European Aviation Safety Agency

EXPLANATORY NOTE ON THE REVISION OF THE AGENCY'S FINANCIAL REGULATION, ITS IMPLEMENTING RULES AND BUDGET STRUCTURE

1. Problem statement

EASA's revenue is composed mainly of a Community contribution and revenue from fees and charges paid by its aviation industry clients. The tariffs paid by the aviation industry are established by a Commission Regulation.

The original Fees and Charges Regulation (EC) No 488/2005 established tariffs based on a mixture of fixed fees, hourly fees and the reimbursement of certain costs. Since a number of certification projects extend over months or even years and are still contracted to competent authorities in the Member States, final amounts due have largely been calculated and invoiced after the work has been completed. Delays in reporting from the National Authorities and tariffs that proved to be too low led to continuous uncertainty on revenue in 2005, 2006 and in early 2007.

The new Fees and Charges Regulation (EC) No 593/2007 of 31st May 2007 improves the situation considerably. Most of the tariffs are now based on flat rates which EASA charges up front upon receipt of an application. The flat rate is calculated so as to cover in advance the value of 12 months of work. Although this new charging scheme is a welcome improvement, it also creates a problematic situation in the financial year 2007, unless the current Financial Regulation is amended.

In 2007 EASA is still collecting revenue under the original regulation ((EC) No 488/2005) from projects that were undertaken early in 2007, in 2006 and to a limited degree even in 2005. At the same time the new regulation ((EC) No 593/2007) brings in revenue to cover several months of work in 2008. It is clear therefore that the budgetary outturn balance at the end of 2007 will be positive.

EASA's current Financial Regulation states that the positive budgetary outturn balance ("cash based balance") will be returned to the Commission, even though in accrual terms a considerable part of the revenue received during 2007 is actually earmarked to cover costs of activities performed in 2008. This is something that the aviation industry is watching very closely. The industry would not understand or accept if the cash surplus from their payments was sent to the common Community budget. This issue has been raised also by the Court of Auditors and the Commission's Internal Audit Service as a point of concern.

2. Proposed solution

The proposed solution, to amend Article 19 by adding paragraph 1a, has been prepared in cooperation with the Commission services, is in line with the amended General Financial Regulation[1], and is building on the amendment of the Agency's Basic Regulation ((EC) No 1592/2002) and the ongoing reform of the Framework Financial Regulation ((EC) No 2343/202), which is the basis of all community bodies' financial rules. However, as long as these regulatory changes are still pending, amending the Agency's Financial Regulation requires a written consent of the Commission.

Although the situation described above is specific to EASA, the proposed amendment is fully in line with the modification to Article 19 of the Framework Financial Regulation 2343/2002 proposed by the Commission in May 2007[2].

The mechanism for amending the Agency's Financial Regulation - even before the final adoption of the above mentioned new EASA Basic Regulation and the amended Framework Financial Regulation – is already established in the General Financial Regulation's article 185(1) which indicates that a Community Body may depart from the framework Financial Regulation in accordance to the specific management needs, with the Commission's consent.[3]

1 Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 amending Regulation (EC, Euratom) No 1605/2002 on the Financial regulation applicable to the general budget of the European Communities; OJ L 390, 310.12.2006

2 BUDG/D/1/MS D(2007) 2772

3 Referred to also in the Regulation 2343/2002: consideranda (2) and Article 1.

On the condition of having received the Commission's approval by 14 December 2007, the Agency now proposes to amend its Financial Regulation so that fee revenue would be recognised as assigned revenue, in accordance with Article 3 of the Fees and Charges Regulation ((EC) No 593/2007)[4] and Article 63 of *the Common Position recently adopted by the Council and the European Parliament (COD 2005/0228) with a view to the adoption of a Regulation of the European Parliament and of the Council replacing the current Basic Regulation (EC) No 1592/2002*[5] as presented in the attached draft MB decision 5(b) and the draft amended Financial Regulation 5(c)

3. Necessary amendments to the Financial Implementing Rules

In the Management Board Decision 14-2007 amending the MB Decision 09-2003 of 26 August 2003 on the Financial Regulation of the European Safety Agency, it is proposed to amend the Agency's Implementing Rules.

When the proposed amendment to add paragraph 1a to article 19 of the Agency's Financial Regulation would be adopted, the Fees and Charges shall be assigned revenue for the Agency.

As the general rule the article 7, paragraph 2 of the Agency's Implementing Rules[6], applicable to assigned revenue, stipulates that "*appropriations corresponding to assigned revenue may be made available, both as commitment appropriations and as payment appropriations, when the revenue has been received by the Agency*", it is proposed to make an exception to this general rule for assigned revenue from fees and charges, which constitute one of the principal sources of income for the Agency.

[4] CHAPTER II, FEES, Article 3*:"…If at the end of a financial year the overall revenue from fees, which constitute an assigned revenue in accordance with Article 53 of the Regulation (EC) No 1592/2002, exceeds the overall cost of certification tasks, the excess shall be used to finance certification tasks in accordance with the Financial Regulation of the Agency."*

[5] COMMON POSITION adopted by the Council on 15 October 2007 with a view to the adoption of a Regulation of the European Parliament and of the Council 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/EC, Article 63.5: "*The amount of the fees and charges shall be fixed at such a level as to ensure that the revenue in respect thereof is in principle sufficient to cover the full cost of the services delivered. These fees and charges shall be assigned revenues for the Agency."* (COD 2005/0228; COM(2007)0631)

[6] Agency's Implementing Rules, CHAPTER IV, Article 7, Paragraph 2:"The appropriations corresponding to assigned revenue may be made available, both as commitment appropriations and as payment appropriations, when the revenue has been received by the Agency. They shall be made available automatically."

The proposed amendments of the Agency's Implementing Rules would allow making the appropriations corresponding to assigned revenue from fees and charges available when an overall provisional estimate of the fees and charges has been established by the beginning of each financial year, as stipulated in article 3, paragraph 3[7] of the Fees and Charges Regulation.

Without this exception, it would mean that the Agency would only be allowed to establish commitments or payments up to the level of the assigned revenue from fees and charges actually collected at a given moment during the financial year. Potentially, this could hamper an efficient management of the expenditure corresponding to the assigned revenue from fees and charges.

On the condition that the Commission has agreed to the above described amendment of Article 19 of its Financial Regulation, the Agency now asks the Management Board to amend the Financial Regulation's Implementing Rules by:

- Amending its Article 7, paragraph 2;
- Adding a new paragraph under article 7;
- Amending its article 51, paragraph 1 as presented in the attached draft MB decision (WP 5(d)) and the draft amended Implementing Rules (WP 5(e))

4. Corresponding amendments to the structure of the Agency's Budget

In order to use the above described amendment as a mechanism for balancing the variations in the fees and charges the Agency also has proposed amending its budget structure so that the budgetary outturn balance from the fees and charges can be put in the budget of 2008 on the income line, named "*Balance Fees & Charges on Outturn from Previous Year",* under Title 7*.* A corresponding expenditure line is proposed to be added to a new expenditure Title 5, named *"Provision for unforeseen F&C funded expenditure".* These amendments are presented in the Draft Budget 2008 document under the agenda point 8.

[7] Fees and Charges Regulation, CHAPTER II, FEES, Article 3, Paragraph 3:"The fees shall be the 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."