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Delegations will find attached document D029685/02.

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Brussels, **XXX**
[...](2013) **XXX** draft

COMMISSION REGULATION (EU) No .../..

of **XXX**

**on the fees and charges levied by the European Aviation Safety Agency, and repealing
Regulation (EC) No 593/2007**

(Text with EEA relevance)

COMMISSION REGULATION (EU) No .../..

of XXX

on the fees and charges levied by the European Aviation Safety Agency, and repealing Regulation (EC) No 593/2007

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC¹, in particular Article 64(1) thereof,

After consulting the Management Board of the European Aviation Safety Agency,

Whereas:

- (1) The revenues of the European Aviation Safety Agency (hereinafter ‘the Agency’), consist of a contribution from the Union and from any European third country which has entered into the agreements referred to in Article 66 of Regulation (EC) No 216/2008, of the fees paid by applicants for certificates and approvals issued, maintained or amended by the Agency, and of charges for publications, handling of appeals, training and any other service provided by the Agency.
- (2) Commission Regulation (EC) No 593/2007² established the fees and charges to be levied by the Agency. However, the tariffs need to be adjusted in order to ensure a balance between the costs incurred by the Agency for related certification tasks and services provided, and the revenues to cover said costs.
- (3) Fees and charges provided for in this Regulation should be set in a transparent, fair and uniform manner.
- (4) The fees levied by the Agency should not jeopardize the competitiveness of the European industries concerned. Furthermore, they should be established on a basis which takes due account of the ability of small undertakings to pay.

¹ OJ L 79, 19.3.2008, p. 1.

² Commission Regulation (EC) No 593/2007 of 31 May 2007 on the fees and charges levied by the European Aviation Safety Agency (OJ L 140, 1.6.2007, p. 3.).

- (5) While civil aviation safety should be the prime concern, the Agency should nevertheless take full account of cost efficiency when conducting the tasks incumbent on it.
- (6) The geographical location of the undertakings in the territories of the Member States should not be a discriminatory factor. Consequently, the travel costs related to the certification tasks carried out on behalf of such undertakings should be aggregated and divided between the applicants.
- (7) This Regulation foresees the possibility for the Agency to charge fees for certification tasks which are not mentioned in the Annex to this Regulation, but which fall within the remits of Regulation (EC) No 216/2008.
- (8) The applicant should have the choice to request a financial quote of the estimated amount to be paid for the certification task or service. The criteria for determining the amount to be paid should be clear, uniform and public. Where it is not possible to accurately determine this amount in advance, transparent principles for assessing the amount to be paid during the provision of the certification task or service should be established by the Agency.
- (9) Deadlines for the payment of fees and charges levied under this Regulation should be fixed.
- (10) Appropriate remedies in cases of non-payment should be laid down such as the termination of the related application processes, invalidation of related approvals, prevention of any further provision of certification tasks or services to the same applicant, and recovery of the outstanding amount through available means.
- (11) The industry should enjoy good financial visibility and be able to anticipate the cost of the fees and charges it will be required to pay. At the same time, it is necessary to ensure a balance between overall expenditure incurred by the Agency in carrying out certification tasks and services provided, and overall income from the fees and charges it levies. In accordance with provisions of the Framework Financial Regulation³, fees and charges should be set at the level such to avoid a deficit or a significant accumulation of surplus. It should therefore be mandatory to review the levels of fees and charges if a significant deficit or surplus becomes recurrent on the basis of the Agency's financial results and forecasts.
- (12) Interested parties should be consulted prior to any change of fees. Moreover, the Agency should regularly provide interested parties with information on how and on what basis the fees are calculated. Such information should provide interested parties with an insight into the costs incurred by the Agency and its productivity.
- (13) The tariffs set out in this Regulation should be based on Agency's forecasts as regards its workload and related costs. The revision of the tariffs should follow a procedure that permits amendment without undue delay based on the Agency's experience gained from the application of this Regulation, continuous resource and working

³ Draft Commission delegated Regulation on the framework Financial Regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, expected to enter into force as of 1 January 2014.

methodology monitoring and associated efficiency gains, and the continuous assessment of the financial needs. In this context it should be noted that the Agency will, no later than January 2016, be obliged to cover, from the fees and charges income, contributions to the pension schemes of its staff financed through the Agency's fees and charges. The fees and charges will need to be adjusted to meet that financial requirement.

- (14) The costs related to services provided by the Agency in the field of air traffic management and air navigation services (ATM/ANS) will need to become eligible to be financed by charges imposed on users of air navigation services in accordance with Article 6 of Commission Regulation (EU) No 391/2013.
- (15) It is reasonable that the full payment of the charges for an appeal against decisions of the Agency is a prerequisite for the appeal to be admissible.
- (16) Agreements referred to in Article 12(1) of Regulation (EC) No 216/2008 should provide a basis for the evaluation of the actual workload involved in the certification of third countries' products. In principle, the process for validation by the Agency of certificates issued by a third country with which the Union has an appropriate agreement is described in these agreements and should result in a different workload from the process required for certification activities by the Agency.
- (17) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 65(1) of Regulation (EC) No 216/2008.
- (18) Regulation (EC) No 593/2007 should therefore be repealed,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation determines the matters for which fees and charges are due, establishes the amount of the fees and charges and the way in which they are to be paid.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'fees' means the amounts levied by the Agency and payable by applicants for certification tasks;

(b) ‘charges’ means the amounts levied by the Agency and payable by applicants for services provided by the Agency other than certification or, in the case of an appeal, by the natural or legal person lodging the appeal;

(c) ‘certification task’ means all activities carried out by the Agency directly or indirectly for the purposes of issuing, maintaining or amending certificates pursuant to Regulation (EC) No 216/2008 and its implementing rules;

(d) ‘service’ means all activities carried out by the Agency other than certification task, including supply of goods;

(e) ‘applicant’ means any natural or legal person requesting to benefit from a certification task or a service provided by the Agency;

Article 3

Determination of fees and charges

1. The fees and charges shall be demanded and levied by the Agency only in accordance with this Regulation.
2. Member States shall not levy fees for certification tasks, even if they carry out those tasks on behalf of the Agency. The Agency shall reimburse the Member States for the certification tasks they provide on its behalf.
3. Fees and charges shall be denominated and payable in euros.
4. The amounts referred to in Parts I and II of the Annex shall be annually indexed to the inflation rate in accordance with the method set out in Part IV of the Annex.
5. By way of derogation from the fees referred to in the Annex, fees for certification tasks performed in the context of a bilateral agreement between the Union and a third country may be subject to dedicated provisions stipulated in the respective bilateral agreement.

Article 4

Payment of fees or charges

1. The Agency shall establish the terms of payment of fees and charges, outlining under which conditions the Agency charges for certification tasks and services. The Agency shall publish the terms on the Agency’s website.
2. The applicant shall pay the amount due in full, including possible bank charges related to the payment, within 30 calendar days from the date on which the invoice is notified to the applicant.
3. Where payment of an invoice has not been received by the Agency after the time period referred to in paragraph 2, the Agency may charge interest for each delayed calendar day.

4. The interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the due date falls, increased by eight percentage points.

5. Where the Agency has evidence that the applicant's financial ability is at risk, it may reject an application unless the applicant provides a bank guarantee or secured deposit.

6. The Agency may reject an application, where the applicant has not fulfilled its payment obligations arising out of certification tasks or services performed by the Agency, unless the applicant pays for the outstanding amounts due for those certification tasks or services provided.

Article 5 **Travel expenses**

1. Where a certification task or service, as referred to in Part I and Part II point 1 of the Annex, is conducted, fully or in part, outside the territories of the Member States, the applicant shall pay the travel expenses according to the formula:

$$d = v + a + h_1 - e$$

2. For the services referred to in Part II point 2 the applicant shall pay, irrespective of the geographical location where the service is conducted, the travel expenses according to the formula:

$$d = v + a + h_2$$

3. For the purpose of the formulas referred to in paragraphs 1 and 2, the following shall apply:

d = travel expenses due;

v = transport costs;

a = Official Commission standard rates for "Per Diems" covering accommodation, meals, local travel within the place of mission and sundry expenses⁴;

h_1 = travel time (hours spent by experts proportionate to the travel involved), charged at the hourly rate set out in Part II point 1 of the Annex;

h_2 = travel time (hours spent by experts proportionate to the travel involved), charged at the hourly rate set out in Part II point 2 of the Annex;

e = average travel costs inside the territories of the Member States, including the average transport costs and average travel time inside the territories of the Member States, multiplied

⁴ See 'Current per diems rates' as communicated on the Commission's EuropeAid website (http://ec.europa.eu/europeaid/work/procedures/implementation/per_diems/index_en.htm), latest update 5 July 2013.

by the hourly rate set out in Part II point 1 of the Annex. It is subject to annual review and indexation.

Article 6
Financial Quote

1. The applicant may request a financial estimate for amounts to be paid.
2. Where the applicant requests a financial estimate or its amendment, activities shall be suspended until the relevant estimate has been provided by the Agency and accepted by the applicant.
3. The financial estimate shall be amended by the Agency if it appears that the task is simpler or can be carried faster than initially foreseen or, on the contrary, if it is more complex and takes longer to carry out than the Agency could reasonably have foreseen.

CHAPTER II

FEES

Article 7
General provisions as regards payment of the fees

1. The certification task is subject to prior payment of the full amount of the fee due, unless the Agency decides otherwise after due consideration of the financial risks. The Agency may invoice the fee in one instalment after having received the application or at the start of the annual or surveillance period.
2. The fee to be paid by the applicant for a given certification task shall consist of:
 - (a) a flat fee set out in Part I of the Annex; or
 - (b) a variable fee.
3. The variable fee referred to in point (b) of paragraph 2 shall be established by multiplying the actual number of working hours and the hourly rate set out in Part II point 1 of the Annex.
4. Upon application of future Regulations pertaining to certification tasks to be carried out by the Agency in accordance with the relevant provisions contained in Regulation (EC) No 216/2008, the Agency may levy fees according to Part II point 1 of the Annex for certification tasks other than those referred to in the Annex until such time that specific provisions on the relevant fees to be levied by the Agency can be incorporated in this Regulation.

Article 8
Payment periods

1. Fees referred to in tables 1 to 4 of Part I of the Annex shall be levied per application and per period of 12 months. For the period after the first 12 months, the fees shall be 1/365th of the relevant annual fee per day.
2. Fees referred to in table 5 of Part I of the Annex, shall be levied per application.
3. Fees referred to in table 6 of Part I of the Annex, shall be levied per period of 12 months.
4. The fees related to organisations referred to in Tables 7 to 11 of Part I of the Annex shall be levied as follows:
 - (a) approval fees shall be levied per application;
 - (b) surveillance fees shall be levied per period of 12 months;
 - (c) any changes to the organisation that affect its approval have the effect of a recalculation of the surveillance fee due as of the next 12 months period.

Article 9
Termination of application

1. The application may be rejected if the fees due for a certification task have not been received upon the expiry of the time period provided for in Article 4(2) and after the Agency has consulted the applicant.
2. The balance of any fees due, calculated on an hourly basis for the ongoing period of twelve months but not exceeding the applicable flat fee, shall be payable in full at the time the Agency stops working on the certification task, together with travel expenses and any other amounts due, in the following cases:
 - (a) if the Agency rejects the application; or
 - (b) a certification task has to be terminated by the Agency because the applicant:
 - (i) has insufficient resources;
 - (ii) fails to comply with the applicable requirements; or
 - (iii) decides to abandon its application or to postpone its project.
3. When, on demand of the applicant, the Agency starts previously stopped certification task again, the Agency shall levy a new fee, irrespective of the fees already paid for the stopped tasks.

Article 10

Suspension or revocation of certificate

1. If the outstanding fees have not been received upon the expiry of the time period provided for in Article 4(2), the Agency may suspend or revoke the relevant certificate after having consulted the applicant.
2. If the Agency suspends the certificate due to non-payment of the annual fee or surveillance fee or because the applicant fails to comply with the applicable requirements, the respective fee period shall continue and the applicant shall pay for the period of suspension.
3. If the Agency revokes the certificate, the balance of fees due, calculated on an hourly basis for the ongoing period of twelve months but not exceeding the applicable flat fee, shall be payable in full together with any other amounts due at that time.

Article 11

Surrender or transfer of certificates

If the certificate holder surrenders or transfers the corresponding certificate, the balance of any fees due, calculated on an hourly basis for the ongoing period of twelve months but not exceeding the applicable flat fee, shall be payable in full on the date the surrender or transfer takes effect, together with travel expenses and any other amounts due at that time.

Article 12

Certification tasks on exceptional basis

An exceptional increase shall be applied to the fee levied in order to cover all of the costs incurred by the Agency in meeting the special request of the applicant, if due to that request a certification task is exceptionally carried out as follows:

- (a) by assigning categories of staff, which the Agency would not normally assign under its standard procedures, or
- (b) by assigning such number of staff that the operation is performed faster than under the Agency's standard procedures.

CHAPTER III

CHARGES

Article 13

Charges

1. The amount of the charges levied by the Agency for services listed in Part II, point 1 of the Annex shall be equal to the real costs of the service provided. To that end the time spent by the Agency shall be invoiced at the hourly rate mentioned in that list.

2. The amount of the charges levied by the Agency for services other than those listed in Part II point 1 of the Annex shall be equal to the real cost of the service provided. To that end, the time spent by the Agency to provide the service shall be invoiced at the hourly rate referred to in Part II point 2 of the Annex.

3. Costs that the Agency may incur in order to perform particular services that cannot be adequately determined and charged using the hourly rate shall be charged in accordance with internal administrative procedures.

Article 14

Time of Levying the Charges

Unless otherwise decided by the Agency, after due consideration of the financial risks, the charges shall be levied before the service is provided.

CHAPTER IV

APPEALS

Article 15

Processing appeals

1. Charges shall be levied for processing an appeal lodged pursuant to Article 44 of Regulation (EC) No 216/2008. The amounts of charges shall be calculated in accordance with the method set out in Part III of the Annex. The appeal shall be admissible only when the charge for appeal has been paid within the time period referred to in paragraph 3.

2. A legal person lodging the appeal shall submit to the Agency a certificate signed by an authorised officer specifying the turnover of the appellant. That certificate shall be submitted together with the appeal.

3. Appeal charges shall be paid according to the applicable procedure established by the Agency within 60 calendar days from the date on which the appeal was filed at the Agency.

4. If the appeal is concluded in favour of the appellant, the appeal charges paid shall be reimbursed by the Agency.

CHAPTER V

PROCEDURES OF THE AGENCY

Article 16

General provisions

1. The Agency shall distinguish revenue and expenditure which are attributable to certification tasks and services provided.

In order to distinguish revenue and expenditure as provided for in the first subparagraph:

- (a) the fees and charges levied by the Agency shall be kept in a separate account and shall be the subject of a separate accounting procedure;
- (b) the Agency shall draw up and use analytical accounting for its revenue and expenditure.

2. The fees and charges shall be subject of an overall provisional estimate by the beginning of each financial year. This estimate shall be based on the Agency's previous financial results, its estimate of expenditure and revenue and its forward working plan.

3. If at the end of a financial year the overall revenue from fees, which constitute an assigned revenue in accordance with Article 64(5) of Regulation (EC) No 216/2008, exceeds the overall cost of certification tasks, the excess shall be used to finance certification tasks in accordance with Article 19(1)(a) of the Agency's Financial Regulation.

Article 17

Evaluation and Revision

1. The Agency shall provide the Commission, the Management Board and the advisory body of interested parties established in accordance with Article 33(4) of Regulation (EC) No 216/2008 annually with information on the components serving as a basis for determining the amount of the fees. That information shall notably consist in a cost breakdown related to previous and next years.

2. The Annex to this Regulation shall be reviewed periodically by the Agency to ensure that significant information related to the underlying assumptions for anticipated income and expenditure of the Agency is duly reflected in the amounts of fees or charges levied by the Agency.

Where necessary, this Regulation may be revised at the latest five years after its entry into force. When necessary, it shall be amended taking into account in particular the income of the Agency and its related costs.

3. The Agency shall consult the advisory body of interested parties referred to in paragraph 1 before giving an opinion on any proposed change in the amounts referred to in the Annex. During that consultation, the Agency shall explain the reasons for the proposed change.

CHAPTER VI

TRANSITIONAL AND FINAL PROVISIONS

Article 18

Repeal

Regulation (EC) No 593/2007 is repealed.

Article 19
Transitional provisions

1. This Regulation shall apply as follows:

- (a) the application fees set out in Part I and Part II of the Annex shall apply to any application that has been filed after the entry into force of this Regulation;
- (b) the annual and surveillance fees set out in Tables 1 to 4 and 6 to 12 of Part I of the Annex shall apply to any ongoing certification task as from the next annual instalment due after the entry into force of this Regulation;
- (c) the hourly rates set out in Part II of the Annex shall apply as of the entry into force of this Regulation to any ongoing tasks chargeable on an hourly basis;
- (d) the indexation referred to in Article 3(4) shall take place each year on 1 January following the entry into force of this Regulation, starting January 2015.

2. Notwithstanding Article 18, provisions of Regulations (EC) No 488/2005 and No 593/2007 shall continue to apply with respect to any fees and charges that are outside the scope of application of this Regulation in accordance with Article 20.

Article 20
Entry into force

This Regulation shall enter into force on the first day of the month following its publication in the Official Journal of the European Union.

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

Done at Brussels,

For the Commission
The President
José Manuel BAROSSO