

**MINUTES OF THE MEETING OF THE EASA MANAGEMENT BOARD HELD
ON 13 DECEMBER 2005
AND SUMMARY OF DECISIONS TAKEN
MB MEETING No. 04-2005**

O. LIST OF ATTENDEES

The following members or alternate members were present:

AUSTRIA	Mr	Karl	PRACHNER
BELGIUM	Mr	Benoît	VAN NOTEN
CZECH REPUBLIC	Mr	Jindřich	PLOCH
DENMARK	Mr	Kurt	LYKSTOFT-LARSEN
ESTONIA	Mr	Koit	KASKEL
FINLAND	Mr	Kim	SALONEN
FRANCE	Mr	Maxime	COFFIN
GERMANY	Mr	Thilo	SCHMIDT
GREECE	Mr	Ioannis	ANDRIANOPOULOS
HUNGARY	Mr	Zoltán	SZEKELY
ICELAND*	Mr	Pétur	MAACK
IRELAND	Mr	Robin	MCKAY
ITALY	Mr	Daniele	CARRABIA
LITHUANIA	Mr	Alvydas	SUMSKAS
LUXEMBOURG	Mr	Henri	KLEIN
NETHERLANDS	Mr	Jules	KNEEPKENS
NORWAY*	Mr	Otto	LAGARHUS
POLAND	Mr	Kryztof	KAPIS
PORTUGAL	Mr	Luis	COIMBRA
SLOVAK REPUBLIC	Mr	Maros	JANCULA
SWEDEN	Mr	Nils Gunnar	BILLINGER
UNITED KINGDOM	Mr	Michael	SMETHERS
EUROPEAN COMMISSION	Mr	Zoltan	KAZATSAY

* Norway and Iceland participate in the Agency (and are hence members of the Management Board without voting rights) under article 55 of Regulation 1592/2002 as a result of Decisions No 179/2004, No 15/2005 and 16/2005 of the EEA Joint Committee which incorporate the Basic Regulation and its implementing rules into Annex XIII to the EEA Agreement.

° Switzerland attends the Management Board meetings as an observer in accordance with MB Decision EASA/MB/4/2002 of 4 December 2002. Bulgaria and Romania attend the Management Board meetings as observers on the basis of their respective Accession Agreements with the European Union.

SUMMARY OF DECISIONS

At its meeting held on 13 December 2005, the Management Board:

- adopted the minutes of the meeting 03-2005 held on 27 September 2005 (MB 04-2005 WP02);
- adopted the Agency's 2006 budget (MB Decision 13-2005);
- instructed the Executive Director to proceed with an invitation to tender for an evaluation of the Agency's management and financial procedures relating to certification activities (MB Decision 12-2005); and
- decided to hold its next meeting on 16 March 2006.

1. ADOPTION OF AGENDA

The agenda was adopted subject to the following modifications:

- Presentation by John Vincent, Head of Safety Analysis and Research, on the future of safety initiatives to be added under Any Other Business.
- It was agreed that the discussion on the external evaluation of EASA (item 4) would be discussed after item 6 (Adoption of 2006 budget).

2. ADOPTION OF MINUTES OF PREVIOUS MEETING

The minutes of the last meeting were adopted subject to the following changes:

- The Spanish delegation asked for its comments on its dissatisfaction with the Board's linguistic arrangements to be reflected in the minutes.
- The inclusion of a delegation's name missing from the attendees list.

3. REPORT OF THE EXECUTIVE DIRECTOR

The Executive Director provided a full report on the main Agency activities and events occurring since the last meeting of the Management Board.

In response to the report, delegations welcomed the news that progress was being made on the provision of a fully-functioning system for the publication of airworthiness directives and that an advance notice of proposed amendment had been published on unmanned aerial vehicles. The Executive Director was asked about the findings of the recent audit of the Agency by the International Civil Aviation Organisation, in particular those relating to Annex 13 obligations.

4. REPORT ON FEES AND CHARGES WORKING GROUP

Introducing this agenda item, the Chair stressed the gravity of the situation. He noted the Management Board's responsibility for the financial well-being of the Agency, and in indicating that a review of the Fees & Charges system is necessary, he set out what he believed were the options available; i.e. either a 'repair' to the Regulation, so that it would provide the necessary income, or the introduction of a new 'flat rate' system of fees and charges. The first option has the disadvantage of involving increases in tariffs which would be unpopular; the second has the advantage of simplicity. He also underlined the need for a review to underline the Agency's need to concentrate on Safety and not bureaucracy.

The Certification Director presented the work of the Fees and Charges Working Group.

The Danish representation noted that apportioning blame would be not be appropriate at this time, notably as flaws in the Fees & Charges system were deemed probable at its time of adoption. In acknowledging the comments made by the Chairman regarding the financial responsibility of the Management Board, the representative also warned against rushed conclusions. He took note of the Agency's proposal for prioritisation in the short-term, but added that the interim period should be used as a fact finding exercise, thus permitting for a future solution to be taken on a sound basis, with due consideration for alternatives.

The United Kingdom representative commented along similar lines to the previous speaker, noting the need for a two-tiered approach, i.e. (i) to deal with the immediate problem, and (ii) to ensure a solid basis for any alternative to be considered. In particular, he noted the need for further information on costs and revenues for certification before any decisions could be made and the Board had to be sure that the correct financial, planning and management tools were in place in the Agency to manage the system. He suggested that this exercise could be carried out by an external evaluator.

The Commission indicated its appreciation for the difficult situation that the Agency finds itself in as a new and growing entity. In acknowledging the Agency's difficulties in obtaining information and figures, it noted that before being able to proceed it would require more justification as to the Agency's market evaluation (e.g. cost vs. income). The Commission signalled that it would not oppose a justified change to the fees and charges Regulation, reiterating that a balance between cost efficiency and safety levels be maintained.

The French representation also highlighted the need for further information regarding the Agency's modus operandi, and in this context

he voiced support for an external evaluation. He also took the opportunity to note that when considering alternatives, due consideration should also be given to the lack of flexibility afforded at the administrative level through the strict application of the [EC] Financial Regulation. He voiced his disappointment at such inflexibility resulting in having to turn to industry to find remedial solutions.

With specific regard to the proposed Flat Rate system, the Norwegian representative questioned whether this would not pose its own difficulties in terms of defining applicants' turnover, given the availability of different corporate structures. Such a system would also need to be checked to ensure that it was proportional, given the possibility of a cross-subsidisation between applicants inherent in any such system.

The Dutch representation did not view prioritisation as a possibility in view of the Agency's legal obligations. Furthermore it voiced its support for the idea of more flexibility, which it noted would be the likely outcome of an evaluation.

The Austrian representation reiterated the political responsibilities of both the Commission and the European Parliament in ensuring that the Agency is fit to carry out its tasks, and in this respect he noted that Safety must be the priority in the context of which finances cannot be an issue. Whereas he acknowledged that industry does have a financial role to play, he nonetheless indicated that not all charges can be passed to them. As paying contributors, he noted that prioritisation among the applicants could not be considered as an option, especially when considering that deficiencies and weaknesses of the Fees & Charges system were pointed out originally. He opposed the idea of a Flat Rate, indicating that this would be the wrong basis for a public authority system. As a last remark, he concurred with the earlier suggestions that the level of bureaucracy should be duly investigated as well.

The German representation made reference to the extensive discussion that had taken place in the past when elaborating the Fees & Charges system, with the proviso that its approval would be subject to a future review. In this context he noted that there simply was not enough information available concerning the Agency's costs and revenue to allow for such a revision to be initiating at this stage, and as such he voiced his support for an external evaluation.

The Italian representation voiced its support for a revision of the Fees & Charges system, although it indicated some scepticism at the idea of the evaluation.

The Polish representation noted that in order to address the short-term it would be necessary to consider the long-term. In this context, they also voiced their support for an evaluation.

The Swedish representation indicated its support for an evaluation, but noted the need to carefully consider the nature and specificity of the Agency's business and obligations. And whilst not opposing the idea of a Flat Rate, it indicated the need to consider the appropriateness of such a system in view of the Agency's public and 'private' facets.

In responding to the various comments, the Executive Director noted that whereas the threat to safety levels should not be minimalised, they should not be over-dramatised either, and the existence of aviation safety expertise in Europe would ensure this. He went on to note the consequences of heavy administrative burden, especially in the Agency's relationship with the NAAs, resulting in prolonged 'waiting periods' for obtaining the required approvals or certificates. And by analogy, he noted the consequences for the Agency and its financial situation due to the late invoicing from the NAAs, i.e. outstanding financial commitments of some €14 million set aside to pay NAAs for certification activities in 2005, of which only around €2 million had actually been invoiced. He noted the historic basis for the Agency's development, although in the exercise of building up the Agency neither the NAAs nor the industry had been able to provide the Agency with the needed information concerning past costs incurred in the certification exercise.

The Chairman acknowledged the comments made by the Executive Director. He noted that this could therefore best be dealt with through a two-tiered approach, namely with the hiring of an external consultant to analyse the financial situation of the Agency, its managerial aspects and [financial] relations with industry, whilst equally inviting the Agency to continue with its own analysis and proposals for short-, mid- and long-term solution based on solid regulatory impact assessments.

There followed a discussion on the advantages of having an external and independent consultant examine this in greater depth, with a view to making useful recommendations to the Board at its next meeting. This proposal was supported by the Board as a whole. In the meantime, the Agency should continue to draft its own proposals to improve the situation, taking into account changes to the fees and charges Regulation and internal procedures as appropriate.

It was further agreed that the Terms of Reference (ToR) for this evaluation should be drafted by the Management Board itself. In this context further discussion led to the agreement that a maximum budget of € 300.000,00 should be set aside for this exercise. The timeframe for the work to be carried out should allow for the consultant to report back

to the Management Board at its 16 March, 2006, meeting. It was therefore agreed to proceed as follows:

- Circulate the draft ToRs for comments – 14 December 2005
- MB to submit comments to ToRs – 15 December 2005
- Finalise ToRs, and circulate Invitation to Tender to selected consultants – 16 December 2005
- Open received tender submissions – 5 January 2006
- Commencement of activities – second week of January 2006
- Completion of activities – 16 March 2006

It was furthermore agreed that a Steering Committee would be established to follow this work, with Mr Kazatsay, Mr Smethers and Mr Schiller representing the Board, and two representatives from the Agency.

The Administrative Director reminded the Board that to contract out a study with the budget and time table outlined above, would not be possible under the general rules pertaining to public procurement. He noted that in order to proceed the Agency would have to resort to an exceptional procedure called a 'Negotiated Agreement'. However, this can be justified on the basis of the Management Board's decision and the urgency of the matter.

The Board confirmed that the Agency should proceed with the study in accordance with the Board's wishes.

5. BUDGET

The Executive Director explained the situation to the Board with regard to the execution of the 2005 budget. Due to the large difference between the amounts financially committed to NAAs and the actual amounts invoiced, there remained a question mark over the size of the likely positive budgetary out-turn for 2005, which is estimated in the draft 2006 budget at €3.8 million, and which could increase even further in view of slow invoicing by the NAAs. The resulting surplus will be paid back to the Commission, which in turn will put it on an earmarked revenue line from which it could be available to the Agency later on if need arise.

He noted the 'preliminary' nature of the 2006 budget in view of the possible review to the Fees & Charges system, as well as the probable inclusion of new activities (i.e. standardisation inspections and SAFA). On being asked as to how long funds would last, he noted that in order to determine this more accurately, he would need to close out the 2005 budget, but at this stage he estimated summer 2006.

The Commission emphasized that, in 2005 again, the EASA had a budgetary surplus, and it expressed its concern on the lack of clarity with regard to the financial situation of the Agency. Consequently, the Commission reserved its position as regards the 2006 budget proposed by the Agency.

In order to help the EASA to improve its financial tools and procedure, the Commission announced that it would conduct an audit of the Agency, at the beginning of 2006, in parallel with the external evaluation decided by the Board.

The Commission also stressed that the budget proposed by the Agency was not a temporary budget but the budget for 2006 and that, in any case, any possible request for additional Community contribution would have to be duly justified and precisely quantified by the Agency.

The Administrative Director, in view of the late date of the next Management Board meeting in mid-March, enquired whether the Commission could cope with so late approval of the Work Programme and Budget 2007 by the Management Board. In the past the deadline was set by the Commission at mid-February. The Commission responded that it would enquire with its budgetary services.

The Austrian representation enquired whether staff technical training would be funded under the proposed budget, to which the Certification Director responded that it would to the extent possible with the available funds.

The UK representation sought assurances that the initial indications for outsourcing funds would not be affected by the proposed budget, to which the Executive and Administrative directors both responded that the Agency cannot commit the Agency beyond the levels indicated in the adopted budget.

The consensus among Board members was that the Agency could not prioritise its certification activities despite the anticipated shortfall in revenue available to fund this activity and therefore instructed the Agency not to modify its current working practices in this respect. The budget would be revisited early next year after a solution to the fees and charges problem had been found.

Based upon this discussion, the Board adopted the budget for 2006 as presented by the Agency.

6. EXTERNAL EVALUATION

The Executive Director reminded the Board that it was responsible for commissioning, in 2006, an independent and external evaluation of the

implementation of Regulation 1592/2002. The Commission stressed that the evaluation is a legal obligation under article 51 of the Basic Regulation, and is to be supervised by the Board itself. The Commission also stressed that the evaluation was to take full account of the views of all relevant stakeholders when drawing up findings and conclusions. The independent external review to be completed by the next MB meeting would also be a useful input to this Article 51 evaluation.

The Board agreed to discuss the issue in greater depth at its next meeting.

7. OUTSOURCING GUIDELINES

The Board noted the report on the implementation of the outsourcing guidelines and the proposed amendment of Management Board Decision 04-2005.

The Agency was asked to justify its proposal to amend these guidelines. In response, the Executive Director pointed to the need to allow the Agency greater flexibility in outsourcing tasks directly to flight test centres and other providers of niche specialists (e.g. structures testing centres, software specialists) where NAAs were unable to provide the service directly. In addition, this flexibility was required in those cases where national authorities were no longer able to continue to carry out tasks allocated to them by the Agency. He furthermore indicated that this proposal was being made in accordance with Article 15 of the Basic Regulation.

There followed a discussion of the impact on the Agency in terms of increased standardisation/accreditation activity.

The Commission indicated that it could agree in principle with the proposal made, noting nonetheless its suggested amendments to reflect the possibility for greater competition.

The Chairman reflected on past discussions and decision taken in this regard, and on this basis queried the availability of such Qualified Entities (QE) and how it would improve the situation of the Agency. The Executive Director responded by indicating that changing the guidelines could encourage the emergence of QEs, and would allow for a level of flexibility deemed necessary by the Agency.

The United Kingdom representative voiced its agreement to the proposal in principle, acknowledging the competition and flexibility issues raised. However, he also indicated that the time was not right, and this in view of the additional accreditation and standardisation activities to be catered for, for which there are insufficient resources available in the Agency.

The Danish representative agreed with the previous speaker, highlighting also that fact that this issue would need to be considered in the context of the 2006 budget, and bearing in mind the associated tendering procedures as well.

The Austrian representative supplemented the above by indicating that the proposal would also need to be considered in the light of associated Essential Requirements or Procedures for the accreditation of QEs.

In responding to these comments, the Executive Director reiterated the Agency's aim to internalise, but also to identify appropriate means to deal with other areas such as proximity tasks and other 'niche' activities (e.g. flight testing). With regard to the timing, he indicated that it was not considered too early, as this first step would serve the purpose of identifying potential interested parties, following which the standardisation and accreditation activities would have to take place.

The French representative acknowledged these comments and indicated that this change would simplify things from an administrative point of view. However, he also highlighted the need to be mindful of the accreditation activity burden, as well as associated tendering issue.

The Spanish representative queried the basis for awarding the contracts (i.e. quality vs. price), to which the Certification Director responded by indicating that this will be dealt with on a case-by-case basis, with quality being the predominant factor, but also allowing for due consideration to be given to the price.

In acknowledging the Agency's argumentation for flexibility and competition, the Belgian representative noted the need to ensure equality of treatment in the decision-making phase.

In response to the discussion as a whole, the Commission indicated that the amendment to the guidelines should not be postponed. It highlighted the fact that the initial decision had been exceptional, but that there now is a need to give a signal to the market that the obligations of the Basic Regulation (i.e. Article 15) are being adhered to.

The Dutch representative suggested that in view of all the unanswered questions, the Management Board members be allowed to submit questions to the Agency, and on the basis of the answers received, the topic be tabled again for a decision at the next meeting.

The Chairman agreed with the suggestion made by the previous speaker, and the Management Board concurred that the matter should be dealt with in this manner.

8. ENACT

The ENACT working group chairman provided the Management Board with an overview of developments, indicating the principle conclusion that the Agency should keep up the momentum of bilateral discussions in order to define the scope of proximity tasks in each country. He also noted that the group did not question the Agency's Establishment Plan, but reiterated the need to keep a watchful eye on the matter in view of the Budget 2006 developments.

He indicated that the group would next meet again in February 2006 (date TBD).

The Management Board took note of the report.

9. FINANCIAL REGULATION

The Administrative Director provided the Management Board with the background information relative to the changes to the Financial Regulation presented.

On the subject of being able to constitute a reserve, he indicated that a change would no longer be considered necessary in view of the response received from DG Budget, which indicated that in a year of a positive budgetary outturn the surplus would be placed by the Commission on an earmarked revenue line for the Agency in case of future needs.

With regard to the Agency's ability to financially commit on the basis of perceived income resulting from invoices, he also noted the advice received from DG Budget and DG TREN. However, he indicated that this issue had also been discussed with the Court of Auditors during their audit visits. Following these discussions it appears that this practice could be contested by the Court as long as the Agency's Financial Regulation remains unchanged. However, the Board would need to have the agreement of the Commission and a formal opinion from the Court of Auditors before making any amendments in the EASA Financial Regulation.

The Board agreed to the amendments and course of action proposed by the EASA and the Chairman requested that the DG TREN, as the "DG de Tutelle" of the Agency, provide its support during the process. The Commission Representative indicated that it would consult DG Budget on the amendments proposed by the Agency.

10. ANY OTHER BUSINESS

- On the basis of the invitations to host received, an agreement was reached for the location of the 2007 and 2009 International Aviation Safety conferences.
- Following the presentation given by John Vincent on the future possibilities for an European Safety Strategy Initiative, it was agreed that a working paper would be prepared for the next meeting
- It was agreed that an item to be included in the agenda for the next meeting should be the Agency's 'Scope Extension'

NEXT MEETING – 16 MARCH, 2006. *(09H00 – 18H00)*