



The Group of Representative Bodies (GRB)

Comments on the draft IA “Fees and charges”

Brussels, 15.03.2017

Original Text / Reference	GRB Comments and remarks & Change request
<p align="center">Article 3 Type of fees and charges</p>	
<p>2 Charges shall be levied by the Agency for all other services referred to in Article 80(2)(c) of Regulation (EU) n° 2016/796 including the pre-engagement process as defined in article 19 of Commission Implementing Regulation XXX on Practical Arrangements for Vehicle Authorisation and in article 4(2) of Commission Delegated Regulation XXX on a common safety method for assessing conformity with the requirements for obtaining a railway single safety.</p>	<p><u>GRB comment</u> Comment 1: GRB request for clarification: It is not currently clear what is meant by “other services” here.</p>
<p align="center">Article 4 Determination of fees and charges</p>	
<p>3. The fees referred to in paragraph 1 of Article 3 or the charges referred to in paragraph 2 of Article 3 shall be established by multiplying the number of working hours and the hourly rate as defined in Annex XX.</p>	<p><u>GRB comment</u> Comment 2: GRB calls for a fixed F&C structure to be established, to allow predictability, the applicant should know the costs of authorisation before applying so to include those costs in the tendering and project planning.</p> <p>If a fixed F&C structure is not possible to be established for VA, SSC and ERTMS Trackside Approval, because of the current large variation amongst the Member States systems, GRB could foresee to start with an hourly rate system in order to gain experience, only if a maximum cost cap is defined. Adopting an hourly rate system without including an expected cap could lead to unpredictable costs for the applicant, which must be avoided</p>
<p>5. For the fees referred to in paragraph 3 of this Article, the Agency may, on request, provide the applicant with an estimate. For this purpose, the national safety authorities involved in the assessment shall provide to the Agency estimates for their assessment referred to in paragraph 2 of this Article. The Agency may at any time review the estimate if it appears that the assumptions taken to establish the estimate have changed. The</p>	<p><u>GRB comment</u> Comment 3: The GRB remark that ‘estimates’ from a transparency perspective are not deemed appropriate. Furthermore, the ‘reviewing of estimates at any time’ cannot be accepted. It is unreasonable to discover that costs could increase due to revised assumptions. The GRB are committed to fulfilling the financial obligations related to the authorisation and approval processes,</p>



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<p>Agency shall communicate the result of the review to the Applicant.</p>	<p>however this must be done in a transparent and accountable manner.</p> <p>The GRB propose, a monthly invoicing of the hours attributed to the authorisation/approval processes (i.e. monthly timesheets) and either monthly or yearly invoicing request of payment based on the aforementioned hours worked.</p>
<p>Article 5 Rules of payment</p>	
<p>1. The Agency shall issue one or more invoices establishing the amount of the fees to be levied. Payment of the fees and charges shall be made only after the Agency has issued an invoice.</p>	<p><u>GRB change request</u></p> <p>1. The Agency shall issue one or more invoices establishing the amount of the fees to be levied. <i>The Agency shall stipulate in the invoices the number of hours and the task description for all such fees to be levied.</i> Payment of the fees and charges shall be made only after the Agency has issued an invoice.</p> <p><u>Justification</u> Comment 4: As per the GRB proposal in comment 3.</p>
<p>2. Regarding the fees defined in Article 3(1), the invoices shall be issued by the Agency only after the decisions have been taken or, in the case of appeals lodged pursuant to Article 58 of Regulation (EU) n° 2016/796, after the appeal is rejected in accordance with article 65 of Commission Implementing Regulation XXX on the rules of procedure of the Board of appeal.</p>	<p><u>GRB comment</u> In the event an applicant choses to appeal a decision, the GRB position is that the applicant will only pay after the appeal process has been completed and in the case of a positive decision there shall be no obligation to pay appeal fees.</p>
<p>3. The amount of the charges shall be invoiced on a regular basis but at least once a year unless the Agency decides otherwise after due consideration of the financial risks.</p>	<p><u>GRB comment</u> Comment 5: As proposed in comment 3, a monthly invoicing of the hours attributed to the authorisation/approval processes (i.e monthly timesheets) and either monthly or yearly invoicing request of payment based on the aforementioned hours worked.</p>



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<p align="center">Article 6 Method of payment</p>	
<p>2. The applicant shall pay the amount due in full, including possible bank charges related to the payment, within 30 calendar days from the date on which the invoice is notified to the applicant.</p>	<p><u>GRB change request</u> 2. The applicant shall pay the amount due in full, within 30 calendar days from the date on which the invoice is notified to the applicant.</p> <p><u>Justification</u> Comment 6: The GRB remark, the applicant shall pay the full amount of the fees and charges. The costs for the transfer are to be paid by the applicant. The applicant does not pay for any bank costs on the receiving side.</p> <p><u>GRB comment</u> GRB would like to discuss the payment horizon of 30 days.</p>
<p align="center">Article 7 Failure to pay</p>	
<p>3. Where the Agency has evidence that the applicant's financial ability is at risk, it may reject an application unless the applicant provides a bank guarantee or secured deposit. 4. The Agency may reject an application, where the applicant has not fulfilled its previous payment obligations set out by this Regulation, unless the applicant pays for the outstanding amounts due for those activities.</p>	<p><u>GRB comment</u> Comment 7: Paragraph 3 & 4 are not acceptable, the GRB call for a clear distinction between Certification and Authorisation, including the cost aspects, which need to be strictly separated. Furthermore, the word 'evidence' here has the plausibility to be objective and the idea of 'secured deposit' is inappropriate.</p>
<p align="center">Article 8 Transparency and monitoring</p>	
<p>4. A the end of each calendar year, the hourly rates shall be revised and shall apply for all activities performed during the following year.</p>	<p><u>GRB change request</u> 4. A the end of each calendar year, the hourly rates shall be revised with consultation of the relevant stakeholders and shall apply for all activities performed during the following year.</p> <p><u>Justification</u> Comment 8: The GRB request for clarification on the format of the review and if any bench</p>



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	benchmarking shall be considered to ensure any revised rates are measured and justified.
Article 10 Evaluation and Revision	
In the light of the information provided by the Agency in its annual report referred to in Article 8, this Regulation shall be reviewed within XX years from its entry into force.	<u>GRB comment</u> Comment 9: Further to comment 2, if a fixed F&C structure is not possible to be established for VA, SSC and ERTMS Trackside Approval, GRB could foresee to start with an hourly rate system in order to gain experience, only if a maximum cost cap is defined and the implementing act will include a provision for revision of Fees & Charges to aim for and include a fixed fee structure within the first 2 years.
Annex	
<i>This formula will need be adapted, if needed, taking into account the result of the discussion on the calculation of the hourly rate of the expert of the pool of expert.</i>	<u>GRB comment</u> Comment 10: Regarding the fee for the 'pool of experts' the GRB are fully in favour of a fixed F&C structure. An alternative, should a fixed F&C structure not be ascertained is 'Option 3: Charging based on hourly rate of staff from the Agency'.
Indirect costs	<u>GRB comment</u> Comment 11: Indirect costs are very vague at this stage and require further detailing.
Other indirect costs, e.g. building, IT tools, travel costs, translation costs, trainings	<u>GRB comment</u> Comment 12: The GRB requests indirect costs to exclude translation costs, training and IT tool costs → F&C should not be a source of income to be used in the maintaining of any IT tool.