

EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION

EUROCONTROL

- Measures of the Permanent Commission -

MEASURE N° 86/65

delegating authority to the Agency to conclude a bilateral agreement relating to terminal charges with Ente Nazionale Di Assistenza Al Volo (ENAV) of Italy.

THE PERMANENT COMMISSION FOR THE SAFETY OF AIR NAVIGATION :

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 2.2(c), 6.3, 11.3 and 12 thereof;

on the proposal of the Agency,

TAKES THE FOLLOWING MEASURE:

The Agency is delegated authority to conclude a bilateral agreement relating to terminal charges with Ente Nazionale Di Assistenza Al Volo (ENAV), 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 **13. 01. 99**



O. E. DØRUM
President of the Commission

AGREEMENT

BETWEEN ENTE NAZIONALE DI ASSISTENZA AL VOLO (ENAV) AND THE EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL) RELATING TO TERMINAL CHARGES

Ente Nazionale di Assistenza al Volo, represented by the President of the Board,
hereinafter referred to as ENAV,

and

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

Having regard to the provisions of Articles 2 § 2(c), 6 § 3, 11 § 3 and 12 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) of the Multilateral Agreement relating
to Route Charges of 12 February 1981;

Having regard to the Measure N° { } taken by the Commission delegating authority
to the Agency to conclude a bilateral agreement relating to terminal charges with ENAV.

HAVE AGREED AS FOLLOWS:

ARTICLE 1 - (Purpose)

ENAV hereby entrusts EUROCONTROL with the calculation, billing, accounting and collection on its behalf of charges for terminal air navigation services in accordance with the laws and regulations in force in Italy, and with the provisions set out in Annex I to this Agreement.

ARTICLE 2 - (Billing and Payment of Terminal Charges)

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

ARTICLE 3 - (Treatment of Claims and Information to Users)

EUROCONTROL is entrusted with the treatment of claims submitted by users. EUROCONTROL shall provide to the users information in respect of the terminal charges.

ARTICLE 4 - (Collection of Terminal Charges)

EUROCONTROL shall collect the terminal charges and take appropriate actions where a debtor has not paid the amount due. For that purpose, the terminal charges shall constitute a claim by EUROCONTROL, in accordance with the provisions set out in Annex I.

ARTICLE 5 - (Disbursement of Terminal Charges)

Terminal charges collected by EUROCONTROL on behalf of ENAV 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 ENAV, in accordance with the provisions set out in Annex I.

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. EUROCONTROL shall, on request, agree that the audit of the financial operations on behalf of ENAV be effected in accordance with the Financial Regulations and the Rules of Application of those Regulations applicable to the EUROCONTROL Route Charges System.
- 6.3. ENAV may, at its own request, or at the invitation of EUROCONTROL, participate in the auditing of the EUROCONTROL accounts in respect of the terminal charges.

ARTICLE 7 - (Transmission of Data)

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

ARTICLE 8 - (Costs)

- 8.1. The costs in respect of the execution of this Agreement shall be calculated on an annual basis.

The development costs are estimated at ECU 43 000.

The annual collection costs for the period starting on 1 January 1999 (operating costs) are estimated at ECU 249 000.

- 8.2. A breakdown of the above costs and the method of calculation are shown in Annex II to this Agreement.

- 8.3. The 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 Agency services adopted by EUROCONTROL's governing bodies.

If the charging rules of the Agency are modified, the new rules shall apply to this Agreement with effect from the date of their entry into force. Any revision of the costs shall be taken into account where it has been duly approved by EUROCONTROL's governing bodies.

- 8.4. The amount due by ENAV to EUROCONTROL for the purposes of this Agreement shall correspond to the costs in respect of the execution of this Agreement, i.e. the costs incurred by EUROCONTROL in respect of the tasks performed by it, as certified by the EUROCONTROL financial services.

ARTICLE 9 - (Payment of Costs)

Payment of costs in respect of the execution of this Agreement shall be made by ENAV according to the following time scale:

- One half of the development costs shall be paid at the beginning of operations, and the other half three months later.
- Advance payments equal to one quarter of the annual collection costs (operating costs) with effect from the starting date of operations shall be made by ENAV at intervals of three months.

At the end of each calendar year EUROCONTROL shall draw up a statement of expenditure, subject to the revision arrangements provided for in § 8.3 above and of the amounts paid by ENAV. Negative or positive balances shall be billed or reimbursed to ENAV.

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.

ARTICLE 10 - (Liability)

ENAV shall indemnify EUROCONTROL and its staff against its legal liability to third parties for damages arising out of the performance of this Agreement except in the case of negligence on the part of EUROCONTROL or its staff, insofar as those damages are attributable to them.

ARTICLE 11 - (Arbitration)

Any dispute which may arise between the Parties to this Agreement concerning the interpretation or application thereof, and which is not possible to settle by direct negotiation or by any other method, will be referred to arbitration as provided for under Article 31 of the EUROCONTROL Convention as amended at Brussels in 1981.

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 letter between the President of the Board of ENAV 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 is concluded for an unlimited period. The calculation and billing of terminal charges shall commence with effect from 1 January 1999.
- 14.2. However, either Party may terminate this Agreement at any time subject to one year's written notice.
- 14.3. The notifying Party shall be liable for any costs resulting from the termination of this Agreement unless the reason of such termination is attributable to the other Party's responsibility.

Done at Brussels on the { } of December 1998 in the English language.

For ENAV,

For EUROCONTROL,

Mr Luciano Mancini
The President of the Board

Mr Yves Lambert
Director General

OPERATING SPECIFICATIONS

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1. INTRODUCTION

- 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 ENAV, in accordance with the principles of the International Civil Aviation Organization (ICAO) as described in ICAO Document 9082/5.
- 1.2. ENAV shall endeavour to provide EUROCONTROL with the same type of financial information as for route charges.
- 1.3. EUROCONTROL shall maintain separate accounts.
- 1.4. 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 applying in the EUROCONTROL Route Charges System.
- 1.5. The listings and outputs to be dispatched to ENAV are specified at Appendix 4.
- 1.6. ENAV shall cooperate with EUROCONTROL in the calculation and collection of the terminal charges.

2. CHARGING

2.1. Definition of a chargeable flight

A terminal charge shall be levied for each flight operated in accordance with ICAO rules and regulations (General Air Traffic) departing from any aerodrome or designated aerodrome situated within the Flight Information Regions (FIRs) listed at Appendix 1.

2.2. Charging formula for the terminal charge

- 2.2.1. The terminal charge T shall be calculated in accordance with the following formula:

$$T = CTT \times p$$

where CTT is the unit rate of charge and p the weight coefficient.

- 2.2.2. The unit rate of charge CTT shall be notified to EUROCONTROL in euro with a maximum of two decimal points.
- 2.2.3. For domestic flights the unit rate shall be reduced by 50%.
- 2.2.4. For a given departing flight, p shall be equal to the Maximum Take-off Weight (MTOW) to the power 0.95. The Maximum Take-off Weight shall be expressed in metric tons and shall be the one used for calculating the EUROCONTROL route charge for the flight concerned.

2.3. Exempted flights

ENAV shall apply the same exemption criteria for terminal charges as it applies for EUROCONTROL route charges within the FIRs listed at Appendix 1.

The categories of flights exempted from the payment of terminal charges collected by EUROCONTROL shall include:

1. flights performed by aircraft of which the Maximum Take-Off Weight Authorised is less than two (2) metric tons;
2. flights performed exclusively for the transport, on official mission, of the reigning Monarch and his/her immediate family, Heads of State, Heads of Government, and Government Ministers. In all cases, this must be substantiated by the appropriate status indicator on the flight plan;
3. search and rescue flights authorised by a competent SAR body.

2.4. Consultation with users

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

3. FLIGHT DATA COLLECTION, TRANSMISSION AND PROCESSING

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

4. BILLING, CLAIMS AND INFORMATION TO USERS

4.1. General

The documents to be dispatched to users are as follows:

- 1) bill for terminal charge
- 2) pro forma statement (statement of flights)
- 3) statement of account
- 4) credit note
- 5) bill for interest on late payment
- 6) credit note for interest on late payment

These documents shall bear the EUROCONTROL letterhead. The bill and the pro forma statement shall show that the terminal charge being levied is 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, the bill for interest on late payment and the statement of account.

Appendix 3 details the variable fields to be shown on these documents.

4.2. Billing cycle

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

4.3. User claims

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

4.4. 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. COLLECTION OF CHARGES

- 5.1. Proceedings for recovery of the amount due shall be instituted either by EUROCONTROL or, at EUROCONTROL's request, by ENAV.
- 5.2. ENAV shall inform and co-operate with EUROCONTROL, as required, in respect of the procedures, competent courts, tribunals or administrative authorities in Italy.
- 5.3. The person liable to pay the terminal charge shall be the person who was the operator of the aircraft at the time when the flight was performed. Where an ICAO designator is used in the flight identification, the identity of the operator of the flight shall be deemed to be that of the aircraft operating agency to whom the ICAO designator was allocated at the time of the flight.

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.

If the operator defaults, then both the operator and the aircraft owner shall be jointly and severally liable for unpaid charges.

- 5.4. Where a debtor has not paid the amount due in respect of terminal charges, EUROCONTROL shall institute enforced recovery, which may include detention of aircraft if the applicable National law so provides.

6. FUND MANAGEMENT

- 6.1. Terminal charges collected on behalf of ENAV shall be disbursed to ENAV under the same conditions as for the route charges collected.
- 6.2. The funds shall be invested by EUROCONTROL to the benefit of ENAV for the duration between their actual collection and disbursement to ENAV.
- 6.3. Payments to third parties out of the terminal charges collected on behalf of ENAV could be arranged on request.

7. ACCOUNTING

- 7.1. The financial year shall begin on 1 January.
- 7.2. The write-off procedures as stipulated in the EUROCONTROL Financial Regulations shall apply, where appropriate, to the terminal charge.
- 7.3. Accounting data to be sent by EUROCONTROL are listed in Appendix 4.

8. PROTECTION OF DATA

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

Flight Information Regions

Milano Flight Information Region
Roma Flight Information Region
Brindisi Flight Information Region

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 will 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 final date for the submission of claims shall be shown on the bill and shall be identical to that applicable to the EUROCONTROL route charges.
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, at the legal interest rate as defined in the Italian Civil Code, and as published in the Official Gazette of the Italian Republic. The interest, entitled Interest on Late Payment, shall be simple interest calculated from day to day on the unpaid overdue amount.
2. ENAV shall notify to EUROCONTROL any variation in the legal interest rate.
3. The interest will be calculated and billed in euro.

Clause 6

Where a debtor has not paid the amount due, measures shall be taken by EUROCONTROL to enforce recovery.

Specifications of documents

1. BILL

- a) Address box
- b) Invoice number
- c) Date of issue
- d) Invoiced period
- e) User code
- f) Amount
- g) To be paid before
- h) Claims to be submitted before

Note: *The reverse side of this document contains the conditions of payment of the charges and applicable legal text.*

2. PRO FORMA STATEMENT (STATEMENT OF FLIGHTS)

- a) Address box
- b) Date
- c) Period of charge
- d) Reference
- e) Page
- f) User ICAO code
- g) Day
- h) Line (item) number
- i) Flight number or registration
- j) Details
 - Time of departure
 - Airport of departure
 - Airport of arrival
 - Aircraft type
- k) Code
- l) Deducted
- m) Charge
- n) Total per page

Note : *The reverse side of this document contains an explanatory note.*

3. STATEMENT OF ACCOUNT

- a) Date of issue
- b) Reference of Statement
- c) User address
- d) Item number
- e) Date of item number
- f) Item code
- g) Item reference
- h) Amount debit
- i) Amount credit
- j) Balance of each billing
- k) Overall balance in respect of items not settled

4. CREDIT NOTE

- a) Date of issue
- b) Credit note reference
- c) Page number
- d) User Code/User Name
- e) User billing address
- f) Pro forma reference
- g) Date of flight
- h) Flight number or registration
- i) Flight details
- j) Item code
- k) Amount credited

5. BILL FOR INTEREST ON LATE PAYMENT

- a) Date of issue
- b) Interest bill reference
- c) User name
- d) User billing address
- e) Interest due
- f) Interest already billed
- g) Interest amount to be paid
- h) Bill reference of unpaid bill
- i) From date
- j) To date
- k) Overdue amount
- l) Interest rate
- m) Number of days
- n) Interest amount
- o) CRCO bank details (for payments)

6. CREDIT NOTE FOR INTEREST ON LATE PAYMENT

- a) Date of issue
- b) Interest credit note reference
- c) User name
- d) User billing address
- e) Interest due
- f) Interest already billed
- g) Interest amount credited
- h) Bill reference of unpaid bill
- i) From date
- j) To date
- k) Overdue amount
- l) Interest rate
- m) Number of days
- n) Interest amount

Listings and outputs to be dispatched to ENAV

These are the listings and outputs to be sent to ENAV 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 (situation per aerodrome):

- total number of flights
- total number of service units
- accrued income in euro

2. Recovery

Computer listing 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

Estimate of 1999 EUROCONTROL Collection Costs (in ECU)

1. Development costs (1999 only)

Development costs	43 000
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2. Operating costs

Personnel

Personnel costs	184 000
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Missions	6 000
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Legal matters	10 000
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Total 1	200 000
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Operating Expenditure

Supplies	13 000
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Communications	32 000
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Other expenditure	4 000
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Total 2	49 000
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Total Operating Costs	249 000
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Special Financial Annex relating to Bilateral Agreement with ITALY

ITALY - Billing of terminal charges Type of Expenditure:	1998 BUDGET	1999 BUDGET	2000 FYP	2001 FYP	2002 FYP	2003 FYP
<i>Internal effort: (EUROCONTROL staff)</i>	NA	184	193	203	213	224
<i>External effort: (Contracted staff)</i>	NA	10	10	10	10	10
<i>Seconded staff: (National Administrations staff)</i>	NA	0	0	0	0	0
<i>Travel & Entertainment</i>	NA	6	1	1	1	1
<i>Training</i>	NA	0	0	0	0	0
<i>Accommodation</i>	NA	0	0	0	0	0
<i>Communication</i>	NA	32	32	32	32	32
<i>Data processing</i>	NA	43	0	0	0	0
<i>General Administrative</i>	NA	17	17	17	17	17
<i>Intangible Assets</i>	NA	0	0	0	0	0
<i>Land & buildings</i>	NA	0	0	0	0	0
<i>Installations</i>	NA	0	0	0	0	0
<i>Equipment</i>	NA	0	0	0	0	0
<i>Leased Assets</i>	NA	0	0	0	0	0
TOTAL EXPENDITURE	NA	292	253	263	273	284
<i>Compensatory receipts</i>	NA	292	253	263	273	284
BALANCE	NA	0	0	0	0	0