

COMMISSION REGULATION (EU) No 494/2012

of 11 June 2012

amending Regulation (EC) No 593/2007 on the fees and charges levied by the European Aviation Safety Agency

(Text with EEA relevance)

THE EUROPEAN COMMISSION

Having regard to the Treaty on the Functioning of the European Union, in particular Article 100(2) thereof,

Having regard to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC ⁽¹⁾, and in particular Article 64(1) thereof,

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

Whereas:

- (1) By Regulation (EC) No 216/2008 the scope of activities of the European Aviation Safety Agency (hereinafter 'the Agency') has been extended; hence the Agency is required to issue a certificate, approval, licence or other document as a result of certification according to the extended scope.
- (2) Commission Regulation (EC) No 593/2007 of 31 May 2007 on the fees and charges levied by the European Aviation Safety Agency ⁽²⁾ does not allow for fees and charges to be levied for any certification activities referred to in Article 5(5)(e) and Articles 21, 22, 22a, 22b and 23 of Regulation (EC) No 216/2008 other than those detailed in Commission Regulations (EC) No 1702/2003 of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production ⁽³⁾ and (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks ⁽⁴⁾.
- (3) Fees and charges referred to in this Regulation should be set in a transparent, fair and uniform manner, reflecting the actual cost of each individual service as stipulated in Article 64(4)(b) of Regulation (EC) No 216/2008. It is necessary to ensure a balance between overall expenditure incurred by the Agency in carrying out certification tasks and overall income from the fees it levies.
- (4) The geographical location of the undertakings in the territories of the Member States should not be a discriminatory factor when setting fees.
- (5) The applicant should have the choice to request a financial quote of the foreseeable amount to be paid for the service which will be provided. The criteria for determining the amount to be paid should be clear, uniform and public. Where it is not possible to accurately determine this amount in advance, transparent principles for assessing the amount to be paid during the provision of the service should be established by the Agency.
- (6) Deadlines for the payment of fees and charges levied under this Regulation should be fixed. Appropriate remedies in cases of non-payment should be laid down such as the termination of the related application processes, invalidation of related approvals, ceasing of any further provision of services to the same applicant, and recovery of the outstanding amount through available means.
- (7) Charges for appeals against decisions of the Agency should be paid in full before the appeal is declared admissible.
- (8) Interested parties should be consulted prior to any modification of fees. Moreover, the Agency should regularly provide interested parties with information on how and on what basis the fees are calculated to provide interested parties with an insight into the costs incurred by the Agency, and to provide the industry with the appropriate financial visibility and the ability to anticipate the cost of the fees it will be required to pay. It should therefore be possible to review the levels of fees annually on the basis of the Agency's financial results and forecasts.
- (9) Regulation (EC) No 593/2007 should therefore be amended accordingly.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 65 of the Regulation (EC) No 216/2008,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 593/2007 is amended as follows:

⁽¹⁾ OJ L 79, 19.3.2008, p. 1.⁽²⁾ OJ L 140, 1.6.2007, p. 3.⁽³⁾ OJ L 243, 27.9.2003, p. 6.⁽⁴⁾ OJ L 315, 28.11.2003, p. 1.

1. in Article 1, the second paragraph is replaced by the following:

‘It determines in particular the matters for which fees and charges referred to in Article 64(4) of Regulation (EC) No 216/2008 are due, the amount of those fees and charges and the way in which they are to be paid.’;

2. in Article 2 points (a) to (d) are replaced by the following:

(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 and payable by applicants for services other than certification tasks provided by the Agency, including the supply of goods;

(c) “certification tasks” means all activities carried out by the Agency directly or indirectly for the purposes of issuing, maintaining or amending certificates pursuant to Regulation (EC) No 216/2008 and its implementing rules;

(d) “applicant” means any natural or legal person requesting to benefit from a certification task or a service provided by the Agency.’;

3. in Article 4, the following second and third paragraphs are added:

‘Upon application of future Regulations, the Agency may levy fees according to Part II of the Annex for certification tasks other than those referred to in Part I of the Annex.

Any changes to the organisation that are reported to the Agency and affect its approval may have the effect of a recalculation of the surveillance fee due, which will be applicable as of the next fee cycle.’;

4. Article 8 is replaced by the following:

‘Article 8

1. The fee shall be payable by the applicant in euros. The terms of payment shall be made available to applicants on the Agency’s website. The applicant shall pay the fee in full including possible bank charges related to the payment before the issuing, maintaining or amending of the certificate, unless the Agency decides otherwise after due consideration of financial risks. The fee shall be paid within 30 calendar days from the date on which the invoice is notified to the applicant by the Agency. The application may be cancelled or the certificate may be suspended or revoked if the fees due have not been received upon the expiry of the deadline and after the Agency has sent out a formal warning.

2. The Agency may invoice the fee in one instalment after having received the application or at the start of the annual or surveillance period.

3. For all certification tasks which give rise to the payment of fees calculated on an hourly basis, the Agency may, on request, provide the applicant with an estimate. The estimate shall be amended by the Agency if it appears that the task is simpler or can be carried out faster than initially foreseen or, on the contrary, if it is more complex and takes longer to carry out than the Agency could reasonably have foreseen.

4. If, following a verification of an application, the Agency decides not to accept this application, any fees already paid shall be returned to the applicant, with the exception of an amount to cover the administrative costs of handling the application. That amount shall be equivalent to two times the hourly fee set out in Part II of the Annex. Where the Agency has evidence that the applicant’s financial ability is at risk, it may refuse an application unless the applicant provides a bank guarantee or secured deposit. The Agency may also refuse an application, where the applicant has not fulfilled its payment obligations arising out of certification tasks or services performed by the Agency, unless the applicant pays for the outstanding amounts due for those certification tasks or services provided.

5. If a certification task has to be interrupted by the Agency because the applicant has insufficient resources or fails to comply with the applicable requirements, or because the applicant decides to abandon its application or to postpone its project, the balance of any fees due, calculated on an hourly basis for the ongoing period of 12 months but not exceeding the applicable flat fee, shall be payable in full at the time the Agency stops working, together with any other amounts due at that time. The relevant number of hours shall be invoiced at the hourly fee set out in Part II of the Annex. When, on demand of the applicant, the Agency starts again a certification task previously interrupted, this task shall be charged as a new project.

6. If the certificate holder surrenders the corresponding certificate or the Agency revokes the certificate, the balance of any fees due, calculated on an hourly basis but not exceeding the applicable flat fee, shall be payable in full at the time the surrender or revocation takes place, together with any other amounts due at that time. The relevant number of hours shall be invoiced at the hourly fee set out in Part II of the Annex.

7. If the Agency suspends the certificate due to non-payment of the annual fee or surveillance fee or because the applicant fails to comply with the applicable requirements, the respective fee periods shall continue.’;

5. in Article 10, paragraph 2 is deleted;

6. in Article 11, the second and third paragraphs are replaced by the following:

‘Charges shall be levied for processing an appeal lodged pursuant to Article 44 of Regulation (EC) No 216/2008 of the European Parliament and of the Council (*). The amounts of charges are set out in Part IV of the Annex. Where the

appellant is a legal person, it is required to supply to the Agency a signed certificate from an authorised officer of the organisation concerned specifying the financial turnover of the appellant. This certificate shall be submitted together with the appeal notification. Appeal charges shall be paid within 60 calendar days from the date on which the appeal was filed at the Agency according to the applicable procedure established by the Agency. In the event the payment is not made within this deadline, the Board of Appeal shall reject the appeal. If the appeal is concluded in favour of the appellant, the appeal charges paid shall be reimbursed by the Agency without delay.

An estimate of the amount of the charges may be communicated on request to the applicant before the service is provided. The estimate shall be amended by the Agency if it appears that the task is simpler or can be carried out faster than initially foreseen or, on the contrary, if it is more complex and takes longer to carry out than the Agency could reasonably have foreseen.

(*) OJ L 79, 19.3.2008, p. 1.;

7. in Article 14 the following paragraph 3 is added:

‘3. The Annex to this Regulation shall be reviewed periodically to ensure that significant information related to the underlying assumptions for anticipated income and expenditure of the Agency is duly reflected in the amounts of fees or charges levied by the Agency. Where necessary, this Regulation and its Annex may be revised at the latest five years after its entry into force.’;

8. the Annex is amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 April 2012.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 June 2012.

For the Commission
The President

José Manuel BARROSO

ANNEX

The Annex to Regulation (EC) No 593/2007 is amended as follows:

(1) in Part II, point 2 is replaced by the following:

‘2. Hourly basis according to the tasks concerned (*):

Demonstration of design capability by means of alternative procedures	Actual number of hours
Production without approval	Actual number of hours
Alternative Methods of Compliance to AD's	Actual number of hours
Validation support (acceptance of EASA certification by foreign authorities)	Actual number of hours
Technical assistance requested by foreign authorities	Actual number of hours
EASA acceptance of Maintenance Review Board reports	Actual number of hours
Transfer of certificates	Actual number of hours
Approved Training Organisation certificate	Actual number of hours
Aero-medical Centre certificate	Actual number of hours
ATM-ANS organisation certificate	Actual number of hours
Air Traffic Controller Training Organisation certificate	Actual number of hours
Operational Data related to Type Certificate, changes to Type Certificate and Supplemental Type Certificate (**)	Actual number of hours
Qualification Certificate for Flight Simulation Training Devices	Actual number of hours
Approval of flight conditions for Permit to fly	3 hours
Administrative reissuance of documents	1 hour
Export certificate of airworthiness (E-CoA) for CS 25 aircraft	6 hours
Export certificate of airworthiness (E-CoA) for other aircraft	2 hours

(*) This is a non-exhaustive list of tasks. Non-inclusion of a task in this Part should not be automatically construed as indicating that the task cannot be performed by the European Aviation Safety Agency.

(**) See Articles 5 and 20 of Regulation (EC) No 216/2008 and Regulation (EC) No 1702/2003 and its modifications.’;

(2) Part IV is replaced by the following:

PART IV

Charges for appeals

All appeal applications attract the fixed charge shown in the table, multiplied by the coefficient indicated for the corresponding charge category for the person or organisation in question.

The appeal shall be deemed to be admissible only when the charge for appeal has been paid.

Fixed charge	EUR 10 000
Charge category for natural persons	Fixed charge coefficient
	0,1
Charge category for organisations, according to financial turnover of the appellant in euros	Fixed charge coefficient
less than 100 001	0,25
between 100 001 and 1 200 000	0,5
between 1 200 001 and 2 500 000	0,75
between 2 500 001 and 5 000 000	1
between 5 000 001 and 50 000 000	2,5
between 50 000 001 and 500 000 000	5
between 500 000 001 and 1 000 000 000	7,5
over 1 000 000 000	10'