

Commission Regulation (EC) No 1794/2006 - consolidated

A consolidation is done for working purposes of *Regulation (EC) No 1794/2006 laying down a common charging scheme for air navigation services* on the basis of changes introduced by Commission Regulation (EU) No 1191/2010 which entered into force 20 December 2010. According to its Article 3 it shall start applying to the air navigation costs, charges and unit rates of the year 2012.

To identify the changes, [text stemming from Commission Regulation \(EU\) No 1191/2010 is in blue](#). Please report errors or mistakes to the Commission/E.2.

Article 2 of Regulation (EU) No 1191/2010 establishes the following transitional provisions to be taken into account:

Those Member States with national regulations which existed prior to 8 July 2010 that establish a reduction on the unit rate beyond the Union-wide targets established in accordance with Regulation (EU) No 691/2010 may exempt their air navigation service providers from Article 11a (3) of Regulation (EC) No 1794/2006. That exemption shall apply for the period where the national regulations reduce the unit rate, but shall not extend beyond the end of the first reference period in 2014. Member States shall inform the Commission and Eurocontrol of such exemptions.

Member States may decide not to apply the provisions of Regulation (EC) No 1794/2006 as amended by this Regulation to terminal charges until 31 December 2014. They shall notify the Commission thereof. Where Member States exempt terminal charges from the provisions of that Regulation, the full costs of the provision of terminal air navigation services may be recovered until 31 December 2014.

COMMISSION REGULATION (EU) No 1191/2010 of 16 December 2010 amending Regulation (EC) No 1794/2006 laying down a common charging scheme for air navigation services

(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 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)⁽¹⁾ and in particular Article 15(4) 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 Article 5(3) thereof,⁽²⁾

⁽¹⁾ OJ L 96, 31.3.2004, p. 10.

⁽²⁾ OJ L 96, 31.3.2004, p. 1.

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Whereas:

- (1) Commission Regulation (EC) No 1794/2006⁽¹⁾ lays down the necessary measures for the development of a charging scheme for air navigation services that is consistent with the Eurocontrol Route Charges System. 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 an optimum safety level and stimulate integrated service provision.
- (2) In order to ensure that the overall objective of improving the cost efficiency of air navigation services is effective, the charging scheme should promote the enhancement of cost and operational efficiencies in consistency with and in support of the European Air Traffic Management Master Plan.
- (3) Regulation (EC) No 1794/2006 needs to be updated in order to translate the financial consequences of the performance scheme into the charging scheme, particularly with regard to the cost and traffic risk sharing mechanisms as well as the incentive schemes described in Commission Regulation (EU) No 691/2010 of 29 July 2010 laying down a performance scheme for air navigation services and network functions and amending Regulation (EC) No 2096/2005 laying down common requirements for the provision of air navigation services (4). Regulation (EC) No 1794/2006 should therefore be amended accordingly.
- (4) Appropriate provisions should be provided to ensure a smooth transition to the updated charging scheme.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Single Sky Committee,

HAS ADOPTED THIS REGULATION:

⁽¹⁾ OJ L 341, 7.12.2006, p. 3.
- The charging Regulation -

COMMISSION REGULATION (EC) No 1794/2006 of 6 December 2006 laying down a common charging scheme for air navigation services

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,
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 Article 15(4) 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 Article 8(2) thereof,

Whereas:

- (1) The Commission is required to establish a common charging scheme for air navigation services throughout the Community. A Regulation with 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) Eurocontrol has been mandated in accordance with Article 8(1) of the framework Regulation to assist the Commission in the development of implementing rules on a common charging scheme for air navigation services. This Regulation is based on the resulting mandate report of 29 October 2004.
- (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 system should contribute to the achievement of greater transparency with respect to the determination, imposition and enforcement of charges to airspace users. The system should also encourage the safe, efficient and effective provision of air navigation services to the users of air navigation services that finance the system 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.
- (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 total 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) According to the Statement attached to the airspace Regulation, the Commission will draft a report by 2008 on experience in the creation of functional airspace blocks. At that time, the Commission will assess the difficulties that may arise from maintaining separate unit rates within a functional airspace block.
- (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 those 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 that 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) third sentence of Commission Regulation (EU) No 691/2010, Member States may decide not to apply this Regulation to air navigation services provided at 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.

Member States shall inform the Commission of that decision. The Commission shall periodically publish an updated list of those airports where Member States have decided not to apply this Regulation to air navigation services.

6. With respect to air navigation services provided at 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 Member States may, prior to each reference period referred to in Article 11(3)(d) of Regulation (EC) No 549/2004, decide not to do any of the following:

- (a) calculate determined costs in accordance with Article 6 of this Regulation;
- (b) calculate terminal charges as set out in Article 11 of this Regulation;
- (c) set terminal unit rates as referred to in Article 13 of this Regulation.

The first subparagraph shall apply without prejudice to the application of the principles referred to in Articles 14 and 15 of Regulation (EC) No 550/2004 and is subject to Article 1(3) third sentence of Regulation (EU) No 691/2010.

The Member States which decide not to apply the provisions listed in the first subparagraph shall carry out a detailed assessment of the extent to which the conditions laid down in Annex I

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to this Regulation are met. That assessment shall include consultation with the representative of airspace users.

Those Member States shall submit a detailed report to the Commission on the assessment referred to in the third subparagraph. That report shall be supported by evidence, include the outcome of the consultation with users and shall provide full reasons for the Member State's conclusions.

After consultation with the Member State concerned, the Commission may determine that the conditions laid down in Annex I to this Regulation have not been met and may, at the latest two months after reception of the report, request that the Member State re-conduct the assessment under revised conditions.

Where the Commission makes such a determination, it shall identify which part(s) of the assessment is/are to be revised and shall state the reasons therefor.

Where the Commission has requested a revised assessment, the Member State concerned shall submit a report on the conclusions of that revised assessment within two months after reception of the Commission's request.

The final report shall be made public and shall be valid for the duration of the reference period concerned.

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;

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- (g) ‘commercial air transport’ means any aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire;
- (h) ‘determined costs’ means costs pre-determined by the Member State as referred to in Article 15(2)(a) of Regulation (EC) No 550/2004;
- (i) ‘reference period’ means the reference period for the performance scheme provided for in Article 11(3)(d) of Regulation (EC) No 549/2004;
- (j) ‘commercial air transport movements’ means the sum total of take-offs and landings for commercial air transport, calculated as an average over the three years which precede the adoption of the performance plans referred to in Article 12 of Regulation (EU) No 691/2010;
- (k) ‘other revenues’ means revenues obtained from public authorities or revenues obtained from commercial activities and/or, in the case of terminal unit rates, revenues obtained from contracts or agreements between air navigation service providers and airport operators, that benefit air navigation service providers with regard to the level of unit rates.

Article 3

Principles of the charging scheme

1. The charging scheme shall be subject to the principles set out in Article 15 of Regulation (EC) No 550/2004.
2. The determined costs of en route air navigation services shall be financed by en route charges imposed on users of air navigation services in accordance with the provisions of Chapter III and/or other revenues.
3. The determined costs of terminal air navigation services shall be financed by terminal charges imposed on users of air navigation services, in accordance with the provisions of Chapter III, and/or other revenues. These may include cross-subsidies granted in accordance with Union 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.

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3. An en route charging zone shall extend from the ground up to, and including, upper airspace. Member States may establish a specific zone in complex terminal areas within a charging zone.

4. Where charging zones extend across the airspace of more than one Member State, which may be a consequence of the creation of a common charging zone in a functional airspace block, the Member States concerned shall ensure consistency and uniformity in the application of this Regulation to the airspace concerned to the maximum possible extent.

Where uniform application of this Regulation to the airspace concerned is not possible, Member States shall inform users of such differences in application of this Regulation in a transparent manner and shall notify the Commission and Eurocontrol of such differences.

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. Member States may establish the following costs as determined costs, in accordance with Article 15(2)(a) of Regulation (EC) No 550/2004, where they are incurred as a result of the provision of air navigation services:

- (a) costs incurred by the relevant national authorities;
- (b) costs incurred by the qualified entities referred to in Article 3 of Regulation (EC) No 550/2004;
- (c) costs stemming from international agreements.

3. In accordance with Article 15a (3) of Regulation (EC) No 550/2004, without prejudice to other sources of funding and in accordance with Union law, part of the revenue resulting from the charges may be used to fund 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 cases, Member States shall ensure that comprehensive and transparent accounting practices are in place so as to ensure that airspace users are not charged twice. Those determined costs which fund the common project shall be clearly identified in accordance with Annex II.

Article 6

Calculation of costs

1. The determined costs and actual costs shall include the costs relating to eligible services, facilities and activities referred to in Article 5 of this Regulation and established in accordance with the accounting requirements laid down in Article 12 of Regulation (EC) No 550/2004.

The non-recurring effects resulting from the introduction of International Accounting Standards may be spread over a period not exceeding 15 years.

Without prejudice to Articles 16 and 18 of Regulation (EU) No 691/2010, the determined costs shall be fixed prior to the beginning of each reference period as part of the performance plans referred to in Article 11 of Regulation (EC) No 549/2004 and Article 10(3)(b) of Regulation (EU) No 691/2010 for each calendar year during the reference period and in both real and nominal terms. Unit rates shall be calculated on the basis of the costs expressed in nominal terms. For each year in the reference period, the difference between the determined costs expressed in nominal terms prior to the reference period and the determined costs adjusted on the basis of the actual inflation recorded by the Commission (Eurostat) for the year shall be carried over no later than in the year $n+2$.

Determined costs and actual costs shall be established in national currency. Where a common charging zone with a single unit rate has been established for a functional airspace block, the Member States concerned shall ensure conversion of national costs into Euro or the national currency of one of the Member States concerned so as to ensure a transparent calculation of the single unit rate in application of Article 13(1) first subparagraph of this Regulation. Those Member States 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. Pensions costs may be calculated using prudent assumptions according to the governance of the scheme or to national law, as appropriate. Those assumptions shall be 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. Fixed assets shall be depreciated in accordance with their expected operating life, using the straight-line method applied to the costs of the assets being depreciated. Historic or current cost accounting may be applied for the calculation of the depreciation. The methodology shall not be altered during the duration of the depreciation and shall be consistent with the cost of capital applied. Where current cost accounting is applied, the equivalent historic cost accounting figures shall also be provided to allow for comparison and assessment.

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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 and 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 of the assets referred to in point (a) and the debts.

Exceptional items shall consist of non-recurring costs relating to the provision of air navigation services during the same year.

Any adjustment beyond the provisions of the 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 the fifth subparagraph of paragraph 2, the factors to which weight shall be given shall be based on the proportion of 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 incurred by the air navigation service 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 of 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;
- (c) an appropriate allocation of all other air navigation services components, reflecting a proportionate attribution between en route and terminal services.

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For the purposes of point (b) of the first subparagraph, Member States shall, before the start of each reference period, define the criteria used to allocate costs between terminal and en route services for each airport, and inform the Commission thereof.

3. The cost of 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 separately 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. Member States shall, at the latest six months before the start of each reference period, offer to consult with the airspace users' representatives on determined costs, planned investments, service unit forecasts, charging policy and resulting unit rates and shall be assisted by the air navigation service providers. Member States shall, in a transparent manner, make their national or functional airspace blocks costs established in accordance with Article 5 and their unit rates available to airspace users' representatives, the Commission and, where applicable, Eurocontrol.

During the reference period, Member States shall, on an annual basis, offer to consult with airspace users' representatives on any deviation from the forecast, especially with regard to:

- (a) actual traffic and costs compared to forecast traffic and determined costs;
- (b) the implementation of the risk sharing mechanism set out in Article 11a;
- (c) the incentive schemes set out in Article 12.

The consultation 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 paragraph 1 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 decided not to calculate determined costs or terminal charges or not to set terminal unit rates in accordance with Article 1(6), the information referred to in paragraph 1 shall be based on the reporting tables and detailed rules set out in Annex III. The relevant documentation shall be made available to the representatives of airspace users, the Commission, Eurocontrol and national supervisory authorities three weeks before the consultation meeting. For the annual consultation referred to in the second subparagraph of paragraph 1, the relevant documentation shall be made available to the representatives of airspace users, the Commission, Eurocontrol and national supervisory authorities each year, no later than 1 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 takeoff 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, the exemption 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) customs 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 be composed of:

- (a) the costs of exempted VFR flights as identified in Article 7(4); and

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- (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 costs incurred for IFR flights shall be equal to the total costs less the costs of VFR flights.

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

Article 10

Calculation of en route charges

1. Without prejudice to the possibility pursuant to 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 that en route charging zone and the en route service units for that flight.

2. The unit rate and 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 pursuant to 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 that flight. For charging purposes, approach and departure shall count as a single flight. The unit to be counted shall be either the arriving or the departing flight.

2. The unit rate and the terminal service units shall be calculated in accordance with Annex V.

Article 11a

Risk sharing

1. This Article lays down the traffic and cost risk sharing mechanisms. It shall apply in accordance with the principles referred to in Article 11 of Regulation (EU) No 691/2010.

2. The following costs shall not be submitted to traffic risk sharing and shall be recovered irrespective of traffic evolution:

- (a) the determined costs established in application of Article 5(2) with the exception of agreements relating to cross border air traffic service provision;
- (b) the determined costs of meteorological service providers;
- (c) the carry-overs authorised from a previous year or reference period and bonuses or penalties resulting from incentive schemes;

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- (d) the over- or under-recoveries resulting from traffic variations, which shall be recovered no later than in year $n+2$.

In addition, 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 Regulation (EC) No 550/2004.

3. Where, over a given year, the actual number of service units does not exceed or fall below the forecast established at the beginning of the reference period by more than 2 %, the additional revenue or loss in revenue of the air navigation service provider with regard to determined costs shall not be carried over.

4. Where, over a given year n , the actual number of service units exceeds the forecast established at the beginning of the reference period by more than 2 %, a minimum of 70 % of the additional revenue obtained by the air navigation service provider(s) concerned in excess of 2 % of the difference between the actual service units and the forecast with regard to determined costs shall be returned to airspace users no later than in year $n+2$.

Where, over a given year n , the actual number of service units falls below the forecast established at the beginning of the reference period by more than 2 %, a maximum of 70 % of the loss in revenue incurred by the air navigation service provider(s) concerned in excess of 2 % of the difference between the actual service units and the forecast with regard to 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.

5. The allocation of traffic risk referred to in paragraph 4 shall be set by the national or functional airspace block performance plan for the entire reference period, following the consultation referred to in Article 8.

6. 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 the view to preserving the stability of unit rate.

Where, over a given year n , the actual service units exceed 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 in year $n+2$.

7. Air navigation service providers without any equity capital or with equity capital not exceeding 5 % of total liabilities as of 31 December 2011 may be exempt of traffic risk sharing during the first reference period, in order to allow achieving a lower proportion of debt financing. Those air navigation service providers exempt from traffic risk sharing 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.

8. The following principles shall apply to cost risk sharing:

- (a) where, over the whole reference period, actual costs fall below 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 exceed the determined costs established at the beginning of the reference period, the resulting difference shall be borne by the air navigation service provider, Member State or qualified entity concerned without prejudice to the activation of an alert mechanism in accordance with Article 18 of Regulation (EU) No 691/2010;
- (c) points (a) and (b) may not apply to the difference between actual and determined costs which may be deemed to be out of the control of the air navigation service providers, Member States and qualified entities as a result of:
 - (i) unforeseen changes in national pension regulations and pension accounting regulations;
 - (ii) unforeseen changes in to national taxation law;
 - (iii) unforeseen and new cost items not covered in the national performance plan but required by law;
 - (iv) unforeseen changes in costs or revenues stemming from international agreements;
 - (v) significant changes in interest rates on loans.

Without prejudice to Article 6(1), third subparagraph, a list of uncontrollable cost factors shall be determined by the national supervisory authority from the list set out in points (i) to (v) of the first subparagraph and shall form part of the performance plan.

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.

Where, over the whole reference period, actual costs exceed 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. The national supervisory authority concerned shall explicitly agree to the carry-over after having ascertained 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.

The amount 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, at national or Functional Airspace Block level, may, on a non-discriminatory and transparent basis, establish or approve incentive schemes 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 pursuant to paragraphs 2 and 3. Those incentives may apply to air navigation service providers or airspace users.

2. In accordance with Article 11 of Regulation (EU) No 691/2010, Member States, at national or functional airspace block level, may adopt financial incentives for the achievement of performance targets by their air navigation service providers. 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 bonuses or penalties shall only be activated where performance variations have a substantive impact on users. The applicable level of bonuses and penalties shall be commensurate with the targets to be reached and the performance achieved. The performance variation levels and the applicable level of bonuses and penalties shall be determined following the offer to consult referred to in Article 8 and set by the national or functional airspace block performance plan.

3. Where a Member State decides to apply an incentive scheme with respect to users of air navigation services, it shall, following the offer to consult referred to in Article 8, modulate charges incurred by them to reflect efforts made by those 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 offsetting the inconvenience of choosing less congested routings;
- (d) accelerate the deployment of SESAR ATM capabilities.

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.

Unit rates shall be set in national currency. Where Member States which form part of a functional airspace block decide to establish a common charging zone with a single unit rate, that unit rate shall be set in Euro or in the national currency of one of the Member States concerned. The Member States concerned shall notify the Commission and Eurocontrol of the applicable currency.

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2. Pursuant to Article 11(4)(e) of Regulation (EC) No 549/2004 and Article 18 of Regulation (EU) No 691/2010, unit rates may be amended in the course of the year where an alert mechanism is activated.

3. Member States shall inform the Commission and Eurocontrol, where appropriate, of the unit rates set for each charging zone.

4. For the first year of the reference period, unit rates shall be calculated on the basis of the performance plan communicated by the Member State or functional airspace block concerned on 1 November of the year preceding the beginning of the reference period. Where performance plans are adopted after 1 November of the year preceding the beginning of the reference period, unit rates shall be recalculated where necessary on the basis of the final adopted plan or the applicable 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 is deleted]

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:

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- (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 oral explanations 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 Regulation (EU) No 691/2010 shall include the risk sharing mechanism set up in Article 11a of this Regulation, the incentive schemes set up pursuant to Article 12 of this Regulation, and their impact and effectiveness in achieving the set performance targets.

Article 18

Entry into force

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

2. This Regulation shall apply from 1 January 2007.

However, Member States may defer the application of Articles 9, 10, 12, 13 and 14 in respect of en route charges until 1 January 2008.

Member States may defer the application of Article 9 and Articles 11 to 15 in respect of terminal charges until 1 January 2010.

If Member States decide to defer application in accordance with the second and third subparagraphs, they shall notify the Commission thereof.

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,

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— whether airports operate in a competitive environment or under economic incentives designed to cap prices or otherwise incentivise cost reductions.

5. Where there are more than 150 000 commercial movements per year, the assessment referred to in points 1 to 4 shall be carried out at each individual airport.

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ANNEX II

Transparency of costs

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.

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), fourth subparagraph.

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 eighteen months before the start of a reference period.

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Table 1 - Total costs

Charging zone name Entity name						Period of reference: N - (N+4)									
						Determined costs					Actual costs				
Cost details						N	N+1	N+2	N+3	N+4	N	N+1	N+2	N+3	N+4
Detail by nature (in nominal terms)															
Staff															
Other operating costs															
Depreciation															
Cost of capital															
Exceptional items															
Total costs															
Total % n/n-1															
Staff % n/n-1															
Other op. % n/n-1															
Detail by services (in nominal terms)															
Air Traffic Management															
Communication															
Navigation															
Surveillance															
Search and rescue															
Aeronautical Information															
Meteorological services															
Supervision costs															
Other State costs															
Total costs															
Total % n/n-1															
ATM % n/n-1															
CNS % n/n-1															
Complementary information on the cost of capital and on the cost of common projects (in nominal terms)															
Average asset base															
Net book value fixed assets															
Adjustments to total assets															
Net current assets															
Total asset base															
Cost of capital %															
Cost of capital pre tax rate %															
Return on equity %															
Average interest on debts %															
Cost of common projects															
Common Project 1															
Complementary information on inflation and on total costs in real terms															
Inflation % ⁽¹⁾															
Total costs in real terms ⁽²⁾															
Total % n/n-1															
Deduction of costs allocated to exempted VFR flights (in nominal terms)															
Total costs															
Costs for exempted VFR flights															
Total costs after deduction ⁽³⁾															

Costs and asset base items in '000 000 national currency - Service units in '000 000

⁽¹⁾ Forecast inflation used for establishing the determined costs in nominal terms - actual inflation recorded by EUROSTAT

⁽²⁾ Determined costs (performance plan) in real terms - actual costs in real terms

⁽³⁾ Determined costs (after deduction of VFR costs) reported at Annex II (in nominal terms)

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 a description of the methodology used for allocating those costs between different charging zones;
- 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;
- 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 point 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.

Table 1
Total costs

Organisation:

Charging zone:

Year n:

(n – 3) A	(n – 2) A	(n – 1) A	(n) F	(n + 1) F	(n + 2) P	(n + 3) P	(n + 4) P	(n + 5) P
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Detail by nature

	(n – 3) A	(n – 2) A	(n – 1) A	(n) F	(n + 1) F	(n + 2) P	(n + 3) P	(n + 4) P	(n + 5) P
Staff									
Other operating costs									
Depreciation									
Cost of capital									
Exceptional items									
Total costs									

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);

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- 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.
- 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),

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- iii) the carry-overs resulting from the implementation of the traffic risk-sharing referred to in Article 11a(2) to (7),
- iv) the carry-overs from the previous reference period resulting from the implementation of the cost risk-sharing referred to in Article 11a(8),
- 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 point 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(1),
 - iii) the carry-overs resulting from the implementation of the traffic risk-sharing referred to in Article 11a(2) to (7),
 - iv) the carry-overs from the previous reference period resulting from the implementation of the cost risk-sharing referred to in Article 11a(8),
 - 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).

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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 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).

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Table 2 - Unit rate calculation

Charging zone name	Period of reference: N - (N+4)
Entity name	

Unit rate calculation	N	N+1	N+2	N+3	N+4
<p>1. Determined costs in nominal terms and inflation uprate</p> <p>Determined costs in nominal terms - VFR excl. (reported from Annex II) Actual inflation rate recorded by EUROSTAT - Annex II Forecast inflation rate - Annex II Inflation adjustment - Article 6-1: year n amount to be carried over</p> <p>2. Forecast and actual total service units</p> <p>Forecast total service units (performance plan) Actual total service units Actual / forecast total service units (in %)</p> <p>3. Costs subject to traffic risk sharing (ANSP)</p> <p>Determined costs in nominal terms - VFR excl. (reported from Annex II) Inflation adjustment - Article 6-1: amount carried over to year n Traffic - Article 11a (2): amounts carried over to year n Traffic risk sharing - Article 11a (2) to (7): add. revenues carried over to year n Traffic risk sharing - Article 11a (2) to (7): revenue losses carried over to year n Uncontrollable costs - Article 11a (8) (c): amounts carried over to year n Bonus or penalty for performance - Article 12-2 Over(-) or under(+) recoveries ⁽¹⁾: amounts carried over to year n Total for the calculation of year n unit rate</p> <p>Traffic risk sharing - Article 11a (2) to (7): add. revenue year n to be carried-over Traffic risk sharing - Article 11a (2) to (7): revenue loss year n to be carried-over</p> <p>Parameters for traffic risk sharing</p> <p>% additional revenue returned to users in year n+2 - Article 11a (4) first subparagraph % loss of revenue borne by airspace users - Article 11a (4) second subparagraph</p> <p>4. Costs not subject to traffic risk sharing - Article 11a (2)</p> <p>Determined costs in nominal terms - VFR excl. (reported from Annex II) Inflation adjustment - Article 6-1: amount carried over to year n Traffic - Article 11a (2) : amounts carried over to year n Uncontrollable costs - Article 11a- 8(c): amounts carried over to year n Over(-) or under(+) recoveries ⁽¹⁾: amounts carried over to year n Total for the calculation of year n unit rate</p> <p>5. Other revenues - applied unit rate (in national currency)</p> <p>Revenues from other sources - Article 3 Grand total for the calculation of year n unit rate</p> <p>Year n unit rate (in national currency) ANSP component of the unit rate MET component of the unit rate NSA-State component of the unit rate</p> <p>Year n unit rate that would have applied without other revenues</p>					

Costs, revenues and other amounts in '000 000 national currency - Service units in '000 000

⁽¹⁾ Annexe IV-V 2. (vi) - over/under recoveries incurred up to the year of entry into force of the Regulation

- The charging Regulation -

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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 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 (4) second subparagraph;
- Description by factors of the amounts carried over from the previous reference period in accordance with Article 11a (8) (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 users of air navigation services.
