

**Preliminary Comments on the Final Draft Report of the Economic Regulation Study
by the Regulatory Policy Institute (RPI)**

The Final Draft Report of the Economic Regulation Study concerns issues of charging for air traffic services provision and regulation of charging. As an introductory remark to the specific comments listed below, it has to be noted that the report leaves aside that the great majority of States applies the full-cost recovery principle for the financing of their air traffic services. The decision of applying the full cost recovery is, at least in Germany, closely linked to the fact that air traffic control is of policing and constitutional infrastructure nature. With regard to the German situation the application of the full cost recovery is a condition in order to avoid financing requirements and subsidies from the public budget. For this reason Germany corporatised its ANSP. However, as the German regulator approves the resulting unit rate we consider this application of the full cost recovery principle to be some kind of economic regulation. Therefore it is also suggested for the study to include the examination of the applicability of the study's proposed measures in conjunction with nationally (administrative, corporative) and internationally (e.g. EUROCONTROL PRC) available tools.

1. Section 2: Review of Restructuring Issues:

The introduction of the concept of Airspace Charging Blocks requires further examination of the realistics for a possible efficient implementation and clarification with respect to possible savings for airspace users and added value for all stakeholders. No quantitative assessment has been made so far. The theory of charging blocks is well reflected however this should be further elaborated using practical examples, e.g. the influence of different charging blocks on a flight from Athens to London. The link between the restructuring of airspace and charging blocks and performance improvements at the level of the ANSP needs further elaboration by the consultant.

2. Section 3: Review of the Theory and Practice of Price Regulation

The different types of economic regulation have been presented by the consultant together with an analysis of the strengths and weaknesses.

In order to better understand the impact of the different formats of economic regulation it would be helpful to present for each format a model case for a typical ATM service provider. Examples

from other sectors do most of the time not serve as a comparison to the special environment ATM is subject to.

The overall costs of regulation and increasing complexity need to be weighted against the potential gains for airspace users stemming out of a newly developed regulation framework. One should be aware that contrary to the named industries utilities, gas, telecom, the ATM industry accounts for only a fraction of the size both in terms of turnover and people. The value added of additional economic regulation as the RIK view implies has to outweigh the additional cost.

The proposed hybrid system needs to be validated within the study to provide more than just another generic or hypothetical model. We share the consultants' view on the deficits of the pure price-cap regulation, however we would expect further analysis as to the objectives and principles to be applied if not a complete proposal for a hybrid regulation model.

3. Section 4: Contractualisation and Service Provision Arrangements

The study states that contractualisation may be difficult to achieve. We share the consultants' view. An individual ANSP is part of a network. Thus, the individual accountability for the network performance is limited which in turn makes any service level agreement difficult.

Another aspect, however, is the non-discriminatory service principle which might constitute another legal hurdle for bilateral service level agreements. Due to the fact that ATM service providers are legally bound to provide its services on a non discriminatory basis the additional benefits from a contractualisation procedures compared with the current user consultation framework should be analyzed.

Even more so the practical implementation seems to be rather complex for the individual ATCO so that any contractualisation model requires considerable in depth analysis.

Due to the obvious problems arising with bilateral contracts, the consultants propose agreements on the level of organizations and associations. We like to point out that not all airlines are members of organizations like AEA. Thus, the involvement of non-organized (low – fare) airlines within such a contractual relationship needs to be studied. Additionally, it seems questionable

whether organizations like AEA, IATA and CANSO can be accountable for contractual arrangements.

A newly created review body might create new interfaces without adding benefit to the present activities of the Performance Review Process at EUROCONTROL. Hence, more in-dept analysis would be welcome.

4. Section 5: ATM Co-ordination and Infrastructure Management

With respect to the ATM Co-ordination much work has been done already and is currently under way at EUROCONTROL level within the scope of the Dynamic Management of the European Airspace Network program. Within this program solutions will be developed, validated and analyzed with regard to costs and benefits. In that sense, duplication of work needs to be avoided. The EUROCONTROL findings should be better reflected within the study.

The similarity of the ATM System Operator concept with the current function of the CFMU is striking. The proposed concept of the draft final report needs to elaborate the differences of the current CFMU role and tasks with the proposed concept. Additionally, the concept would need far more analysis regarding its costs, benefits, practicality and the functioning in real life.

The more strategically oriented role of an ATFM system operator should be weighted against possible implications for the tactical decisions of an ATM service provider.

Comparisons with other sectors have been conducted (railways) but a more ATM oriented analysis of practical implications and quantifiable advantages need to be conducted by the consultant before being in a position to judge the proposal.

With respect to the proposed Infrastructure Manager more information on its impact on the competitiveness of the ATM industry need to be provided. The conformity of an active infrastructure manager with competition law has to be analyzed. Potential market distortions should be further studied.

Air navigation services organized under market conditions (such as CNS, AIS...) might not need a centralized infrastructure manager. Such a position might even hamper a competition of such services based on different technical solutions.

Again, before judging the usefulness of such a centralized Infrastructure Manager, much more information on the practicalities of such a function within the ATM sector need to be provided by the consultant.

In case an Infrastructure Manager would be established such a function could be set up by the community of the ANSP in Europe since such a position is closely related to a common procurement activity which is already being exercised by many ANSPs today.

5. Section 6: Risk Sharing & Benefit Sharing in ATM

The theoretical formula presented by the consultant should be used for practical modelling with available data thus enabling the consultant to analyze the potential impacts of the formula on the risk balance.

It may prove helpful for the study to ascertain whether any sort of the proposed Revenue Recovery Imbalance Account has already been established by European ANSPs. It appears that this type of account may only substitute minor imbalances. Therefore the study may also include a statement to what extent such an account would need to be elevated for an economic downturn as experienced over the last two years in direct relation to the size of such an account not to become questionable.

As long as ANSPs operate under a cost recovery regime they should be able to obtain a suitable rating and credit line to cover losses without setting up the proposed account. The consultant should describe in more detail the organization of such a fund, e.g. contributors, size, criteria for use, and its overall necessity.

Airspace user should be consulted on such an approach.

6. Section 7 and 8: The Structure of Route Charges and Alternative Options for ATM Charging Structures

The idea of an origin/ destination charge might face problems with respect to its practicability. In case aerodrome control service are being provided by different ANSP it remains unclear how charges should be evenly attributed.

Different airports may be operated by different ANSP with different cost structures. The way such a structure should be handled within an origin/destination charge remains unclear.

The study does not make a firm proposal for a new and innovative charging regime.

All suggested charging options need to be validated and benchmarked with the existing one using realistic input data in order to place the reader of the study in a position to evaluate the benefits and risks of the proposed ideas.

Conclusion:

We share the consultants' view that a change of the charging structure will have a limited effect on the performance of the European ATM network. In the consultant's view, strong regulation, pressure from the user side and centralized functions will bring the desired results. We find it difficult to follow the consultant's view since the proposed concepts and ideas are of a very generic nature and thus, require more analysis.

We note that the proposed concepts have been applied to other industries. We are not in a position to judge to what extent the introduction of these concepts have contributed to the successes and faults in the liberalization process of the particular industries. The report at this stage lacks the in-depth analysis of the consequences of the application of the central ideas to the ATM network in Europe. We look forward to receiving a considerable amount of that analysis in the final report.