

EVALUATION ROADMAP				
TITLE OF THE EVALUATION	EVALUATION OF THE DIRECTIVE 2009/12/EC ON AIRPORT CHARGES			
LEAD DG – RESPONSIBLE UNIT	DG MOVE - UNIT E.4	DATE OF THIS ROADMAP	01/09/2016	
TYPE OF EVALUATION	Evaluation Ex-post Mixed	PLANNED START DATE	Q3 / 2016	
		PLANNED COMPLETION DATE	Q3 / 2017	
		PLANNING CALENDAR	<a href="http://ec.europa.eu/atwork/key-documents/index_en.htm#planned2011">http://ec.europa.eu/atwork/key-documents/index_en.htm#planned2011</a>	
<b>This indicative roadmap is provided for information purposes only and is subject to change.</b>				

A. Purpose
(A.1) Purpose
<p>The purpose of this evaluation is to assess whether Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (hereinafter "Airport Charges Directive")<sup>1</sup> has achieved its objectives, notably as regards non-discrimination between users and greater transparency, as well as whether the means intended to reach these objectives, namely the provisions on consultation on charges between airports and airlines and on the functioning of the independent supervisory authorities have proven appropriate. The evaluation will assess to what extent EU regulation of airport charges as foreseen by the Directive is still relevant to the current needs. The evaluation is aimed to provide not only an up-to-date overview of the application of the Directive in the Member States and to enquire into the benefits it delivered, but should seek to identify areas of concern in its implementation (if any), based on existing evidence and taking into account the current market reality.</p>
(A.2) Justification
<p>The Aviation Strategy<sup>2</sup> adopted on 7 December 2015 acknowledges that aviation is a strong driver of economic growth, jobs, trade and mobility for the European Union, which must be a global model for sustainable aviation. In this document, the Commission has identified the need to tackle limits to growth in the air and on the ground and clearly, infrastructure is central to the challenge. The availability of highly performing, competitive airport services is critical for the competitiveness of the EU aviation sector and the service quality experience of passengers and owners of cargo. The Action Plan attached to the Strategy foresees an evaluation of the Airport Charges Directive to be carried out in 2016/2017, in order to assess whether there is a need to revise it.</p> <p>Furthermore, during the public consultation on the Strategy, the industry has questioned whether its provisions are suitable for the market reality<sup>3</sup>. Airports and airlines positions differ<sup>4</sup> regarding economic regulation of airports, with airlines typically arguing that airports have market power and the ability and incentive to exercise it and therefore they support a general strengthening of the Airport Charges Directive, while airports point notably to the growing competition among European airports and among European and non-European airport hubs, to justify a</p>

<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0012>

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, An Aviation Strategy for Europe, COM(2015) 598 final  
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0598&from=EN>

<sup>3</sup> Communication from the Commission An Aviation Strategy for Europe, COM(2015) 598 final , p. 7

<sup>4</sup> Commission Staff Working Document Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, An Aviation Strategy for Europe SWD(2015) 261 final  
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015SC0261&from=EN>, p. 56-58

less rigid legal framework.

At the time when the 2007 Commission proposal for the Directive<sup>5</sup> was prepared, there was no consensus among industry representatives on whether and how the EU should intervene in the area of airport charges. The evaluation of the Directive conducted in 2013<sup>6</sup> concluded that stakeholders have not changed their views, adding that it was too early to consider a recast of the Directive or a move to a Regulation.

The present evaluation will also allow looking in detail into the matters brought forward by all stakeholders (industry and national supervisory bodies) since the Directive entered into force on 15 March 2009 and will potentially confirm some of the issues raised.

## B. Content and subject of the evaluation

### (B.1) Subject area

The Airport Charges Directive establishes a common European framework for regulating the essential features of airport charges. It was to be transposed by 15 March 2011.

Airport charges are paid by airport users (airlines) for the use of airport facilities and services. They are related to landing, take-off, lighting and parking of aircraft, and processing of passengers and freight and they generally cover the cost to the airport of providing the relevant infrastructure and associated services. Although airport charges are levied on airlines, the cost is ultimately borne by the passenger or freight customer since these charges form part of the cost passed on through the final price which they pay.

The Directive applies to all airports in the EU/EEA and Switzerland which handle at least five million passengers per year or, for those Member States with no airport reaching this threshold, to the largest airport in terms of passenger movements in that Member State. Around 70 EU airports fall within the scope of the Directive; representing just under 80% of EU passenger traffic.

The Directive imposes certain requirements for transparency, users' consultation, and non-discrimination in the setting of airport charges. The Directive also obliges Member States to designate an independent supervisory authority responsible for overseeing airport charges and, in most cases, to adjudicate in disputes over such charges between airlines and airports.

### (B.2) Original objectives of the intervention

The rationale for EU intervention was to create a common framework for the regulation of airport charges at EU airports. The Impact Assessment accompanying the proposal for a Directive found that there was limited airport competition among EU airports, with the main competition taking place at the level of large regional airports (i.e. airports with between one and five million passengers per annum) and that taking no action at EU level might have led airports with market power to increase charges to the detriment of efficiency of airports market. The Airport Charges Directive was part of a wider initiative that placed the focus on airports and that sought to promote efficient airport operations and the optimal use of scarce capacity.

Consequently, the specific objectives of establishing common EU airport charges rules were: *(i)* to improve fairness in the process of charges setting, with the aim of improving the countervailing bargaining power of airport users, especially when dealing with airports with market power; *(ii)* contribute to fair competition between EU airports by the introduction of common charging principles; *(iii)* promote more transparent charging systems applicable to users of airport infrastructure; and *(iv)* generate sufficient revenues to maintain and complete airport infrastructure at an optimal level.

In the absence of such rules, market power of some airports could be reflected in unduly high prices for their

<sup>5</sup> Commission Staff Working Document SEC(2006) 1688, Accompanying document to the Proposal for a Directive of the European Parliament and of the Council on airport charges, Full Impact Assessment  
<http://ec.europa.eu/transparency/regdoc/rep/2/2006/EN/2-2006-1688-EN-1-0.Pdf>

<sup>6</sup> Report from the Commission to the European Parliament and the Council on the application of the Airport Charges Directive COM(2014)278 final  
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014DC0278>

Evaluation of Directive 2009/12/EC on airport charges, Final Report, September 2013, prepared by Steer Davies Gleave  
<http://ec.europa.eu/transport/modes/air/studies/doc/airports/2013-09-evaluation-of-directive-2009-12-ec-on-airport-charges.pdf>

services, or in unduly low quality and range of services offered, which adversely affect airlines, passengers and owners of cargo and other downstream economic sectors. Before the adoption of the Airport Charges Directive, a number of Member States had already put in place mechanisms for the regulation of airport charges at airports which were considered to have market power. However, not all Member States were having a functioning, non-discriminatory and comprehensible procedure for calculating airport charges and therefore the intervention at EU level was aimed to provide for a coherent regulatory framework at EU level and to prevent possible distortions of competition in the EU market.

The application, ex-post, of general competition laws alone was considered as insufficient to address the risk of market failure. Against this background the Directive was conceived so as to apply as from certain, easily applicable thresholds and to ensure fair charges for all airports thus encompassed. It contains a few more precise provisions on the substance and, above all, a number of organisational and procedural rules intended to bring about proper results. A key element of the Directive in this respect is the requirement to establish an independent national authority to ensure the correct application of the measures taken to comply with the Directive.

The Airport Charges Directive enshrines in EU legislation a number of basic principles drafted by the Council of the International Organisation for Civil Aviation (ICAO) and widely accepted by the industry worldwide<sup>7</sup>. ICAO policy recognises inter-alia the need for the economic regulation of airports to include elements such as cost-relatedness, non-discrimination in the application of the charges, the ensuring of transparency and consultation, and the establishment and review of quality standards.

The Airport Charges Directive was expected to boost fair competition between airports by creating a regulatory level playing field and therefore improve the operation of the EU aviation market functioning and the competitiveness of the EU aviation sector at large. The overall expected impact of the Directive was a downward pressure on charge levels.

*(see also intervention logic diagram in Annex)*

### (B.3) How the objectives were to be achieved

The first specific objective was to improve fairness in the way charges are set, particularly by increasing the bargaining power of airport users. To this end, the non-discrimination principle in the application of charges is intended to protect users against any potential unfair treatment; however airports are given the possibility to modulate their charges for environmental or public interest reasons (e.g. congestion, noise, NO<sub>x</sub> emissions, CO<sub>2</sub> emissions). Charges can also be differentiated on the basis of different quality and scope of services in order to meet the needs of users and promote efficient use of the infrastructure; such differentiation has to be justified and transparent. In complement to this, a compulsory regular consultation process requires that airports and airlines exchange views on the levels of the charges as well as on all factors and regulatory requirements that have an influence on their determination. To achieve the effective application of ICAO principles related to airport charges, an independent supervisory body has to be set up in each Member State. Transparency, non-discrimination and consultation are expected to result in airport charges that are transparent, fair to users and take into account the users' perspective. The presence of control mechanisms is expected to effectively remedy potential issues. Overall, the various features mentioned are intended to reduce the possible power asymmetry between airports and users and, in the long term, to also improve relationships between both parties.

The second specific objective was to improve fair competition between airports. The existence of a common framework is expected to reduce differences between airports in the way they are allowed to set charges. This should create a level playing field across the EU, regardless of the ownership or management structures of the airports. Where common charging systems are in place (airport networks or airports serving the same city or conurbation), transparency requirements must be observed, in addition to ensuring that economic transfers between such airports comply with EU competition law. To address the issue of potential or real conflict of interest, Member States are required to ensure that the supervisory authorities are legally distinct and functionally independent from any airport or airline, in particular where Member States retain ownership or control of industry actors.

The third specific objective was to promote more transparent charging systems. This would lead to an improved level of acceptability of charges by airlines. Because the Directive imposes consultation and transparency, airports are expected to be encouraged to improve the soundness of their management and take decisions that are efficient, while users are given the possibility to understand the match between airports costs and investments on one hand and the tariffs perceived on the other hand. Also, because the exchange of information foreseen goes

<sup>7</sup> ICAO's Policies on Charges for Airports and Air Navigation Services, Doc 9082, Ninth Edition – 2012  
[http://www.icao.int/publications/Documents/9082\\_9ed\\_en.pdf](http://www.icao.int/publications/Documents/9082_9ed_en.pdf)

both ways, airports have the right to receive relevant information from users so as to allow them to employ their capital and dedicate their capacity in an optimal way. Overall these elements should contribute to charges being better adapted to the needs of users, as well as to airports functioning more economically and efficiently.

The fourth specific objective was to generate sufficient revenues to allow airports maintain and enhance capacity and deliver the services in question at an optimal level. The Directive intends to reach this objective mainly through the consultation between parties and the exchange of information, ensuring that the level of charges corresponds to the level of operating and development costs. Furthermore, the Directive foresees that specifically for plans of new infrastructure, airport managers have to consult the users beforehand, so that investment is correctly balanced with users' needs. The independent supervisory authorities are empowered to arbitrate between the required trade-offs, in assessing the risks of over- or under- investment in both existing and new capacity; for this purpose they have to take decisions in an impartial and transparent manner. Additionally, the Directive permits the conclusion of service level agreements between airports and airlines, to include agreed quality and operational performance standards aimed to encourage continuous improvement.

## C. Scope of the evaluation

### (C.1) Topics covered

The evaluation will provide a thorough assessment of the performance of all provisions of the Airport Charges Directive across Member States, since its adoption. The starting point will be the legal text itself, but this evaluation will also look at the Impact Assessment carried out in 2007 in view of the proposed Directive, in particular regarding the considerations on airports market power. In this regard, it will be important to take into account - for example - the difference between airports which mainly focus on point to point traffic between two cities (i.e. passengers arriving or departing from that airport, as opposed to making a connection there) and those which compete to be hub airports serving to a large extent as a connection point. The evaluation will also examine to what extent the findings of the 2013 evaluation of the Directive (see point D.2) are still valid.

The evaluation will seek to assess to what extent the Directive has been properly applied, the effectiveness of its provisions' enforcement as well as whether the requirements set out in the Directive are such that its objectives are attained.

### (C.2) Issues to be examined

Indicative evaluation questions:

#### Relevance:

- To what extent have the specific objectives underlying the adoption of the Directive proven to be appropriate for addressing the problems? To what extent is the current scope of application of the Directive catering to the real needs of airports (e.g. sufficient funding) and airlines (e.g. quality standards, differentiation of services)?
- To what extent is this Directive still relevant to tackle today's reality?
- To what extent do the airports concerned by the Directive have market power, and notably how relevant is the threshold regarding the selection of airports to be covered by the Directive? Does it reflect correctly airports market power?

#### Effectiveness:

- To what extent is the existing range of remedies (as foreseen by Article 6 of the Directive) across Member States effective in dealing with possible market power of airports?
- In which ways have industry actors made use of the Directive's provision allowing for justified modulation of charges and services for users, while preventing discrimination? To what extent has such modulation taken into account environmental impacts?
- Have organisational and procedural arrangements led to increased clarity and fairness in setting airport charges?
- To what extent has the current regime managed to balance airports' needs for operation and investment with airlines' requirements for competitive charges, by promoting effective cooperation between the two groups?

- To what extent has the Directive contributed to the improvement of airports operations? To what extent has the Directive contributed to the competitiveness of the aviation sector in general?

**Efficiency:**

- Are the costs borne by national supervisory authorities, airports and airlines reasonable in relation to the benefits? Is there a fair distribution of costs between the main actors?
- To what extent are the administrative requirements flexible to cater for the needs of SMEs active in the industry?

**Coherence:**

- To what extent is the Directive in line with other EU interventions in the field (e.g. air navigation services, ground handling services, slots, security, assistance to disabled persons and persons with reduced mobility)?
- To what extent do the various tools set out in the Directive work together in a coherent way?

**EU added value:**

- What is the added value resulting from EU intervention in airport charging, compared to what could be achieved at international, national or regional level without such intervention?

(C.3) Other tasks

**D. Evidence base**

(D.1) Evidence from monitoring

National authorities

National independent supervisory authorities are bound by the Directive to publish annual reports. These reports may be important sources of information relevant for this evaluation.

(D.2) Previous evaluations and other reports

The Commission has already published in 2014 a report regarding the mid-term evaluation of the application of the Airport Charges Directive, which draws upon the Commission's experience of dealing with implementation issues over the first three years following the expiry of the time limit for transposition of the Directive and on the results of an external study. The report identified a number of problematic aspects in the application of the Directive and provided an overview of the progress made by 2013 in attaining the objectives of the Directive, together with a number of suggestions and recommendations. However, the main limitation of the external study and the report related to the fact that experience gathered with the application of the Directive was still limited at the time, therefore all questions raised at that time are still relevant.

Thessaloniki Forum

The Thessaloniki Forum created in 2014 and composed of experts from the national independent supervisory authorities is intended to help these authorities develop their working methods and knowledge by sharing experience and best practice. The Aviation Strategy sets out an important role for the Thessaloniki Forum, namely: draw up findings/recommendations on a competition-based approach to airport charges regulation; continue working on common approaches/best practices for implementing the current Directive. The conclusions of the Forum's meetings and the outcomes of the working subgroups set up by it (to date, one working group is in place whose mandate is to discuss in detail the issues of consultation process and transparency) will be fed into the evaluation of the Directive.

European Observatory on Airport Capacity and Quality

The findings of this forum<sup>8</sup> which brings together Member States and aviation stakeholders may also contain relevant information for this evaluation.

<sup>8</sup> [http://ec.europa.eu/transport/modes/air/airports/airport\\_capacity\\_and\\_quality\\_en.htm](http://ec.europa.eu/transport/modes/air/airports/airport_capacity_and_quality_en.htm)

The available data listed above and in section D.2 may not be comprehensive and additional sources may be added in the course of the evaluation.

(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)

Enforcement action undertaken by the Commission has focused on incorrect transposition or deficiencies in the application of the Airport Charges Directive provisions. Since the time limit for transposing the Directive has expired, the Commission has launched investigations or opened infringement proceedings against 12 Member States, either on its own initiative or following complaints from airlines, airlines associations or citizens. The issues at stake cover the independence, powers and duties of the national supervisory authorities, discriminatory charges and the provisions on consultation and transparency.

To date, there is no ruling of the European Court of Justice linked to the transposition or application of this Directive.

(D.4) Consultation

The stakeholders to be consulted for the purposes of this evaluation include: national independent supervisory authorities; national ministries in charge of air transport; airports and their trade associations (ACI Europe); airlines and their trade associations (A4E, AEA, ELFAA, ERA, IACA, IATA, EBAA, EEA); consumers associations.

An extensive consultation process will be undertaken structured around two main axes of actions:

- an open, internet-based public consultation of minimum duration 12 weeks which will be launched in the first quarter of 2017 on the "Your Voice in Europe" website ([http://ec.europa.eu/yourvoice/consultations/index\\_en.htm](http://ec.europa.eu/yourvoice/consultations/index_en.htm)) and on the EC MOVE webpage ([http://ec.europa.eu/transport/index\\_en.htm](http://ec.europa.eu/transport/index_en.htm)); this open public consultation will seek to gather mainly the views of the 'non-specialist' larger groups of stakeholder, such as EU citizens, EU Member States, consumer associations, travel and tourism industry, etc and even if the questionnaire will be available only in English, contributions may be submitted in all EU languages;
- a set of targeted consultation activities tailored for particular stakeholders groups which are involved directly in the implementation and affected by the provisions of the Directive, namely national supervisory authorities, airports and airlines communities; these activities will include sessions chaired by the Commission with industry representatives (at least one 'focus group' by end of 2016, followed by other 2 in 2017), surveys, interviews and case studies.

Input will be sought on a broad range of matters: airports benchmarking, methods to assess the market power of individual airports, relevance of current EU/national regulatory arrangements, objectives, goals or targets of Member States / EU action (e.g. cost efficient airports, territorial cohesion, facilitating commercial agreements), viable options that may achieve the objectives.

The synopsis report which will cover all consultation activities will describe how feedback was incorporated into the Commission's evaluation of the Directive.

(D.5) Further evidence to be gathered

Industry studies

Airports and airlines have also prepared over the past few years a wide range of studies on economic regulation of airports. These findings and conclusions should also be considered for the purposes of the present evaluation.

Market developments

The present evaluation will also comprise an assessment of the current national regulations which implement and supplement the provisions of the Directive, with a particular focus of the most recent and relevant changes. European airports ownership and management<sup>9</sup> have considerably evolved since the time the Commission had proposed the Directive, with an increased involvement of private participation either through privatisation or concessions. These developments will be also taken into account. Commercial negotiation between airports and airlines is also maturing slowly, albeit differentially across Member States and since these agreements become increasingly complex and impact a growing number of passengers, the assessment of the existing practice will also be an important element of the evaluation.

<sup>9</sup> Source of data: ACI Europe

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E. Other relevant information/ remarks

Annex: Intervention logic diagram

