

# **Qualitative assessment of the possible consequences of the introduction of the new regulation on a common charging scheme**

## Management summary

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## 1. Introduction

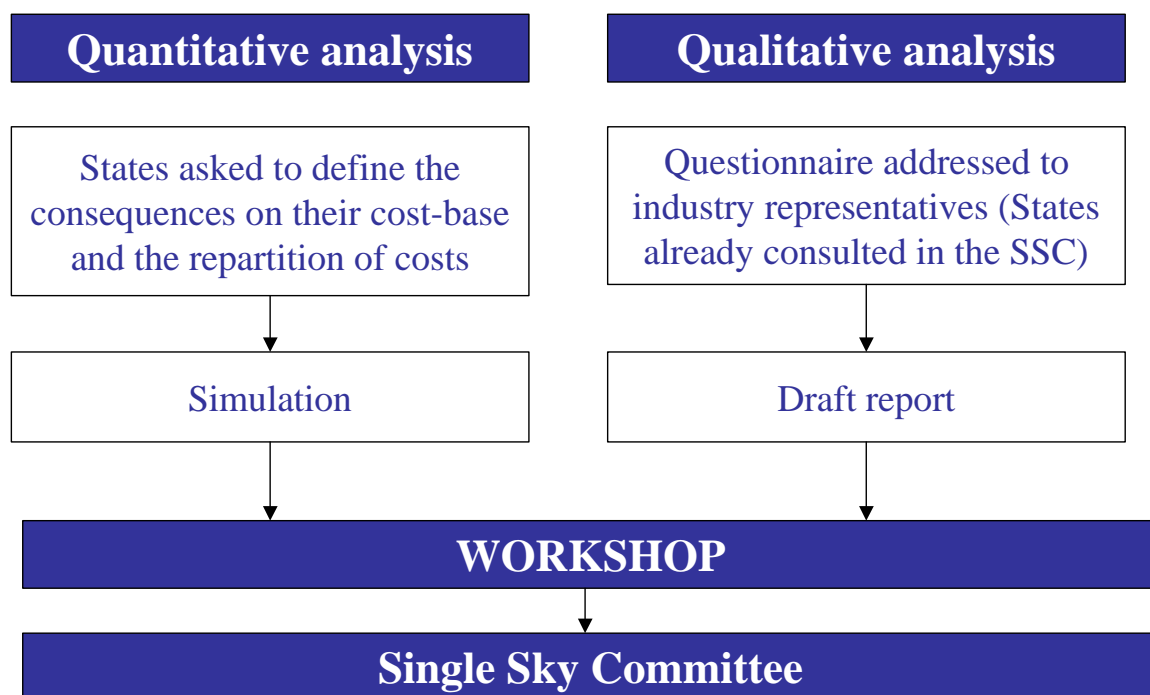
1. In application of the Service provision regulation (EC) N° 550/2004, the Commission is required to establish a common charging scheme for air navigation services throughout the European Union. Based on the EUROCONTROL mandate report of 29 October 2004, the Commission, assisted by the Single Sky Committee and its sub-groups, has developed draft implementing rules. The draft text is now sufficiently stable to analyse its potential impact.

## 2. Scope of this report

2. By a request for support signed on 30 June 2006, the Commission entrusted EUROCONTROL, in the context of the framework agreement for the provision of technical support to the Single European Sky, to perform a qualitative assessment of the impact of the introduction of a regulation on a common charging scheme.

In complement to this study, a quantitative assessment of the consequence of the introduction of terminal charges was already foreseen by a previous request for support.

3. The process was the following :



4. The questionnaire was internet-based, but stakeholders were invited to request face to face meetings with the Team<sup>1</sup> in charge of this study, if they so wished. The consultation period was open from 05/07/2006 to 01/08/2006.

5. The questionnaire was mainly directed to industry representatives (States have had the opportunity to express their views to the SSC). Nevertheless some states have decided to answer the questionnaire and their views were recorded

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6. Airspace users associations were free to distribute the questionnaire to their members, or inform them of it and to let them answer separately or to answer on their behalf. By contrast we have informed all ANSPs individually.

Not surprisingly the bulk of the answers came from ANSPs and airspace users.

Some stakeholders have indicated that due to time constraints and other surveys conducted at the same time they would not be able to answer.

7. The results of the consultation are presented in Annex A (Summary of Responses). During the consultation period, some stakeholders requested a bilateral meeting. A summary of these meetings can be found in Annex B. Annex C compiles the contributions received by mail.

8. This report is a management summary of this consultation.

This is not the final report of the whole assessment exercise. This will be compiled to include the conclusions of the workshop to be held on 4 September 2006, and will be presented to the Single Sky Committee on 29 September 2006.

### **3. Remarks on the process**

9. The stakeholders made some general remarks on this process.

10. Some stakeholders regretted that this exercise is not a formal impact assessment, although such a study has been repeatedly requested. As the foreseen regulation has to comply with the constraints of the service provision regulation which imposes most policy options, and as this proposed regulation has already been drafted, indeed a formal impact assessment could not be launched at this stage without running the risk of being seen as artificial.

11. Other stakeholders noted that the short time left for answering to the questionnaire and the timing, during the month of July, were not leaving sufficient time to prepare and coordinate answers.

12. A respondent noted that the design of the evaluation section of the questionnaire did not allow them to reflect their views in the scoring. This remark could have shed doubts on the results and interpretation of this exercise if it were valid. However, in this particular case, where this stakeholder wanted to explain that increased transparency would adversely affect the overall costs, it was perfectly possible to answer positively to field 2 or 7 (on transparency) while scoring field 4 (on cost-effectiveness) negatively.

## 4. Participation

<b>ANSP</b>	<b>21</b>
<b>Airspace Users Organisations</b>	<b>4</b>
<b>Military</b>	<b>0</b>
<b>Airspace Users (Civil)</b>	<b>4</b>
<b>General aviation</b>	<b>2</b>
<b>Airport Authorities</b>	<b>0</b>
<b>International organisations</b>	<b>3</b>
<b>Social and industry rep.</b>	<b>1</b>
<b>National Authorities (Civil)</b>	<b>8</b>
<b>National Authorities (Military)</b>	<b>1</b>
<b>Others</b>	<b>2</b>
<b>Total</b>	<b>46</b>

46 stakeholders answered.

N bilateral meetings were organised.

13. To better analyse the above table, it should be mentioned that IFATCA classified itself in the 'international organisation' category rather than in the 'social and industry' one. IACA chose the same heading. A member of the EUROCONTROL Agency expressed his personal views.

A bilateral meeting was held with ACI, but they did not complete the questionnaire. A representative of Polish Airports chose to register under the 'ANSP' category.

## 5. General remarks on the regulation

14. Throughout the questionnaire, some stakeholders noted that the regulation defines high level rules, leaving to Member States the responsibility for their application. The draft regulation describes very succinctly some mechanisms but leaves the door open to wide interpretation or even does not prescribe concrete actions. They also pointed out that the mechanism for compliance review would probably be ineffective, as the specifications in these regulations are too generic or imprecise to be used as a basis for a meaningful review or appeal procedure.

15. Airspace users deplore that the regulation falls short of prescribing mechanisms to ensure cost-effectiveness. They note that whereas it provides useful principles for fair cost-allocation and increases the requirements for transparency, nothing is said about the justification of these costs.

16. Also, some stakeholders note that a likely impact of the regulation will actually be a cost increase, as no mechanism exists that would encourage the Member States to cooperate or to delegate their responsibilities regarding the establishment of NSAs. There is also a very

sceptical tone about Functional Airspace Blocks, seen as one of the most important innovations of the SES initiative, but for which this regulation does nothing to penalise the creation of artificial FABs, not built for operational purposes with the objective of bringing efficiency benefits, but rather for political reasons.

## 6. Principles, eligible services, facilities and activities

17. Most stakeholders note that, for en-route charges, this regulation develop principles copied from the EUROCONTROL route charges system and are disappointed that the opportunity was not used to achieve more progress. Some innovations to these principles are explored in more detail below (see following questions). Some stakeholders note that cross-subsidies, possibly inequitable, are explicitly allowed, the only requirement being full transparency.

These principles do not address the issue of cost-effectiveness or efficiency. They allow for the charging of all costs and do not address the sources of inefficiencies identified by the EC or the PRU, such as fragmentation.

18. One respondent warns that increased charges on General Aviation may have an adverse effect on safety, such as users trying to avoid controlled airspace, and on regional economic development.

19. The debate starts here between the advocates of the extension of the regulation to all phases of flight and their challengers asking to keep Terminal services out of the harmonisation process, as they see transparency as an obstacle to competition and cost-efficiency. This debate will be discussed under chapter 8.

20. Controllers warn that a clearer definition between en-route, terminal and tower services is needed. They insist that ATM funding must not get to a point where costs are not covered.

21. States may be tempted to do away with military exemptions, as they have to finance them, causing political difficulties and creating constraints to the carry-out of missions.

22. The cost of NSAs, and their eligibility in the cost-base, is a cause for concern. No review mechanism is foreseen by the regulation, and the EUROCONTROL principles are mute on this issue. Furthermore, there is a risk of proliferation of NSAs, as the regulation only allows for cooperation and delegation of powers but does not encourage such moves.

23. Some respondents qualify art 5. of the regulation as a 'loose checklist', and a particular cause for concern is the concept of 'common projects', the regulation stopping short of defining safeguards for accepting their eligibility and of requiring a preliminary positive cost/benefit analysis. Users fear that the common projects could lead to discriminatory situations where a group of users is requested to pay for some projects that are mainly to the benefit of others.

More generally, airspace users are concerned by the inclusion of costs in the cost-base without any pre-defined indicators aiming at ensuring cost-effectiveness.

24. Some respondents also believe that the regulation should be accompanied by better defined methodologies, inspired by the Principles for the Route Charges System.

25. Some stakeholders oppose the use of weight in the charging formula.

## 7. Incentives

### 7.1. Incentives applied to ANSPs

26. Stakeholders note that this is one of the few innovations of this regulation, although the decision to implement an incentive scheme is left to the States. This allows for a form of price cap regulation (strong economic regulation). However, some contributors regret that the wording of the regulation is too generic, and does not sufficiently emphasise that incentives should aim at encouraging cost-efficiency while maintaining high safety levels.

27. Some respondents note that this is conflicting with the principle of cost-recovery.

### 7.2. Incentives applied to airspace users

28. Users in general are very wary about incentives, fearing that congestion and peak charges might be introduced, and arguing that incentives are not useful when applied to airlines in a competitive business (when on the contrary they are the only way to push for cost-efficiencies when applied to ANSPs operating in a monopoly).

The regulation contains no effective safeguards against the abuses of this regulation nor the removal of measures when they are not effective.

## 8. Terminal charges

### On a common formula for Terminal charges

29. Most respondents consider that the imposition of a common formula for terminal charges will bring transparency and comparability and also will end some discriminatory practices.

A common formula, in itself, does not lead to cost-efficiency and a respondent feared that it may reduce incentives to reach this aim.

A better definition of 'terminal services' is needed with a view to having a proper allocation of costs between en-route and terminal charges.

30. The choice of exponent 0.7 is seen by some as not addressing the problem of congestion of runways as, in comparison with exponent 0.5, it favours light aircraft.

31. Some respondents challenge the need to regulate terminal charges. They consider that a common formula ignores particular situations, for example airports having a mix of aircraft with different approach speeds. Current modulations will no longer be possible, with a potential important impact on some users.

On the contrary, others welcome a formula that will ensure a level playing field and facilitate benchmarking, but they warn that their priority is a proper cost-allocation between en-route and TNC. Subsidisation of TNC by en-route is rejected.

32. Some respondents fear an increase of costs and wait for the quantitative analysis to assess the impact on airspace users. The introduction of a transition period for the application of this common formula is generally seen as positive, allowing flexibility. Some see the five-year duration as too lengthy.

33. The 'single till' principle is welcomed. However, some respondents note that cross-subsidies between groups of airport might create discrimination. Transparency of cross-subsidies is welcomed.

### **On transparency and thresholds for application of the regulation**

34. Many respondents consider that thresholds are destroying the aim pursued by the legislation: it will allow the heterogeneous situation of airports to continue and will defeat the objective of comparability. They are of the opinion that transparency is the base for competition.

Others consider that 'contestable markets' achieve better the objective of cost-efficiency and that transparency will harm competition, giving competitors an unfair advantage. They also insist that thresholds are useful to avoid regulatory costs on small entities.

35. Some consider that the expression of the thresholds in number of movements will bring instability as the traffic continues to grow. Also the rationale behind the numbers chosen to fix them is unclear. They expect to see a list of exempted airports taking into account the threshold and the State's decision.

36. Some users fear that the 'contestability test' is too unprecise and cannot be applied objectively. Another respondent supports the principle of this test because of his lack of faith in the ability to strictly enforce compliance with the principles.

37. ACI explains that they did not complete the web form because ATM is not in the core of airports' business. They prefer to concentrate on landing and airport charges and would like to be reassured that the regulation has no impact on their own negotiations.

## **9. En-route charging zones**

38. Some respondents welcome the current wording which offers maximum flexibility in defining several unit rates in a FAB and defining charging zones based on operational agreements.

39. However, others note that this regulation is totally neutral vis-à-vis FABs, neither preventing them neither encouraging them. They are wary of the possibility to create a 'terminal charging zone' noting that the term 'complex' is vague and that this allows differentiation between upper and lower airspace, which in their view is not advisable. They also note that the regulation does not address the issue of reduction of costs and of operational benefits.

## **10. Exemptions and collection of charges**

40. The risk linked to the requirement that States should pay for the exemptions is highlighted, in particular for lighter aircraft and military flights.

41. The methodology for calculating the costs of providing services to VFR flights should be detailed. There may be a safety issue if commercial flights are tempted to fly under VFR.

42. Enforcement measures in relation to collection of charges are welcomed.

However, the particular case of military users is singled out:

- revoking their exemptions in some states might lead to political constraints to the accomplishment of their missions
- it is doubtful that the text will solve the issue of large unpaid bills by US Military. In the current system “good” payers are subsidizing the “bad”.

## **11. Transparency, consultation, appeal and review procedures**

43. Although some warn that the costs should not outweigh its benefits, transparency is generally welcomed.

44. Some stakeholders point out that :

- IAS has consistently led to higher costs, and extra costs are to be avoided if they do not lead to extra results.
- Mandatory consultation is seen as a constraint which has its costs : consultation should be linked to a request from the users.

45. On the contrary, airspace users note that full transparency is a fundamental requirement for any cost and charges system, with a view to being a means to achieve cost-effectiveness. Some respondents add that common performance indicators are needed to use transparency as a tool to improve cost-effectiveness.

46. Some note the limits of consultation: ANSPs are required to justify their costs but not motivated to reduce them. Transparency has value only if it is linked to robust appeal processes and compliance enforcement. As the regulation is often vague, it offers no leverage for proper evaluation and appeal procedures. Precise and legally valid guidelines are needed.

47. NSAs have not yet convinced some respondents that they are really competent, but building these competencies may prove costly. To avoid duplication of costs and duplication of efforts, as well as distortions due to heterogeneous specifications, some consider it advisable to consolidate NSAs and to establish a strong and competent regulator.

## 12. Overall assessment

48. In general, most stakeholders agree that this regulation brings useful innovations but they think that it should have gone further, some voicing their disappointment in this respect.

49. Dissenting voices are mainly concentrating on the most contentious issue : the application of the regulation to terminal charges and particularly the transparency requirements put on ANSPs present in 'contestable markets'.

50. The perceived areas for improvement are mainly relating to the following observations :

- a) the regulation does not help in improving cost-effectiveness, nor in setting the mechanisms to achieve this goal ;
- b) it does not promote the establishment of effective FABs ;
- c) it does not promote large charging zones and may have the effect of leading to more ;
- d) it is too vague, lacking specific legally valid guidance material, and therefore not enforceable ;
- e) there are too many 'opt-out' clauses ;
- f) there are fears of adverse consequences of the incentives applied to airspace users.

51. However, as one stakeholder puts it, there are some positive novelties. This regulation is not revolutionary but a prudent enhancement of the present situation.

### **As a conclusion :**

52. Some answers show that some respondents have not fully understood the details of the proposed regulation. It certainly would help if a particular communication effort could be done with a view to explaining in plain language the philosophy and the implications of this text.

53. The proposed text meets a qualified acceptance from the Industry. They see it as a first step that should lead to further enhancements, possibly after an appraisal of the real application the Member States will make of this regulation.

### 13. Annexes

- A Summary of Responses to the Questionnaire
- B Report on the bilateral meetings held during the consultation period
- C Written answers to the questionnaire received outside the web-based response form (ATSA Bulgaria, ELFAA, IAOPA, IATA, UK DfT)
- D Slides
- E Questionnaire
- F Draft implementing rules

Nota bene: All documents relating to this study can be found on the EUROCONTROL website :

[http://www.eurocontrol.int/ses/public/standard\\_page/sk\\_chargingschemes.html](http://www.eurocontrol.int/ses/public/standard_page/sk_chargingschemes.html)

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