



CONFERENCE ON THE ECONOMICS OF AIRPORTS AND AIR NAVIGATION SERVICES

Montréal, 15 to 20 September 2008

Agenda Item 4: Implementation of ICAO's policies on charges

IMPLEMENTATION OF ICAO'S POLICIES ON CHARGES FOR AIRPORTS IN THE EUROPEAN COMMUNITY

(Presented by the European Commission (EC))

SUMMARY

The European Commission takes the view that the levying of airport charges needs regulation and has therefore proposed new legislation in this field. This paper outlines the main provisions of the European Commission's proposal on airport charges, which the European Parliament and the Council of Ministers are currently discussing. The proposal aims to ensure efficient implementation of ICAO principles; however, this will require some of ICAO's concepts and definitions to be further clarified.

Action by the Conference is in paragraph 4.

1. INTRODUCTION

1.1 As part of its January 2007 airports package the European Commission proposed legislation on airport charges based predominantly on *ICAO's Policies on Charges for Airports and Air Navigation Services* (Doc 9082). This proposal was submitted to the European Union's co-legislators - the European Parliament and the Council of Ministers, for adoption. Once adopted the legislation will then be transposed into national laws and regulations of the European Union's (EU) Member States.

1.2 The ICAO policies on non-discrimination, cost transparency and regular user consultation are the main principles of the proposal. They have been further defined and clarified to assist their implementation by the EU Member States. The proposal would also require each EU Member State to have an independent authority to handle complaints.

1.3 The proposal was well-received by the European Parliament and the Council of Ministers.

2. DISCUSSION

2.1 Over the last 15 years, the EU has successfully liberalised its air transport market leading to more consumer choice and cheaper air fares. The liberalisation has also led to greater diversity of airport charges which has also brought the relationship between airports and their users into the spotlight. Some users have used differentiated charges to gain a competitive advantage. The European Commission shares the concern mentioned in WP/10 presented by the Secretariat that differentiated airport charges could be discriminatory and non-transparent, and therefore anticompetitive¹. The last 15 years have also seen greater airport privatisation, which, as pointed out in WP/4 presented by the Secretariat, may have contributed to less awareness of ICAO's policies on airport charges².

2.2 Therefore the European Commission decided that further regulation of the relationship between airports and users concerning airport charges was needed. It carefully analysed a wide variety of options ranging from regulating the level of airport charges in detail, to relying exclusively on competition law. The analysis showed that very detailed regulation would be incompatible with the EU Member States' varied legal and regulatory situations. It also showed that relying exclusively on competition law would be insufficient particularly when establishing an airport's market position is time-consuming.

2.3 The European Commission also examined the commitment by EU Member States to ICAO's policies on airport charges. It concluded that these policies provide a comprehensive framework for levying airport charges. Nevertheless these policies were not always implemented in the same way across the EU. The European Commission's airport charges proposal therefore aims for a more consistent implementation of the internationally accepted principles continuously developed by ICAO in its policies.

2.4 These principles are general and so do not distinguish between publicly or privately owned airports. The European Commission proposed that they should only apply to airports with an annual traffic of at least 1 million passengers or 25 000 tonnes of cargo as smaller airports have less commercial impact and so do not warrant regulation.

2.5 A charge, unlike a tax or fee, is levied for a service. It should therefore reflect the cost of providing this service; however, over recent years and in particular since the liberalisation of the EU's air transport market, it has become increasingly difficult to distinguish between actual airport charges and other pricing elements such as marketing devices.

2.6 Paragraph 3 of Doc 9082 defines an airport charge as "a levy that is designed and applied specifically to recover the costs of providing facilities and services for civil aviation". However, the proposal needed a more precise definition of an airport charge. The European Commission therefore refers to a specific number of relevant services which airport charges should cover: "a levy paid by the users for the use of facilities and services related to landing, take-off, lighting and parking of aircraft, and to processing of passengers and cargo."

2.7 Paragraph 23 of Doc 9082 states that airport charges shall not discriminate between foreign and domestic users or between different foreign users. The European Commission's proposal consequently states that airport charges shall not discriminate between users.

¹ Paragraph 1.1 of WP/10 on Differential Charges

² Paragraph 2.2 of WP/4 on Economic Oversight

2.8 The recent trend of using differentiated charges to attract and retain new airline services has raised concerns about possible discrimination. However, the principle of non-discrimination between users does not always imply that reductions or rebates are prohibited. Such reductions or rebates are accepted provided they are justified, transparent and based on objective criteria. Paragraph 24 of Doc 9082 goes in the same direction. WP/10 presented by the Secretariat also argues for more flexibility to use existing airport capacity more efficiently. The European Commission endorses its conclusions provided such differentials are justified, transparent and do not discriminate between users.

2.9 The proposal's transparency provision is based on paragraph 21 of Doc 9082 which states that airports should provide adequate financial information to users during consultations on airport charges. Transparency allows it to be seen whether the level of charges applied is related to the costs of the services provided and thereby identify possible discrimination.

2.10 Full transparency of the cost base becomes even more important if there are different levels of cost-recovery for different services. WP/8 presented by the Secretariat highlights the recent trend towards having higher levels of cost-recovery for passenger service charges than for other charges and argues for more flexibility to accommodate this trend³. Nevertheless, as the current text of Doc 9082 already provides for sufficient flexibility, they do not need to be modified and the amendments proposed in WP/8 are unnecessary.

2.11 The objective of regular consultation between airports and users is to allow airports to explain any proposed change in the level of airport charges and to seek agreement with users. The airport must take the users' views into account before deciding or recommending a change to the decision-making authority. The airport must submit any proposal to modify the charges at least four months before the new charges will enter into force and must communicate its decision at least two months before their entry into force. These time limits may be adjusted under certain exceptional circumstances if they are justified to the users. Paragraph 31 of Doc 9082 provides for similar time limits. The European Commission therefore supports the general statement made in WP/6 presented by the Secretariat on user consultation to better define the time limits for an airport to inform users of decisions⁴.

2.12 The European Commission's proposal also promotes further cooperation between airports and users by suggesting that user consultations include discussions on the quality of service provided. Paragraph 16 of Doc 9802 supports this argument. Such discussions should provide users with a better understanding of the content of relevant airport services and their translation into particular charging levels.

2.13 The European Commission proposal obliges airports to consult users before new infrastructure plans are finalised. This aims to give users the possibility to react to plans that may have significant implications on future airport charging levels. Airports should then be better able to develop this new infrastructure in line with users' needs. Paragraphs 17 and 32 of Doc 9802 are based on the same reasoning.

2.14 The European Commission is convinced that the general principles mentioned above will improve and structure the dialogue on airport charges between airports and the users. That said, some decisions on charges could still be questioned by users. The proposal therefore requires the establishment of an independent supervisory authority in each EU Member State. This authority must act upon complaints to settle disputes on the future level of airport charges. The authority will also have significant

³ Paragraph 2.9 of WP/8 on Cost Basis, Cost Allocation and Charging Systems

⁴ Paragraph 2.7 of WP/6 on Consultations with Users

expertise on airport charges, allowing it to take decisions quickly. Rapid dispute resolution increases the financial certainty for both airports and users. Paragraphs 15 and 33 of Doc 9802 advocate the establishment of such an independent regulator.

3. CONCLUSIONS

3.1 The European Commission remains convinced that adherence to the paragraphs of Doc 9802 mentioned above is favourable for the functioning of the whole aviation sector. Nevertheless it considers that unless they are transposed into national legislation they may not be fully respected. Such transposition requires that some concepts and definitions are further clarified. Consequently, this paper supports the conclusion in WP/17 presented by the Secretariat that States should ensure that their service providers adhere to ICAO's policies on airport charges⁵.

3.2 The European Commission supports the conclusions made in WPs/4, 6, and 10 presented by the Secretariat, which are aligned with its proposal on airport charges.

4. ACTION BY THE CONFERENCE

4.1 The Conference is invited to:

- a) encourage States to implement the relevant parts of ICAO's policies on airport charges more effectively, and
- b) endorse the conclusions in paragraph 3 on the Working Papers presented by the secretariat of ICAO.

— END —

⁵ Paragraph 4.1(b) of WP/17 on Implementation of ICAO's Policies on Charges