

## Recommendations on Consultation and Transparency

### Background

The goal of the Aviation Strategy is to strengthen the competitiveness and sustainability of the entire EU air transport value network. Tackling limits to growth in the air and on the ground, in particular by boosting the efficiency of airport services, is one of the three key priorities that the Commission has identified. The Thessaloniki Forum of Airport Charges Regulators is tasked with working on and making recommendations for a better common implementation of Directive 2009/12/EC on Airport Charges (the "ACD").

The ACD requires Member States to assign responsibility for supervising the setting of airport charges to Independent Supervisory Authorities (ISAs). This role includes supervising compliance with the requirements of the ACD relating to Consultation and Transparency.

This document provides recommendations on the process for consultation between airports and airlines required by the ACD, and reflects the principles that ISAs seek to apply in exercising their supervisory role.<sup>1</sup> Transparency as it relates to consultation is also addressed. The Working Group is aware that the Directive provides further transparency requirements beyond the consultation process.

These recommendations have been formulated by the Consultation and Transparency working group of the Thessaloniki forum on Airport Charges, taking into account the views of representatives of the airport and airline communities, and have been adopted by the Forum as a whole.

### Caveats

The recommendations do not represent the views of the European Commission and do not in any way change the requirements of the ACD.

The recommendations form a set of acceptable practices; individual Independent Supervisory Authorities (ISAs) may have valid reasons for promoting a different process than that set out above.

These recommendations are not exhaustive. They do not repeat the requirements of the Airport Charges Directive, rather they deal with some areas where the group of ISAs considered that recommendations would be useful.

The Airport Charges Directive (ACD) covers a large group of diverse airports, as such, all of the recommendations may not be relevant in all situations. In particular, at airports where there is not substantial market power or where consultation and transparency are working well (in the opinion of airport users) then additional processes may not be required.

These recommendations will be kept under review and changed as and when deemed necessary by the Forum.

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<sup>1</sup> Throughout this document: Airport refers to the Airport Managing Body or the Airport Authority. User or Airline refers to airlines operating or planning to operate at the airport during the period in which the charges being consulted on will be applicable (airlines planning to operate should formally notify the airport of this intention prior to the consultation). ISA refers to the Independent Supervisory Authority referred to in the Airport Charges Directive and designated by the individual Member State.

## Role of ISA in Consultation Process

### ISA Guidelines

1. ISAs may provide guidelines for consultations and transparency in situations where:
  - National framework relating to airport charges is not sufficiently detailed
  - it is requested to do so by an airport or airport user
  - the ISA is of the opinion that the current process is not working as well as it could
  - consultation is working well but the ISA believes the guidelines are necessary to ensure that continues to be the case
  - an airport has significant market power.

### Attendance at Consultations

2. ISAs recognise that it can be beneficial to attend consultations, however, this is not necessary in all situations. In general, ISAs may attend if explicitly requested to do so by the airport managing body, airport users or an airline association.
3. When attending consultations, ISAs should be, preferably, an observer. Where appropriate, ISAs may play a facilitator role to encourage consultations to be accountable, transparent, and collaborative among all parties.

### Evaluation

4. If there are any concerns identified about the consultation process by any attending airport users, an evaluation of the process by the ISA may be appropriate. The timing of any such evaluation would need to be mindful of appeals if applicable. The ISA may evaluate the issues raised taking into account the reasons of the airport not to implement the views of the interested users.

## Process for Consultation

5. As a general principle, consultations should be constructive and should not merely provide information with a predetermined outcome, this is, the views of airport users should be taken into account. For many airports a collaborative approach between the airport and the airport users may be best able to define the exact process and level of transparency required.

### Timeline

6. The consultation timeline and introduction of charges should be in line with the timelines in the directive.
7. Detailed consultation documentation should be provided in advance of any consultation meeting in sufficient time to allow airport users analyse the information.
8. There should be sufficient opportunity for preparation of comments and to seek clarifications.

### Language

9. Consultation meetings and documents should be in the national language or in the national language and English. If English is not the national language but is requested by an airline or airline association, then, at a minimum, the key issues of the consultation and the key documents should be translated into English. Translations of documents should be regarded as unofficial, with documents in the national language taking precedence.

### Participation in Consultation

10. All users of the airport should be able to attend the consultations on airport charges. Airline associations should be allowed to attend if representing a particular airline that operates at the airport. It should be made clear which airlines are members of the association and who it is speaking for at the consultation.

### Rounds of Consultations

11. The consultation process should involve as many rounds as necessary, although in general, one round of consultation should be sufficient. In any case, if the final proposals differ substantially from the initial proposals or from those discussed at the consultation meetings, an additional round of consultation may be conducted. The timeline of the process should respect what is defined in the Directive.

### Airport Users' Comments

12. The airport should show how it took account of the comments of airport users in its final decision on charges. Where comments were not adopted a reason should be given by the airport in writing to all users.

## What is Consulted on?

### Level and Structure of Charges – Aeronautical revenue

13. The level and structure of charges should be consulted on.<sup>2</sup> Linkages should be provided between the structure of charges, the cost of services, the projected revenue and the investment plans.

### Incentive Schemes – rebates and discounts on the normally payable charges

14. Incentive schemes resulting in rebates or discounts on the normally payable charges should be consulted on.
15. Consultation and transparency on these schemes is required to discourage discriminatory schemes.
16. Airports should show how the incentive schemes affect the charges payable by the generality of users. In general, incentive schemes should be funded from the benefits generated from them, that is, the costs should not be allocated to other users who do not benefit from the incentives. An analysis of the incentive's effectiveness and feasibility of covering the costs should be provided by the airport.
17. Similar concerns could arise from bilateral contracts (agreements on charges, quality and/or infrastructure between the airport and one airline) and the general criteria applicable to these agreements. Users not subject to bilateral contracts should be made aware of the existence of bilateral contracts, while respecting their confidential nature. Airports should endeavour to set their general charges schemes and incentives as if the bilateral agreements were not present. The airport should be able to justify that bilateral agreements do not breach Article 3 of the Directive.

### Quality of Service

18. The quality of service or service level agreements should form part of the consultation process. When consulting on service level options, the airport should provide the cost implication to users to help inform decisions.
19. Aspects of quality of service may be dealt with also in other forums, for example in ground handling agreements.

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<sup>2</sup> Structure of Charges: disaggregation of the level of charges into the component charges: e.g. landing, take-off, lighting and parking of aircraft, and processing of passengers and freight

## New Infrastructure

### Process

20. In general, the relevant parts of the above process should apply to consultations on new infrastructure. Consultations on new infrastructure can be separate or part of the consultation on airport charges.
21. When presented with capital investment projects airport users should be made aware of the effect they will have on charges. In some cases, the effect will be multifaceted as new infrastructure will have a direct effect on capital costs but may also reduce or increase operating costs, commercial revenues and total aeronautical revenue.

### Definition of New Infrastructure

22. Agreement should be reached between airports and airport users on the size of projects requiring consultation, unless it is already set in the national legislation. As a principle, any investment project which has a material impact on the charges should be considered.

### Masterplan

23. The investment plan related to the regulatory period and the masterplan if applicable, should be periodically consulted on with the airport users in the context of the annual capital expenditure requirements. However, given the timeframe of masterplans it should not be reopened annually.

## Transparency for Consultation Process – Airports

24. In general, airports should provide historical and forecast data of airport charges, corresponding to five years preferably, as well as a detailed explanation as to how the proposed charges are derived. The level of detail should be sufficient to allow airport users to analyse how charges are derived, assess whether they are based on costs and how they take account of the infrastructure and the quality of service required by airport users. The degree of transparency should be proportionate to the market power of the airport and the significance of any changes proposed.

### Services Provided

25. Airports should provide users with details of the services covered (or not covered if easier) by airport charges.

### Operating Costs and Commercial Revenues

26. Airports should provide airport users with detailed historic and forecast information on costs and commercial revenues. The exact requirements will depend on the level of market power, and furthermore depend on whether it is single, hybrid or dual till. Historic costs and revenues from recent years should be provided for comparison. As a general principle, the information should be detailed enough to allow users make a full assessment of the costs and should include the methodology used to calculate the commercial costs and revenues as well as the forecast. Drivers of costs and revenues should also be provided.

### Cost of Capital

27. Details on the estimation and setting of individual parameters should be provided and not just the overall cost of capital. Justification should be provided for the values of the parameters and the methodologies used. The value of the parameters that should be provided include, but are not limited to, the cost of equity, the risk free rate, the equity market risk premium, the equity beta, the cost of debt, the corporate tax and the capital structure or gearing.
28. Alongside this document, the working group has developed comprehensive recommendations on the cost of capital.

### Traffic Forecasts

29. Traffic forecasts and the methodology used to obtain them should be provided and the underlying traffic development model should be substantiated.

### Revenue from Airport Charges

30. Forecasts of expected total aeronautical revenues and the methodology used to calculate them should be provided.

### Transparency for Consultation Process – Airport Users

31. Airport users should meet their obligations under the Directive in a timely and complete manner. While airport users' business plans may be short term in nature the information is of significant value to airports for planning purposes and to improve short term forecasting of traffic volumes.