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## **SYNTHESIS REPORT**

# **RECOMMENDATIONS FOR THE EVOLUTION OF THE REGULATORY FRAMEWORK FOR AIRPORTS**

**> November 2023**

This is a partial translation of the report "Préconisation en vue de l'évolution du cadre de régulation des aéroports". Only the French version is authentic.

<https://www.utorite-transports.fr/wp-content/uploads/2023/09/2023-09-25-evolution-du-cadre-de-regulation-rapport-complet.pdf>

## President's editorial

The air transport conferences<sup>1</sup>, held in 2018 and whose conclusions were made public in early 2019, had highlighted the need for a national-level study on the evolution of the regulatory model for the airport sector, so that it provides answers to the criticisms of both airlines and airport operators.

While the health crisis triggered by the Covid-19 pandemic in February 2020 has led to these considerations taking a back seat to the actual management of the crisis, the debate has not been closed.

In 2022, the issue of changing the regulatory framework for airports came back to the fore, with two publications by the French Court of Auditors calling for changes to the regulatory framework for airports (in its annual public report devoted to major French airports, and in its report on the management and accounts of ART) and the positions taken by operators at the annual conference of the "Union des Aéroports Français".

As the economic regulator for France's main airports, ART could not remain aloof from this debate, as it can also help to shed light regarding its missions and regulatory practice in the toll road and rail sectors.

This is why ART's strategic orientations include a commitment to improving the regulatory framework for airports.

To this end, ART consulted widely with industry players: government departments (DGAC, APE), users, airport operators and their representatives, as well as economists, banks and institutional investors, and specialized consultants.

These consultations have led to the present study, which sets out general

recommendations and their concrete implementation.

Some of our proposals are based on existing tools that can be rapidly mobilized. I'm thinking in particular of the economic regulation contract, which needs to be made more attractive to the sector. Others are more medium-term developments, such as differentiated regulation, but we can start thinking about these as of now.

In addition, this study enables us to tackle certain thorny issues in detail - the toll system, for example - and I hope that it will help to bring the players' positions closer together.

My hope is that this report will serve as a reference document for all stakeholders, helping to create a more flexible and effective regulatory framework for the benefit of the sector as a whole.

A handwritten signature in black ink, reading "Philippe Richert". The signature is written in a cursive style and is positioned above a solid horizontal line that spans the width of the signature.

Philippe Richert, Acting President

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<sup>1</sup> "Assises du transport aérien"



## Executive summary

In line with its strategic orientations, ART, as the economic regulator for France's main airports, wanted to be able to put forward concrete proposals, based on extensive discussions with stakeholders, aimed at designing a regulatory framework more conducive to the challenges faced by the various players.

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### **These proposals are based on four main observations.**

Firstly, the annual tariff approval process - the only way used to regulate airport charge rates since ART took over jurisdictions on October 1<sup>st</sup>, 2019 - raises issues for all stakeholders, mainly because it holds cumbersome process and gives little visibility to stakeholders.

On the other hand, while the economic regulation contract ("CRE") seems likely to provide answers to most of the issues identified, notably by offering a multi-year, incentive-based regulatory framework, it is used very little.

The performance incentive tools provided for in these contracts would also make it possible to address the main investment issue, which has more to do with the need for greater control over performance (costs and benefits for users) than with fundamental disagreements over the appropriateness of investments made by operators.

Secondly, while the question of the till system is the one that gives rise to the most antagonistic positions, a compromise could undoubtedly be drawn up between supporters of the single-till (the users) and those of the dual-till (the airports) to encourage airport operators to develop commercial activities, without making an excessive transfer of value to them, since

these activities are directly linked to air traffic.

Thirdly, the conditions used to consult users are limited in terms of the transparency of the information they are given and the quality of the consultation process.

Fourthly, given the diversity of airport situations, it seems that "systematic *ex-ante*" regulation, as applied uniformly to all airports, could be reserved for certain airports, while others could be subject to a more flexible form of "on-demand" regulation.

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On this basis, ART makes four recommendations, three of which would improve the framework for regulating airport charge rates, without changing the legislative framework.

### **General recommendation no. 1: Make multi-year regulation the principle and annual approval the exception.**

Rather than resorting to annual approval of their tariffs, airport operators should be encouraged to sign an economic regulation contract of a maximum of five years with the concession grantor, in order to control the evolution of charges over this period.

This contract, the content of which would be specifically discussed with users, should include performance incentive mechanisms, both in terms of costs (management efficiency) and service quality.

While the procedure for drawing up this contract would benefit from simplification - notably through the introduction of a "standard CRE", under the aegis of the DGAC, in the preparation of which ART could usefully be involved, in view of the assent it is required to give - it should nevertheless

give users and their representatives a full role.

**General recommendation no. 2: Open up the possibility of the principle of an adapted till whose the transfer rate of the economic benefits generated by commercial activities would be set in the CRE.**

Recent economic research has shown that “hermetic” dual-till control is never optimal. In the absence of a single-till, an adapted till, if correctly parameterized, may be an acceptable solution. However, the implementation of an adapted till should only be possible if the operator and the concession grantor have signed an economic regulation contract precisely defining the transfer rate to the regulated perimeter.

This transfer rate of economic profits generated by commercial activities (i.e. after return on capital employed) to aeronautical activities may not be lower than a floor rate, which should be at least 50%. In the absence of a multi-year contract in force, the rate of transfer would be 100%, leading to a situation close to a single-till, although transitional measures are possible and even desirable to avoid excessive rate variations.

This provision would reinforce operators' incentives to adopt a multi-year regulatory framework.

**General recommendation no. 3: Strengthen consultation and transparency between operators and users.**

This could be achieved by improving the representativeness of users, particularly on economic advisory commission “CoCoÉco”, and by improving the quality, accessibility and relevance of the information provided to ensure effective consultation.

In particular, transparency of the costs incurred by operators in their budgets, especially with regard to investments, which could be subject to independent audits, would help to strengthen confidence between players.

In the medium term, we need to think about strengthening the prerogatives of users, to create the conditions for effective implementation of differentiated regulation (see general recommendation no. 4 below).

**General recommendation no. 4: Consider differentiated regulation by airport.**

There could be two regulatory systems for airports falling within ART's scope. For high-stake airports, according to a perimeter to be defined on the basis of objective, transparent, relevant and non-discriminatory criteria, *ex-ante* approval of tariff proposals by ART would remain mandatory. For the other airports, ART would only be requested to intervene, subject to the proper functioning of the system, in the event of disagreement between users and the operator over the level or system of charges to be applied at the airport.

**These four general recommendations are broken down into nineteen operational recommendations (see table below).**

Lastly, the regulatory body's powers could usefully be extended to enable it to contribute effectively to the establishment of a regulatory framework that is both more flexible and more incentive-based:

**1 - its consultation on regulatory texts relating to the regulation of the airport sector prior to their adoption** would facilitate the coherence and legibility of the regulatory framework as a whole, by putting ART in a position to alert the rule-making power, upstream of the enactment of texts, to possible difficulties and, where appropriate, to propose adaptations.

This consultation, which could take the form of a power of a consultative opinion, would be of particular interest with regard to any changes to the toll system, or to the powers of the economic advisory commission and its organizational and operating conditions;

**2 - by facilitating its involvement in the definition of regulatory mechanisms to encourage** compliance with costs and deadlines, particularly for major investment projects, as well as service quality.

### Methodology

ART conducted around thirty interviews between March and May 2023. On the basis of these exchanges and feedback from nearly four years of regulating airport charge rates, ART has formulated initial findings and concrete proposals aimed at designing a regulatory framework more conducive to the issues at stake for the various stakeholders. These findings and proposals were brought together in an initial summary document, which was the subject of consultations designed to encourage dialogue with stakeholders. Observations from stakeholders have enriched and complemented ART's thoughts.

This study report on ART's recommendations on the evolution of the airport regulatory framework is the culmination of this consultation process. It comprises two complementary parts. The first is the consolidated and definitive version of the summary document submitted by ART for stakeholder consultation (subject to this English translation). It presents four recommendations, three of which can be implemented without modifying the legislative framework. The second is made up of four thematic fact sheets, which underpin the proposals put forward by ART and propose more operational recommendations.





## Table of operational recommendations

#	Related theme sheet	Associated general recommendation	Operational recommendation statement
1	1	1	Specify explicitly in the texts that the moderation criteria of tariffs increase is assessed <i>ex ante</i> in ART's opinion on the CRE
2	1	1	Transfer "CoCoAéro"'s CRE-related powers to ART
3	1	1	Draw up a "standard CRE " template containing the essential clauses to be included in the contract
4	1	3	Strengthen the role of users in the development of the CRE throughout the process, in an iterative way
5	1	2	Make the introduction of an adapted till subject to the conclusion of a CRE
6	2	3	Introduce a systematic audit of investment costs above a certain threshold, and monitor them during implementation
7	2	1	Give priority to the principle of a multi-year price cap in CREs, and provide a framework for tariff adjustment factors depending on the context
8	2	1	Include binding service quality targets with financial penalties in CRE
9	3	2	Define the regulated and non-regulated perimeters on the basis of clear and transparent principles, for example the principle that only airport public service activities and those essential to the provision of these activities should remain within the regulated perimeter
10	3	2	Provide for a contribution from the non-regulated perimeter to the regulated perimeter based on profits after return on invested capital
11	3	2	Define a default transfer rate of 100% from the non-regulated perimeter to the regulated perimeter, and open up the possibility of derogating from this rate within the framework of a CRE, without it being able to be less than 50%
12	3	2	Provide for the possibility of maintaining the transfer rate fixed in a CRE for a limited period following the expiry of the contract, once a consultation file for the conclusion of a new CRE has been published
13	3	2	Clarify the allocation of value sharing in the CRE, opening up the possibility that the transfer from the non-regulated to the regulated perimeter could be used to reduce the level of expenses to be covered and/or directly finance aeronautical investments
14	4	4	Transpose into national law the possibility of differentiated airport regulation
15	4	4	For airports subject to on-demand regulation, provide for the possibility for users to contest one or more elements of the tariff proposed by the operator, as well as the consultation procedure
16	4	4	Define criteria to determine which airports fall under each of the two modes of regulation (systematic or on-demand)
17	4	4	For airports subject to on-demand regulation, provide for the possibility of ART itself setting charge rates in the event that users and the operator do not agree on the proposed rate
18	4	3	Modify the composition of CoCoÉco and increase the frequency of meetings between users and the operator
19	4	3	Allow the users to ask the operator to provide one or more counterfactual scenarios to support its assumptions



## 1 THE CURRENT REGULATORY FRAMEWORK RAISES A NUMBER OF ISSUES

Aeronautical activities provided at airports falling under the jurisdiction of ART<sup>2</sup> give rise to the perception of fees for services rendered. The latter are subject to a dual framework:

- their terms and conditions may be determined by an CRE (provided for in Article L. 6325-2 of the French Transport Code) signed between the State and the airport operator, after receiving ART's assent, for a maximum period of five years;
- the tariffs for these charges must be approved annually by ART<sup>3</sup>, after consultation with the CoCoÉco<sup>4</sup>.

The scope of activities taken into consideration in determining these charges (the regulated perimeter) depends on the till system in place at the airport.

- in a single-till system, airport activities, whether of an aeronautical or commercial nature, are integrated into the regulated perimeter. In this context, airport charges take into account the results of commercial activities, whose profits can thus be used to reduce the charges paid by users to cover the costs of airport public services;
- on the other hand, the dual-till system defines two strictly distinct till. The regulated till is fed exclusively by aeronautical activities and constitutes the regulated perimeter. In this case, the expenses associated with airport public services are entirely financed by airport charges;
- the hybrid or adapted till system<sup>5</sup> lies between these two till systems. Distinguishing between a regulated perimeter and a non-regulated perimeter, it provides for the contribution of revenues from commercial activities to the regulated perimeter, either by transferring part of the profits from the non-regulated perimeter to the regulated perimeter, or by integrating non-aeronautical activities into the regulated perimeter, the two methods not being mutually exclusive.

When it receives an application for approval of airport charge tariffs, ART verifies compliance with three requirements:

- the user consultation procedure laid down by regulation has been complied with;
- the tariffs and their adjustments comply with the general rules applicable to fees, are non-discriminatory and that their evolution in relation to the tariffs in force is moderate;
- alternately :
  - o when a CRE has been signed, that the conditions for tariff changes stipulated in the contract have been met;
  - o in the absence of a CRE, that the airport operator receives a fair return on the capital invested in the regulated perimeter, assessed on the basis of the

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<sup>2</sup> These are airports whose annual traffic exceeded five million passengers in any of the previous five calendar years, and airports forming part of an airports system comprising at least one airport whose annual traffic exceeded five million passengers in any of the previous five calendar years.

<sup>3</sup> The operator must submit a proposed tariff to ART at least four months before the tariff comes into force. It then has two months in which to object, if necessary. In such a case, the aerodrome operator may, within one month and without further consultation with users, notify new tariffs and any adjustments to them. ART then has a period of one month in which to object to these tariffs. If ART does not object, the tariffs are deemed to have been approved.

<sup>4</sup> This commission brings together the airport's stakeholders (operator, users and their representatives, local authorities, State).

<sup>5</sup> In the remainder of this document, we will use the term "adapted till".

weighted average cost of capital (WACC) calculated for this perimeter, and that the total income from charges does not exceed the cost of services rendered.

Since it assumed jurisdiction on October 1<sup>st</sup> 2019, all the applications for tariff approval submitted to ART have been outside the scope of any multi-year contractualization within the framework of a CRE, with the exception of a single<sup>6</sup>.

### 1.1 The current framework for regulating airport charge rates raises issues for all stakeholders

The interviews conducted by ART during its study revealed several difficulties, the main ones of which are summarized by players in the table below. For the most part, these difficulties stem from the cumbersome annual approval process, the low visibility given to players and the lack of performance incentives.

	Challenges posed by the current approval process
<b>Airports</b>	<ul style="list-style-type: none"> <li>• Cumbersome annual certification process ;</li> <li>• Inability of this process to meet the objective of providing visibility on the return on capital employed (difficulties in understanding how the three criteria on which tariffs are based are articulated, annual nature of the approach) and, consequently, on the financing of investments over the long term.</li> </ul>
<b>Users</b>	<ul style="list-style-type: none"> <li>• A consultation process deemed "fake" (information asymmetry in relation to operators, CoCoEco voting systems that do not accurately reflect users' positions on operators' proposals);</li> <li>• Lack of visibility on investments planned by airports and changes in the level of charges (despite the principle of tariff moderation);</li> <li>• A system that doesn't allow fine-tuned monitoring of service quality obligations.</li> </ul>
<b>ART</b>	<ul style="list-style-type: none"> <li>• Cumbersome annual certification process ;</li> <li>• Incompleteness of the regulatory framework due to the possibility of evading ART's control every other year ("Joker" year), even though ART's action framework is annual;</li> <li>• Lack of performance incentives (costs/service quality) ;</li> <li>• Lack of consultation - particularly in the form of a (simple) opinion - on regulatory texts concerning the airport sector prior to their adoption, which does not facilitate consistency of the regulatory framework (particularly with regard to the till system).</li> </ul>
<b>Grantor (DGAC)</b>	<ul style="list-style-type: none"> <li>• Incompatibility of the annual approval process with proper planning of investment ambitions, when some concession contracts are due to expire in the next fifteen years and the sector's ecological transition requires platforms to be adapted accordingly.</li> </ul>

Source: ART, based on interviews with stakeholders

<sup>6</sup> Decision no. 2020-001 of January 9, 2020 concerning the application for approval of the rates for airport charges applicable to Paris-Charles de Gaulle, Paris-Orly and Paris-Le Bourget airports from April 1<sup>er</sup> 2020.

## 1.2 The economic regulation contract is rarely used

**Despite its imperfections, stakeholders agree that the economic regulation contract (CRE) is the best existing tool for effective regulation.**

In theory :

- the price-cap stipulated in the CRE provides both (i) predictability for users in terms of the evolution of fee levels to finance investments and (ii) an incentive for the operator to be more efficient (in terms of costs). This greater efficiency then makes it possible to base the next CRE's tariff trajectories on expenses that are better controlled, all other things being equal;
- it can be for a maximum of five years, which seems a good compromise between visibility and flexibility;
- it can include (i) binding service quality obligations through penalty mechanisms (thereby limiting the risk that cost-efficiencies linked to the existence of a fare cap will lead the operator to reduce the quality of service offered to users), (ii) appropriate risk sharing (adjustment factors, notably on traffic) and (iii) incentive mechanisms (bonus-malus) for service quality and expenditure performance;
- it helps to define a relevant investment strategy by promoting dialogue between the concession grantor, the operator and users on future medium-term investments.

In practice, the observed lack of recourse to the CRE does not seem to be due so much to exogenous factors - which are certainly real (effects of the health crisis on the lack of visibility of traffic), but which could nevertheless be overcome (by setting up adjustment mechanisms to spread this specific risk) - as to endogenous factors :

- the cumbersome process involved in concluding and implementing the CRE is a major obstacle to its use by many regional airports, whose teams are insufficiently sized to manage it;
- the diversity of stakeholders, with their sometimes diverging positions (grantor, operator, users, ART, CoCoAéro<sup>7</sup>), seems to represent a significant risk of compromising its success, while at the same time lengthening its development time;
- some airports make their commitment to a CRE conditional on a change in the till system (with the exit from the single-till system), with these airports highlighting the switch to a dual-till system as the only way to enable the financing of long-term investments.

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<sup>7</sup> Under the current legal framework, the Airport Consultative Commission, set up by the Airports Act of April 20, 2005, reports to the Minister for Civil Aviation, who consults it during the preparation of the economic regulation contracts that the State concludes with the operators of the airports it owns and with Aéroports de Paris, notably on investment programs, service quality targets and changes in charges for services rendered.

### 1.3 The views of those in favour of the single till (users) and those in favour of the dual till (airports) do not appear to be totally irreconcilable

The till system represents the main antagonism between industry players. However, the interviews conducted by ART revealed that these oppositions could be overcome in the transition to an adapted till system, if value is properly shared between operators and users. Indeed:

- airports recognize the direct link between retail and parking revenues, on the one hand, and the number of passengers flying on the other - a link that cannot be taken into account by a dual-till system;
- some users recognize that certain activities (and the associated risk) are not directly related to air transport. They are open to a regulatory framework that can create value for the system as a whole by providing sufficient incentives for operators to develop commercial activities - which may not be the case with a pure single-till system;
- for economists, while a dual-till system clearly leads to a deviation from the social optimum and does not take into account the "two-sided" nature<sup>8</sup> of the market for airport services, a properly parameterized cashier system, providing for the transfer of a significant proportion of the economic profits generated by commercial activities (*i.e.* after return on capital employed) to aeronautical activities, may prove equivalence to a single-till in terms of social well-being.

**Although there is no full consensus on this issue, an adapted till system, correctly parameterized to share the value generated by airport activities, could provide an acceptable compromise for both users and operators.**

### 1.4 The choice of investments borne by operators raises issues relating to the division of responsibilities and the need for greater control

**While the business model of airport companies is likely to evolve in the years ahead to take account of environmental considerations, it has proved its great robustness in the midst of a health crisis<sup>9</sup>.** However, the regulatory framework needs to be adapted to give greater visibility to capital funders and ensure investment efficiency. Indeed:

- future platform capacity increases, as planned in the past (before the health and energy crises), will probably be abandoned in favour of better utilization of existing capacity, insofar as there still seems to be room for manoeuvre and the political context no longer seems to allow for significant capacity projects;
- airports seem to recognize that the cost of the "investment wall" of the ecological transition lies more with the airlines than with the platforms, and that this transition will take time;

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<sup>8</sup> Companies operating in "two-sided" markets, known as "two-sided platforms", have three major characteristics:

- the two-sided platform offers distinct products or services to two distinct groups of customers;
- there are indirect network externalities between the different sides of the market;
- the pricing structure is not neutral in the sense that it may be appropriate, for example, to subsidize certain activities on one side of the market in order to attract users on the other.

<sup>9</sup> See the first airport economic and financial monitoring report published by ART in January 2023 ([link](#)).

- the final decision in the choice of structuring investments must remain ultimately the responsibility of the concession grantor and the operator - the former setting the broad guidelines, the latter proposing solutions to meet them - who have the best grasp of the long-term challenges of each hub to satisfy all stakeholders (passengers and their families, local authorities, airlines);
- nevertheless, in the absence of a regulatory framework that encourages performance in terms of investment costs, users ultimately bear all or part of the risk of investments that are poorly sized, poorly managed or fail to deliver the expected results. This risk is all the greater when the airport enjoys strong market power. Consequently, on the one hand, investments relating to the use of the hub by users must be decided in good understanding with them, and on the other, appropriate mechanisms must be put in place to ensure (i) a good estimate of their initial cost, (ii) an incentive for the operator to respect costs and deadlines, and (iii) the monitoring of their expected benefits over time.

**A clear, predictable and effective regulatory framework must ensure the financing of airport investments and guarantee their efficiency through reinforced independent control.**

#### **1.5 Given the diversity of airport situations, uniform regulation for all airports is not the most appropriate approach**

**Many airport operators deplore the current regulatory burden, which, in their view, is characterized by excessive and recurrent intervention by ART.** Today, national legislation applies the same regulation to all airports, i.e., a systematic approval requirement prior to the entry into force of airport charge tariffs. In addition to discouraging users and operators from seeking compromise, by shifting responsibility for the final decision on tariff levels to the regulator, this situation precludes a differentiated approach depending on the situation of each airport.

**However, European legislation offers opportunities for differentiated regulation that could usefully be taken advantage of (2009/12/EC Directive on airport charges).**

## 2 FOUR RECOMMENDATIONS TO IMPROVE THE REGULATORY FRAMEWORK FOR AIRPORT CHARGES

### 2.1 General recommendation no. 1: make multi-year regulation the principle and annual approval the exception

**The CRE is a good tool for setting tariffs over a multi-year period, while encouraging operators to improve their performance in terms of costs and quality of service.** In addition to investments, their amount and the timetable for their completion, it enables service quality targets to be set for the period concerned, together with financial incentive mechanisms, as well as the conditions under which tariffs are to evolve. The article R. 224-4 of the French Civil Aviation Code explicitly states that, within the framework of a CRE, the ceiling on the average rate of change in charges for each tariff period is adjusted in the event of any deviation from the forecast elements taken into account (traffic, investments, costs and introduction of new charges).

**Thus, the CRE addresses several weaknesses in the current regulatory framework.** It sets tariffs within a multi-year framework, giving stakeholders the visibility they need to carry out their airport investment program, while retaining flexibility in terms of the risks borne, thanks to adjustment factors. It commits the airport operator to binding service quality indicators and performance incentive mechanisms.

**As a general rule, CREs should be used to set the framework for changes in airport charge rates.** To achieve this, it would be advisable:

- on the one hand, to adapt the CRE preparation process, using, for example, a "standard CRE" template, within the framework of a working group led by the DGAC and involving ART (failing which its adoption would be subject to a prior opinion from ART). The adoption of such a framework should not preclude derogations from it, if necessary, to maintain a certain degree of flexibility;
- on the other hand, to review the role of both users and ART in the conclusion process, so that (i) users and operators are encouraged to reach agreement on the project that forms the basis of the CRE (see also, in this respect, general recommendation no. 3), and (ii) ART is more closely involved in drawing up the CRE, before it is submitted, in order to limit the risk of an unfavorable opinion. An extension of the scoping opinion that may be requested by the DGAC from ART under article L. 6327-3 of the French Transport Code<sup>10</sup>, currently limited to the weighted average cost of capital to be used for the preparation of the CRE, to all the elements on which the CoCoAéro must give its opinion under current legislation<sup>11</sup> would make the process more secure, to the benefit of all stakeholders.

Eventually, once dialogue between airport operators and users has been fully re-established, the CRE could evolve to leave more room for consultation between these two parties, with the

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<sup>10</sup> Article L. 6327-3 of the French Transport Code stipulates that "with a view to drawing up a draft contract, the competent State authority may consult the Transport Regulation Authority, which will issue a reasoned opinion on the weighted average cost of capital to be taken into account in the draft contract".

<sup>11</sup> In accordance with article L. 228-1 of the French Civil Aviation Code, CoCoAéro gives its opinion "notably on investment programs, service quality objectives and changes in charges for services rendered".



role of the concession grantor focusing on defining a master plan for investments and service quality.

## **2.2 General recommendation no. 2: Open up the possibility of an adapted till principle, with the transfer rate of the economic benefits generated by commercial activities set by the CRE**

**An adapted till system, based on the establishment of a value-sharing rule in the CRE, would enable us to reconcile the positions of operators and airlines on this subject.** The CRE would be the best tool for defining the appropriate parameters for the fund, within the framework of the till system approved by the DGAC. It maximizes the efficiency of the system by modulating the level of contribution according to the specific features of each airport and the tariff period concerned. The duration of a CRE, which could be up to five years, also makes it possible to adapt the level of contribution for non-regulated commercial activities to the investment needs.

**In the case of an adapted till system, the CRE would set the rate at which the economic benefits (i.e., after return on capital employed) of non-aeronautical activities would be transferred to the airport public services.** This approach would make it possible to adjust the sharing of value over a limited period and thus avoid any windfall effects from a definitive transfer. The parameters of the payback percentage could depend on the level of profitability of non-aeronautical activities, in line with the recommendations of the most recent academic studies on the subject<sup>12</sup>. This transfer could take two complementary forms, to be calibrated according to investment needs and the desired evolution of airport fee tariffs: (i) a reduction in the costs of airport public services, which airport fee tariffs should enable to be covered; (ii) a subsidy for investments made on the platform. These terms and conditions of transfer would automatically have an impact on the terms and conditions for rate increases set out in the CRE project, on which ART is required to give its opinion under article L. 6327-3 of the French Transport Code.

**In the absence of a CRE, the Minister's decree would provide for a 100% rate of transfer of commercial profits to airport activities,** leading to a situation akin to a single fund<sup>13</sup>. Transitional measures could be introduced between two CRE, to ensure that the 100% rate applicable in the absence of a CRE does not lead to excessive variations in tariffs.

**Once the CRE has been signed, ART's control would essentially be aimed at ensuring compliance with the conditions for changes set out in the CRE,** on which it would have given its prior assent. As a result, the operator would retain the obligation to notify the ART of the tariffs to be applied for the coming tariff period, but ART's control would be greatly reduced.

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<sup>12</sup> See, in particular, the paper by David Martimort, Guillaume Pommey, Jérôme Pouyet (2022) *Optimal regulation design of airports: Investment incentives and impact of commercial services*, *Transportation Research Part B: Methodological*, volume 164, pages 25-44/.

<sup>13</sup> The only difference between this system and the single fund would be a possible differentiated cost of capital according to activity.

### 2.3 General recommendation 3: Strengthen consultation and transparency between operators and users

It is essential to strengthen the dialogue between operators and users, which could involve:

- **modifying the composition of the economic consultative commissions (CoCoÉco)**, as provided for in the current regulatory framework<sup>14</sup>, to reinforce the importance of user representation and ensure that their votes are taken into account, in line with the objectives of Directive 2009/12/EC on airport charges, which encourages consensus-building between users and operators;
- **more frequent meetings between users and operators**, including meetings dedicated to specific topics (e.g. investments or service quality);
- **improving the information provided to users, so that they fully understand the factors used to set charges**;
- **the introduction of a systematic audit of costs above a certain threshold through an independent review**. Whether for investment or operating costs, transparency and control of initial budgets will help build user confidence in the charges invoiced.

**The introduction of differentiated regulation could be the culmination of a fully renewed dialogue.** In this context, users' prerogatives should be strengthened, since the regulator would only intervene, for certain airports, in the event of a dispute between them and the operator. In particular, users should be able to appeal to ART when they feel that the consultation procedure has not been respected (see below).

### 2.4 General recommendation no. 4: consider differentiated regulation for each airport

**The 2009/12/EC Directive on airport charges (the "ACD") provides for different types of regulation:** at the request of the parties (articles 6§3 and 6§4), systematic for all airports falling within the scope of regulation, as in France (6§5-a) or adapted to the competitive situation of airports (6§5-b).

**Article 6§5-b of the directive provides for the possibility of adapting the intensity of regulation to the competitive situation of airports.** Implementing this type of regulation, however, requires studies to be carried out to measure airports' market power ("market tests"). These complex studies would require the regulator to mobilize substantial resources, which it does not have, and would take an inordinate amount of time.

**On the other hand, regulation "on-demand" at the request of the parties, as provided for in articles 6§3 and 6§4 of the ACD, has several advantages.** On the one hand, it can facilitate the emergence of innovative solutions, likely to result in lower fares for users than systematic regulation implemented at national level for all airports. On the other hand, it reduces the regulatory burden, while maintaining the advantages of annual tariff approval.

While regulation on-demand is not the most appropriate solution for all French airports falling within the scope of the directive, **differentiated regulation (combining systematic regulation and regulation on-demand, depending on the specific situation of each airport) would have many advantages.** It would give users a central role, by giving priority to agreement between

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<sup>14</sup> Articles D. 224-2 and D. 224-3 of the French Civil Aviation Code.

the parties to determine the tariffs applicable to regulated airports and would limit the regulatory burden for airports whose situation does not justify systematic intervention by the regulator. The mode of regulation could be determined according to a limited number of relevant, objective, non-discriminatory and transparent criteria, without relying on complex market tests.

**However, the introduction of differentiated regulation** presupposes adaptation of the French legislative framework, which does not currently provide for the possibility of on-demand regulation. In addition, it would have to be based on a wide-ranging consultation process to define objective, transparent, relevant and non-discriminatory criteria for determining the mode of regulation applicable to different airports, which can only be envisaged in the medium term.

**Finally, effective regulation on-demand would require a number of other adjustments to the current regulatory framework.** To ensure this regulation does not give rise to a systematic appeal to ART by one of the stakeholders, the consultation bodies should first be reviewed (see general recommendation no. 3 above on modifying the composition of CoCoÉco). In addition, ART's powers in the event of an appeal should be strengthened to enable it, in particular, to set fares itself if necessary, outside the cases already provided for in article L. 6327-2 of the French Transport Code.







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**Printing:** "Direction de l'information légale et administrative "(DILA) in 50 copies

**Legal deposit:** November 2023

**ISSN:** In progress

The report « Recommendations for the evolution of the regulatory framework for airports » is available online on the website: <https://www.autorite-transport.fr>



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