

Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on Airport Charges

Background

The European Union has traditionally been involved in airport policy. For example, the Council Regulation (EEC) 95/93 of 18 January 1993 on Common Rules for the Allocation of Slots at Community Airports laid down the slot allocation rules that regulate the airlines access to congested parts of airports infrastructure. Another example is the Council Directive 96/67/EC of 15 October 1996 on Access to the Ground Handling Market, which liberalized ground handling services to any airport located on the territory of a Member State whose annual traffic is over 2 million passenger movement or 50 000 tonnes of cargo.

A need for a directive targeting airport charges specifically arose from the existence of multiple frameworks applied in the different Member States that could have threatened fair competition among airlines using European airports. On 24 January 2007, the European Commission proposed an initial legislative document whose purpose was to set up common principles for the levying of airport charges at European airports under the form of a Directive of the European Parliament and of the Council. The document was established with explicit reference to *ICAO's Policies on Charges for Airports and Air Navigation Services* (Doc 9082). The final legislative act was adopted on 11 March 2009 by the Council, which approved all amendments voted by the European Parliament.

Content of the Directive 2009/12/EC

The main objectives of the Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on Airport Charges are the following:

1. Improving the transparency of the costs and related charges: airport operators have to present to their users the allocation of their costs and thus justify the calculation of airport charges.
2. Prohibiting the discrimination between users: airlines receiving the same service at a given airport in Europe have to pay the same charge. A differentiation of charges remains possible as long as it is based on clear and transparent criteria. Finally, airport operators can also modulate charges based on environmental justifications.
3. Establishing consultation mechanisms: airport operators have to consult their users before setting charges.
4. Helping the settlement of disputes over charges: Member States have to designate an independent authority to oversee the implementation of the principles laid down in the Directive.

The European Commission initially proposed that the Directive be applied to any European airport whose traffic is over 1 million passenger movements or 25 000

tonnes of cargo, or which accounts annually for more than 15% of the passenger movements in the Member State in which it is located. But the European Parliament and the Council decided to subject to the Directive all European airports whose annual traffic is over 5 million passenger movement and to add the largest airport in each Member State. Airport networks, defined as groups of airports duly designated as such by a Member State and operated by the same airport managing body, may also be concerned by the Directive. In order to secure its approval, the European Commission accepted this common position by the European Parliament and the Council to reduce the scope of the Directive. A legal action for annulment of the Directive on the grounds that the defined scope of the Directive constituted discriminatory treatment of airports was rejected by the European Court of Justice in May 2011.

Several amendments were passed during the co-decision procedure. Regarding pre-financing of infrastructure, Member States or airport operators where pre-financing occurs should refer to ICAO's policies on charges and/or establish their own safeguards. Member States may also allow an airport operator to apply a common and transparent charging system at different airports serving the same urban area. Airport operators shall normally publish decisions or recommendations on charges no later than two months before its entry into force. Finally, a mandatory procedure for charges was established.

Member States were given 36 months to transpose the Directive into national law and to take all the necessary measures for its implementation. The Commission has to submit a report by 15 March 2013 to assess progress made in achieving the goals and objectives of the Directive and suggest any appropriate suitable proposal.

On a final note, the Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on Airport Charges does not address security charges, which are dealt with by another Directive currently being discussed by the European Parliament and the Council. Moreover, the Directive does not contain any provision regarding the application of the single-till, the dual-till or the hybrid-till, which has to be decided at the Member State level while transposing the Directive into national law.

Conclusion: The “Airport Package”

This Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on Airport Charges is part of a broader policy move made by the European Union. The European Commission launched two other initiatives that specifically targeted airports. On one hand, a Communication on Airport Capacity, Efficiency and Safety in Europe provided an action plan for tackling congestion at European airports. On the other hand, a Report on the Implementation of the Ground Handling Directive assessed the initial phase of ground handling liberalization on opening up access to ground handling markets at European airports to competition. This “Airport Package” focused on airport competitiveness and aimed to ensure a regulatory convergence between Member States.

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