



**Regulatory Body for Railway Transport and
for Brussels Airport Operations**

**Communication C-2015-01-LA of 4 Mars 2015 regarding the role of the Regulatory Body
during the airport charges consultation process with the users at Brussels Airport**

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1. Context

1. The present communication must be seen in the framework of the ongoing tariff consultation process for regulated activities, in application of the articles 39 and following of the royal Decree of 21 June 2004 granting the operating license for the airport Bruxelles-National.
2. The tariff system consists of the set of charges for regulated activities, while the tariff formula determines the yearly evolution of these charges during the 5-year period.
3. The consultations with the users (airlines) are organized by the license holder with the objective to draft a final proposal which can be accepted or not by the users.
4. Article 51, §2 of the Royal Decree of 21 June 2004 stipulates that the economic regulatory authority, i.e. The Regulatory Body for Railway Transport and for Brussels Airport Operation, hereafter called the Regulatory Body, can participate at the consultation meetings with the users, as an observer.
5. By letter received on 20 November 2014, the Regulatory Body was invited by the license holder to participate as observer at the consultation process, which has a maximum duration of 4 months and started on January 14, 2015.
6. With the interest of ensuring a good course of the consultation process, the Regulatory Body has decided to participate as an observer at all meetings organized by the airport operator.

2. Requests

7. Recently, some participants of the consultation process expressed their wish to meet with the Regulatory Body outside the consultation process managed by the license holder.

3. Analysis and observations

8. The requests for specific meetings between certain participants in the consultation process and the Regulatory Body requires a clear definition of the mission given to the latter by law in the process of determining the tariff system and the tariff control formula.
9. In this respect, one may take note that the legislation on economic regulation at Brussels Airport has been adapted in 2011¹ from an *ex ante* airport regulation into an *ex post* one. Indeed, the changes adopted in 2011 recognize an active role to the Regulatory Body only in case of disagreement at the end of the consultation, as described in article 55 of the royal decree of June 21st, 2004. Furthermore, the Regulatory Body is in no way empowered with a mediation task during the formal tariffs consultation process.
10. Furthermore, article 51 of the royal decree of June 21st, 2004 gives the license holder the responsibility of determining the tariff system and the tariff control formula. In this context, the license holder has to fully ensure the organization of the tariff consultation and to submit a proposal including the tariff control formula and the tariff system within the timeframe foreseen in article 52 of the royal decree of June 21st, 2004.
11. Taking this into account, the Regulatory Body considers that its observer mission must be evaluated according to the new *ex post* regulatory system and its intrinsic characteristics.
12. In this context of *ex post* regulatory system, the Regulatory Body considers as essential that its actions could not be seen as a form of obstruction to a successful tariff consultation process nor as an obstacle to the formulation of a tariff proposal by the license holder.
13. The Regulatory Body considers it is fundamental that the fulfillment of its observer role does not affect the necessary impartiality in the case it would have to deal with a disagreement on the tariff proposal, as foreseen in article 55 of the royal decree of June 21th, 2004.

¹ Modifications included in the Royal decree of May 12th, 2011 correcting the royal decree of June 21st, 2004 attributing the operation license of Brussels National airport to the private company BIAC.

14. The regulatory system defined by law implies the necessity to safeguard all legitimate interests of all parties in the tariff consultation process. This is only possible when the prerogatives of each party in the tariff consultation are strictly respected.

Given the above-mentioned, the Regulatory Body :

- **Cannot give a positive response to the requests from certain participants at the tariff consultation with respect to hold specific meetings;**
- **Will continue to participate as an observer at the meetings organized by the license holder in the framework of the tariff consultations for the regulated period 2016-2021.**

Brussels, 4th of March 2015.

For the Regulatory Body for Railway Transport and for Brussels Airport Operation,

Serge DRUGMAND,

Director