



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

Decision D-2022-02-L on the entry into force of the change in airport charges at Brussels Airport for the regulated period from 1 April 2023 to 31 March 2028

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1. Object

1. The Regulatory Body for Railway Transport and for Brussels Airport Operations – hereinafter "the Regulatory Body" – is required to make a provisional decision concerning the entry into force of the change in airport charges in the context of the established differences of opinion between certain airlines and the airport operator concerning the final proposal for the tariff system and formula for tariff control made by the latter for the regulated period from 1 April 2023 to 31 March 2028 inclusive.

2. Facts and background

2. The airport operator Brussels Airport Company held consultations with the airlines during the period from January 2022 to May 2022 as part of the determination of the tariff system and tariff control formula for the regulated period 2023-2028.
3. On 13 May 2022, Brussels Airport company formulated its final proposal for the tariff system and formula for tariff control for the regulated period 2023-2028.
4. On 13 June 2022, the Regulatory Body received by registered mail a petition from Ryanair refusing the final proposal for the tariff system and formula for tariff control.
5. On 13 June 2022, the Regulatory Body also received by registered mail a petition from IATA (*International Air Transport Association*) refusing the final proposal for the tariff system and formula for tariff control. IATA filed this petition on behalf of a number of airlines that have mandated it to do so.

3. Legal basis

6. Article 55, §3, paragraph 5 of the Royal Decree of 21 June 2004 on the granting of an operating licence for Brussels Airport – hereinafter the “Licensing Decree” – reads as follows:

“The economic regulatory authority shall, within four weeks of receipt of the petition, issue a provisional decision regarding the entry into force of the change in airport charges, unless a final decision can be issued within the same period.”

7. Article 2bis of the Royal Decree of 25 October 2004 establishing the Regulatory Body for Railway Transport and for Brussels Airport Operations, determining its composition and the charter applicable to its members, as inserted by the Royal Decree of 1 February 2006, stipulates that the Regulatory Body is the economic regulatory authority referred to in Article 55 of the Licensing Decree.

4. Analysis of the Regulatory Body

8. The provisional decision referred to in article 55, §3, paragraph 5 of the Licensing Decree is to avoid the old tariffs becoming invalidated at a certain point, where a final decision on the new tariffs has not yet been taken by the Regulatory Body.
9. Article 52 of the Licensing Decree stipulates a number of strict deadlines, these being:
 - commencement of multi-year user consultation: no later than fourteen (14) months and fourteen (14) days prior to commencement of the next regulated period;
 - end of multi-year consultation: no later than ten (10) months and fourteen (14) days prior to commencement of the next regulated period;
 - publication of the tariffs by the airport operator after final decision by the Regulatory Body: no later than three (3) months prior to commencement of the next regulated period.

10. Finally, Article 34, §5, 2nd paragraph, and Article 35, §4, 2nd paragraph of the Royal Decree of 27 May 2004 concerning the conversion of Brussels International Airport Company (B.I.A.C.) into a limited liability company under private law and concerning the airport facilities stipulate the period within which the Regulatory Body must inform the licensee of its final decision, namely three (3) months and seven (7) days prior to commencement of the next regulated period.
11. Article 55, §3, 5th paragraph of the Licensing Decree stipulates that the period for the final decision by the economic regulatory authority is four (4) months (and can be extended to six months in exceptional cases). Through this final decision, the Regulatory Body shall settle the disagreements pursuant to Article 55, §4 of the Licensing Decree.
12. Consultations with users for the regulated period 2023-2028 were initiated by the airport operator on 17 January 2022 and ended on 11 May 2022.
13. The Regulatory Body received two petitions refusing the tariffs on 13 June 2022. As a result, the Regulatory Body will need to make its final decision under normal circumstances on 13 October 2022. If the Regulatory Body were to invoke the exceptional extension of its decision period, the latest decision date is set for 13 December 2022.
14. This decision deadline of 13 December 2022 for the Regulatory Body falls within the imposed calendar for final publication date of the new tariffs by the airport operator, this being 1 January 2023.

5. Decision

Considering that the Regulatory Body has a period of four (4) months (and exceptionally six (6) months) for its final decision, this is either through 13 October 2022 or through 13 December 2022;

Considering that the holder must be notified of this final decision three (3) months and seven (7) days prior to commencement of the next regulated period, which is no later than 25 December 2022;

Considering that the holder must publish the new tariffs on 1 January 2023;

the Regulatory Body considers that there is no risk that its decision would be issued too late, which is to say after the mandatory publication date for the new tariffs by the holder. The holder will thus have timely notice of the tariffs that it is required to disclose on 1 January 2023, through the decision of the Regulatory Body.

6. Right of appeal

Pursuant to Article 2 of the Act of 9 July 2004 containing various provisions, the parties concerned have the right to appeal against this decision to the Market Court. The appeal must be lodged at the latest 30 days after the notification of this decision, after which this right expires.

The appeal has no suspensive effect, except with regard to decisions by which the Regulatory Body has imposed an administrative fine on the holder of an operating licence by application of Article 49 of the Royal Decree of 27 May 2004 concerning the conversion of Brussels International Airport (BIAC) into a public limited company under private law and concerning the airport facilities, or where the Market Court orders the suspension of the contested decision.

The Judicial Code is applicable as far as the procedure is concerned, whereby the Market Court rules as in summary proceedings.

Issued in Brussels, on 4 July 2022,

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

Serge Drugmand

Director