EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION

EUROCONTROL

- Decisions of the enlarged Commission -

DECISION N°131

authorising the Agency to conclude a bilateral agreement relating to terminal charges with the Civil Aviation Directorate (CAD) of Malta

THE ENLARGED COMMISSION,

Having regard to the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation, as amended at Brussels on 12 February 1981, and in particular Articles 2.2(c) and 5.2 thereof;

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

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

HEREBY TAKES THE FOLLOWING DECISION:

The Agency is authorised to conclude a bilateral agreement relating to terminal charges with the Civil Aviation Directorate (CAD) of Malta, for an unlimited period commencing on 1 January 2015, on the basis of the draft agreement attached, which shall be signed on behalf of the Organisation by the Director General of the Agency.

Done at Brussels on 12.11.2014

Feliks BACI
President of the Commission
AGREEMENT

BETWEEN

THE EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)

AND

THE CIVIL AVIATION DIRECTORATE OF MALTA

RELATING TO TERMINAL CHARGES

The European Organisation for the Safety of Air Navigation (EUROCONTROL), represented by its Director General, Mr Frank Brenner, hereinafter referred to as “EUROCONTROL”,

and

The Civil Aviation Directorate of Malta, represented by its Director General Mr. George Borg Marks, hereinafter referred to as “CAD”,

Having regard to the provisions of Article 2.2(c) and Article 5.2 of the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation of 13 December 1960 as amended at Brussels in 1981;

Having regard to the provisions of Article 3.2(i) and Article 6.1(b) of the Multilateral Agreement relating to Route Charges of 12 February 1981;

Having regard to the Decision N° { } taken by the enlarged Commission on { } authorising the Agency to conclude this bilateral agreement (hereinafter “Agreement”) relating to terminal charges with the CAD.

HAVE AGREED AS follows:
ARTICLE 1 - Purpose

The CAD hereby entrusts EUROCONTROL with the calculation, billing, accounting and collection on its behalf of charges for terminal air navigation services, but excluding enforced recovery of unpaid bills, in accordance with the laws and regulations in force in Malta and with the provisions set out in Annex I “Operating Specifications” to this Agreement.

ARTICLE 2 - Billing and Payment of Terminal Charges

2.1. The terminal charges shall be billed in euro and payable to EUROCONTROL in accordance with the Conditions of Payment set out in Appendix 2 of Annex I.

2.2. VAT shall be billed, where applicable, under the conditions and in accordance with the procedures agreed between the parties.

ARTICLE 3 - Treatment of Claims and Information to Users

EUROCONTROL is entrusted with the treatment of claims submitted by users. Disputes concerning the legitimacy of charges shall be referred to the CAD.

EUROCONTROL shall provide to the users information in respect of the terminal charges.

ARTICLE 4 - Collection of Terminal Charges

4.1. EUROCONTROL shall collect the terminal charges and shall take all necessary measures to ensure that the charges are collected within the due time as stated on the invoice. If the user is not paying the full amount in due time the user is immediately in default.

4.2. Enforcement measures are the sole responsibility of the CAD. Where a user defaults and the usual collection measures have been exhausted, the CAD shall be responsible to initiate the enforced recovery of amount due.

4.3. The terminal charges shall constitute a claim by the CAD.

4.4. The person liable to pay the charge shall be the person who was the operator of the aircraft at the time when the flight was performed. The ICAO designator or any other recognised designator in the identification of the flight may be used to identify the operator of the aircraft.

If the identity of the operator is not known, the owner of the aircraft shall be regarded as the operator, unless he proves which other person was the operator.
ARTICLE 5 - Disbursement of Terminal Charges

Terminal charges collected by EUROCONTROL on behalf of the CAD in performance of this task shall be remitted, inclusive of accrued interests, if any, but exclusive of bank charges incurred by EUROCONTROL relating to the collection of terminal charges, to the CAD in accordance with the provisions set out in Annex I to this Agreement.

ARTICLE 6 - Accounting

6.1. EUROCONTROL shall produce annual accounts for the terminal charges in the form of a Balance Sheet and Income and Expenditure account. The accounts shall be produced according to accepted international standards. The accounts shall be expressed in euro.

6.2. The CAD may audit the EUROCONTROL accounts in respect of these terminal charges.

ARTICLE 7 - Transmission of Data

Flight data collection and transmission to EUROCONTROL shall be the sole responsibility of the CAD. Flight data to be used for the purpose of calculating terminal charges shall be those transmitted by the CAD for the purpose of calculating EUROCONTROL route charges.

ARTICLE 8 - Costs

8.1. The amount to be paid by the CAD to EUROCONTROL for the purposes of this Agreement shall correspond to the costs incurred by EUROCONTROL in respect of the tasks performed by it, as certified by the EUROCONTROL financial services.

8.2. This amount based on the costs in respect of the execution of this Agreement shall be established on an annual basis beginning pro rata in the year of the signature of this Agreement.

The collection costs are estimated at EUR 41,000.

8.3. A breakdown of the above costs is shown in Annex II to this Agreement.

8.4. Costs in respect of the execution of this Agreement shall be assessed on the basis of the most realistic estimates possible at the time of conclusion of this Agreement and the current rules for the charging of the Agency services adopted by EUROCONTROL's governing bodies.

If the charging rules of the Agency are modified and duly approved by EUROCONTROL's governing bodies, the new rules shall apply to this Agreement with effect from the date their modification becomes effective. If required, the costs estimated at Annex II shall be revised in accordance to Article 13(b).
ARTICLE 9 - Payment of the Costs

Payment of costs shall be made by the CAD according to the following time scale:

1. Advance payments equal to one quarter of the annual costs with effect from the starting date of operations shall be made by the CAD at intervals of three months.

2. At the end of each calendar year EUROCONTROL shall draw up a statement of expenditure, subject to the revision arrangements provided for in Article 8 above, and of the amounts paid by the CAD. Negative or positive balances shall be billed or reimbursed to the CAD.

3. The bills shall be drawn up by EUROCONTROL in euro and paid to EUROCONTROL in the same currency within 30 days following the date of the bills.

4. When the payments detailed in the above provisions are not paid by their due date, the arrears shall be automatically deducted from the amounts due to the CAD in respect of terminal charges collected under this Agreement.

ARTICLE 10 - Liability

10.1. The CAD shall indemnify EUROCONTROL against claims from third parties arising out of the performance of this Agreement, except in the case of wilful default or gross negligence on the part of EUROCONTROL or its staff, insofar as those damages are attributable to them.

10.2. Neither Party shall make a claim against the other Party with respect to loss, damage or bodily injury suffered by its staff as a result of the performance of the present Agreement, unless such loss, damage or bodily injury is due to gross negligence or deliberate omission or wrongful act on the part of the other Party or its staff.

ARTICLE 11 - Arbitration

11.1. Any dispute arising between the Parties relating to the interpretation, application or performance of the present Agreement, which cannot be settled by direct negotiation or by any other means, shall be settled by final and binding arbitration in accordance with the applicable Optional Rules for Arbitration of the Permanent Court of Arbitration as in effect on the date of the entry into force of the present Agreement.

11.2. The number of arbitrators shall be three.

11.3. The language to be used in the arbitral proceedings shall be English.

11.4. Each Party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.

ARTICLE 12 - Suspension of Agreement

In the event of a state of crisis, conflict or war, this Agreement may be suspended by a mutual decision of the Parties or by unilateral written notice of one Party to the other.
ARTICLE 13 - Amendments

The Parties may, by exchange of letters between the CAD's Director General and the Director General of EUROCONTROL, modify:

a) Annex I, provided the amendment has no financial implications;

b) the expenditure detailed in Annex II, provided the budgetary procedures to which the two Parties are subject have been complied with beforehand.

ARTICLE 14 - Date of Effect and Duration

14.1. This Agreement shall enter into force on the date of signature by both Parties for an unlimited period. The calculation and billing of terminal charges shall commence on 1st January 2015.

14.2. However, either Party may terminate this Agreement at any time subject to one year's written notice.

ARTICLE 15 - Order of Precedence

Annex I and its Appendices 1-4 shall form an integral part of the Agreement. In the event of any inconsistency between the Agreement and its Annex and Appendices, the Agreement shall prevail over the Annex which shall prevail itself over its Appendices in the given order.

Done in two originals in the English language.

At ................on ................................. At Brussels on ....................................

For the CAD, For EUROCONTROL,

George Borg Marks Frank Brenner
Director General Director General
ANNEX I
TO THE AGREEMENT
BETWEEN
THE EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION
(EUROCONTROL)
AND
THE CIVIL AVIATION DIRECTORATE OF MALTA
RELATING TO TERMINAL CHARGES
OPERATING SPECIFICATIONS

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1. **GENERAL**

1.1. These operating specifications cover the services to be provided by EUROCONTROL which consist of calculating, billing, collecting and accounting for terminal charges on behalf of the CAD, but excluding enforced recovery of unpaid bills, in accordance with ICAO principles as described in ICAO Document 9082 and relevant national law.

1.2. EUROCONTROL shall maintain separate accounts, in accordance with international accounting standards (IAS/IFRS).

1.3. EUROCONTROL shall ensure that all data required for the execution of the present Agreement shall be stored on magnetic support, in accordance with the same conditions applicable in the EUROCONTROL Route Charges System.

1.4. The reports to be dispatched to the CAD are specified at Appendix (4).

1.5. The CAD shall cooperate with EUROCONTROL in the calculation and collection of the terminal charges.

1.6. The CAD shall ensure that the relevant rules and procedures governing terminal charges are published in the official national publications of Malta, copy of which shall be provided, together with any related aeronautical information, to EUROCONTROL.

2. **CHARGING**

2.1. **Definition of a chargeable flight**

A terminal charge shall be levied for each flight performed under Instrument Flight Rules (IFR) in accordance with the procedures laid down in application of the Standards and Recommended Practices of the International Civil Aviation Organisation by an aircraft departing from any aerodrome or designated aerodrome situated within the Terminal Charging Zone(s) listed at Appendix (1), which fall within the competence of the CAD.

2.2. **Charging formula for the terminal charge**

2.2.1. The terminal charge $R$ shall be calculated in accordance with the following formula:

$$R = t \times N$$

where $t$ is the unit rate of charge and $N$ the number of service units corresponding to terminal air navigation services made available.

2.2.2. The unit rate $t$ shall be calculated by dividing the forecast number of total terminal service units for the relevant year into the corresponding cost-base for terminal services. The CAD shall notify the unit rate of charge $t$ to EUROCONTROL in national currency with two decimal points, together with the corresponding cost-base and service units forecast.

The unit rate of charge $t$ shall be set for a calendar year.
Changes of unit rate shall only be effective from a first day of a month. The notification of change must be received by EUROCONTROL not later than the first day of the month for which the new unit rate applies or the new charging zone applies.

The CAD shall publish the unit rate of charge $t$.

2.2.3. For a given departing flight, the number of service units in respect of terminal charges, designated $N$, shall be the quotient, obtained by dividing by fifty the Maximum Take-off Weight (MTOW), expressed in metric tons, which is used for calculating the EUROCONTROL route charge for the flight concerned, to the power of 0.7.

For the purpose of calculating the charge, $N$ shall be expressed as a figure taken to two decimal places.

2.3. Exempted flights

The CAD shall establish exemptions for terminal charges exclusively on the basis of the categories of flights as defined for exemption purposes in the EUROCONTROL Conditions of Application of the Route Charges System and Conditions of Payment.

The CAD shall notify the categories of flights exempted from the payment of terminal charges to EUROCONTROL. These categories shall include:

1. Flights performed exclusively under visual flight rules (VFR);

2. Flights performed by aircraft of which the Maximum Take-Off Weight Authorised is less than two (2) metric tons.

2.4. Consultation with users

Effective and transparent consultation with users in respect of the terminal charge shall be the sole responsibility of the CAD. EUROCONTROL may be invited to attend with observer status any user consultation meetings organised by the CAD.

3. Flight Data Collection, Transmission and Processing

3.1. Information to be provided to EUROCONTROL

The CAD shall provide information to EUROCONTROL on all matters that necessitate modifications of flight messages or the user data files, for instance the national aircraft register.

3.2. Correction procedure

Any request that relates specifically to terminal charges shall be transmitted to EUROCONTROL in conformity with EUROCONTROL Route Charges System’s procedures.
4. BILLING, CLAIMS AND INFORMATION TO USERS

4.1. General

The documents to be dispatched to users are as follows:

a) bill for terminal charge
b) pro forma statement (statement of flights)
c) statement of account
d) credit note
e) bill for interest on late payment
f) credit note for interest on late payment
g) VAT annex to bill (if applicable)
h) VAT annex to credit note (if applicable)

These documents shall specify that the charges are collected for terminal air navigation services in Malta and are payable to EUROCONTROL.

EUROCONTROL's bank account, into which the terminal charge shall be payable, as well as the bank's address, shall be shown on the bill and the statement of account.

4.2. Billing cycle

Billing periods shall be the same as within the EUROCONTROL Route Charges System.

4.3. User requests and claims regarding bills and invoices

User claims shall be processed in accordance with the EUROCONTROL Route Charges System's procedures.

4.4. Value Added Tax (VAT)

Terminal charges may be subject to value added tax. EUROCONTROL may, in that case, collect the said tax under the conditions and in accordance with the procedures agreed with the CAD.

4.5. Information to users

EUROCONTROL shall keep the users informed by means of information circulars where necessary.

EUROCONTROL shall provide to the users upon request information in respect of the terminal charge.
5. **ENFORCED RECOVERY OF CHARGES**

5.1. Measures for the enforced recovery of terminal charges shall be the sole responsibility of the CAD.

5.2. EUROCONTROL shall provide the CAD with the necessary information to enable the CAD to take enforced recovery action.

6. **FUND MANAGEMENT**

6.1. Terminal charges and VAT, where applicable, collected on behalf of the CAD shall be disbursed under the same conditions as for the route charges collected.

6.2. The funds shall be invested by EUROCONTROL to the benefit of the CAD for the duration between their actual collection and disbursement to the CAD. The interest earned by EUROCONTROL shall be disbursed to the CAD together with terminal charges collected.

6.3. Payments to third parties out of the terminal charges collected on behalf of the CAD may be arranged on the specific written instructions from the CAD to EUROCONTROL.

7. **ACCOUNTING**

7.1. The financial year shall begin on 1 January.

7.2. Provision for doubtful debts and the write-off of irrecoverable debts shall be dealt with in accordance with the EUROCONTROL Financial Regulations applicable to the Route Charges System.

8. **CONFIDENTIALITY OF DATA**

All data relating to the terminal charges shall be kept confidential by EUROCONTROL according to the principles applied in the EUROCONTROL Route Charges System.
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BETWEEN

THE EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)

AND

THE CIVIL AVIATION DIRECTORATE OF MALTA

RELATING TO TERMINAL CHARGES

OPERATING SPECIFICATIONS

APPENDIX (1) : Terminal Charging Zone

LMML - Luqa
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APPENDIX (2) : Conditions of Payment of Terminal Charges

Clause 1

1. The amounts billed shall be payable in euro into the EUROCONTROL Central Route Charges Office's bank account shown on the bill.

2. The amount of the charge is due on the date of performance of the flight. The latest value date by which payment must be received by EUROCONTROL shall be shown on the bill.

3. The time granted to users for payment of the terminal charge, i.e. the interval between the bill date and the date for payment shown on the bill, shall be identical to the time granted to users for payment of the EUROCONTROL route charges.

Clause 2

Payment shall be deemed to have been received by EUROCONTROL on the value date on which the amount due was credited into the banking establishment designated by EUROCONTROL, referred to in Clause 1 paragraph 1. The value date shall be the date on which EUROCONTROL can use the funds.
Clause 3

1. Payments shall be accompanied by a statement giving the references, dates and amounts in respect of bills paid and of any credit notes deducted.

2. Where a payment is not accompanied by the details specified in paragraph 1 above so as to allow its application to a specific bill or bills, EUROCONTROL shall apply the payment:
   - first to interest, and then
   - to the oldest bills unpaid.

Clause 4

1. Claims against bills must be submitted to EUROCONTROL in writing or by an electronic medium previously approved by EUROCONTROL. The latest date by which claims must be received by EUROCONTROL shall be shown on the bill and shall be the same as for the EUROCONTROL Route Charges System.

2. The date of submission of claims shall be the date on which the claims are received by EUROCONTROL.

3. Claims must be detailed and should be accompanied by any relevant supporting evidence.

4. Submission of a claim by a user shall not entitle him to make any deduction from the relevant bill unless so authorised by EUROCONTROL.

5. Where EUROCONTROL and a user are mutually debtor and creditor no compensation payments shall be effected without EUROCONTROL's prior agreement.

Clause 5

1. Any charge which has not been paid by the latest date for payment shall be increased by the addition thereto of interest. The interest, entitled Interest on Late Payment, shall be simple interest calculated from day to day on the unpaid overdue amount.

2. The interest shall be calculated and billed in national currency. The interest rate shall be published by the CAD.

Clause 6

Where a debtor has not paid the amount due, measures may be taken by the CAD to enforce recovery.
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APPENDIX (3): Specifications of documents

1. BILL
   a) Identification of the type of charges
   b) State and/or service provider name
   c) Date of issue
   d) Flight period
   e) Bill reference
   f) User code/User name
   g) User billing address
   h) To be paid at the latest by (date)
   i) Amount to be paid
   j) Method of payment (bank details)
   k) Claims to be submitted before (date)
   l) Change of company title or address
   m) Failure to pay
   n) Interest on late payment

2. PRO FORMA STATEMENT (STATEMENT OF FLIGHTS)
   a) Identification of the type of charges
   b) State and/or service provider name
   c) Date of issue
   d) Flight period
   e) Bill reference
   f) Page number
   g) User code/User name
   h) User billing address
   i) Day of flight
   j) Line (item) number
   k) Flight number or aircraft registration
   l) Flight details:
      • time of departure
3. **STATEMENT OF ACCOUNT**

   a) Identification of the type of charges  
   b) State and/or service provider name  
   c) Date of issue  
   d) Reference of statement  
   e) Page number  
   f) User code/User name  
   g) User billing address  
   h) Item number  
   i) Value date of item  
   j) Item code  
   k) Item reference  
   l) Amount debit  
   m) Amount credit  
   n) Balance of each billing  
   o) Overall balance  
   p) CRCO bank details (for payments)

4. **CREDIT NOTE**

   a) Identification of the type of charges  
   b) State and/or service provider name  
   c) Date of issue  
   d) Note number  
   e) Credit note reference  
   f) Page number  
   g) User code/User name  
   h) User billing address  
   i) P.F. Line number  
   j) Date of flight  
   k) Flight number or aircraft registration  
   l) Flight details:  
      - time of departure  
      - airport of departure  
      - airport of arrival  
      - aircraft type  
   m) Code of exemption  
   n) Rebilling (Indicator for the rebilling of a flight)  
   o) Charge amount (credited)  
   p) Cumulative totals of charged amounts (credited)
5. BILL FOR INTEREST ON LATE PAYMENT

a) Identification of the type of charges
b) State and/or service provider name
c) Date of issue
d) Page number
e) Interest bill reference
f) User code/User name
g) User billing address
h) Interest due
i) Interest already billed
j) Interest to be paid immediately
k) Bill reference of unpaid bill
l) From date
m) To date
n) Overdue amount
o) Interest rate
p) Number of days
q) Interest amount
r) Total interest amount
s) CRCO bank details (for payments)

6. CREDIT NOTE FOR INTEREST ON LATE PAYMENT

a) Identification of the type of charges
b) State and/or service provider name
c) Date of issue
d) Page number
e) Interest credit note reference
f) User code/User name
g) User billing address
h) Interest due
i) Interest already billed
j) Interest amount credited
k) Bill reference of unpaid bill
l) From date
m) To date
n) Overdue amount
o) Interest rate
p) Number of days
q) Interest amount
r) Total interest amount
s) CRCO bank details
7. **(VAT) ANNEX TO BILL**

a) Identification of the type of charges  
b) State and/or service provider name  
c) Date of issue  
d) Flight period  
e) Document reference  
f) User code/User name  
g) User billing address  
h) User VAT number  
i) Identification of the service provider on behalf of which the VAT invoice is issued  
j) Service provider VAT number  
k) Amount liable to VAT  
l) VAT rate %  
m) VAT amount  
n) Total inclusive of VAT  

8. **(VAT) ANNEX TO CREDIT NOTE**

a) Identification of the type of charges  
b) State and/or service provider name  
c) Date of issue  
d) Note number  
e) Document reference  
f) User code/User name  
g) User billing address  
h) User VAT number  
i) Identification of the service provider on behalf of which the VAT invoice is issued  
j) Service provider VAT number  
k) Amount liable to VAT  
l) VAT rate %  
m) VAT amount  
n) Total inclusive of VAT
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APPENDIX (4): Reports to be dispatched to the CAD

These are the reports to be sent to the CAD by EUROCONTROL in addition to the documents sent in accordance with standard procedures (e.g. for the purposes of claims processing) and in addition to the annual accounts.

1. Billing

Report containing, in respect of the corresponding period of flight, the following information, in respect of terminal charges:

- Total number of flights (chargeable, exempted, total);
- Total number of service units (chargeable, exempted, total);
- Accrued income in euro.

2. Recovery

Report containing the information in respect of amounts due by flight periods and by user (monthly).

3. Accounting

- Situation of terminal charges billed
- Situation of terminal charges received
- Situation of terminal charges disbursed
- Balance - amount still outstanding
ANNEX II

TO THE AGREEMENT

BETWEEN

THE EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)

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Estimate of collection costs (in EUR)

Annual cost estimate for 2015 (in EUR)

Personnel

Personnel costs 31,100
Management 3,100

Total 1 34,200

Operating Expenditure

Supplies – Accommodation 3,200
Communications 3,600

Total 2 6,800

Total 41,000