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Decrees, orders, circulars

General Texts

Ministry of Transportation, Equipment, Tourism and the Sea

Order of September 16, 2005 on fees for services provided at airfields

NOR: ECOT0551048A

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, in particular Articles R. 224-2-1, R. 224-3-1, R. 224-4 and R. 224-4-1, Order:

Article 1

I. – For Aéroports de Paris, the activity perimeter provided for in Article R. 224-3-1 of the French Code of Civil Aviation shall cover all the activities of Aéroports de Paris at airfields mentioned in Article D. 251-1 of such same Code, except for:

- at the Paris - Charles-de-Gaulle and Paris-Orly airfields, activities of groundhandling services other than those mentioned in Article R. 216-6 of the French Code of Civil Aviation;
- subject to section IV of this Article, activities conducted by companies related to Aéroports de Paris as defined in the Order no. 2005-649 of June 6, 2005;
- activities the funding of which is governed by Article 1609 *quatervicies* of the French General Tax Code (*Code Général des Impôts*);
- activities the funding of which is governed by Article 1609 *quatervicies* A of such same Code;
- land and real estate activities other than making available of land, surfaces, buildings or premises for:
 - exercising any activity in terminals;
 - exercising car rental activities;
 - exercising groundhandling service activities;
 - storage and distribution of airplane fuel;
 - maintenance of aircraft;
 - exercising activities relating to air freight;

- exercising general and business aviation activities;

provided, however, that in the case of the first agreement pursuant to section II of Article L. 224-2 of the French Code of Civil Aviation, all land and real estate activities of Aéroports de Paris may be included in the aforementioned perimeter;

- if necessary, other activities unrelated to the activity of the aforementioned airfields.

II. – For the State’s conceded airfields, the activity perimeter provided for in Article R. 224-3-1 of the Council of Civil Aviation covers the activities included in the concession as well as all the activities exercised by the concession holder on the conceded area, except for:

- on airfields, the annual traffic of which is greater than, or equal to, two million passengers, activities of groundhandling services other than those mentioned in Article R. 216-6 of the French Code of Civil Aviation;

- subject to section IV of this Article, activities conducted by corporations related to the concession holder as defined in the Order no. 2005-649 of June 6, 2005;

- activities the funding of which is governed by Article 1609 *quatervicies* of the French General Tax Code;

- activities the funding of which is governed by Article 1609 *quatervicies* A of such same Code;

- if necessary, activities unrelated to the airfield(s) concerned.

III. – For Aéroports de Paris and the State’s conceded airfields, an agreement entered into pursuant to Article L. 224-2 of the French Code of Civil Aviation may provide that, for purposes of applying Article L. 224-3-1 of such Code, not all of the profits achieved by the activities of the aforementioned perimeter should be taken into account (excluding the services mentioned in Article R. 224-1 of such Code).

IV. – For Aéroports de Paris and the State’s conceded airfields, in the event that the results of the activities of the aforementioned perimeter, or their evolution prospects, shall be abnormally affected by the effect of an agreement entered into by the operator with a company related to it as defined by the order no. 2005-649 of June 6, 2005, such perimeter may be extended by decision of the Ministers in charge of Civil Aviation and the Economy, to relevant activities of said company. Such perimeter may be modified, under the same conditions, to take into account the effect of a change in the operator’s legal organization.

V. – For airfields other than those mentioned in section I or II of this Article, the signatory of the agreement provided for in Article L. 221-1 of the French Code of Civil Aviation shall set the activity perimeter mentioned in Article R. 224-3-1 of such Code, as well as the terms and conditions of assumption of profits achieved by activities other than the services mentioned in Article R. 224-1 of such Code.

Article 2

I. – In the context of the preparation of the agreements provided for in Article R. 224-4 of the French Code of Civil Aviation, Aéroports de Paris or the operator of an airfield conceded by the State shall communicate to the Ministers in charge of Civil Aviation and the Economy the following information:

- annual forecasts, over the period in question, of the rate of return on invested funds for the activity perimeter provided for in Article R. 224-3-1 of such same Code, calculated as the ratio between the operating income after corporate income tax and the regulated asset base for the fiscal year concerned; the operating income and the regulated asset base shall be calculated in accordance with the provisions of Article 3 of this order;

- an estimated weighted average cost of its capital, calculated according to the rate of return that an investor may expect from the company as well as the average cost of its debt, in accordance with methods customarily used regarding assessment of assets of companies.

In accordance with Article R. 224-4 of the French Code of Civil Aviation, the operator shall further send to the Ministers, at their request, any additional information enabling them to assess the economic and financial impact of the assumptions it uses regarding, in particular, traffic, investments, quality of service and fee rates.

II. – In the other cases, Aéroports de Paris or the operator of an airfield conceded by the State shall communicate to the Ministers, pursuant to Article R. 224-4-1 of the French Code of Civil Aviation, the following information:

- items, for the coming annual pricing period, such as those provided for in Article R. 23-3-1 and section II (a) of Article R. 224-4 of such Code;

- an estimate, for the coming annual pricing period, of the rate of return on invested funds in respect of the activity perimeter provided for in Article R. 224-3-1 of such Code, calculated in accordance with section I of this Article;

- an estimated weighted average cost of its capital, calculated in accordance with Section I of this Article.

Article 3

I. – The operating income mentioned in Article 2 shall be calculated, for the activity perimeter provided for in Article R. 224-3-1 of the French Code of Civil Aviation, as the difference between:

- on the one hand, turnover, proceeds from internal sales between the aforementioned perimeter and the rest of the company, capitalized production, reversals of operating provisions, other current management proceeds, portion of equipment subsidies charged to the fiscal year, capital gains for sales of assets and transfers of charges;

- on the other hand, all current expenses of the company, internal consumption between the aforementioned perimeter and the rest of the company, amortization expenses for fixed assets and operating provisions, capital losses from the sales of assets and employees' profit

sharing; in the event that the operator is a concession holder, amortization expenses shall include caducity amortizations for investments made, if any.

Proceeds from internal sales and internal consumption shall be assessed by reference to the costs borne.

Subject to the previous provisions of this section I, operating income does not include any exceptional item.

II. – The regulated asset base mentioned in Article 2 shall be calculated as the total amount, as of the closing date of a fiscal year, of fixed assets funded by the operator and the working capital requirements for the activity perimeter provided for in Article R. 224-3-1 of the French Code of Civil Aviation.

The amount of fixed assets funded by the operator shall be calculated as the sum of net book values assigned to the activity perimeter provided for in Article R. 224-3-1 of the French Code of Civil Aviation, less depreciation allowances, equipment subsidies chargeable to future fiscal years, if any, as well as, for concessions, the net book value of properties given by the conceding party and provisions for caducity amortizations for investments made, if any.

Article 4

I. – A pre-financing as provided for in section II of Article R. 224-2-1 of the French Code of Civil Aviation can apply only to an equipment transaction or a group of related transactions the assessed amount of which, net of subsidies, shall be lower than 20% of the turnover of the activity perimeter mentioned in Article R. 224-3-1 of such Code, for the last fiscal year known.

II. – In the event that, pursuant to section II of Article R. 224-2-1 of the French Code of Civil Aviation, future expenses are taken into account to determine the fees mentioned in Article R. 224-1 of such Code, the proceeds from fees so received shall be deducted, over the period of amortization of relevant fixed assets, from the operator's compensation mentioned in Article R. 224-3-1 of this Code.

Such deduction may also be allocated based on a number of fiscal years lower than the amortization period of the fixed asset.

Article 5

The *directeur général de l'aviation civile* and the *directeur général de la concurrence, de la consommation et de la répression des fraudes* shall be in charge, each as far as he is concerned, of enforcing this order, which shall be published at the Official Gazette of the French Republic.

Done in Paris, on September 16, 2005.

The Minister of Transportation, Equipment,

Tourism and the Sea,

Dominique Perben
The Minister of the Economy,
Finances and the Industry,
Thierry Breton

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Ministry of Transportation, Equipment, Tourism and the Sea

Order of September 16, 2005 on fees for services provided at airfields (rectification)

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Rectification to the Official Gazette of September 23, 2005, electronic publication, text no. 16, and paper publication, page 15291:

First column, Article 1, at the first paragraph of section II, second line, instead of: “Council”, read: “Code”, and in section III, fourth line, instead of: “Article L. 224-3-1”, read: “Article R. 224-3-1”;

Second column, Article 2, first dash of section II, second line, instead of: “Article R. 23-3-1”, read: “Article R. 224-3-1”.