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Subject : Proposal for a Directive of the European Parliament and of the Council on airport charges
- Political agreement

A. INTRODUCTION

On 29 January 2007, the Commission transmitted to the Council the above mentioned proposal. The objective of the proposed Directive is to set common principles for the levying of airport charges at Community airports. It aims to re-define the relationship between airport operators and airport users by requiring total transparency, user-consultation and the application of the principle of non-discrimination when calculating charges levied on users.

Moreover, it aims to create a strong, independent national authority to arbitrate and settle disputes in order to achieve their speedy resolution.

On 29 - 30 November 2007, the Council reached a general approach on the proposal.

On 15 January 2008, the European Parliament (rapporteur Mr Ulrich Stockmann (PSE-DE)) voted on the proposal at first reading. The EP opinion consists of 45 amendments.

Under Slovenian Presidency, the Aviation Working Party examined the EP amendments at a number of meetings. On the basis of oral and written contributions from Member States, Presidency compromise proposals were drafted and discussed on a number of EP amendments. The Permanent Representatives Committee examined the text of the political agreement on 19 March and on 2 April 2008. LU, supported by EE, and MT have a reservation on the scope of the draft Directive (see footnote 5, page 8).

B. OUTSTANDING ISSUE

The scope of the Directive (Article 1, footnote 5, page 8)

This has been a contentious issue since the initial examination of the draft Directive. The Commission initially proposed to include all airports with an annual traffic of more than 1 million passengers. The Council general approach text increased this threshold to 5 million with the addition of the largest airport in each Member State. This scope is to a large extent in line with the opinion of the EP.

LU, which has voted against the Council general approach, entered a reservation suggesting the application of a unique criterion (i.e. the 5 million passengers). LU, supported by EE, is sceptical as regards the rule that the largest airport per Member State has to be covered, arguing that competition with airports of similar size in another Member State (but not included in the scope of the Directive) will put the largest airport in the first Member State in a situation of competitive disadvantage in a way which would be contrary to the principles of Community law. However, a large majority of Member States, in adopting the Council general approach, considered that at least one airport per Member State had to be covered by the Directive, as the largest airport in each Member State has an exceptional position in the market of that particular Member State. They consider that this approach should be kept in the Council political agreement.

MT also entered a reservation considering the 5 millions criterion as too high.

At the time of the adoption of the Council general approach, the Commission while trying to find a solution acceptable to all delegations made the following statement to the Minutes of the Council:

"The Commission will assess whether, as a result of the implementation of the [proposed] Directive, the airports referred to in Article 1(2) are being unjustifiably disadvantaged vis-à-vis other airports with comparable traffic data of other Member States with which they are in competition. Where appropriate, the Commission will take adequate initiatives in order to restore a level playing field including, if necessary, making proposals for reviewing the Directive's thresholds."

C. CONCLUSION

The Council is invited to solve the above outstanding issue and to reach a political agreement on the text of the proposal, as set out in the Annex to this report, at its session on 7 April 2008.

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on airport charges
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

¹ OJ C, p
² OJ C, p
³ OJ C, p
⁴ OJ C, p

- (1) The main task and commercial activity of airports is to ensure the handling of aircraft, from landing to take-off, and of passengers and cargo, so as to enable air carriers to provide their air transport services. For this purpose, airports offer a number of facilities and services related to the operation of aircraft and the processing of passengers and cargo, the cost of which they generally recover through airport charges. Airport managing bodies providing facilities and services for which airport charges are levied should endeavour to operate on a cost efficient basis.
- (2) It is necessary to establish a common framework regulating the essential features of airport charges and the way they are set, as in the absence of such framework, basic requirements in the relation between airport managing bodies and airport users may not be respected. Such a framework is without prejudice to the possibility for a Member State to determine the extent to which revenues from an airport's commercial activities may be taken into account in establishing airport charges.
- (3) This Directive should apply to airports located in the Community territory that are above a minimum size, as the management and the funding of small airports do not call for the application of a Community framework.
 - (3a) In order to promote territorial cohesion, Member States should have the possibility to apply a common charging system to cover an airport network. Economic transfers between airports in such networks should comply with Community law.
 - (3b) For reasons of traffic distribution Members States may allow an airport management body for airports serving the same city or conurbation to apply the same level of charges. Economic transfers between these airports should comply with relevant Community law.
 - (3c) Incentives for starting up new routes, such as to promote, *inter alia*, the development of disadvantaged and outermost regions should only be granted in accordance with Community law.

- (4) The collection of charges with respect to the provision of air navigation services and groundhandling services has already been addressed by Commission Regulation (EC) No 1794/2006 of 6 December 2006 and Council Directive 96/67/EC of 15 October 1996, respectively.
- (4a) The ICAO Council in 2004 adopted policies on charges for airports that included, *inter alia*, the principles of cost-relatedness of charges, non-discrimination and an independent mechanism for economic regulation of airports.
- (4b) The ICAO Council has considered that a charge is a levy that is designed and applied specifically to recover the cost of providing facilities and services for civil aviation, while a tax is a levy that is designed to raise national or local government revenues which are generally not applied to civil aviation in their entirety or on a cost-specific basis.
- (5) Airport charges should be non-discriminatory. A compulsory procedure for regular consultation between airport managing bodies and airport users should be put in place with the possibility for either party to have recourse to an independent supervisory body whenever a decision on airport charges or the modification of the charging system is contested by airport users.
- (6) An independent supervisory body should be established in every Member State so as to ensure the impartiality of its decisions and the proper and effective application of this Directive. The authority should be in possession of all the necessary resources in terms of staffing, expertise, and financial means for the performance of its tasks.
- (7) It is vital for airport users to obtain from the airport managing body, on a regular basis, information on how and on what basis the airport charges are calculated. Such transparency will provide air carriers with an insight into the costs incurred by the airport and the productivity of an airport's investments. To allow an airport managing body to properly assess the requirements with regard to its future investments, the airport users should be required to share all their operational forecasts, developments projects and specific demands and wishes with the airport managing body on a timely basis.

- (8) Airports should inform airport users about major infrastructure projects as these have significant impact on the level of airport charges. Such information shall be provided in order to make monitoring of costs of infrastructure possible and with the view to providing suitable and cost-effective facilities at the airport concerned.
- (9) Airports should be enabled to apply charges corresponding to the infrastructure and/or the level of service provided as air carriers have a legitimate interest to require services from an airport that correspond with the price/quality ratio. However, access to a differentiated level of infrastructure or services should be open to all carriers that wish to avail of them on a non-discriminatory basis. In case demand exceeds supply, access must be determined on the basis of objective and non-discriminatory criteria to be developed by an airport managing body. Any differentiation in charges should be transparent, objective and based on clear criteria.
- (10) [...]
- (11) Airport users and the airport managing body may conclude a service level agreement with regard to the quality of service provided in return for the charges. Negotiations on the quality of service in return for the charges may take place as part of the consultation.
- (12) This Directive is without prejudice to the application of the provisions of the Treaty, in particular Articles 81 to 89 thereof.
- (13) Since the objectives of the action taken cannot be sufficiently achieved by the Member States as airport charges systems cannot be put in place at their level in a uniform way throughout the Community and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in the Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

1. This Directive sets common principles for the levying of airport charges at Community airports.
2. This Directive applies to any airport located in a territory subject to the provisions of the Treaty and open to commercial traffic whose annual traffic is over 5 million passenger movements and to the airport with the highest passenger movement in each Member State.⁵

Member States shall publish a list of the airports on their territory to which this Directive applies. This list shall be based on data from EUROSTAT and shall be updated annually.

⁵ LU, EE, MT: reservation on the scope of the Directive.
LU cannot agree to the current wording of the provision on the scope, which, in its view, is liable to lead to discrimination in the application of the proposed Directive. In order to address this issue, LU maintains its suggestion of adding a new sentence at the end of the first subparagraph of Article 1(2): "However, the Commission may decide that all or some of the provisions of this Directive shall not apply, for as long as necessary, to an airport of the latter type if the application of the relevant provisions has, or is likely to have, the consequence of unjustifiably disadvantaging such airport vis-à-vis other airports to which this Directive does not apply, and, which have comparable traffic data and are in competition with the airport in question."
Besides this proposal, LU reiterates its opinion that a single criterion (e.g. based on a 1 million threshold) would be the most appropriate way to guarantee a uniform coverage and avoiding unequal treatment under the proposed Directive.

This Directive shall not apply to the charges collected for the remuneration of en-route and terminal air navigation services in accordance with Commission Regulation (EC) 1794/2006 laying down a common charging scheme for air navigation services⁶, or to the charges collected for the remuneration of groundhandling services referred to in the Annex of Council Directive 96/67/EC on access to the groundhandling market at Community airports, 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 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.⁷

This Directive is without prejudice to the right of each Member State to apply additional regulatory measures that are not incompatible with this Directive or other relevant provisions of Community law with regard to any airport managing body located in its territory. This may include economic oversight measures, such as the approval of charging systems and/or the level of charges including incentive-based charging methods or price cap regulation.

Article 2

Definitions

For the purposes of this Directive

- (a) ‘airport’ means any land area especially adapted for the landing, taking-off and manoeuvring of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services;

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

⁷ OJ L 204, 26.7.2006, p. 1.

- (b) 'airport managing body' means a body which, in conjunction with other activities or not as the case may be, has as its objective under national laws or regulations or contracts the administration and management of the airport or airport network infrastructures and the co-ordination and control of the activities of the different operators present in the airports or airport network concerned;
- (c) 'airport user' means any natural or legal person responsible for the carriage of passengers, mail and/or freight by air from or to the airport concerned;
- (d) 'airport charge' means a levy collected for the benefit of the airport managing body and paid by the airport users for the use of facilities and services, which are exclusively provided by the airport management body and which are related to landing, take-off, lighting and parking of aircraft, and processing of passengers and freight;
- (e) [...]
- (f) 'airport network' means a group of airports operated by the same airport managing body duly designated as such by the Member State.

Article 3

Non-discrimination

Member States shall ensure that airport charges do not discriminate among airport users, in accordance with Community law. This does not prevent the modulation of charges for issues of public and general interest, including environmental issues. The criteria used for such a modulation shall be relevant, objective and transparent.

Article 3a

Airport network

1. Member States may allow the managing body of an airport network to introduce a common and transparent airport charging system to cover the airport network.

2. Member States may allow an airport managing body for airports serving the same city or conurbation, to apply the same level of charges to all the airports concerned, provided that each airport fully complies with the requirements on transparency set out in Article 5.

Article 4

Consultation and remedy

1. Member States shall ensure that a compulsory and regular procedure for consultation between the airport managing body and airport users or representatives of airport users is established with respect to the operation of the system of airport charges, the level of such charges and, as appropriate, the quality of service provided. Such consultation shall take place at least once a year, unless agreed otherwise in the latest consultation. When a multi-annual agreement between the airport managing body and the airport users exists, the consultations shall take place as foreseen in such agreement. Member States keep the right, anyway, to request more frequent consultations.
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 four months before they enter into force, together with the reasons for the proposed changes, unless there are exceptional circumstances which would need to be justified to users. This period shall, however, not be less than two months. The airport managing body shall hold consultations on the proposed changes with the airport users and take their views into account before the decision is taken. The airport managing body shall publish its decision or recommendation within reasonable time before it enters into force. The airport managing body shall justify its decision with regard to the views of the airport users in the event no agreement on the proposed changes is reached between the airport managing body and the airport users.

3. Member States shall ensure that in the event of a disagreement over a decision on airport charges taken by the airport managing body, either party may seek the intervention of the independent supervisory body which shall examine the justifications for the modification of the airport charges system or the level of airport charges.
4. A modification in the level of charges decided upon by the airport managing body shall, if brought before the independent supervisory body, not take effect until that body has examined the matter. The independent supervisory body may take an interim decision on the entry into force of the modification of the charges.
5. A Member State may decide not to apply paragraphs 3 and 4 in relation to the changes to the level of charges or the structure of airport charges at those airports for which it has established a procedure, whereby there is economic oversight. These measures may be the same as those referred to in the last subparagraph of Article 1(2). Where these economic oversight measures include approval of the level of charges, these must be approved the same body that has been nominated or established as independent supervisory body for the purposes of this Directive.

Article 5

Transparency

1. Member States shall ensure that the airport managing body provides each airport user, or the representatives or associations of airport users, every time consultations referred to in Article 4 paragraph 1 are to be held with information on the components serving as a basis for determining the level of all charges levied at each airport by the airport managing body. This information shall at least include:
 - (a) a list of the various services and infrastructure provided in return for the charge levied;
 - (b) the methodology used for setting charges;
 - (c) the overall cost structure with regard to the facilities and services which airport charges relate to;

- (d) the revenue of the different charges and the total cost of the services covered by them;
 - (e) [...]
 - (f) forecasts of the situation at the airport as regards the charges, traffic growth and ~~any~~ proposed investments;
 - (g) the actual use of airport infrastructure and equipment over a given period.
 - (h) [...]
2. Member States shall ensure that airport users submit information to the management body before every consultation, as foreseen in Article 4(1), concerning in particular:
- (a) forecasts as regards traffic;
 - (b) forecasts as to the composition and envisaged use of their fleet;
 - (c) their development projects at the airport concerned;
 - (d) their requirements at the airport concerned.
3. Subject to national legislation, the information provided on the basis of this article shall be considered as confidential or economically sensitive and handled accordingly. In the case of airports that are quoted on the stock exchange, stock exchange regulations in particular must be complied with.

Article 6

New infrastructure

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

Article 7

Quality standards

1. In order to ensure smooth and efficient operations at an airport, Member States shall take the necessary measures to allow the airport managing body and the association or associations representing airport users at the airport to enter into negotiations with a view to concluding a service level agreement with regard to the quality of service provided at the airport. These negotiations on service quality may take place as part of the consultations referred to in Article 4.
2. Any such service level agreement shall determine the level of the service to be provided by the airport managing body which takes into account the actual level of charges and the level of service to which airport users are entitled in return for the charges.

Article 8

Tailored services

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 and their costs or any other objective justification. Airport managing bodies remain free to set any such differentiated charges.
2. Member States shall take the necessary measures to allow any airport user wishing to use the tailored services or dedicated terminal or part of a terminal, to have access to these services and terminal or part of terminal.

In the case that more users wish to have access to the tailored services and/or a dedicated terminal or part of terminal than it is possible due to capacity constraints, access shall be determined on the basis of relevant, objective, transparent and non-discriminatory criteria. These criteria may be set by the airport managing body and Member States may require these criteria to be endorsed by the independent supervisory body.

Article 9

Security charges

[...]

Article 10

Independent supervisory body

1. Member States shall nominate or establish an independent body as their national independent supervisory body in order to ensure the correct application of the measures taken to comply with this Directive and to assume, at least, the tasks assigned under Article 4. Such body may be the same as the entity entrusted by a Member State with the application of the additional regulatory measures referred to in Article 1(2), including with the approval of the charging system and/or the level of charges, provided that it meets the requirements of paragraph 2.
2. Member States shall guarantee the independence of the independent supervisory body by ensuring that it is legally distinct from and functionally independent of any airport managing body and air carrier. Member States that retain ownership of airports, airport managing bodies or air carriers or control of airport managing bodies or air carriers shall ensure that the functions relating to such ownership or control are not vested in the independent supervisory body. Member States shall ensure that the independent supervisory body exercises its powers impartially and transparently.
3. Member States shall notify to the Commission of the name and address of the independent supervisory body, their assigned tasks and responsibilities, and of the measures taken to ensure compliance with paragraph 2.

Member States may establish a funding mechanism for the independent supervisory body, which may include levying a charge on airport users and airport managing bodies.

3(a) Without prejudice to Article 4 paragraph 5, Member States shall ensure that for the independent supervisory body, in respect of disagreements referred to in Article 4 paragraph 3, the necessary measures relating to the level or structure of airport charges, including relating to quality of service, shall be taken to:

- (i) establish a procedure for resolving disagreements between the airport managing body and the airports users
- (ii) determine the conditions under which a disagreement can be brought to it.
The independent supervisory body may, in particular, dismiss complaints that are not properly justified or adequately documented
- (iii) determine the criteria against which disagreements will be assessed for resolution.

These procedures, criteria and conditions shall be non-discriminatory, transparent and objective.

4. When undertaking an investigation into the justification for the modification of the structure or level or airport charges as set out in Article 4, the independent supervisory body shall have access to necessary information from the parties concerned and shall be required to consult the parties concerned in order to reach its decision. It shall issue a decision as soon as possible, and in any case within six months after receipt of the complaint. The decisions of the supervisory body shall have binding effect, without prejudice to parliamentary or judicial review, as this applies in Member States.
5. The independent supervisory body shall publish an annual report concerning its activities.

Article 11

Report and revision

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

Article 12

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to conform to this Directive not later than 36 months from the date of its publication in the *Official Journal of the European Union*. They shall forthwith inform the Commission thereof.

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

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

Article 13

Entry into force

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

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President
