

Courtesy translation – only the Italian text is authentic

Decision No 68/2021

Airport charges regulatory models. Extraordinary measures related to the entry into force of Decision No 136/2020 supplementing the applicable sector regulation due to the COVID-19 epidemiological emergency.

In its meeting of 20 May 2021, the Authority,

- HAVING REGARD** to Article 37 of Decree-Law No 201 of 6 December 2011, converted, with amendments, into Law No 214 of 22 December 2011, establishing the Transport Regulation Authority (hereinafter: Authority);
- HAVING REGARD** to Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009, on airport charges;
- HAVING REGARD** to Articles from 71 to 82 of Decree-Law No 1 of 24 January 2012, converted, with amendments into Law No 27 of 24 March 2012 transposing the above-mentioned Directive 2009/12/EC into domestic legislation;
- HAVING REGARD** to Decree-Law No 133 of 12 September 2014, converted, with amendments, into Law No 164 of 11 November 2014, and in particular Article 1 thereof;
- HAVING REGARD** to the Decision of the Council of Ministers of 21 April 2021 on “*Extension of the state of emergency following the health risk associated with the occurrence of diseases originating from transmissible viral agents*”, published in the Official Journal of the Italian Republic No 103 of 30 April 2021;
- HAVING REGARD** to the rules of procedure for the first implementation of the proceedings for decision-making within the Authority’s remit and stakeholders’ participation, approved by Decision No. 5/2014 of 16 January 2014, and in particular Article 5 (4) thereof, providing that no public consultation is carried out “*when this is incompatible with needs of urgency, emergency or secrecy*”;
- HAVING REGARD** to Decision No 64/2014 of 17 September 2014 on “*Approval of airport charges regulatory models*”;
- HAVING REGARD** to Decision No 92/2017 of 6 July 2017 on “*Conclusion of the proceeding initiated by Decision No 106/2016 – Approval of airport charges regulatory models*”;
- HAVING REGARD** to Decision No 136/2020 of 16 July 2020 on “*Conclusion of proceedings initiated by decision No. 84/2018. Approval of airport charges regulatory models*”;

- HAVING NOTED** that the effects of the COVID-19 pandemic as recorded in 2020 and published on 12 April 2021 by ENAC attest a decrease in passenger traffic accounting for more than 70% compared to 2019;
- CONSIDERING** the need to ensure compliance, not only with the regulatory framework, but also with the general principles underlying the sector regulation as defined by the Authority;
- HAVING CONSIDERED** that the persistent uncertainties related to the COVID-19 pandemic make it particularly difficult, at present, to outline, with the appropriate level of reliability, the developing traffic scenario in the short-medium term, which is essential to make planning choices and to determine the level of airport charges that meet the necessary requirements of transparency, effectiveness and efficiency;
- HAVING REGARD** to the report drawn up by the competent offices of the Authority;
- HAVING CONSIDERED** the urgent need to define unequivocal regulatory principles and criteria so as to ensure certainty and stability to the economic regulation of the airport sector, which is particularly affected by the ongoing health emergency;
- HAVING CONSIDERED** therefore appropriate to postpone until 1 January 2023 the entry into force of the Models referred to in Decision No. 136/2020, which were to be applied from 1 July 2021, with ensuing application of the Models referred to in Decision No 92/2017 for the procedures of airport charges review initiated until 31 December 2022;
- HAVING ALSO NOTED** that the Authority, with the Models referred to in Decision No 136/2020, intended, *inter alia*, to pursue the following two objectives:
- (i) extension of the scope of the Authority's regulation to airports holding programme contracts (*contratti di programma*) as provided for in Article 17 (34a) of Decree-Law No. 78 of 1 July 2009, converted, with amendments, into Law No 102 of 3 August 2009 (hereinafter: PCs under Decree-law No 78/2009) in order to implement the provision referred to in Article 10 of Law No 37 of 3 May 2019, that, while replacing Article 73 of the above-mentioned Decree-law No 1/2012, set out that the Authority performs the functions of National Supervisory Authority including with reference to such cases;
 - (ii) adoption of specific regulatory measures aimed at providing, in the event of a request for adoption of a common charging system by the managing bodies of more than one airport, adequate guarantees of compliance with the principles referred to in Article 80 (1) of Decree-law No 1/2012, so as to meet the needs of the managing bodies of more than one airport to adopt clear and explicit criteria for the regulation of an airport network or an airport system;
- CONSIDERING THAT,** in the light of these objectives, the related provisions of the regulatory measures under Decision No 136/2020, which have already been subject to consultation and to regulatory impact analysis, appear to usefully supplement, as from 1 July 2021,

the above Models referred to in Decision No 92/2017, without being affected by the present situation caused by the COVID-19 pandemic;

HAVING CONSIDERED in particular that:

- with specific reference to the airports regulated by PCs under Decree-law No 78/2009, the economic regulatory measures referred to in the Models approved by Decision No 92/2017 would be applicable through the conclusion of additional arrangements related to the revision of the contractual agreements, or different agreement between the awarding entity and the concessionaire, in accordance with the principles set out in Articles from 71 to 82 of Decree-law No 1/2012;
- as regards the regulation of Airport Networks and Systems, the relevant measures of Decision No. 136/2020 would provide the necessary implementing provisions for the measures under Decision No. 92/2017, with limited additional coordination measures concerning the identification of rate of remuneration of invested capital, efficiency objectives and coefficients of cost elasticity;

GIVEN THAT airport operators, affected by the expiry of previous regulatory periods, have requested, in view of the aforesaid epidemiological emergency, to extend the application of the existing charges to the following years;

CONSIDERED it appropriate to provide airport operators, that will launch the consultation procedure for the review of airport charges in the two-year period 2021-2022, with flexible tools that alternatively allow to initiate the related procedure in accordance with the Models under Decision No 92/2017 – as supplemented from 1 July 2021, according to the terms specified – or to propose the extension of the existing charges also to the following year;

GIVEN the pivotal role of the consultation between managing bodies and users, that is enshrined in Directive 2009/12/EC as transposed into domestic legislation, for the purpose of the pricing decisions for the access to airport infrastructure;

HAVING CONSIDERED that any proposals to extend the application of the existing airport charges should be submitted by the competent managing bodies to their users, subject to the submission of a reasoned request to the Authority, in compliance with the information and transparency requirements with regard to users as provided for by Article 80 of Decree-Law No 1/2012;

HAVING REGARD to the rules governing the regulatory impact analysis (*RIA*) and the regulatory impact verification (*RIV*), approved by the Authority's Decision No 54/2021 of 22 April 2021, and in particular Article 3 ("*Scope of RIA and RIV*"), and having regard to the specified needs of urgency;

CONSIDERING the need to analyse the effects of the Authority's regulatory measures, by

assessing the degree of target achievement, and to identify any remedies that could be made, where appropriate, also to Decision No. 136/2020, in order, *inter alia*, to pursue a reduction of information, economic or financial burdens introduced by the regulation;

upon proposal by the Secretary-General

HAS TAKEN THE FOLLOWING DECISION

1. the entry into force of the airport charges regulatory Models referred to in Decision No 136/2020 of 16 July 2020, that was originally scheduled to apply from 1 July 2021, is postponed, for the reasons expressed in the premises which are understood to be fully referred hereto, to 1 January 2023;
2. the procedures for the review of airport charges initiated from 1 July 2021 until 31 December 2022 shall be subject to the Models referred to in Decision No 92/2017 of 6 July 2017, as accompanied by the implementing and supplementing measures set out in Annex A to this Decision, which is an integral and substantial part thereof;
3. airport managers initiating the consultation procedure for the review of airport charges over the two-year period 2021-2022 may, alternatively:
 - i. initiate the relevant procedure in accordance with the Models referred to in Decision No. 92/2017, subject to the provisions of point 2 above;
 - ii. subject to a reasoned request lodged with the Authority, propose to extend the application of the charges in force at the time of the request also to the following year, while fulfilling the information and transparency obligations towards users, referred to in Article 80 of Decree-law No 1/2012, and ensuring the provision of adequate information ahead of the first useful annual consultation, including with reference to any adjustment systems;
4. on the basis of the outcome of the user consultation procedure referred to in point 3 (ii), in compliance with the principle of participation for the protection of all parties involved, the Authority's offices, in accordance with the principles set out in Article 80 of Decree-law No 1/2012, shall carry out the assessments within their remit and express their views on the requests for extension submitted by airport managing bodies;
5. the regulatory measures referred to in this Decision are subject to the regulatory impact verification referred to in the Authority's Decision No 54/2021 of 22 April 2021, to be concluded by 30 October 2022; the person in charge of the regulatory impact verification is Dr. Cinzia Rovesti, certified e-mail address: pec@pec.autorita-trasporti.it, telephone 0039 011 19212521;
6. the implementing and supplementing measures referred to in point 2 and the report drawn up by the Authority's offices shall be published on the Authority's *website*.

Turin, 20 May 2021

The President
Nicola Zaccheo
(digital signature pursuant to legislative
decree no 82/2005, as amended)