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**Decrees, orders, circulars**

**General Texts**

**Ministry of Transportation, Equipment, Tourism and the Sea**

Decree no. 2005-827 of July 20, 2005 on fees for services provided on airports

NOR: EQUX0500129D

The President of the Republic,

Pursuant to the report of the Prime Minister, of the Minister of the Economy, Finances and the Industry and the Minister of Transportation, Equipment, Tourism and the Sea,

Considering the French Code of Civil Aviation;

Considering the French Commercial Code, in particular Article L. 410-2;

Considering the Decree no. 60-652 of June 28, 1960, as amended, relating to the organization of the metropolitan decentralized services of civil aviation;

Considering the Decree no. 62-993 of August 18, 1962, as amended, relating to the organization of the *direction de l'aviation civile Antilles-Guyane*;

Considering the Decree no. 97-34 of January 15, 1997, as amended, relating to the decentralization of individual administrative decisions;

Considering the Decree no. 97-1198 of December 19, 1997, as amended, taken for the implementation to the Minister of Equipment, Transportation and Housing of section 1° of Article 2 of the Decree no. 97-34 of January 15, 1997 on decentralization of individual administrative decisions;

Considering the opinion of the French Competition Council dated July 11, 2005;

The *Conseil d'Etat* (public work section) having been heard;

The Cabinet having been heard,

Orders:

**Article 1**

Articles R. 224-1 to R. 224-5 of the French Code of Civil Aviation shall be replaced by the following provisions:

## “Section 1

### General Provisions

Article R. 224-1. - On airfields opened to public air traffic and on airfields mentioned in Articles R. 231-1 and R. 232-2, the airport public services giving rise to payment of fees pursuant to Article L. 224-2 shall be the services rendered to aircraft operators and their service providers in the context of the use of airport land, infrastructure, facilities, premises and equipment provided by the airfield operator insofar as such use is directly necessary, on the airfield, to the operation of aircraft or of an air transportation service.

Such services cannot give rise to the collection of other sums, under any form whatsoever.

Article R. 224-2. - The following provisions shall apply on airfields the average annual traffic of which for the last three years has exceeded 100,000 passengers:

1° Fees include in particular:

- a landing fee corresponding to the use by aircraft greater than six tons of airport infrastructure and equipment necessary for the landing, taking-off and taxi, as well as additional services, such as lighting, flight information and visual assistance; the rates for such fee are based on the certified maximum take-off weight of the aircraft;

- a parking fee corresponding to the use by aircraft greater than six tons of parking infrastructure and equipment, as well as, if necessary, additional services such as jetways, electric power and de-icing; the rates for this fee are based on the parking duration, the aircraft features and the parking area features, if any;

- a passenger fee corresponding to the use of facilities designed to receive passengers and the public, as well as additional services, if any, such as the availability of check-in and boarding counters, and luggage handling. The basis of this fee is the number of departing passengers. On a same airfield, the price applicable to a same category of passengers is identical for all terminals. However, for terminals put into service after August 1, 2005, differentiated pricings may be set according to the investment and operating costs relating to such terminals and the quality of services;

- a fee for use of fixed facilities for the distribution of aircraft fuel; the basis of this fee, owed by operators of these facilities, is the volume of distributed fuel.

Additional services may, at the operator's choice, be linked to any of the above-mentioned fees.

2° Ancillary fees may be set by the entity mentioned in section I of Article R. 224-3.

They may in particular correspond to the additional services mentioned in 1° above, if not already covered by fees mentioned therein, for availability of technical premises, water treatment facilities and warehouse areas, and the use of facilities necessary for landing, take-off and parking of aircraft of six tons and less.

The pricing conditions for ancillary fees may be set pursuant to an agreement when they correspond to services of a specific nature that are rendered to some users only.

3° Airfield operators mentioned in the first paragraph keep an accounting of their services enabling to identify the costs relating to each of the categories of fees mentioned in this Article.

The other conditions of preparation and collection of fees shall be specified, insofar as necessary, by joint order of the Ministers in charge of Civil Aviation and the Economy.

Article R. 224-2-1. - I. – Expenses incurred to build airport infrastructure or facilities may be taken into account to determine fees, in addition to expenses corresponding to investments already carried out.

II. – When their significance justifies it, future expenses related to the construction of infrastructure or facilities, the works of which are scheduled to start within a maximum five-year period, may also be taken into account for the determination of fees, under conditions set by order of the Ministers in charge of Civil Aviation and the Economy.

The entity in charge of setting fee rates shall identify the transaction in advance, specify its estimated cost, the programming of corresponding works and the date of putting into service. Such entity shall carry out a study on the estimated economic impact of such rates for users and the airfield.

Article R. 224-2-2. - Limited adjustments provided for in section I of Article L. 224-2 shall be determined under objective, transparent and non-discriminatory conditions. The scope and, if necessary, the term of application of such adjustments are in proportion to the general interest objective to which they refer. Such adjustments may be aimed at:

- reducing or setting-off environmental damage; in such a case, the landing fee may be adjusted depending on the time of the day and the performance of aircraft regarding acoustic and gas emissions;

- improving the use of infrastructure; in such a case, fees may be adjusted depending on the time of the day, the week or the year where the service is provided, traffic categories, features of use of the infrastructure and facilities or the location thereof; fees may also be temporarily reduced for aircraft operators for whom the volume or evolution of all or part of the traffic exceeds thresholds or are the subject of contractual commitments;

- favoring the creation of new links; in such a case, fees may be temporarily reduced for air carriers who operate new links from the airfield and whose departure and arrival regions do not coincide with those of another existing airline;

- answering requirements of continuity and national planning; in such a case, fee rates may be reduced for routes with overseas departments and collectivities, as well as for routes liable to public service obligations as defined by Council Regulation (EEC) no. 2408/92 of July 23, 1992 on access for Community air carriers to intra-Community air routes.

Prior to the introduction of a new adjustment or a substantial change to an existing adjustment, the entity in charge of determining fee rates shall specify the general interest

objective sought, set the period of application of the adjustment, define the follow-up indicators corresponding to such objective and assess the estimated impact of such adjustments on the conditions of use of the airfield.

“Article R. 224-3. - I. – For airfields mentioned in Article L. 251-2 and airfields belonging to the State, fee rates shall be set by the operator under the conditions of this Article and of Articles R. 224-4 to R. 224-4-3. For the other airfields, the signatory of the agreement provided for in Article L. 221-1 may either set such rates itself, under the conditions of this Article and of Article R. 224-5, or entrust the airfield operator therewith, under the same conditions.

II. – Without prejudice to the provisions of section III of Article R. 224-4, a consultation of users mentioned in the first paragraph of Article R. 224-1 shall be initiated at least four months before the effective date of the new rate conditions. It shall be made in the context of the economic consultative commission of the airfield, when it has one.

III. – Airfields the average annual traffic of which for the last three years has exceeded 200,000 passengers, or having as users, for this same period, at least two air carriers representing an average of 50,000 passengers per year each, shall have an economic consultative commission that includes representatives, in particular, of the operator, the airport users and air transportation professional organizations; the number of representatives of such last two categories shall at least be equal to the number of representatives of the operator. Except for airfields mentioned in Article L. 251-2, the *directeur de l'aviation civil* having territorial jurisdiction is invited, as an observer, to the meetings of this commission.

A single commission may be common to several close airfields having the same operator.

The commission shall be created by the signatory of the agreement provided in Article L. 221-1 or by the State for airfields belonging to it and airfields mentioned in Article L. 251-2. The Members of the commission shall be appointed and the internal rules shall be approved under the same conditions.

The commission shall be held at least once a year to issue an opinion on the terms and conditions of preparation and application, on the airfield in question, fees for services rendered mentioned in Article R. 224-1 as well as on the investment programs of the airfield. It may be consulted on any subject matter relating to services rendered by the airfield operator.

Meetings of the commission shall be recorded in minutes.

IV. - Information mentioned in the last paragraph of Article R. 224-2-1 and Article R. 224-2-2 shall be communicated to users in the context of the consultations provided for in section II of this Article.

V. – Without prejudice to the provisions of Articles R. 224-4, R. 224-4-1 and R. 224-5, fee rates shall be made public by the airfield operator and shall be effective no sooner than one month after such publication, except for rates set by agreement under the conditions of the third paragraph of section 2° of Article R. 224-2.

“Article R. 224-3-1. - Fee rates shall be set by taking into account the estimated passenger and freight traffic evolution on the airfield(s) in question as well as the following:

- anticipated of evolution of expenses, taking into account, in particular, the evolution of the quality of services provided to users and that of the operator’s productivity;
- estimated evolution of receipts;
- investment programs and financing.

Profits realized from the operator’s activities other than the services mentioned in Article R. 224-1 may also be taken into account.

The airfield operator receives, considering such elements, fair compensation for invested funds, assessed in view of the weighted average cost of its capital.

A joint order of the Ministers in charge of Civil Aviation and the Economy shall specify the conditions of application of this Article, in particular for the definition of the perimeter of activities and services taken into account.

## Section 2

### Provisions Applicable to Airfields of the State

#### and of Aéroports de Paris

Article R. 224-4. - I. - The agreements provided for in section II of Article L. 224-2 are entered into between the State, represented by the Ministers in charge of Civil Aviation and the Economy, and the operator of the airfield(s) in question. They shall determine:

- those of the fees mentioned in Article R. 224-1 the conditions of evolution of which are included in the agreement; they must include the fees mentioned in paragraph 1° of Article R. 224-2 and the principal ancillary fees, except for those for which rates are set pursuant to an agreement under the conditions of paragraph 2° of Article R. 224-2;
- the successive pricing periods, having a term that does not exceed one year, during which the aforementioned fees are established under the agreement; the estimated effective dates of the modifications of pricings of the aforementioned fees corresponding to the beginning of each of such periods;
- the upper limit of the average evolution rate of such fees for each pricing period;
- the adjustment of such upper-limit in case of a difference compared with the forecast elements taken into account regarding traffic and investments and in case of introduction of new fees.

Such agreements shall provide for the conditions for verification of the proportionate nature of the fees compared to corresponding costs.

Such agreements shall also determine, insofar as necessary, the limits to the scope and term of the adjustments mentioned in Article R. 224-2-2.

They shall set the objectives of quality of service, along with financial incentive mechanisms.

They further specify the amount of investments and the main equipment operations planned.

They provide for the conditions of their revision or early termination at the request of the Ministers and after approval of the airport consultative commission, in particular when exceptional and unforeseeable circumstances affect the estimated items taken into account regarding traffic and investments, insofar as they result in a disruption of the economic conditions of the agreement.

They may provide that the fees are received, on the Aéroports de Paris' airfields, by third parties to which this company has delegated the performance of some of its missions in accordance with the ninth paragraph of Article L. 251-2.

A joint order of the Ministers specifies, insofar as necessary, the conditions of application of this paragraph.

II. – The preparation of such agreements shall include the following successive phases:

a) The operator makes public a file relating to the perimeter of activities mentioned in Article R. 224-3-1, including, in particular:

- an assessment of the performance of the on-going multi-annual agreement or, when such an agreement has not been entered into, a study describing for the previous years the traffic evolutions, airport capacities, nature and quality of services rendered, fee pricings, as well as the economic and financial components relating to the aforementioned perimeter;

- a presentation of assumptions of the operator for the forthcoming agreement, in particular regarding evolution of traffic on airfield(s) it operates, evolution of airport capacities, investment programs and preliminary financing thereof, as the case may be, adequacy of public services to the users' needs, of quality of such services, of evolution of fee rates and adjustments thereof, if any;

- an assessment of the economic and financial impact of such assumptions and, as the case may be, alternative assumptions;

The content of this file shall be specified, insofar as necessary, by order of the Ministers in charge of Civil Aviation and the Economy;

b) Within one month following the publication of such file, which may be extended to fifteen days by decision of the Ministers in charge of Civil Aviation and the Economy, the users and other interested parties shall send their comments to such same Ministers, who communicate them to the airfield operator;

c) The Minister in charge of Civil Aviation shall refer the matter to the airport consultative commission mentioned in Article L. 228-1; the opinion of the commission is made public by this same Minister;

d) Based on the above components, the agreement is negotiated between the State and the airfield operator;

In the context of the preparation of agreements, the airfield operator shall send to the Ministers in charge of Civil Aviation and the Economy and to the chairman of the airport consultative commission, at their request, any element enabling them to assess the aforementioned economic and financial impact. In the event that financial instruments issued by the operator shall be listed on a regulated market and that such elements of assessment constitute privileged information within the meaning of Article 621-1 of the general rules of the *Autorité des marchés financiers*, they cannot be communicated to third parties;

e) Once entered into, the agreement is made public.

III. – When an agreement is entered into, the operator shall engage in the consultation of the users at least three months before the start of each pricing period.

It shall notify the rates of fees mentioned in Article R. 224-2 except for those mentioned in the second paragraph of section 2°, and, if necessary, any adjustments thereof, by registered letter with return receipt requested and two months at least before the beginning of each pricing period, to the Ministers in charge of Civil Aviation and the Economy. This notice shall be delivered together with the opinion of the economic consultative commission of the airfield, as well as information sufficient to permit verification of compliance with the agreement, and information mentioned in section IV of Article R. 224-3.

Fee rates and adjustments, if any, shall be deemed approved and are effective for the pricing period in question under the conditions set in section V of Article R. 224-3 unless the Ministers in charge of the Civil Aviation and the Economy jointly make an objection thereto within one month following the receipt of the notice, in case of breach of the general rules applicable to fees or to provisions of the agreement.

Article R. 224-4-1. - I. – Absent any agreement, the operator shall notify, by registered letter with return receipt requested, and four months at least before the beginning of each annual period, the rates for fees mentioned in Article R. 224-2, excluding those mentioned in the third paragraph of section 2°, and their adjustments, if any, for approval by the Ministers in charge of Civil Aviation and the Economy. This notice shall be delivered together with the elements mentioned in Article R. 224-3-1 and in section IV of Article R. 224-2, as well as the opinion of the economic consultative commission of the airfield.

The fee rates and their adjustments, if any, shall be deemed approved and become enforceable under the conditions set in section V of Article R. 224-3 unless the Ministers in charge of Civil Aviation and the Economy jointly object thereto within one month following the receipt of the notice.

II. - The operator may, within one month following the objection and without new consultation of users, notify to the Ministers in charge of Civil Aviation and the Economy, by registered letter with return receipt requested, new fee rates and new adjustments thereto, if any.

These rates and adjustments, if any, shall then be deemed approved and become enforceable under the conditions set in section V of Article R. 224-3 unless the Ministers in charge of

Civil Aviation and the Economy jointly object thereto within fifteen days following the receipt of the notice.

In case of such an objection, or failing any of the notices provided for in this Article, rates previously in force remain applicable.

III. - However, when under the previous paragraph, fee rates have remained unchanged for two consecutive years, the Ministers in charge of Civil Aviation and the Economy may, by joint order and at least forty-five days before the beginning of the relevant annual period, set the average evolution rate of fees and regulate the adjustments thereof, if any. The operator shall accordingly set the fee rates and their adjustments, which become enforceable under the conditions set in section V of Article R. 224-3.

Article R. 224-4-2. - At the request of at least one third of the members of the economic consultative commission of an airfield for which fee rates are to be set by an agreement provided for in section II of Article L. 224-2, the Minister in charge of Civil Aviation may refer any disputes between the operator of the airfield and its users on the fee rate policy to the airport consultative commission for opinion.

The Minister may further refer to this commission, when an agreement has been entered into under II of Article L. 224-2, the issue of the compliance with the provisions of the agreement or of the circumstances that could ground its revision or early termination

Article R. 224-4-3. - The application by an airfield operator of fee rates not approved under the conditions of Articles R. 224-4 or R. 224-4-1 shall be subject to financial penalties, determined by the Minister in charge of Civil Aviation after opinion of the airport consultative commission, the amount of which shall be equal to 120 % of the difference between the annual turnover resulting from rates applied by the operator and approved rates, without exceeding 1 % of the turnover excluding taxes of the operator's most recent fiscal year.

An operator shall be subject to the same sanction, determined after opinion of the airport consultative commission, for failure to comply with the provision of the order mentioned in the last paragraph of Article R. 224-4-1.

To apply the previous two paragraphs, the airport consultative commission shall hear the operators' comments.

### Section 3

#### Provisions Applicable to Other Airfields

Article R. 224-5. – Rates of fees mentioned in paragraph 1° of Article R. 224-2 and their adjustments, if any, shall be notified by the entity in charge of setting them to the State's representative within the *département* at least two months before their effective date. This notice, communicated by registered letter with return receipt requested, shall be delivered together with the opinion of the economic consultative commission or, if none, the minutes of consultation of users, as well as the information mentioned in section IV of Article R. 224-3



## Article 2

In Chapter IV of Title II of Book II of the French Code of Civil Aviation, a section 4 entitled: “Specific Provisions Applicable to Airfields Operated by a Chamber of Commerce and Industry”, including Article R. 224-6, shall be created.

## Article 3

Chapter II of Title II of the aforementioned Decree of June 28, 1960 is deleted.

## Article 4

Section 1 of Chapter II of Title II of the aforementioned Decree of August 18, 1962 is deleted.

## Article 5

Section 3° of Article R. 224-2 shall apply as from January 1, 2007.

The economic consultative commissions created before the effective date of this decree shall remain in office until the expiration of their members’ term of office or until appointment of a new commission, as the case may be.

Airfields mentioned in Section III of Article R. 224-3 of the French Code of Civil Aviation that do not have, on the effective date of this Decree, an economic consultative commission, shall have one within one year.

As an exception to the provisions of this Decree, fee rates for a State’s airfield to which Article 28 of the Law no. 2004-809 of August 13, 2004 on local freedoms and responsibilities applies, shall be set, before its final transfer to a territorial collectivity or to a group of collectivities, under the conditions applicable before the effective date of this Decree.

## Article 6

In Section A of Title II of the Annex to the aforementioned Decree of December 19, 1997, the words: “Measure taken by the Minister in charge of Civil Aviation and the Minister in charge of the Economy and finances-French Code of Civil Aviation” shall be deleted as well as the chart that follows.

## Article 7

In Section B of Title II of Annex to the aforementioned Decree of December 19, 1997, the following line is included in the chart appearing after the words: “Measures taken by the Minister in charge of Civil Aviation-French Code of Civil Aviation”:

Please read the chart in the Official Gazette

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## Article 8

This Decree may be amended pursuant to a Decree in *Conseil d'Etat*, except for the provisions of Article R. 224-4-3, which shall be amended under the conditions provided for in 1° of Article 2 of the aforementioned Decree of January 15, 1997.

## Article 9

The Prime Minister, the Minister of the Economy, Finances and the Industry and the Minister of Transportation, Equipment, Tourism and the Sea shall be responsible, each as far as he is concerned, of the application of this Decree, to be published in the Official Gazette of the French Republic.

Done in Paris, on July 20, 2005.

Jacques Chirac

By the President of the Republic:

The Prime Minister,

Dominique de Villepin

The Minister of Transportation, Equipment,

Tourism and the Sea,

Dominique Perben

The Minister of the Economy,

Finances and the Industry,

Thierry Breton