and services covered by the proposal for a Directive. In view of their monopoly situation, airports must ensure a certain amount of transparency in their costs and in the way the charges are calculated. Carriers, who are exposed to keen competition and for whom charges make up a large part of their expenses, must also be consulted before any unilateral change is made to the level of the charges or the way in which they are calculated.

4. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms?

The smallest airports are not affected by the proposal.

Consultation

5. List of the organizations which have been consulted and outline of their views.

A consultation document which served as a basis for drafting the proposal has been sent to the various parties concerned: the representatives of the Member States, airport operators, air carriers and employees. The national experts also had an opportunity to express their views at the meetings held in the presence of Commission representatives within the European Civil Aviation Conference (ECAC). The ECAC experts and nine of the ten Member States having expressed their views as well as the vast majority of the parties consulted support the principles set out in this document.

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