

DRAFT COMMISSION REGULATION

amending Commission Regulation (EC) N°1794/2006 of 6 December 2006 laying down a common charging scheme for air navigation services

Note: Changes agreed before 8 July are in yellow. Changes agreed on 8 July at SSC 36 Meeting are in blue.

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation), and in particular Articles 15(4) and 15a thereof;

Having regard to Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation), and in particular Articles 3, 5 and 11 thereof.

Whereas:

- (1) The Commission is required to establish a common charging scheme for air navigation services throughout the European Union. A Regulation providing direct application is the most suitable instrument for this purpose in order to guarantee uniform application of the common charging scheme in the single European Sky.
- (2) *Whereas (2) deleted*
- (3) The development of a common charging scheme for air navigation services provided during all phases of flight is of the utmost importance for the implementation of the single European sky. The scheme should achieve greater transparency with respect to the determination, imposition and enforcement of charges to airspace users and cost efficiency in providing air navigation service. It should also encourage efficiency of flights while maintaining and optimum safety level and stimulate integrated service provision.
- (4) In accordance with the overall objective of improving the cost efficiency of air navigation services, the charging scheme should promote the enhancement of cost and operational efficiencies in consistency and in support of the ATM Master plan.
- (5) In order to provide access for passengers to the air transport network and in particular to small and medium sized airports as well as to larger airports at an acceptable cost, Member States should be able to apply the same unit rate for terminal services charges at all airports served by the same air traffic service provider, or in several

groups of such airports, ~~as the case may be~~, in order to cover the costs of terminal services.

- (6) The common charging scheme should be consistent with Article 15 of the 1944 ICAO Chicago Convention on International Civil Aviation.
- (7) Since the majority of Member States are parties to the Eurocontrol Multilateral Agreement for route charges of 12 February 1981 and the Community has signed the protocol of accession to the Eurocontrol revised Convention, the rules developed in this Regulation should be consistent with the Eurocontrol Route Charges System.
- (8) The charging scheme should allow the optimum use of airspace, taking into account air traffic flows, in particular within functional airspace blocks as established in accordance with Article 5 of Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation).

(9) Whereas (9) deleted

- (10) It is necessary to establish requirements for complete and transparent information ~~on the cost base~~ to be made available in due time to airspace users' representatives and the competent authorities.
- (11) The level of charges imposed in particular on light aircraft should not discourage the use of facilities and services necessary for safety or the introduction of new techniques and procedures.
- (12) The charging formula for terminal air navigation services should reflect the different nature of services as compared to en route air navigation services.
- (13) Member States should be able to set their unit rates collectively, in particular when charging zones extend across the airspace of more than one Member State or when they are parties to a joint route charges system.
- (14) In order to improve the efficiency of the charging scheme and to reduce the administrative and accounting workload, Member States should be able to collect en route charges collectively within a joint route charges system through a single charge per flight.
- (15) It is important to reinforce the legal means necessary to ensure the prompt and full payment of air navigation charges by users of air navigation services.
- (16) Charges to be imposed on airspace users should be established and applied in a fair and transparent manner, after consultation of users. Such charges should be reviewed on a regular basis.
- (17) The measures provided for in this Regulation are in accordance with the opinion of the Single Sky Committee,

HAS ADOPTED THIS REGULATION:

Chapter I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation lays down the necessary measures for the development of a common charging scheme for air navigation services which is consistent with the Eurocontrol Route Charges System
2. This Regulation shall apply to air navigation services provided by air traffic service providers designated in accordance with Article 8 of Regulation (EC) No 550/2004 and by providers of meteorological services, if designated in accordance with Article 9(1) of that Regulation, for general air traffic within the ICAO EUR and AFI regions where Member States are responsible for the provision of air navigation services.
3. Member States may apply this Regulation to air navigation services provided in airspace under their responsibility within other ICAO regions, on condition that they inform the Commission and the other Member States thereof.
4. Member States may apply this Regulation to providers of air navigation services which have received permission to provide air navigation services without certification, in accordance with Article 7(5) of the service provision Regulation.
5. **Subject to Article 1(3) of the performance Regulation**, Member States may decide not to apply this Regulation to air navigation services provided at **aerodromes airports** with less than 50 000 commercial air transport movements per year, regardless of the maximum take-off mass and the number of passenger seats, **movements being counted as the sum of take-offs and landings and calculated as an average over the previous three years.**
Member States shall inform the Commission thereof. The Commission will publish periodically an updated list of exempted airports.
6. Without prejudice to the application of the principles referred to in Articles 14 and 15 of the service provision Regulation, **subject to Article 1.3 of the performance Regulation and prior to each reference period referred to in Article 11.3(d) of the framework Regulation**, Member States may decide not to calculate **determined costs as stipulated in Article 6 of this Regulation or** terminal charges as stipulated in Article 11 of this Regulation and not to set terminal unit rates as referred to in Article 13 of this Regulation in respect of air navigation services provided at **aerodromes airports** with less than 150 000 commercial air transport movements per year, regardless of the maximum take-off mass and the number of passenger seats, **movements being counted as the sum of take-offs and landings and calculated as an average over the previous three years.**

~~Before taking that decision,~~ To this effect, Member States shall carry out a detailed assessment, supported by evidence, of the extent to which the conditions laid down in Annex I are met, including consultation with airspace users' representatives ~~are met~~.

The final assessment as to whether the conditions are met against each criterion set out in Annex I and the decision of Member State shall be ~~published and~~ communicated to the Commission, giving full reasoning for the Member State's conclusions, including the outcome of the consultation with users.

Where the Commission shall deem that this assessment does not meet the conditions laid down in Annex I, it may, at the latest two months after reception of the assessment and in accordance with the procedure referred to in Article 5, paragraph 2 of the framework Regulation, request the Member State to revise the assessment. Such decision shall be taken after consultation of the Member State concerned and shall identify precisely which part(s) of the assessment has / have to be revised and the rationale of the Commission's request.

In such case, the Member State concerned shall propose a revised assessment at the latest two months after reception of the Commission's decision.

The final assessment shall be published and valid for the duration of the performance reference period.

Article 2 Definitions

For the purpose of this Regulation, the definitions in Article 2 of the framework Regulation shall apply.

In addition the following definitions shall apply:

- (a) "User of air navigation services" means the operator of the aircraft at the time when the flight was performed or, if the identity of the operator is not known, the owner of the aircraft, unless he proves that another person was the operator at that time.
- (b) "Airspace users' representative" means any legal person or entity representing the interests of one or several categories of users of air navigation services.
- (c) "IFR" means Instrument Flight Rules, as defined in Annex 2 of the 1944 Chicago Convention on International Civil Aviation (Tenth Edition – July 2005).
- (d) "VFR" means Visual Flight Rules, as defined in Annex 2 of the 1944 Chicago Convention on International Civil Aviation (Tenth Edition – July 2005).
- (e) "en route charging zone" means a volume of airspace for which a single cost base and a single unit rate are established.
- (f) "Terminal charging zone" means an airport or a group of airports for which a single cost base and a single unit rate are established.

- (g) “Commercial air transport” means any aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire.
- (h) "Determined costs" means the costs as defined in Article 15.2(a) and (b) of the service provision Regulation.
- (i) "Reference period" means the reference period for the performance scheme set up in Article 11.3(d) of the framework Regulation
- (j) "Commercial air transport movements" means the sum of take-offs and landings for commercial air transport, calculated as an average over the three years preceding the adoption of the performance plans referred to in Article 12 of the performance Regulation.
- (k) For the purpose of Article 3 “other revenues” means revenues granted by public authorities, revenues from commercial activities that air navigation service providers may avail to reduce the level of unit rates as well as, in the case of terminal unit rates, revenues from contracts or agreements between air navigation service providers and airport operators.

Article 3 Principles of the charging scheme

1. The charging scheme shall be governed by the principles set out in Article 15 of the service provision Regulation.
2. The determined costs of en route air navigation services shall be financed by means of en route charges imposed on the users of air navigation services, in accordance with the provisions of Chapter III of this Regulation, and/or other revenues.
3. The determined costs of terminal air navigation services shall be financed by means of terminal charges imposed on the users of air navigation services, in accordance with the provisions of Chapter III of this Regulation, and/or other revenues, including cross-subsidies in accordance with Community law.
4. Paragraphs 2 and 3 shall be without prejudice to the financing of exemptions of certain users of air navigation services through other sources of funding in accordance with Article 9.
5. The charging scheme shall provide transparency and consultation on the cost bases and on the allocation of the costs among different services.

Article 4 Establishment of charging zones

1. Member States shall establish charging zones in the airspace falling under their responsibility where air navigation services are provided to airspace users.

2. The charging zones shall be defined in a manner consistent with air traffic control operations and services, after consultation of airspace users' representatives.
3. An en route charging zone shall extend from the ground to, and including, upper airspace without prejudice to the possibility for a Member State to establish a specific zone for complex terminal area ~~after consultation with airspace users' representatives.~~
4. If charging zones extend across the airspace of more than one Member State, for example as a consequence of the decision to create a common charging zone in a functional airspace block, the Member States concerned shall make the appropriate arrangements to ensure to the maximum possible extent consistency and uniformity in the application of this Regulation to the airspace concerned. They shall make any differences transparent to users and notify the Commission and Eurocontrol thereof.

Chapter II
THE COSTS OF AIR NAVIGATION SERVICE
PROVISION

Article 5

Eligible services, facilities and activities

1. Air navigation service providers referred to in Article 1(2) and (4) shall establish the costs incurred in the provision of air navigation services in relation to the facilities and services provided for and implemented under the ICAO Regional Air Navigation Plan, European Region, in the charging zones under their responsibility.

Those costs shall include administrative overheads, training, studies, tests and trials as well as research and development allocated to these services.

2. **In order to set the determined costs**, Member States may establish the following costs when they are incurred in relation with the provision of air navigation services:
 - (a) **The** costs incurred by the relevant national authorities.
 - (b) **The** costs incurred by the **qualified entities**, as referred to in Article 3 of the service provision Regulation,
 - (c) **The** costs stemming from international agreements.
3. **In application of Article 15a (3) of the service provision Regulation, without prejudice to other sources of funding and in accordance with Community law, part of the charges may be used to provide funding for common projects for network-related functions that are of particular importance for the improvement of the overall performance of air traffic management and air navigation services in Europe. In such case, comprehensive and transparent accounting shall be applied to ensure that airspace users are not double-charged. The part of the determined costs corresponding to the funding of the common project shall be clearly identified.**

Article 6

Calculation of costs

1. **The determined costs established by Member States in accordance with Article 15.2 of the service provision Regulation and the actual costs shall be composed of eligible services, facilities and activities within the meaning of Article 5 and established in consistency with the accounting requirements of Article 12 of the service provision Regulation. However** The non-recurring effects resulting from the introduction of International Accounting Standards may be spread over a period not exceeding 15 years.
 - 1a. **Without prejudice to Articles 16 and 18 of the performance Regulation, the determined costs shall be fixed prior to the beginning of each reference period, as part of the performance plans referred to in Articles 11 of the framework Regulation, and 10.3(b) of the Performance Regulation for each calendar year of the reference period and both in real and nominal terms. Unit rates shall be calculated on the basis of the costs**

expressed in nominal terms. For each year of the reference period, the difference between the determined costs expressed in nominal terms prior to the reference period and the determined costs as updated on the basis of the actual inflation recorded by EUROSTAT for the year shall be carried over no later than in the year n+2.

1b. Determined costs and actual costs shall be established in national currency. Where a functional airspace block decides to establish a common charging zone with a single unit rate, the Member States concerned shall make appropriate arrangements to ensure conversion of the national costs into Euro or the national currency of one of the Member States concerned with a view to allowing the transparent calculation of the single unit rate in application of Article 13.(1a). They shall notify the Commission and Eurocontrol thereof.

2. The costs referred to in paragraph 1 shall be broken down into staff costs, other operating costs, depreciation costs, cost of capital and exceptional items including non recoverable taxes and custom duties paid, and all other related costs.

Staff costs shall include gross remuneration, payments for overtime, employers' contributions to social security schemes as well as pension costs and other benefits. Pension costs may be calculated using prudent assumptions according to the governance of the scheme and national law as appropriate and detailed in the national performance plan.

Other operating costs shall include costs incurred through the purchase of goods and services used to provide air navigation services, in particular outsourced services such as communication, external staff such as consultants, material, energy, utilities, rental of buildings, equipment and facilities, maintenance, insurance costs and travel expenses. Where an air traffic service provider purchases other air navigation services, the service provider shall include the actual expenditure for those services in its other operating costs.

Depreciation costs shall relate to the total fixed assets in operation for air navigation services purposes ~~and the adjustments to total fixed assets which may be determined and reported by the national supervisory authority within the provisions of the International Accounting Standards~~. Fixed assets shall be depreciated in accordance with their expected operating life, using the straight-line method applied to the historic costs of the assets being depreciated. ~~When the assets belong to an air navigation service provider which is subject to an incentive scheme as referred to in Article 12(2), current cost accounting may be applied instead of historic cost accounting.~~ Historic or current cost accounting may be applied for the calculation of the depreciation. The method shall remain constant during the duration of the depreciation and be consistent with the cost of capital applied. Where current cost accounting is applied, the equivalent historic cost accounting figures shall be provided to allow comparison and assessment.

Cost of capital shall be equal to the product of:

- (a) the sum of the average net book value of fixed assets and possible adjustments to total assets determined by the national supervisory authority, used by the air navigation service provider in operation or under construction, and of the average value of the net current assets, excluding interest bearing accounts, that are required for the provision of air navigation services; and

- (b) the weighted average of the interest rate on debts and of the return on equity. For air navigation service providers without any equity capital the weighted average shall be calculated on the basis of a return applied to the difference between the total assets as referred to in paragraph (a) and debts.

Exceptional items shall be non-recurring costs in relation to the provision of air navigation services that have occurred in the year.

Any adjustment outside the provisions of International Accounting Standards shall be specified in the national performance plan for review by the Commission and in the additional information to be provided in accordance with Annex II.

3. For the purposes of paragraph 2, fifth subparagraph, the weight factors shall be based on the proportion of the financing through either debt or equity. The interest rate on debts shall be equal to the average interest rate on debts of the air navigation service provider. The return on equity shall be based on the actual financial risk of the air navigation service provider. ~~When the air navigation service provider is subject to an incentive scheme as referred to in Article 12(2), an additional premium may be added to ensure adequate consideration of the specific financial risk assumed by this provider.~~

When the assets do not belong to the air navigation service provider, but are included in the calculation of the cost of capital, Member States shall ensure that the costs of these assets are not recovered twice.

Article 7 Allocation of costs

1. The costs of eligible services, facilities and activities within the meaning of Article 5 shall be allocated in a transparent way to the charging zones in respect of which they are actually incurred.
- Where costs are incurred across different charging zones, they shall be allocated in a proportional way on the basis of a transparent methodology as required in Article 8.
2. The cost for terminal services shall relate to the following services:
- (a) Aerodrome control services, aerodrome flight information services including air traffic advisory services, and alerting services;
 - (b) Air Traffic Services related to the approach and departure of aircraft within a certain distance of an airport on the basis of operational requirements. In advance of each reference period, Member States shall define for each airport the criteria used to allocate costs between terminal and en route services and inform the Commission thereof.
 - (c) An appropriate allocation of all other air navigation services components, reflecting a proportionate attribution between en route and terminal services.
3. The cost for en route services shall relate to the costs referred to in paragraph 1 to the exclusion of the costs referred to in paragraph 2.

4. If exemptions are granted to VFR flights in accordance with Article 9, the air navigation service provider shall identify the costs of air navigation services provided to VFR flights from the costs provided to IFR flights. These costs may be established through a marginal cost methodology taking into account the benefits to IFR flights stemming from the services granted to VFR flights.

Article 8

Transparency of costs and of the charging mechanism

1. Before the start of the reference period, Member States assisted by their air navigation service providers shall offer to the airspace users' representatives a detailed consultation hearing on cost bases, determined costs, planned investments, service unit forecasts, charging policy and resulting unit rates. Subsequently, they shall make their national or functional airspace blocks costs established in accordance with Article 5 available in a transparent manner to airspace users' representatives, the Commission and, where applicable Eurocontrol.
 - 1a. During the reference period, Member States shall propose annually a hearing with airspace users representatives to consult them on any deviation from the forecast, and in particular actual traffic and costs versus forecast traffic and determined costs and the implementation of the risk sharing mechanism set out in Article 11a and/or incentive schemes set out in Article 12. Such hearing may be organised on a regional basis. Airspace user representatives shall retain the right to request more consultation. User consultation shall also be organised systematically following the activation of an alert mechanism generating a revision of the unit rate.
2. The information referred to in paragraphs 1 and 1a shall be based on the reporting tables and detailed rules set out in Annexes II and VI or, where a Member State, at national or functional airspace block level, has taken the decision referred to in Article 1(6), or has indicated to the Commission that it is considering taking such a decision, in Annex III. The relevant documentation shall be put at the disposal of airspace users' representatives, the Commission, Eurocontrol and national supervisory authorities three weeks before the consultation hearing and on an annual basis, no later than 1st November.

Chapter III
**THE FINANCING OF AIR NAVIGATION SERVICE PROVISION THROUGH AIR
NAVIGATION CHARGES**

Article 9
Exemptions from air navigation charges

1. Member States shall exempt from en route charges:
 - (a) flights performed by aircraft of which the maximum take-off weight authorised is less than two metric tons;
 - (b) mixed VFR/IFR flights in the charging zones where they are performed exclusively under VFR and where a charge is not levied for VFR flights;
 - (c) flights performed exclusively for the transport, on official mission, of the reigning Monarch and his immediate family, Heads of State, Heads of Government, and Government Ministers; in all cases, this must be substantiated by the appropriate status indicator **or remark** on the flight plan;
 - (d) search and rescue flights authorised by the appropriate competent body.
2. Member States may exempt from en route charges:
 - (a) military flights performed by military aircraft of any country;
 - (b) training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew, where this is substantiated by an appropriate remark on the flight plan; flights must be performed solely within the airspace of the Member State concerned; flights must not serve for the transport of passengers and/or cargo, nor for positioning or ferrying of the aircraft;
 - (c) flights performed exclusively for the purpose of checking or testing equipment used or intended to be used as ground aids to air navigation, excluding positioning flights by the aircraft concerned;
 - (d) flights terminating at the airport from which the aircraft has taken off and during which no intermediate landing has been made;
 - (e) VFR flights;
 - (f) humanitarian flights authorised by the appropriate competent body;
 - (g) custom and police flights.
3. Member States may exempt from terminal charges the flights referred to in paragraph 1 and 2.

~~4. The costs incurred for exempted flights shall not be taken into account for the calculation of the unit rates.~~

~~These costs~~ The costs incurred for exempted flights shall be composed of:

- (a) The cost of exempted VFR flights as identified in Article 7(4) and;
- (b) The costs of exempted IFR flights which shall be calculated as the product of the costs incurred for IFR flights and the proportion of the number of exempted service units and the total number of service units; the cost incurred for IFR flights shall be equal to the total costs less the cost of VFR flights.

Member States shall ensure that air navigation service providers are reimbursed for the services they have provided to exempted flights.

Article 10

Calculation of en route charges

1. Without prejudice to the possibility under Article 3(2) of financing en route air navigation services through other revenues, the en route charge for a specific flight in a specific en route charging zone shall be equal to the product of the unit rate established for this en route charging zone and the en route service units for this flight.
2. ~~Without prejudice to the implementation by a Member State of an incentive scheme with regard to air navigation service providers in accordance with Article 12(2),~~ The unit rate and the en route service units in the en route charging zone shall be calculated in accordance with Annex IV, by dividing the forecast number of chargeable en route service units for the relevant year into the forecast costs for air navigation services. ~~The forecasts costs shall include the balance resulting from over or under recovery of previous years.~~
3. ~~The en route service units shall be calculated in accordance with Annex IV.~~

Article 11

Calculation of terminal charges

1. Without prejudice to the possibility under Article 3(3) of financing terminal air navigation services through other revenues, the terminal charge for a specific flight in a specific terminal charging zone shall be equal to the product of the unit rate established for this terminal charging zone and the terminal service units for this flight. For charging purposes, approach and departure shall count as a single flight. The counting unit shall be either the arriving or the departing flight.
2. ~~Without prejudice to the implementation by a Member State of an incentive scheme with regard to air navigation service providers in accordance with Article 12(2),~~ The unit rate and the terminal service units in the terminal charging zone shall be calculated in accordance with Annex V, by dividing the forecast number of chargeable terminal service units for the relevant year into the forecast costs for air navigation

services. The forecast costs shall include the balance resulting from over or under recovery of previous years.

3. The terminal service units shall be calculated in accordance with Annex V.

Article 11a.
Risk sharing

In application of the principles contained in Article 11 of the performance Regulation, the following provisions shall apply:

1. Traffic risk:

- (a) The determined costs established in application of Article 5.2 to the exception of agreements relating to cross border air traffic service provision, the determined costs of meteorological service providers, the carry overs authorised from a previous year or reference period and bonuses or penalties resulting from incentive schemes shall not be submitted to traffic risk sharing; they shall be recovered irrespective of traffic evolution. Over or under recoveries resulting from traffic variations shall be recovered no later than in year n+2. Member States may exempt from traffic risk sharing the determined costs of providers of air navigation services which have received permission to provide air navigation services without certification, in accordance with Article 7(5) of the service provision Regulation.
- (b) Where, over a given year, the actual number of service units is not higher or lower by more than 2% than the forecast established at the beginning of the reference period, the additional revenue or loss in revenue of the air navigation service provider in respect of determined costs shall not be carried over.
- (c) Where, over a given year n, the actual number of service units is higher by more than 2% than the forecast established at the beginning of the reference period, a minimum of 70% of the additional revenue obtained by the air navigation service provider(s) concerned in excess of the 2% of difference between the actual service units and the forecast in respect of determined costs shall be returned to airspace users no later than in year n+2.
- (d) Where, over a given year n, the actual number of service units is lower by more than 2% than the forecast established at the beginning of the reference period, a maximum of 70% of the loss in revenue incurred by the air navigation service provider(s) concerned in excess of the 2% of difference between the actual service units and the forecast in respect of determined costs shall be borne by the airspace users in principle no later than in year n+2. However, Member States may decide to spread the carry over of such loss in revenue over several years with a view to preserving the stability of the unit rate.
- (e) The allocation of traffic risk established in paragraphs (c) and (d) above shall be determined for the entire reference period, following the consultation referred to

in Article 8, and set by the national or functional airspace block performance plan.

- (f) Where, over a given year n, the actual service units are lower than 90% of the forecast established at the beginning of the reference period, the full amount of the loss in revenue incurred by the air navigation service provider(s) concerned in excess of the 10% of the difference between the actual service units and the forecast in respect of determined costs shall be borne by the airspace users in principle no later than in year n+2. However, Member States may decide to spread the carry over of such loss in revenue over several years with a view to preserving the stability of the unit rate.
- (g) Where, over a given year n, the actual service units are higher than 110% of the forecast established at the beginning of the reference period, the full amount of the additional revenue obtained by the air navigation service provider(s) concerned in excess of the 10% of the difference between the actual service units and the forecast in respect of determined costs shall be returned to airspace users no later than in year n+2.
- (h) Air navigation service providers without any equity capital or with an equity capital below 5% of total liabilities as at 31st December 2011 may not be submitted to traffic risk sharing for the first reference period, in order to allow achieving a lower proportion of debt financing. Such decision shall be specified in the performance plan for review by the Commission and in the additional information to be provided in accordance with Annex II. Member States shall describe and justify the measures planned to achieve the lower proportion of debt financing and their timing.

2. Cost risk:

- (a) Where, over the whole reference period, actual costs are lower than the determined costs established at the beginning of the reference period, the resulting difference shall be retained by the air navigation service provider, Member State or qualified entity concerned.
- (b) Where, over the whole reference period, actual costs are higher than the determined costs established at the beginning of the reference period, without prejudice to the activation of an alert mechanism in application of Article 18 of the performance Regulation, the resulting difference shall be borne by the air navigation service provider, Member State or qualified entity concerned.
- (c) Paragraphs (a) and (b) may not apply to the difference between actual and determined costs due to:
 - (i) Unforeseen changes due to national pension regulations and pension accounting regulations
 - (ii) Unforeseen changes due to national taxation law
 - (iii) Unforeseen and new cost items not covered in the national performance plan but required by obligations set by law

(iv) Unforeseen changes in costs or revenues based on obligations set by international agreements

(v) Significant changes in interest rates on loans

which may be deemed to be out of the control of the air navigation service providers, Member States or qualified entities. Without prejudice to Article 6.1(a), a list of uncontrollable cost factors shall be pre determined by the national supervisory authority from the above list and form part of the performance plan.

For such cost factors, where, over the whole reference period, actual costs are lower than the determined costs established at the beginning of the reference period, the resulting difference shall be returned to airspace users through a carry-over to the following reference period.

For such cost factors, where, over the whole reference period, actual costs are higher than the determined costs established at the beginning of the reference period, the resulting difference shall be passed on to airspace users through a carry-over to the following period. To this effect the national supervisory authority concerned shall ascertain that:

i) the variation of actual costs against determined costs is actually the result of developments that are beyond the influence of the air navigation service provider, Member State or qualified entity concerned;

ii) the variation in costs to be passed on to users is specifically identified and categorised

and shall give its explicit agreement to the carry-over.

The amounts carried over shall be specified by factors and described in the additional information to be provided in accordance with Annex VI.

Article 12

Incentive schemes

1. Member States or functional airspace blocks may establish or approve incentive schemes consisting of financial advantages or disadvantages on a non-discriminatory and transparent basis to support improvements in the provision of air navigation services or the reduction of the environmental impact of aviation, resulting in a different calculation of charges according to paragraphs 2 and 3. These incentives may apply to air navigation service providers and/or airspace users.

2. In accordance with Article 11 of the Performance Regulation, Member States, at national or functional airspace block level, may adopt financial incentives to the achievement of capacity performance targets by their air navigation service providers. To this effect the unit rate may be adjusted to provide for a bonus or penalty according to the actual performance level of the air navigation service provider against the relevant target. Such bonus or penalties shall only be activated when performance variations result in substantive impacts to users. The performance variation levels and the applicable level of bonus and penalties shall be determined following the consultation referred to in Article 8 and be set by the national or functional airspace

block performance plan. The applicable level of bonuses and penalties shall be commensurate with the targets to be reached and the performance achieved.

3. When a Member State decides to apply an incentive scheme, ~~including night time modulations,~~ in respect of users of air navigation services, it shall, following the consultation referred to in Article 8, modulate charges incurred by them in order to reflect efforts made by these users to, **in particular:**
 - a) **optimise the use of air navigation services;**
 - b) **reduce the environmental impact of flying;**
 - c) reduce the overall costs of air navigation services and increase their efficiency, in particular by decreasing **or modulating** charges according to airborne equipment that increases capacity or ~~to~~ offsetting the inconvenience of choosing less congested routings;
 - d) **accelerate the deployment of SESAR ATM capabilities.**

The incentive schemes shall be limited in time, scope and amount. The estimated savings generated by the operational efficiency improvements shall at least offset the cost of incentives within a reasonable timeframe. The scheme shall be subject to regular review involving airspace users' representatives.

4. Member States which have established or approved incentive schemes shall monitor the proper implementation by air navigation service providers of these incentive schemes.

Article 13

Setting of unit rates for charging zones

1. Member States shall ensure that unit rates are set for each charging zone on an annual basis. ~~They may also ensure that unit rates are set in advance for each year of a period not exceeding five years.~~
 - 1.a **Unit rates shall be set in national currency. Where a functional airspace block decides to establish a common charging zone with a single unit rate, this unit rate shall be set in Euro or in one of the national currencies of one of the Member States concerned. The Member States concerned shall notify the Commission and Eurocontrol thereof.**
2. **Further to Articles 11.4(e) of the framework Regulation and 18 of the performance Regulation, in case of activation of an alert mechanism,** unit rates may be amended during the course of the year.
3. Member States shall inform the Commission and Eurocontrol, where appropriate, of the unit rates set for each charging zones.
4. **Unit rates for the first year of the reference period shall be calculated on the basis of the performance plan communicated by the Member State or functional airspace block concerned as at 1st November of the preceding year. Where performance plans are**

adopted later than 1 November of the year preceding the beginning of the reference period, unit rates shall be recalculated if necessary on the basis of the finally adopted plan and/or the decided corrective measures.

Article 14 Collection of charges

1. Member States may collect charges through a single charge per flight. Where charges are billed and collected on a regional basis, the billing currency may be the Euro and an administrative unit rate remunerating billing and collection costs may be added to the unit rate concerned.
2. Users of air navigation services shall promptly and fully pay all air navigation charges.
3. Member States shall ensure that effective enforcement measures are applied. These measures may include the denial of services, detention of aircraft or other enforcement measures in accordance with applicable law.

Article 15

Transparency of the charging mechanism

- ~~1. Member States shall ensure that airspace users' representatives are consulted on the charging policy on a regular basis. To this end, they shall provide them with the necessary information on their charging mechanism as set out in Annex VI, or where a Member State has taken the decision referred to in Article 1(6), in Annex III, part 2 and organise an effective and transparent consultation hearing to present this information as well as the information referred to in Article 8, in the presence of the air navigation service providers involved.~~
- ~~2. Without prejudice to Article 18 of the service provision Regulation, the relevant documentation shall be put at the disposal of airspace users' representatives, the Commission, Eurocontrol and national supervisory authorities three weeks before the consultation hearing.~~

Chapter IV **FINAL PROVISIONS**

Article 16 **Appeal**

Member States shall ensure that decisions taken pursuant to this Regulation are properly reasoned and are subject to an effective review and/or appeal procedure

Article 17 **Facilitation of compliance monitoring**

Air navigation service providers shall facilitate inspections and surveys by the national supervisory authority or by a **qualified entity** acting on the latter's behalf, including site visits. **The authorised** persons shall be empowered:

- (a) to examine the relevant accounting documents, asset books, inventories and any other material relevant to the establishment of air navigation charges;
- (b) to take copies of or extracts from such documents;
- (c) to ask for an oral explanation on site;
- (d) to enter relevant premises, lands or means of transport.

Such inspections and surveys shall be carried out in compliance with the procedures in force in the Member State in which they are to be undertaken.

Article 17a **Review**

The review by the Commission of the performance scheme, referred to in Article 24 of the performance Regulation, shall cover in particular the risk sharing mechanism set up in Article 11a, the incentive schemes set up in Article 12 and their impact and effectiveness in achieving the set performance targets.

Article 18 **Entry into force**

This Regulation shall enter into force on the **twentieth** day following that of its publication in the Official Journal of the European Union.

This Regulation shall start applying to the air navigation services costs, charges and unit rates of the year 2012.

Those member States where national regulations, already existing prior to 8th July 2010, establish a reduction on the unit rate going beyond the European Union-wide targets established in accordance with the performance Regulation may exempt their air navigation service providers from the application of Article 11a (1) (b). The application of this exemption shall have a transitional nature and shall be applicable during those years for which

the national regulations establish the reduction on the unit rate but not longer than the first reference period. Member States shall inform the Commission and Eurocontrol thereof.

Member States may defer the application of this Regulation in respect of terminal charges until 1 January 2015. They shall notify the Commission thereof. In such case, the full costs of the provision of terminal air navigation services may be recovered until 31 December 2014.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX I
ASSESSMENT OF THE CONDITIONS FOR THE PROVISION OF AIR
NAVIGATION SERVICES AT AIRPORTS FALLING WITHIN ARTICLE 1(6)

The conditions to be assessed under Article 1(6) are the following:

1. The extent to which air navigation service providers can freely offer to provide or withdraw from the provision of air navigation services at airports:
 - the existence or otherwise of any significant economic barriers that would prevent an air navigation service provider from offering to provide or withdrawing from the provision of air navigation services;
 - the existence or otherwise of any significant legal barriers that would prevent an air navigation service provider from offering to provide or withdrawing from the provision of air navigation services;
 - the length of contract duration;
 - the existence of a procedure allowing assets and staff to be transferred from one air navigation service provider to another.
2. The extent to which airports can freely determine who will provide their air navigation services, including the option to self-supply:
 - the ability or otherwise of airports to move towards self-supply of air navigation services;
 - the existence or otherwise of legal, contractual or practical barriers to an airport's ability to change air navigation service provider;
 - the role of airspace users' representatives in the selection process of the air navigation service provider.
3. The extent to which there is a range of air navigation service providers' from which airports can choose:
 - the existence or otherwise of structural rigidity which restricts the effective choice of the air navigation services for airports;
 - evidence of alternative air navigation service providers, including the option of self-supply that provides choice in the selection of air navigation services by airports.
4. The extent to which airports are subject to commercial cost pressures or incentive-based regulation:
 - whether airports actively compete for airline business;
 - the extent to which airports bear the air navigation service charge;
 - whether airports operate in a competitive environment or under economic incentives designed to cap prices or otherwise incentivise cost reductions.
5. Above 150 000 commercial movements per year the assessment referred to in Paragraphs 1 to 4 above shall be carried out at the level of each individual airport.

ANNEX II TRANSPARENCY OF THE COST BASE

1. REPORTING TABLE

Member States as well as air navigation service providers shall fill the following reporting table for each charging zone under their responsibility and for each reference period. Member States shall also provide a consolidated reporting table for each charging zone under their responsibility.

A consolidated table shall be filled for all airports submitted to the provision of this Regulation. ~~The figures shall be actual figures for year (n-3) until year (n-1) and planned figures for year (n) onwards.~~

When a charging zone extends across the airspace of more than one Member State, they shall fill the table jointly in accordance with the arrangements referred to in Article 4(4)

Actual costs shall be established on the basis of the certified accounts. The costs shall be established in accordance with the business plan required by the certificate and reported in the currency in which they are established in accordance with Article 6.1.b.

In order to facilitate the establishment by the Commission of European Union-wide performance targets and without prejudice to the performance plans to be adopted at national or functional airspace block level, Member States as well as air navigation service providers shall fill such reporting table with initial forecast figures 18 months before the start of a reference period.

(Reporting table produced separately)

2. ADDITIONAL INFORMATION

In addition, Member States as well as air navigation service providers shall provide at least the following information:

- Description of the methodology used for allocating costs of facilities or services between different air navigation services based on the list of facilities and services listed in ICAO Regional Air Navigation Plan, European Region (Doc 7754) and description of the methodology used for allocating those costs between different charging zones;
- ~~Description and explanation of differences between planned and actual figures for year (n-1);~~
- ~~Description and explanation of the five-year planned costs based on the business plan~~
- ~~Description of the costs incurred by Member States (Other State costs);~~
- Description and explanation of the method adopted for the calculation of depreciation costs: historic costs or current costs. When current cost accounting is adopted, provision of comparable historic cost data;
- ~~Justification for the cost of capital, including the components of the asset base, the possible adjustments to total assets and the return on equity;~~

- Description of the total determined costs for each airport submitted to the provision of this Regulation for each terminal charging zone; For airports with less than 20 000 commercial air transport movements per year being calculated as the average over the previous three years, costs may be presented in an aggregated way per aerodrome;
- Definition of the criteria used to allocate costs between terminal and en route services for each regulated airport;
- Breakdown of the meteorological costs between direct costs and “MET core costs” defined as the costs of supporting meteorological facilities and services that also serve meteorological requirements in general. These include general analysis and forecasting, surface and upper-air observation networks, meteorological communication systems, data processing centres and supporting core research, training and administration;
- Description of the methodology used for allocating total MET costs and MET core costs to civil aviation and between charging zones;
- As requested in Paragraph 1, eighteen months before the start of a reference period, description of the reported forecast costs and traffic;
- Every year of the reference period, description of the reported actual costs and their difference against the determined costs.

ANNEX III
SPECIFIC TRANSPARENCY REQUIREMENTS FOR THE PROVISION OF AIR
NAVIGATION SERVICES AT AIRPORTS FALLING WITHIN ARTICLE 1(6)

1. THE COSTS OF AIR NAVIGATION SERVICES

1.1. Reporting table

Air navigation service providers shall fill the following reporting table for each terminal charging zone under their responsibility.

The figures shall be actual figures for year (n-3) until year (n-1) and planned figures for year (n) onwards. Actual costs shall be established on the basis of the certified accounts. Planned costs shall be established in accordance with the business plan required by the certificate. Costs shall be established in national currency.

(Reporting table –no change proposed)

1.2. Additional information

In addition, air navigation service providers shall provide at least the following information:

- Description of the **criteria** used for allocating costs of facilities or services between different air navigation services based on the list of facilities and services listed in ICAO Regional Air Navigation Plan, European Region (Doc 7754);
- Description and explanation of differences between planned and actual non-confidential figures for year (n-1);
- Description and explanation of non-confidential five year planned costs and investments in relation to expected traffic;
- Description and explanation of the method adopted for the calculation of depreciation costs: historic costs or current costs;
- **Justification** for the cost of capital, including the components of the asset base, **the possible adjustments to total assets and the return on equity**.

2. THE FINANCING OF AIR NAVIGATION SERVICES

Air navigation service providers shall provide the following information for each terminal charging zone: Description of the way(s) by which the costs of air navigation services are financed.

ANNEX IV
CALCULATION OF THE EN ROUTE SERVICE UNITS AND UNIT RATES

1. Calculation of en route service units

- 1.1 The en route service unit shall be calculated as the multiplication of the distance factor and the weight factor for the aircraft concerned.
- 1.2 The distance factor shall be obtained by dividing by one hundred the number of kilometres flown in the great circle distance between the entry and the exit point of the charging zones, according to the latest known flight plan filed by the aircraft concerned for air traffic flow purposes.
- 1.3 If the exit and entry point of one flight are identical in a charging zone, the distance factor shall be equal to the distance in the great circle distance between these points and the most distant point of the flight plan multiplied by two (2).
- 1.4 The distance to be taken into account shall be reduced by 20 kilometres for each take-off from and for each landing on the territory of a Member State.
- 1.5 The weight factor, expressed as a figure taken to two decimal places, shall be the square root of the quotient obtained by dividing by fifty the number of metric tons in the maximum certificated take-off weight of the aircraft as shown in the certificate of airworthiness or any equivalent official document provided by the aircraft operator. Where this weight is unknown, the weight of the heaviest aircraft of the same type known to exist shall be used. Where an aircraft has multiple certificated maximum take-off weights, the maximum one shall be used. Where an aircraft operator operates two or more aircraft which are different versions of the same type, the average of the maximum take-off weights of all his aircraft of that type shall be used for each aircraft of that type. The calculation of the weight factor per aircraft type and per operator shall be effected at least once a year.

2. Calculation of en route unit rates

- 2.1 The en route unit rate shall be calculated before the beginning of each year of the reference period.
- 2.2 It shall be calculated by dividing the forecast number of total en route service units for the relevant year into the algebraic sum of the following elements:
 - i) the determined costs of the relevant year
 - ii) the application of the difference between forecasted and actual inflation as referred to in Article 6.1 a
 - iii) the carry-overs resulting from the implementation of the traffic risk-sharing referred to in Article 11a.(1)
 - iv) the carry-overs from the previous reference period resulting from the implementation of the cost risk-sharing referred to in Article 11a.(2)
 - v) bonuses and penalties resulting from the financial incentives referred to in Article 12 (2)

- vi) for the first two reference periods, the over or under recoveries incurred by Member States up to the year 2011 included.
- vii) a deduction of the costs of VFR flights as identified in Article 7.4

ANNEX V
CALCULATION OF THE TERMINAL SERVICE UNITS AND UNIT RATES

1. Calculation of terminal service units

- 1.1 The terminal service unit shall be equal to the weight factor for the aircraft concerned.
- 1.2 The weight factor, expressed as a figure taken to two decimal places, shall be the quotient, obtained by dividing by fifty the number of metric tons in the highest maximum certified take-off weight of the aircraft, referred to in Annex IV paragraph 1.5, to the power of 0.7. However, in a transitional period of five years following the calculation of the first terminal unit rate under this Regulation, this exponent shall be comprised between 0.5 and 0.9.

2. Calculation of terminal unit rates

- 2.1 The terminal unit rate shall be calculated before the beginning of each year of the reference period.
- 2.2 It shall be calculated by dividing the forecast number of total terminal service units for the relevant year into the algebraic sum of the following elements:
- i) the determined costs of the relevant year
 - ii) the application of the difference between forecasted and actual inflation as referred to in Article 6.1a
 - iii) the carry-overs resulting from the implementation of the traffic risk-sharing referred to in Article 11a.(1)
 - iv) the carry-overs from the previous reference period resulting from the implementation of the cost risk-sharing referred to in Article 11a.(2)
 - v) bonuses and penalties resulting from the financial incentives referred to in Article 12 (2)
 - vi) for the first two reference periods, the over or under recoveries incurred by Member States up to the year preceding the application of this Regulation to terminal charges.
 - vii) a deduction of the costs of VFR flights as identified in Article 7.4

ANNEX VI CHARGING MECHANISM

1. REPORTING TABLE

Member States as well as air navigation service providers shall fill the following reporting table for each charging zone under their responsibility and for each reference period. Member States shall also provide a consolidated table ¹ for each charging zone under their responsibility.

When a charging zone extends across the airspace of more than one Member State, they shall fill the table jointly in accordance with the arrangements referred to in Article 4(4). The figures shall be actual figures for year (n-3) until year (n-1) and planned figures for year (n) onwards. The “Total costs” shall be established as the sum of all total costs presented in Table 1 which are allocated to this charging zone.

(Reporting table produced separately)

2. ADDITIONAL INFORMATION

In addition, the Member States concerned shall collect and provide at least the following information:

- Description and rationale for the establishment of the different charging zones, in particular with regard to terminal charging zones and potential cross-subsidies between airports;
- Description and explanation on the calculation of the forecast chargeable service units;
- ~~Description and explanation of the methodology used with respect to the recovery of the balance resulting from over or under recovery of previous years~~
- Description of the policy on exemptions and description of the financing means to cover the related costs;
- Description of the carry-overs of over or under recoveries incurred by Member States up to the year 2011 for en route charges and up to the year preceding the application of this Regulation for terminal charges;
- Description of the under recoveries carried over in accordance with Article 11a. 1 (d);
- Description by factors of the amounts carried over from the previous reference period in accordance with Article 11a. 2(c);
- Description of the other revenues when they exist;
- Description of the formula used for calculating terminal charges
- ~~Description and explanation of incentives applied on air navigation service providers and, in particular, the modalities to be applied in setting regulatory conditions on the level of unit rates. Description and explanation of the objectives in term of performance and on the modalities to take them into account in the setting of maximum unit rates;~~

~~Description of the plans of air navigation service providers in order to meet projected demand and performance objectives;~~

- Description and explanation of incentives applied on users of air navigation services.