

EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION

EUROCONTROL

- Decision of the enlarged Commission -

DECISION N°121

relating to the conclusion of a bilateral agreement with BULATSA relating to the denial of provision of air navigation services in the airspace of Bulgaria for default in the payment of EUROCONTROL route charges

THE ENLARGED COMMISSION:

Having regard to the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation, as amended by the Protocol signed at Brussels on 12 February 1981, and in particular Articles 2.1(l) and 5 thereof;

Having regard to the Multilateral Agreement relating to route charges of 12 February 1981 and in particular Article 12 thereof;

Having regard to the Protocol consolidating the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation of 13 December 1960 as variously amended, which was opened for signature on 27 June 1997, and in particular Article 6.2 of Annex IV to the consolidated version annexed to the said Protocol;

On the proposal of the enlarged Committee and the Agency;

HEREBY TAKES THE FOLLOWING DECISION:

Sole Article

The Agency is authorised to conclude a bilateral agreement with BULATSA relating to the denial of provision of air navigation services in the airspace of Bulgaria for default in the payment of EUROCONTROL route charges, on the basis of an Agreement, copy of which is at Annex.

Done at Brussels, on 26.8.2013



P. HENTTU
President of the Commission

DRAFT

Agreement between the European Organisation for the Safety of Air Navigation (EUROCONTROL) and the State Enterprise “Bulgarian Air Traffic Services Authority” (BULATSA) relating to the denial of provision of air navigation services in the airspace of Bulgaria for default in the payment of EUROCONTROL route charges

The European Organisation for the Safety of Air Navigation (EUROCONTROL), having its headquarters in 1130 Brussels, Rue de la Fusée 96, represented by its Director General, hereinafter referred to as “EUROCONTROL”,

and

the State Enterprise “Bulgarian Air Traffic Services Authority” (BULATSA), represented by its Director General, hereinafter referred to as "BULATSA"

hereinafter collectively referred to as “the Parties”;

Taking into consideration the following:

- Having regard to the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation, amended by the Protocol signed at Brussels on 12 February 1981, and in particular Articles 2.1(l) and 5, thereof;
- Having regard to the Multilateral Agreement relating to Route Charges of 12 February 1981, and in particular Article 12 thereof, which stipulates that measures may be taken to enforce recovery when a debtor has not paid the amount due in respect of route charges;
- Having regard to the Protocol consolidating the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation of 13 December 1960 as variously amended, which was opened for signature on 27 June 1997, and in particular Article 6.2 of Annex IV to the consolidated version annexed to the said Protocol, these measures may also include, at EUROCONTROL’s request, the review by a Contracting Party or any competent body of the administrative authorisation connected with air transport or air traffic management issued to a person liable to pay the charge, if the relevant legislation so provides;
- Having regard to Article 18.3 of Commission Regulation (EU) No. 391/2013 of 3 May 2013 laying down a common charging scheme for air navigation services, regarding the application of effective enforcement measures;
- Having regard to the right of BULATSA to apply enforced recovery measures provided by the relevant Bulgarian legislation, and in particular by the Bulgarian Civil Aviation Act, promulgated initially by the Bulgarian State Gazette, issue 94 of 1 December 1972;

- Having regard to Decision No. ..., taken by the enlarged Commission on ... 2013, delegating authority to the Agency to conclude a bilateral agreement relating to denial of the provision of air navigation services;

The Parties have agreed as follows:

Article 1 - Route charges in arrears

- 1.1 EUROCONTROL may request BULATSA in writing to deny the provision of air navigation services to a user in arrears in order to recover unpaid route charges, provided that part of the due route charges are intended for Bulgaria.
- 1.2 BULATSA is under no obligation to deny the provision of air navigation services.
- 1.3 Procedural details will be addressed in a "Working Procedures" document. The Working Procedures may be amended in writing as appropriate further to the agreement of the Parties.

Article 2 - Indemnification

- 2.1 EUROCONTROL shall indemnify BULATSA and its staff against:
 - a) their legal liability which may arise in respect of loss, damage or injury to an aircraft (including the loss of use thereof), or to persons (including injury resulting in death) arising directly out of the denial of the provision of air navigation services in the airspace of Bulgaria as a consequence of default in the payment of EUROCONTROL route charges pursuant to a request from EUROCONTROL, and
 - b) the costs incurred by BULATSA arising out of the denial of the provision of air navigation services, to the extent agreed between the Parties. These include parking and other related costs which may be incurred as a result of aircraft being unable to depart Bulgaria, and
 - c) reasonable legal fees incurred by BULATSA in defending any claim, legal action or proceedings that arise out of the denial of the provision of air navigation services further to a request from EUROCONTROL, to the extent agreed between the Parties.
- 2.2 The indemnity provided for in 2.1 shall not apply where the loss, damage or injury to an aircraft and/or persons is caused due to gross negligence or willful default of BULATSA or its staff or where BULATSA has been requested to terminate the denial of services.

Article 3 - Co-operation of the Parties

- 3.1 The Parties shall fully co-operate and assist each other in connection with any claim, legal action or proceedings arising directly out of the denial of the provision of air navigation services further to a request from EUROCONTROL.

- 3.2 If any Party becomes aware of an actual or potential claim, legal action or proceedings against it, or any other party, arising out of the denial of air navigation services further to a request of EUROCONTROL, the Party shall inform the other Party in writing.
- 3.3 BULATSA shall consult and discuss with EUROCONTROL the handling of any claim, legal action or proceedings against BULATSA resulting from a request for the denial of air navigation services from EUROCONTROL.

Article 4 - Costs

- 4.1 The costs relating to the denial of the provision of air navigation services that have to be paid by EUROCONTROL on the basis of Article 2.1 (b) and which were incurred by an airport operator and/or an aircraft handling organisation and charged to BULATSA shall be paid to BULATSA within 30 days after a request for payment is received by EUROCONTROL from BULATSA. Such request shall be submitted to EUROCONTROL once the denial of provision of air navigation services is terminated.
- 4.2 When the provision of air navigation services is denied by BULATSA as a consequence of default of payment of charges other than the EUROCONTROL route charges in respect of which EUROCONTROL has requested denial of air navigation services, the part of costs incurred by BULATSA in respect of those other charges shall be borne by BULATSA in proportion to the amount of those charges.

Article 5 - Applicable law and Jurisdiction

- 5.1 This Agreement shall be governed by the provisions of Bulgarian law.
- 5.2 The Parties agree that any dispute which arises in connection with this Agreement and which cannot be settled by direct negotiation shall be brought before the competent court of Bulgaria.

Article 6 - Amendments

This Agreement may be amended only by an instrument in writing of equal formality signed by the duly authorised representatives of the Parties.

Article 7 - Confidentiality

Except as shall be required by law or regulation, this Agreement and any working procedures agreed by the Parties shall be kept confidential and its content only disclosed to third parties on a need to know basis. Any disclosure to a third party shall be on the same basis of strict confidence.

Article 8 - Entry into force

The present Agreement shall enter into force on the day it has been signed by both Contracting Parties.

In witness whereof, the undersigned, having been duly authorised, sign this Agreement.

Done in two originals in the English language.

For BULATSA,

For EUROCONTROL,

Mr Diyan DINEV
Director General

Mr Frank BRENNER
Director General

Date of signature:

Date of signature:

