

# REGULATION OF AIRPORT CHARGES IN EU LAW, AND IN POLAND AND GERMANY: LIMITS OF AIRPORT MANAGING BODIES' AUTONOMY AND THE PRINCIPLE OF TRANSPARENCY AND NON-DISCRIMINATION

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## ABSTRACT

This article analyses the regulation of airport charges under European Union law and within the national legal systems of Poland and Germany, with particular focus on the relationship between the autonomy of airport managing bodies and their obligation to observe the principles of transparency and non-discrimination. The authors discuss the legal framework established by Directive 2009/12/EC and examine its implementation in two distinct national contexts. The analysis demonstrates that, although airport managing bodies formally possess the right to determine the level and structure of charges, their discretion is constrained by both EU legislation and national oversight mechanisms.

Keywords: airport charges, non-discrimination, transparency, EU law, EU air transport

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## INTRODUCTION

Airports play a key role in the development of both domestic and international air transport. Access to airport infrastructure – and consequently, airport charges – significantly affects relationships between air carriers, as well as between carriers and passengers, shaping route networks and the quality of services provided. To prevent abuses in this area, the system of airport charges is subject to fundamental principles established at the international level, as well as to detailed national regulations and, in the case of airports within the European Union, to EU-level rules.

One of the crucial elements in the legal regulation of airport charges is the role of airport managing bodies and their influence on the operational conditions of airports. This article explores the issue within the context of EU law, aiming to assess the extent to which the current model of airport charge regulation, shaped primarily by Directive 2009/12/EC,<sup>1</sup> promotes transparency, a balance of interests, and non-discriminatory access to infrastructure. The research hypothesis is as follows: the current model of airport charge regulation effectively achieves the aforementioned objectives. The analysis covers both the Directive and selected national regulations in Poland and Germany, as well as reform proposals put forward by the European Commission and market stakeholders, including airlines, airport managing bodies, and public authorities. The discussion concludes with a review of relevant EU and national case law concerning airport charges, which serves as a basis for evaluating the effectiveness of the existing legal framework and for outlining possible reforms.

## LEGAL BASIS

The legal regulation of airport charges aims to ensure transparency, non-discriminatory access to airport services, and a balance between the interests of airport managing bodies and airport users. To illustrate how the relevant rules are structured, it is necessary to refer to legal acts at the international, EU, and national levels, which will be examined in this part.

## INTERNATIONAL LAW

At the international level, the issue of airport charges is governed by Article 15 of the Convention on International Civil Aviation of 1944,<sup>2</sup> according to which 'Every airport in a contracting State which is open to public use by its national aircraft shall likewise (...) be open under uniform conditions to the aircraft of all the other contracting States.' Consequently, charges related to the use of an airport by aircraft of another contracting State shall not exceed those levied on domestic

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<sup>1</sup> Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (OJ L 70, 14.3.2009, p. 11); hereinafter referred to as 'the Directive'.

<sup>2</sup> Convention on International Civil Aviation, done at Chicago on 7 December 1944, 15 UNTS 295; hereinafter referred to as 'the Chicago Convention'.

aircraft engaged in similar services<sup>3</sup> – this principle applies to both scheduled and non-scheduled air services. Moreover, these charges must be published and notified to the International Civil Aviation Organization (ICAO), established under Article 43 of the Chicago Convention.

During its seventy-eight years of existence, ICAO has repeatedly addressed the issue of airport charges<sup>4</sup> – including during Assembly sessions and through Council resolutions – clarifying, among other things, the distinction between a charge and a tax. Specifically,

‘an airport charge is a levy that is designed and applied specifically to recover the cost of providing facilities and services for civil aviation, while a tax is a levy that is designed to raise national or local government revenues which are generally not applied to civil aviation in their entirety or on a cost-specific basis.’<sup>5</sup>

Directly referring to Article 15 of the Chicago Convention, ICAO has also published extensive guidelines on airport charges, known as Doc. 9082,<sup>6</sup> which also covers charges for air navigation services – an area beyond the scope of this article. Although these guidelines are not legally binding in themselves, they have gained the status of generally accepted practice among contracting States.<sup>7</sup> The guidelines base the airport charges system on the following fundamental principles:

- non-discrimination, including between domestic and foreign users as well as users from different States;
- cost-relatedness of charges;
- transparency; and
- consultation with airport users.

All these principles are reflected in the legal framework adopted by the European Union.<sup>8</sup>

## EU LAW

As mentioned above, under the current legal framework, Directive 2009/12/EC of the European Parliament and of the Council regulates the issue of airport charges. It obliges Member States to ensure a mandatory consultation procedure between the airport managing body and its users, including discussions regarding the level of

<sup>3</sup> W.R. Grove Jr, ‘International Law – Chicago Convention Interpreted – Discriminatory Airport Charges to Foreign Airlines’, *University of Miami Law Review*, 1963, No. 18, p. 483.

<sup>4</sup> See T.M. Markiewicz, ‘Airport Charges as an Instrument of Competition Between Airports in the European Union: Legislative Aspects’, *Zeszyty Naukowe Akademii Sztuki Wojennej*, 2019, No. 2 (115), pp. 6–11.

<sup>5</sup> The Directive, preamble, recitals 9–10.

<sup>6</sup> International Civil Aviation Organization, *ICAO's Policies on Charges for Airports and Air Navigation Services*, Doc. 9082 (9th ed.) 2012.

<sup>7</sup> International Civil Aviation Organization, *ICAO's Policies on User Charges & Taxation*; <https://www.icao.int/sustainability/pages/eap-im-policies.aspx> [accessed on 29 May 2025].

<sup>8</sup> G. Schiller, ‘Neue gemeinschaftsrechtliche Vorgaben zur Festsetzung von Flughafenentgelten. Die Richtlinie 2009/12/EG über Flughafenentgelte’, *Zeitschrift für Luft- und Weltraumrecht*, 2009, Vol. 58, No. 3, p. 356.

airport charges, and to guarantee the principle of non-discrimination among airport users in the setting of such charges. It should also be noted that the Directive defines an 'airport charge' as 'a levy collected for the benefit of the airport managing body and paid by the airport users for the use of facilities and services (...)' (Article 2).

It is essential to point out that the applicability of the Directive is limited to airports located within the territory where the Treaty applies, which are open to commercial traffic and handle over five million passengers annually, as well as to the airport with the highest passenger traffic in each Member State. Consequently, the Directive does not apply to airports handling fewer than five million passengers.

Alongside ensuring non-discrimination and equal treatment of airlines in the setting of airport charges, the main objectives of the Directive also include guaranteeing transparency (Article 7), allowing for the differentiation of charges (Article 10), consultation on the charging system (Article 6), and supervision by an independent body (Article 11). These measures aim to promote competition and fair access to airport infrastructure. It is important to emphasise that Member States, in accordance with the will of the EU legislator, are responsible for appointing the independent supervisory authority tasked with overseeing the correct application of the Directive's provisions. Consequently, there is currently no single common supervisory authority at the EU level.

## SELECTED NATIONAL LAW

This part analyses the regulation of airport charges in the legal systems of Poland and Germany, focusing on their seemingly differing approaches to the implementation of EU provisions stemming from administrative differences. Poland, as a Central and Eastern European country of a unitary nature, and Germany, a federal state and one of the key air transport hubs in Europe, provide an interesting comparative case. This selection allows for a better understanding of how different administrative and economic models influence the scope of autonomy of airport managing bodies, as well as the application of the principles of transparency and non-discrimination arising from EU law.

### *POLAND*

At the national level, one of the legal acts regulating the issue of airport charges is the Aviation Law Act.<sup>9</sup> Article 75 thereof provides that the airport managing body may charge fees for the use of facilities, equipment, or services provided exclusively by that airport managing body, related to take-off, landing, lighting, parking of aircraft, or the handling of cargo (goods and mail) or passengers (airport charges). An important aspect is that the airport managing body may also impose a noise charge.

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<sup>9</sup> Act of 3 July 2002: Aviation Law (Journal of Laws of 2023, item 2110, as amended), hereinafter referred to as 'the Aviation Law Act' or 'the AL'.

Another legal act regulating airport charges is the Regulation of the Minister of Infrastructure and Development of 2014.<sup>10</sup> This regulation specifies the conditions, manner, and procedure for conducting consultations. It also sets requirements regarding airport charge tariffs, as well as the methods for their approval and publication. An analysis of these provisions reveals that the legislator precisely defines who may set airport charge tariffs. As specified, this responsibility lies with the managing body of a public-use airport (§ 2). Thus, the scope of entities is limited to airport managing bodies that are open to all aircraft at times and hours determined by the managing body and made publicly known (Article 54 AL).

As a result, airports for exclusive use fall outside this category and, as noted by K. Marut, are considered private airports.<sup>11</sup> A key aspect distinguishing them from public-use airports is that commercial flights cannot be operated at these airports. However, there are exceptions to this rule, as the managing body of an exclusive-use airport may, under Article 54(7) AL, apply for permission to temporarily open the airport for public use. This decision is issued by the President of the Civil Aviation Authority.

The aforementioned 2014 Regulation specifies the types of airport charges that may be established. The catalogue of charges includes, among others, take-off and landing charges (§§ 2 and 7), parking charges for the provision and maintenance of parking stands (§§ 2 and 8), passenger charges related to passenger terminal infrastructure (§§ 2 and 9), and cargo charges levied for the use of cargo terminal buildings and their equipment (§§ 2 and 10). Additionally, charges may be set for noise (§§ 2 and 11), as well as for the provision of passenger, baggage, and cargo security and safety checks, and for the protection of aircraft on the apron. The noise charge, pursuant to Article 75(4) AL, may be introduced in cases of problems related to excessive noise. Under Article 75(4a) AL, the airport managing body may also establish an environmental charge if issues arise concerning the protection of obstacle limitation surfaces or the functioning of visual navigation aids due to trees or shrubs.

Another important issue is the method of setting airport charges. According to the 2014 Regulation, the managing body of a public-use airport must adhere to the principle of transparency, allowing aircraft users or other entities operating aircraft to verify the correctness of the fees charged. This obligation aligns with the principle of non-discrimination. It is also crucial to ensure the stability of charges during a given scheduling season, except in justified cases. When setting charges – both basic (§ 2(1): take-off, parking, passenger, and cargo charges) and additional (§ 2(4)) – the commercial nature of the airport managing body's activity must be taken into account. Furthermore, the level of charges should reflect the actual costs of services and the provision and maintenance of infrastructure necessary for handling flight operations, passengers, and cargo, while maintaining appropriate levels of safety and quality, excluding costs covered from other sources.

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<sup>10</sup> Regulation of the Minister of Infrastructure and Development of 8 August 2014 on Airport Charges (Journal of Laws, item 1074), hereinafter referred to as 'the 2014 Regulation'.

<sup>11</sup> K. Marut, in: Żylicz M. (ed.), *Prawo lotnicze. Komentarz*, Warszawa, 2016, Article 54.

In this context, two questions arise: does the managing body of a public-use airport have the right to independently determine the level of airport charges, and can it differentiate the charges for individual entities? In response to the first question, reference should be made to § 6, according to which the airport managing body takes into account the costs incurred in providing services. These may include, among others, direct operating costs related to the maintenance and operation of the airport, indirect costs, including administrative expenses, infrastructure costs (e.g. depreciation and fixed assets under construction), as well as financial costs of external capital. Additionally, the inclusion of the cost of equity capital is permitted. In answering the second question, §§ 4 and 5 provide for the possibility of granting discounts and modulating the level of airport charges based on public or social interest. An example given by the legislator is environmental protection.

Finally, consultations regarding airport charges must be conducted within a specified period before the tariff is announced or approved by the President of the Civil Aviation Authority (§ 14). The procedure depends on the volume of passenger traffic at the given airport: for airports handling over five million passengers annually, the tariff requires approval, whereas for airports with lower traffic, it only needs to be announced. Examples of airports in the first category include Kraków-Balice (11,071,897 passengers in 2024) and Gdańsk Lech Wałęsa Airport (6,698,533 passengers). Airports in the second category include, among others, Wrocław-Strachowice (4,467,264 passengers) and Poznań-Ławica (3,597,147 passengers).<sup>12</sup> The legislator stipulates that consultations take place in writing; however, the managing body of a public-use airport may waive this requirement and organise a meeting with interested parties. Airport charge tariffs are approved by the President of the Civil Aviation Authority, who issues an administrative decision in this regard.

## GERMANY

As a result of the Directive's transposition, airport charges have been regulated in German law under § 19b of the Aviation Act (de. *Luftverkehrsgesetz*, LuftVG).<sup>13</sup> Unlike Directive 2009/12/EC, the German regulation covers not only airports handling over five million passengers annually but all commercial airports and airfields. For large airports (over five million passengers), a more comprehensive consultation procedure has been established<sup>14</sup> – as discussed below.

Under § 19b(1), the airport managing body is obliged to prepare an *Entgeltordnung* – a charges regulation, which specifies the fees for using infrastructure related to aircraft movements (take-offs, landings, parking) as well as passenger and cargo handling. This regulation must be approved by the competent supervisory authority.

<sup>12</sup> Statistics available on the website of the Polish Civil Aviation Authority (pl. *Urząd Lotnictwa Cywilnego*, ULC), *Podsumowanie wyników rynku lotniczego w 2024 roku*; <https://ulc.gov.pl/aktualnosci/podsumowanie-wynikow-rynku-lotniczego-w-2024-roku> [accessed on 29 May 2025].

<sup>13</sup> Aviation Act (*Luftverkehrsgesetz*) in the version published on 10 May 2007 (BGBl. I S. 698), as last amended by Article 3 of the Act of 23 October 2024 (BGBl. 2024 I Nr. 327).

<sup>14</sup> L. Giesberts, 'Neuregelung von Flughafenentgelten nach § 19b LuftVG. Zur Umsetzung der Direktive 2009/12/EG in das deutsche Recht', *Zeitschrift für Luft- und Weltraumrecht*, 2012, No. 61, p. 187.

However, the provision does not specify which body performs this supervisory function – in practice, these are the regional administrative authorities responsible for overseeing civil aviation in the respective federal state.<sup>15</sup> Charges must be set in advance, in a cost-justified, objective, transparent, and non-discriminatory manner. Differentiation of charges is permitted on public interest grounds, especially concerning noise and emissions.

For airports exceeding the threshold of five million passengers annually, the procedure for setting charges is more formalised. Under paragraph 3, the managing body is obliged to provide users with a draft of the charges regulation no later than six months before its planned entry into force.<sup>16</sup> Users' comments must be taken into account when submitting the approval application, which should be filed at least five months before the planned effective date.<sup>17</sup> The approving authority examines, among other things, whether the charges are proportionate to the expected costs and whether the managing body demonstrates an efficiency orientation in its activities.<sup>18</sup> Additionally, the managing body is required to disclose a range of information to users, such as cost structure, calculation methods, planned investments, and traffic forecasts.<sup>19</sup>

Regardless of the approval of charges, according to paragraph 3, point 5, the managing body is required to hold consultations with airport users at least once a year, giving one month's notice. Industry organisations may also participate in these consultations. However, C. Koenig and F. Schramm point out that the effectiveness of these consultations may be limited by an imbalance of bargaining power – the dominance of one carrier can lead to outcomes disadvantageous to smaller ones. Therefore, in their view, it is worth considering the introduction of additional protective mechanisms.<sup>20</sup>

In summary, § 19b of the LuftVG largely fulfils the core regulatory objectives of the EU Directive – ensuring transparency, non-discrimination, proportionality, and linking charges to actual costs. However, in practice, the unilateral setting of charges by airport managing bodies, approved by the supervisory authority, still predominates, without effectively strengthening the bargaining position of airlines.<sup>21</sup> The national case law and the rulings of the Court of Justice of the European Union (CJEU) concerning this provision, discussed below, focus precisely on this issue.

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<sup>15</sup> See *Hessisches Ministerium für Wirtschaft, Energie, Verkehr, Wohnen und ländlichen Raum, Flughafenentgelte: Jahresbericht zur Genehmigung der Entgeltordnung 2017 des Flughafens Frankfurt*, <https://wirtschaft.hessen.de/Jahresbericht-zur-Genehmigung-der-Entgeltordnung-2017-des-Flughafens-Frankfurt> [accessed on 29 May 2025].

<sup>16</sup> § 19b(3)(1) LuftVG.

<sup>17</sup> *Ibidem*, point 2.

<sup>18</sup> *Ibidem*, point 3.

<sup>19</sup> *Ibidem*, point 6.

<sup>20</sup> C. Koenig, F. Schramm, 'Die Regulierung von Flughafenentgelten', *Netzwirtschaften und Recht*, 2014, No. 11, p. 239.

<sup>21</sup> *Ibidem*.



## AIRPORT CHARGES AT SELECTED AIRPORTS

As mentioned above, various types of airport charges can be distinguished, including landing fees, passenger charges, and parking fees. It is clear that there may be further types of charges depending on the circumstances and the specific environment of a given airport. Consequently, additional charges may also arise, including those related to environmental factors<sup>22</sup> (e.g. noise charges or environmental charges).

To illustrate the practical dimension of the discussed regulations, the authors have compiled a comparison of airport charges applicable at selected airports in Poland and Germany for the year 2025. The table below presents data for the airports: Kraków-Balice (KRK), Gdańsk-Rębiechowo (GDN), Hamburg (HAM), and Leipzig/Halle (LEJ). All charges are presented in Polish zlotys (PLN), with conversions from euros (EUR) made according to the exchange rate of 18 May 2025. Considering that charges often depend on the maximum take-off weight (MTOW) of the aircraft, the values in the table have been calculated for a Boeing 737-800, with an MTOW of 70,530 kg.

**Table 1. Airport charges at selected airports in Poland and Germany**

<b>Airport</b>	<b>Landing charge</b>	<b>Parking charge</b>	<b>Passenger charge (departing, not in transit)</b>	<b>Charge for providing passenger and baggage security screening</b>
<b>KRK<sup>(a)</sup></b>	PLN 32.00 for every started tonne of MTOW	PLN 12.20 for every started tonne of MTOW and every started 24 hours of parking	PLN 45.00 for each departing passenger	PLN 11.68 for each departing passenger
<b>GDN<sup>(b)</sup></b>	MTOW > 2 tons – PLN 25.00 for every started tonne of MTOW	PLN 4.50 for every started tonne of MTOW and every started 24 hours of parking. No charges apply for parking up to 120 minutes	PLN 48.00 for each departing passenger	PLN 8.00 for each departing passenger

<sup>22</sup> E. Marciszewska, A. Hoszman, 'Zróżnicowanie polityki opłat za korzystanie z infrastruktury portów lotniczych', *Logistyka*, 2015, No. 3, p. 5225.



Table 1. (cont.)

Airport	Landing charge	Parking charge	Passenger charge (departing, not in transit)	Charge for providing passenger and baggage security screening
<b>HAM<sup>(c)</sup></b>	PLN 14.22 for every started tonne of MTOW (turbojet aircraft)	MTOW > 7t – PLN 0.51 for every tonne of MTOW and every started 15 minutes of parking. The minimum charge is PLN 19.51. No fee is charged for the period from 23:00 to 04:59	Domestic flights – PLN 43.76 per departing passenger	PLN 5.85 for each departing passenger
			Flight to another EU Member State, Iceland, Norway, Switzerland, or the United Kingdom – PLN 43.76 per departing passenger	
			Flight outside the EU – PLN 51.92 per departing passenger	
<b>LEJ<sup>(d)</sup></b>	PLN 21.86 per every started tonne of MTOW	PLN 13.41 per every started tonne of MTOW and every started 24 hours of parking. The minimum parking fee for each 24 hours is PLN 31.42. No fee is charged for parking shorter than 8 hours	Flight to another EU Member State, Iceland, Norway, or Switzerland – PLN 60.75 per departing passenger	PLN 10.33 for each departing passenger
			Flight outside the EU – PLN 74.80 per departing passenger	

<sup>(a)</sup> Kraków Airport, *Taryfa Opłat Lotniskowych*; <https://krakowairport.pl/storage/2024-12/2025-krk-pl-taryfawnioski-1733920829NOkQL.pdf> [accessed on 29 May 2025].

<sup>(b)</sup> Announcement No. 2 of the President of the Civil Aviation Authority of 22 January 2009 on the Airport Charges Tariff at Gdańsk Airport Ltd. (*Official Journal of the Civil Aviation Authority*, 2009, No. 2, item 49).

- (c) Hamburg Airport, *Airport Charges*; <https://www.hamburg-airport.de/resource/blob/79030/311ddb4ba75adf134f139d19fccc00/airport-charges-april-2024-data.pdf> [accessed on 29 May 2025].
- (d) Leipzig-Halle Airport, *Regulation on Fees Aviation*; [https://www.mdf-ag.com/media/user\\_upload/Leipzig\\_Halle/PDF/LEJ\\_RoF\\_Aviation\\_2024-12-01\\_rev05-24.pdf](https://www.mdf-ag.com/media/user_upload/Leipzig_Halle/PDF/LEJ_RoF_Aviation_2024-12-01_rev05-24.pdf) [accessed on 29 May 2025].

Source: Authors' own elaboration.

## WORK OF THE EUROPEAN COMMISSION ON AMENDMENTS TO DIRECTIVE 2009/12/EC CONCERNING AIRPORT CHARGES

Over the years, opinions have emerged suggesting that the provisions of the current Directive are no longer fully adequate – particularly in light of new business models in aviation, increasing market competition, and growing sustainability requirements. As part of the so-called fitness check of the Directive in 2024, the European Commission (EC) conducted an evaluation of the functioning of the existing regulations, which concluded that although certain objectives have been achieved, the current rules require modification.

One element of the evaluation involved inviting EU aviation market stakeholders to submit their feedback. Airlines, their representative organisations, airports, and national authorities were among those who expressed their views on the need to amend the Directive. This part presents a synthesis of these positions, concluding with recommendations adopted in recent years by an informal expert group – the so-called Thessaloniki Forum – established to support the European Commission in implementing the Directive.

## POSITION OF AIRLINES AND ORGANISATIONS REPRESENTING AIRLINES

In the responses provided by airlines and organisations representing them to the invitation to submit feedback as part of the fitness check of airport charges legislation, several clear trends can be identified.

Firstly, both low-cost carriers (e.g. Ryanair and easyJet) and legacy carriers (including Air France/KLM)<sup>23</sup> highlighted the positive impact of applying a single till financing system when setting airport charges. According to their position, this system promotes greater transparency and limits the risk of abuse of dominant market positions by airports with significant market power.<sup>24</sup> The single till system assumes that the entire airport operation – both aeronautical and commercial activities – is

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<sup>23</sup> European Commission, *Feedback from: Air France-KLM*; [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3469518\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3469518_en) [accessed on 29 May 2025].

<sup>24</sup> European Commission, *Feedback from: Ryanair Holdings*; [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3469550\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3469550_en) [accessed on 29 May 2025].

taken into account when setting charges,<sup>25</sup> as opposed to the dual till system, where aeronautical activities are treated separately, which can lead to inflated charges.<sup>26</sup> This stance was also supported by the International Air Transport Association (IATA).<sup>27</sup>

Secondly, carriers of both types, as well as industry organisations such as Airlines for America (A4A)<sup>28</sup> and IATA, expressed the need to strengthen the role of independent regulatory authorities (Article 11 of the Directive). EasyJet, in its comments, pointed to the inconsistent implementation of regulations concerning these authorities, particularly regarding their powers, resources, and independence in some jurisdictions.<sup>29</sup>

Thirdly, concerns were raised about the lack of transparency in the charging process, linked to an ineffective consultation system between airports and their users. Under the current wording of Article 6(2) of the Directive, airports are not obliged to conduct consultations if charges remain unchanged. This provision prevents users from influencing charges in situations where traffic volume or the efficiency of the services provided changes.<sup>30</sup> This issue is exacerbated by the absence of precise transparency requirements within the Directive itself.

Finally, almost all airlines and industry organisations that responded to the consultation expressed support for regulating airport charges at the EU level in the form of a regulation. Such a solution would aim to eliminate the problem of inconsistent implementation caused by the current Directive format and the need for transposition into national law.

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<sup>25</sup> A. Jurkowska, 'Zasady wyznaczania rynków usług portów lotniczych w sprawach z zakresu ochrony konkurencji i regulacji', in: Czernicki F., Skoczny T. (eds), *Usługi portów lotniczych w Unii Europejskiej i w Polsce a prawo konkurencji i regulacje lotniskowe*, Warszawa, 2010, p. 71.

<sup>26</sup> York Aviation, *The Cost and Profitability of European Airports. How Effective is Regulation under the Airport Charges. Directive? Final Report*, August 2017; <https://a4e.eu/wp-content/uploads/a4e-study-york-aviation-the-cost-and-profitability-of-european-airports-2017-08-04.pdf> [accessed on 29 May 2025].

<sup>27</sup> European Commission, *Feedback from: International Air Transport Association (IATA)*; [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3469540\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3469540_en) [accessed on 29 May 2025].

<sup>28</sup> European Commission, *Feedback from: Airlines for America*; [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3469564\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3469564_en) [accessed on 29 May 2025].

<sup>29</sup> European Commission, *Feedback from: easyJet Airline*; [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3469509\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3469509_en) [accessed on 29 May 2025].

<sup>30</sup> European Commission, *Feedback from: European Regions Airline Association (ERA)*; [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3469536\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3469536_en) [accessed on 29 May 2025].

## POSITION OF AIRPORTS

In its position,<sup>31</sup> Airports Council International Europe (ACI Europe) – an organisation representing European airports – pointed to the divergence between the interests of airports and those of airlines. Unlike the airlines, ACI Europe maintains that the Directive fulfils its functions and provides sufficient flexibility in various situations, such as the COVID-19 pandemic. The regulations also encompass the modulation of environmental charges, which is significant in the context of current challenges in the aviation sector, including the implementation of the ‘Fit for 55’ package and the European Green Deal, both of which require substantial airport investment. Moreover, the Directive ensures an appropriate balance between consultations with users and the provision of information on new infrastructure. ACI Europe also emphasises that lower airport charges do not necessarily translate into lower ticket prices, whereas a lack of investment in increasing airport capacity may lead to higher prices.

Another important issue is that the financial situation of airports and their commercial activities are often treated as secondary to the interests and costs of airlines. According to ACI Europe, airport charges constitute a key part of airport revenues, enabling them to cover operational costs and finance long-term investments necessary to meet future demand and improve service quality.

## POSITION OF NATIONAL AUTHORITIES

In assessing the adequacy of EU regulations, individual national authorities also expressed their views, including the French authorities and the authorities of the German federal states of Bavaria and Hesse.

While all three positions expressed approval of the existing regulations and considered that the current legal framework sufficiently addresses the needs related to the regulation of airport charges, the French authorities declared their openness to potential changes aimed at improving the harmonisation of the European market, particularly regarding the powers of supervisory bodies and the transparency of the charging process.<sup>32</sup> In contrast, the federal states of Bavaria and Hesse opposed extending the current requirements and introducing a regulation format, arguing that there are significant differences between existing German airports in terms of competition and their market position.<sup>33</sup>

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<sup>31</sup> European Commission, *Feedback from: ACI EUROPE*; [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3468805\\_en/](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3468805_en/) [accessed on 29 May 2025].

<sup>32</sup> European Commission, *Feedback from: Autorités françaises*; [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3469547\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3469547_en) [accessed on 29 May 2025].

<sup>33</sup> European Commission, *Feedback from: Bayerisches Staatsministerium für Wohnen, Bau und Verkehr*; [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3466355\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3466355_en) [accessed on 29 May 2025]; European Commission, *Feedback from: Hessisches Ministerium für Wirtschaft, Energie, Verkehr und ländlichen Raum*; [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3468668\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14193-Aviation-fitness-check-of-EU-airport-legislation/F3468668_en) [accessed on 29 May 2025].

## THE THESSALONIKI FORUM OF AIRPORT CHARGES REGULATORS

As mentioned above, in 2014 an informal expert group called the Thessaloniki Forum was established, with which DG MOVE (the Directorate-General for Mobility and Transport of the European Commission) may consult on matters relating to airport charges.<sup>34</sup> The Forum's tasks include assisting the European Commission with the implementation of existing regulations, programmes, and EU policies, as well as supporting the preparation of legislative proposals and political initiatives, and coordinating with Member States. The group is chaired by a DG MOVE representative, and its members are divided into categories C, D, and E.

Category C includes five observers, such as ACI Europe and IATA; category D consists of national authorities from the Member States; and category E comprises other entities – currently only the Swiss Federal Department of the Environment, Transport, Energy and Communications (DETEC) / Federal Office of Civil Aviation (FOCA).<sup>35</sup> According to the Forum's terms of reference, opinions, recommendations, and reports are adopted by consensus (Article 5). Additionally, the creation of working subgroups is provided for (Article 6). In 2023, the document was expanded to include provisions concerning the participation of experts (Article 7) and observers (Article 8).

One of the recommendations adopted by the group is the document titled 'Concession Agreements and ISAs Supervisory Powers',<sup>36</sup> which highlights the lack of uniform regulations concerning supervisory authorities across Member States, noting that their competencies vary considerably (point 2.7). Some have the authority to request additional information (point 2.8). The document also proposes changes to the consultation process on airport charges with airport users, as well as an expansion of the supervisory authorities' duties, including monitoring the conduct of these consultations (point 3.13).

Another significant document is 'Airport Charges in Times of Crisis',<sup>37</sup> which points out that the current Directive lacks detailed regulations concerning crises such as the COVID-19 pandemic. It highlights the absence of definitions for terms such as 'crisis' or 'exceptional circumstances,' which may cause interpretative difficulties. Attention was also drawn to the lack of rules addressing situations where airports that previously exceeded the threshold of five million passengers per year cease to meet this criterion. The Forum recommended regulating this issue.

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<sup>34</sup> European Commission, *Register of Commission Expert Groups and Other Similar Entities: Thessaloniki Forum of Airport Charges Regulators (E03084)*; <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupId=3084&fromMeetings=true&meetingId=46276> [accessed on 29 May 2025].

<sup>35</sup> Ibidem.

<sup>36</sup> Thessaloniki Forum, *Concession agreements and ISAs supervisory powers*, 27 January 2022; [https://www.iaa.ie/docs/default-source/1c-economic-regulation/concession-agreements-and-isas-supervisory-powers.pdf?sfvrsn=627a10f3\\_1](https://www.iaa.ie/docs/default-source/1c-economic-regulation/concession-agreements-and-isas-supervisory-powers.pdf?sfvrsn=627a10f3_1) [accessed on 29 May 2025].

<sup>37</sup> Thessaloniki Forum, *Airport charges in times of crisis*, 27 January 2022; [https://www.iaa.ie/docs/default-source/1c-economic-regulation/airport-charges-in-times-of-crisis.pdf?sfvrsn=7b7a10f3\\_1](https://www.iaa.ie/docs/default-source/1c-economic-regulation/airport-charges-in-times-of-crisis.pdf?sfvrsn=7b7a10f3_1) [accessed on 29 May 2025].

## INTERNATIONAL AND NATIONAL CASE LAW

Before analysing the effectiveness of Directive 2009/12/EC in the context of achieving its objectives – such as ensuring transparency, balancing interests, and guaranteeing non-discriminatory access to airport infrastructure – it is worth reviewing the available international and national case law concerning airport charges. Building on the earlier analysis of the legal framework, this part presents judgments of the Court of Justice of the European Union (CJEU) as well as national courts in Poland and Germany. As of the date of this article's publication, only four rulings are known from the perspective of the practical application of the regulations, which indicates a limited body of case law in this area

JUDGMENT OF THE COURT OF JUSTICE OF THE EUROPEAN UNION  
OF 21 NOVEMBER 2019

Regarding airport charges, the Court of Justice of the European Union (CJEU) has so far issued only one ruling – the judgment of 21 November 2019 in Case C-379/18 between Deutsche Lufthansa AG and the Federal State of Berlin.<sup>38</sup> In November 2014, Deutsche Lufthansa challenged the decision of the Federal State of Berlin dated 13 October 2014, which approved a new system of airport charges for Berlin-Tegel Airport (TXL), developed by the airport managing body (Berliner Flughafen GmbH), effective from 1 January 2015, seeking its annulment. The Higher Administrative Court for Berlin-Brandenburg (de. *Oberverwaltungsgericht Berlin-Brandenburg*) dismissed the complaint on the grounds of lack of standing under § 42(2) of the German Code of Administrative Procedure (de. *Verwaltungsgerichtsordnung*).<sup>39</sup>

According to the court, the approval of charges had no legal effect on third parties, since § 19b LuftVG 'does not offer any protection for third parties on which Deutsche Lufthansa could rely as an airport user'<sup>40</sup> and concerns only 'the relationship between the independent supervisory authority and the airport managing body.'<sup>41</sup> Furthermore, the charges had thus far been subject to review by civil courts on the basis of equity (*ex aequo et bono*), pursuant to § 315 of the German Civil Code (de. *Bürgerliches Gesetzbuch*, BGB), which was deemed sufficient in light of constitutional requirements.

Lufthansa appealed the decision to the referring court, arguing that it had standing because the decision of Berliner Flughafen violated its rights as an airport user. The referring court observed that the carrier would have standing to request the annulment of the relevant act under German law if the contested approval had the effect of shaping private-law relations,<sup>42</sup> which would allow the parties

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<sup>38</sup> Judgment of the Court (Fourth Chamber) of 21 November 2019, *Deutsche Lufthansa AG v Land Berlin*, EU:C:2019:1000.

<sup>39</sup> Ibidem, paras. 13–15.

<sup>40</sup> Ibidem, para. 17.

<sup>41</sup> Ibidem, para. 16.

<sup>42</sup> Ibidem, para. 22.

to invoke a breach of freedom of contract under Article 2(1) of the German Basic Law (*Grundgesetz*), and the civil route would give way to the administrative one.<sup>43</sup> The court also noted that § 19b LuftVG is silent as to whether the approval requirement carries the effect of shaping private-law relations, which, according to the court, cannot be accidental, since earlier laws, including those on postal and telecommunications services, contained such a mechanism.<sup>44</sup>

However, the referring court found that, irrespective of national law, Directive 2009/12/EC might require granting Lufthansa standing – particularly in light of its Articles 3 (non-discrimination), 6 (requirements for transparency and approval of charges) and 11 (status of ‘interested parties’).<sup>45</sup> Consequently, the Federal Administrative Court (*Bundesverwaltungsgericht*) stayed the proceedings and referred two preliminary questions to the CJEU concerning the interpretation of Articles 3, 6(3)–(5), and 11(1) and (7) of the Directive, namely:

- is national law compatible with the Directive if it allows parties (the airport managing body and airport user) to agree on charges other than those approved by the independent supervisory authority?
- is national law compatible with the Directive if it excludes the possibility for an airport user to challenge the approval of charges, limiting them only to civil law remedies based on equity?

In response to the first question, the CJEU held that

‘when a national provision such as Paragraph 19b(1) and (3) of the LuftVG provides for a mandatory procedure by virtue of which the system of airport charges is to be approved by an independent supervisory authority, that system must also be mandatory for all users, without it being possible to set, together with a particular airport user, charges different from those previously approved,’

which aligns with the systemic interpretation of the Directive.<sup>46</sup>

Allowing deviations from approved charges would undermine the authority of the independent supervisory authority as the guarantor of compliance with the principle of non-discrimination, as well as the principles of consultation, transparency, and non-discrimination of users that form the basis of the Directive.<sup>47</sup> In summary, ‘a modulation of the airport charges cannot be made within the confidential framework of contractual negotiations between the airport managing body and an individual airport user’,<sup>48</sup> so such a national provision would be incompatible with the Directive.

Regarding the second question, the CJEU noted that although national law determines issues related to standing and legal interest, under Article 19(1), second subparagraph, of the Treaty on European Union (TEU), national provisions cannot undermine the right to effective judicial protection and ‘must not, in particular,

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<sup>43</sup> Ibidem, para. 25.

<sup>44</sup> Ibidem, paras. 23–24.

<sup>45</sup> Ibidem, paras. 26, 28, 32.

<sup>46</sup> Ibidem, paras. 39–40.

<sup>47</sup> Ibidem, paras. 41–43.

<sup>48</sup> Ibidem, para. 51.



render practically impossible or excessively difficult the exercise of rights conferred by EU law',<sup>49</sup> in accordance with the principle of effectiveness.<sup>50</sup>

Moreover, it was observed that control of charges based on equity and decisions made *ex aequo et bono* are contrary to the principle of non-discrimination of users, especially as national court judgments would be effective only between the disputing parties, not all users of the airport. Consequently,

'§ 315(3) of the BGB, according to which airport users are unable to obtain a judicial review that is carried out on the basis of objective elements and is capable of ensuring full compliance with the conditions set by Directive 2009/12, does not allow the German civil courts to ensure effective judicial protection for those users.'<sup>51</sup>

In conclusion, such an interpretation of national law is incompatible with the Directive and does not guarantee the effective judicial protection foreseen in EU law. The CJEU judgment in Case C-379/18 is significant for the application of Directive 2009/12/EC in Member States. The Court unequivocally confirmed that national provisions allowing individual agreements between airport managing bodies and users, bypassing rates approved by the independent authority, are incompatible with the Directive. Furthermore, the CJEU emphasised that airport users must have a real and effective possibility to challenge decisions approving the airport charges system.

#### NATIONAL CASE LAW – EXAMPLE OF POLAND

The judgment of the Supreme Administrative Court (*Naczelny Sąd Administracyjny*, NSA) of 7 July 2017 concerned the refusal by the President of the Civil Aviation Authority (*Urząd Lotnictwa Cywilnego*, ULC) to amend the provisions of the airport charges tariff for Katowice Airport.<sup>52</sup> The case was examined following a complaint by an airline company that challenged the decision of the President of the ULC dated 14 July 2014.

On 4 April 2014, the President of the ULC received a letter from M., informing him of the airport charges tariff for Katowice Airport. This tariff included amendments to the provisions of points 7.1 and 7.2, and the introduction of a new point 7.5. The airline submitted a request to amend these provisions, which was rejected by the President of the ULC. After examining the facts of the case, the NSA annulled the judgment of the Regional Administrative Court (*Wojewódzki Sąd Administracyjny*, WSA) in Warsaw and the decision of the President of the ULC, finding them to be unfounded.

<sup>49</sup> Ibidem, para. 62.

<sup>50</sup> See Judgment of the Court (Grand Chamber) of 13 March 2007, *Unibet (London) Ltd and Unibet (International) Ltd v Justitiekanslern*, EU:C:2007:163, paras. 39, 43, and the case-law cited therein.

<sup>51</sup> Case C-379/18, paras. 69–70.

<sup>52</sup> Judgment of the Supreme Administrative Court of 7 July 2017, I OSK 2646/15, LEX No. 2345583.

The Court held that differentiating the level of discounts from identical charges based on the number of operations performed does not automatically constitute discrimination. It emphasised that there is no normative basis for assuming *a priori* that such discounts are discriminatory in nature. It was further indicated that whether a discount is discriminatory must be assessed individually, taking into account the specific facts of the case and the impact of the discounts in those circumstances.

Consequently, the NSA indicated that administrative decisions regarding airport charges tariffs should be based on detailed analysis rather than on abstract assumptions. Authorities should first assess how changes to the tariff affect actual and potential beneficiaries, rather than focusing solely on existing discounts which were not subject to amendment and remained at their previous level.

## NATIONAL CASE LAW – EXAMPLE OF GERMANY

As in the case of Poland, the case law of German courts concerning airport charges is very limited and essentially confined to two cases, both relating to Berlin airports. In the previously discussed case of *Deutsche Lufthansa v. Land Berlin*, following the judgment of the CJEU, the Federal Administrative Court revisited the dispute in its ruling of 3 June 2020 (BVerwG 3 C 21.19).<sup>53</sup> It found that it could not decide on the merits of the case, as the necessary findings of fact had not been established by the Higher Administrative Court. Consequently, the contested judgment was set aside, and the case was remitted to the lower court for reconsideration in accordance with § 144(3), sentence 1, point 2 of the German Code of Administrative Procedure.<sup>54</sup> At the time of writing (May 2025), this remains the most recent decision in the matter,<sup>55</sup> and the TXL airport itself was definitively closed on 4 May 2021<sup>56</sup> following the commencement of operations at the newly constructed Berlin-Brandenburg Airport (BER).

The second case concerning airport charges before the German courts relates to charges at the new BER airport. In judgments delivered on 28 February 2024 (OVG 6 A 6/22, OVG 6 A 7/22, and OVG 6 A 8/22),<sup>57</sup> the Higher Administrative Court for Berlin-Brandenburg dismissed the applications of four airlines that had challenged the airport charges in force from 1 September 2022 to 31 December 2023 at BER. Unlike the previous system, which calculated charges based on aircraft type, the new model was based on noise emission levels, which were measured in detail at

<sup>53</sup> Judgment of 3 June 2020, Federal Administrative Court (BVerwG), 3 C 21.19, ECLI:DE:BVerwG:2020:030620U3C21.19.0.

<sup>54</sup> *Ibidem*, para. 13.

<sup>55</sup> Dejure.org, Case law: BVerwG, 3 June 2020 – 3 C 21.19 (3 C 20.16); <https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BVerwG&Datum=03.06.2020&Aktenzeichen=3%20C%2021.19> [accessed on 29 May 2025].

<sup>56</sup> Flughafen Berlin Brandenburg, *Berlin Tegel Airport*; <https://corporate.berlin-airport.de/en/company-media/history/berlin-tegel-airport.html> [accessed on 29 May 2025].

<sup>57</sup> Higher Administrative Court of Berlin-Brandenburg (*Oberverwaltungsgericht Berlin-Brandenburg*), judgment of 28 February 2024, OVG 6 A 6/22, ECLI:DE:OVGBEBB:2024:0228.OVG6A6.22.00; *Oberverwaltungsgericht Berlin-Brandenburg*, judgment of 28 February 2024, OVG 6 A 7/22, ECLI:DE:OVGBEBB:2024:0228.OVG6A7.22.00; *Oberverwaltungsgericht Berlin-Brandenburg*, judgment of 28 February 2024, OVG 6 A 8/22, ECLI:DE:OVGBEBB:2024:0228.OVG6A8.22.00.

several monitoring points during each take-off and landing. This new system aimed to encourage airlines to adopt noise-reduction measures.

Two of the applications were deemed inadmissible because the airlines had not conducted any operations at the airport during the period in which the disputed tariff was in effect. The remaining applications were dismissed as unfounded. The court, however, noted that the BER noise-based charging system was grounded in objective and transparent criteria and did not result in discrimination against airport users. This may serve as an important precedent and an incentive for introducing similar mechanisms at other airports.<sup>58</sup>

## CONCLUSIONS

The conducted research allowed for the positive verification of the research hypothesis, according to which the current model of airport charge regulation effectively achieves the objectives of transparency, balance of interests, and non-discriminatory access to infrastructure.

Several significant findings observed during the research support the above hypothesis. First and foremost, it should be noted that airport managing bodies, under the applicable EU and national law, are obliged to comply with the principles of non-discrimination and transparency. As a result, they are required to conduct consultations with airport users, disclose financial data, and justify the adopted fee structures. In this context, the principle of transparency functions as a control mechanism, enabling carriers to influence the tariff-setting process and to prevent unilateral decisions by airport managing bodies. Meanwhile, the principle of non-discrimination plays a key role in ensuring equal access to airport infrastructure and in preventing the preferential treatment of selected users.

Based on the analysis conducted in the fourth part, it can be concluded that there are significant differences between the interests of public-use airport managing bodies and airline carriers. According to EU law, airport managing bodies hold broad powers in setting airport charges; however, their discretion is significantly limited by the provisions of the Directive and national regulations, which safeguard the position of airlines. Moreover, the analysis of the regulations in force in Poland and Germany indicates that the provisions implementing Directive 2009/12/EC reflect the administrative systems of both countries (unitary and federal in nature) and consequently differ in their approach to organising the tariff-setting system.

In Poland, the President of the Civil Aviation Authority plays a central role, whereas in Germany, part of the responsibility for approving charges lies with the regional administrative authorities overseeing civil aviation in the respective federal states. This divergence results in different models for conducting consultations, approving tariffs, and determining the degree of state intervention in the activities

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<sup>58</sup> Oberverwaltungsgericht Berlin-Brandenburg, *Einzelereignisbezogene Lärmrentgelte am BER sind rechtmäßig* – 8/24, 29 February 2024; <https://www.berlin.de/gerichte/oberverwaltungsgericht/presse/pressemitteilungen/2024/pressemitteilung.1422662.php> [accessed on 29 May 2025].

of airport managing bodies. In both countries, one of the main challenges remains striking a balance between ensuring the operational efficiency of airports and protecting the interests of users. Excessive autonomy may lead to abuses, particularly in conditions of limited competition, while overly strict regulation can hinder investment and infrastructure development.

In summary, airport charges play a very important role in the EU aviation market, significantly shaping the relationship between airports and airlines. However, it is worth noting that the dynamic development of aviation in the region – including the modernisation of airport infrastructure and growing passenger traffic – will be a key factor influencing future changes in regulations concerning airport charges. Their overriding goal will remain the pursuit of maintaining a balance between the interests of airport managing bodies and airlines.

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