



**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**

(Presented by France, on behalf of the European Community and its Member States,<sup>1</sup> by the other State members of the European Civil Aviation Conference (ECAC),<sup>2</sup> and by the United States)

**SUMMARY**

Adherence to and implementation of ICAO's policies on charges could be significantly advanced by the adoption by States of legal obligations that reflect the essential principles of non-discrimination, cost-relatedness, transparency and user consultation. In addition to incorporating the principles of Doc 9082 into their national law, States should incorporate them into their air services agreements.

Action by the Conference is in paragraph 4.

**1. INTRODUCTION**

1.1 Several working papers have noted that implementation of ICAO's policies on charges by contracting states leaves much to be desired, and the lack of implementation was a common theme of many speakers during the Symposium.

1.2 WP/17 describes the legal framework: while States are bound to follow the principles set forth in Article 15 of the Convention, they are not legally bound to adhere to the principles elaborated in Doc 9082. However, States are "morally committed" to follow the principles of Doc 9082 and to "ensure" that their service providers practices conform to them. WP/17 describes ICAO's past efforts to

<sup>1</sup> Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom. All these 27 States are also Members of the ECAC.

<sup>2</sup> Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Iceland, Moldova, Monaco, Montenegro, Norway, San Marino, Serbia, Switzerland, The former Yugoslav Republic of Macedonia, Turkey and Ukraine.

increase awareness and understanding of ICAO's policies and suggests similar initiatives that could be undertaken by States and industry organizations.

1.3 A number of suggestions have been made that go beyond such educational and promotional activities. For example, several participants have proposed that States incorporate Doc 9082 into national law or policy. WP/65 presented by the European Commission endorses such incorporation and describes the ways that its proposed directive on airport charges is consistent with Doc 9082. However, the working paper also notes that some concepts and definitions of Doc 9082 require clarification before being transposed into national law.

## 2. DISCUSSION

2.1 The authors of this paper endorse incorporation of the principles of Article 15 and Doc 9082 into national legislation and have incorporated them in their own policies, *e.g.* the U.S. FAA's Airports Rates and Charges Policy. At the same time, the authors of this paper do not believe it would be practical to transpose Doc 9082 *in toto* into national law. What is important is to give the essential principles of Doc 9082 -- non-discrimination, cost-relatedness, transparency and user consultation -- more legal weight in order to reinforce the moral commitment States have made in adopting them as ICAO Policies.

2.2 A further means of giving legal force to these principles is to incorporate them into States' air services agreements. Many States' agreements contain robust user charge articles that reflect the principles of Article 15 and Doc 9082. An example from the U.S.-EU Air Transport Agreement is attached in the Appendix.

2.3 Wider adoption of similar provisions in air services agreements, which are part of States' international obligations, could greatly enhance adherence to and implementation of the principles of Doc 9082.

## 3. CONCLUSIONS

3.1 Adherence to and implementation of ICAO's policies on charges could be significantly advanced by the adoption by States of legal obligations that reflect the essential principles of non-discrimination, cost-relatedness, transparency and user consultation.

- a) States should adopt those principles as part of their national legislation, regulations or policy; and
- b) States should include those principles as part of their future air services agreements.

4. **ACTION BY THE CONFERENCE**

4.1 The Conference is invited to:

- a) recommend that States adopt the principles contained in Doc 9082, *i.e.*, non-discrimination, cost-relatedness, transparency and user consultation, as part of their national legislation, regulations or policy; and
- b) recommend that States include the principles contained in Doc 9082, *i.e.*, non-discrimination, cost-relatedness, transparency and user consultation, as part of their air services agreements.

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**APPENDIX**  
**U.S.-EU AIR TRANSPORT AGREEMENT**

Article 1

*Definitions*

*"Full cost" means the cost of providing service plus a reasonable charge for administrative overhead;*

*"User charge" means a charge imposed on airlines for the provision of airport, airport environmental, air navigation, or aviation security facilities or services including related services and facilities.*

Article 12

*User Charges*

1. *User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favorable than the most favorable terms available to any other airline at the time the charges are assessed.*

2. *User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such charges may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.*

3. *Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.*

4. *Neither Party shall be held, in dispute resolution procedures pursuant to Article 19, to be in breach of a provision of this Article, unless (a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or (b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.*

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