

Airport charges in times of crisis

1. Background & Introduction

- 1.1 The European Commission Sustainable and Smart Mobility Strategy (SSMS) and its Action Plan¹ lay down the foundation for how the EU transport system can achieve its green and digital transformation and become more resilient to future crises. To achieve these objectives, the SSMS includes the revision of Directive 2009/12/EC on Airport Charges (the “ACD”).
- 1.2 The Thessaloniki Forum of Airport Charges Regulators is tasked with 1) working on and making recommendations for a better common implementation of the ACD and 2) promoting best practices in economic regulation of airports.² The ACD requires Member States to assign responsibility for supervising the setting of airport charges to Independent Supervisory Authorities (“ISAs”).
- 1.3 As of March 2020, airports and airlines in Europe are facing severe challenges as a consequence of the Covid-19 pandemic. This pandemic is an exceptional and unforeseeable circumstance that caused a disruptive and disproportionately large drop in air traffic and the relating revenues of airports and airlines. In this paper, the Forum describes the development of airport charges related to the pandemic and gives recommendations on how to handle situations of this kind in the short term from the perspective of an ISA.
- 1.4 Traffic forecasts are a key element in determining airport charges, both directly, as a driver to set airport charges, and indirectly, e.g. as an input for the purpose of forecasting investment plans, operating expenditure and other planning activities. This paper provides a description of the practices and challenges that airports and airlines execute and face in relation to forecasting traffic levels. The paper will also provide recommendations on this. These recommendations will focus on the before mentioned ongoing crisis and are also meant for similar exceptional and unforeseen circumstances.
- 1.5 The paper also provides recommendations on legislation for airport charges in times of crisis. These recommendations are meant not only for the ongoing crisis as a result of the Covid-19 pandemic, but are also general recommendations for any future exceptional and unforeseen circumstances that might result in a large drop in air traffic and the relating revenues of airports.
- 1.6 The paper is structured as follows. Chapter 2 gives an overview of the financial impact as a result of the crisis on the economically regulated activities of airports in relation

¹ European Commission Communication on a Sustainable and Smart Mobility Strategy – putting European transport on track for the future, 9 December 2020 (see Communication and Action Plan [here](#)).

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0012&from=EN>

to the Directive. Chapter 3 describes the powers of the ISAs related to airport charges and the measures that ISAs have taken pertaining to the consequences of the Covid-19 pandemic. Chapter 4 gives recommendations for ISAs to deal with the effect of a crisis on the airport charges. Chapter 5 describes the challenges that airports and airlines face with relation to traffic forecast. Chapter 6 contains recommendations for legislation on regulating airport charges in times of crisis.

- 1.7 This paper has been produced by the 2021 Working Group of the Thessaloniki Forum of Airport Charges regulators, taking into consideration the views of the airport and airline communities. In preparation of this paper, an investigative survey was sent to all 27 ISAs. The findings of this paper are partly based on the responses of 19 ISAs to this survey. The ISAs who participated in the preparation of this paper are those of France, Ireland, Italy, Portugal, Switzerland and the Netherlands.
- 1.8 This report has been adopted by the Thessaloniki Forum in January 2022.
- 1.9 This report does not represent the views of the European Commission and does not in any way change the requirements of the ACD or national laws.
- 1.10 This report should not be used as a limitation or constraint for Member States to apply their own methodologies, having regard to specific circumstances, regulation or other reasons.
- 1.11 This report will be kept under review and changed as and when deemed necessary by the Thessaloniki Forum.

2. Overview of impact on airports' regulated activities

Introduction

- 2.1 This chapter contains an overview of the (financial) impact on the (economically regulated) activities of airports as a result of the Covid-19 pandemic. It starts with a description of the impact of the COVID-19 pandemic on air traffic, followed by a description of the charges in 2020 and 2021. Temporary relief measures or other changes to the charges or terms and conditions are also included in this description. Then, the chapter discusses the financial results in 2020, in particular, revenues, costs, savings and investments. The last paragraph of this chapter presents ISAs reported expectations about the future development of charges.
- 2.2 This chapter is largely based on the earlier mentioned investigative survey to which 19 out of 27 contacted ISAs responded. Some ISAs have provided data for multiple airports (or airport groups) in their jurisdiction. For the comparative analyses in this chapter, only one airport or airport group is selected per ISA to achieve a more balanced comparison. For this selection, the largest airport or airport group (in terms of yearly passenger movements) with a cost orientation obligation³ is considered as the most relevant. If none of the regulated airports are subject to a cost orientation obligation, the largest airport or airport group (in terms of yearly passenger movements) has been selected as the most relevant. Another reason why the largest airport for each ISA is chosen, is because the Directive applies to the airport with the highest passenger movement in each Member State and any airport open to commercial traffic whose annual traffic is over five million passenger movements.⁴ Thus, the Directive always applies to the largest airport of the Member State. A list of the selected airport or airport group per ISA can be found in Appendix A.

Development of passenger volumes and cargo flights following Covid-19

- 2.3 All airports have seen a sharp decrease in passenger volumes in 2020 compared to 2019. The investigative survey shows an average decrease of 73% in passenger volumes. ACI Europe reports a decline of 70% based on a larger sample.⁵ This percentage is slightly lower than the percentage based on the investigative survey. Larger airports seem to have had slightly larger percentage decreases in passenger movements than smaller airports. At the same time, the data on passenger movements that three ISAs have provided for multiple airports, also show that

³ "Cost orientation obligation" is defined as the obligation that the charge for a (set of) service(s) may not exceed the cost of providing the service(s). This also includes price cap regulation.

⁴ Following article 1(2) of the Directive.

⁵ See ACI Europe, *Economics report 2020*, June 17 2021, 2020 Financial results, page 3. The data presented in this report is according to ACI based on the aggregation of financial results from European airports in the reporting year 2020. Data was collected from 63 airport operators representing 176 airports in 28 countries, with the collective passenger traffic welcomed by those airports representing 56% of total European passenger traffic in 2019, see page 4. Direct link: [2020 European Airports Economics Report \(aci-europe.org\)](https://www.aci-europe.org/2020-Economics-Report)

differences in the percentage decline of passenger movements between airports, regardless of size, are small.

- 2.4 Out of the 19 ISAs, 11 were able to share information on the forecasts of the largest airport in their jurisdiction. There is no information on the date of these forecasts, but it is certain that all information provided on forecasts date from before June 2021, which was the deadline for the investigate survey. The forecasts of the passenger volume for 2021 reported by the ISAs in the investigative survey still show a large decrease compared to 2019. The average decrease is still 61%, which means that it is forecasted that the number of passengers in 2021 will remain much lower than before the Covid-19 pandemic. However, the predictions vary. While the percentages for the 2020 decrease compared to 2019 were roughly similar (all between a 60% and 80% decline), the percentages for the predicted number of passengers in 2021 are between a roughly estimated 30% and 80% decrease compared to 2019. Some forecasts do not foresee much recovery, while others do.
- 2.5 In October 2021, ACI Europe has published updated figures concerning the (expected) development of passenger volumes in 2021. In this publication ACI Europe predicts that the total number of passengers in 2021 will be 60% lower as compared to 2019.⁶
- 2.6 The information above refers to passengers. Cargo is also relevant to mention. In February 2021 Eurocontrol has published information on the cargo share of all European flights.⁷ Eurocontrol distinguishes mentions “all cargo flights” in dedicated cargo aircrafts and cargo in the belly of a passenger aircraft.⁸
- 2.7 The chart in figure 1 below shows the cargo shares graphically. Eurocontrol provided the following explanation on this chart. Though they carry a little over half of the cargo, all-cargo flights in normal years make up just 3 or 4% of total European flights. In the first wave of COVID-19, boosted by the need to ship medical equipment, flights by the all-cargo segment of the market declined by ‘only’ 6% in April and May 2020. Meanwhile other market segments collapsed, giving a decline of nearly 90% for total flights.
- 2.8 Since June 2020, the number of all-cargo flights has actually been slightly higher than 12 months before: typically 2-4% higher, but 14% up in December 2020. All-cargo is the only market segment staying above 2019 flight counts. The graph shows that, as a result, the all-cargo segment’s share of flights at first grew rapidly to more than 20% of the total market. More recently, all-cargo has a market share of 10-11%, which is 3 or 4 times the normal share.

⁶ See ACI Europe, *COVID-19 & AIRPORTS Traffic Forecast Revised Q4 2021, FY 2021 & 2022 Scenarios*, 25 October 2021. See: [COVID-19 & AIRPORTS | ACI Europe \(aci-europe.org\)](https://www.aci-europe.org/)

⁷ See: [EUROCONTROL Data Snapshot | EUROCONTROL](https://www.eurocontrol.eu/), Eurocontrol uses data from ECAC countries.

⁸ According to Eurocontrol More than half of air cargo – freight and mail – is carried in dedicated “all-cargo” freighter aircraft and the rest in the holds of passenger aircraft.

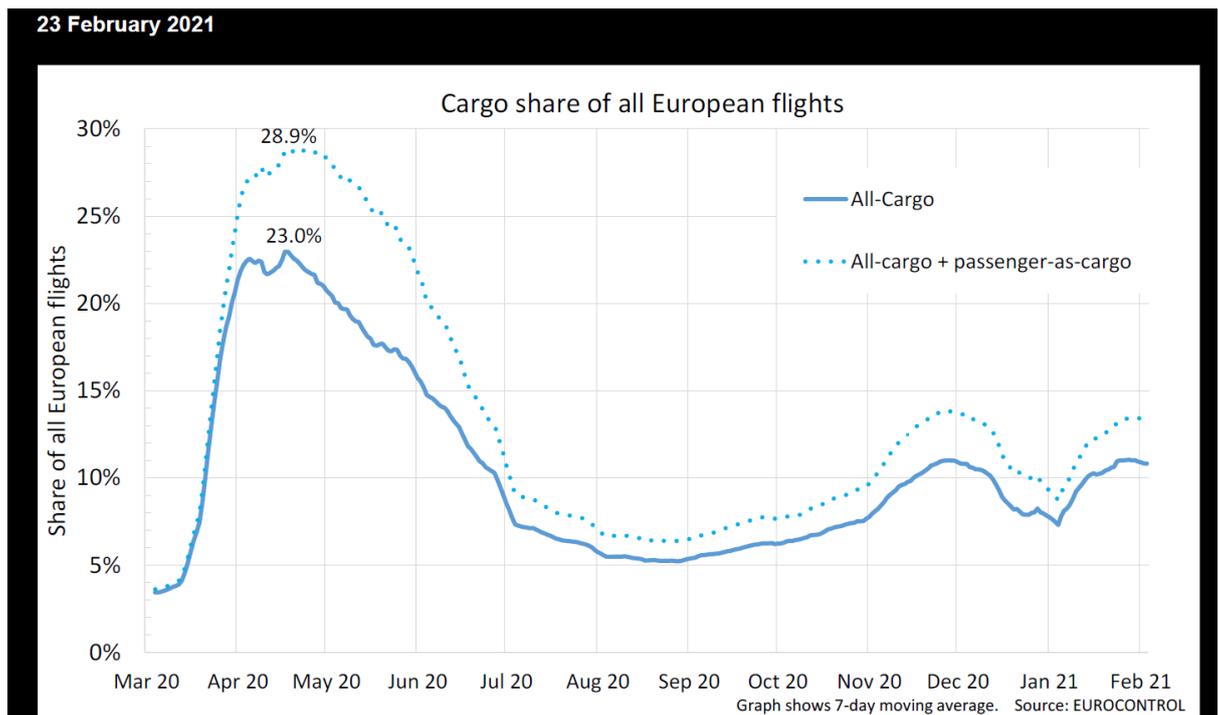


Figure 1. Cargo share off all European flights March 2020 – Februari 2021

- 2.9. In October 2021, Eurocontrol has published new information on the number of cargo flights and other flight segments in the Eurocontrol network.⁹ The chart in figure 2 below shows the percentage deviation on the number of flights per market segment in 2020 and 2021 compared to the equivalent days in 2019. The chart confirms the previously mentioned above 2019 flight counts for cargo flights during the pandemic in general. According to the chart the big picture is that the number of cargo flights has during the pandemic - except for a period in March 2020 - roughly been higher than in 2019.

⁹ See: covid19-eurocontrol-comprehensive-air-traffic-assessment-13102021.pdf. slide 7. The underlying data used for the chart are from ECAC countries.

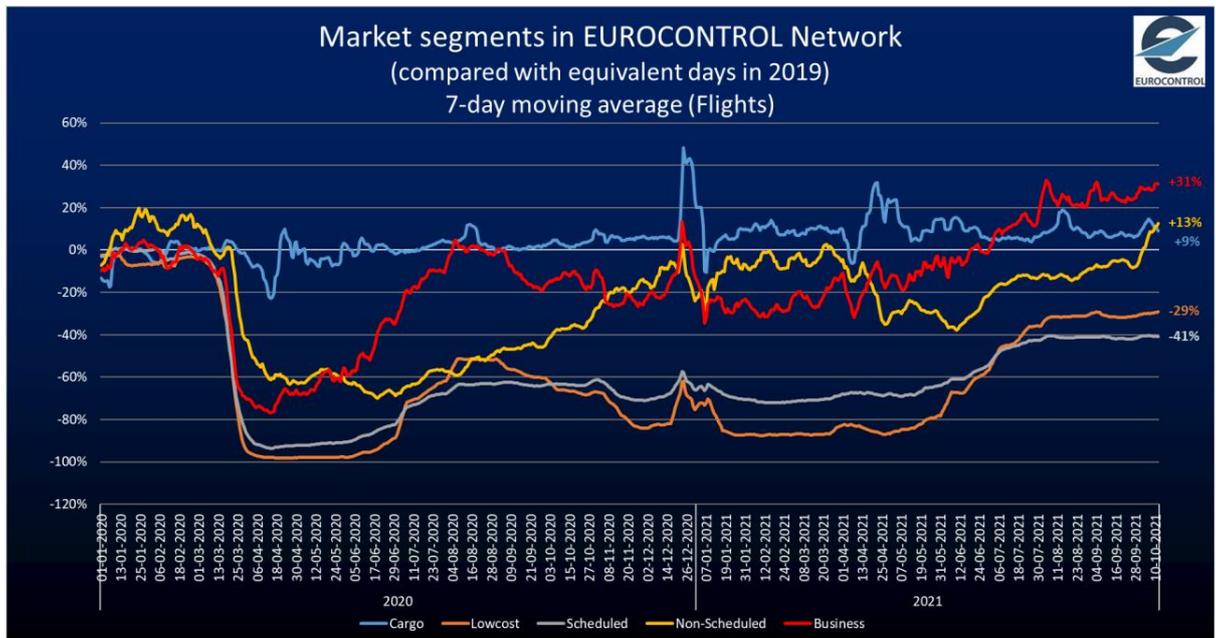


Figure 2. Air traffic in 2020 and 2021 compared with equivalent days in 2019

Development of aeronautical charges following Covid-19

- 2.10 First of all, it should be mentioned that there may not be an automatic direct or immediate connection between charge development and the traffic volume development as a result of the Covid-19 crisis. Charges may for instance be fixed for a longer regulatory period for some airports. Secondly, the information on the percentage changes presented in the following paragraphs should not be easily used for benchmarking purposes. Differences between airports or airport groups can have a multitude of explanations, considering the different circumstances of each airport or airport group.
- 2.11. The investigative survey shows that the ‘normal’ charging menu¹⁰ did not change considerably in almost all airports or airports group¹¹ in 2020 in comparison with 2019.¹² The survey out of the 19 airports or airport groups shows the following: For 10 of them there was an increase and for 5 a decrease. For 4 airports or airport groups, the charging scheme (apart from temporary measures) did not change at all. An overview of these results can be found in figure 2 below (left chart). For the 13 ISAs that reported the percentage changes in charges for the airport(s) in their jurisdiction, changes were mostly less than a 2% increase or decrease in 2020 compared to 2019. 4 ISAs reported a change in the charges of more than 2%. The changes for Helsinki Airport, Stockholm Arlanda Airport and Amsterdam Airport Schiphol increased 3.9%, 5% and 8.7% respectively. Vaclav Havel Airport Prague increased charges by 11%, but simultaneously introduced an incentive, that effectively neutralises the significant part

¹⁰ This refers to the table of basic charges (without extras, incentive schemes, etc).

¹¹ In the sample of the investigative survey, see Appendix A.

¹² Without taking into account temporary measures which will be discussed later.

of increase based on airlines' reinstating seat capacity to a share of 2019 levels.¹³ These airports can change their charges yearly and three of these airports are not subjected to a regulatory period of multiple years.

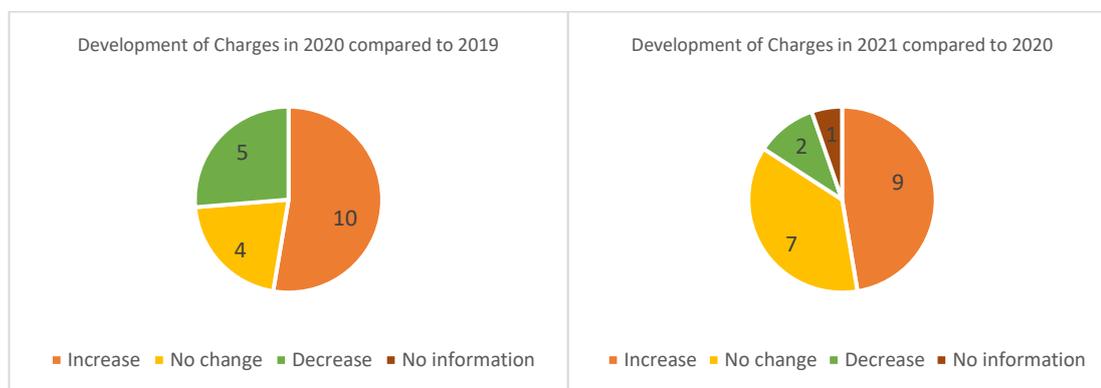


Figure 3. Development of Charges in 2020 (left) and in 2021 (right) in terms of increase, decrease or no change.

- 2.12. The charges for 2021 look similar for 18 out of the 19 of the airports or airport groups in Appendix A that were reported by the ISAs. The charges for one airport changes sign (from increase to decrease) and for five airports the charges remain the same after a decrease or increase in 2020. Zurich Airport goes from unchanged charges in 2020 to a reduction in charges for 2021, as it introduces a 10% reduction of flight operation charges for 2021 only (from April 2021).¹⁴ Overall, charges did not change for 7 airports, increased in 9 airports and decreased in 2 airports in 2021 in comparison with 2020 (see right chart of figure 2). Two airports increased their charges by just above 2%, Schiphol Airport increased its charges by 5%. The airports that decreased the charges, however, have reduced their charges by higher percentages.
- 2.13. A group of airports did not change their charges. Some ISAs indicate in their answers to the investigative survey that without the pandemic these airports could have increased their charges.¹⁵ Some airports reduced their planned increase. Most of the airports that froze their charges or reduced their planned increase did not introduce any additional discount, as they already introduced lower charges than they would have charged in the counterfactual without the Covid-19 pandemic. This could also be seen as a discount.
- 2.14. Five ISAs mentioned that the airports have cancelled or amended incentive schemes in response to the effects of the Covid-19 pandemic. These incentive schemes were meant to incentivize opening new routes or realizing passenger growth. Sometimes the incentive scheme was replaced, or it was simply revoked. For some airports, the cancellation or amendment of incentive schemes was the only response, whereas

¹³ According to ACI, there are more examples of airports that increased charges, while simultaneously providing financial relief to compensate users for this increase based on recovery to 2019 traffic levels

¹⁴ Although this could also be qualified as a temporary measure.

¹⁵ For some airports it remains unclear whether the charges would have increased without pandemic.

other airports did this in combination with relief measures.

- 2.15. In the investigative survey, the ISAs were asked whether the airport in their jurisdiction changed, cancelled or suspended any charge in response to the Covid-19 pandemic. Apart from aforementioned measures (e.g. freezing of charges or cancellation of incentive schemes), 6 ISAs report that in their jurisdiction certain charges were temporarily and voluntarily reduced or cancelled and 2 ISAs report that the invoicing of certain charges was suspended. Mostly these cancellations, reductions or invoice suspensions concerned aircraft parking charges. Indeed, 7 of the 19 airports listed in Appendix A took measures related to the parking charges. However, some airports (also) introduced discounts for other charges.

Development of financial results following Covid-19

- 2.16. Airports suffered financial losses in 2020 as a result of the Covid-19 pandemic. In the investigative survey 14 out of 18 responding ISAs have provided information about the financial results of one or more airports under their regulatory jurisdiction or on the parent company (airport group) to which this airport belongs.¹⁶ Every reported airport or airport group did suffer decreasing turnover and airports did suffer substantive financial losses in 2020 on the company level and/or the level of their aeronautical activities. This is consistent with ACI Europe's published information in its *economics report 2020*.¹⁷ In this report ACI Europe reported the following European Airport Sector Earnings (in billions of euro's)¹⁸:

	2019	2020	% change
Revenues	49.2	20.0	-60%
Operating expenses	27.6	21.1	-24%
EBITDA	22,1	-0.4	-102%
Capital costs	10.3	10.6	3%
EBIT (before government aid)	11	-12	-203%

- 2.17. ACI Europe has – among other revenue information - also specified the loss of revenues into aeronautical and non-aeronautical revenues. ACI Europe reported a revenue loss for aeronautical activities of 67% and a 52% revenue loss on non-aeronautical activities for 2020 compared to 2019.¹⁹ Airport revenue per passenger-equivalent remained on the whole stable.

- 2.18. In October 2021 ACI Europe has published a 2021 first half year update on European

¹⁶ As mentioned in paragraph 2.2, for the comparative analyses in the following paragraph, one airport (group) per ISA is selected. See appendix A for the list of airports or airport groups in the sample.

¹⁷ See ACI Europe, *Economics report 2020*, June 17 2021, 2020 Financial results, page 4.

¹⁸ The reported EBITDA and EBIT numbers do not exactly match the difference between revenue and operating costs, respectively the difference between EBITDA and capital costs. They do, however, give a clear indication of the development of the financial results.

¹⁹ See ACI Europe, *Economics report 2020* June 17 2021, 2020 Financial results, page 7-8.

airport traffic and airport financial performance. ACI Europe reported – among other figures – a revenue loss of aeronautical business of 68% as compared the first half year of 2019.²⁰

- 2.19. The Thessaloniki Forum’s investigative survey revealed the emergence of extra costs as a result of the pandemic. A majority of the ISAs who responded in the investigative survey mentioned extra cost caused by for instance measures which were put in place to be compliant with new hygiene rules, such as announcements and information signs on codes of conduct, floor markings, plexiglas panes, spatial separation, increasing cleaning cycles and time extension at check-in, security checks, baggage claim areas, bus transports, etc. All ISAs who reported figures (9 out of 19 responding ISAs reported figures) indicated that the percentage of total costs was no higher than a single digit number. Almost all ISAs mentioned a percentage that was no higher than 5%.
- 2.20. On the other hand, airports have realized savings on costs (of regulated activities) as a result of the pandemic. Almost all ISAs (16 out of 19) who responded in the investigative survey mentioned cost savings for various types of costs on both the aeronautical and the non-aeronautical side. For instance, lower traffic had a reducing impact on variable costs such as security.²¹ In addition, labour costs were reduced (through contract endings and temporary un-employment). There were also cost savings on temporary re-negotiated contracts. Some specific infrastructure was temporarily closed. The survey has yielded little (comparable) information on the level of costs savings compared to total costs and split by aeronautical and non-aeronautical activities. However, it is clear that the savings realized were in general insufficient to offset the pandemic-driven revenue loss. Furthermore, the investigative survey did not provide a clear answer to whether - in the ISA’s opinion - the airport used all the possibilities to realize savings as a result of the Covid-19 pandemic. 12 out of 19 ISAs didn’t provide (a clear) opinion on this. The remaining ISAs stated that the airports under their jurisdiction did what the airports could reasonably do.
- 2.21. The responding ISAs did not give empirical examples of costs being excluded from the tariff calculation as a result of the Covid-19 pandemic. Some airports could have decided, for instance, to exclude certain depreciation costs from the tariff calculation, because certain assets were used less or not used at all by the lower number of passengers. Of course, this option has to be possible for the airport given the applicable national legislation.
- 2.22. There are also other options to mitigate or offset the losses. According to 10 out of 19

²⁰ See ACI Europe *2021 First Half Update September 2021, European Airports, Traffic & Financial Performance*, 5 October 2021, page 8. According to ACI Europe half year airport results are estimated from the sample of European airports which publish half year results: AENA, Avinor , Bologna Airport, Copenhagen Airports, Fraport, Groupe ADP, Heathrow Airport, Schiphol Group, SEA Milano, Vienna Airport, Zurich Airport. Only revenue from the airports in the European region are considered (international airport business are excluded).

²¹ Although in some airports, security costs are not financed through charges, but via a dedicated tax.

ISAs, airports in their jurisdiction have a specific legal opportunity or no legal restrictions to settle (to some extent) regulatory losses as a result of the pandemic. The investigative survey has provided little information to what extent airports in these jurisdictions actually use this opportunity or intend to use it.

- 2.23. In many jurisdictions, airports have received or have the possibility to receive financial aid from the government. Financial relief can for instance be given based on general national compensation packages, deferral of concession payments, subsidies and/or loans. A majority of the ISAs (14 out of 19) mentioned these possibilities.
- 2.24. A majority (13 out of 19) of responding ISAs in the investigative survey have stated that airports in their jurisdiction have cancelled or postponed investments as a result of the Covid-19 pandemic. The amounts of money mentioned (as a percentage of the Regulatory Asset Base (RAB) value) differ greatly from airport to airport. ACI Europe mentions in its *economics report 2020* a 26% decrease in 2020 as compared to 2019. It also mentions an expected 50% cut in the amount of money invested in the (upcoming) years 2021-2023.²²

Future development of charges

- 2.25. The investigative survey provided very little information on the future development of charges. It is difficult to predict how airport charges will develop in the coming years. This will mainly depend on the market power of airports, the applicable regulatory framework, the recovery of traffic which is uncertain at the moment of the writing of this paper, the development of costs and the investments aimed at reducing the environmental and climate impact of airports. The development of charges will also depend on the possibilities that airports have and will take to settle losses from the past.

²² See ACI Europe, *Economics report 2020*, June 17 2021, 2020 Financial results, page 26.

3. Actions taken by ISAs and legislators

Introduction

3.1 This chapter examines some of the ways in which the ISAs and national legislatures of Member States²³ responded to the impacts of the Covid-19 pandemic on the aviation sector. It begins with an overview of the actions taken by ISAs under “exceptional circumstances” (as defined in article 6(2) of the ACD²⁴). Following this, there is a summary of the approaches taken by Member States to regulating airports that fell below the five million passenger threshold and an assessment of the various legislative changes taken by national legislatures in response to the crisis. This chapter will then conclude with a breakdown of the various tools ISAs have at their disposal should they wish to intervene in the aviation sector, followed by an overview of the state aid airports received during the crisis.

Actions taken by ISAs under exceptional circumstances

- 3.2 As a result of the impact of the Covid-19 pandemic on the aviation industry, most ISAs took actions under “exceptional circumstances”. The main reasons given by the countries that did not take actions under this clause were either that the “exceptional circumstances” clause was not implemented in the national law, or that there was no need to activate this clause as the airport managing bodies were directly financially supported by the Member States.
- 3.3 When the “exceptional circumstances” clause has been activated, the actions taken consequently originated from either the legislatures of the Member States, or the ISAs.
- 3.4 12 ISAs (out of the 19 that responded to the earlier mentioned investigative survey) reported taking actions under “exceptional circumstances”. The actions taken in relation to the Covid-19 pandemic varied considerably, with some countries introducing an initial raft of measures to combat the effects of the pandemic and others introducing their measures at different times across the period.
- 3.5 Broadly, the first set of actions taken were designed to have an immediate impact on the sector during the lockdowns and travel restrictions caused by the pandemic. As discussed in detail in chapter two, actions were taken by ISAs to adapt airport charges to the exceptional context of reduced aircraft movements. These actions were focused both on airport charges, for example with the freezing or reduction of the charges, and on rebates which can be applied on the airport charges, with amendments of the

²³ Member states here refers to the states in which Thessaloniki Forum members operate.

²⁴ This article states: “...the airport managing body shall submit any proposal to modify the system or the level of airport charges to the airport users, together with the reasons for the proposed changes, no later than four months before they enter into force, unless there are exceptional circumstances which need to be justified to airport users.”

existing discount schemes. Actions were also taken in the context of the slowdown of the economies in general and notably in conjunction with travel restrictions. These actions were linked to the processes around the consultation or approval of airport charges. For example, some Members States and/or ISAs, decided to extend consultation processes, or postponed the deadlines for providing data and information requested by the ISA, as well as the adoption of their decisions related to the approval of the airport charges. Some ISAs also allowed for a shorter consultation process than usual under the exceptional circumstances clause.

- 3.6 A second type of action was to support the ramp-up in aeronautical activity following the Covid-19 pandemic. These actions, which have only been implemented in one country, were focused on a middle term reduction of the airport charges due to the exceptional circumstances in order to help the restart of the aeronautical sector.
- 3.7 Throughout the implementation of these actions, ISAs' role varied across countries. Some ISAs advised Governments on the legislative and regulatory changes required for actions to be implemented. Other ISAs were responsible for approving the changes in the airport charges and associated rebates proposed by the airport management bodies. Furthermore, some ISAs play a role of law keeper by reminding airport management bodies of existing legal frameworks, especially to ensure that the actions taken were made in respect of the transparency and non-discrimination principles.

ISAs' approach to regulating airports that fell below the five million passenger threshold

- 3.8 Article 1 (2) of the ACD provides that the directive *"shall apply to any airport located in a territory subject to the Treaty and open to commercial traffic whose annual traffic is over five million passenger movements and to the airport with the highest passenger movement in each Member State"*.
- 3.9 The Covid-19 pandemic led to a drastic reduction in passenger movements in 2020. This raised questions regarding the approach to be followed by ISAs in order to regulate airports that fell below the five million passenger threshold. This situation varies across countries.
- 3.10 In some Member States, regulated airports are defined by the law independently of the level of traffic. The ACD allows the Member States to apply additional regulatory measures.²⁵ Therefore, a Member State can also simply choose to identify the airports that are regulated, as long as the airport with more than five million passenger movements are identified. In this case, the passenger movement reduction linked to the Covid-19 pandemic has no impact on the regulatory process.

²⁵ See article 1(5) of the ACD: *"This Directive shall be without prejudice to the right of each Member State to apply additional regulatory measures that are not incompatible with this Directive or other relevant provisions of Community law with regard to any airport managing body located in its territory."*

- 3.11 Some other Members States have implemented the ACD threshold of five million passengers in their national laws, but their ISA powers were already extended to airports below the ACD threshold. Similarly, to the first case, the decrease of passenger traffic in conjunction to the Covid-19 pandemic had a limited impact on the regulatory process.
- 3.12 In the remaining Member States, only the five million passenger threshold is implemented in their national laws, leading to a situation where some airports fell below the threshold. But no case of non-continuity of the regulatory process was reported by the ISAs, all airport management bodies have continued to follow the regulatory process notwithstanding the apparent lack of legal obligation to do so.
- 3.13 It is notable that the way to apply the five million passenger threshold mentioned in the ACD can be different from a Member State to the other, and that the period of observation can be adapted locally. For example, to ensure continuity in the regulatory process, one Member State changed its national law during the Covid-19 pandemic so that the ISA will now regulate all airports above five million passengers in any of the previous five calendar years, instead of only the previous year.

Summary of aviation legislative changes developed in response to Covid-19

- 3.14 In addition to taking actions relating to airport charges, several Member States also amended their national laws in response to the reduction in aeronautical activity caused by the Covid-19 pandemic.
- 3.15 Changes to the national laws of 3 Member States have so far been implemented in response to the Covid-19 pandemic. The purpose of these laws varies between countries. As outlined previously, in one instance a law has been implemented to change the manner in which the 5 MPAX threshold is applied (from above the 5 MPAX threshold in any of the previous five calendar years, rather than just the previous year). In a further example, a law has been introduced to shorten the approval times for requests by airports to change the tariff on airport charges to counteract the effects of the pandemic. That ISA of that Member State participated in consultations on this law. Additionally, a law has been passed in a Member State which offers a mechanism by which an airport operator can recover the extra costs incurred from implementing Covid-19 health and operational measures. Finally, a law has been passed in a Member State that allows for the submission of requests to obtain a suspension of the deadline provided for the finalisation of the consultation process or the postponement of the deadline for providing data and information requested by the ISA.
- 3.16 At the date of the survey, a further 3 Member states are in the process of changing their national laws in response to Covid-19, with new laws still pending. The first of these laws proposes to allow the Member States largest airport to raise charges in line with inflation and to allow smaller airports to raise theirs in line with inflation +0.5%. The second Member State has a law pending that will change the rules for consultation

on new investments. The previous requirement has been to consult on investments of more than 15 % of a year's turnover. This will now be changed to 15 % of a three-year average turnover. Thus, this is another example of extending the reference period for such mechanisms, in order to make them more robust to outlier events. The final Member State is in the process of introducing a law to allow regulatory cost and revenue recovery to be suspended for one year and to allow their largest airport to spread this recovery flexibly over 3 years under exceptional circumstances. The purpose of this law is to provide short term tariff relief to airlines.

- 3.17 In 3 other Member States, 'exceptional circumstances' laws are already defined in legislation and so no additional laws were deemed necessary at this time. A noteworthy example is an instance where the ISA has the power to decide if a commercial airport or aerodrome in their country will be subject to economic regulation, even if it has an annual passenger volume of less than 5 million.
- 3.18 Finally, numerous other Member States have not reported any new national laws being implemented in their countries in response to Covid-19.

Additional tools available to ISAs to intervene in the aviation sector

- 3.19 While actions have been taken in many Member States to combat the effects of the Covid-19 pandemic on the aviation sector, several tools are still available to the ISAs of these countries should they wish to take further action.
- 3.20 Either the airports or the ISAs of 8 Member States have tools at their disposal to make changes to airport charges but have not yet used them. All of these countries have laws in place allowing changes to airport charges in the case of exceptional circumstances or in the public interest. In at least one instance this change must be based on the findings of an interim review of a previous airport charges decision. In another, a 25% drop in air traffic is needed before charges can be changed. The process of changing airport charges can (depending on the country and circumstances) be initiated by either an airport or an ISA. In one Member State, charges can also be changed if both the airport and the airlines agree to the change (the ISA will still approve changes in this instance).
- 3.21 The timing of when a change to the charges can take place varies across countries. In at least one country, the ISA can initiate the process for changing charges at any time if it considers that public interest or general traffic considerations necessitate it. In some member States, where the national law has included a definition or framework for "exceptional circumstances", the ISA can introduce changes to the level of airport charges with short notice. In this regard, the exceptional circumstances threshold may be broader in some member States than in others.
- 3.22 Three Member States have mechanisms in place through which their national governments can intervene in the aviation sector. One such country has specific legislation allowing the state to impose obligations and requirements upon aviation

bodies, provided that they are sufficiently compensated for any costs or loss in revenue resulting from these actions. Another country has legislation in place which requires the state to determine who must bear the cost of any emergency measures put in place, namely the airport manager, the airlines, or the taxpayers. A final Member State has legislation allowing the ISA to advise the relevant government minister to adjust the conditions of an operating license or impose additional conditions when the existing ones are ineffective due to exceptional economic conditions.

- 3.23 A further ISA is required to verify any costs incurred as a result of the operational and health measures related to Covid-19, and to determine how these costs will affect airport charges.
- 3.24 Additionally, the national laws of some Member States offer the possibility of settling or adjusting for losses in the next regulatory period.
- 3.25 One ISA has reported taking a decision to postpone the entry into force of a new charging model. However, the existing model that was still in place has been improved by the same decision.
- 3.26 Finally, five ISAs reported having limited or no additional tools available to them.

State financial aid to airports in relation to the Covid-19 crisis

- 3.27 Fourteen ISAs have reported that their regulated airports have received some form of state aid. While not all ISAs reported the size of the aid packages, for those that did this ranged from **[1-4]**% to **[22-26]**% of the losses resulting from the Covid-19 crisis. The form these schemes took varies considerably, the most common type was direct financial aid to airports, followed by wage subsidies available to all domestic enterprises.
- 3.28 Seven ISAs reported that their regulated airports received some form of direct financial aid from their national governments during the Covid-19 crisis. Two of these ISAs reported that their airports availed of grant schemes that were widely available to all domestic enterprises, with a further country's airport availing of a similarly widely available fixed costs subsidy (which up to **[72-79]**% of fixed costs). Financial aid in the form of sizeable capitalisation program of the state's airport operator has also been reported by an ISA. A further two ISAs reported that their regulated airports received aid covering **[1-4]**% and **[11-17]**% of their losses in 2020, however, they did not specify the form this aid took. Finally, two ISAs reported that their airports were offered a state supported loan during the crisis.
- 3.29 Airports in 5 Member States have availed of the generally available wage support schemes offered by their national governments. While the design of these schemes varies across countries, they generally involved the national government covering a fixed proportion of an enterprises wage bill for a set period (or in some cases for as

long as they are deemed necessary), with the aim of maintaining employment levels.

- 3.30 Airports are reported to have availed of fees, rates or taxes deferrals or waivers in 3 Member States. In the first country this took the form of a deferral of concessions fees for 2020 and 2021 to ease pressure on the State's largest airport. In the second country this policy took the form of a business rates waiver for 2020 which was sufficient to cover approximately 10% of losses resulting from the Covid-19 crisis. The final Member State offered exemptions from certain rates as part of a broader suite of measures available to all domestic companies, these measures included small grants and wage subsidies.
- 3.31 In 2 Member States, aid programs are available that have not yet been fully realised. The first is a non-refundable grant from the state intended to cover a portion of the operating losses the state's largest airport that were incurred by remaining open during the crisis. The request for this grant has come from the airport and should it be approved, the payment will be expected in the financial year 2021. The second country has established a fund to compensate airport operators and suppliers of airport ground-handling services for the damages suffered during Covid-19. While the fund was established in December 2020 it has not yet been distributed.

4. Recommendations for charge regulation in times of crisis

Introduction

- 4.1 As explained in the preceding chapters the scale of the crisis in the aviation sector caused by the Covid-19 pandemic is unprecedented in peacetime. At the time of writing, the crisis is not over and its medium- to long-term effects cannot be assessed conclusively. The aviation sector probably continues to experience below 2019 levels of traffic throughout 2021 and consequently the financial losses of all stakeholders in the aviation industry may accumulate over several years.
- 4.2 During the Covid-19 pandemic crisis, the challenges for most price regulating ISAs are – although even the price raising powers of undertakings with significant market power in theory has its limits - related to adopting a fair approach that does not unduly transfer the negative financial impacts caused by the pandemic from airports to airlines. Another related difficulty identified by ISAs concerns the growth of charges in models with cost recovery, despite the cost-cutting efforts that were made, the decrease in traffic was such that there is a risk of charges eventually ending up increasing significantly.
- 4.3 Hence, one of the main questions that arises is if or to what extent ISAs should allow price regulated airports to recover some of their financial losses and increase charges in unforeseen and exceptional circumstances, like the Covid-19 pandemic. In this context, the chapter starts with a section on the fundamental guiding principles regarding the recovery of financial losses. The following section will discuss guiding principles applicable setting the charges taking into consideration their impact on the restoration of the aviation traffic. This chapter will be concluded with some guiding principles for dealing with the investment plans and the calculation of the regulatory WACC.
- 4.4 The recommendations in this chapter are written from the price regulating supervisor's (conceptual) action perspective. The standards of economic price regulation are addressed to airports. They should be read together and are not only meant for the current crisis; they can also be useful in similar unforeseen and exceptional circumstances. In chapter 6 a possible definition of unforeseen and exceptional circumstances is presented.

Fundamental regulatory economic guiding principles regarding recovery of financial losses

- 4.5 Many airports have accumulated considerable financial losses in the aeronautical segment during the crisis. Transferring these losses could result in a sudden and large increase in airport charges.
- 4.6 This section will discuss guiding fundamental regulatory economic principles regarding

the recovery of financial losses for price regulating ISAs.²⁶ The section will be based on standard regulatory economic principles. The section serves as conceptual framework in order to have a structured exchange of views between airports and airport users and could serve as a point of reference for the actions of the price regulating ISAs.

- 4.7 In practice the treatment of financial losses of course will depend on the (legal provisions of) the regulation model in force: (a) in models in which airport operators are assumed to bear the traffic risk, for example in some price cap regulation regimes, there is unlikely to be a policy to recover losses from any crisis.²⁷(b) in cost-based regulation regimes, it could be necessary to introduce a compensation mechanism during a certain period of time.²⁸
- 4.8 According to fundamental economic regulatory principles in the case of economic maximum price regulation of an undertaking, regulation aims to provide the correct incentives for an efficient operation, while allowing the regulated undertaking a reasonable rate of return on capital.²⁹ This is aimed to protect users against the risk of possible misuse of significant market power of the regulated undertaking.³⁰
- 4.9 For providing the correct incentives for efficient operation the characteristics of a very competitive market could serve as a point of reference. In such a competitive market only costs³¹ resulting from the efficient use of production factors can be transferred to customers. In a well-functioning market, shareholders of efficiently financed undertakings would receive an appropriate rate of return on capital in the long run, which would compensate for demand side risk. Economic profits and losses broadly

²⁶ Price regulation is ideally imposed in case an undertaking is designated as having significant market power. An undertaking may (implicitly) be legally assumed to have significant market power and/or the designation of significant market power may be the result of an economic market power analyses. For the connection between significant market power and economic regulation see: *First Report Working Group Market Power Assessments Recommendations on market power assessments to ensure that economic regulation of airports in the EU is appropriately targeted*, November 2017.

²⁷ In price cap regulation airports are ideally incentivized to incur efficient cost. The higher risk associated with these regimes is normally compensated with a higher regulatory WACC as compared to a cost plus regime

²⁸ As also stated in chapter one. ISAs have to deal with provisions in their national law, which may (partly) differ from the principles mentioned in this paper. For instance some national laws contain provisions for the ex post settlement of certain costs and turnover differences as a part of the cost orientation obligation for aviation charges.

²⁹ See also for instance: *Telecommunications Law and Regulation*, by Ian Walden originally published 2005 paragraph 2.3; *Regulation of Energy Markets, Economic Mechanism and Policy Evaluation*, by Machiel Mulder 2018, paragraph 4.2.4; and *The Principles of Regulatory Cost Assessment*, Future Ideas Lab 2021, page 6.

³⁰ For the relationship between price regulation and market power, see footnote 26.

³¹ The fundamental allocative efficiency rule states that tariffs should be related to marginal costs is, but in the long term it is also crucial that the regulated industry is dynamically efficient. Hence, it is important that regulated firms have incentives to put effort in lowering their marginal costs and are able to recoup their efficient fixed costs. Under economic price regulation practice, the latter is done for instance by adding a mark up on marginal costs. The fundamental allocative efficiency rule states that tariffs should be related to marginal costs is, but in the long term it is also crucial that the regulated industry is dynamically efficient. Hence, it is important that regulated firms have incentives to put effort in lowering their marginal costs and are able to recoup their efficient fixed costs. Under economic price regulation practice, the latter is done for instance by adding a mark up on marginal costs.

cancel out over the medium term.

- 4.10 Shareholders of price regulated undertakings receive a risk compensation for their price regulated activities in the form a regulatory WACC. For this reason, it is in principle appropriate to transfer the demand side risk to the shareholders.³² As a result of these general principles demand side risk should according to fundamental economic regulatory principles not be transferred to users by increasing charges.
- 4.11 It may be said that economic regulation has only been designed for normal economic cycles in which the economic profits and losses broadly cancel out over the medium term. Situations like the Covid-19 pandemic cause disruptive financial losses in the airport sector and would therefore not be part of a normal business cycle, which economic regulation does not take into account. The financial losses caused by Covid-19 may be a “black swan” event. Black swans that do disrupt cost recovery may sometimes appear in some price regulated sectors. Golden swans that would dramatically increase profits do ideally not appear in properly price regulated sectors, are often to a large extent passed through to customers³³. The question is does economic price regulation compensate for black swans of this kind?
- 4.12 As far as economic regulation does not compensate for this in exceptional circumstances³⁴ like this, from a regulatory point of view transferring airport losses to airlines may be considered.³⁵ By considering this transfer, guidelines should be used which are as close as possible to the regulatory economic principal premise of mimicking the outcome of a competitive market or maintaining the general economic incentives that stimulate efficient operation. These guidelines are as follows.
- 4.13 In case loss compensation is considered, ISAs may at first investigate whether the financial losses as a result of the crisis would have an unacceptable negative impact on the (long term) financial sustainability of the airport.³⁶ taking into account shareholders’ responsibility. Also related to this latter point, in any case loss

³² In some regulatory regimes revenue-cap regulation is applied, where an allowed revenue is determined. The tariffs are determined by dividing this allowed revenue by the expected volumes. The regulated undertaking can in principle receive the allowed revenue, irrespective of the volumes its sells. The underrecovery (if less volume is sold than expected) or overrecovery (if more volume is sold than expected) is corrected in the tariffs of for instance the year $t+2$ and possible next years. Based on these regulatory design premises as such, the regulated undertaking bears no volume risk. These systems are chosen by the legislator or the regulator for example to provide more certainty to investors, although this regulatory design as such ideally provides less incentives for the regulated undertaking to operate efficiently.

³³ See for these insights also the Brattle Group, *Risk and return for regulated industries*, Elsevier Academic press, 2017, page 227

³⁴ For a definition of exceptional circumstances, intended for the context of this paper see chapter 6.

³⁵ This may also be considered as an alternative for changing the regulatory WACC. With regard to regulatory WACC, reference is made to the considerations in the final section of this chapter

³⁶ For example, the Spanish ISA CNMC in their report DORA II made an analysis in order to ensure that the DORA proposal guarantees the sustainability of the airport network manager in the present circumstances and in the long term. The CNMC analysed Aena's economic sustainability in the regulatory period based on an assessment of a set of solvency ratios selected.

compensation is allowed, demand side risk can only partially passed through to users.

- 4.14 Risk may be shared via the settlement of turnovers. In exceptional circumstances negative and positive differences in turnover above and below a certain threshold as a result of differences between budgeted and actual traffic volume may be shared between airports and airlines.³⁷ By applying a certain threshold a part of the risk remains with the airport, which encourages the airport to take measures to mitigate the negative financial effects of a crisis. As far as the risks are shared, in this settlement mechanism example risks are divided symmetrically between airports and airlines.
- 4.15 ISAs may take into account the fact that some costs have been saved or could have been avoided by the airport. Take for example the cost of tangible fixed assets. Individual fixed assets may be technically indivisible, economically they are not. Tangible fixed assets can be seen as a stock of work units, where the costs allocation follows where possible the actual total use of these work units during a financial year. In particular, in exceptional situations like Covid-19 where the annual activity level has dropped dramatically, depreciation costs of these assets could be treated as a per unit cost instead of depreciating by for example a fixed amount independent of its actual use over a certain period of time. The allocation of the regulatory depreciation costs in the charges could also be postponed as a result of the fact that the actual use or degeneration of assets has been reduced during the crisis.³⁸ Both solutions mentioned in this paragraph in principle still allow airports to recoup their investments. Regulatory accounting principles can deviate from airport accounts.³⁹
- 4.16 Furthermore, financial government aid and other (net) cost savings as a result of the drop-in traffic volume should be taken into account before transferring costs to customers by increasing airport charges.
- 4.17 Cost- and turnover recovery mechanisms should not be applied in isolation. This means that a compensation for lost turnover may be considered after taking into account (net) cost savings or avoidable cost.
- 4.18 Any cost- or turnover recovery mechanism should consider its impact on traffic recovery. For that reason, the Forum recommends spreading the recovery over a

³⁷A condition may be to impose that airports and airlines are willing to share these risks.

³⁸ See for these kinds of solutions also Frontier Economics: *A regulatory flight-path to airport recovery*, page 5 and Oxera: *Post-COVID airport regulation: a clear path?*, March 2021 page 1. ACI Europe Working Paper– “OFF THE GROUND” *Re-thinking Economic Regulation as a result of the COVID-19 traffic shock*: 5 June 2020, paragraph 3.3.1, second bullet point. See for the general principle depreciation costs reflecting the use of an assets: ICAO Airport Economics Manual document 9562, fourth edition 2020 paragraph 4.76: “When the cost bases for charges are determined, a depreciation element reflecting the use of the assets during the period concerned (usually the financial year) must be included. This may result in the application of depreciation rates for charging purposes which differ from those reflected in the airport accounts. Also, interest imputed on the net capital value of airport assets would normally not be reflected in the airport accounts but should be included in the cost basis for charges.”

³⁹ See for instance ICAO Airport Economics Manual document 9562, fourth edition 2020 paragraph 4.76, quoted in the previous footnote.

certain period of time (5 to 7 years, for example, the time period may depend on the amounts of money to be recovered).

Guiding principles for setting charges taking into consideration their impact on the restoration of the traffic

- 4.19 During a major crisis in the aviation sector, it must be possible for airport management bodies and airport users to agree on a modification of the airport charges, while respecting the transparency and non-discrimination principles. Therefore, some guidelines will be presented below regarding the adjustments of airport charges under “exceptional circumstances”.⁴⁰
- 4.20 If charges increase too much, the restoration of traffic will slow down, which in turn may further increase charges. Therefore, the airport managing body may decide not to raise charges at the level necessary to achieve cost-recovery. In other words, large increases in charges should be avoided where possible in order to not damage the restoration of passenger traffic. The ISA, for its part, should encourage that changes in the level of airport charges are made in agreement between the airport managing body and the airport users.
- 4.21 Following this line, it could be relevant to compare charges level with recent charge levels of the airport itself, for instance in 2019.
- 4.22 A further measure may be the introduction of charge smoothing by spreading the regulatory costs over a number of years using, for example, the inclusion of notional items into the regulatory costs.⁴¹ This may prevent a large short-term increase in charges.

Guiding principles for dealing with the investment-plans

- 4.23 Airports’ (future) investments may be hindered by heavy airport debt and/or lack of incoming cashflows as a result of the crisis, and required investments in long term capacity may not happen.
- 4.24 Referring to the fundamental regulatory principles as mentioned earlier in this chapter cost of assets in use could be transferred to customers, allocated in proportion to the actual use of the production factors used for activities. Solving a cash flow shortage

⁴⁰ For further elaboration on the definition of “exceptional circumstances”, see paragraph 6.3-6.13.

⁴¹ An example of cost smoothing is to allocate depreciation costs according to the actual (expected) use of product resources. Notional items should have a neutral economic effect (for Airport and Users) and should be subject to (i) an agreement to be reached in the users’ consultation and (ii) to ISAs’ verification.

for the sole reason of financing future investments or assets under construction through increasing charges however would not be possible if an airport were to operate in a competitive market. The prefinancing of investments in a competitive market is the responsibility of shareholders. Therefore, according to fundamental static regulatory principles, charges should not be increased to facilitate prefinancing of investments.⁴² In a competitive market, undertakings are able to recoup their efficient investments, without prefinancing. According to regulatory economic principles an airport should be allowed to recoup these investments when in use and where possible according to their actual use.

- 4.25 In case an ISA has a legal role or power concerning (allowing the prefinancing of)⁴³ the investment-plans, the regulatory tools to deal with the effects of a crisis should be flexible and a case-by-case approach should be applied to the situation of each airport. Therefore, each airport should be able to rework its investment-plan. Each investment project should be reviewed in accordance with the airports' specific situation as well as the construction phase. Investments that are not necessary should be postponed. Necessary investments may include, for safety / security reasons, for airport decarbonisation, for regulatory reasons or for business continuity reasons.
- 4.26 Other types of investments that an airport managing body wants to push-forward should be justified and reviewed in close consultation with airport users. Nevertheless, the investment plan reviewed should be in line with the traffic forecasts and should be leading to provide sufficient capacity and quality in the long term. It should be pointed out that the investment postponed could have effects on the quality of services in the medium/long run, as a consequence of the lack of investment in the improvement of infrastructure and services provided.

Guiding principles for setting the regulatory WACC⁴⁴

- 4.27 Exceptional circumstances may influence individual WACC parameters such as the costs of debt and the asset beta in the short term. However, WACC calculations should reflect the long-term systematic risk airport investors face and the calculation of WACC parameters is ideally based on a longer statistic reference period which is more representative for the long-term risk and will smooth the short time influences.
- 4.28 This means the WACC should be calculated according to the systematic risk an investor in airports aeronautical services will face in the long term and the standard methods

⁴² See also *Thessaloniki Forum paper on cost allocation*, adopted by the Forum January 2021, paragraph 5.1.

⁴³ ICAO principles include prefinancing of investments as a *possibility* in some cases with specific rules.

⁴⁴ With regard to the principles of setting the regulatory WACC, the Forum also refers to the Forum paper *Recommendations for the Setting and the Estimation of the WACC of Airport Managing Bodies*, December 2016. The recommendations on the regulatory WACC in this paper must be read as an addition to the before mentioned paper.

of calculating the regulatory WACC should be used using multi-year reference periods for individual parameters.

- 4.29 A specific premium on the regulatory WACC for risks like Covid-19 in a price regulated context as explained in the second section of this chapter is not recommended by the Forum. It is usually very challenging to estimate such a risk premium in practice. For instance, the probability of an exceptional rare circumstances, like an event as defined in chapter 6, and the expected loss as a result of it needs to be estimated. These values may vary over time and are probably hard to observe.⁴⁵

⁴⁵ See also the Brattle Group, *Risk and return for regulated industries*, Elsevier Academic press, 2017, page 236-237.

5. Recommendations for aviation traffic forecast in times of crisis

Introduction

5.1 This chapter will discuss the traffic forecasting issues and recommendations related to crisis situations such as the Covid-19 pandemic. Before doing so, this chapter provides a general introduction to the topic of traffic forecast including the role of traffic forecast in setting charges; how traffic forecasts are developed and the role of ISAs in the assessment of traffic forecast.

Practices in the determination / assessment of traffic forecast

5.2 In the airports that are subject to economic regulation, traffic forecasting is a key element in defining airport charges, both, directly, as a driver to set airport charges, and indirectly, e.g. as an input for the purpose of forecasting investment plans or other planning activities. As shown in figure 5.1 of the paper "[Remedies Available to ISAs to Address Potential Misuse of Significant Market Power by Airports](#)", adopted by the Forum in December 2019, for airports where price-cap regulation is in place and where charges are cost-related, a decrease (increase) in traffic forecast, *ceteris paribus*, would result an increase (decrease) in airport charges, because there is an inverse relation between charges and traffic forecast.

5.3 The ISAs adopt different approaches in relation to the definition and verification of traffic forecast: most of them allow airports to define airport traffic forecast on the basis of criteria which are set out by the regulatory body and/or provided for by the relevant legislation. Some ISAs have a more active role and provide for a definition of traffic forecast, either specifically or through the indication of a path/range. One ISA estimated passenger growth using the country's GDP as the driver. Annual data on GDP was used instead of quarterly data as it was more stable than quarterly, which had seasonal effects.⁴⁶

5.4 Where airports are allowed to define airport traffic forecasts, the ISAs can still play a significant role in their verification. In some cases, other authorities or external consultants support Airports or ISAs in the definition and/or verification of traffic forecast. The process of verification differs across Member States: some ISAs act only in case of complaints or in case of non-agreement on airport charges, while other ISAs verify traffic forecast taking into account the whole context of their airport charging duties. According to the investigation survey, in one Member State, the ISA plays no role in the definition or verification of traffic forecast, neither are there any provisions how the traffic forecast should be derived.

5.5 In all the countries participating in the process the ISAs and/or the relevant legislation

⁴⁶ The passenger forecast was calculated by multiplying each years GDP growth forecast by an elasticity of GDP to passenger growth rate calculated by the ISA.

stipulate that users shall provide airport managing bodies with information regarding the development of traffic forecast, according to Article 7(2) of the ACD⁴⁷. This information is particularly relevant in dealing with the current uncertainties related to the Covid-19 pandemic.

- 5.6 Many elements are taken into account to develop traffic forecasts. These may include economic data (e.g. GDP), historical traffic, development needs reported by sectoral bodies of reference (e.g. Eurocontrol) or by airline and airport associations (e.g. ACI, IATA), passenger booking and slot usage.
- 5.7 Output of traffic forecast may include the expected number of passengers (e.g. segmented into O/D or transit passengers or broken down by area of origin and destination of movement or by low-cost and full-service carrier), the expected number of take-offs and landings and the expected cargo traffic at the airport.
- 5.8 In the Member States where traffic forecast is a binding element in setting airport charges, relevant provisions shall be included in the consultation process. Indeed, in many cases traffic forecasts are covered by the main consultation on airport charges, while some others envisage a specific consultation on traffic forecast. Even where a multi-annual agreement is in force, during the annual consultation⁴⁸, airports shall provide users with updated traffic forecasts which, depending on the existing regulatory framework, may or may not imply a binding adjustment in the annual determination of airport charges.
- 5.9 The Forum recommends that the methodology applied for the determination of the traffic forecast and the approach used to take into account all available relevant information shall be part of consultation between airport managing bodies and airport users.⁴⁹ Output of traffic forecast shall be disaggregated in line with the parameters assumed for the purpose of setting the charges.

Traffic forecasting under unforeseen and exceptional circumstances

- 5.10 As shown in par. 2.3 to 2.7, one of the main consequences of the Covid-19 pandemic has been a reduction of passenger volumes. The uncertainties related to the Covid-19 pandemic resulted in new variables, such as the spreading of the contagion, the

⁴⁷ "Member States shall ensure that airport users submit information to the airport managing body before every consultation, as provided for in Article 6(1), concerning in particular:

(a) forecasts as regards traffic;

(b) forecasts as to the composition and envisaged use of their fleet;

(c) their development projects at the airport concerned; and

(d) their requirements at the airport concerned."

⁴⁸ In accordance with Article 6(1) of the ACD "consultation shall take place at least once a year, unless agreed otherwise in the latest consultation".

⁴⁹ See also, Thessaloniki Forum paper *Recommendations on Consultation and Transparency*, December 2016, paragraph 29.

restriction to people's mobility and the dissemination of vaccines.

- 5.11 Where airports are not allowed to allocate airport losses to further periods, a fall in traffic and uncertainties related to traffic recovery could result in stronger incentive for the airport to underestimate traffic forecast in order to increase in airport charges.
- 5.12 Many ISAs reported that the existing measures related to traffic forecast are already flexible enough to address the uncertainties due to the Covid-19 pandemic. Where the ISAs have recognized the need to consider the issue, the above-mentioned uncertainties have been taken into account to modify or supplement the broader regulatory framework. Some ISAs reported that these uncertainties have been tackled with different remedies, e.g. by providing, if needed, for the possibility to leave the airport charges unchanged, or to set shorter regulatory periods, or by developing different traffic scenarios to allow more flexible regulatory models.
- 5.13 Forecasts should be treated with caution and during the charge setting time the latest forecasts available should be used (see par. 5.6, where source like Eurocontrol and IATA are mentioned). Regarding the uncertainty and difficulties to predict passenger volumes and considering the purpose forecasts are being used for and under "exceptional circumstances", an airport managing body could decide if allowed by the ISA not to change the charges. Furthermore, the most recent available data should be preferably used to develop traffic forecast.
- 5.14 Where economic regulation is in place, subject to stakeholders' consultation, ISAs could introduce measures to mitigate the effect of the uncertain traffic forecast. A revenue sharing system as described in chapter 4 may help to reduce the effect of over/under-performance of actual traffic related to traffic forecasts.

6. Recommendations for legislation for airport charges in times of crisis

Introduction

- 6.1 This chapter will discuss possible adaptations or enhancements to legislation for airport charges. In consideration of what was discussed in the previous chapters, a legislative clarification is needed, in particular, on the following aspects:
1. A definition of crisis and of exceptional circumstances;
 2. More flexibility in the application of the 5 Million Passenger movements threshold under exceptional circumstances;
- 6.2 In chapter two and three we have seen many different practices in response to the Covid-19 crisis in different member states. This can adversely affect the functioning of the internal aviation market(s) in the EU. The Commission may take the recommendations in this chapter into account when considering proposals on the ACD recast.

Definition of crisis / exceptional circumstances

- 6.3 Art 6 (2) of the Airport Charges Directive states, *“member States shall ensure that, wherever possible, changes to the system or the level of airport charges are made in agreement between the airport managing body and the airport users. To that end, the airport managing body shall submit any proposal to modify the system or the level of airport charges to the airport users, together with the reasons for the proposed changes, no later than four months before they enter into force, unless there are exceptional circumstances which need to be justified to airport users.” (...).*
- 6.4 The Directive does not provide more details on the definition of exceptional circumstances, which means that the definition may be interpreted differently at the level of each Member State.⁵⁰ With this in mind, some Member States have chosen or may have chosen not to define the term exceptional circumstances at all. In this case, the ISA must assess on a case-by-case basis whether there are substantial grounds by considering if the circumstances are exceptional, generally outside the control of the regulated airport, and the effects of those circumstances compromise the objectives of the original determination of airport charges.
- 6.5 It should be noted that allowing for exceptional circumstances (with or without a specific definition) is in itself important tool in regulatory processes and decisions.
- 6.6 The pandemic crisis has showed the importance of having a definition or guidance on what circumstances could fall under “exceptional circumstances”. However, only

⁵⁰ The interpretation may differ not only as to the term (i.e., the time limit of four months before the proposed changes enter into force), but also on what can be adjusted in presence of exceptional circumstances.

some Member States have included a definition of exceptional circumstances in their national legislation.

- 6.7 The nature of a crisis cannot be predicted. Besides a pandemic, many other unforeseen situations may result in a severe crisis in the aviation sector or for individual airports (for example earthquakes, volcanic eruptions, floods or terrorist attacks). Hence it is important that any definition of exceptional circumstances is flexible and robust enough to deal with a wide range of unexpected situations. However, the definition should not be too narrow in order to maintain a certain scope of action.
- 6.8 For example, the Dutch legislation defines exceptional and unforeseen circumstances as follows (only applies to Schiphol Airport):⁵¹
- a. The airport can't foresee the circumstances, before setting the charges and conditions.
 - b. The circumstances have a disproportionate and disruptive effect on volume, sales, costs and financial results of the aviation activities.
 - c. The circumstances cannot or to a limited extent be influenced by the airport.
 - d. The effects of the circumstances cannot or to a limited extent be mitigated by the airport.
 - e. Conservation of the existing charges cannot be expected from the airport.
- 6.9 Another example could be the Spanish legislation⁵², which defines as exceptional causes that may justify a modification of the Airport Regulation Document (DORA) currently in force, any causes not attributable to the Airport manager, that were unforeseeable at the time of approval of the DORA, and that have a certain and substantial effect on the financial viability of the network of airports. Thus, the Spanish law establishes as such exceptional causes, amongst others, annual reductions of more than 10% of the passenger traffic throughout the network due to natural disasters, terrorist acts or war situations.
- 6.10 Therefore, the Forum is of the opinion that a possible generic definition of the “exceptional circumstances” could be as follows: “Circumstances that an airport could not have reasonably foreseen or influenced causing disproportionately large variations in air traffic and/or has a large impact on the annual financial results of the regulated activities, and these effects cannot be significantly mitigated by the airport.” Crises are exceptional circumstances having a negative impact, which is the scope of this paper.

5 Million Passenger movement thresholds in times of crisis

- 6.11 Art 1 (2) of the Airport Charges Directive states, *“this Directive shall apply to any*

⁵¹ See: Decree of containing rules on the operation of Amsterdam Airport Schiphol (Amsterdam Airport Schiphol Operation Decree 2017), article 22.

⁵² See: Law 18/2014, of 15 October, on the approval of urgent measures for growth, competitiveness and efficiency, article 27.

airport located in a territory subject to the Treaty and open to commercial traffic whose annual traffic is over five million passenger movements and to the airport with the highest passenger movement in each Member State.”

- 6.12 The Directive does not establish what to do if an airport or an airport network suddenly and under exceptional circumstances drops below the five million-passenger thresholds, which means that during a crisis the Directive may be applied differently at the level of each Member State.
- 6.13 Therefore, in a possible revision of the Directive, it could be considered to revise Article 1(2) in order to clarify that the Directive shall apply to an airport, whose annual traffic is over five million passenger movements in at least one of the past five years. This is a simple solution that ensures continuity of the regulation when the number of passenger movements suddenly drops below the threshold.

Other recommendations for legislation

- 6.14 Legislators should consider facilitating the charges setting process in times of crisis. For example, Member States might consider the possibility of an intermediate review of charges during an existing regulatory period and/or shortening the approval times for requests by airports to adjust airport charges to counteract the consequences of exceptional circumstances.
- 6.15 Adjusting charges during a regulatory period or shortening approval times, deviating from the standard procedure, would in the context of exceptional circumstances be possible if the adjustment of charges is aimed to protect the user (for instance decrease of parking charges) and / or the increase is moderated in order not to compromise the traffic resumption.
- 6.16 Regarding cost calculation the Forum furthermore recommends the introduction of legislation through which airport operators can recover the extra justifiable costs as a result from exceptional circumstances, such as cost incurred from implementing Covid-19 health measures.⁵³ To ensure a prudent application of these provision a formal government assignment for taking these extra measures is needed. Furthermore, the Forum recommends the introduction of regulatory legislation – where needed – that empowers ISAs to impose a flexible allocation of depreciation costs over time in case there is a lower usage of assets.
- 6.17 The Forum recommends to perform a mandatory feedback between airport management bodies, airport users and ISAs the year after the “exceptional circumstances” has been activated.

⁵³ Similar legislation does exist in the Netherlands for extra costs related to aviation security measures

Appendix A. Most relevant airport or airport group selected by responding ISAs

Country	Most relevant airport or airport group
Austria	Vienna International Airport
Belgium	Brussels Airport
Czech Republic	Vaclav Havel Airport Prague
Germany	Frankfurt Airport
Denmark	Copenhagen Airport
Estonia	Lennart Meri Tallinn Airport
Spain	Aena's network
Finland	Helsinki Airport
France	Paris airports' network (ADP)
Greece	Athens International Airport
Kroatia	Zagreb Airport
Ireland	Dublin Airport
Italy	Aeroporti di Roma ⁵⁴
Luxembourg	Aéroport de Luxembourg
Netherlands	Amsterdam Airport Schiphol
Poland	Warsaw Chopin Airport
Portugal	Lisbon Airport
Sweden	Stockholm Arlanda Airport
Switzerland	Zurich Airport

Table 1. List of countries and the airport or airport groups included in this paper's analysis.

⁵⁴ Financial data for Aeroporti di Roma cover both Fiumicino and Ciampino airports.