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followed by: Jean-Claude Gouhot & Nicolas Lochanski

Dear Sir,

Regarding the presentation on October 15th 2003 of the final report of the study cited in the subject, the French delegation would like to congratulate your consultant for the quality of the document. Nethertheless, if I essentially share the proposals formulated to map out the general principles of the charging structure of the air navigation services, I find some adjustments which may be needed to in the analysis and the practical proposals for an economic regulation.

This study is an important step to prepare the rules of implementation of the Single European Sky with the aim of improving the effectiveness of the air navigation services.

Then, you will find in the appendix a list of our reserves and comments relating to the final report, which certain innovative proposals deserve to be studied more thoroughly.

Yours sincerely.

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Enclosures : Appendix « French comments on the report 'Study on the implementation rules of economic regulation within the framework of the implementation of the Single European Sky' »

Appendix

French comments on the report " Study on the implementation rules of economic regulation within the framework of the implementation of the Single European Sky "

Section 1 - Introduction

1-1 The French delegation regrets that in this introduction the consultant is satisfied, after a brief description of the current en route charging system, to bring back some opinions of the European Commission and the PRC according to which "one of the principal weaknesses of the current system is the lack of incentives to efficiency".

1-2 It misses obviously in the paragraph 1.1 (b) " The current en-route charging system " at least the evocation of the robustness of the full cost recovery system, demonstrated by the successful application which has been made for more than 20 years by almost all of the Eurocontrol Member States.

Section 2 - Review of restructuring issues

2-1 The distinction made between the operational airspace blocks (OAB) and the airspace charging blocks (ACB) seems relevant because there is indeed not a priori bijective relation between a block of airspace built or modified for exploitation purpose and a block whose charging level is uniform. The current situation of the States having several ACC is like one ACB comprising the OABs.

2-2 The report mentions a new environment, which is more commercialized in orientation and would promote financial contracts and help to share revenues. The " Conseil d'Etat " (the highest French administrative jurisdiction) has considered that the air navigation services are a Service for General Interest (SGI). Their public interest nature predominates over commercial interests.

Moreover it was by no means proven that services given by ANSPs that were corporatized or privatized have been at higher quality level or lower cost. In addition, the evolution of the French unit rates since 1994 shows: France is the only country among large countries to have passed below the Eurocontrol average.

2-3 Options of implementation of economic regulation within the framework of the Single European Sky are proposed, the UARIK " Upper Airspace Restructuring is Key " or the RIK " Regulation Is Key ".

The first option implies the participation of voluntary States which would create together blocks of airspace in the upper airspace. The consultant specified that the Fonctional Airspace Blocks (FAB) which could exist within the framework of the implementation of the Single European Sky correspond to the OAB, i.e. the blocks of airspace whose ACC are responsible for.

The future FAB are supposed to be located in the upper airspace. So if some French airspaces were to be transformed into FAB, then they should be reorganized as necessary. However France does not plan a reorganization of its airspace which would lead to specialize an ACC in controlling all or a part of its upper airspace, even less to delegate it to another ANSP.

The RIK option would be based on a centralized organization responsible for the coordination network. It would regulate the ANSPs with incentives and penalties. This option does not seem to be realistic¹. There are further comments in section 7 on this issue.

Section 3 – Recent developments in the practice of the regulation

This section with a theoretical appendix about the last evolutions of network regulation, is interesting. However, it raises a question in regard to its applicability within Air Traffic Management.

Until now, only the United Kingdom has tried to implement a sort of price-cap regulation with such difficulties that it had to be revised. From this year on, it offers to NATS a minimum revenue. The original sort of price regulation was replaced by a mechanism even more complex which finally, seems to ensure the provider to be able to recover a given level of its costs.

The study recommends modes of hybrid regulation from the cost of service regulation to the price-cap regulation. The proposed complexity should make the SES stakeholders very cautious.

The report does not provide concrete comparisons between ATM and network industries. Beyond theoretical comparisons, it appears indeed difficult to consider an economic regulation applied to the ATM by reference to regulations in competition industries such as electricity or telecommunications services. Air Traffic Control is not a service to be put in competition. It is given by organizations which, except for the NATS:

- are all public or state-owned
- and do not make, or even less distribute, profit
- and do not have other income

Most european ATC stakeholders have taken advantage of the economic performance of the en-route charges current system. In this respect, the costs and the unit rates in Europe did not cease dropping from 1994 to 2000. They increased in the 2001-2003 period but they did get back to the 1994 level, once the effect of inflation had been deducted.

The current full cost recovery system permits to clearly know which users pay. On the other hand, on the assumption of a regulation which would prevent the service provider from covering its actual costs, the identification of who would

¹ Because of the States responsibility for a SIG

finally assume possible losses is not dealt with. Would this be the State or the users?

Moreover, the development of the " best practices " for regulation in other network industries is not necessarily engaging. It is not the possible success in these other sectors which will guarantee the success in ATM.

For all these reasons, I consider it is impossible that full cost recovery principles could be given up by all the Eurocontrol States and be replaced by such a dubious regulation.

Section 4 – Contractualisation – *common targets setting*

4-1 The concept of common targets setting should prevail over the concept of contractualisation because the latter is used to organize means for the former. In addition, the specific nature of ATM, recognized by the Court of Justice of the European Communities, could not be the subject of a contract. Thus " Contractualisation " should be replaced in the title of this section by "common targets setting ".

4-2 The consultation process with ANSPs is one way in which, according to the consultant, one can make improvements in the respect of mutual commitments. I support this opinion. Indeed, this process offers references and indicators which help the States and the ANSPs to set and to achieve objectives.

The work achieved until now by the PRU, in particular on the matters of economic performance, is recognized as being of quality and useful for the States, the service providers and the users. The consultation work has encouraged the ANSPs to disclose relevant information related with costs, operational data and human resources.

This work is still in progress through studies which aim is to know the exact scope of these data, whatever their original country. France supports these efforts which, allowing the consolidation of the data, will result in quality economic benchmarking.

4-3 The consultant considers the possibility to create a forum or an independent organization through which the actors would bind. In the context where Eurocontrol already provides advanced solutions to ANSPs, a new authority seems to be unnecessarily time and resource consuming. The States could not leave their responsibilities for setting their objectives and targets as well as for management control.

Section 5 - Risk sharing and traffic volatility in ATM

5-1 This section describes in an concise way the major difficulty observed in the current system, which generates, in a period of air transport recession, an increase in charging level. Mechanisms which smooth the unit rates must be introduced.

5-2 The proposal for RRIA “ Returned Recovery Imbalance Account ” principle would deserve to be studied considering an account per State. This has already been implemented in France in a simple way, within the framework of the terminal charges, with a spreading of under recoveries in years 2001 and 2002. To be fully effective, this RRIA must be able to integrate under recoveries as well as over recoveries, in a symmetrical way. The development of a new rule is essential in particular for over recovery.

Section 6 - General charging framework to determine risks and rewards in ATM

The term “benefit” used in this section is inappropriate according to the french charging rules based on the full cost recovery principle

6-1 The report proposes a “ sharing risk and benefit ” model. The so called “ hybrid ” model would offer the possibility to the national regulator, to choose in a common but flexible framework, a mode of sharing risk and benefit from the cost of service regulation to the price-cap regulation. This idea of a common but flexible mode is interesting and takes again the necessary current flexibility in the en-route charging principles of the multilateral agreement in allowing the States to choose among two alternate mechanisms into account.

6-2 Nevertheless this model appears to be incomplete since it does not cover the the full cost recovery option as currently practised by almost all the Eurocontrol States. This model comprises a carry-on mechanism for receipts, that takes up the traffic volatility, but it does not integrate a carry-on mechanism for costs². This model should also include the full cost recovery system so as to allow each State or regulator, within a common framework, to choose the charging system that would be the most suitable. In addition, as properly stated in the report, the initial level of unit cost to target is a difficulty which is unsolved at this stage. The consultant seems to have the only view of operators who would have other ressources to eventually offset losses or would raise money, which is not the general case in the European ATM.

Reminding the comments made on section 3, I consider that a charging mode that would exclude full cost recovery principles could not be approved.

² between the forecast costs and the actual costs

Section 7 - ATM coordination and infrastructure management

The proposals made by the consultant in this section are out of the framework of the Single European Sky

7.1 According to the consultant, the network manager in other network industries has to manage and co-ordinate the network in such a way it would facilitate interoperability between the service providers. Still according to him, the establishment of an European network manager would be indispensable to increase the ATM efficiency. It would act in fact as an ATFM manager who in the short run would enable a better use of the resources. In the long term, the network manager would be qualified to decide where capacity should be increased in priority.

7.2 Still here, before considering possible improvements, it would have been necessary to admit the important progress made since the operational start of the CFMU, as well by the CFMU itself as by the FMP of the States. France developed a high level of expertise in the local management of flows which is quite valuable for the CFMU and in fine for the users.

Therefore the proven approach of a coordinated and tactical capacity management between the States and the CFMU should be kept. It offers the tools and a sight on the nodes of the network. On the other hand, it lets to the service suppliers the responsibility to accept the sectors load by adjusting in as finely as possible supply and demand.

7.3 On the contrary, a supranational centralized network management which would impose more or less relevant regulations to ANSPs is not acceptable. The States and their delegated service suppliers are responsible for the service. For this reason, they could not be imposed with measures which could jeopardize and damage the quality of the service (safety and speed).

7.4 The experience in other sectors such as electricity network services could possibly bring help to the debate on the more or less active measures which could be taken by the network manager. However, the role or the operation of the network manager should not be evocated without the Eurocontrol proven technical experts within Eurocontrol and the closely associated ANSPs.

7.5 For the same reasons of States responsibility, reserves must also be issued on the creation of an ATM infrastructure interoperability and development manager.

The separation between infrastructure and operating activities, still very often dealt with in the theoretical plan and sometimes experiencing difficulties (see the English experiment with Railtrack) is not justified for the monopolistic ATC service where infrastructure management and service supply are interrelated.

7.6 It would be useless and inefficient to create a new " European supervision organization " whereas Eurocontrol and the States have gradually developed and improved through paneuropean projects the ATM infrastructure. The Reduced Vertical Separation Minimum (RVSM) recent implementation proved that the

collaboration of all parts concerned within Eurocontrol, the States first, could lead to harmonization, integration and interoperability in the infrastructure development (airspace organisation, equipments and systems).

Section 8 – The structure of en-route charges: general principles and some generic issues

8-1 the general principles as non-discrimination, cost reflectiveness, and transparency recalled in the report are essential to determine a charging structure.

8-2 the criterion of ability to pay, as taken again within the draft implementation rules, led to use the weight in the tariffication. The 0.5 exponent currently applied appears to be suitable insofar as it constitutes a right balance between the previous criterion ³ and the incentive for using larger carriers so as to better use the available capacity. Therefore the consultant's proposal to keep the current parameters is suitable. If the exponent had to move, it should increase rather than the reverse.

It is clear that the output produced by terminal services should be measured with "movements", as quite certain that it should be done for en-route services with "distance". This ICAO principle is also taken again by the independent Eurocontrol PRC.

As far as en-route services are concerned, and apart from the criterion of ability to pay, the two-part tariffs including a fixed part independent of the overflowed range should be discarded. The conclusions of the study on this point are clear and I approve them.

Section 9 – Alternative options for ATM charging structures

9-1 Considering as a starting point the the comparison of the charging models in other networks, specially in the field of energy services, the study proposes a charging model named "origin-destination-distance". This model regards the final services as a "connection" service to the en-route network, in entry and at exit, that is to say on departure and arrival in the ATM terms, the service provided by the network being transport over a certain range.

This model corresponds to an approach oriented to the services provided to the users rather than the organization of the ANSPs; it offers a "gate to gate" view of the Air Navigation Services and would harmonize charging for terminal services in Europe. This innovative view appears promising and should be developed.

9-2 The analysis which has led to the distinction between upper airspace and lower airspace shows that it would increase the airspace fragmentation, would distort the cost-reflectiveness and would introduce a discriminatory charging. This economic analysis seems relevant so that this option has to be drawn aside, as suggested by the consultant.

³ whose value would be, pursuant to this only criterion, higher (0.72 in the PWC study)

9-3 Lastly, the study confirms that it would not improve ATM performance in Europe to differentiate the charging level with ACCs. Such a differentiation would be likely to produce pernicious effects. For example, the dense areas would have lower tariffs and would attract even more traffic. Also the change of sectors from an ACC to another within a single ANSP could generate opposite evolutions in the costs of these ACC, which would be unjustified for an operation intended to improve the overall en-route network effectiveness.