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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE EVALUATION of the Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges

Delegations will find attached document SWD(2019) 291 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE EVALUATION

of the

**Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009
on airport charges**

{SWD(2019) 289 final}

Background and scope of the evaluation

The Airport Charges Directive (hereafter ‘the Directive’) was adopted in 2009 and establishes a common framework for regulating essential features of airport charges and the way they are set at the largest airports in the EU. Airport charges are paid by airlines to airports for the use of airport facilities and services exclusively provided by the airport and related to landing, take-off, lighting and parking of aircraft and processing of passengers and freight.

The Directive contains provisions requiring: the prevention of discrimination between airlines; regular consultation between airports and airlines on the level and structure of charges; transparency as to the basis for airport charges involving exchange of information between airports and airlines; and the establishment of an independent supervisory authority (ISA) in each Member State to help settle any disputes over charges.

The evaluation covers the period from the deadline for Member States to bring into force national measures to comply with the Directive (15 March 2011) until April 2019. It considers the application of the Directive across all EU Member States, and refers to the EEA and Switzerland, as the Directive is also relevant to these countries.

Evaluation methodology

The evaluation follows the European Commission's Better Regulation Guidelines and covers the five standard evaluation criteria. The evaluation draws on the external study commissioned to support the evaluation (published in December 2017), the Commission's experience of monitoring implementation of the Directive and input provided by stakeholders. The external study included targeted stakeholder consultation, literature review and data analysis. The evaluation also draws on the results of an open public consultation that ran from 3 April to 26 June 2018 and the outcome of two stakeholder events organised by the Commission on 17 June 2017 and 28 May 2018.

Main findings

Relevance

The issues underpinning the Directive appear to persist today, but on a smaller scale. While the competitive pressures on EU airports have generally increased for all sizes of airports since the introduction of the Directive, no firm conclusions can be drawn on the extent to which these developments affect the competitive situation of individual airports. Member States have found significant market power at four airports, although, as no market power assessments have been carried out by other authorities, there is no conclusive evidence as to the situation at other airports across the EU.

The first issue the Directive sought to address – the possibility for some airports to extract prices and terms that would otherwise not be achieved in a competitive market – seems to persist, albeit on a smaller scale. The second issue that the Directive aimed to address - diverging charging systems in Member States which lack clear transparency in the way they are established – also remains, although to a lesser degree, and is rather a problem driver.

The evaluation has highlighted an additional issue, whose magnitude is not established. At some airports where there is an airline with significant buyer power, there is a risk that the airport charges setting process may be influenced by that airline in a way that makes it more difficult for other airlines wishing to launch services at that same airport to enter the market.

The objectives of the Directive are still broadly relevant to the issues identified above. Nevertheless, some gaps and inconsistencies have been identified. Most significantly, the interests of air passengers and owners of air freight are not explicitly mentioned in any of the Directive's objectives.

The threshold that determines to which airports the Directive applies is easily applicable but there is no economic rationale underpinning this threshold.

Effectiveness and EU Added Value

Measures taken at national level, over and above the requirements of the Directive, have impacted outcomes in a way that makes it difficult to gauge the precise impact of the Directive itself.

By providing a common framework for airport charges setting - including requiring regular consultation and greater exchange of information between airports and airlines, requiring the prevention of discrimination and establishing ISAs to intervene in case of disagreements - the Directive has prompted action that improved transparency and fairness in the way airport charges are set at EU airports. However, the evaluation has also highlighted scope for the Directive to have been more effective had elements of the requirements relating to consultation and transparency, especially as they apply to investments in airport infrastructure, been specified in greater detail.

The ISAs have a critical role in ensuring the correct application of the Directive's requirements. The evaluation found that a lack of detail in, and different interpretations of, the Directive's requirements relating to the independence, powers and duties of ISAs limit its effectiveness in addressing the risk of possible misuse of significant market power by airports. However, it is not possible to draw any conclusions about whether any EU airport has misused significant market power as this would require detailed assessments at the airport-level that would have been disproportionate under this evaluation.

It is likely that in the absence of the Directive some Member States would have continued to apply their own regulatory systems, without any common set of principles, while others would have had no rules in place at all. Therefore, it is likely that the Directive has added value relative to what would have occurred in the absence of EU level action.

Efficiency

The introduction of the Directive has imposed additional costs for the industry and the Member States' administrations, as compared to a scenario in which no EU legislation on airport charges had been adopted. It has not been possible to quantify the full costs of the Directive, nor has it been possible to quantify its benefits, which are largely qualitative by their nature. The efficiency of the Directive has been reduced by limitations in its effectiveness. However, on the basis of all the evidence collected, it appears reasonable to conclude that the benefits of the Directive exceed its costs.

Internal and External Coherence of the Directive

The Directive is generally coherent with other EU legislation affecting airports. The evaluation has, however, identified an internal incoherence, namely between the non-discrimination requirement and the provision allowing Member States to not provide for the possibility to seek the intervention of the ISA at airports where the maximum level of airport charges is determined or approved by the ISA itself.