



The Court confirms the validity of the directive on airport charges

The airport of Luxembourg-Findel falls within the scope of the directive because it has the highest passenger movements per year and enjoys a privileged position as the point of entry into Luxembourg

Luxembourg has brought an action before the Court of Justice for partial annulment of Directive 2009/12 which lays down common principles for the levying of charges¹ paid by airlines to European Union airports². The directive applies to airports open to commercial traffic with over 5 million passenger movements per year or, if no airport in a Member State reaches that minimum threshold, to the airport with the highest passenger movements per year, which enjoys a privileged position as the point of entry into that State.

By virtue of that directive, Member States are to ensure that airport charges do not discriminate among airport users (airlines). A compulsory procedure for regular consultation of airport users or the representatives or associations of airport users is to be established (at least once a year) by the airport managing body with respect to the operation of the system of airport charges, the level of airport charges and, as appropriate, the quality of service provided.

Luxembourg contested the fact that the airport of Luxembourg-Findel, the only airport in the State, is subject to the administrative and financial obligations of the directive when it has 1.7 million passenger movements per year, unlike other nearby regional airports which do not fall within the scope of the directive despite the fact that they generate more traffic. Luxembourg refers, as examples, to the airports of Charleroi (Belgium) and Hahn (Germany), which have around 2.9 million and 4 million passenger movements per year respectively, and those of Turin (Italy) or Bordeaux (France), which are located close to urban centres of a certain size or have a certain level of economic activity, with 3.5 million and 3.4 million passenger movements per year respectively.

Luxembourg submits that, although the directive seeks to avoid any risk of abuse of dominant position by the airports within its scope, there is no such risk as regards the airport of Findel which, on the contrary, is in competition with its neighbouring airports of Hahn (Germany) and Charleroi (Belgium), which serve 'low-cost' airlines, and the hubs of Frankfurt (Germany) and Brussels (Belgium).

In addition to an infringement of the principle of equal treatment because of different treatment of comparable situations – the airport of Findel being covered by the directive whereas regional airports of the same size are not – Luxembourg also alleges infringement of the principle of equal treatment inasmuch as the airport of Luxembourg-Findel is treated in the same way as airports whose annual traffic exceeds 5 million passengers, despite the fact that Findel has neither the same position of strength as regards airlines nor the same economic power as the latter airports.

¹ An airport charge is 'a levy collected for the benefit of the airport managing body and paid by the airport users for the use of facilities and services, which are exclusively provided by the airport managing body and which are related to landing, take-off, lighting and parking of aircraft, and processing of passengers and freight'.

² The directive was to have been transposed by the Member States by 15 March 2011 at the latest.

In its judgment delivered today, the Court of Justice holds that **the airport of Luxembourg-Findel must be regarded as enjoying a privileged position as the ‘point of entry’ into that Member State within the meaning of the directive. Consequently, the fact that it falls within the scope of the directive is not contrary to the principle of equal treatment.**

The Court points out that the European Union legislature, in adopting the directive, considered that it was not necessary to include all European Union airports in its scope but that only two categories of airports should be covered by the directive, those which exceed the minimum threshold of 5 million passenger movements per year and those, such as Luxembourg-Findel, with the highest passenger movements per year in a Member State where no airport reaches that minimum threshold. By adopting a common framework, the European Union legislature has sought to ensure that certain basic requirements are met, such as transparency of charges, consultation of airlines and non-discrimination among them.

After having examined the situation of main airports in the light of their situation as regards the airlines, the Court considers that, in Member States where no airport reaches the minimum threshold laid down in the directive, **the airport with the highest passenger movements per year must be regarded as the point of entry into the Member State concerned, which confers on it a privileged position as regards airlines.** As a general rule, those airports are located near to large political and/or economic centres of the Member States and, to a great extent, attract business customers for whom the ticket price is only one criterion among others and who can be particularly sensitive to the location of the airport, to connections with other means of transport and to the quality of the services provided. For this average or top segment of the market, it is more strategically advantageous for airlines to offer flights to and from a main airport such as that of Luxembourg-Findel – rather than a secondary airport such as that of Hahn – the amount of the airport charges or even the actual volume of passenger movements per year not being regarded as decisive criteria for those companies.

Accordingly, the airport of Luxembourg-Findel, as a main airport, must be subject to the obligations of the directive in the light of the risk of abuse of the privileged position of that airport as regards the fixing of airport charges.

Conversely, secondary airports – not subject to the obligations of the directive – cannot, in principle, be regarded as the ‘point of entry’, within the meaning of that directive, irrespective of the number of passenger movements per year, even if they are located near to an urban centre, like the airports of Bordeaux or Turin. What is more, those secondary airports, in particular those which are not located near to a large urban centre, may be more attractive to so-called ‘low-cost’ airlines. Those airlines, in principle guided by a different strategy, serve customers who, unlike business customers, are more sensitive to ticket prices and more willing to travel farther between the airport and the city it serves. In those circumstances, the European Union legislature has not committed a manifest error or exceeded the limits of its power by considering that secondary airports are not in the same situation as main airports.

Furthermore, the fact that the situation of an airport such as that of Luxembourg-Findel is not the same as that of airports whose traffic exceeds 5 million passenger movements per year does not mean that the fact that those airports are subject to the same obligations of tariff transparency laid down in the directive is contrary to the principle of equal treatment. The fact that those airports enjoy a privileged position in relation to airlines justifies application of the directive.

In that regard, the framework of common principles laid down by the directive is appropriate and necessary to achieve the objective of the directive. With regard to proportionality, the charges under the system introduced by the directive do not appear to be manifestly disproportionate in comparison with the advantages which that system brings. In particular, **it does not appear that the costs complained of by Luxembourg connected with the consultation procedure instituted by the directive and obligatory for Findel would cause airlines to decide to abandon that airport.** Finally, as far as the principle of subsidiarity is concerned, the European Union legislature considered, rightly, that it was not necessary to include airports with fewer than 5

million passenger movements per year in the scope of the directive when they are not the main airport of their Member State.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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