

## **CONFERENCE ON THE ECONOMICS OF AIRPORTS AND AIR NAVIGATION SERVICES**

(Montreal, 19 - 28 June 2000)

**Agenda Item 4:**        **Determinants of the economic regulation of airports and air navigation services**

**Agenda Item 5.2:**    **Elements for consideration with regard to ICAO policy**

### **USER CONSULTATION**

(Presented by Switzerland)

### **INFORMATION PAPER**

#### **SUMMARY**

This Information Paper describes the methods applied in Switzerland in the process of modifications of charges for airports and air navigation and underlines the importance of user consultations.

## **1. Introduction**

1.1            In the context of the general evolution of Civil Aviation, and particularly in view of the recent worldwide privatization and commercialization tendencies of service providers, the relationships between the partners involved – the regulators, users and providers – have gained increased importance. The relationship between providers and users is specifically focussed in the *Statements by the Council to Contracting States on Charges for Airports and Air Navigation Services* (ICAO Doc 9082/5), notably in the recommendations outlined in paragraphs 22/23 and 44-46 with reference to user consultations.

1.2            In Switzerland this important requirement of user consultations in cases of modification of infrastructure charges has been a part of national legislation for many years. The Information Paper presented here has the objective to give a short overview of the application of this process in practical use in Switzerland. It must be clearly stated at this point, however, that the methods described here are by no means the only way of following the recommendations of the ICAO Council, but represent one of several possible approaches.

1.3            Legal status and organizational form of the service provider as well as regulation of competence between regulator and provider are obviously of primary importance in approaching this question.

Information Paper «Organizational and Financial Aspects of Swiss Airports and Swisscontrol» (ANSCConf-WP/67) provides the necessary information on organizational aspects of air navigation services and international airports in Switzerland.

## 2. Consultation Procedure regarding Airport Charges and Planning

### 2.1 ICAO Provisions

2.1.1 **Reference:** ICAO document 9082/5 *Statements by the Council to Contracting States on Charges for Airports and Air Navigation Services*, paras. 22 and 23.

“Consultations with users regarding charges and airport planning”

### 2.2 Legal Bases in Switzerland

2.2.1 **Note:** The following legal wording is an English translation of the official publication of the legal texts, which in Switzerland are published in the languages German, French and Italian.

Ordinance on Aeronautical Infrastructure:

Chapter 3 Airport Charges

Art. 32 Requirements

1. The airport authority maintains separate cost bases for the different charges elements such as landing, passenger, cargo, fuel or handling charges. Air navigation charges are not considered to be airport charges.

2. Aircraft with low levels of emissions will be treated favourably when establishing charges.

Art. 33 Supervision

1. The Office [for Civil Aviation] supervises the establishment and application of airport charges. It will thereby apply the dispositions in accordance with the federal law of 20 December, 1985 on Price Supervision.

2. The airport authority supports the Office and provides full access to its operational accounts at any time.

Art. 34 Publication

The airport authority is responsible for the publication of the charges and its components in the AIP.

Art. 35 Modification

1. Any modification of the airport charges system or charges levels must be published in the Aeronautical Information Circular (AIC); the modification must be accompanied by a note

informing users that they may have access to relevant documents of the provider within 2 months.

2. If at the end of the consultation period modifications are decided by the airport authority, users and the Office will be informed accordingly. Modifications of charges will become effective at the earliest two months after publication.

## **2.3 Application in Switzerland**

2.3.1 Airport charges are not formally approved by the supervisory authority, the Federal Office for Civil Aviation (FOCA). This supervisory function is to verify that national legal provisions and international directives and recommendations (notably those of ICAO) are respected and that the applicable general charges principles, both in structure and in collection, are observed by the respective airport authorities.

2.3.2 According to the dispositions mentioned in para. 2.2 the airport authority is required to give the users and FOCA sufficient notification time about its intentions. As a general rule, a written report is presented six months before the planned effectivity date, accompanied by detailed justification that also shows the economic effects on the airport authority as well as on the users. The affected users then have a time period of two months to state their position, also in written form. FOCA will only become active at this stage if it has reasons to believe that one or several of the principles mentioned above have been violated.

2.3.3 After the hearing has been held, the airport authority decides about the introduction of the intended modifications, with adequate consideration of the positions formulated by the users. FOCA and those users participating in the consultation process will be informed in writing by the airport authority about the new charges schedules at least two months before the effectivity date. With the official publication by FOCA in the form of an Aeronautical Information Circular (AIC) as well as an amendment in the Aeronautical Information Publication (AIP) the procedure is officially closed.

2.3.4 In principle the whole procedure is based on a partnership philosophy between service providers and users. If the decision of the provider should lead to grave differences or if the users should have serious doubts about the legality of the change, they would still have the right to investigate legal steps. In fact, they would have the possibility to demand a decree from the deciding authority which includes official information on possible legal steps and then proceed to formally question the decision by administrative law.

### 3. Consultation Procedure regarding Air Navigation Charges and Planning

#### 3.1 ICAO Provisions

3.1.1 Reference is made to ICAO document 9082/5, *Statements by the Council to Contracting States on Charges for Airports and Air Navigation Services*, paras. 44, 45 and 46.

“Consultation with users regarding charges and air navigation services planning”

#### 3.2 Legal Bases in Switzerland

3.2.1 **Note:** The following legal wording is an English translation of the official publication of the legal texts, which in Switzerland are published in the languages German, French and Italian.

##### **Ordinance on Air Navigation Services**

##### Section 3: Air Navigation Charges

##### Art.12 Setting and Approval

1 Swisscontrol determines the charges for air navigation services, which comprise charges for approach and aerodrome control and route air navigation services.

2 The department approves the air navigation charges before they become effective ; it will thereby apply the dispositions in accordance with the federal law of 20 December, 1985 on Price Supervision.

3 The department sets the directives for the calculation of charges.

##### **Ordinance on the delegation of air navigation services duties and the calculation of charges for air navigation services**

##### Art. 5 Modification of charges for air navigation services

If Swisscontrol wants to modify its charges for air navigation services, it will inform the office in time and will consult with the users. A substantiated request will be made at least two months before the effectivity date with the Federal Department of Transport, Communication and Energy.

#### 3.3 Application in Switzerland

##### 3.3.1 Approach and Aerodrome Control Charges

3.3.1.1 According to the legal provisions mentioned above, the Federal Department for Environment, Transport, Energy and Communication (DETEC) has the authority to approve the charges for air navigation services of the officially designated provider, Swisscontrol. FOCA, the department’s direct supervisory body for the service providers, assumes the expert level role by evaluating the issues and presenting formal proposals to the department.

3.3.1.2 As a part of the regular contacts between the regulator and the provider Swisscontrol informs FOCA at an early stage (as a general rule 9 months in advance) about intended measures in the charges sector. During this first phase FOCA conducts a summary examination of the envisaged modifications, with focus on the principles of proportionality and non-discrimination. At this stage it publishes the project in the Aeronautical Information Circular (AIC).

3.3.1.3 At least six months in advance, Swisscontrol opens the consultation procedure with the users and its representative organisations. The supporting documentation, with copy to FOCA, includes the new or modified charges as well as the economic justifications of the project and the financial consequences for the users. FOCA does not take any position at this time ; however, it shares the documentation with the Federal Price Supervision Service who is checking the project for any illegal pricing practices. The position of the Price Supervision Service later will be one of the decisive elements for a definitive evaluation of Swisscontrol's request.

3.3.1.4 At the end of the consultation (as a general rule 3 months after the procedure has been opened) Swisscontrol decides on its definitive request, taking into account the comments received, and files it with FOCA, for approval by DETEC. In its examination FOCA verifies that the project is in conformity with the norms and recommendations established by ICAO and EUROCONTROL, and if national legal dispositions, notably the established principles of administrative law such as the law prohibiting any legal abuse, non-discrimination and proportionality are observed. If there is no opposition against the intended measures, FOCA forwards the project to DETEC with a proposal for approval. The decision for approval by DETEC is published officially in the form of a decree which can be subject to legal action. At the same time, Swisscontrol as the requesting organisation is informed about the decision, enabling them to inform the users concerned in adequate form. The official publication by FOCA in the Aeronautical Information Circular (AIC) and as an amendment in the Aeronautical Information Publication (AIP) ends the process.

3.3.1.5 In the case of the users having serious doubts regarding the conformity of the decision made by DETEC, they would be able to seek legal recourse by taking the issue to the Federal Council, who then would make a final decision.

### 3.3.2 **Route Air Navigation Services Charges**

3.3.2.1 Contrary to the national system of approach and aerodrome control charges, Switzerland as a member of the European Organisation for Air Navigation Safety EUROCONTROL, is integrated into the system of route air navigation services charges of this organisation. As a consequence, user consultations are regulated by the dispositions determined by EUROCONTROL and its competent bodies. On the other hand it is possible for user organisations to request bilateral consultations at any time. This possibility is used on a regular basis. The present paper does not attempt to go into further details of this procedure, as it is assumed to be widely known.

3.3.2.2 The approval of charges according to Swiss law (see ch. 3.2) is accomplished by the fact that Switzerland is represented at ministry level in the competent body, the «Permanent Commission» of EUROCONTROL, and consequently the approval of all charges applicable in the EUROCONTROL system automatically includes the charges for Switzerland, and therefore for Swisscontrol.

3.3.2.3 The possibility of legal recourse is regulated by dispositions determined by EUROCONTROL.