Commission Implementing Regulation (EU) 2019/2153 of 16 December 2019 on the fees and charges levied by the European Union Aviation Safety Agency, and repealing Regulation (EU) No 319/2014

COMMISSION IMPLEMENTING REGULATION (EU) 2019/2153

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on the fees and charges levied by the European Union Aviation Safety Agency, and repealing Regulation (EU) No 319/2014

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91[(1)], and in particular Article 126(4) thereof,

After consulting the Management Board of the European Union Aviation Safety Agency,

Whereas:

(1) In accordance with Regulation (EU) 2018/1139, the revenues of the European Union Aviation Safety Agency (the Agency), include, among other items, the fees paid by applicants for, and holders of, certificates issued by the Agency, and by persons who have registered declarations with the Agency, and charges for publications, handling of appeals, training and any other service provided by the Agency.

(2) Commission Regulation (EU) No 319/2014[(2)] established the fees and charges to be levied by the Agency. However, the tariffs need to be adjusted in order to achieve recovery of cost while avoiding significant accumulation of surplus, in accordance with the provisions set out in Article 126(2) of Regulation (EU) 2018/1139.

(3) In this respect, the Agency's forecasts as regards its workload, related costs and other relevant factors should be taken into account.

(4) Fees and charges provided for in this Regulation should be set in a transparent, fair, non-discriminatory and uniform manner.

(5) Without prejudice to the principle of cost coverage established in Article 126 of Regulation (EU) 2018/1139, fees and charges levied by the Agency should not jeopardise the competitiveness of the Union industry concerned. Likewise, they should be established on a basis which takes due account of the ability of the legal or natural persons concerned to pay, in particular small and medium-sized enterprises.

(6) While civil aviation safety should be the prime concern, the Agency should nevertheless take full account of cost efficiency when conducting the tasks incumbent on it, having regard to the scope of those tasks, as they stands following the entry into force of Regulation (EU) 2018/1139, and the resources available to it.

(7) The Agency should be enabled to levy fees and charges for certification tasks or the provision of other services, which are not specifically mentioned in the Annex to this Regulation, but which are within the remit of Regulation (EU) 2018/1139.

(8) Agreements referred to in Article 68(1) of Regulation (EU) 2018/1139 should provide a basis for the evaluation of the actual workload involved in the certification of third countries' products. In principle, the process for validation by the Agency of certificates issued by a third country with which the Union has an appropriate agreement is described in such agreement and should result in workload that differs from the workload required for certification activities by the Agency.

(9) Time limits for the payment of fees and charges levied under this Regulation should be fixed.

(10) In order to contribute to fees and charges being recovered to the fullest extent possible, appropriate remedies in cases of non-payment and risk of non-payment should be laid down.

(11) The geographical location of undertakings in the territories of the Member States should not be a discriminatory factor. Consequently, the travel costs related to the certification tasks carried out on behalf of [such] undertakings should be aggregated and divided among the applicants.

(12) Applicants should be able to request an estimate of the amount to be paid for the certification tasks and services, so as to increase predictability. In certain cases, the preparation of the estimate may require the Agency to perform a prior technical analysis. Given the cost of such analysis, it is justified for the Agency to be remunerated accordingly.

(13) It is reasonable that the full payment of the charges for an appeal against decisions of the Agency is a prerequisite for an appeal to be admissible.

(14) While this Regulation should enable industry to anticipate the level of the fees and charges it will be required to pay, it is necessary to regularly examine whether its terms need to be revised, in accordance with Article 126(3) of Regulation (EU) 2018/1139.

(15) Interested parties should be consulted prior to any change of fees, and should be given information as to how the fees are calculated. Such information should provide interested parties with an insight into the costs incurred by the Agency and its productivity.

(16) The revision of the tariffs should follow a procedure that permits amendment without undue delay based on the Agency's experience gained from the application of this Regulation, continuous resource and working methodology monitoring, and the continuous assessment of the financial needs.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/2153. (See end of Document for details)*

(17) Regulation (EU) No 319/2014 should be repealed, without prejudice to transitional provisions.

(18) The measures provided for in this Regulation are in accordance with the opinion of the committee established by Article 127(1) of Regulation (EU) 2018/1139,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation determines the matters for which fees and charges are due to the Agency, and establishes the amount of the fees and charges and the way in which they are to be paid.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(a) ‘fees’ means the amounts levied by the Agency and payable by applicants for certification tasks;

(b) ‘charges’ means the amounts levied by the Agency for services provided other than certification tasks;

(c) ‘certification task’ means any activity carried out by the Agency directly or indirectly for the purposes of issuing, maintaining or amending certificates pursuant to Regulation (EU) 2018/1139 and the delegated and implementing acts adopted on the basis of that Regulation;

(d) ‘service’ means any activity carried out by the Agency other than certification tasks, including the supply of goods;

(e) ‘applicant’ means any natural or legal person that requests a certification task or a service provided by the Agency;

(f) ‘billing cycle’ means the recurring 12-month period applied to multiannual projects and to surveillance tasks. The period starts:

  (1) for fees and charges listed in tables 1 to 6 of Part I of the Annex, on the date on which the application is received;

  (2) for fees listed in table 8 of Part I of the Annex, on 1 June following the issuance of the certificate;

(3) for approval fees listed in tables 9 to 15 of Part I of the Annex, on the date on which the application is received;

(4) for surveillance fees listed in tables 9 to 15 of Part I of the Annex, on the date on which the certificate is issued.

Article 3

Determination of fees and charges

1 The fees and charges shall be demanded and levied by the Agency only in accordance with this Regulation.

2 In those cases for which this Regulation does not provide for otherwise, fees and charges shall be calculated at the hourly rate indicated in Part II of the Annex.

3 Member States shall not levy fees for tasks that fall within the remit of the Agency, even if they carry out those tasks on behalf of the Agency. The Agency shall reimburse Member States for the tasks they carry out on its behalf.

4 Fees and charges shall be denominated and payable in euros.

5 The amounts referred to in Parts I, II and IIa of the Annex shall be indexed, with effect of 1 January each year, to the inflation rate in accordance with the method set out in Part IV of the Annex.

6 By way of derogation from the fees referred to in the Annex, fees for certification tasks performed in the context of a bilateral agreement between the Union and a third country may be subject to dedicated provisions stipulated in the respective bilateral agreement.

Article 4

Payment of fees or charges

1 The Agency shall establish the terms of payment of fees and charges, outlining under which conditions the Agency charges for certification tasks and services. The Agency shall publish the terms on its website.

2 The applicant shall pay the amount due in full, within 30 calendar days from the date on which the invoice is notified to the applicant.

3 Where payment of an invoice has not been received by the Agency after the time period referred to in paragraph 2, the Agency may charge interest for each calendar day of delay.

4 The interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the due date falls, increased by eight percentage points.

Article 5

Rejection or termination for financial reasons

1 Without prejudice to the Agency's rules of procedure, the Agency may:

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/2153. (See end of Document for details)*

a reject an application if the fees or charges due have not been received upon the expiry of the time period provided for in Article 4(2);

b reject or terminate an application where there is evidence that the applicant's financial ability is at risk, unless the applicant provides a bank guarantee or secured deposit;

c reject or terminate an application in the cases referred to in the second subparagraph of Article 8(4);

d reject a request for the transfer of a certificate, where payment obligations arising out of certification tasks performed or services provided by the Agency have not been fulfilled.

2 Before proceeding in accordance with paragraph 1, the Agency shall consult the applicant on the Agency's intended measure.

Article 6

Travel expenses

1 Where a certification task or service is conducted, fully or in part, outside the territories of the Member States, the applicant shall pay the travel expenses according to the formula: d = v + a + h – e.

2 For the purpose of the formula referred to in paragraph 1 the following shall apply:

d = travel expenses due;

v = transport costs;

a = official Commission standard rates for 'per diems' covering accommodation, meals, local travel within the place of mission and sundry expenses[(3)];

h = travel time (standard number of travel hours per destination, established by the Agency), at the hourly rate set out in Part II of the Annex[(4)]; in case of missions relating to several projects, the amount shall be subdivided accordingly;

e (e-component) = average travel costs inside the territories of the Member States, including the average transport costs and average travel time inside the territories of the Member States, multiplied by the hourly rate set out in Part II of the Annex. It is subject to annual review and indexation.

3 Travel expenses incurred in the context of the provision of the services referred to in Article 14(2) shall be charged exclusively in accordance with Part IIa of the Annex.

Article 7

Financial estimate

1 Upon request by an applicant, and subject to paragraph 2, the Agency shall provide a financial estimate.

2 In cases where, due to the expected complexity of the project, the above financial estimate requires a prior technical analysis by the Agency, this analysis shall be charged on an hourly basis, under a contractual agreement to be signed between the applicant and the Agency.

3 Activities shall be suspended upon the request made by the applicant until the estimate requested has been provided by the Agency and accepted by the applicant.