

EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION

EUROCONTROL

- Decisions of the enlarged Commission -

DECISION No. 52

amending the Principles for Establishing the Cost-Base for Route Facility Charges and the calculation of the Unit Rates

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 Article 5.2 thereof;

Having regard to the Multilateral Agreement Relating to Route Charges, dated 12 February 1981, and in particular Articles 3.2(a) and 6.1(a) thereof;

On the proposal of the enlarged Committee and the Provisional Council,

HEREBY TAKES THE FOLLOWING DECISION :

Article 1

The Principles for Establishing the Cost-Base for Route Facility Charges shall be completed by the addition of new paragraphs 1.10 and 1.11 as follows:

"1.10. Notwithstanding the above provisions of the Principles, where:

- the Route Air Navigation Facilities for which a State is responsible are provided by a body ("the service provider") which is subject to independent economic regulation, and*
- that regulation is designed, inter alia, to provide incentives through the charging mechanism to encourage an efficient and effective service at the lowest possible cost,*

that State may disapply both paragraph 1.3 above and the adjustment mechanism referred to in paragraph 1.8 above and described in Chapter 3 and Appendix III, whereupon the following provisions shall apply:

- (i) the regulator¹ shall conduct periodic reviews of future charges and shall set in advance, for a period not exceeding 5 years, conditions from which the maximum level of the national unit rate shall be determined in each year of the review period;*

¹ "The regulator" is defined as the individual or body mandated by the contracting state to administer the system of economic regulation established in accordance with the Principles.

- (ii) the proposed national unit rate shall be calculated annually in accordance with the conditions referred to in (i) above, and presented to the enlarged Commission in accordance with (iii) of paragraph 1.11;*
- (iii) in the event of exceptional circumstances the regulator may institute an interim adjustment to the regulatory conditions imposed on the service provider.*

1.11. *Any contracting state wishing to adopt independent economic regulation in compliance with the provisions of paragraph 1.10 shall do so in accordance with the Principles and taking full account of the guidelines in Appendix VII. The following conditions shall apply:*

- (i) Contracting states shall, before setting up a new system, consult with users, the national service provider, and EUROCONTROL on the objectives, procedures and timetable of the proposed system and take account of the views expressed.*
- (ii) Prior to the beginning of each review period, or where the regulator is considering an interim adjustment in accordance with paragraph 1.10 (iii), the contracting state shall:*
 - (a) ensure that adequate information, as set out in Appendix VII, is made available to users to enable them to participate in informed consultation;*
 - (b) ensure that there is appropriate and meaningful consultation between the regulator, the service provider and users so as to determine sound and justifiable projections and principles to be applied in setting regulatory conditions on the maximum level of the unit rate;*
 - (c) inform the enlarged Committee of these projections and:*
 - the forecast costs for the review period as applied by the regulator, using the specimen tables at Appendix II;*
 - conditions set by the regulator and the maximum level of the unit rate which derives from them.*
- (iii) Within each review period the contracting state shall on a yearly basis:*
 - notify its forecast and actual costs using specimen tables at Appendix II in accordance with common procedures as described in paragraph 1.6; and*
 - seek the approval of the enlarged Commission of its proposed unit rate.*
- (iv) States shall make provision for a suitable appeal mechanism where this would be consistent with their national legal systems."*

Article 2

The Principles for Establishing the Cost-Base for Route Facility Charges shall be completed by the addition of a new Appendix VII as follows:

“APPENDIX VII: DRAFT GUIDELINES FOR STATES INTENDING TO ADOPT THE ALTERNATIVE MECHANISM

Regulation

Independence and legal status

- *There should be a credible and robust institutional structure for economic regulation; the regulator should be separate from the service provider and users, and should not be a direct beneficiary from the financial performance of either the provider or the users;*
- *the state should require its regulator to comply with its international obligations;*
- *regulation of the national ATC provider can be one of a range of duties;*
- *the regulator can be national or regional (i.e. his remit can extend to more than one state), although states who set up a regional arrangement should be able to retain separate national unit rates;*
- *the regulator's objectives and duties should be published, by the competent national authorities, at the time of the launching consultation and of any subsequent revision to his objectives and duties;*
- *the regulator should be required to demonstrate that he has acted impartially.*

Regulatory objectives and duties

Taken in total, the regulator's objectives and duties will reflect national and international transport policies (including, where appropriate, military interests), and priorities as determined by States and/or competent international organisations. They may vary from state to state. Objectives and duties specific to the route charges system should include:

Objectives

- *furthering the interests of users;*
- *encouraging efficiency and value for money in service provision;*
- *encouraging investment in time to satisfy reasonable demand;*
- *ensuring an appropriate quality and level of service provision (taking account of guidance provided and norms set according to the EUROCONTROL performance review system);*
- *having regard to the financial position of the service provider.*

Duties

- *promoting and participating in meaningful consultation between both the regulator and the service provider (jointly and/or separately) with users;*
- *setting standards for and ensuring provision of information (including financial and forward-looking) by the service provider;*
- *conducting periodic reviews of the provider's forecasts, actual costs and income, and ensuring that these are published;*
- *monitoring and enforcing service standards;*
- *setting the conditions which determine the maximum level of charges (subject to final approval by the enlarged Commission of annual unit rates);*
- *ensuring transparency of his own processes by publishing his decisions and the reasons for them.*

Consultation

States who opt for a system of independent economic regulation should recognise that user consultation, and the provision of information to users, will be an essential part of the process.

Processes

- Launching consultation to be held before the alternative option is implemented by a state. States must allow sufficient time for the launching consultation and must consult users, the national service provider and EUROCONTROL (i.e. the enlarged Commission or successor body). The Commission would probably want to consult the PRC and CRCO, and the state would, of course, also be free to take advice from anyone else they wished. The information provided to consultees must include:
 - regulator's status, objectives and duties,
 - regulatory process and timetable,
 - proposals for future consultation.
- Consultation at the beginning of each review period between regulator, service provider and users. States may also wish to consult EUROCONTROL at this stage. Information provided must include:
 - current regulatory cost base,
 - projected costs and revenues, traffic forecasts, investment plans and planned capital employed for the review period,
 - principles the regulator intends to apply (e.g. appropriate cost of capital)
- Regulator proposes the conditions on charges for the review period and invites comments on his proposals before reaching a decision.
- Regulator should consult service provider and users again if the conditions on charges are changed during a review period.
- On going consultation, as required by the revised Convention (and following the best practice guidance drawn up by the FIFU group) between provider and users/regulator on other aspects of the service.

General principles

- Information requirements of regulator and users: regulator should be given access to any information he needs in order to do his job; he decides any dispute over what information provider gives users, subject to what is permissible under national and international legal codes on e.g. commercial confidentiality.
- States should ensure that all users or their representatives are able to participate in the consultation process.

Financial issues

- Regulator should take account of market returns of businesses facing equivalent risk, views of users and of provider in determining "reasonable return";

- *regulator may be free to impose clawback, profit sharing, or a cap on "reasonable return", but this should be left to national discretion;*
 - *regulator should be able to consider requests, from either the service provider or users, for an interim review, but only under exceptional circumstances e.g. if either the service provider or users as a group was seriously disadvantaged to the point of being unable to finance their functions;*
- *existing procedures for adoption of unit rates to continue;*
- *presentation of annual financial information to the enlarged Committee and the Commission to be in a common format as laid down in the Principles for establishing the cost-base for route facility charges and the calculation of the unit rates.*

Service levels

- *Regulator to monitor and enforce performance standards established by international norms and guidance from the EUROCONTROL performance review system so as to ensure that the provider does not make profits at the expense of service standards;*
- *regulator may be able to impose financial penalties if service standard falls, but must be subject to national discretion.*

Relationship between States and EUROCONTROL

States may wish to inform the enlarged Committee of the relevant economic regulatory procedures applicable at national level in order to exchange information and advice which may be of interest or assistance to others."

Article 3

These amendments shall come into effect on the first day of the month following the date of the present Decision.

Done at Brussels on 16 July 1999



O. LIAVAAG

Vice-President of the Commission